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THE NATIONAL GRANGE OF THE ORDER OF PATRONS OF HUSBANDRY and EDWARD L. LUTTRELL

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN THE COUNTY OF SACRAMENTO

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

Plaintiff,

v.

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

Defendants.

ROBERT MCFARLAND, an individual

Cross-Complainant,

v.

THE NATIONAL GRANGE OF THE ORDER OF PATRONS OF HUSBANDRY, a Washington D.C. nonprofit corporation, and MARTHA STEFENONI, an individual, and EDWARD L. LUTTRELL, an individual, and SHIRLEY BAKER, an individual, ROES 1 through 10, inclusive,

Cross-Defendants.

Case No. 34-2012-00130439

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE NATIONAL GRANGE OF THE ORDER OF PATRONS OF HUSBANDRY AND EDWARD LUTTRELL'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION AGAINST MCFARLAND'S CROSS-COMPLAINT

DATE: **January 12, 2015**
TIME: **2:00 p.m.**
DEPT: **53**

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OTHER AUTHORITY

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INTRODUCTION

Cross-Complainant Robert McFarland (hereafter "McFarland") was in 2012 the Master of the California State Grange, a California non-profit corporation (hereafter "CSG"). CSG was a constituent part of the National Grange of the Order of Patrons of Husbandry (hereafter "National Grange"). McFarland's Cross-Complaint against Cross-Defendants National Grange and Edward Luttrell ("Luttrell"), Master of the National Grange, sets forth six closely related causes of action, mostly emanating from a neutral and exhortatory letter dated February 7, 2012, from Luttrell to McFarland.[1] As Master of the National Grange, Luttrell was required under the bylaws of the Order to monitor masters of state granges to ensure compliance with the rules of the Order. The February 7, 2012, letter was addressed and sent to McFarland, and copies were also intentionally sent to the CSG Executive Committee and select members of the National Grange Executive Committee with a particular interest in the issue of Grange governance in California. Thus, all recipients of the letter were closely associated with the administration of CSG. Luttrell neither sent nor authorized the sending of copies to anybody else.

The February 7 letter contains no false or defamatory statements of fact about McFarland. Rather, the mild and cautious letter was merely Luttrell's preliminary response to CSG investigations that had been undertaken to address a set of concerns raised by several members of the CSG Executive Committee, among others, regarding the governance of CSG. Luttrell made no factual findings in the February 7 letter, but merely stated some of the concerns that had been raised and addressed by the investigations conducted by the CSG Executive Committee members themselves. Luttrell indicated that, in his opinion, there were some issues for consideration and requested McFarland to apply his leadership skills to serve the ideals of the Order, without ever determining that McFarland may have actually violated any rules. Indeed, McFarland is the person who has most persistently proclaimed that Luttrell condemned McFarland's conduct in the letter. In

[1] For brevity, Luttrell is often referred to alone herein, even though the National Grange is also named as a Defendant in each cause of action. There is no tortious conduct alleged against the National Grange separate and distinct from Luttrell's conduct. Similarly, "CSG" is used here to refer only to the organization for which McFarland served as Master. It is important to note that McFarland in October 2013 engineered what amounted to a secession by CSG from the National Grange, while still maintaining possession and control of Grange property contrary to the bylaws. A new CSG was rechartered in July 2014 with no connection to McFarland.

any event, this letter was statutorily privileged because it was sent only to those persons who had a direct interest in the governance of the CSG, and was in no manner malicious. Luttrell had no reason to believe the text of the letter would be spread further to other CSG members.

McFarland's second cause of action alleging public disclosure of private facts by Luttrell is similarly without merit as a matter of law because none of the facts set forth in the February 7 letter were "private" facts under California law. Although McFarland's pleading endeavors to characterize the letter as an "employment evaluation," which in some contexts may not be heedlessly disclosed to others by the employer, McFarland subsequently admitted it was not really an employment evaluation. Indeed, the National Grange was not McFarland's employer and McFarland had no legitimate expectation of privacy about disclosure of his official activities that emerged from investigations to which McFarland had consented. Instead, the February 7 letter involved discussion of Luttrell's legitimate concerns as the Master of the National Grange regarding the governance of the subordinate CSG by McFarland, the elected Master of a large organization. No personal facts about McFarland were revealed.

Similarly, McFarland's third cause of action for intrusion is without factual support. A letter's general discussion of areas regarding an elected master's governance, without broadcasting or otherwise revealing truly private facts to the general public, cannot as a matter of law constitute the tort of intrusion. In any event, nothing disclosed by Luttrell can be deemed highly offensive to a reasonable person and the "interested persons" privilege also applies here to preclude liability.

The related torts of intentional interference with contract and interference with prospective economic relations fail here for several reasons. The entities with which McFarland alleges contractual or prospective economic relations are all constituent parts of the National Grange, not separate and unrelated parties. Furthermore, McFarland has no evidence of any independent unlawful conduct by Luttrell, especially in the absence of defamation, which cannot be bootstrapped here. Moreover, McFarland has suffered no actual injury to his economic position as a result of Luttrell's comments and subsequent charges against McFarland. He was re-elected as Master of CSG in 2013 and has continued his employment without interruption from the organization that subsequently seceded from the Order. McFarland has thus been deprived of no

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financial benefits whatsoever. Finally, McFarland's cause of action for infliction of emotional distress is without merit as a matter of law. There is no evidence of any outrageous conduct by Luttrell resulting in severe personal distress to McFarland. McFarland simply faced a mild critique of his public governance activities, which he found stressful.

