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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SACRAMENTO
10

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

13 Plaintiff,

14 And

15 THE GRANGE OF THE STATE OF
CALIFORNIA'S ORDER OF PATRONS OF
16 HUSBANDRY, CHARTERED and ED KOMSKI

17 Plaintiffs-in-Intervention

18 v.

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

21 Defendants.
22

23 AND RELATED CROSS ACTIONS
24
25
26
27
28

Case No.: 34-2012-00130439

**DEFENDANT MCFARLAND'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, MOTION FOR SUMMARY
ADJUDICATION**

**DATE: May 1, 2015
TIME: 2:00 p.m.
DEPT: 53
RESERVATION NO.: 2032655**

***Complaint Filed: October 1, 2012
Trial Date: June 1, 2015***

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1 I. INTRODUCTION

2 Defendant Robert McFarland ("McFarland") brings this Motion for Summary Judgment or, in
3 the alternative, Motion for Summary Adjudication against Plaintiff The National Grange of The Order
4 of Patrons of Husbandry's ("National Grange" or "NG") First Amended Complaint which alleges two
5 causes of action for declaratory relief and injunctive relief.

6 McFarland is the President ("Master") of Defendant California State Grange ("CSG") which
7 prior to 2012, was affiliated with the National Grange. However, CSG is, and has always been, a
8 separate California non-profit mutual benefit corporation since 1946. By way of this dispute, the
9 National Grange, an out-of-state corporation, is attempting to remove McFarland from his
10 employment with the CSG by overruling decisions made by CSG's Executive Committee related to
11 internal issues of the CSG. By filing its Complaint in California State Court and requesting
12 declaratory and injunctive relief, the National Grange has ostensibly requested that this Court second
13 guess and overturn the decisions made by a California corporation's Board of Directors. Under these
14 circumstances, as a matter of law Summary Judgment in favor of McFarland is proper.

15 **First**, McFarland cannot be removed from his elected office as President of the CSG, or his
16 position as a director of the CSG, on the basis that he allegedly violated the governing laws of an out-
17 of-state corporation (the NG) when CSG entered into a settlement agreement resolving civil litigation
18 between the CSG and the Agricultural Association of Vista (former Vista Grange). McFarland entered
19 into the settlement agreement while acting with express authority of CSG's Board of Directors. The
20 decision by CSG's Board of Directors to delegate settlement authority to McFarland and for CSG to
21 settle the civil lawsuit was made in good faith and in the best interest of the CSG and as such is
22 protected by the business judgment rule. *See Cal. Corp. Code §7231(b)*.

23 **Second**, the National Grange cannot remove McFarland from his elected position as President
24 of a California corporation based on "charges" that have already been investigated by CSG's Board of
25 Directors and which they found McFarland to have committed no wrong doing. Again, the business
26 judgment rule protects CSG's directors' determination that McFarland did not violate Grange law. An
27 out-of-state corporation cannot somehow reverse the findings of the Board of Directors of a California
28 corporation, nor can this Court second-guess the decisions of the California corporation without a

1 showing of fraud, bad faith or gross overreaching. See Eldridge v. Tymshare, Inc., (1986) 186
2 Cal.App.3d 767, 776; Lamden v. La Jolla Shores Clubdominium Homeowners Association (1999)
3 21 Cal.4th 249, 257 [business judgment rule insulates a court from second guessing the decisions of a
4 corporation's directors].

5 Third, the National Grange cannot attempt to remove McFarland from his position based on the
6 doctrine of laches. National Grange has attempted to remove McFarland based upon a 2009 settlement
7 agreement between CSG and the Vista Grange which reinstated Vista Grange's charter. However, the
8 National Grange knew about the terms of CSG's settlement agreement with the Vista Grange, at latest
9 in August of 2010, when McFarland disclosed the terms to the NG. Moreover, the NG ratified the
10 terms of the settlement agreement by accepting dues from the reinstated Vista Grange since January
11 2010 through August 2012. Thus, the CSG had been operating for, at a minimum, two years under the
12 belief that the settlement the CSG entered into with the Vista Grange was acceptable to all parties
13 involved including the NG.

14 Thus, National Grange's claims for declaratory relief and injunctive relief as alleged against
15 McFarland fail as a matter of law. The business judgment rule insulates this Court from second-
16 guessing the CSG's directors' decisions which is exactly what the National Grange's First Amended
17 Complaint requests that this Court do. Additionally, the doctrine of laches bars CSG's claim for
18 declaratory relief. Therefore, McFarland respectfully requests that this Court grant his request for
19 summary judgment, or in the alternative, summary adjudication.

20 II. FACTUAL BACKGROUND

21 A. The Vista Grange Matter

22 1. The CSG v. Vista Grange Litigation

23 On March 24, 2009, CSG filed a civil lawsuit in San Diego Superior Court against the former
24 Vista Grange, which, by then, was calling itself the "Agricultural Association of Vista." (UMF 1.) The
25 complaint, in essence, alleged that members of the former Vista Grange had diverted Grange assets
26 and were attempting to sell the Vista Grange Hall without the CSG's necessary approval. This
27 occurred before McFarland became the Master of the California State Grange. (Exh. 1 to the Master
28

1 **List of Exhibits,**¹ Declaration of Robert McFarland, ("McFarland Decl.") ¶2.)²

2 **2. The October 2009 California State Grange Convention**

3 In October of 2009, the CSG held its Annual Convention during which delegates were to elect
4 CSG's governing officials and vote on the CSG's public policy positions.

