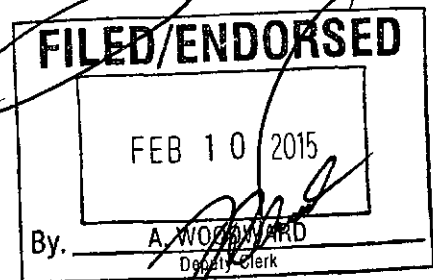


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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

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

ROBERT McFARLAND, an individual,

Cross-Complainant,

vs

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

Cross-Defendants

CASE NO 34-2012-00130439

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MARTHA STEFENONI AND SHIRLEY
BAKER'S MOTION FOR SUMMARY
JUDGMENT, OR IN THE
ALTERNATIVE, SUMMARY
ADJUDICATION

RESERVATION NO. 2033102

Date April 28, 2015

Time 2 00 p.m

Dept 53

Complaint Filed October 1, 2012

Trial Date June 1, 2015

BY FAX

MARTHA STEFENONI & SHIRLEY BAKER'S
MEMO OF PTS AND AUTH ISO MSJ, OR IN
THE ALTERNATIVE, SUMM ADJUDICATION

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1 I. INTRODUCTION

2 This matter arises from a dispute between the National Grange of the Order of the
3 Patrons of Husbandry ("National Grange"), and the formerly chartered California State
4 Grange ("CSG") The Master of the National Grange is Edward Luttrell The Master of the
5 CSG is Robert McFarland Martha Stefenoni and Shirley Baker are former members of the
6 CSG Executive Committee, which oversees the activities of the CSG.

7 McFarland brought a First Amended Cross-Complaint ("FACC") against the
8 National Grange, Edward Luttrell, Martha Stefenoni, and Shirley Baker McFarland
9 alleged six causes of action relating to McFarland's administration and to a February 7,
10 2012 letter written by Luttrell to McFarland which McFarland viewed as critical of his
11 performance

12 Stefenoni and Baker brought an anti-SLAPP motion against these allegations and
13 prevailed, with one exception. The Court ruled this exception to be statements that
14 McFarland had engaged in conduct within the CSG offices which amounted to
15 "harassment" and "intimidation of employees" and was a "bully in the workplace " The
16 anti-SLAPP motion was otherwise granted

17 The surviving allegations in the FACC are limited by McFarland's discovery
18 responses where he identifies the source of his defamation claim to be a letter which refers
19 to "informal complaints and reports about your actions which primarily include bullying
20 behavior and insincere statements " This reference is contained in a February 7, 2012 letter
21 from Luttrell to McFarland. McFarland alleges that the February 7, 2012 letter, with the
22 allegedly offending statement, was disseminated by Stefenoni and Baker to CSG members
23 who were not its intended recipients

24 The February 7, 2012 letter relates solely to McFarland's conduct at the CSG
25 workplace It makes no factual statements that McFarland is a bully, harasses or intimidates
26 employees Further, McFarland is a limited purpose public figure and must show malice on
27 the part of Stefenoni and Baker in their alleged dissemination of the letter He cannot do

1 so In addition, McFarland has published documents on the CSG website which make the
2 same statements he claims were wrongly disseminated These statements are openly
3 available to the general public, a much broader audience than the limited CSG
4 membership

5 Regarding the second cause of action for Public Disclosure of Private Facts, the
6 statements in the February 7, 2012 letter do not constitute "unwarranted publication of
7 intimate details of one's private life which are outside the realm of legitimate public
8 interest." None of the facts disclosed in discussions with Luttrell or in the February 7, 2012
9 Luttrell letter were "private" facts in which McFarland had a reasonable expectation of
10 privacy as Master and President of the CSG

11 Regarding the third cause of action for Intrusion, there was no intrusion into a
12 place, conversation, or matter as to which McFarland had a reasonable expectation of
13 privacy McFarland cannot show any intrusion that occurred in a manner highly offensive to
14 a reasonable person McFarland's treatment of CSG staff is not within any "zone of
15 privacy" for McFarland, who is the CSG Master and President

16 Regarding the fourth cause of action for Intentional Interference with Contractual
17 Relations, McFarland continues to be the Master and President of the CSG and can
18 articulate no actual interference with his employment with the CSG, nor related income
19 loss.

20 Regarding the sixth cause of action for Interference with Prospective Economic
21 Relations, similarly, there has been no actual disruption of an economic relationship nor
22 proximately related economic harm. Neither has McFarland alleged any other,
23 independent, wrongful act aside from the defamation claims.