STATEMENT OF FACTS

During McFarland's entire time as Master of CSG, Edward Luttrell has served as Master of the National Grange. (Exhibit J, First Amended Cross-Complaint ("FACC"), ¶ 3; Exhibit B, Luttrell Declaration, ¶ 1.)[2] Robert McFarland was originally elected Master of CSG in 2009, and was re-elected to that position in 2011. (UMF No. 6.) McFarland was re-elected again in October 2013. (UMF No. 6.)

Until October 2013, the National Grange bylaws were adopted and acknowledged as supreme and provided an internal judicial process for adjudicating purported violations of bylaws by members. (UMF No. 1.) In October 2011, Luttrell was alerted by Martha Stefenoni, Overseer (effectively vice-master) of CSG, regarding certain perceived problems of governance in CSG for which an investigation was commenced. (Exhibit J, FACC, ¶ 11.) After some preliminary investigation, Luttrell requested a report by the CSG Executive Committee regarding the purported falsification of charter applications, seating of unqualified convention delegates, and harassment and bullying of employees in the CSG office. (Exhibit J, FACC, ¶ 12.) A report approved by a majority of the CSG Executive Committee in January 2012 found little fault with McFarland. (Exhibit J, FACC, ¶ 13.) There was, however, also a separate report prepared by a minority of the CSG Executive Committee in January 2012, which found some significant fault with McFarland's leadership. (Exhibit J, FACC, ¶¶ 14-15.) In light of these conflicting reports, Luttrell did not make findings but simply prepared a letter dated February 7, 2012, urging the parties to avoid such problems in the future. (UMF No. 8.)

The February 7 letter was sent by Luttrell to McFarland, with "cc" listings for only a small number of people who were directly interested in CSG governance: the Executive Committee of

[2] All Exhibits referenced herein by letter are attached to the concurrently-filed Appendix of Exhibits, and are identified by the declarations of either Edward Luttrell or Martin Jensen.

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the California State Grange; Fran Vitt, Counsel for the National Grange; and Jimmy Gentry, Overseer of the National Grange. (UMF No. 3, Exhibit K.) Luttrell did not send the February 7 letter to any other persons and did not encourage or expect any of the recipients to send the contents of the February 7 letter to others. (UMF No. 4.)

McFarland alleges that the February 7 letter contained false statements about him being dishonest. (Exhibit J, FACC, ¶ 27.) Regarding potential dishonesty, the February 7 letter simply states: "Integrity is a requirement of successful Grange leadership. I have had a number of informal complaints and reports about your actions which primarily include bullying behavior and insincere statements." (UMF No. 8.) McFarland also alleges that the February 7 letter contained false statements about him having a penchant for "bullying" in the workplace. (Exhibit J, FACC, ¶ 27.) Besides the brief mention of reports about "bullying behavior," the February 7 letter simply states in the next paragraph: "Grange leadership requires that we work with those who disagree with us. Disagreement and the ensuing debate are healthy for us as people and for our organization. Failure to engage in debate or to consider opposing viewpoints goes against the philosophy of the Grange." (UMF No. 8.) McFarland alleges that the February 7 letter contained false statements about him engaging in unethical activities which put in question McFarland's integrity. (Exhibit J, FACC, ¶ 27.) Besides the mention of "integrity," the February 7 letter makes no findings or determinations of fact about McFarland's handling of several matters as the Master of CSG. (UMF No. 8.)

While generally exhorting McFarland toward his best ethical leadership ability within Grange policy, the letter does not declare McFarland acted unethically and only mentions "integrity" in the context of protecting the integrity of the CSG delegate body. (UMF No. 8.) The February 7 letter contains no false and defamatory statements of fact about McFarland, but rather opinions from Luttrell as Master of the National Grange about those ideals of the Order to which McFarland should aspire. (UMF No. 8.) Luttrell did not have actual malice toward McFarland regarding the February 7 letter. (UMF No. 2.) All of the persons to whom Luttrell sent copies of the February 7 letter were interested in the proper governance of the CSG within the Order. (UMF No. 3.) Luttrell did not send the February 7, 2012 letter to other persons and did not encourage or expect any of the recipients to send the contents of the February 7, 2012, letter to others. (UMF No.

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4.)

Even after later filing new Grange charges against McFarland in August 2012, based in part upon new information regarding the Vista Grange, Luttrell never interfered with McFarland's contractual employment relationship with CSG. To the extent the suspension of McFarland as Master, which was permitted by the rules of the Order pending internal Grange adjudication of the charges may have potentially affected his position within the Order, Luttrell and the National Grange never required CSG to stop paying McFarland's salary during his suspension in 2012. (UMF No. 5.) That decision remained for the CSG. In any event, McFarland and the majority of the CSG Executive Committee refused to accept the required suspension, so McFarland's employment contract was never disrupted.

