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5 Attorneys for Defendants  
PACIFICA FOUNDATION, MARY FRANCES BERRY,  
6 DAVID ACOSTA, JUNE MAKELA,  
ANDREA CISCO, FRANK MILLSPAUGH,  
7 KEN FORD, MICHEAL PALMER and WILLIAM LUCY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF ALAMEDA

11 DAVID ADELSON, LAUREN AYERS,  
MARY BERG, JOANNE BOBB, LYDIA  
12 BRAZON, CECELIA CARUSO, GAIL  
DIXON, ANNE EMERMAN, SHERRY  
13 GENDELMAN, TERENCE GUY, JIM  
HORWITZ, KAHLIL JACOBS-  
14 FANTAUZZI, DAWUD KHALIL-ULLAH,  
PELE DE LAPPE, STEVE LUSTIG,  
15 ERROL MATTLAND, MIGUEL  
MALDONADO, ANDREW NORRIS,  
16 LEWIS O. SAWYER, JR., MARIALICE  
WILLIAMS, and FRIEDA ZAMES,  
17 individually, and on behalf of others  
similarly situated, and on behalf of Pacifica  
18 Foundation,

19 Plaintiffs,

20 vs.

21 PACIFICA FOUNDATION, a California  
Nonprofit Corporation, MARY FRANCES  
22 BERRY, DAVID ACOSTA, JUNE  
MAKELA, ANDREA CISCO, FRANK  
23 MILLSPAUGH, KEN FORD, MICHEAL  
PALMER, WILLIAM LUCY, and DOES 1-  
24 25, inclusive,

25 Defendants.

ENDORSED  
FILED  
ALAMEDA COUNTY

JUN 13 2000

CLERK OF THE SUPERIOR COURT  
By Columbus Littleberry, Deputy

Case No. 814461-0

DECLARATION OF DAVID  
ACOSTA IN OPPOSITION TO  
MOTION FOR PRELIMINARY  
INJUNCTION

Date: June 23, 2000

Time: 2:00 p.m.

Dept. 31

Judge: James A. Richman

Wendel, Rosen, Black & Dean, LLP  
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Oakland, California 94607-4036

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I, David Acosta, declare that:

1. I have personal knowledge of the matters stated herein and if called as a witness, I could competently testify thereto.

2. I am currently the Vice Chair of the Board of Directors of the Pacifica Foundation ("Board"). I was first elected as a Director in March of 1996 and was elected in June of 1998 as Vice Chair. I am also a certified public accountant licensed by the State of Texas, and owner of my own accounting firm, a recording company, and a publishing company. I chair a tax committee with the Texas Society of Certified Public Accountants and am a member of a special projects committee with the National Academy of Recording Arts and Sciences (Grammys®). I've held positions in the League of United Latin American Citizens and the Houston Hispanic Chamber of Commerce. In Pacifica, I've held positions as LAB member, LAB Chair, National Board member, Executive Committee member and Chair of the Governance Committee.

3. The Board always elected all directors. The LABs were allowed to nominate some directors, but they always had to be elected by the Board to be seated. The LABs have had some objections to the Board's decisions over the years, but never to my knowledge asserted or even suggested they had the right to elect directors, until Mr. Siegel raised the issue in a letter written to the Board just before this lawsuit.

4. The 1997 and 1999 Bylaw changes never took away any power or right of the LAB members previously had held. They could nominate directors before and after those Bylaw changes.

5. LAB members have never voted on changes to Pacifica's Bylaws in their capacity as a LAB member. They have never had that right under the Bylaws or the Board's policies and practices. LAB members never asserted they had such a right. The number of directors has always been subject to the discretion of the Board of Directors. This status has never been disputed by anyone, until now and is directly covered by Article Three, Section 1C of the Bylaws which has stated since 1961 that the number of

1 directors is in the discretion of the Board.

2 6. The Board has never to my knowledge adopted a Bylaw which restricts the  
3 number of at-large members. The number of Board members has fluctuated from year to  
4 year, but it has never been constrained from electing at-large members, other than by the  
5 available talent pool. Ms. Gendelman's assertion that there were mandated proportions  
6 and that there were always fifteen Directors is erroneous.

7 7. In fact, I have reviewed available Minutes from Board meetings to review the  
8 variant number of Board members. Those records show on the dates indicated the  
9 number of Board members.

- |    |      |                |   |
|----|------|----------------|---|
| 10 | (1)  | September 1961 | Board meeting attended by 7 Board members<br>with ten others absent.  |
| 11 |      |                |   |
| 12 | (2)  | February 1966  | Board meeting attended by 8 Board members<br>with nine others absent. |
| 13 |      |                |   |
| 14 | (3)  | July 1977      | Board meeting attended by 17 Board members<br>with two others absent. |
| 15 |      |                |   |
| 16 | (4)  | January 1984   | Board meeting attended by 12 Board members.<br>with one absent.       |
| 17 |      |                |   |
| 18 | (5)  | May 1987       | Board meeting attended by 12 Board members.                           |
| 19 |      |                |   |
| 20 | (6)  | January 1988   | Board meeting attended by 11 Board members.                           |
| 21 |      |                |   |
| 22 | (7)  | February 1991  | Board meeting attended by 11 Board members<br>with one other absent.  |
| 23 |      |                |   |
| 24 | (8)  | June 1995      | Board meeting attended by 14 Board members.                           |
| 25 |      |                |   |
| 26 | (9)  | September 1995 | Board meeting attended by 12 Board members.                           |
| 27 |      |                |   |
| 28 | (10) | March 1996     | Board meeting attended by 15 Board members.                           |
|    | (11) | June 1996      | Board meeting attended by 13 Board members.                           |
|    | (12) | September 1996 | Board meeting attended by 13 Board members.                           |
|    | (13) | June 1997      | Board meeting attended by 13 Board members.                           |

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Oakland

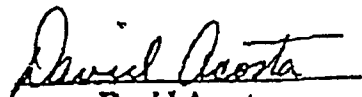
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- (14) September 1997 Board meeting attended by 14 Board members.
- (15) March 1998 Board meeting attended by 14 Board members and one other absent.
- (16) June 1998 Board meeting attended by 13 Board members.
- (17) October 1998 Board meeting attended by 11 Board members with four others absent.
- (18) February 1999 Board meeting attended by 13 Board members with one other absent.
- (19) June 1999 Board meeting attended by 13 Board members.

8. Other corporate records of meetings show that in August of 1990 there were 13 Board members; in September of 1991 there were 13 Board members; in March of 1992 there were seventeen Board members; in September of 1992 there were 15 Board members; in February of 1993 there were 14 Board members; in September of 1993 there were 14 Board members; in January of 1994 there were 11 Board members; in October of 1994 there were 16 Board members and in February of 1997 there were 10 Board members.

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 on this 12<sup>th</sup> day of June, 2000 at Houston, Texas.

  
David Acosta