24 Regarding the sixth cause of action for Infliction of Emotional Distress, there has
25 been no act on the part of Stefenoni or Baker which rises to the level of being a "substantial
26 quality or enduring quality that no reasonable [person] in civilized society should be
27 expected to endure it "

1 There is no basis for liability against Stefenoni and Baker from the alleged
2 statements to Luttrell nor their alleged dissemination of the February 7, 2012 letter and its
3 brief reference to reports of "bullying in the workplace " Stefenoni and Baker move for
4 summary judgment as to the FACC In the alternative, Stefenoni and Baker move for
5 summary adjudication as to each cause of action

6 **II. UNDISPUTED FACTS**

7 The National Grange of the Order of Patrons of Husbandry is a nonprofit
8 corporation organized under the laws of the District of Columbia SUF No 1 It is
9 headquartered in Washington, DC *Ibid* Edward Luttrell is currently the Master of the
10 National Grange, and has at all relevant times SUF No 2 Robert McFarland is currently
11 the President and Master of CSG SUF No 3 He was originally elected in 2009, and
12 reelected in 2011 and 2013. SUF No. 4.

13 From 2006 to 2012, Stefenoni was a member of the CSG Executive Committee.
14 From 2009 to 2012, Baker was a member of the CSG Executive Committee SUF No 5.

15 On February 7, 2012, Edward Luttrell sent a letter to McFarland which discussed
16 McFarland's management of the CSG SUF No 6 The letter was also addressed to the
17 CSG Executive Committee. *Ibid* It was not marked "Confidential." *Ibid*
18 The February 7, 2012 letter states only the following with regard to McFarland's workplace
19 behavior:

20 "Integrity is a requirement of successful Grange leadership. I have had a number of
21 informal complaints and reports about your actions which primarily include bullying
behavior and insincere statements

22 Grange leadership requires that we work with those who disagree with us
23 Disagreements 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
24 against the philosophy of the Grange "

25 SUF No. 7. Luttrell believed these statements were truthful when he made them RJN No
26 3, Decl of Edward Luttrell in support of Motion for Summary Judgment, at 7) SUF No 8
27 The letter was not an employee evaluation as McFarland was not employed by the National

1 Grange in any capacity *Id* at 4 SUF No 9

2 McFarland filed the FACC on or about May 13, 2013 against the National Grange,
3 Edward Luttrell, Martha Stefenoni and Shirley Baker The FACC alleges causes of action
4 for (1) defamation, (2) public disclosure of private facts, (3) intrusion, (4) intentional
5 interference with contractual relations, (5) intentional interference with prospective
6 business relations, (6) infliction of emotional distress SUF No 10

7 Ms Stefenoni and Ms Baker brought an anti-SLAPP motion against the FACC
8 SUF No 11 The Court granted this motion except as follows:

9 "However, the statements by Stefenoni and Baker about some of McFarland's
10 conduct as an employee, specifically that McFarland engaged in conduct within the
11 office which amounted to harassment, bullying, and the intimidation of employees
12 had nothing to do with legislation or general public policy Therefore the Court
does not conclude that the statements that McFarland was a "bully" in the
workplace constitutes protected conduct regarding a matter of public interest
(FACC, paras 12, 15, 23, 27, 30)"

13 SUF No 12

14 Stefenoni and Baker specifically asked McFarland in interrogatory discovery
15 requests to "IDENTIFY ALL PUBLISHED STATEMENTS which YOU assert form a
16 basis for your defamation claim against propounding party " SUF No 13 In responding to
17 these requests, McFarland specifically responds "[w]ithout waiving said objection, the
18 Responding Party identifies the February 7, 2012 letter authored by Ed Luttrell " SUF No
19 14 The relevant allegations relating to this letter are contained in Paragraphs 27 and 30 of
20 the FACC SUF No 15

21 On January 12, 2015, the National Grange and Luttrell brought a Motion for
22 Summary Judgment as to the FACC SUF No 16 The Court granted this Motion in its
23 entirety SUF No. 17 Among its other findings, the Court's Order on the Motion for
24 Summary Judgment found that McFarland was a limited purpose public figure, that the
25 February 7, 2012 letter was not defamatory as a matter of law, and McFarland was not
26 entitled to recover on any of the causes of action SUF No 18

27 Neither Martha Stefenoni nor Shirley Baker wished to injure or harm McFarland

28

1 SUF No 19 In all their interactions involving Luttrell and McFarland, Stefenoni and Baker
2 acted solely from concern for the welfare of the CSG SUF No 20 This includes any
3 statements they made about McFarland SUF No. 21

4 McFarland has allowed publication of a letter from Edward Luttrell on the CSG
5 website dated August 1, 2012 which references allegations of "bullying and allowing the
6 bullying and intimidation of Grange members " SUF No. 22

7 In addition, there is a letter on the CSG website dated October 10, 2011 by Luttrell
8 that states Luttrell has received a complaint that McFarland "intimidates or possibly
9 harasses certain employees of the California State Grange " SUF No 23. This also is made
10 available to the general public by the CSG on the CSG website *Ibid* These documents are
11 not password-protected. *Ibid*. They are indexed and identified for easy retrieval, and can be
12 retrieved and read by anyone with Internet access. *Ibid*.