5 Several important events happened at the 2009 convention. First, McFarland was elected as the
6 new CSG Master.³ (Exh. 1, McFarland Decl. ¶2.)

7 Second, one of the issues discussed and voted upon at the 2009 Annual Convention was the
8 litigation between CSG and the so-called Agriculture Association of Vista (former Vista Grange).
9 This was a big issue because the litigation was quite expensive and was draining the CSG's financial
10 resources. (Exh. 1, McFarland Decl. ¶¶7-8.) The CSG delegates were concerned with the escalating
11 legal expenses being paid by the CSG. The CSG delegates adopted so-called Resolution 09-074-GA.
12 This resolution gave the CSG's Board of Directors full authority to resolve the ongoing civil action.
13 (UMF No. 2)

14 **3. The Vista Settlement Following Mediation**

15 In December of 2009, with the authority bestowed by virtue of Resolution 09-074-GA, CSG's
16 Executive Committee deliberated on how to resolve the civil action with the Agriculture Association of
17 Vista. CSG's Executive Committee developed a list of settlement "recommendations," which it gave to
18 McFarland, including giving him the full authority to settle the lawsuit at an upcoming judicially
19 mandated mediation. (UMF No. 3.) Thus, McFarland was given express authority by CSG's
20 Executive Committee to settle the lawsuit.

21 On or about December 7, 2009, McFarland attended the court mandated mediation in Irvine,
22 California. (Exh. 1, McFarland Decl. ¶5.) Prior to agreeing to a settlement with the Vista Grange,
23 McFarland called every member of CSG's Executive Committee to obtain their input and ratification
24 of the settlement. (UMF No. 4.) After receiving each Executive Committee member's agreement,
25

26 ¹ All supporting exhibits are attached to the Master List of Attached Exhibits, filed herewith.

27 ² Only the material facts pertinent to this motion are contained in McFarland's Separate Statement of Undisputed Material
Facts. All other facts are provided for context and background.

28 ³ The terms "Master" and "President" are interchangeable.

1 McFarland, acting under the express authority and approval of the Executive Committee, entered into
2 the settlement agreement on behalf of the CSG. (UMF No. 5.)

3 The CSG Executive Committee members and the CSG's membership were elated over the
4 settlement. As written by CSG Executive Committee member Shirley Baker ("Baker"):

5 *Hip-Hip-Hurray to our Master for getting a settlement. A job well done. Of*
6 *course we would always like to gain more money in this type of situation, but at what*
7 *cost. I am so happy to have this behind us and most importantly **our bylaws were***
8 *upheld.*

9 Bob, given what you were facing at the moment, *I appreciate you took the time*
10 *to contact all of the EC members.* I am satisfied with the results and I know the
11 members will be as well.

12 (See Exh. 5, December 8, 2009 e-mail from Baker to the CSG's Executive Committee.
13 [Emphasis added.]

14 On December 7, 2009, McFarland also spoke to National Master Ed Luttrell ("Luttrell"), and
15 reported the outcome of the mediation and the terms of the settlement agreement, including (1) the
16 reinstatement of the Vista Grange as a subordinate California Grange, and (2) the approval of the sale
17 of the Grange hall. (UMF No.7) During the conversation with McFarland, Luttrell acknowledged
18 "these are the kind of phone calls [I] like to get." (Exh. 1, McFarland Decl. ¶5; Exh. 22: December 8,
19 2009 e-mail.)

20 Subsequently, at the request of NG's Executive Committee, and per the advice of CSG's
21 attorney, McFarland sent Luttrell a written summary of the terms of the settlement agreement between
22 the CSG and the Agricultural Association of Vista. (UMF No. 21.)

23 The settlement agreement itself that resulted from the mediation was not generally
24 disseminated because of mediation confidentiality. See, e.g., Evid. Code § 1119, et seq. However, the
25 agreement was actually shared by McFarland with the CSG's Executive Committee and ratified.
26 (UMF No. 8.)

27 **B. The Prundale/Springfield Consolidation Controversy**

28 **1. The Consolidation**

During the winter of 2010 and summer of 2011, the Springfield and Prunedale California
Granges sought to consolidate their respective Grange halls. The process of Grange consolidation

1 generally involved the real property of one of the consolidating Granges being sold off with the
2 proceeds of the sale held in trust for use by the newly consolidated Grange Hall. This approach,
3 however, was historically frowned upon by the CSG Executive Committee because the proceeds were
4 not used for the "greater good" of the organization.

5 The CSG Executive Committee agreed to permit the Springfield/Prunedale consolidation, but
6 contingent upon the newly consolidated Grange spending the funds on promotional activities in the
7 Prunedale Grange community at large. Throughout the discussions regarding this consolidation,
8 McFarland was in contact with Luttrell. (UMF No. 17.)

9 On August 13, 2011, upset that they could not sell the Grange Hall and personally keep profits
10 for the Prunedale Grange's sole benefit, Inger Bevans and Lee Geiger, members of the Springfield
11 Grange, presented to Luttrell a so-called "formal" complaint against McFarland. (Exh. 13,
12 Springfield/Prunedale Grange Complaint.) The complaint alleged that McFarland personally had
13 somehow violated the NG Digest of Laws relative to the procedures for consolidation of the
14 Springfield and Prunedale Granges by the proposed requirement for the distribution of assets, even
15 though that was required by the Executive Committee after passage of the resolution. (Ibid.) The
16 complaint sought to find McFarland personally "out of order" in following the Executive Committee
17 decision. (Ibid.)

