

1 Daniel Rapaport (Bar No. 67217)  
Thiele R. Dunaway (Bar No. 130953)  
2 **WENDEL, ROSEN, BLACK & DEAN, LLP**  
1111 Broadway, 24<sup>th</sup> Floor  
3 Oakland, California 94607-4036  
Telephone: (510) 834-6600  
4 Fax: (510) 834-1928

5 Attorneys for Defendants  
PACIFICA FOUNDATION, MARY FRANCES BERRY,  
6 JUNE MAKELA, FRANK MILLSPAUGH,  
ANDREA CISCO, KEN FORD, DAVID ACOSTA,  
7 MICHEAL PALMER, ROBERT FARRELL,  
KAROLYN VAN PUTTEN, WENDELL JOHNS,  
8 VALRIE CHAMBERS, BERTRAM LEE,  
JOHN MURDOCK, LYNN CHADWICK  
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF ALAMEDA

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

15 Plaintiffs,

16 vs.

17 PACIFICA FOUNDATION, et al.,

18 Defendants.  
19  
20

Case No. 831252-3

**DECLARATION OF DANIEL  
RAPAPORT IN OPPOSITION TO  
MOTION TO DISQUALIFY  
WENDEL, ROSEN, BLACK &  
DEAN, LLP AS DEFENDANTS'  
COUNSEL**

Date: April 10, 2001  
Time: 9:00 a.m.  
Dept: 31  
Judge: Hon. Judith D. Ford

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22  
23 I, Daniel Rapaport, declare:

24 1. I am an attorney duly licensed to practice law before all of the Courts of the  
25 State of California. I am a partner in the law firm of Wendel, Rosen, Black & Dean, LLP  
26 ("Wendel, Rosen"), and we are counsel of record for defendants Pacifica Foundation,  
27 David Acosta, Dr. Mary Frances Berry, Lynn Chadwick, Valrie Chambers, Andrea Cisco,  
28 Robert Farrell, Ken Ford, Wendell Johns, Bertram Lee, June Makela, Frank Millspaugh,

1 John Murdock, Micheal Palmer and Karolyn Van Putten (hereinafter, these individual  
2 defendants shall collectively be referred to as the “director defendants”). I have been  
3 practicing law continuously in the State of California since 1975. During that time I have  
4 never, to my knowledge, been the subject of either a disciplinary inquiry or a motion to  
5 disqualify me as counsel for a party in litigation.

6 2. Prior to the filing of the case of *Adelson v. Pacifica*, Alameda County Superior  
7 Court Case No. 814461-0 in July of 1999, neither I nor Wendel, Rosen had ever  
8 represented the Pacifica Foundation (“Pacifica”) or any of its directors or officers.  
9 At that time, Wendel, Rosen was asked by the then-Executive Director of Pacifica, Lynn  
10 Chadwick, to represent Pacifica Foundation in the *Adelson* action. That action was  
11 brought by certain individuals who were members of local advisory boards who alleged  
12 violations of Pacifica’s bylaws by Pacifica’s Directors in 1997 and 1999, which allegedly  
13 took away their claimed right to elect directors. Ms. Chadwick also agreed that Wendel,  
14 Rosen should represent the individual Pacifica directors who had been named as  
15 defendants in the *Adelson* complaint. Ms. Chadwick was not named as a defendant in  
16 that action. That case is still pending in state court.

17 3. When Carol Spooner and others applied to the California Attorney General in  
18 November, 1999 for leave to sue Pacifica and its directors in a *quo warranto* action, Ms.  
19 Chadwick, in her capacity as Pacifica’s Executive Director, again retained Wendel, Rosen  
20 to represent Pacifica in connection with that matter. She again agreed that Wendel, Rosen  
21 should also represent the individual Pacifica directors who had been named as defendants  
22 in the proposed *Spooner* complaint. The defendant directors concurred. Ms. Chadwick  
23 was not a proposed named defendant in the proposed complaint submitted by the relators  
24 to the Attorney General. Neither Ms. Spooner nor the other relators ever objected to  
25 Wendel, Rosen’s representation of Pacifica and its directors prior to the filing of the  
26 motion to disqualify in this action in November 2000, after it was removed to federal  
27 court.

28 4. After the *Spooner* complaint was filed in state court on September 15, 2000,

1 Wendel, Rosen was requested by the current Executive Director, Bessie Wash, to  
2 continue to represent Pacifica in that action. Ms. Wash also agreed that Wendel, Rosen  
3 could also represent every Pacifica director who requested representation and with whom  
4 there was no conflict of interest. Ms. Wash is not a named defendant in the complaint.  
5 We also contacted all of the Pacifica Directors who we were advised joined with the  
6 majority of Directors in believing that the lawsuits entirely lacked merit and should be  
7 vigorously defended.

8 5. All of those individuals who we currently represent, agreed to our joint  
9 representation. Those who concurred with the positions of the plaintiffs in these lawsuits,  
10 were advised to seek separate counsel and were further advised of whom to talk to at the  
11 insurance company to inquire about a separate defense.

