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SUPERIOR COURT OF CALIFORNIA
SACRAMENTO COUNTY

THE NATIONAL GRANGE OF THE
ORDER OF PATRONS OF
HUSBANDRY, a Washington, D.C.,
nonprofit corporation,

Plaintiff,

vs.

THE CALIFORNIA STATE GRANGE,
a California nonprofit corporation, and
ROBERT McFARLAND, JOHN
LUVAAS, GERALD CHERNOFF and
DAMIAN PARR,

Defendants.

and related Cross-Actions.

CASE NO. 34-2012-00130439

**~~PROPOSED~~ ORDER GRANTING IN
PART AND DENYING IN PART
CROSS-DEFENDANTS MARTHA
STEFENONI AND SHIRLEY BAKER'S
SPECIAL MOTION TO STRIKE**

RESERVATION NO.: 1877422

DATE: November 6, 2013
TIME: 2:00 p.m.
DEPT.: 53
JUDGE: Hon. David Brown

Complaint Filed: October 1, 2012
Trial Date: Not yet

BY FAX

Having taken the matter under submission on 11/06/2013, the Court now rules as follows:

Cross-defendants Martha Stefenoni and Shirley Baker's Special Motion to Strike the First Amended Cross-complaint of Robert McFarland is GRANTED in part and DENIED



**~~PROPOSED~~ ORDER GRANTING IN PART
AND DENYING IN PART CROSS-
DEFENDANTS MARTHA STEFENONI AND
SHIRLEY BAKER'S SPECIAL MOTION TO
STRIKE**

1 in part under Code Civ. Proc. § 425.16.

2
3 Cross-defendants Martha Stefonia and Shirley Baker's Special Motion to Strike the
4 First Amended Cross-complaint of Robert McFarland is GRANTED in part and DENIED
5 in part. C.C.P., sec. 425.16. The notice of motion does not provide notice of the Court's
6 tentative ruling system as required by with C.R.C., Rule 3.1308 and Local Rule 1.06(D).
7 Local Rules for the Sacramento Superior Court are available on the Court's website at
8 <<http://www.saccourt.ca.gov/local-rules/local-rules.aspx>>. Counsel for
9 moving party is ordered to notify opposing party immediately of the tentative ruling system
10 and to be available at the hearing, in person or by telephone, in the event opposing party
11 appears without following the procedures set forth in Local Rule 1.06(B).

12
13 *First Amended Cross-Complaint*

14 Defendant/Cross-Complainant Robert McFarland's cross-complaint was filed Nov.
15 15, 2012, against Cross-defendants The National Grange of the Order of Patrons of
16 Husbandry ("National Grange"), Edward L. Luttrell and Martha Stefenoni.
17 The First Amended Cross-complaint ("FACC"), filed May 13, 2013, added Shirley Baker as
18 a cross-defendant and alleges six causes of action: the 1st for defamation, the 2nd for public
19 disclosure of private facts, the 3rd for intrusion, the 4th for intentional interference with
20 contractual relations, the 5th for intentional interference with prospective business
21 relations and the 6th for infliction of emotional distress.

22
23 *Facts Alleged in the FACC*

24 The allegations of the cross-complaint were: (1) that Stefenoni contacted Luttrell
25 and falsely accused defendantMcFarland of wrongfully processing applications for new
26 chapter Granges and attempting to seat

1 unqualified delegates to the California Grange's annual convention; (2) that Stefenoni and
2 Baker issued and published to Luttrell, the National Grange, and the California Grange
3 executive committee and members, an unauthorized minority report of the executive
4 committee's investigation of the actions of McFarland, as ordered by Luttrell; (3) that
5 Stefenoni (serving as Acting Master of the California Grange during McFarland's
6 suspension) began manufacturing further charges against McFarland, and obtained
7 and provided Luttrell information concerning a 2009 real property legal dispute between
8 the California Grange and the Vista Grange; (4) that Baker published Luttrell's letter of
9 February 7, 2012, which allegedly was a confidential evaluation of McFarland's
10 employment; (5) that the cross-defendants published false facts, allegations, and charges.
11 Baker is named as a cross-defendant in all causes of action.

12
13 Stefenoni is named as a cross-defendant in the First, Fourth, Fifth and Sixth Causes
14 of Action. Baker is named in all causes of action.

15
16 *Special Motion to Strike*

17 The individual cross-defendants Martha Stefenoni (Vice President and member of
18 the Executive Committee of the California State Grange) and Shirley Baker (a member of
19 the Executive Committee of the State Grange) move to strike all causes of action alleged
20 against them.

