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18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 COUNTY OF ALAMEDA

20 GENERAL JURISDICTION (UNLIMITED)

21 THE PEOPLE OF THE STATE OF  
22 CALIFORNIA, *ex rel.* CAROL  
23 SPOONER, et al.,

24 Plaintiffs,

25 vs.

26 PACIFICA FOUNDATION, a  
27 California non-profit public benefit  
28 corporation and charitable trust, et al.,

Defendants.

Case No. 831252-3

**EX PARTE APPLICATION FOR  
TEMPORARY RESTRAINING ORDER AND  
ORDER TO SHOW CAUSE RE:  
PRELIMINARY INJUNCTION; AND  
SUPPORTING DECLARATION OF DANIEL  
ROBERT BARTLEY RE: ADVANCE  
NOTIFICATION**

Hearing Date: Monday, February 26, 2001

Hearing Time: 1:45 p.m.

Judge: Hon. Judith D. Ford

Department: 31

Location: U.S. Post Office Building  
201 13th Street  
Oakland, CA 94607  
Tel 510 208 3949

1 **EX PARTE APPLICATION**

2 Plaintiffs, The People of the State of California *ex rel* Carol Spooner, et al., apply for a  
3 temporary restraining order restraining defendants The Pacifica Foundation, Mary Frances Berry,  
4 June Makela, Frank Millsbaugh, Andrea Cisco, Ken Ford, Rob Robinson, David Acosta, Michael  
5 Palmer, Robert Farrell, Aaron Kriegel, Peter Bramson, Karolyn van Putten, Tomas Moran,  
6 Wendell Johns, Leslie Cagan, Valrie Chambers, Bertram Lee, Beth Lyons, John Murdock, Lynn  
7 Chadwick, and their agents, servants, and employees, from:

- 9 LXIV1 amending the Pacifica Foundation Bylaws;
- 10 2 appointing new directors of Pacifica Foundation;
  - 11 3 removing current directors of the Pacifica Foundation;
  - 12 4 moving the principle place business of Pacifica Foundation, including the  
13 financial offices, from its current location in Los Angeles County, California;
  - 14 5 destruction of relevant documents, including any financial documents; and
  - 15 6. taking any substantial actions affecting the Pacifica Foundation assets,  
16 governance, management, and operations;
  - 17
  - 18

19 and for an order to show cause why a preliminary injunction should not be granted enjoining  
20 defendants and their agents, servants, and employees, from committing or performing the above  
21 described acts during the pendency of this action.

22 This application is made on the grounds that defendants, before this matter can be heard  
23 on notice: (1) are threatening to amend the Pacifica Foundation bylaws and to appoint and/or  
24 remove directors from the board of directors at a board meeting scheduled for **March 2-4, 2001**,  
25 (2) are making preparations to remove the principle offices of the Foundation from Los Angeles  
26 County to Washington, D.C., on **February 28, 2001, or March 1, 2001**, (3) and have fired and  
27 threaten to continue to fire Pacifica management and staff, including the corporate controller and  
28 the General Manager and Program Director of radio station WBAI in New York, and have

1 “banned” station personnel from the WBAI premises and changed the locks, (4) and plaintiffs  
2 have reason to believe that relevant financial documents are being or have been destroyed at the  
3 financial offices; and on the further grounds that plaintiffs are entitled to the relief requested in  
4 the Complaint; the commission of these acts during the litigation would produce waste or great  
5 or irreparable harm to the rights of the plaintiffs; defendants are doing and threatening to do acts  
6 in violation of the rights of plaintiffs tending to render judgment ineffectual; pecuniary  
7 compensation would not afford adequate relief, and the obligations sought to be enforced arise  
8 from a trust; and on the further ground that great *and/or* irreparable injury will result to plaintiffs  
9 before the matter can be heard on notice.  
10

11 Plaintiffs have not previously applied to any judicial officer for similar relief.  
12

13 This application is based on the complaint on file in this case, and on the Declaration re  
14 Advance Notice of plaintiffs’ counsel, and the supporting Declarations of Daniel Robert Bartley,  
15 Carol Spooner, Alice Chan, David Adelson, and Andrew Norris, Memorandum of Points and  
16 Authorities filed herewith, and such other evidence as may, in the interim, surface and be  
17 produced at the hearing.  
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19  
20 Dated: February 23, 2001

Respectfully submitted,  
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23 \_\_\_\_\_  
DANIEL ROBERT BARTLEY  
Attorney for Plaintiffs  
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25 **SUPPORTING DECLARATION OF DANIEL ROBERT BARTLEY**  
26 **RE ADVANCE NOTIFICATION**

27 I, Daniel Robert Bartley, declare: 1. I am an attorney at law duly admitted to  
28 practice before all the courts of the State of California and lead counsel of record herein for  
plaintiffs in the above-described action.

1           2. On Thursday morning, February 22, 2001, I had a one 1½-hour telephone  
2 conversation with defendants' attorney Daniel Rappaport, during which I apprized him in great  
3 detail the elements of, and grounds for, this intended application, and informed him that this  
4 application would be made on Monday, February 26, 2001. I followed up with a telephone call  
5 that evening, at 4:55 p.m., to his voice mail, confirming that the application would be pursued on  
6 Monday. I again telephoned his voice mail at approximately 9:00 a.m. on February 23, 2001, and  
7 left him a message informing him that this application would be pursued on February 26, 2001,  
8 at 1:45 p.m., before The Hon. Judith D. Ford, Judge, Department 31, at the U.S. Post Office  
9 Building, 201 13th Street, Oakland, CA , 94607, telephone 510 208 3949. Thereafter, at 10:55  
10 a.m., I received a fax from defense counsel Rapaport, confirming his receipt of this notice.  
11 During our phone conversations, Mr. Rapaport informed me that he would plan to appear for this  
12 application.  
13  
14

15           I declare under penalty of perjury under the laws of the State of California that the  
16 foregoing is true and correct, at Novato, Marin County, California.  
17  
18

19 Dated: February 23, 2001.

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20 DANIEL ROBERT BARTLEY  
21 Attorney for Plaintiffs  
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