12 6. Following our written disclosure and discussion of issues of conflict of interest  
13 and representation, I have been asked in writing by each of the directors we currently  
14 represent in this matter to represent them in this action. I have evaluated each of the  
15 following factors to determine whether an actual conflict existed or would potentially  
16 arise in connection with the dual representation of Pacifica and the director defendants:

17 (1) whether I would receive conflicting instructions from the clients in which I could not  
18 follow one client's instruction without violating another client's instruction; (2) whether  
19 there were conflicting objectives of the clients that would preclude me from effectively  
20 advancing one client's objective without detrimentally affecting another client's  
21 objective; (3) whether the clients had antagonistic positions that would require me to  
22 advocate both sides of a negotiation or a legal position at the same time; (4) whether the  
23 clients had inconsistent expectations of confidentiality in which one client would expect  
24 me not to disclose information I would be required to impart to the other client; (5)  
25 whether there was a preexisting relationship with one client that would adversely affect  
26 my independent judgment on behalf of the other client; and (6) whether there would be  
27 conflicting demands by the clients for the original file once the representation ended. I  
28 concluded that there is no actual or potential conflict of interest nor would any potentially

1 arise during the representation of Pacifica and the director defendants. I have determined  
2 that all of the director defendants we currently represent in this matter are aligned with  
3 prior and existing legal positions taken by Pacifica. As the Court can easily adduce from  
4 the filing of Related Case 831286-0 in this Court, Pacifica Directors Rob Robinson and  
5 Rabbi Aaron Kriegel are aligned with the *Spooner* plaintiffs.

6 7. Pacifica Directors Leslie Cagan (“Cagan”), Tomas Moran (“Moran”) and Peter  
7 Bramson (“Bramson”) have also been named as defendants in this action, but each has  
8 taken numerous actions antithetical to the majority of Directors, such that Cagan, Moran  
9 and Bramson are also aligned with plaintiffs in this action. I have subsequently been  
10 advised by James Wagstaffe, an attorney in San Francisco, that he represents Directors  
11 Cagan, Moran and Bramson, and that he intends to seek to have them realigned as  
12 plaintiffs, which would obviate their presence as defendants.

13 8. I have also been retained to represent Pacifica in another copycat lawsuit,  
14 filed by Mr. Frucht on behalf of two dissident Directors in the matter of *Robinson, et al.*  
15 *v. Pacifica Foundation, et al.*, Case No. 831286-0. The *Adelson, Spooner* and *Robinson*  
16 cases are all based on a claim that certain members of the National Governing Board  
17 could only be directly elected by local advisory boards. Plaintiffs claim that if this were  
18 the case, any changes to Pacifica’s Bylaws which altered their alleged pre-existing right  
19 to directly elect directors, were void and that all subsequent acts by the Board would be  
20 impermissible.

21 9. Since the Summer of 1999, I have attended numerous depositions, reviewed  
22 hundreds of documents and interviewed numerous witnesses. It is my conclusion based  
23 upon this evidence that every person elected to a position as Director of the Pacifica  
24 National Governing Board was in fact voted upon by the National Board itself, which  
25 exercised the ultimate authority to allow people to serve as directors. *See*, Declaration of  
26 Jack O’Dell attached as Exhibit 7 to the Request For Judicial Notice In Support Of  
27 Opposition To Order To Show Cause Re Preliminary Injunction. Even the plaintiffs in  
28 *Adelson* that I deposed had no contrary admissible evidence, and they only offered the

1 advice they had from legal counsel interpreting the Pacifica bylaws. *See*, Exhibits to the  
2 Declaration of Daniel Rapaport In Opposition To Order To Show Cause Re Preliminary  
3 Injunction.

4 10. When the *Adelson* case was commenced, I was advised that all of the  
5 defendants that we currently represent in that proceeding understood and agreed that the  
6 claims made by the *Adelson* plaintiffs were without merit. There was thus, and is no  
7 conflict of interest between these individuals who made up the majority of the Board and  
8 the Pacifica Foundation.

9 11. The Pacifica Foundation and its Directors requested and were granted a  
10 defense by their insurer, which issued a Directors and Officers liability policy. That  
11 insurer has not objected to Wendel, Rosen, Black & Dean representing all likeminded  
12 defendants.

13 12. Throughout prosecution of the *Adelson* case, and to date, no request was  
14 made to disqualify counsel by counsel for plaintiffs asserting that any conflict of interest  
15 existed precluding Wendel, Rosen, Black & Dean, or Epstein, Becker & Green from  
16 representing their clients in that case.

17 13. Over the last two years, I have become intimately familiar with the case, the  
18 issues, the parties and the strategies related to the defense of these three cases. It would  
19 be prejudicial to defendants to be required to select new counsel at this stage, especially  
20 since there is an upcoming trial scheduled for August 3, 2001, and Mr. Bartley advised  
21 me he and Mr. Frucht will seek to consolidate the *Spooner* and *Robinson* matters with the  
22 *Adelson* case.

23 14. In order to make it absolutely clear to all concerned that the named  
24 defendants<sup>1</sup> we represent want our continued representation, they have all been provided  
25 with a copy of Mr. Bartley's Points and Authorities In Support Of Motion To Disqualify

26 \_\_\_\_\_  
27 <sup>1</sup> We believe that it was improper to name the Directors individually and motions for  
28 summary judgment will be brought to have them dismissed, should this case not be  
resolved, on the basis of the pending demurrer.

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Defendants' Counsel, which articulates his view of why a conflict of interest exists. No written disclosure could be more one-sided than this document. Despite reviewing this document, all available individual defendants that we represent have signed declarations confirming their desire that their current representation be unimpeded by Mr. Bartley's strategic attempt to strip defendants of their selected counsel.

15. Attached hereto as **Exhibit A** is a true and correct copy of a "Lawsuit Update" dated March 10, 2001 from Carol Spooner regarding the subject "UPDATE-- Committee to Remove the Pacifica Board", which I located on the Internet by viewing the website located at <http://www.wbai.net/lawsuits.html>.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed at Oakland, California, on March 29, 2001.

  
\_\_\_\_\_  
Daniel Rapaport