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**ENDORSED
FILED
ALAMEDA COUNTY**

JUN 13 2000

CLERK OF THE SUPERIOR COURT
By Columbus Littleberry, Deputy

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, 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.

Case No. 814461-0

**DECLARATION OF DANIEL
RAPAPORT 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
1111 Broadway, 24th Floor
Oakland, California 94607-4036

1 I, Daniel Rapaport, declare:

2 1. The following information is within my personal knowledge and if sworn as a
3 witness, I could competently testify thereto.

4 2. I am one of the attorneys of record for Pacifica Foundation in the above-
5 captioned matter. I was provided with and attached hereto as **Exhibit P** is a true and
6 correct copy of the letter from Dan Siegel which was sent to Dr. Mary Frances Berry
7 dated June 14, 1999. This letter is referred to in paragraph 42 of the plaintiff's Verified
8 Second Amended Complaint. While Mr. Siegel chose not to attach the letter to the
9 Complaint, the letter is quite illuminating in discrediting the current allegations
10 supporting the Petition for Injunction.

11 3. In the first full paragraph on page 2, Mr. Siegel acknowledges that at the
12 September 1997 National Board Meeting, the Board passed a Bylaw to increase the
13 number of at-large representatives by four. No where in the remaining portion of this
14 letter does he object to, suggest or imply that the Board did not have authority for this
15 action. In fact, **Exhibit K** containing his comments at that meeting demonstrate even he
16 understood the Board had authority to elect directors and change Bylaws.

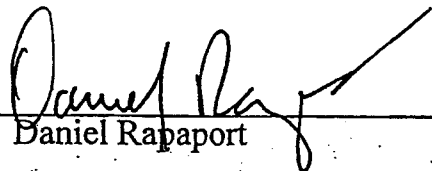
17 4. One of several websites which are promoting plaintiffs' cause is "radio4all." It
18 routinely publishes reports and press releases from Mr. Siegel. Attached hereto as
19 **Exhibit Q** is a true and correct copy of his report of the September 27, 1997 meeting. He
20 reports the Board Development Committee was proposing: "That each Local Advisory
21 Board continue to nominate two representatives to the Governing Board." This rather
22 clearly demonstrates that at least the Board did not think LABs had the power to elect.
23 He reported that the change in the percentage of votes needed to elect "at-large" directors
24 from 2/3rds to 1/2 was justified since "the LAB nominated representatives would have
25 already been 'vetted' by the LABs and the at-large representatives would have similarly
26 been vetted by the Board Development Committee." Finally, he reported that there was
27 agreement the Bylaws will "be clarified to provide for Board election by a simple
28 majority to seat all members." He concludes that this "meeting was very positive."

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5. The letter also acknowledges that at the September 1997 meeting the Board agreed that a majority vote of the National Board would be required to seat all Board members, no matter how nominated. Again, this is an acknowledgment of the fact that the Board members were the ones who previously voted to seat all members, no matter how nominated. No where in Mr. Siegel's letter of complaint does he suggest that the National Board did not have the authority to alter this Bylaw in 1997.

6. His exclusive complaint was that the Bylaw amendment in February of 1999 required approval by LAB members. However, Mr. Siegel has acknowledged in oral argument in connection with Defendants' Demurrer to Plaintiffs' Second Amended Complaint that unless LAB members had the right to actually elect members of the National Board, they had no right to vote on proposed Bylaw changes. Since Mr. Siegel's June 14, 1999 letter tacitly admits that the National Board historically voted on the election of all Board members (just under different plurality requirements) he in essence admits the error in his legal analysis. Mr. Siegel's letter goes further. In the last sentence on page 3, he acknowledges that the National Board had a right to reject local advisory board nominees.

I declare under penalty of perjury that the foregoing is true and correct and that this Declaration was executed on June 12, 2000, in Oakland, California.


Daniel Rapaport