13 McFarland was informed that these documents were on the CSG website during his
14 deposition on February 2, 2015 SUF No. 24. As of the date of this Motion these documents
15 have not been removed or become password-protected SUF No 25

16 The document identified as a "Minority Report" in the FACC is also available on
17 the CSG website, and available to the general public SUF No. 26.

18 Jon Luvaas, the chair of the CSG executive committee, has no facts to support an
19 allegation that Stefenoni disseminated the February 7, 2012 letter. SUF No 27 Likewise,
20 McFarland also has no facts to support his allegation that Stefenoni disseminated the
21 February 7, 2012 letter SUF No 28

22 In terms of damages, McFarland identifies repayment of a \$1,000 insurance
23 deductible and \$1,000 payment of bond to secure a preliminary injunction against the
24 National Grange SUF No 29 He alleges he has lost \$2,000 in lost income to date *Ibid* He
25 does not know how this figure was arrived at SUF No. 30 The remainder of his claim is for
26 general damages SUF No 31

27 //

1 **III. LEGAL STANDARD FOR MOTION FOR SUMMARY JUDGMENT AND IN THE**
2 **ALTERNATIVE, SUMMARY ADJUDICATION**

3 "The purpose of the law of summary judgment is to provide courts with a mechanism
4 to cut through the parties' pleadings in order to determine whether, despite their
5 allegations, trial is in fact necessary to resolve their dispute " *Aguilar v Atlantic Richfield Co*
6 (2001) 25 Cal 4th 826, 843

7 "Any party may move for summary judgment in any action or proceeding if it is
8 contended that the action has no merit .." Civ Proc Code § 437c(a) A cause of action lacks
9 merit if "[o]ne or more of the elements of the cause of action cannot be separately
10 established" (Civ Proc Code § 437c(o)(1), (p)(2)), or if there is a complete defense (Civ
11 Proc Code § 437c(o)(2), (p)(2))

12 If the moving defendant makes a prima facie showing that the cause of action lacks
13 merit, "the burden shifts to the plaintiff . to show that a triable issue of one or more
14 material facts exists as to that cause of action or a defense " Civ Proc Code § 437c(p)(2).
15 The plaintiff "may not rely on his or her pleadings alone, but must file opposition to the
16 motion, with affidavits setting forth specific facts demonstrating that a triable issue of
17 material fact exists as to the cause of action or defense " *Sangster v Paetkau* (1998) 68
18 Cal App 4th 151 at 162 (citations omitted)

19 "[I]n order to avert summary judgment the plaintiff must produce substantial
20 responsive evidence sufficient to establish a triable issue of material fact on the
21 merits of the defendant's showing For this purpose, responsive evidence that gives
22 rise to no more than mere speculation cannot be regarded as substantial, and is
23 insufficient to establish a triable issue of material fact "

24 Id at 162-163 (citations omitted)

25 "We will not draw inferences from thin air Where, the plaintiff seeks to
26 prove an essential element of her case by circumstantial evidence, she cannot
27 recover merely by showing that the inferences she draws from those circumstances
28 are consistent with her theory Instead, she must show that the inferences favorable
to her are more reasonable or probable than those against her "

29 *Leslie G v Perry & Assocs* (1996) 43 Cal App 4th 472, 483 (citations omitted)

1 Summary judgment is no longer "considered a 'disfavored' procedure *Bunder v*
2 *Aetna Life Insurance Co* (1999) 75 Cal App 4th 832, 838 (citations omitted) If the moving
3 defendant satisfies its evidentiary burden and the plaintiffs fail to "sustain their burden of
4 proof imposed upon them given th[at] evidentiary showing," the trial court has "a duty to
5 grant the summary judgment motion " *FSR Brokerage Inc v Superior Court* (1995) 35
6 Cal App 4th 69, 74-75, Civ Proc Code § 437c(o)(1)

7 Under Civ Proc Code §437c, summary adjudication permits a party to have one or
8 more causes of action summarily adjudicated

9 McFarland's discovery responses and other undisputed facts demonstrate the lack of
10 merit of the claims against Stefenoni and Baker which remain after their anti-SLAPP
11 motion was granted