Finally, McFarland's sixth cause of action for intentional infliction of emotional distress is without evidentiary support. Although McFarland claims he was stressed by investigations into his conduct, no evidence indicates that Luttrell or the National Grange engaged in any highly offensive conduct that may have caused McFarland severe emotional distress. (UMF No. 31.)

Regarding McFarland's causes of action, he has been unable to indicate in discovery responses any general or special damages he has actually suffered as a result of the alleged torts. (Exhibit C, McFarland's Response to Special Interrogatories, Nos. 213, 216.) More specifically, McFarland admitted that he has suffered no loss of income or earning capacity as a result of the alleged torts. (UMF No. 9.)

LEGAL ARGUMENTS

Snatchko v. Westfield LLC (2010) 187 Cal.App.4th 469, 477, explains that the scope of material evidence is determined here by the allegations of the FACC:

> [T]he pleadings frame the issues to be resolved. "'The purpose of a summary judgment [adjudication] proceeding is to permit a party to show that material factual claims arising from the pleadings need not be tried because they are not in dispute.' [Citation.] 'The function of the pleadings in a motion for summary judgment [adjudication] is to delimit the scope of the issues: the function of the affidavits or declarations is to disclose whether there is any triable issue of fact within the issues delimited by the pleadings.' [Citations.]" (*FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 381.)

Thus, the moving party's evidence need only focus on the particular facts set forth in McFarland's

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FACC. Undisputed evidence, or absence of any evidence supporting the allegations, shifts the burden regarding essential elements of each of McFarland's causes of action as pled.

The Third District Court of Appeal explains further the applicable standard in *216 Sutter Bay Associates v. County of Sutter* (1997) 58 Cal.App.4th 860, 875-876:

> A party may move for summary adjudication of a cause of action if that party contends the cause of action has no merit. (Code Civ. Proc., § 437c, subd. (f)(1); hereafter, section 437c.) A defendant moving party meets its burden of showing that a cause of action has no merit if it shows that one or more elements of the cause of action cannot be established. (§ 437c, subd. (o)(2).) To do this, a moving party may note that discovery has disclosed no evidence to support one or more elements of the cause of action. (See *Rio Linda Unified School Dist. v. Superior Court* (1997) 52 Cal.App.4th 732, 735; *Hunter v. Pacific Mechanical Corp.* (1995) 37 Cal.App.4th 1282, 1286-1287; *Union Bank v. Superior Court* (1995) 31 Cal.App.4th 573, 590.) A motion for summary adjudication shall be granted if all the papers submitted show that there is no triable issue as to any material fact regarding the cause of action and that the moving party is entitled to adjudication as a matter of law. (See § 437c, subd. (c).)

McFarland's discovery responses in several crucial areas either explicitly or implicitly disclosed an absence of evidence to support his pleadings. In other areas the discovery responses actually negate McFarland's allegations.

A. LUTTRELL'S FEBRUARY 7, 2012 LETTER DOES NOT CONTAIN UNPRIVILEGED FALSE AND DEFAMATORY STATEMENTS OF FACT AGAINST MCFARLAND.

The California Supreme Court set forth the requisite elements of defamation in *Taus v. Loftus* (2007) 40 Cal.4th 683, 720, stating:

> The tort of defamation "involves (a) a publication that is (b) false, (c) defamatory, and (d) unprivileged, and that (e) has a natural tendency to injure or that causes special damage." (5 Witkin, Summary of Cal. Law (10th ed. 2005) Torts, § 529, p. 782, citing Civ. Code, §§ 45-46 and cases.)

The undisputed facts, however, negate nearly each of the elements for defamation here. The February 7 letter nowhere declares as a factual matter, or even implies, that McFarland, who is at least a limited public figure as elected Master of CSG, was of bad character, violated the rules of the Order, or was otherwise incapable of performing his official duties. In context, for example, the letter's reference to "falsification" of chartering dates approved by CSG did not even imply that

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McFarland was personally found to have deliberately created fraudulent documents. Rather, Luttrell exhorted McFarland, like himself a Grange leader, to maintain vigilance in supervision over those crucial CSG documents to make sure incorrect information was not used in Grange business. Errors by his staff could still be considered McFarland's responsibility as CSG Master.

McFarland alleges that the February 7 letter labeled him as dishonest, but reading its text makes clear that the letter did no such thing. The letter simply states that Luttrell had received informal complaints about McFarland's "insincere statements," which is a perception by others. Luttrell never endorsed the view that McFarland was in fact dishonest. Similarly, to the extent McFarland alleges the February 7 letter accused him of "bullying behavior," Luttrell merely recounted that some of the informal complaints raised that concern. Luttrell again did not endorse that position, but urged McFarland to accept disagreement by those CSG members with opposing viewpoints. Finally, McFarland alleges that the February 7 letter indicated McFarland was unethical and lacked integrity, but the language of the letter merely set forth Luttrell's opinion that as Master of CSG, it was McFarland's responsibility to supervise and ensure that the bylaws were followed by CSG regarding chartering of local granges and credentialing delegates to the annual CSG Session.