21
22 *Anti-SLAPP Procedure*

23 The court's task in ruling on an anti-SLAPP motion to strike is as follows. Section
24 425.16, subdivision (b)(1) requires the court to engage in a two-step process. First, the court
25 decides whether the defendant has made a threshold showing that the challenged cause of
26 action is one arising from protected activity. The moving defendant's burden is to

1 demonstrate that the act or acts of which the plaintiff complains were taken "in furtherance
2 of the [defendant]'s right of petition or free speech under the United States or California
3 Constitution in connection with a public issue," as defined in the statute. (§ 425.16, subd.
4 (b)(1).) If the court finds such a showing has been made; it then determines whether the
5 plaintiff has demonstrated a probability of prevailing on the claim. Under section 425.16,
6 subdivision (b) (2), the trial court in making these determinations considers "the pleadings,
7 and supporting and opposing affidavits stating the facts upon which the liability or defense
8 is based." *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal. 4th 53, 67.

9
10 Code Civ. Proc. § 425.16 (e) provides: "As used in this section, 'act in furtherance of
11 a person's right of petition or free speech under the United States or California
12 Constitution in connection with a public issue' includes: . . . (3) any written or oral
13 statement or writing made in a place open to the public or a public forum in connection
14 with an issue of public interest, or (4) any other conduct in furtherance of the
15 exercise of the constitutional right of petition or the constitutional right of free speech in
16 connection with a public issue or an issue of public interest."

17 In a recent court of appeal decision, *Cho v. Chang* (2013) 219 Cal. App. 4th 521, 523,
18 the appellate court held that where the causes of action in the cross-complaint combine
19 allegations of conduct that is protected by the anti-SLAPP statute with conduct that is not,
20 the trial court may strike the allegations in the cross-complaint attacking the protected
21 activity while allowing the unprotected theories to remain. ["Striking the entire cause of
22 action would plainly be inconsistent with the purposes of the statute.

23 Striking the claims that invoke protected activity but allowing those alleging nonprotected
24 activity to remain would defeat none of them. Doing so also is consonant with the historic
25 effect of a motion to strike: "to reach certain kinds of defects in a pleading that are not
26 subject to demurrer." (See 5 Witkin, Cal. Procedure (5th ed. 2008) Pleading, § 1008, p.

1 420.)"]. Id. at. p. 527

2
3 *Right of Petition or Free Speech In Connection With a Public Issue*

4 Moving parties assert that their conduct and Constitutional right of free speech were
5 in connection with a public issue, as they characterize the governance of the California
6 Grange as "a quasi-governmental entity paralleling in almost every case the powers, duties
7 and responsibilities of a municipal government", citing *Damon v. Ocean Hills Journalism*
8 *Club* (2000) 85 Cal.App.4th 468 [allegedly defamatory statements about a homeowners'
9 association manager were subject to the anti-SLAPP statute]

10
11 The relevant factual allegations include: On or about October 5, 2011, Stefenoni
12 contacted Luttrell and the National Grange and falsely accused McFarland of wrongfully
13 processing applications for several new California sub-chapter Granges and attempting to
14 seat unqualified delegates for the State Grange's annual convention. (FACC, para. 11)

15
16 Luttrell tasked the Executive Committee to investigate the discrepancies in the dates
17 of charter applications, the seating of alternate and affiliate delegates at the California
18 State Grange's Annual Convention, and accusations of harassment and bullying in the
19 California State Grange office by McFarland. (FACC, para. 13.)

20
21 After the State Grange Executive Committee investigated the accusations made by
22 Stefenoni and issued its exoneration of McFarland, Stefenoni and Baker drafted an
23 unauthorized "minority report" disputing the findings and conclusions of the majority and
24 stating that in fact McFarland had acted improperly and should be removed from office.
25 Stefenoni and Baker sent their minority report to Luttrell at the National Grange and then
26 republished it to the State Grange. (FACC, para. 14-16.)

1 The Court finds that the governance of the State Grange constitutes a matter of
2 public interest to the members of both the State and National Granges. The Courts are
3 required to construe the phrase "public issue or issue of public interest" broadly. West's
4 Ann.Cal.C.C.P. § 425.16(e)(4). *Hilton v. Hallmark Cards*, 599 F.3d 894 (9th Cir. 2010);
5 *Bailey v. Brewer* (2011) 197 Cal. App. 4th 781. Here, the criticism of McFarland by
6 Stefenoni and Baker regarding his acceptance of new State Grange subchapters with
7 altered dates and improperly seating alternate delegates without proper credentials at the
8 State Convention constitutes protected conduct in connection with a public issue.

9
10 However, the statements by Stefenoni and Baker about some of McFarland's
11 conduct as an employee, specifically that McFarland engaged in conduct within the office
12 which amounted to harassment, bullying, and the intimidation of employees had nothing to
13 do with legislation or general public policy. (McFarland Decl., paras. 4, 14; Luvaas Decl.,
14 para. 2; Exh. A.)

15
16 Therefore, the Court does not conclude that the statements that McFarland was a
17 "bully" in the workplace constitutes protected conduct regarding a matter of public interest.
18 (FACC, paras. 12, 15, 23, 27, 30.)

19
20 As each of the six causes of action incorporates by reference the unprotected
21 statements that McFarland was a bully in the workplace, none of the causes of action is
22 alleges only protected activity.