12
13 **IV. STEFENONI AND BAKER ARE NOT LIABLE UNDER ANY CAUSE OF ACTION**
14 **ALLEGED IN THE FACC**

15 **A. Stefenoni and Baker Are Not Liable for Defamation**

16 **1. McFarland is a Limited Public Figure**

17 The California Supreme Court has defined a limited purpose public figure as "an
18 individual who voluntarily injects himself or is drawn into a particular public controversy
19 and therefore becomes a public figure for a limited range of issues " *Reader's Digest Assn v*
20 *Superior Court* (1984) 37 Cal 3d 244, 253 Whether a libel plaintiff is a limited purpose
21 public figure is particularly suited for determination by the court as a matter of law on
22 summary judgment *Id* at 252, *Rudnick v McMullan* (1994) 25 Cal App 4th 1183, 1190 In
23 *Rudnick*, contacting the editor of a ranchers' trade publication with hopes that the editor
24 would write an article about government management of land in the area and review a draft
25 article was sufficient to have Rudnick determined to be a limited purpose public figure

26 Here, McFarland has become the elected Master and President of the California
27 State Grange for multiple terms He is involved in the highest levels of governance for the

1 CSG and his relationship with the National Grange was and is a limited public matter. He is
2 not seeking anonymity by any extent and McFarland is a limited public figure with regard to
3 his leadership of the CSG. As a limited public figure, actual malice must be demonstrated
4 in order to recover for any alleged defamatory factual statements.

5 **2. McFarland's Surviving Claims Against Stefenoni and Baker Are**
6 **Limited Following the Anti-SLAPP Motion**

7 The Court's order granting Stefenoni and Baker's anti-SLAPP motion in part against
8 the allegations of the FACC allowed the allegations that "McFarland engaged in conduct
9 within the office which amounted to harassment, bullying, and the intimidation of
10 employees." The Order on the anti-SLAPP motions references FACC paragraphs 12, 15,
11 23, 27 and 30 as being within the exceptions to the Order. McFarland's claims are more
12 limited. McFarland specifically identifies in discovery the basis for his defamation claims as
13 being the alleged dissemination of the February 7, 2012 letter. This Motion for Summary
14 Judgment therefore focuses upon the allegations of FACC paragraphs 27 and 30 which
15 relate to that letter.

16 Paragraph 27 alleges "On or about February 7, 2012, Luttrell acting in his capacity
17 as Master of the National Grange drafted a letter, on National Grange letter head,
18 containing false statements about McFarland, including but not limited to,
19 McFarland having a penchant for "bullying" in the workplace."

20 Paragraph 30 alleges "The unprivileged statements published about McFarland are
21 libelous on their face. The unprivileged statements accuse McFarland of "bullying" in the
22 workplace."

23 Neither of these statements rise to the level of defamation. As discussed further
24 below, these statements are neither factually false nor malicious, and are privileged.

25 **3. The February 7, 2012 Letter Contains No False Statements of Fact**

26 Defamation involves (a) a publication that is (b) false, (c) defamatory, and (d)
27 unprivileged, and that (e) has a natural tendency to cause injury or that causes special
28

1 damage *Smuth v Maldonado* (1999) 72 Cal App 4th 637, 645, *Seelig v Infinity Broadcasting*
2 *Corp* (2002) 97 Cal App 4th 798, 809

3 Further the statement in the February 7, 2012 letter must have "a natural tendency
4 to cause injury or that causes special damage " *Smuth v Maldonado, supra, Seelig v Infinity*
5 *Broadcasting Corp supra* "The question whether a statement is reasonably susceptible to a
6 defamatory interpretation is a question of law for the trial court Only once the court has
7 determined that a statement is reasonably susceptible to such a defamatory interpretation
8 does it become a question for the trier of fact whether or not it was so understood " *Smuth v*
9 *Maldonado, supra*, at 647 An example of such a statement is a blog accusing a person of
10 committing perjury, extortion and accepting bribes *Burnill v Nau* (2013) 217 Cal App 4th
11 357

12 The February 7, 2012 letter barely touches on the issue of McFarland being a "bully
13 in the workplace " The one relevant statement in the February 7, 2012 letter is as follows

14 "Integrity is a requirement of successful Grange leadership I have had a number of
15 informal complaints and reports about your actions which primarily include bullying
behavior and insincere statements

16 Grange leadership requires that we work with those who disagree with us
17 Disagreements 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
18 against the philosophy of the Grange "

19 Contrary to McFarland's allegations, this statement by Luttrell is clearly an attempt
20 to gently provide guidance to McFarland It makes no factual statement statement that
21 McFarland was a bully It does not reference harassment or intimidation of employees It
22 states that Luttrell received "informal complaints and reports" about his actions which
23 include bullying behavior and insincere statements

24 Recovery for defamation requires more A defamatory statement must be a factually
25 false statement *Smuth v Maldonado* (1999) 72 Cal App 4th 637, 645, *Seelig v Infinity*
26 *Broadcasting Corp* (2002) 97 Cal App 4th 798, 809 Here, Luttrell is not making any false
27 statement of fact regarding "harassment, bullying and the intimidation of employees " He is
28

1 only saying that he "had a number of informal complaints and reports" about this behavior,
2 which is not disputed

