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9 Attorneys for Defendants
PACIFICA FOUNDATION, MARY FRANCES BERRY,
10 JUNE MAKELA, FRANK MILLSPAUGH, ANDREA CISCO,
KEN FORD, DAVID ACOSTA, MICHEAL
11 PALMER, ROBERT FARRELL, KAROLYN VAN PUTTEN,
WENDELL JOHNS, VALRIE CHAMBERS, BETH LYONS,
12 BERTRAM LEE, JOHN MURDOCK, and
LYNN CHADWICK

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF ALAMEDA

16 THE PEOPLE OF THE STATE OF
17 CALIFORNIA, *ex rel.* CAROL SPOONER,
et al.,

18 Plaintiffs,

19 vs.

20 THE PACIFICA FOUNDATION, a
21 California non-profit public benefit
corporation and charitable trust, *et al.*,

22 Defendants.
23

Case No. 831252-3

**NOTICE OF HEARING ON
DEMURRER AND DEMURRER
OF FOUNDATION DEFENDANTS
TO PLAINTIFFS' VERIFIED
COMPLAINT**

Date: April 10, 2001

Time: 9:00 a.m.

Dept: 31

Judge: Hon. Judith D. Ford

24
25 TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

26 PLEASE TAKE NOTICE THAT the demurrer of defendants Pacifica Foundation,
27 Mary Frances Berry, June Makela, Frank Millsbaugh, Andrea Cisco, Ken Ford, David
28 Acosta, Micheal Palmer, Robert Farrell, Karolyn Van Putten, Wendell Johns, Valrie

1 Chambers, Beth Lyons, Bertram Lee, John Murdock, and Lynn Chadwick (hereinafter,
2 the "Foundation Defendants") to the Verified Complaint of plaintiffs has been set for
3 hearing on April 10, 2001, at 9:00 a.m., or as soon thereafter as the matter may be heard,
4 in Department 31 of the above-entitled Court, located at 201-13th Street, 2nd Floor,
5 Oakland, California.

6 The Foundation Defendants hereby demur, jointly and severally, to the Verified
7 Complaint filed by plaintiffs on each of the following grounds:

8 1. The First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and
9 Tenth Causes of Action fail to state causes of action, because Plaintiffs have no standing.

10 2. The Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Tenth
11 Causes of Action fail to state causes of action, because Plaintiffs have no standing or
12 authority to assert such claims.

13 3. The First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and
14 Tenth Causes of Action fail to state causes of action against Defendants Mary Frances
15 Berry, June Makela, Frank Millspaugh, Andrea Cisco, Ken Ford, David Acosta, Micheal
16 Palmer, Robert Farrell, Karolyn Van Putten, Wendell Johns, Valrie Chambers, Beth
17 Lyons, Bertram Lee, John Murdock, and Lynn Chadwick because defendants' alleged
18 conduct is protected by the business judgment rule.

19 4. The First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and
20 Tenth Causes of Action fail to state causes of action against Defendant Lynn Chadwick.

21 5. The First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and
22 Tenth Causes of Action fail to state causes of action against Defendants Mary Frances
23 Berry, June Makela, Frank Millspaugh, Andrea Cisco, Ken Ford, David Acosta, Micheal
24 Palmer, Robert Farrell, Karolyn Van Putten, Wendell Johns, Valrie Chambers, Beth
25 Lyons, Bertram Lee, John Murdock, and Lynn Chadwick because Plaintiffs failed to
26 comply with Code of Civil Procedure Section 425.15.

27 6. The Sixth Cause of Action for an accounting fails to state a cause of action
28 because Plaintiffs have no standing under Corporations Code Section 6336.

1 7. The Seventh and Eighth Causes of Action fail to state causes of action
2 because Plaintiffs are not “members” under Corporations Code Section 5036.

3 8. The First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and
4 Tenth Causes of Action fail to state causes of action because they are preempted by
5 federal law.

6 The demurrer will be based on this notice and demurrer, the request for judicial
7 notice, the memorandum of points and authorities filed and served herewith, on the
8 Court’s files and records in this action, and on such other and further oral and
9 documentary evidence as may be presented at the hearing on this demurrer.

10 Dated: March 20, 2001

11 EPSTEIN BECKER & GREEN, P.C.

12 WENDEL, ROSEN, BLACK & DEAN, LLP

13
14 By 

15 Daniel Rapaport
16 Attorneys for Defendants

17 PACIFICA FOUNDATION, MARY
18 FRANCES BERRY, JUNE MAKELA, FRANK
19 MILLSPAUGH, ANDREA CISCO,
20 KEN FORD, DAVID ACOSTA, MICHEAL
21 PALMER, ROBERT FARRELL, KAROLYN
22 VAN PUTTEN, WENDELL JOHNS, VALRIE
23 CHAMBERS, BETH LYONS, BERTRAM
24 LEE, JOHN MURDOCK, and
25 LYNN CHADWICK
26
27
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