1. McFarland Is A Limited Purpose Public Figure.

When public officials are sued for libel they must prove by clear and convincing evidence that the defamatory statement is "made with 'actual malice' – that is, with knowledge that it was false or with reckless disregard of whether it was false or not." (*New York Times Co. v. Sullivan* (1964) 376 U.S. 254, 280.) Even if the plaintiff is not a celebrity or public figure for all purposes, he may be deemed a public figure regarding a particular controversy. Indeed, the California Supreme Court has defined a limited purpose public figure as "an individual who 'voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues.' (418 U.S. at p. 351 [41 L.Ed.2d at p. 812].)" (*Reader's Digest Assn. v. Superior Court* (1984) 37 Cal.3d 244, 253.) The issue of whether a libel plaintiff is a limited purpose public figure is particularly suited for determination by the court as a matter of law on summary judgment. (*Id.* at p. 252; *Rudnick v. McMillan* (1994) 25 Cal.App.4th 1183, 1190.) The

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Rudnick case is particularly instructive as to how little public action is required for a person to become a limited public figure. All *Rudnick* did was contact the editor of a ranchers' trade publication with hopes that the editor would write an article about government management of land in the area and review a draft article. (25 Cal.App.4th at p. 1187.)

Here, McFarland voluntarily thrust himself directly into issues regarding governance of CSG by being elected as Master, the highest office, of this large statewide organization. (UMF No. 6.) As such, his relationship with the National Grange was necessarily a limited public matter for consideration by all the members of CSG. He cannot seriously contend that he sought to preserve privacy and anonymity regarding such issues of governance over this large organization. Thus, even defamatory factual statements about his governance of CSG could only be deemed libelous if clearly made with actual malice.

2. Luttrell Did Not Publish the February 7, 2012 Letter With Actual Malice.

As set forth in the Declaration of Edward Luttrell, he did not knowingly make any false statements of fact about McFarland with knowledge of or disregard about the falsity of such statements. (UMF No. 2.) Indeed, Luttrell was simply exhorting McFarland to find ways in the future to uphold the ideals and integrity of the Order, even where disagreements may erupt between members. To the extent McFarland in retrospect might be able to demonstrate that he was not personally at fault regarding some of the problems that erupted within CSG in 2011-12, Luttrell had no way to make that determination before February 7, 2012, based on the information contained in the two conflicting reports. (UMF No. 7.) Luttrell simply analyzed various interpretations from different sources and suggested, as an opinion, ways for McFarland to try avoiding potential violations of rules, or otherwise falling short of the ideals of the Order. (UMF No. 8.)

It is worth noting that in his Amended Responses to Special Interrogatory Nos. 83-85, McFarland declined to set forth any facts supporting his allegation that Luttrell published false statements with actual malice. (UMF No. 2.) Instead, McFarland relies on the mistaken legal understanding that if a statement may be deemed defamatory per se, no showing of actual malice is necessary to establish liability regarding even a public figure. McFarland is mistaken. The case

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previously cited by McFarland does not deal with that particular issue. (*Correia v. Santos* (1961) 191 Cal.App.2d 844, 854.) Moreover, *Cabrera v. Alam* (2011) 197 Cal.App.4th 1077, 1093, held that even after the defendant accused a community association board candidate of stealing organization funds, there could still be no liability for defamation absent evidence of actual malice.

In *Rattray v. City of National City* (9th Cir. 1994) 51 F.3d 793, 801, the Ninth Circuit reiterated the applicable standard: "In *New York Times*, the Supreme Court explicitly held that a public official suing for defamation must prove 'actual malice' by clear and convincing evidence. 376 U.S. at 285-86." This same standard must be applied to a motion for summary judgment against a limited purpose public figure. (*Reader's Digest, supra,* 37 Cal.3d at p. 252.) No clear and convincing evidence supports McFarland's allegation that Luttrell made false statements of fact about McFarland that he knew or should have known were false. (UMF No. 2.)

3. Luttrell Published the February 7, 2012 Letter Only To CSG's Executive Committee.

As set forth in the Declaration of Edward Luttrell, he sent the letter only to McFarland and a very small group of people who were particularly interested and directly affected by the issues of governance regarding CSG. (UMF No. 3.) The letter was not sent to other members of CSG, and Luttrell did not request or expect that it would be sent to others not listed on the letter under "cc." (UMF No. 4.) Thus, to the extent Shirley Baker nevertheless sent copies of the February 7 letter to other members of CSG, it was done on her own and contrary to Luttrell's wishes. Luttrell should have no potential liability for any transmission to CSG members outside its Executive Committee because its spread beyond the short "cc" list could not have been reasonably expected. (*Mitchell v. Superior Court* (1984) 37 Cal.3d 268, 281.) Luttrell sought purposely to limit distribution of the letter. (UMF No. 4.) All the people to whom Luttrell sent the February 7 letter were already familiar with the facts and McFarland's history as master. No new facts were being spread by Luttrell.