18 **C. Martha Stefenoni's Complaint About McFarland as to Falsifying Charter Applications**

19 Between August 5 and August 7, 2011, Martha Stefenoni ("Stefenoni"), and a CSG staff
20 employee, Leslie Parker ("Parker"), attended the Grange Western Regional Conference in Boise,
21 Idaho. (Exh. 7, Deposition of Martha Stefenoni ("Stefenoni Depo."), pp. 70: 1-14; 71:3-25.)
22 Unbeknownst to McFarland, during the conference, Stefenoni and Parker discussed so-called
23 "inaccuracies" in the subordinate California Grange charter applications with Luttrell. (Ibid.)

24 In September 2011, Stefenoni met with Luttrell at his office in Washington, D.C. During that
25 meeting at the NG headquarters, Luttrell and Stefenoni discussed the allegedly falsified applications
26 supposedly received from the subordinate California Granges; Stefenoni apparently believed they had
27 been altered by McFarland and backdated. Luttrell requested that Stefenoni (the complainant) herself
28 investigate this matter and report back to him. McFarland and the CSG Executive Committee were

1 wholly unaware of this meeting. (Exh. 7, Stefenoni Depo. pp. 72:12-25; 73:21-25; 74:1-11; 75:14-20;
2 76:4-9; 76:12-25; 77:1-15.) Luttrell seemed not to understand the incongruous nature of his hand-
3 picked investigator also being the chief complainant.

4 Subsequently, McFarland was notified of the charges filed against him by Bevans and Lee
5 Greiger stemming from the unresolved Springfield/Prunedale Grange consolidation. (Exh. 13,
6 Springfield/Prunedale Complaint.)

7 On October 5, 2011, Stefenoni sent a letter directly to Luttrell containing the “findings” of her
8 so-called “investigation” into the falsifying and/or altering of subordinate California Grange charters.
9 This October 5 letter falsely accused McFarland personally of falsifying subordinate Grange charters,
10 and it openly questioned his honesty and integrity – all without citing one iota of supporting evidence.
11 (Exh. 1, McFarland Decl. ¶12; Exh. 5, October 5, 2011 Letter from Stefenoni to Luttrell.)

12 **D. On October 10, 2011 Luttrell Confronts McFarland**

13 On October 10, 2011, Luttrell made a surprise visit to the CSG headquarters in Sacramento,
14 California. The purpose of Luttrell’s unannounced visit was ostensibly to obtain McFarland’s “side of
15 the story” as to the accusations of: (1) conspiring to seat alternative delegates; (2) falsifying charter
16 applications for the Healdsburg and Petaluma Granges; and, (3) creating a hostile work environment at
17 the CSG office.⁴ (UMF No. 11.) But, after presentation of the letter, Luttrell gave McFarland only two
18 options – he could either resign, or immediately prove his innocence. (Exh. 1, McFarland Decl. ¶13.)

19 McFarland refused to resign, and upon just having received the charges for the first time, he
20 said he could not “immediately prove” his innocence. In light of this, Luttrell decided to delay the
21 suspension, and he ordered an investigation into the charges. (UMF No. 12.)

22 Luttrell met with Shirley Baker (“Baker”) and assigned her and the remainder of the Executive
23 Committee with the task of investigating the charter application accusations against McFarland.
24 (UMF No. 12.)

25 ///

26 ///

27
28 ⁴ The exact charges of “harassment” and “bullying” are vague and unclear.

1 **E. The October 2011 Convention**

2 The CSG Annual Convention took place in Palermo, California from October 12 to October 16,
3 2011. (Exh. 1, ¶18.) Per the Bylaws, each subordinate Grange was allowed to send two delegates to
4 the convention – this is typically the Master of the subordinate grange and his/her spouse. If the Master
5 could not attend, a subordinate Grange can assign its seats to other CSG members who share the same
6 beliefs, even if not from the same Grange hall. (*Ibid.*)

7 At the 2011 Annual Convention, at the direction of Luttrell, many CSG delegates were
8 interrogated by Baker and Stefenoni before being allowed to participate. It appears that Stefenoni and
9 Luttrell were suspicious of delegates who were attending on behalf of one Grange, when they belonged
10 to another. Stefenoni was running against McFarland for the position of Master. Under Stefenoni's
11 theory, McFarland was having "friendly" members affiliate with distant Granges to control the voting
12 at the convention. Based on this questioning, up to 22 CSG delegates were disenfranchised, with no
13 evidence of wrongdoing, based on Stefenoni's suspicion that their credentials were "not in order."
14 (Exh. 1, ¶18.)

15 Due to the investigation into CSG delegate credentials and the disenfranchisement of so many
16 members, many delegates at the Annual Convention became upset and angry. After consulting with the
17 CSG Parliamentarian, a motion was made on the floor by one of the delegates to seat all credentialed
18 delegates. The CSG Parliamentarian, not McFarland, determined that the motion was in order. (Exh. 1,
19 ¶18.)

20 The morning after the motion was adopted, at Luttrell's direction, the CSG Executive
21 Committee confronted McFarland and requested that he sign a prepared statement admitting he had
22 "suspended" Grange law the day before so as to seat the delegates. (Exh. 1, ¶19.) McFarland was
23 informed that if he refused to sign the prepared statement, he would be immediately suspended as
24 Master. (Exh. 1, ¶19.)

