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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10 GENERAL JURISDICTION (UNLIMITED)

11 THE PEOPLE OF THE STATE OF
12 CALIFORNIA, *ex rel.* CAROL SPOONER,
13 et al.,

14 Plaintiffs,

15 vs.

16 PACIFICA FOUNDATION, a California
17 non-profit public benefit corporation and
18 charitable trust, et al.,

19 Defendants

CASE NO. 821252-3

NOTICE OF MOTION AND MOTION FOR
PRELIMINARY INJUNCTION
PROHIBITING NOMINAL DEFENDANT
PACIFICA FOUNDATION FROM
ADVANCING DEFENSE EXPENSES ON
BEHALF OF INDIVIDUALLY NAMED
DEFENDANTS WITHOUT AN
UNDERTAKING

Hearing Date: May 8, 2001
Hearing Time: 9:00 a.m.
Judge: Hon. Judith Ford
Department: 31

20 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

21 NOTICE IS HEREBY GIVEN that Plaintiffs, The People of the State of California ex
22 rel. Carol Spooner, et al., will and hereby do move the court for a preliminary injunction
23 prohibiting nominal Defendant Pacifica Foundation from:

24 Advancing defense expenses of this litigation, including without limit, attorneys' fees,
25 on behalf of Defendants Mary Frances Berry, June Makela, Frank Millsbaugh, Andrea
26 Cisco, Ken Ford, David Acosta, Micheal Palmer, Robert Farrell, Karolyn van Putten,

1 Wendell Johns, Valrie Chambers, Bertram Lee, John Murdock, and Lynn Chadwick,
2 unless and until each of these Defendants provide an undertaking to repay such
3 advances unless it is ultimately determined that he or she is entitled to
4 indemnification.

5 This motion will be heard in Department 31 of the above-entitled Court, located at the
6 United States Post Office Building, 201 13th Street, Second Floor, Oakland, California, on
7 May 8, 2001, at 9:00 o'clock a.m., or as soon thereafter as the matter may be heard.

8 The ground for this motion is California Corporations Code section 5238 which
9 requires such undertakings to protect the corporate assets in proceedings where agents of a
10 nonprofit public benefit corporation have been individually sued. Without such undertakings
11 the security of nominal defendant Pacifica Foundation's assets has been and continues to be
12 irreparably harmed.

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

14 This Motion is based on the Complaint on file in this case, and the Memorandum of
15 Points and Authorities and supporting Declaration of Daniel Robert Bartley and Request for
16 Judicial Notice filed herewith, and such other oral and documentary evidence as may be
17 produced at the hearing.

18 Dated: April 12, 2001

Respectfully submitted,

20 DANIEL ROBERT BARTLEY, Esq.
21 Attorney for Plaintiffs/Relators