4. The February 7, 2012 Letter Was a Privileged Communication.

Civil Code section 47, subdivision (c), provides:

In a communication, without malice, to a person interested therein, (1) by one who

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> is also interested, or (2) by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication to be innocent, or (3) who is requested by the person interested to give the information. This subdivision applies to and includes a communication concerning the job performance or qualifications of an applicant for employment, based upon credible evidence, made without malice, by a current or former employer of the applicant to, and upon request of, one whom the employer reasonably believes is a prospective employer of the applicant. This subdivision authorizes a current or former employer, or the employer's agent, to answer whether or not the employer would rehire a current or former employee. This subdivision shall not apply to a communication concerning the speech or activities of an applicant for employment if the speech or activities are constitutionally protected, or otherwise protected by Section 527.3 of the Code of Civil Procedure or any other provision of law.

All of the members of the CSG Executive Committee as well as the two National Grange figures listed under the "cc" for the letter were interested parties. They were all concerned with proper governance of CSG within the rules of the Order. (UMF No. 3.) The term "interested" under the statute reaches broadly, as explained in *Rancho La Costa, Inc. v. Superior Court* (1980) 106 Cal.App.3d 646, 665, as follows:

> One authority explains the statutory interest as follows: (1) The "interest" applies to a defendant who "is protecting his own pecuniary or proprietary interest." (2) The required "relation" between the parties to the communication is a contractual, business or similar relationship, such as "between partners, corporate officers and members of incorporated associations," or between "union members [and] union officers." (3) The "request" referred to must have been in the course of a business or professional relationship. (4 Witkin, Summary of Cal. Law (8th ed. 1974) Torts, §§ 306-309, pp. 2577-2580.)

Certainly each of the intended recipients of the February 7 letter from Luttrell was especially interested as a collegial member of the Order, and concerned that it continues to be governed according to established rules of conduct. The fact that they were all members of the CSG executive committee or had important National Grange positions further confirms their high degree of interest in this particular matter. Luttrell and each of the recipients were thus in a relationship among officers of the collegial association of the Order, and the communication at issue was made in the course of this organizational relationship. It did not address any matters external to the Order. Because Luttrell prepared and drafted this letter without actual malice toward McFarland, the privilege against defamation should apply.

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5. The February 7, 2012 Letter Contains No Defamatory False Statements of Fact.

McGarry v. University of San Diego (2007) 154 Cal.App.4th 97, 112, states:

> "The sine qua non of recovery for defamation ... is the existence of falsehood." (*Letter Carriers v. Austin* (1974) 418 U.S. 264, 283.) Because the statement must contain a provable falsehood, courts distinguish between statements of fact and statements of opinion for purposes of defamation liability. Although statements of fact may be actionable as libel, statements of opinion are constitutionally protected. (*Baker v. Los Angeles Herald Examiner* (1986) 42 Cal.3d 254, 260.)

It is generally a question of law for the court to determine whether a particular communication constitutes a statement of fact. *Franklin v. Dynamic Details, Inc.* (2004) 116 Cal.App.4th 375, 385, states that summary judgment is appropriate unless the court determines "a reasonable fact finder could conclude the published statement declares or implies a provably false assertion of fact. (*Milkovich, supra*, 497 U.S. at p. 19.)" No reasonable finder of fact reading the February 7 letter could conclude that it declares or implies a provably false statement of fact against McFarland. Luttrell was clearly of the opinion that McFarland in the face of certain criticism should be more careful in performing some of his duties, and earnestly requested McFarland to pursue the highest ideals of the Order, but meticulously avoided any determination of actual wrongdoing by McFarland.

Specifically, the February 7 letter nowhere states or implies that McFarland acted dishonestly in a particular matter. (UMF No. 8.) Instead, in the face of complaints that McFarland was being less than "sincere" toward certain persons, Luttrell in the letter advised McFarland to avoid such situations. The same is true regarding complaints of "bullying" where Luttrell declined to make any determination in the face of conflicting facts about how McFarland was perceived by others. Luttrell simply requested McFarland to accept that there will be disagreements within the organization and treat even dissenters with respect. In sum, there were no defamatory false statements of fact in the February 7 letter written by Luttrell.

B. NO EVIDENCE SUPPORTS MCFARLAND'S ALLEGATION THAT LUTTRELL INJURED MCFARLAND BY PUBLICLY DISCLOSING PRIVATE FACTS.

This tort alleged in McFarland's second cause of action is designed to protect a person from

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the spreading of true but private facts about him in an offensive manner. (*Shulman v. Group W Productions, Inc.* (1998) 18 Cal.4th 200, 214.) The requisite elements of the public disclosure tort are: (1) public disclosure (2) of a private fact (3) which would be offensive and objectionable to the reasonable person and (4) which is not of legitimate public concern. (*Ibid.*) The absence of any one of these elements is a complete bar to liability. (*Moreno v. Hanford Sentinel, Inc.* (2009) 172 Cal.App.4th 1125, 1130.) The evidence supports none of the requisite elements here.