25 McFarland refused to sign the prepared statement. He announced to the CSG delegates that the
26 motion adopted the previous day which sat all delegates was being challenged, and that a review of
27 delegate credentials would continue. (Exh. 1, ¶19.)

1 **F. The Executive Committee Investigates the Charges Against McFarland and Clears Him**
2 **of All Wrongdoing**

3 **1. The Majority Report**

4 Between October 2011 and January 2012, CSG's Executive Committee investigated all
5 accusations proffered by Luttrell against McFarland as stated in Luttrell's October 10, 2011 letter.
6 (UMF No. 13.) CSG's Executive Committee interviewed all witnesses, including the CSG office staff
7 and McFarland. It also reviewed the purportedly suspicious subordinate Grange charter applications,
8 and reviewed the delegate credentials. (Exh. 17, Executive Committee's Final Report; Exh. 28,
9 Luvass Dec., ¶ 3.)

10 A series of reports issued. After concluding its investigation, on January 23, 2012, CSG's
11 Executive Committee Chairman sent a draft final report of the investigation findings to the members of
12 the Board of Directors. (Exh. 17; Exh. 28.) The CSG Chairman requested that Executive Committee
13 members send him their input before the report was forwarded on to Luttrell. (*Ibid.*) At that time, no
14 member of the CSG Board of Directors openly voiced any concern over the investigation findings, nor
15 did any member state that they would be submitting a minority report. (Exh. 28, ¶ 11.)

16 After receiving no reply from the Executive Committee members, on January 24, 2012, the
17 CSG Chairman sent the final report via e-mail to Luttrell. (UMF No. 13.) The final report found that
18 McFarland (1) did not falsify subordinate Grange charter applications, and (2) he did not seat
19 unqualified delegates at the 2011 Annual Convention, and (3) he did not engage in harassing or
20 bullying behavior in the workplace. (UMF No. 15.) Instead, the report found many of the issues
21 within the CSG stemmed from a lack of communication, training, and overall dysfunction in the CSG
22 office, which could not be attributed to any one employee or McFarland. (Exh. 17.)

23 **2. The Unauthorized "Minority" Report**

24 Nonetheless, on January 25, 2012, an unauthorized "minority" report, signed by Board
25 members Stefenoni, Baker, and Bevans, was sent to Luttrell. (Exh. 1, ¶14; Exh. 23.) This minority
26 report was drafted, issued and sent to Luttrell without the knowledge of, or approval by the majority of
27 the CSB Board, in violation of the acceptable protocol as contained in the Digest of Laws and Robert's
28 Rules of Order, Rule 53 (which are followed by the Grange). (*Ibid.*; Exh. 25; Exh. 28, ¶ 11.)

1 Overall, the minority report found that the investigation undertaken by the CSG Executive
2 Committee was incomplete. (Exh. 23: Unauthorized Minority Report.) The minority report did not
3 determine that McFarland in fact violated Grange law or engaged in any of the activity of which he
4 was accused.

5 **G. The March 31, 2012 Grange "Trial"**

6 On March 31, 2012, McFarland took part in a Grange Trial on the Springfield/Prunedale
7 consolidation complaint. (UMF No. 16.) The trial was overseen by a three-judge panel, all of whom
8 were appointed by Luttrell. (Exh. 1, ¶20.) Bevans testified that she only sought to challenge the CSG
9 Executive Committee's decision to not distribute the proceeds from the Prunedale/Springfield sale.
10 (*Ibid.*) Nonetheless, the three-judge panel found McFarland guilty of "intent" to violate the Bylaws,
11 and it actually expelled him from the office of Master for the remainder of his term, not something
12 requested by the charges. (UMF No. 18.) This expulsion would have elevated Stefenoni (the only trial
13 witness who testified against him) to the position of Master by virtue of her position as the so-called
14 "Overseer." (Exh. 1, ¶22.)

15 On May 17, 2012, upon McFarland's appeal, the NG Executive Committee reduced
16 McFarland's punishment to a 60-day suspension. (UMF No. 18.) The suspension ran from June 1,
17 2012 to July 31, 2012. McFarland acquiesced to this suspension for the good of the order, and due to
18 lack of funds to continue to challenge the ruling. (Exh. 1, ¶22.)

19 **H. McFarland's Suspension From June 1 to July 31, 2012.**

20 On June 1, 2012, McFarland began to serve his 60-day suspension as a result of the
21 Springfield/Prunedale Grange trial. (Exh. 1, ¶22.) During his suspension, Stefenoni acted as interim
22 State Master. (*Ibid.*) Stefenoni's first act as interim Master was to direct the CSG office manager to
23 remove McFarland from the payroll and add herself! (Exh. 8, Martha Stefenoni's Daily Task Log.)

24 During Stefenoni's brief tenure as acting CSG Master from June to July 2012, she received
25 notice that the real property at issue in the 2009 "Vista" lawsuit with the Agriculture Association of
26 Vista had been sold, as anticipated by the settlement. Stefenoni communicated with Luttrell and
27
28

1 reported that she was unaware the property was to be being sold.⁵ (Exh. 8.) Once again, Stefenoni
2 created a baseless accusation of wrongdoing alleged against McFarland for acts taken in his capacity as
3 State Master.

