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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF ALAMEDA**

15 **THE PEOPLE OF THE STATE OF**
16 **CALIFORNIA, *ex rel.* CAROL**
17 **SPOONER, JOHN D. BIELLO,**
18 **CAROLYN M. BIRDEN, KURT**
19 **GUERDRUM, ARTURO GRIFFITHS,**
20 **AMBURN R. HAGUE, LEIGH**
21 **HAUTER, PATRICIA HEFFLEY,**
22 **BARBARA MacQUIDDY, RICK**
23 **POTHOFF, CHARLES P. H.**
24 **SCURICH, RONALD SWART, indivi-**
25 **dually and on behalf of PACIFICA**
26 **FOUNDATION,**

27 **Plaintiffs,**

28 **vs.**

1 **PACIFICA FOUNDATION, a California**
2 **non-profit public benefit corporation**
3 **and charitable trust, MARY FRANCES**
4 **BERRY, JUNE MAKELA, WILLIAM**
5 **LUCY, FRANK MILLSAUGH,**
6 **ANDREA CISCO, KEN FORD, ROB**
7 **ROBINSON, DAVID ACOSTA,**
8 **MICHAEL PALMER, ROBERT FAR-**
9 **RELL, AARON KRIEGEL, PETER**
10 **BRAMSON, KAROLYN VAN PUT-**
11 **TEN, TOMAS MORAN, WENDELL**
12 **JOHNS, and DOES 1-100, inclusive,**

13 **Defendants.**

Case No.

VERIFIED COMPLAINT
IN QUO WARRANTO

[Code Civ. Proc. § 803; Corp. C. §§
5142, 5151(a), 5223, 5250, 5520,
6320(a)(1), 6336, 9505; Govt. C. §§
12580, 12591, 12596, 12598; 11 Bar-
clay's Official Cal. Code Regs. §§ 1-11]

1. **Declaratory Relief Compelling Adoption and Implementation of Fair, Reasonable, and Consistent Mechanisms for Defining and Democratically Selecting Voting Members, and for Voting Members to Democratically Nominate and Elect Directors**
2. **Usurpation of Office**
3. **Breach of Charitable Trust**
4. **Gross Abuse of Authority and Discretion**
5. **Accounting**

1 THE PEOPLE OF THE STATE OF CALIFORNIA, on the Relation of CAROL
2 SPOONER, JOHN D. BIELLO, CAROLYN M. BIRDEN, KURT GUERDRUM,
3 ARTURO GRIFFITHS, AMBURN R. HAGUE, LEIGH HAUTER, PATRICIA
4 HEFFLEY, BARBARA MacQUIDDY, RICK POTHOFF, CHARLES P. H. SCURICH,
5 RONALD SWART, individually, and on behalf of PACIFICA FOUNDATION, complain
6 of Defendants, and each of them, and for cause of action allege:
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9 **PURPOSE OF ACTION**

10 1. (a) This Complaint *In Quo Warranto* is in regard to PACIFICA FOUNDA-
11 TION ("PACIFICA"), a California nonprofit public benefit corporation and charitable
12 trust whose corporate purpose is listener-sponsored free speech radio. (b) Relators
13 accuse Defendants of breach of charitable trust, usurpation of office, and gross abuse of
14 authority and discretion. (c) This Complaint asks the Court to require, in a form and
15 manner acceptable to the People:
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17 (i) a Bylaws amendment establishing a fair, reasonable, and consistent
18 mechanism for the definition and selection of a body of voting members,
19 consistent with a modicum of due process, and ensuring listener-sponsors a
20 voice in the management of the PACIFICA charitable trust;
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22 (ii) a Bylaws amendment establishing a fair, reasonable, and consistent
23 mechanism for PACIFICA's members to democratically nominate and elect a
24 finite number of directors of PACIFICA;
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26 (iii) a full accounting of PACIFICA funds expended by Defendants over
27 the past five (5) years, or such other period as the Attorney General and the
28 Court find reasonable and appropriate, for the purpose of ensuring that such

1 funds have been spent in a manner consistent with the purpose of PACIFICA'S
2 charitable trust;

3 (iv) nomination and election of directors by the newly constituted voting
4 members;

5 (v) appointment of interim provisional directors (e.g., a retired judge, a
6 CPA, a long-time listener-sponsor, and a charitable trusts consultant) to assist
7 the existing directors in the expeditious implementation of each of the above
8 measures.
9

