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**ENDORSED  
FILED  
ALAMEDA COUNTY**

**JUN 13 2000**

5 Attorneys for Defendants  
PACIFICA FOUNDATION, MARY FRANCES BERRY, CLERK OF THE SUPERIOR COURT  
6 DAVID ACOSTA, JUNE MAKELA, By Columbus Littleberry, Deputy  
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**

10

11 DAVID ADELSON, LAUREN AYERS,  
MARY BERG, JOANNE BOBB, LYDIA  
12 BRAZON, CECELIA CARUSO, GAIL  
DIXON, ANNE EMERMAN, SHERRY  
13 GENDELMAN, TERRENCE GUY, JIM  
HORWITZ, KAHLIL JACOBS-  
14 FANTAUZZI, DAWUD KHALIL-ULLAH,  
PELE DE LAPPE, STEVE LUSTIG,  
15 ERROL MAITLAND, 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.  
26  
27  
28

Case No. 814461-0

**DECLARATION OF JOHN  
CRIGLER IN OPPOSITION TO  
MOTION FOR PRELIMINARY  
INJUNCTION**

Date: June 23, 2000  
Time: 2:00 p.m.  
Department: 31  
Name of Judge: James A. Richman

Wendel, Rosen, Black & Dean, LLP  
1111 Broadway, 24<sup>th</sup> Floor  
Oakland, California 94607-4036

1           4.       Pacifica receives a substantial percentage of its budget from CPB grants.  
2 These grants exceed a million dollars a year. Should Pacifica violate the requirements of  
3 the Communications Act by, for example, giving its Community Advisory Boards the  
4 power to exercise control over CPB-funded stations, CPB could conclude that it could no  
5 longer fund Pacifica stations.

6           5.       Over the years, Pacifica and CPB representatives discussed the questions of  
7 whether Pacifica's LABs satisfied the requirements of the Communications Act. In  
8 September of 1998, the President and Chief Executive Officer of CPB, Robert T.  
9 Coonrod, wrote to the then Executive Director of Pacifica, Pat Scott, advising that  
10 Community Advisory Boards (which Pacifica calls Local Advisory Boards or LABs),  
11 must serve a purely advisory function and can have no role in the control or operation of  
12 the station. Mr. Coonrod expressed concern that Pacifica's governance structure did not  
13 segregate the management and operational functions of its Governing Board from the  
14 advisory functions of Pacifica's Advisory Boards. He reminded Pacifica that failure to  
15 maintain a clear demarcation between the Governing Board and Advisory Boards would  
16 violate the Communications Act and put future CPB funding at risk. A true and correct  
17 copy of Mr. Coonrod's letter is attached as **Exhibit M**.

18           6.       At the time Pacifica received Mr. Coonrod's letter, Pacifica's Governing  
19 Board contained Directors who were members of LABs. No formal process was in place  
20 to have nominees resign from a LAB if elected to the National Board of Directors. In  
21 response to Mr. Coonrod's letter, the Pacifica Board took steps to assure Pacifica's  
22 compliance with CPB guidelines. On February 28, 1999, the Chair asked Board members  
23 who were also LAB members whether they wished to resign from their Local Advisory  
24 Boards. That group included, Michael Palmer, Jewell Taylor-Gibbs, Robert Farrell,  
25 Aaron Kriegel, Ken Ford, Rob Robinson, Frank Millsbaugh, and Andrea Cisco. All of  
26 these Directors voluntarily resigned from the LABs at that meeting. In my opinion these  
27 resignations brought Pacifica into compliance with CPB guidelines.  
28

1           7.     To assure that Pacifica remained in compliance with CPB requirements, the  
2 Board adopted the following resolution:

3  
4           Local Advisory Boards will still have input to the Governing Board  
5 to the Counsel of Chairs, and the right to nominate, as a body or  
6 individually, directors to the Governing Board through the Board  
7 Governance and Structure Committee. The only limitation is that  
8 the nominee may not be an LAB member and a Governing Board  
Member concurrently. The Committee will ensure representation  
from the signal area of each Pacifica station. The Executive  
Committee must have representation from each signal area.

9           This resolution was added as a footnote to Article Three Section Two of the Pacifica  
10 Bylaws at the February 28, 1999 Board meeting. A true and correct copy of the Minutes  
11 of such are attached hereto as **Exhibit N**.

12           8.     It was and is my opinion that even if the LABs had been granted the power  
13 to elect a majority of directors to the Governing Board, such a power is a power not  
14 allowed to Community Advisory Boards under the Communications Act, that is, the  
15 power to control rather than merely advise an FCC licensee. The 1999 amendment did  
16 not deprive the LABs of the ability to nominate Directors to the Governing Board. The  
17 change in the Bylaws did, however, prevent the same person from concurrently serving as  
18 a LAB member and a member of the Governing Board.

19           9.     The Board and Governance Structure Committee, which serves as the  
20 nominating committee for the Pacifica Board, did not erect new barriers to participation  
21 in LAB functions. Although a person may not concurrently serve on a LAB and on the  
22 Governing Board of Directors, members of the Governing Board may continue to attend  
23 LAB meetings on an ex officio basis, or as a member of the public.

24           10.    Prior to the 1997 and 1999 amendments to the Bylaws, LABs were entitled  
25 to nominate, but not to elect, Members of the Governing Board. Pacifica elected its  
26 directors by vote of the Governing Board only. At no time was a person nominated by a  
27 LAB allowed on the Governing Board of Directors without the affirmative vote of the  
28 Board.

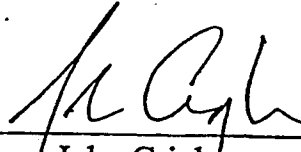
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1           11. It is my legal opinion that the 1997 and 1999 amendments to Pacifica  
2 Foundation Bylaws, a true and complete copy of which are attached hereto as Exhibit 0,  
3 were enacted in accordance with Pacifica's Articles of Incorporation and the Bylaws then  
4 in existence. No provision of Pacifica's Articles of Incorporation or Bylaws gave LAB  
5 members the right to approve changes in Pacifica's Bylaws.

6           12. From year to year, the number of Directors and at-large Directors of the  
7 Governing Board has varied. There is no requirement in Pacifica's Articles of  
8 Incorporation or Bylaws of Pacifica that any specific proportion of Directors be at-large  
9 Directors or Directors originally nominated by LABs.

10           13. The FCC retains primary jurisdiction over the ownership and control of  
11 broadcast licensees. Section 310(d) of the Communications Act, 47 C.F.R. § 310(d)  
12 provides that, "No construction permit or station license, or any rights thereunder, shall be  
13 transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly  
14 or indirectly, or by transfer of control of any corporation holding such permit or license,  
15 to any person except upon application to the Commission and upon finding by the  
16 Commission that the public interest, convenience, and necessity will be served thereby."  
17 Any transfer of control of an FCC licensee effected without prior approval of the FCC  
18 would violate the Communications Act and subject Pacifica to monetary forfeitures or  
19 other sanctions.

20           I declare under penalty of perjury under the laws of the State of California that the  
21 foregoing is true and correct and that this declaration was executed on this 9<sup>th</sup> day  
22 of June, 2000 at Washington, D.C.

23  
24   
25 \_\_\_\_\_  
26 John Crigler  
27  
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