As demonstrated previously, the February 7 letter avoided widespread public disclosure of any facts, but merely conveyed concerns to certain CSG Executive Committee members who were necessarily interested in the governance of CSG. Indeed, because the February 7 letter was published to only a small number of highly interested Executive Committee members, not the general public, the Civil Code section 47, subdivision (c), privilege should again apply. Luttrell did not even want the letter to be distributed throughout the CSG general membership. (UMF Nos. 12, 13.) Rather than revealing McFarland's confidential facts to the general public, the February 7 letter simply mentioned facts that had been disclosed and discussed already in investigations of CSG governance by these same individual Executive Committee members. They were all interested persons. (*Rancho La Costa, Inc. v. Superior Court, supra,* 106 Cal.App.3d at p. 665.) In any event, the issues of governance are actually of legitimate concern to all the members of CSG, whether on the Executive Committee or not. All were "interested" within the meaning of the statute.

Next, any facts discussed by Luttrell were not private facts in which McFarland had a reasonable expectation of privacy as Master of the CSG. Because the February 7 letter concerned organizational issues of the Grange regarding an elected Master, not confidential employment personnel records, there can be no tort liability here. Obviously, issues concerning chartering of local Granges and seating of delegates pertain directly to governance of CSG, and are not private facts at all. Remaining issues regarding McFarland's performance of the duties of a state Master, which were known to the other recipients, all pertain similarly to governance, not McFarland's private activities while off-duty. (UMF No. 14.) Moreover, McFarland alleged no disclosure of private facts at issue in his pleading (FACC), which necessarily frames this motion. Further, McFarland failed in discovery to enumerate any private facts that were disclosed. (Exhibit C,

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McFarland's Responses to Special Interrogatories, Nos. 96, 99, 102, 105.) Although initially alleging it to be a "confidential employment evaluation letter" (Exhibit J, FACC, ¶ 34.), McFarland has himself admitted in discovery that he was not employed by the National Grange and that the February 7 letter did not assert that he was. Thus, the letter was not an employment evaluation, and Luttrell was not his supervisor. (UMF Nos. 10, 11.) Although the National Grange and CSG were part of the same Order, Luttrell and the National Grange had no access whatsoever to McFarland's confidential CSG employment files. Any facts contained in the February 7 letter were from investigations requested by McFarland himself as the elected Master of CSG. As such, this tort is not available. (See *Taus v. Loftus*, *supra*, 40 Cal.4th at p. 726.)

Finally, the few statements of genuine fact in the February 7 letter cannot be deemed "highly offensive" by any reasonable reader. (*Shulman, supra,* 18 Cal.4th at p. 214.) By contrast, revelation of a long-past criminal conviction resulting in "ostracism, isolation, and the alienation of one's family," may be deemed offensive. (*Briscoe v. Reader's Digest Ass'n* (1971) 4 Cal.3d 529, 542.) It is certainly imaginable that McFarland may have preferred that Luttrell either ignore the controversies or full-throatedly endorse McFarland in all respects, but that preference does not transform the rather gentle and exhortatory language of the letter into "offensive and objectionable" language. (See *Johnson v. Harcourt, Brace, Jovanovich, Inc.* (1974) 43 Cal.App.3d 880, 892.) In any event, McFarland suffered no cognizable injury as a result of the February 7 letter. (UMF No. 15.)

C. MCFARLAND HAS NO EVIDENCE TO SUPPORT THE TORT OF INTRUSION AS THE THIRD CAUSE OF ACTION.

Similar to the prior cause of action, *Shulman v. Group W Productions, Inc.*, *supra*, 18 Cal.4th at pp. 230-231, explains that the tort of intrusion "encompasses unconsented-to physical intrusion into the home, hospital room or other place the privacy of which is legally recognized, as well as unwarranted sensory intrusions such as eavesdropping, wiretapping, and visual or photographic spying." *Shulman* further sets forth the applicable standard as follows:

> The leading California decision is *Miller v. National Broadcasting Co., supra*, 187 Cal.App.3d 1463 (*Miller*). *Miller*, which like the present case, involved a news organization's videotaping the work of emergency medical personnel, adopted the

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> Restatement's formulation of the cause of action: "One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person." (Rest.2d Torts, § 652B; *Miller*, *supra*, 187 Cal.App.3d at p. 1482.)

(*Id.* at p. 231.) "A privacy violation based on the common law tort of intrusion has two elements. First, the defendant must intentionally intrude into a place, conversation, or matter as to which the plaintiff has a reasonable expectation of privacy. Second, the intrusion must occur in a manner highly offensive to a reasonable person." (*Hernandez v. Hillsides, Inc.* (2009) 47 Cal.4th 272, 286.) Neither of the elements is supported by the evidence regarding the February 7 letter.

First, McFarland purposely rejected seclusion into a zone of privacy by becoming CSG Master and faced nothing as physically intrusive as a news organization videotaping his acutely painful plight to broadcast to millions of people, as in *Miller* or *Shulman*. Luttrell did not intrude upon McFarland's home or engage in wiretapping to gather information about his private employment status. Luttrell simply wrote about issues of CSG governance concerning the Order. (UMF Nos. 16, 17, 18.) Indeed, McFarland effectively consented to an investigation of CSG governance by the CSG Executive Committee as a means of addressing Luttrell's concerns. (Exhibit J, FACC, ¶ 12.) Nor does McFarland allege here that the factual information contained in the February 7 letter was obtained unlawfully. Instead, McFarland merely alleges that the letter sent to a handful of interested persons revealed facts somehow within his "zone of privacy." (Exhibit J, FACC, ¶ 41.) McFarland, however, has failed to enumerate any private facts that were disclosed. (UMF No. 19.) Thus, McFarland suffered no loss of income or earning capacity as a result of the February 7 letter. (UMF No. 20.)