3 Further, these concerns raised about McFarland are not "the unwarranted
4 publication of intimate details of one's private life " They are not personal medical
5 information, criminal history or family details *Briscoe v Reader's Digest Ass'n* (1971) 4
6 Cal 3d 529, 542 The concerns expressed in the letter are directly related to his governance
7 of the CSG

8 The Luttrell statement cannot rise to the level of one that McFarland can credibly
9 claim had a natural tendency to cause him injury Based on its contents, the February 7,
10 2012 letter was not defamatory as a matter of law

11 Significantly, and undercutting every claim he has made in the FACC against
12 Stefenoni and Baker, McFarland has allowed letters to be published on the public CSG
13 website which contain statements others allege he engages in "bullying and allowing the
14 bullying and intimidation of Grange members and "intimidates or possibly harasses certain
15 employees of the California State Grange " Despite being President and Master of the
16 CSG, these documents were not removed from the CSG website after McFarland was
17 confronted with their publication on that forum It cannot be credibly disputed that these
18 documents are on the CSG website with his permission

19 McFarland's publication of these letters is significant In *Sipple v Chronicle*
20 *Publishing Co* (1984) 154 Cal App 3d 1040, the Court stated that "a crucial ingredient of
21 the tort premised upon invasion of one's privacy is a public disclosure of private facts [cites]
22 that is, the **unwarranted publication of intimate details of one's private life which are**
23 **outside the realm of legitimate public interest** [cites] " *Id* at 1047 [Emphasis added]

24 Here, McFarland sues Stefenoni and Baker for allegedly sending the February 7,
25 2012 letter to non-Executive Committee members of the CSG, while he contemporaneously
26 has published the allegations of "bullying," "harassment" and "intimidation" in the much
27 more public forum of the CSG public website Whereas the innocuous comments made in
28

1 the February 7, 2012 letter are alleged by McFarland to have been disseminated to other
2 CSG members who have an interest in the governance of the CSG, the forum McFarland
3 has allowed them to be published to is accessible by any member of the public, including
4 any news reporter, anywhere in the world with access to the Internet. He does not consider
5 them "private" in any sense. He cannot now claim that those allegations are "outside the
6 realm of legitimate public interest" as stated in *Supple, supra*.

7 After his own publication of these documents, McFarland cannot credibly claim that
8 it was malicious for them to publish the February 7, 2012 letter, nor can he argue that such
9 publication was harmful to himself.

10 **4. McFarland Has No Evidence That The Letter Was Disseminated**
11 **With Actual Malice**

12 McFarland has no evidence that Stefanoni disseminated the February 7, 2012 letter,
13 although he believes Baker did so. Neither Stefanoni nor Baker had any wish to harm
14 McFarland. Their actions with regard to McFarland were limited to their concerns for the
15 welfare of the CSG. McFarland may speculate, but there is no admissible evidence that this
16 letter, which was not defamatory, was sent to CSG members with actual malice by either
17 Stefanoni or Baker.

18 **5. Statements by Stefanoni and Baker About Concerns of McFarland**
19 **Being A "Bully in the Workplace" Were Privileged**

20 Civil Code Section 47, subdivision (c) provides as follows:

21 A privileged publication or broadcast is one made

22 (c) In a communication, without malice, to a person interested therein, (1) by one
23 who is also interested, or (2) by one who stands in such a relation to the person
24 interested as to afford a reasonable ground for supposing the motive for the
25 communication to be innocent, or (3) who is requested by the person interested to
26 give the information. This subdivision applies to and includes a communication
27 concerning the job performance or qualifications of an applicant for employment,
28 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

1 otherwise protected by Section 527.3 of the Code of Civil Procedure or any other
2 provision of law

3 The term "interested" under this statute has been defined as

4 The word "interested" as used in the statute refers to a more direct and immediate
5 concern. That concern is something other than mere general or idle curiosity of the
6 general readership of newspapers and magazines. One authority explains the
7 statutory interest as follows: (1) The "interest" applies to a defendant who "is
8 protecting his own pecuniary or proprietary interest." (2) The required "relation"
9 between the parties to the communication is a contractual, business or similar
10 relationship, such as "between partners, corporate officers and members of
11 incorporated associations," or between "union members [and] union officers." (3)
12 The "request" referred to must have been in the course of a business or professional
13 relationship. (4) Witkin, Summary of Cal. Law (8th ed. 1974) Torts, §§ 306-309, pp
14 2577-2580.)