4 Based on the information provided by Stefenoni, Luttrell concluded that McFarland had
5 unilaterally entered into the Vista settlement agreement without the knowledge or consent of the CSG
6 Executive Committee. Luttrell ordered the "investigation" into the circumstances of the settlement
7 agreement headed by NG Lecturer Pete Pomper ("Pomper"). Stefenoni created a small list of
8 witnesses for Pomper to interview as part of his investigation. The list of witnesses included Baker and
9 Bevans (highly biased against McFarland), as well as Larry Kroger. Mr. Kroger was Chairman of the
10 CSG Board during the time of the 2009 settlement. (Exh. 3, Kroger Decl. ¶¶8-9.) Mr. Kroger advised
11 that the CSG Board did give McFarland the authority to settle the lawsuit. *Id.*

12 While McFarland was serving his 60-day suspension, Luttrell drafted a new set of charges
13 against him based on the 2009 settlement with the Agricultural Association of Vista.

14 On August 1, 2012, McFarland returned from his 60-day suspension. (Exh. 1, ¶¶ 2-23.)

15 **I. August 2012: The NG Attempts to Suspend McFarland (Again)**

16 On August 6, 2012, at Luttrell's direction, Bob Clouse (a former CSG Master) took part in
17 hand-delivering the new charges to McFarland at the CSG office. (Exh. 1, ¶23.) Upon Mr. Clouse's
18 arrival at the CSG office, Luttrell telephoned and requested Mr. Clouse hand McFarland one of the
19 three envelopes he was carrying in his briefcase. (*Ibid.*)

20 This first envelope contained a letter summarizing the new charges against McFarland and
21 noticed his new suspension. The first letter was unsigned. (Exh. 1, ¶ 23.) McFarland was "charged"
22 with the following new charges: (1) signing the Vista Grange settlement in December of 2009 in
23 violation of four separate provisions of the National Digest of Laws, and (2) misrepresenting the terms
24 of the settlement agreement; (3) submitting incorrect charter applications; (4) encouraging members to

25
26 ⁵ As a voting member of CSG's Executive Committee from October to December 2009, Stefenoni had participated in the
27 deliberations and discussions regarding the settlement of the Vista lawsuit. The "laundry list" of settlement terms approved
28 by CSG's Executive Committee prior to the mandatory settlement conference included the sale of the real property. On the
day of the settlement conference, McFarland personally called Stefenoni to discuss the proposed terms, and she voiced no
opposition. It could not credibly be claimed to have been a surprise to her that the real property was being sold. (Exhibit
1, ¶ 5.)

1 affiliate improperly with other Granges for the purpose of becoming delegates to the 2011 state
2 convention; (5) illegally moving to "suspend" the by-laws at the 2011 state convention by allowing
3 delegates to be seated; (6) bullying and harassing his office staff; and (7) making or allowing public
4 misrepresentations concerning the "facts" of the 2012 complaint filed by Bevans regarding the
5 consolidation of the Springfield and Prunedale Granges (for which he had already accepted the 60-day
6 suspension).⁶ (UMF No. 19.)

7 Revealing his true agenda, Luttrell demanded that McFarland resign from office. McFarland
8 refused. (Exh. 1, ¶23.) Luttrell then instructed Mr. Clouse to give McFarland the second letter. The
9 second letter was identical to the first letter but contained Luttrell's signature. This second letter
10 purported to officially suspend McFarland from the office of CSG Master. (Exh. 1, ¶23; Exh. 16,
11 October 10, 2011 Letter.)

12 Upon the advice of the CSG Executive Committee and his attorney, McFarland refused. The
13 CSG Executive Committee flatly refused to uphold McFarland's purported suspension and voted
14 against it. (Exh. 1, ¶¶ 24-25.)

15 **J. The NG Attempts To Suspend the CSG Charter**

16 On September 16, 2012, Luttrell purportedly suspended CSG's charter for its refusal to enforce
17 McFarland's suspension. If not for Luttrell's actions against McFarland and the (late) assertion of
18 charges related to the Vista Grange, the charter of CSG would not have been suspended.

19 **III. ALLEGATIONS IN THE OPERATIVE COMPLAINT**

20 The First Amended Complaint ("FAC") was filed by NG against CSG, McFarland, John
21 Luvaas, Gerald Chernoff, Damien Parr, Takashi Yogi, Kathy Bergeron, and Bill Thomas on July 12,
22 2013. Mr. Yogi, Mrs. Bergeron, and Mr. Thomas were added as Defendants due to their election to
23 CSG's Executive Committee.

24 The allegations against McFarland remain substantially similar to those alleged in the original
25 October 1, 2012 complaint. These allegations are as follows:

- 26 • McFarland served as Master of the California State Grange, its highest office, but was

27
28 ⁶ In his deposition testimony, Luttrell has categorized these four later charges as "minor." Only the Vista settlement agreement issues are "material." (UMF No. 10.)

suspended in August 2012. He was also on the Executive Committee of the California State Grange. (FAC ¶4);

- McFarland had been elected as Master of the California State Grange, but was suspended for 60 days (June-July 2012) by the National Grange after a judicial proceeding was conducted. During the course of McFarland's suspension, Martha Stefenoni, Overseer of the California State Grange, served as acting Master. (FAC ¶14);
- Effective August 6, 2012, McFarland was suspended by the Master of the National Grange, pending a new set of duly filed charges to be adjudicated in the National Grange trial process. (FAC ¶15);
- McFarland refused to accept the suspension, and he continued acting as Master of the California State Grange, despite the provision that Masters of the State Granges are answerable to the Master of the National Grange. (FAC ¶16);
- Beginning in late August 2012, the Master of the National Grange contacted members of the Executive Committee of the California State Grange to secure their cooperation in the suspension of McFarland pending adjudication of the new charges, but a majority of the members did not act to enforce his suspension and secure Martha Stefenoni's elevation to acting Master. (FAC ¶17);
- McFarland and the Executive Committee of the California State Grange have rejected the authority of the National Grange and the State Grange Bylaws regarding the suspension of McFarland pending adjudication of the charges filed against him. McFarland is continuing to act in his capacity as Master of the California State Grange. (FAC ¶24);
- On September 20, 2012, McFarland notified members of the California Grange of its intent to continue to operate by and through its elected officials, despite the suspension order. (FAC ¶27); and,
- There is an actual controversy between the National Grange and the members of the Executive Committee of the California State Grange, as well as McFarland, regarding whether the National Grange has rightful authority to revoke the Charter of the California State Grange and compel it to turn over Grange property. (FAC ¶32).