23
24 *Probability of Prevailing on the Claim*

25 As each of the causes of action allege both protected and unprotected activity, the
26 Court cannot determine that the Cross-complainant McFarland has demonstrated a

1 probability of prevailing on the entirety of each addressed cause of action.

2
3 The guiding principle in applying the anti-SLAPP statute to a mixed cause of action
4 case is that a plaintiff cannot frustrate the purposes of the SLAPP statute through a
5 pleading tactic of combining allegations of protected and nonprotected activity under the
6 label of one cause of action. *Cho v. Chang, supra*, 219 Cal. App. 4th at 527.


7
8 Following the appellate court's decision in *Cho v. Chang* (2013) 219 Cal. App. 4th
9 521, as it must, this Court strikes the allegations in each of the causes of action of the
10 FACC alleging protected activities while allowing the allegations of unprotected theories
11 (harassment, bullying, and the intimidation of employees) to remain.

12
13 Under section 425.16, none of the causes of action is subject to being stricken in its
14 entirety.

15
16 Again following the appellate court in *Cho v. Chang, supra*, at 525, the court denies
17 an award of attorney fees, reasoning the moving parties' partially successful motion
18 "produced nothing of consequence."

19
20 Cross-defendants shall file their Answers to the FACC, not later than Tuesday, Nov.
21 27, 2013.

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24 DATED: DEC - 2 2013

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HONORABLE DAVID BROWN, Department 53
Judge, Sacramento Superior Court

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PROOF OF SERVICE

The National Grange of the Order of Patrons of Husbandry
v.
The California State Grange, et al. and related Cross-Actions

Sacramento Superior Court Case No. 34-2012-00130439

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. I am employed in the office of a member of the bar of this court at whose direction the service was made. My business address is 411 Borel Avenue, Suite 425, San Mateo, California 94402-3518. On November 20, 2013, I served the following document(s):

**[PROPOSED] ORDER GRANTING IN PART AND DENYING IN PART
CROSS-DEFENDANTS MARTHA STEFENONI AND SHIRLEY BAKER'S SPECIAL
MOTION TO STRIKE**

on the following person(s) by the method(s) indicated below:

Martin N. Jensen, Esq. Thomas L. Riordan, Esq. PORTER SCOTT 350 University Avenue, Suite 200 Sacramento, California 95825	<i>Attorneys for Plaintiffs and Cross-Defendants The National Grange of the Order of Patrons of Husbandry and Edward L. Luttrell</i> Telephone: 916-929-1481 Facsimile: 916-927-3706
Robert D. Swanson, Esq. Daniel S. Stouder, Esq. BOUTIN JONES INC. 555 Capitol Mall, Suite 1500 Sacramento, California 95814-4603	<i>Attorneys for Defendants and Cross-Complainant The California State Grange, John Luvaas, Gerald Chernoff and Damian Parr</i> Telephone: 916-321-4444 Facsimile: 916-441-7597
Mark E. Ellis, Esq. William A. Lapcevic, Esq. ELLIS LAW GROUP, LLP 740 University Avenue, Suite 100 Sacramento, California 95825	<i>Attorneys for Defendant and Cross-Complainant Robert McFarland</i> Telephone: 916-283-8820 Facsimile: 916-283-8821

- ☐ by transmitting via facsimile on this date from fax number (650) 554-6240 the document(s) listed above to the fax number(s) set forth herein. The transmission was completed before 5:00 p.m. and was reported complete and without error.
- ☒ by placing the document(s) listed above in a sealed envelope(s) with postage thereon fully prepaid, for deposit in the United States mail at San Mateo, California addressed as set forth herein. I am readily familiar with the firm's practice of collection and

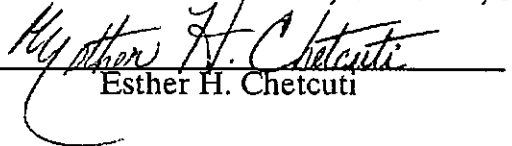
1 processing correspondence for mailing. Under that practice it would be deposited with
2 the U.S. Postal Service on that same day, with postage thereon fully prepaid in the
ordinary course of business.

3 [] by placing the document(s) listed above in a sealed envelope(s) and by causing personal
4 delivery of the envelope(s) to the person(s) at the address(es) set forth herein. Signed
proof of service by the process server or delivery service is attached to this proof of
5 service.

6 [] by personally delivering the document(s) listed above to the person(s) at the
address(es) set forth herein.

7 [] by placing the document(s) listed above in a sealed envelope(s) and consigning it to an
8 express mail service for guaranteed delivery on the next business day following the date
of consignment to the address(es) set forth herein.

9 I declare under penalty of perjury under the laws of the United States and the State
10 of California that the above is true and correct. Executed at San Mateo, California, on
November 20, 2013.

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12 _____
13 Esther H. Chetcuti
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