15 Cited by *Rancho La Costa, Inc. v. Superior Court* (1980) 106 Cal App 3d 646, 664-665. The
16 relationship between Stefanoni and Baker, as members of the CSG Executive Committee
17 and Edward Luttrell, President and Master of the National Grange, is analogous to persons
18 who have a business or similar relationship, such as business partners or corporate officers.
19 Luttrell, as President of the National Grange, was an "interested party" within the meaning
20 of Civil Code Section 47 as to any statements by Stefanoni and Baker about McFarland's
21 workplace activities. The definition goes further, however, and includes all members of the
22 CSG. If members of an unincorporated association as well as "union members" and "union
23 officers" can have such an "interested" relationship, then dues-paying members of the CSG
24 are likewise "interested" within the meaning of Civil Code Section 47. Communications
25 between Stefanoni and Baker with Luttrell and other CSG members reflected in the
26 February 7, 2012 letter, about McFarland's conduct at the CSG administration, without
27 malice, is a matter that is privileged under Civil Code Section 47.

28 McFarland cannot recover under the first cause of action for defamation.

**B. Shirley Baker is Not Liable for Public Disclosure of Private Facts As Alleged
in the Second Cause of Action**

1 Shirley Baker is named in this second cause of action. The elements of this tort are
2 "(1) public disclosure (2) of a private fact (3) which would be offensive and objectionable to
3 the reasonable person and (4) which is not of legitimate public concern." *Moreno v Hanford*
4 *Sentinel, Inc.* (2009) 172 Cal App 4th 1125, 1130-1131. As the court stated, "[t]he absence of
5 any one of these elements is a complete bar to liability." *Id.* at 1131.

6 The tort of Public Disclosure of Private Facts is aptly illustrated in *Moreno*, where
7 plaintiff wrote an article entitled "An Ode to Coalinga" and posted it on her online journal
8 on MySpace.com. *Id.* at 1128. The article made a number of extremely negative comments
9 about Coalinga. *Ibid.* The day after plaintiff removed the article from her online journal,
10 she learned that a high school principal had submitted the article to the newspaper by
11 giving it to the editor of the newspaper. *Ibid.* Plaintiff and her family sued the principal and
12 the newspaper, alleging causes of action for invasion of privacy and intentional infliction of
13 emotional distress. *Ibid.*

14 The court sustained the defendants' demurrer without leave to amend. *Ibid.* The
15 court noted that "A matter that is already public or that has previously become part of the
16 public domain is not private" and "the fact that Cynthia expected a limited audience does
17 not change the above analysis. Cynthia opened the article to the public at large. Her
18 potential audience was vast." *Ibid.*

19 *Moreno* also incorporated the reasoning of *Sipple, supra*, discussed above. *Moreno*,
20 *supra*, at 1130. *Sipple's* definition of adequately offensive statements as being "unwarranted
21 publication of intimate details of one's private life which are outside the realm of legitimate
22 public interest" is a far cry from the innocuous statements in the February 7, 2012 letter.
23 The February 7, 2012 letter merely refers to "reports" of bullying and insincere statements.
24 The letter is confined to issues regarding the CSG office environment. McFarland's
25 treatment of his office staff is not a private fact as it affects those persons and the
26 functioning of the CSG administration. There is no disclosure of confidential personal
27 information such as health records, employment evaluations or non-CSG related facts.

1 It is undisputed that the February 7, 2012 letter solely concerned issues regarding
2 the governance of the Grange and McFarland's administration of the CSG as Master and
3 President

4 McFarland himself must agree that the allegations of "harassment," "intimidation"
5 and "bullying in the workplace" are a matter of public interest as he has published them, or
6 allowed them to be published, on the CSG website as part of his narrative of the dispute
7 with the National Grange. He has allowed them to be published to a much wider audience
8 than he claims Stefanoni and Baker did. The Second Cause of Action should be
9 adjudicated in favor of Shirley Baker as a matter of law

10
11 **C. Shirley Baker Is Not Liable for Intrusion As Alleged in the Third Cause of**
12 **Action.**

13 Shirley Baker is named in this third of cause of action for Intrusion. As stated in
14 *Shulman v Group W Productions, Inc* (1998) 18 Cal 4th 200, the tort of intrusion into
15 private places is defined as

16 "[U]nconsented-to physical intrusion into the home, hospital room or other place
17 the privacy of which is legally recognized, as well as unwarranted sensory intrusions
such as eavesdropping, wiretapping, and visual or photographic spying "

18 *Id* at 230-231

19 The *Shulman* case concerned the videotaping and broadcast of an accident rescue
20 and detailed activities of helicopter paramedics as they sought to medically assist severely
21 injured persons. *Id* at 210. These facts were similar to other cases where intrusion was
22 found, such as in *Noble v Sears, Roebuck & Co* (1973) 33 Cal App 3d 654 at p 660
23 (dealing with an exclusive right of occupancy of her hospital room), and *Miller v National*
24 *Broadcasting Co* (1986) 187 Cal App 3d 1463 at pp 1489-1490 (media's entry into home
25 after paramedics were called). A privacy violation based on the common law tort of
26 intrusion has two elements. First, the defendant must intentionally intrude into a place,
27 conversation, or matter as to which the plaintiff has a reasonable expectation of privacy