Second, nothing in the February 7 letter even approaches the threshold of intruding upon McFarland's privacy in a manner highly offensive to a reasonable person. Any facts disclosed pertained to his activity as Master, not embarrassing revelations about his private life. In any event, because the February 7 letter was published only to a small number of interested Executive Committee members, not the general public (UMF Nos. 16-19), the Civil Code section 47, subdivision (c), privilege should again apply.

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D. NO EVIDENCE SUPPORTS MCFARLAND'S FOURTH CAUSE OF ACTION FOR INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS.

Quelimane Co. v. Stewart Title Guaranty Co. (1998) 19 Cal.4th 26, 55, states:

> "The elements which a plaintiff must plead to state the cause of action for intentional interference with contractual relations are (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage." (*Pacific Gas & Electric Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126.)

There are two serious deficiencies with McFarland's fourth cause of action. Luttrell and the National Grange, even if not his employer, are not true third parties to McFarland's contractual relationship with CSG, and there is no evidence that McFarland's contractual employment relationship with CSG was ever breached or significantly disrupted by Luttrell's factual comments.

1. No Third Party Stranger.

Regarding the fourth cause of action, McFarland conspicuously no longer alleges (as he does in the second cause of action) that the February 7 letter was an employment evaluation, which would necessarily mean that McFarland was in the position of an employee of the National Grange. Nevertheless, the bylaws of the National Grange and CSG together demonstrate that Luttrell and the National Grange were in no meaningful sense strangers to McFarland's contract with CSG. (UMF No. 22.) That is to say, CSG was a constituent part of the same Order headed by the National Grange, all bound by the same rules prior to October 2013. The National Grange had a legitimate interest in the course of the contract's performance by McFarland as Master. As such, neither the National Grange nor Luttrell can be deemed a party wholly independent of that contract and, thus, they cannot be liable for this tort. (*Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 514.)

The California Supreme Court explained in *Applied Equipment*:

> [C]onsistent with its underlying policy of protecting the expectations of contracting parties against frustration by outsiders who have no legitimate social or economic interest in the contractual relationship, the tort cause of action for interference with contract does not lie against a party to the contract. (*Shoemaker v. Myers, supra*, 52

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> Cal.3d at pp. 24-25; *Kelly v. General Telephone Co.* (1982) 136 Cal.App.3d 278, 288; *Dryden v. Tri-Valley Growers* (1977) 65 Cal.App.3d 990, 998.) [¶] *Applied's* conspiracy theory is fundamentally irreconcilable with the law of conspiracy and the tort of interference with contract as just discussed. One contracting party owes no general tort duty to another not to interfere with performance of the contract; its duty is simply to perform the contract according to its terms. The tort duty not to interfere with the contract falls only on strangers – interlopers who have no legitimate interest in the scope or course of the contract's performance.

(7 Cal.4th at p. 514.)

Under the bylaws of the National Grange, to which CSG necessarily agreed, McFarland as Master of CSG was subject to the organizational supervision of Luttrell who served as Master of the National Grange. As such, Luttrell cannot be deemed a stranger-interloper who had no legitimate interest in the scope of course of the contract's performance. (UMF No. 22.) Even without an actual employment relationship with McFarland, or control over his remuneration, the National Grange was inextricably intertwined with CSG and it's Master under the bylaws of the Order. The members of CSG, who were McFarland's constituents, were simultaneously all members of the National Grange, and the Order as a whole.

2. No Actual Injury to McFarland.

Furthermore, McFarland sets forth no evidence indicating that he was actually injured in any legally-cognizable manner by Luttrell's actions. McFarland never lost any compensation or earning capacity as a result of Luttrell's required monitoring of the Order. (UMF Nos. 21, 23, 24, 25.) McFarland was never kept from performing his obligations under his employment contract with CSG. There is no evidence that the actions of Luttrell in 2012 made performance of his employment relationship impossible, since he completed the term of the extant contract in 2013.[3] (UMF No. 24.) McFarland indicates that CSG suffered growing division and lost dues because of the dispute with the National Grange, but McFarland does not indicate that it actually harmed his contractual relationship with CSG at all. Indeed, McFarland was re-elected to his position as CSG Master in October 2013. (UMF No. 21.) He did not lose his employment or any compensation.

[3] Short of breach or actual disruption of his contractual performance, McFarland has similarly been unable even to set forth substantive evidence that Luttrell's conduct made performance of McFarland's obligations personally more expensive, merely that the National Grange charges made his governance slightly more challenging. (Exhibit C, McFarland's Responses to Special Interrogatories, Nos. 138, 141.)

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McFarland thus suffered no general or special damages as a result of the charges ultimately brought against him. (UMF No. 25; Exhibit C, McFarland's Response to Special Interrogatories, Nos. 213, 216.)