10 11 **AUTHORITY FOR ACTION**

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13 2. (a) This action is brought in service of the public interest pursuant to: Code
14 Civ. Proc. § 803; Corp. C. §§ 5142, 5223, 5250, and 5520; Govt. Code §§ 12580, 12591,
15 and 12598; and Attorney General Regulations Governing Proceedings in the Nature of
16 *Quo Warranto*, 11 Barclay's Official Cal. Code Regs. §§ 1-11. (b) The Attorney General
17 of the State of California, as guardian of the public interest, supervises charitable
18 entities and enforces their legal responsibilities, including, but not limited to, each
19 entity's fiduciary duties owed the public and each entity's adherence to the purpose for
20 which it was founded.
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22 23 **STANDING**

24 3. (a) At all times material hereto, Corp. C. § 5142 was in full force and effect,
25 and was binding upon Defendants, and each of them. (b) Such section permits legal
26 action to enjoin, correct, obtain damages for, or otherwise remedy a breach of a
27 charitable trust. (c) Section 5142 grants standing to: (i) The corporation, or a member
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1 in the name of the corporation pursuant to Section 5710; (ii) An officer of the
2 corporation; (iii) A director of the corporation; (iv) A person with a reversionary,
3 contractual, or property interest in the assets subject to such charitable trust; and (v)
4 The Attorney General, or any person granted relator status by the Attorney General.
5

6 4. (a) Each of the Relators, at all times pertinent hereto, is, and has been, a
7 listener-sponsor of PACIFICA FOUNDATION. (b) Relators bring this action on behalf
8 of the State of California, as guarantor of the rights of the public and especially those
9 members of the public who are listener-sponsors of PACIFICA FOUNDATION and have
10 a clear and direct interest in the charitable purpose of PACIFICA. (c) On information
11 and belief, PACIFICA FOUNDATION has tens of thousands of listener-sponsors,
12 roughly 40% of whom reside in the State of California. (d) By virtue of their status as
13 both sponsors and listeners, Relators and all other PACIFICA FOUNDATION listener-
14 sponsors have cognizable special, beneficial, proprietary and contractual interests in the
15 charitable trust run by PACIFICA FOUNDATION's directors. (e) The listener-sponsors
16 of PACIFICA FOUNDATION are the intended beneficiaries of the PACIFICA FOUN-
17 DATION charitable trust. (f) The listener-sponsors have a direct and defined interest in
18 the PACIFICA charitable trust, distinct from that of the general public, in the
19 enforcement of the charitable obligations at issue. (g) Relators constitute listener-
20 sponsors from each of the five areas of the Country where PACIFICA owns and oper-
21 ates listener-sponsored radio stations. (h) Each of Relators is, and at all times relevant
22 hereto, has been, a listener-sponsor of PACIFICA FOUNDATION in such Relator's
23 particular listener area, donating funds for the support of PACIFICA FOUNDATION.
24 (i) Each Relator is, and has been, the beneficiary of free-speech broadcasting by
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1 PACIFICA FOUNDATION stations. (j) Relators are members of the class that the
2 charitable trust is designed to benefit.

3 4 RELATORS

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6 5. (a) Lead Relator CAROL SPOONER is a citizen and resident of Santa Rosa,
7 California, and is a listener-sponsor of radio station KPFA, Berkeley, California. (b)
8 Relator JOHN D. BIELLO is an adult citizen and resident of New York, New York,
9 and is a listener-sponsor of radio station WBAI. (d) Relator CAROLYN M. BIRDEN is
10 an adult citizen and resident of New York, New York, and is a listener-sponsor of radio
11 station WBAI, New York, New York. (d) Relator KURT GUERDRUM is an adult citi-
12 zen and resident of Spring, Texas, and is a listener-sponsor of radio station KPFT,
13 Houston, Texas. (d) Relator ARTURO GRIFFITHS is an adult citizen and resident of
14 Washington, D.C., and a listener-sponsor of radio station WPFW, Washington, D.C.
15 (e) Relator AMBURN R. HAGUE is an adult citizen and resident of San Francisco,
16 California, and is a listener-sponsor of radio station KPFA, Berkeley, California. (f)
17 Relator LEIGH HAUTER is an adult citizen and resident of The Plains, Virginia, and is
18 a listener-sponsor of radio station WPFW, Washington, D.C. (g) Relator PATRICIA
19 HEFFLEY is an adult citizen and resident of New York, New York, and is a listener-
20 sponsor of radio station WBAI, New York. (h) Relator BARBARA MacQUIDDY is an
21 adult citizen and resident of Nevada City, California, and is a listener-sponsor of radio
22 station KPFA, Berkeley, California. (i) Relator RICK POTHOFF is an adult citizen
23 and resident of Houston, Texas, and is a listener-sponsor of radio station KPFT,
24 Houston, Texas. (j) Relator CHARLES P. H. SCURICH is an adult citizen and resident
25 of both Oakland, California, and San Clemente, California, and is a listener-sponsor of
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