1 Second, the intrusion must occur in a manner highly offensive to a reasonable person
2 *Hernandez v Hillsides, Inc* (2009) 47 Cal 4th 272, 286

3 Here, the basis for McFarland's Intrusion claim is the alleged dissemination of
4 reports that McFarland engaged in "harassment" and "bullying" in the CSG workplace
5 There is no discussion of his personal life, health or family matters As Master and
6 President of the CSG, none of the exhortations in the February 7, 2012 letter regarding
7 reports heard by Luttrell are within any "reasonable expectation of privacy" by McFarland
8 The dissemination of these reports does not rise to the level of a hospital-room videotaping
9 and recording personal medical details No one appeared at McFarland's home and
10 attempted to photograph him or record his personal activities

11 McFarland, as president of the CSG, has allowed the re-broadcast of the above
12 statements in the much more public CSG website forum It is evident that McFarland
13 himself does not consider these private matters As the Court noted in granting the
14 National Grange and Luttrell's Motion for Summary Judgment for this cause of action,
15 "[n]one of the information contained in the letter is alleged to have been obtained
16 unlawfully Nor are any private facts disclosed " McFarland has no basis for recovery under
17 the third cause of action for Intrusion

18

19 **D. Martha Stefenoni and Shirley Baker are Not Liable for Intentional**
20 **Interference with Contractual Relations As Alleged in the Fourth Cause of**
21 **Action.**

22

23 McFarland alleges in this cause of action, against both Stefenoni and Baker, that
24 they "intended to wrongfully remove McFarland from his elected position through their
25 wrongful publication of false facts " FACC at 50

26

27 The elements of the tort of Intentional Interference with Contractual Relations is
28 set forth by *Queimane Co v Stewart Tile Guaranty Co* (1998) 19 Cal 4th 26 as. (1) a valid
contract between plaintiff and a third party, (2) defendant's knowledge of this contract, (3)

29

1 defendant's intentional acts designed to induce a breach or disruption of the contractual
2 relationship, (4) actual breach or disruption of the contractual relationship, and (5)
3 resulting damage " (*Pacific Gas & Electric Co v Bear Stearns & Co* (1990) 50 Cal 3d 1118,
4 1126 " Id at 55

5 McFarland cannot prevail on this cause of action because he cannot show that there
6 was an "actual breach or disruption of the contractual relationship" or that he has suffered
7 "resulting damage" as required by *Quelimane, supra* at 55 McFarland continues to be the
8 Master and President of the CSG He was re-elected in the last election cycle There has
9 been no disruption of his elected position with the CSG Since there has been no
10 disruption of his elected position, McFarland has no "resulting damage" to point to *Ibid*
11 McFarland's discovery responses that he "was going to seek" one more two year term as
12 President of the California State Grange He does not claim that he was unable to win the
13 election, nor does he claim any other loss of income He references a \$1,000 insurance
14 deductible and payment of a \$1,000 bond, which do not appear to be "loss of income "

15 McFarland cannot recover under the this cause of action for Intentional
16 Interference with Contractual Relations

17
18 **E. Martha Stefenoni and Shirley Baker are Not Liable for Interference with**
19 **Prospective Economic Relations as Alleged in the Fifth Cause of Action.**

20 McFarland alleges this cause of action against both Stefenoni and Baker The
21 elements of this cause of action are stated in *Korea Supply Co v Lockheed Martin Corp*
22 (2003) 29 Cal 4th 1134 as follows

23 (1) an economic relationship between the plaintiff and some third party, with the
24 probability of future economic benefit to the plaintiff, (2) the defendant's knowledge
25 of the relationship, (3) intentional acts on the part of the defendant designed to
26 disrupt the relationship, (4) actual disruption of the relationship, and (5) economic
27 harm to the plaintiff proximately caused by the acts of the defendant ' [Citations]"
28 (*Westside Center Associates v Safeway Stores 23, Inc* (1996) 42 Cal App 4th 507,
521-522 "

1 *Id* at 1153

2 McFarland cannot prove these elements, similar to the prior cause of action,
3 primarily because McFarland's economic relationship at issue, his position as Master and
4 President of the CSG, has not been disrupted

5 Further, there McFarland has not alleged any other, independent, wrongful act As
6 stated in *Della Penna v Toyota Motor Sales, U S A* (1995) 11 Cal 4th 376 "We hold that a
7 plaintiff seeking to recover for an alleged interference with prospective contractual or
8 economic relations must plead and prove as part of its case-in-chief that the defendant not
9 only knowingly interfered with the plaintiff's expectancy, but engaged in conduct that was
10 wrongful by some legal measure other than the fact of interference itself " *Id* at 393 There
11 is no independent wrongful act alleged here other than the alleged defamation, and no
12 evidence of any

