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

DAVID ADELSON, et al.,

Plaintiffs,

vs.

PACIFICA FOUNDATION, et al.,

Defendants.

Case No.: 814461-0
(Lead case in consolidated cases)

**DECLARATION OF PETER FRANCK IN
SUPPORT OF PLAINTIFFS' AND CROSS-
COMPLAINANTS' MOTIONS SET FOR
HEARING ON SEPTEMBER 13, 2001**

Date: September 13, 2001
Time: 9:00 a.m.
Dept: 22
Judge: Hon. Robert M. Sabraw

DECLARATION OF PETER FRANCK

I, PETER FRANCK, declare as follows:

1. This declaration is based upon my personal knowledge, except where as stated upon information and belief.

2. From 1975 through 1984, I served as a Director on Pacifica's Governing Board, which, at that time, was referred to as the National Board. From March 1980 until mid-1984, I served as President and CEO of the Pacifica Foundation.

3. During the time that I served as Pacifica President and CEO, and, upon information and belief, at all times relevant to this lawsuit, the basic documents governing the Pacifica Foundation

**DECLARATION OF PETER FRANCK
IN SUPPORT OF PLAINTIFFS' MOTIONS SET FOR HEARING ON SEPTEMBER 13, 2001**

1 consisted of the Articles of Incorporation, the Bylaws, and the Organization and Procedure Resolution.
2 The Organization and Procedure Resolution was and is a standing resolution that contains the basic rules
3 with respect to the National Board, the staff, the officers, and the Station Boards (now referred to as
4 Local Advisory Boards, or “LABs”). A true and correct copy of the Pacifica Foundation’s basic
5 documents as of August 1983 are attached hereto as Exhibit A.

6 4. At the time that I became President of Pacifica, Article Three, Section 2 of Pacifica’s
7 Bylaws provided as follows:

8 In order to be elected, a nominee must receive the approval of two-thirds of the members
9 of the Board of Directors present and voting by secret ballot.

10 See Exhibit A, page 4.

11 5. However, at that time, the practice was for each LAB to elect up to four representatives to
12 sit on the Governing Board.

13 6. As President and CEO of Pacifica, one of my goals was to strengthen the LABs by
14 formalizing the practice that had developed over the years of LABs electing Directors to the Governing
15 Board. Accordingly, in August 1982 I proposed amendments to Pacifica’s basic documents that would
16 so formalize that practice. A true and correct copy of a memorandum from Jim Berland, then General
17 Manager of KPFK) to Pacifica’s Governance Committee, dated August 17, 1982, announcing this
18 proposal is attached hereto as Exhibit B.

19 7. According to the Berland memorandum,
20 [Franck’s] proposal would strengthen the role of the “Station Boards”, both through a
21 change in name, as well as an empowerment in “normal” circumstances that their choices
22 for National Board would be honored....

23 Ex. B. The Berland memorandum also notes that the proposed amendments were simply “writing down
24 what seems to be our current practice.” Id.

1 8. My proposal was presented during the course of the Board meeting in September 1982.
2 Subsequently, at the same meeting, the Board amended Section 1 of the Organization and Procedure
3 Resolution so as to provide that each LAB could elect two Directors to the Governing Board. The
4 amendment further provided that these Directors would be seated “automatically” unless there were
5 “legal prohibitions” preventing the Board from doing so. Finally, the amendment also provided that the
6 Board could elect up to five at-large Directors.

7 9. Following the amendments described above, Article 1 of the Organization and Procedure
8 Resolution provided as follows:

9 THE NATIONAL BOARD of the Foundation shall consist of two members from each
10 station signal area. The Board may elect at its discretion additional at-large members, not
11 to exceed one-half of the number of station representatives. When a vacancy occurs in
12 the representation of any station, the Station Board shall nominate a person to fill that
13 vacancy....Subject to the bylaws of the Foundation, persons so nominated will normally
14 be approved for membership on the Board (subject to applicable legal requirements).

15 See Exhibit A, Organization and Procedure Resolution, page 1. True and correct copies of certain pages
16 of the Minutes from the September 1982 Board meeting, reflecting this amendment, are attached hereto
17 as Exhibit C. True and correct copies of certain pages of the “Flash Minutes” from the September 1982
18 Board meeting, also reflecting this amendment, are attached hereto as Exhibit D.

19 10. The amendment to Article 1 of the Organization and Procedure Resolution codified the
20 practice of LABs electing Directors to the Governing Board. It further required that the Governing
21 Board seat these Directors absent technical problems with their election. One example of such a “legal
22 problem” is that, at that time, the Federal Communications Act required that all directors be citizens of
23 the United States. Another example is that the Federal Communications Commission had mandated that
24 individuals with certain types of criminal convictions could not serve as directors. The Board was thus
25 empowered to reject any LAB-elected Directors falling into these categories.

1 11. In a memorandum that I sent to LAB Chairs on November 18, 1982, I described the
2 effect of this amendment as follows:

3 Election by the Station Board to the National Board will be direct, rather than the
4 nomination procedure which has been used in the past. Under the revised [Organization
5 and Procedure] Resolution, the National Board is committed to accepting Station Board
6 nominations.

7 I also explained that the number of representatives from each station was reduced from four to two. A
8 true and correct copy of my November 18, 1982 memorandum is attached hereto as Exhibit E.

9 12. In 1983-84, I worked with Delfino Varela, one of the board representatives from station
10 KPFK, to put together a new proposal to amend Article Three, Section 2 of Pacifica's Bylaws. The
11 purpose of the proposed amendment to Article Three, Section 2 was codify the existing practice by
12 which LABs could elect Directors to the National Board, and by which the Board was required to seat
13 these Directors absent technical or legal obstacles to doing so. For consideration at the January 1984
14 Board Meeting, Mr. Varela and I prepared a proposed Resolution, which was sent to all board members,
15 that Article Three, Section 2 of Pacifica's Bylaws be amended so as to read as follows:

16 In order to be elected, a member must receive the nomination and vote of a majority of
17 the station board which he represents, unless such member is classified as an "at large"
18 member, in which event he must be elected by a 2/3 vote of the Board of Directors of the
19 Foundation, voting by secret ballot.

20 A true and correct copy of the Proposed Resolution is attached hereto as Exhibit F.

21 13. After discussion, the Governing Board voted to approve the proposed amendment to
22 Article Three, Section 2, with minor amendments. A true and correct copy of the relevant pages of the
23 Summary Minutes of the January 28-29, 1984 meeting of the Pacifica National Board reflecting that the
24 proposed amendment had been approved, is attached hereto as Exhibit G. See page 7.

1 I declare under penalty of perjury under the laws of the state of California that the foregoing is
2 true and correct. This declaration was executed on August 27, 2001, at Oakland, California.

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