IV. LEGAL ANALYSIS

A. Standard For A Motion For Summary Judgment.

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

Summary judgment must be granted if all evidence submitted demonstrates there is no triable issue as to any material fact and the moving party is entitled to judgment as a matter of law. **Cal. Code**

1 **Civ. Pro. § 437(c).** A cause of action lacks all merit if a defendant establishes an affirmative defense to
2 the cause of action. **Cal. Civ. Pro. § 437c(o).**

3 The court shall consider all evidence set forth in the moving papers and all inferences
4 reasonably deducible from such evidence. An issue that is abstractly one of fact may be resolved by
5 summary adjudication (judgment) if the moving party's declarations fully establish the claim or
6 defense and the opponent's declarations fail to rebut it. **Joslin v. Marin Municipal Water Dist.**
7 (1967) 67 Cal. 2d 132, 148-149. To put the matter otherwise, an issue of fact becomes one "of law"
8 and loses its "triable" character if the undisputed facts leave no room for a reasonable difference of
9 opinion. **Terry v. Atlantic Richfield Co.** (1977) 72 Cal.App. 3d 962, 967.

10 Once the moving party has met the initial burden, the burden shifts to the opposing party to
11 produce admissible evidence showing a triable issue of fact exists. **Cal. Code Civ. Proc. § 437c(p)(2);**
12 **Green v. Ralee Engineering Co.** (1998) 19 Cal. 4th 66, 72. The opposing party may not rely upon
13 allegations or denials in its pleadings. Rather, it must "set forth the specific facts showing that a triable
14 issue of material fact exists." **Cal. Code Civ. Proc. § 437c(p)(2); see Santa Ana Unified School Dist.**
15 **v. Orange County Develop. Agency** (2001) 90 Cal.App.4th 404, 411.

16 As discussed *infra*, McFarland has established uncontroverted affirmative defenses to each one
17 of National Grange's causes of actions. McFarland submits that NG will not be able to meet its burden
18 of proof to produce admissible evidence to show a triable issue of fact.

19 **B. NG's Action Against McFarland Fails Because the CSG's Ratification of McFarland's**
20 **Actions In Operating the CSG Is Protected Under The Business Judgment Rule.**

21 The California Legislature has codified the business judgment rule as it relates to non-profit
22 corporations such as the National Grange and the California State Grange. California Corporations
23 Code, section 7231 defines the rule regarding personal liability of directors of a non-profit corporation:

24 A director shall perform the duties of a director, including duties as a member of
25 any committee of the board upon which the director may serve, in good faith, in a
26 manner such director believes to be in the best interest of the corporation and with
such care, including reasonable inquiry, as an ordinarily prudent person in a like
position would use under similar circumstances.

27 **Cal. Corp. Code §7231(a).** The statute continues:
28

1 *A person who performs the duties of a director in accordance with subdivision*
2 *(a) and (b) shall have no liability* based upon any alleged failure to discharge the
3 *person's obligations as director, including, without limiting the generality of the*
foregoing, any actions or omissions which exceed a public or charitable
purpose to which assets held by a corporation are dedicated. (Emphasis added).

4 Cal. Corp. Code §7231(b).

5 The business judgment rule sets up a presumption that directors' decisions are based on sound
6 business judgment. "This presumption can only be rebutted by a factual showing of fraud, bad faith, or
7 gross overreaching." **Ritter & Ritter v. Churchill Condominium Ass'n.** (2008) 166 Cal.App.4th
8 103, 123.

9 Application of the common law business judgment rule has two consequences. First, it
10 immunizes corporate directors from personal liability if they act with the good faith and in the best
11 interest of the corporation. **Lamden**, *supra*, 21 Cal.4th at 257. The business judgment rule insulates a
12 court from intervening with those management decisions which are made by directors in good faith
13 and in what the director believes is in the organizations best interests. *Ibid*.

14 The business judgment rule applies to director-officers who are acting in their capacity as
15 directors. *See* **Biren v. Equality Emergency Medical Group, Inc.** (2002) 102 Cal.App.4th 125, 136-
16 138 [business judgment rule applied to CFO who was also a director of the corporation].

17 As a California non-profit mutual benefit corporation, such as CSG, is governed by **California**
18 **Corporation Code § 7231(a)-(c)**. The members of CSG have authorized an Executive Committee,
19 directly analogous to a corporation's Board of Directors, to manage its affairs. Mr. McFarland, as State
20 President/Master, is part of that Board of Directors. The Board of Directors has the responsibility for
21 governing the CSG by developing and establishing policies and objectives for the CSG which includes
22 but is not limited to offering administrative guidance to corporate officers and determining whether to
23 retain or dismiss an executive .