13 Since McFarland was re-elected in the most recent election cycle in 2013, and
14 continues to be Master and President of the CSG, he cannot make a claim for damages as
15 required by the fifth element of this tort, as set forth in *Korea Supply, supra* McFarland
16 cannot recover under this cause of action

17 **F. Martha Stefenoni and Shirley Baker are Not Liable for Infliction of**
18 **Emotional Distress as Alleged in the Sixth Cause of Action.**

19 McFarland cannot prevail on his sixth cause of action for Infliction of Emotional
20 Distress, plead against both Stefenoni and Baker Although he has plead "negligence" as
21 one basis for this cause of action, "there is no duty to avoid negligently causing emotional
22 distress to another, and that damages for emotional distress are recoverable only if the
23 defendant has breached some other duty to the plaintiff That is already the law in
24 California " *Potter v Firestone Tire & Rubber Co* (1993) 6 Cal 4th 965, 984

25 Assuming McFarland intended to plead a cause of action for "intentional" infliction
26 of emotional distress, he is also barred The elements of the tort of intentional infliction of
27 emotional distress are

1 "(1) extreme and outrageous conduct by the defendant with the intention of causing,
2 or reckless disregard of the probability of causing, emotional distress, (2) the
3 plaintiff's suffering severe or extreme emotional distress, and (3) actual and
4 proximate causation of the emotional distress by the defendant's outrageous
5 conduct " Conduct to be outrageous must be so extreme as to exceed all bounds
6 of that usually tolerated in a civilized community ' [Citation] The defendant must
7 have engaged in 'conduct intended to inflict injury or engaged in with the realization
8 that injury will result ' [Citation]"

9 *Potter v Firestone Tire & Rubber Co* (1993) 6 Cal 4th 965, 1001 The level of emotional
10 distress must be one that is "[o]f such substantial quality or enduring quality that no
11 reasonable [person] in civilized society should be expected to endure it " *Potter, supra*, at
12 1004

13 McFarland cannot claim such a level of distress as a result of the alleged
14 dissemination by Stefenoni and Baker of the February 7, 2012 letter Examples of actions
15 which rise to the level of being sufficient to cause severe emotional distress are found in
16 *Delfino v Agilent Technologies, Inc.* (2006) 145 Cal App 4th 790, 809 (anonymous e-mails
17 graphically threatening physical harm) and in *Kiseskey v Carpenters' Trust for So California*
18 (1983) 144 Cal App 3d 222, 229-230 (threats of harm or death to plaintiff and his family
19 for failure to sign new union agreement) Dissemination of the February 7, 2012 letter to
20 other CSG members with its single, brief reference to reports about bullying in the
21 workplace are insufficient as a matter of law As the Court ruled in favor of the National
22 Grange and Luttrell's Motion for Summary Judgment, "'No 'outrageous' conduct, so
23 'extreme as to exceed all bounds of that usually tolerated in a civilized community,' and
24 'intended to inflict injury or engaged in with the realization that injury will result' can be
25 shown here "

26 McFarland himself has placed complaints of "harassment", "bullying", and
27 "intimidation" squarely in the public eye on the CSG website As Master and President of
28 the CSG, McFarland cannot credibly claim that he cannot have them taken down or
29 password-protected It is evident that McFarland does not consider the dissemination of
30 these complaints to be "[O]f such substantial quality or enduring quality that no reasonable

1 [person] in civilized society should be expected to endure it "

2 The sixth cause of action for Infliction of Emotional Distress should be adjudicated
3 as a matter of law in favor of Martha Stefenoni and Shirley Baker

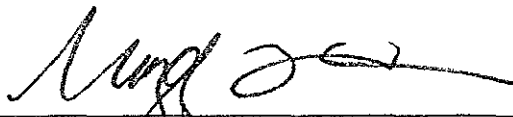
4 **IV. CONCLUSION**

5 Following the granting of the anti-SLAPP motion in favor of Stefenoni and Baker,
6 the remaining basis for claiming liability against them is the alleged dissemination of the
7 February 7, 2012 letter with its alleged statements regarding "bullying in the workplace "
8 McFarland has placed, or allowed to be placed, such statements on the CSG's public
9 website, publically showing repeated concerns that McFarland engages in bullying,
10 harassing and intimidating other employees of the CSG who disagreed with him These
11 statements cannot possibly be a basis for liability against Martha Stefenoni and Shirley
12 Baker The innocuous February 7, 2012 letter is not defamatory as a matter of law,
13 McFarland cannot recover under any other cause of action, and Stefenoni and Baker
14 should be granted summary judgment as to the FACC In the alternative, Martha Stefenoni
15 and Shirley Baker should be granted summary adjudication as to each cause of action

16
17 DATED February 10, 2015

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18
19
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