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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

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.
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Case No. 814461-0

**DECLARATION OF JACK
O'DELL IN OPPOSITION TO
PLAINTIFFS' PETITION FOR
PRELIMINARY INJUNCTION**

Date: June 23, 2000
Time: 2:00 p.m.
Dept: 31
Judge: Hon. James A. Richman

1 I, Jack O'Dell, declare:

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

4 2. I was a member of and Chair of the National Board of Directors (the
5 "Board") of Pacifica Foundation ("Pacifica") from 1977 to June 1997.

6 3. At the time I became Chair of Pacifica's Board, the Board began to develop
7 a concept of Pacifica as a national network. Pacifica had grown to include five primary
8 radio stations, which were located on the East and West Coasts and in Texas. Under
9 Pacifica's Bylaws, and as envisioned by the Board, the role of the Local Advisory Boards
10 ("LABs"), or Station Advisory Boards, as the LABs were sometimes called, was solely an
11 advisory one. I do not recall any occasion during the time I served on Pacifica's Board,
12 when any donor, any LAB member or any person, other than a director serving on
13 Pacifica's Board at the time, ever voted, or had the power to vote, to amend Pacifica's
14 Bylaws or to elect directors to the Board, even though some of those Bylaw amendments
15 directly affected the LABs.

16 4. When I first was elected to the Board in 1977, the Bylaws related to Board
17 membership were clear that the Board itself both nominated and elected its members. See
18 the true and correct copy of Article 3 of the Bylaws in force at that time, attached as
19 **Exhibit A.**

20 5. Attached hereto as **Exhibit B** is a true and correct copy of a portion of those
21 Minutes describing my election. It had always been clear that the local boards were
22 precluded from taking action which preempted the authority of the National Board. See
23 Section 7, Procedure for Pacifica Local Advisory Boards, a true and correct copy attached
24 as **Exhibit C.**

25 6. In 1984, numerous changes were made to the Pacifica Bylaws, nevertheless
26 both before and after 1984, all directors were elected by the Board. Compare Minutes of
27 the 1984 and 1987, and 1988 Board meetings which show, just as today, the Board
28 always voted on the election of directors nominated by the Local Advisor Boards. See

1 **Exhibits D1, D2, D3.**

2 7. While I served on the Board, the Board always and without dissent
3 interpreted the post 1984 language found in Article Three, Section 2 of the Bylaws
4 regarding election of directors to mean that in order for any nominee put up by an LAB to
5 serve on the Board, the nominee had to be elected to the Board by a majority vote of the
6 members of the Board itself. (A true and correct copy of Article Three, Section 2 of the
7 Bylaws that was in effect is attached hereto as **Exhibit E.**) In 1991, the Bylaws were
8 again changed to add the sentence "Each Station Board shall nominate at least one person
9 of color as a permanent representative of the National Board." This sentence also
10 confirms the Board's intent, understanding and practice that the Station Board's role was
11 to nominate, not elect. See **Exhibit F** for a true and correct copy of the text of the
12 relevant Bylaws as of 1991. I am informed and believe that in 1997, these Bylaws were
13 again amended and a true and correct copy of the changed Bylaw is attached as **Exhibit**
14 **G.**

15 8. In short, LABs simply never elected directors to serve on the Board. The
16 LABs only role was to nominate potential directors. This is also reflected in Pacifica's
17 records. For example, attached hereto as **Exhibit I** is a true and correct copy of a
18 Schedule Of Pacifica Board Of Directors Elections And Terms dated January 1991 for
19 use in February 1991 elections, which states that "[t]he Station Board shall nominate
20 members to the National Board." This is consistent with information typically given to
21 the Board prior to an election. The Board's vote was then required in order to place the
22 LAB's nominee on the Board. Procedurally, this vote was referred to as a "motion to
23 seat." For example, attached hereto as **Exhibit J** is a true and correct copy of a portion of
24 the Board's Minutes for its meeting on February 9 and 10, 1991, which show that the
25 Board itself voted on the election of members to the Board by way of a formal motion
26 that Jim Yee, Dawn Dancy and Eugene Strauss "be seated as members of the board."

27 9. During my tenure as Chair, under the Bylaws of Pacifica, the LAB of each
28 station selected two persons to be recommended to serve on Pacifica's Board. At that

1 time, the typical practice was that before an LAB nominated potential directors, the LAB
2 would discuss potential LAB nominees and forward relevant information about the
3 nominee to the Board.

4 10. Following formal selection by the LABs, the Board would have received a
5 copy of the minutes of the LAB meeting at which the nominees were selected, and copies
6 of the nominees' resumes which would be circulated to all members of the Board. At the
7 Board meeting, the Board would then consider a motion to seat the nominees. If the
8 motion to seat was approved, the nominee would be elected to the Board. I know of no
9 director who was ever placed on the Board who was not so elected by the Board itself.

10 11. During the time I served on the Board, it was a long-standing policy of the
11 Board that if a director has been elected as an officer of the Board, and during the
12 director's term as officer, his or her term as a director on the Board expired, the director
13 was encouraged to continue to serve on the Board until the balance of his or her term as
14 officer expired.

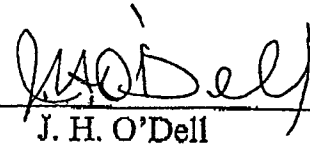
15 12. The Bylaws of the Governance Board in whole or in part were never subject
16 to a vote by the LABs before approval. LABs were free to offer advice on such matters,
17 often did, and this advice was respectfully considered. However, as a matter of policy,
18 the Governance Board made its own Bylaws. By contrast, Bylaws of the LABs required
19 approval of the Governance Board prior to going into effect.

20 13. Since 1961, the Bylaws have always read: "There shall be such number of
21 directors as the Governing Board shall from time to time decide." Article Three, Section
22 1.(c). The version of Pacifica's Bylaws that existed during my tenure on the Board and
23 when I ended my service on the Board in June 1997 contained no restriction on the
24 number of at-large directors who may serve on the Board. The Board could, by way of a
25 motion, change the number of at-large directors that served on the Board. For example,
26 page 7 of the Board's Minutes for February 9 and 10, 1991, attached hereto as Exhibit J,
27 shows that the Board passed a motion that "two at-large members be added to the
28 National Board." My understanding is that the Board has exercised this authority since

1 1961 when the following provision of the Bylaws was adopted: "There shall be such
2 number of Directors as the Governing Board shall from time to time decide."

3 14. At the Board's meetings in January and June 1997, the Board adopted a
4 Strategic Plan, which is a carefully thought-out program to foster the growth and
5 development of Pacifica, including enlarging its base of listener-supporters. One of the
6 goals the Board sought to achieve by the Strategic Plan was to enlarge the base of
7 listener-supporters in order to make the radio stations as nearly self-sustaining as
8 possible. At all times during the development of this Strategic Plan, the Board adhered to
9 and sought to carry out the basic purposes of Pacifica set forth in its Articles of
10 Incorporation, including operating the Foundation for educational purposes and for
11 engaging in activities in its radio broadcasting operations that would contribute to a
12 lasting understanding between nations and between the individuals of all nations, races,
13 creeds and colors.

14 I declare under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct and that this declaration was executed on this 12th day of
16 June, 2000, at Vancouver, British Columbia, Canada.

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J. H. O'Dell

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