

## PLAINTIFFS' COMPLEX CASE DETERMINATION HEARING STATEMENT

Relators herein are twelve listener-sponsors of the five Pacifica Foundation ("Pacifica") radio stations across the country: KPFA in Berkeley, KPFK in Los Angeles, KPFT in Houston, TX, WPFW in Washington, DC, and WBAI in New York, NY. On November 19, 1999 Relators filed a petition with the California Attorney General for leave to sue the Pacifica Foundation, a California nonprofit public benefit corporation, and individual past and current officers and directors, in the name of the People of the State of California. Ten months later, following comprehensive briefings by both sides, the Attorney General granted leave to sue on September 14, 2000. The Complaint was filed in this Court on September 15, 2000. On October 16, 2000, Pacifica and fifteen of the twenty individually named defendants removed the case to Federal Court. On February 20, 2001, on Plaintiffs' motion, the Federal Court remanded the case to this Court. Finally, after fifteen months of delays, Plaintiffs are ready to move swiftly to remedy the continuing disorder, unlawful conduct and breaches of fiduciary duties that are ravaging the Pacifica Foundation.

The Complaint sets forth ten causes of action. Three causes of action (the 3rd, 4th, and 5th causes of action) are in the nature of *quo warranto* under Code of Civil Procedure §803, seeking ouster of unlawfully seated directors who are exercising the Pacifica Foundation corporate franchise without authority. Three causes of action (the 1st, 2nd and 6th causes of action) are for breach of charitable trust and appropriate remedies under the Nonprofit Corporation Law, Corporations Code §§5000 *et seq.*, and the Uniform Supervision of Trustees for Charitable Purposes Act, Government Code §§12580 *et seq.*, i.e., seeking removal of some of

the directors for gross abuse of authority, accounting, and damages on behalf of the Pacifica Foundation. Three causes of action (the 7th, 8th and 9th causes of action) are for declaratory and injunctive relief requiring Pacifica to adopt bylaws in conformity with controlling statutes and that are reasonable given the nature size and operations of Pacifica. The tenth cause of action is for unfair business practices, under Business and Professions Code §17200 *et seq.*, seeking injunctive relief.

The defendants have appeared in three separate groups. Nominal defendant Pacifica Foundation and fifteen of the individual past and present officers and directors (the “Board majority”) have appeared together.<sup>1</sup> Two sets of “dissident” directors have separately appeared, Robinson and Kriegel, together, and Bramson, Cagan and Moran, together (collectively the “Board minority”).

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<sup>1</sup> Defendants Berry, Makela, Millspaugh, Cisco, Ford, Acosta, Palmer, Farrell, van Putten, Johns, Chambers, Lyons, Lee, Murdock and Chadwick. Defendant Makela resigned as a director and defendant Chadwick resigned as executive director before this action was filed on September 15, 2000. Defendants Berry, Millspaugh and Lyons have resigned as directors since this action was filed. Defendant Lyons has been dismissed as the only one cause of action against her was for usurpation of office, and that is now moot.

Plaintiffs' motion is now pending to disqualify Wendel Rosen Black and Dean, LLP, and Epstein Becker & Green, PC,<sup>2</sup> from dual representation of nominal defendant Pacifica and the individual board majority defendants for conflicts of interests between the corporate entity, itself, and the individuals alleged to have damaged and breached the charitable trust of the corporate entity; as well as to disqualify Epstein Becker & Green, PC, from representing *any* defendants on the grounds that a member of the firm is a defendant in this case, and his disqualification is imputed to his entire law firm. Plaintiffs also have a motion pending to prohibit the Pacifica Foundation from advancing litigation expenses on behalf of the board majority directors unless they provide the statutorily required undertaking to repay such expenses to Pacifica unless they are ultimately determined to be entitled to indemnification.

In addition, plaintiffs' motion is pending for preliminary injunction prohibiting substantial actions affecting Pacifica's assets, governance, management and operations, including amending the bylaws, appointing or removing directors, and removing the principal place of business from Los Angeles County to Washington, DC., during the pendency of this action.

The Pacifica Foundation and the board majority defendants have filed a demurrer. The two groups of minority directors have both filed Answers to the Complaint in the form of General Denials.

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<sup>2</sup> Both of these law firms have appeared on behalf of the Pacifica Foundation and fifteen individually named defendants.