24 Specifically, in October of 2009, the members of the CSG authorized the Executive Committee
25 to settle the ongoing civil litigation against the Agricultural Association of Vista. (UMF No. 2.) In
26 turn, the CSG Executive Committee delegated that authority to McFarland. (UMF No. 3.) Thus, while
27 attending the mediation, McFarland was acting in his capacity as director and with express authority
28 from the Executive Committee to settle the litigation on behalf of the CSG. (UMF No. 4.)

1 As a director of CSG, McFarland may avail himself to the business judgment rule; the rule
2 immunizes him from personal liability for actions he took in good faith, for which he believed to be in
3 the best interest of the corporation, and in exercising the judgment an ordinarily prudent person in a
4 like position would exercise under similar circumstances would have done. (UMF Nos. 5, 6) *See*
5 Lamden, *supra*, 21 Cal.4th at 258.

6 Several California courts have found directors to be immune from liability for their decisions
7 which were made in good faith and without evidence of fraud or self-dealing. In many of these cases,
8 the exculpated directors did not go to the same lengths, as McFarland here, to vet his decisions and to
9 ensure his decisions were in the best interest of the non-profit corporation.

10 In Biren v. Equality Emergency Medical Group, Inc., financial officer and director Biren
11 was sued by the corporation for breach of contract, breach of fiduciary duties, and declaratory relief for
12 hiring a third-party billing corporation without first obtaining shareholder approval. Biren v. Equality
13 Emergency Medical Group, Inc. (2002) 102 Cal.App.4th 125, 134-135. Biren dismissed a third-
14 party billing firm which was not able to produce work in a timely fashion, and she hired another firm.
15 Prior to hiring the new firm, Biren preformed her own investigation and received glowing
16 recommendations in support of the new firm. *Id.* at 133.

17 Prior to officially hiring the new firm, Biren informed two other directors of the change in
18 billing companies. Biren, *supra*, 102 Cal.App.4th at 134. The other directors expressed no opposition,
19 and she believed them to have no objections. *Ibid.* Ultimately, the new billing company's performance
20 was also subpar. *Id.* at 135.

21 The Sixth District Court of Appeals applied the business judgment rule to Biren's decision
22 making which was done without director approval as required. The court concluded that Biren should
23 have taken the decision to the Board of Directors for its approval; but, her failure to gain prior approval
24 did not rebut the presumption of good faith. Biren, *supra*, 102 Cal.App.4th at 138. This was so
25 because Biren believed in good faith, as the director responsible for billing matters, that she had the
26 authority to act alone. *Ibid.* Biren did not "close her eyes" to the financial situation but, instead, her
27 "eyes were wide open to a financial crises she tried to resolve." *Ibid.*

28 Unlike Biren, McFarland was not acting under a mistaken belief of authority when he entered

1 into the settlement agreement with the Vista Grange. (UMF Nos. 2, 3.) Rather, he possessed the
2 express authority of the CSG Executive Committee to settle the litigation. (UMF No. 3.) McFarland
3 went further than the director in Biren by personally calling each director in advance of the settlement
4 to discuss the terms of the settlement agreement and to obtain their approval before he agreed to it.
5 (UMF No. 4.) Every director with whom McFarland spoke agreed with the terms of the settlement.
6 (UMF No. 4.) McFarland's action was later expressly ratified by the CSG Board of Directors. (UMF
7 No. 8.)

8 McFarland's actions went above and beyond what California courts generally require of
9 directors when applying the business judgment rule to immunize them from liability. McFarland did
10 speak with every Executive Committee member prior to the settlement and engaged in the settlement
11 process with the express authority from the CSG Executive Committee. (UMF Nos. 2, 3, 4.)
12 McFarland had a good faith belief that it was in CSG's best interest to settle the matter because of the
13 financial burden it was placing on the non-profit, and the settlement was ratified by the Executive
14 Committee. (UMF Nos. 5, 7, 8.)

15 Moreover, in Berg & Berg Enterprises, LLC v. Boyle, the court emphasized a director's
16 responsibility "to exercise judgment in an informed, good faith effort to maximize the corporation's
17 long-term wealth creating capacity." Berg & Berg Enterprises, LLC v. Boyle (2009) 178
18 Cal.App.4th 1020, 1038. In Berg, the corporation sued its directors for failing to conduct a reasonable
19 investigation into additional ways to protect the corporation's interest as a creditor to a smaller
20 insolvent corporation, and disclose the details of an assignment of credit until after it was entered into.
21 *Id.* at 1046.

22 In determining that each of the directors were individually immune from liability under the
23 business judgment rule, the court noted that the directors acted within their duty to "maximize the
24 corporation's long-term wealth creating capacity," and there were no allegations that the directors
25 acted in bad faith. Berg, *supra*, 178 Cal.App.4th at 1047-1048.

26 In the instant matter, by signing the settlement agreement with the Agricultural Association of
27 Vista (Vista Grange), McFarland was acting to maximize the CSG's overall longevity and ability to
28 maintain its public purpose. To the CSG Executive Committee, the high financial risk to the

1 organization was not worth the reward. (UMF Nos. 5-6.) There are no allegations that he acted with
2 bad faith and no facts to show that he could have somehow been an “interested” party to the
3 transaction.

4 Thus, under the business judgment rule, the CSG’s decision to settle the Vista Grange lawsuit
5 and include terms such as the selling of the Vista Grange Hall or the reinstatement of Vista Grange’s
6 charter are given deference and cannot be second guessed. The National Grange cannot come to this
7 Court and ask for declaratory relief and injunctive relief to ostensibly suspend McFarland from his
8 position as President and Director of the CSG based on the CSG’s delegation of settlement authority to
9 McFarland, and McFarland’s subsequent decisions, which were made while acting in good faith on
10 behalf of the CSG.