E. NO EVIDENCE SUPPORTS MCFARLAND'S CAUSE OF ACTION FOR INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS.

The elements of McFarland's fifth cause of action are similar, but slightly different from those of the fourth cause of action. The California Supreme Court stated in *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153:

> These elements are usually stated as follows: "'(1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant.' [Citations]"

It is important to note that the National Grange and Luttrell are not meaningfully separate third parties in relation to CSG and its local granges, plus their members, who were also members of the National Grange. (UMF No. 27.) *Korea Supply* went on to explain an important difference where there is no actual contract in place: "To establish a claim for interference with prospective economic advantage . . . a plaintiff must plead that the defendant engaged in an independently wrongful act. (*Della Penna v. Toyota Motor Sales, U.S.A.* (1995) 11 Cal.4th 376, 393.) An act is not independently wrongful merely because defendant acted with an improper motive." (29 Cal.4th at p. 1158.) Rather, "an act is independently wrongful if it is unlawful, that is, if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard." (*Id.* at p. 1159.) In the FACC, McFarland does not even allege an independently unlawful act (other than defamation), let alone produce evidence thereof. There is none. (UMF No. 29.) Luttrell, of course, had the duty under the rules of the Order to ensure that McFarland properly carried out his obligations as the Master of CSG (UMF No. 29), and thus could not be liable for this tort by charging McFarland with internal bylaws violations.

Finally, McFarland did not suffer injury or damages as a result of Cross-Defendants' purported interference with his prospective economic relations. Specifically, McFarland's

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allegation that his "ability to run for the office of Master of the California State Grange in the future has been interfered with" (Exhibit J, FACC, ¶ 61.) is contrary to the undisputed facts. Indeed, following the February 7 letter and other alleged criticisms of McFarland, he was nevertheless re-elected to the office of Master in October 2013. (UMF No. 26.) It is worth noting that he also engineered the voluntary secession of CSG from the National Grange around the same time (Exhibit B, Luttrell Declaration, ¶ 14), so McFarland can claim no other injury caused by Luttrell or the National Grange interfering with his economic relations as Master of CSG. (Exhibit J, FACC, ¶ 12.)

F. NO EVIDENCE SUPPORTS MCFARLAND'S CAUSE OF ACTION FOR INFLICTION OF EMOTIONAL DISTRESS.

There is no independent tort of negligent infliction of emotional distress in California. (*Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 205.) Thus, to the extent the Complaint alleges that the National Grange and Luttrell may have negligently caused McFarland's emotional distress, there can be no liability. In order to establish intentional infliction of emotional distress, however, the defendant must have purposely harmed the plaintiff by conduct so outrageous and extreme "as to exceed all bounds of that usually tolerated in a civilized community." (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1051.) The pleadings and evidence do not support any such conduct by Luttrell here. (UMF No. 31) At most, Luttrell's February 7 letter and investigation regarding the governance of CSG raised questions that needed to be answered. Luttrell never stated as a fact that McFarland had done anything criminal or otherwise morally repugnant. (UMF No. 31.) Moreover, McFarland has indicated merely that he found the investigations stressful, not that his injury exceeded the high threshold of "severe emotional distress," which requires that he suffered "emotional distress of such substantial quality or enduring quality that no reasonable [person] in civilized society should be expected to endure it." (*Ibid*; *Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 1004.) Finally, McFarland suffered no general or special damages as a result of the charges ultimately brought against him. (Exhibit C, McFarland's Responses to Special Interrogatories, Nos. 213, 216.)

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CONCLUSION

For all the foregoing reasons, the instant motion for summary judgment/adjudication must be granted. There are no triable issues of material fact as to any of McFarland's causes of action, which fail as a matter of law. McFarland cannot prevail on his causes of action for defamation, invasion of privacy or intrusion because no false statements of fact, or true private facts were revealed to the public about McFarland's conduct. McFarland's self-defamation cannot convert the text of the mild February 7, 2012, exhortation into a knowingly false statement of fact. In any event, there is no evidence that he suffered any injury as a result of the February 7 letter or any other written statement by Luttrell or other agent of the National Grange.

Dated: October 10, 2014

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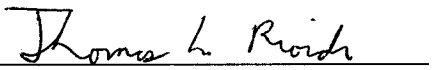
By 

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National Grange, et al. v. The California State Grange, et al.
Sacramento County Superior Court Case No.: 34-2012-00130439

PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. My business address is 350 University Avenue, Suite 200, Sacramento, California 95825.

On the date below, I caused to have served the following document:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE NATIONAL GRANGE OF THE ORDER OF PATRONS OF HUSBANDRY AND EDWARD LUTTRELL'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION AGAINST MCFARLAND'S CROSS-COMPLAINT

X	**BY MAIL:** I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
	BY PERSONAL SERVICE: I caused such document to be personally delivered to the person(s) addressed below. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.
	BY OVERNIGHT DELIVERY: I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the person(s) listed below. I placed the envelope or package for collection and overnight delivery at my office or a regularly utilized drop box of the overnight delivery carrier.
	BY FAX TRANSMISSION: Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached
	BY ELECTRONIC SERVICE: Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification address listed below.

Addressed as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Sacramento, California on October 13, 2014.

Aimee Ludlow

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