Plaintiffs intend to move for summary adjudication of their *quo warranto* causes of action as soon as permitted by statute after all answers are on file, and may apply for permission to bring this motion sooner, in order to move as swiftly as possible to oust the *de facto* directors who are unlawfully seated and are acting without legitimate authority. The motion will be based upon the limitation in the Pacifica Articles of Incorporation of the number of directors to five directors. As there are currently 15 individuals acting as directors, there are obviously ten too many. Plaintiffs will seek to remove the seven most recently appointed directors, as their appointment clearly was in excess of the five-directors limitation. Of the remaining eight directors, two have been voted out of office by the corporate members who originally elected them (Farrell and Cisco) and four have continued acting as directors after the expiration of their 3-year terms (Acosta, Ford, Palmer and Cisco).<sup>3</sup> This motion will also seek a Court declaration that bylaws amendments purporting to eliminate the voting rights of the corporate members (the members of the five Pacifica local station advisory boards or “LABs”) and extending the terms of directors beyond three years, without the statutorily required vote of approval of the corporate members, are null and void and of no legal effect. Plaintiffs believe these issues can be determined swiftly on the law and the irrefutable facts as set forth unambiguously in the applicable written instruments, i.e., the Pacifica Foundation Articles of Incorporation and Bylaws.

If plaintiffs prevail on their motion for summary adjudication, three directors lawfully elected by the corporate members will remain in office to direct the affairs of the Pacifica

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<sup>3</sup> Andrea Cisco has both been voted out of office by the members and continues to act as a director after the expiration of her term.

Foundation: Peter Bramson, Rabbi Aaron Kriegel and Rob Robinson. Plaintiffs are hopeful that the remaining declaratory and injunctive relief causes of action (the 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> causes of action), requiring adoption of lawful and reasonable bylaws, etc., can be settled with these directors.

Plaintiffs will then continue to prosecute their breach of charitable trust and accounting causes of action seeking an award of damages in favor of the Pacifica Foundation as against the board majority directors. A fair amount of discovery will be required, and plaintiffs anticipate these causes of action will not be ready for trial until the end of the year.

It should be noted that two related cases are now pending in this Court. *Adelson et al v. Pacifica Foundation, et al.*, Case No. 814461-0, filed July 16, 1999, is an action brought by some of the corporate members, i.e., some local advisory board members; and *Robinson, et al. v. Pacifica Foundation, et al.*, Case No. 831286-0, filed September 19, 2000, is an action brought by two of the “dissident” Pacifica directors, Robinson and Kriegel. Some measure of consolidation is probably in order to insure consistent rulings in these cases. However, plaintiffs motion for summary adjudication should be decided first, as it is the simplest issue and may resolve many if not all of the outstanding issues in the other two cases.

Finally, it should be noted that this case is the center of a heated national controversy. The Pacifica Foundation was founded by pacifists and war resisters in 1946, and has for more than 50 years been a unique “experiment” in radio broadcasting. Radio station KPFA in Berkeley first went on the air in 1949, and was the first “listener-sponsored” radio station in America. Over the years Pacifica acquired radio broadcast licenses in five major metropolitan areas, and also developed a national program system with approximately 50 independent

“affiliate” stations across the country that broadcast the “Pacifica Network News” and other public affairs programs. Pacifica has always been politically controversial. In the 1960s the House Un-American Activities Committee (HUAC), the Federal Bureau of Investigation (FBI), and the Senate Internal Security Subcommittee (SISS) all investigated Pacifica programming for alleged "subversion" and “communist affiliations.” Pacifica’s Houston station was bombed off the air twice by the Ku Klux Klan in the 1970s. Pacifica has been to the United States Supreme Court twice on First Amendment issues: *FCC v. Pacifica Foundation* (1978) 438 U.S. 726 (obscenity) and *FCC v League of Women Voters* (1984) 468 U.S. 364 (right of noncommercial broadcasters to editorialize).

Plaintiffs allege that the board majority defendants have breached the Pacifica charitable trust and abandoned the founding purposes of Pacifica and, in order to obtain federal funding, among other reasons, have permitted Pacifica to come under the domination of a quasi-governmental entity, the Corporation for Public Broadcasting. This has resulted in “mainstreaming” Pacifica’s programming, eliminating much of its cultural diversity, and hampering and censoring political news and commentary. The controversy, which had been developing for several years, erupted in 1999 when the board majority attempted to “shut down and reprogram” KPFA in Berkeley, installed a armed private “corporate intelligence gathering and security” force and locked the staff out for 23 days in July 1999. This resulted in massive public protests culminating with 10-15,000 people marching in the streets of Berkeley on July 31, 1999. KPFA was restored to an uneasy semblance of “truce” in August 1999, but similar events have occurred at WBAI in New York since December 2000 -- numerous managers, staff and volunteers have been fired or banned, locks have been changed, and public protests are ongoing.

And, in February 2001, a national program co-host resigned on the air and called for a national boycott of Pacifica. Public protests and demonstrations are spreading across the country, calling for resignation of the board of directors.

In this heated atmosphere, plaintiffs believe the need is urgent to resolve the ultimate issue of who the legitimate directors of the Pacifica Foundation are and to swiftly remove the illegitimate directors. It is uncertain how much longer Pacifica can survive under their control. And the loss of Pacifica – the only national broadcast voice of political dissent in this country -- would be a great tragedy.

Dated: April 17, 2001

Respectfully presented,

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Attorney for Plaintiffs