11 Likewise, all of McFarland’s other actions that formulate the basis of the August 2012
12 complaint by Luttrell were either authorized by the CSG Executive Committee, or have been shown to
13 lack merit after an investigation by the CSG Executive Committee. (UMF Nos. 11-14.) These later
14 allegations were investigated by the CSG Executive Committee, and McFarland was fully exonerated
15 of any wrongdoing. (UMF Nos. 11-14.) Even Luttrell testified that the charges unrelated to the Vista
16 settlement were “minor.” (UMF No. 10.) Therefore, the National Grange cannot demand that this
17 Court overrule the decision of the CSG in conducting the internal affairs of the CSG. Such decisions
18 include the findings that McFarland did not (1) falsify Grange charter applications; (2) improperly seat
19 alternative delegates; or, (3) create a hostile work environment within the CSG headquarters. (UMF
20 No. 11.) The CSG Executive Committee’s conduct and decisions are insulated by the business
21 judgment rule.

22 **C. National Grange’s Requests For Declaratory Is Barred By The Equitable Doctrine Of**
23 **Laches.**

24 “The law helps the vigilant, before those who sleep on their rights.” Cal. Civ. Code §3527.
25 Laches is an equitable defense that applies in cases where the court is sitting in equity, as well as cases
26 seeking an injunction. Schwing, 2 Cal. Affirmative Defenses, §26:7 at p.17 (2013 ed. West).
27 Generally,

28 A court of equity will refuse relief even where the statutory limitations period

has not run, if in addition to mere passive neglect there is a showing of facts amounting to acquiescence in the acts complained of, or other circumstances which couples with the delay, render the granting of relief inequitable. Smith v. Sheffey (1952) 113 Cal.App.2d 741, 744 [emphasis added].

To prove successful on the defense of laches, McFarland must show that (1) the National Grange failed to assert its rights (2) for an appreciable period as to amount to an unreasonable delay; and (3) the National Grange's failure to assert its rights resulted in prejudice to him. Schwing, *supra*, §26:1 at p.3.

The August 1, 2012 letter which purported to suspend McFarland from his duly elected position as President of the CSG charged McFarland with violating the National Digest of Laws by entering into a settlement with the Vista Grange which reinstated its charter. (UMF No. 19.) In Luttrell's opinion, this specific charge relating to the Vista Grange settlement was the most serious offense; the rest of the charges contained in the complaint were "minor." (UMF No. 10.) NG (and Luttrell) knew about the settlement terms of the Vista Grange lawsuit as early as December of 2009 (and as late as August 2012 (UMF Nos. 7, 21). Yet, NG took no action on the purported violations of the National Digest of Laws that occurred as part of the settlement with the Vista Grange from December of 2009 to July of 2010. Rather, NG waited until August of 2012 before it charged McFarland with any violations. (UMF No. 19.)

However, between 2009 and 2012, NG received quarterly reports from CSG listing the Vista Grange as re-organized and received dues from the Vista Grange from December of 2009 through 2012. (UMF No. 20.) Essentially, by accepting the Vista Granges dues each year, the NG's conduct amounted to ratification or acquiescence of the settlement. The NG cannot decide two years later that the Vista Grange is not properly chartered by the NG after sitting silently and accepting dues from the Vista Grange for two years.⁷

Pursuant to the foregoing, the NG could have clearly acted prior to August 2012 in taking action against McFarland for entering into the settlement agreement with the Vista Grange, since it received the terms of the settlement agreement in August of 2010 that explained that the Vista Grange Hall was

⁷ Ironically, Luttrell testified that the acceptance of dues from the Vista Grange was a clerical error and the result of an innocent mistake or oversight by his staff. (Exhibit 21, Luttrell Depo. Vol 2, p. 96-102. Yet, the August 1, 2012 letter purports to remove McFarland from his elected position because of charter applications with the incorrect dates were submitted which resulted from staff errors. (Exhibit 17.)

1 being sold and the Vista Grange charter reinstated.⁸ By failing to act for approximately two years
2 (August 15, 2010 to August 1, 2012), the NG unreasonably delayed in asserting any rights it may have
3 possessed in regards to the Vista Grange settlement agreement.

4 Thus, the NG is precluded from taking action against McFarland due to the doctrine of laches.
5 The NG waited two years before it asserted any right which it may have over the Vista Grange
6 settlement. During those two years, the CSG accepted the Vista Grange as part of its brotherhood and
7 continued operations as normal. The NG cannot now attempt to remove McFarland from his duly
8 elected position (and employment) years after it accepted dues from the reinstated Vista Grange.

9 **V. CONCLUSION**

10 Based upon the foregoing, Defendant Robert McFarland respectfully requests that this Court
11 grant him summary judgment on National Grange's First Amended Complaint or, alternatively,
12 summary adjudication on the individual claims therein.

13 Dated: February 13, 2015

14 ELLIS LAW GROUP, LLP

15 By 

16 William A. Lapcevic
17 Attorney for
18 DEFENDANT/CROSS COMPLAINANT ROBERT
19 MCFARLAND
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27 _____
28 ⁸ This assumes that the National Grange actually had rights over the State Grange's settlement with a non-grange entity as the parties to the civil suit were the State Grange and the Agriculture Association of Vista.