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ALAMEDA COUNTY

April 04, 2014

CLERK OF
THE SUPERIOR COURT
By Burt Moskaira, Deputy

CASE NUMBER:
HG14720131

1 Amy Sommer Anderson #282634
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8 Attorney for Plaintiff,
9 PACIFICA DIRECTORS FOR GOOD
10 GOVERNANCE

11 SUPERIOR COURT OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 PACIFICA DIRECTORS FOR GOOD
14 GOVERNANCE, an unincorporated
15 association,

16 Plaintiff(s),

17 v.

18 PACIFICA FOUNDATION RADIO, a
19 California Not-for-Profit Corporation;
20 RODRIGO ARGUETA, LYDIA BRAZON, JIM
21 BROWN, BENITO DIAZ, ADRIANA
22 CASENAVE, BRIAN EDWARDS-TIEKERT,
23 JOSE LUIS FUENTES, HANK LAMB, TONY
24 NORMAN, LAWRENCE REYES, CERENE
25 ROBERTS, and MARGY WILKINSON in their
26 official capacities as members of the Board of
27 Directors of Pacifica Foundation Radio; and
28 DOES 1-100, inclusive,

Defendant(s).

Case No. HG 14720131

**PLAINTIFF'S EX PARTE
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE RE PRELIMINARY
INJUNCTION**

Date: April 9, 2014
Time: 9:00 AM
Dept: 15
Hearing judge: Hon. Ioana Petrou
Action Filed: April 3, 2014
Trial date: NOT SET

TO THE COURT AND ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS

OF RECORD:

Plaintiff hereby applies, *ex parte*, for a Temporary Restraining Order ("TRO"), restraining and enjoining Defendants PACIFICA FOUNDATION RADIO, RODRIGO ARGUETA, LYDIA

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1 BRAZON, JIM BROWN, BENITO DIAZ, ADRIANA CASENAVE, BRIAN EDWARDS-
 2 TIEKERT, JOSE LUIS FUENTES, HANK LAMB, TONY NORMAN, LAWRENCE REYES,
 3 CERENE ROBERTS, and MARGY WILKINSON, their agents, assigns, partners, employees, and
 4 any individual or entity acting in concert with Defendants, from engaging in any of the following
 5 acts pending a hearing on a Preliminary Injunction:
 6

- 7 • violating Pacifica Foundation Radio’s Bylaws dated January 20, 2012;
- 8 • approving or executing on any board decision resulting from or otherwise the subject of
 9 procedural violation of the Bylaws in reaching such decision or performing such execution;
- 10 • breaching the terms of the January 30, 2014 employment contract Pacifica Foundation Radio
 11 holds with its Executive Director, Summer Reese;
- 12 • taking or causing to be taken any action in furtherance of purported Board decisions—
 13 including but not limited to the attempted termination of Ms. Reese and re-hiring of Mr.
 14 Salvador—absent documentation of Board approval of such decision in compliance with
 15 PFR’s Bylaws, said documentation being either unanimous written consent where action was
 16 taken outside of a meeting or the corresponding meeting minutes and Board approval of the
 17 minutes for actions taken during properly noticed and held Board meetings; and
 18
- 19 • making any further personnel decisions within the purview of the Board without proper Board
 20 approval and recordation of such decisions, including documentation of the corresponding
 21 meeting minutes and Board approval of the minutes.
 22

23
 24 This Application for preliminary injunctive relief as set forth in the [PROPOSED] TRO filed
 25 herewith, is made upon the grounds that the conduct sought to be enjoined, if allowed to continue to
 26 occur, will:

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1 (1) cause immediate and irreparable injury to Pacifica Foundation Radio and its
 2 directors, officers, employees, members, affiliates, listeners, other specific and general beneficiaries,
 3 and the general public (collectively "PFR Members") in that PFR faces imminent and substantial
 4 risk of potentially fatal financial hardships, as well as irreparably lost opportunities to investigate
 5 questionable internal financial reporting;
 6

7 (2) would result in a multiplicity of judicial proceedings in that employment actions for,
 8 *inter alia*, unlawful termination, as well as multiple director and member lawsuits to manage the
 9 implications of the unlawful actions Plaintiff seeks to be enjoined would ensue.

10 Plaintiff PDGG also requests the Court issue an Order to Show Cause ("OSC") pursuant to
 11 Cal. Rules of Court, rule 3.1150, affording Defendants the opportunity to appear and show cause
 12 why a Preliminary Injunction should not issue restraining and enjoining Defendants in the same
 13 manner for the remainder of this litigation.
 14

15 This Application is based upon Code Civ. Proc. §§ 525 et seq. and Cal. Rules of Court, rule
 16 3.1150 and Cal. Rules of Court, rules 3.1200 et seq.; upon the attached Memorandum of Points and
 17 Authorities; upon the Verified Complaint on file herein, with its supporting Declarations of Summer
 18 Reese and Carolyn Birden; upon the Declaration of Amy Sommer Anderson, filed herewith; and
 19 upon records and files in this action; and upon such further evidence and argument as may be
 20 presented prior to or at the time of hearing on the motion.
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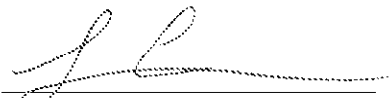
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There has not been a previous application for such relief.

DATED: April 4, 2014

AROPLEX LAW

By: 

Amy Sommer Anderson
AROPLEX LAW
156 2nd Street
San Francisco, CA 94105
Phone: 415-529-5148
Attorney for Plaintiff,
PACIFICA DIRECTORS FOR
GOOD GOVERNANCE

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff seeks a Preliminary Injunction as prayed for in the Complaint on file herein, restraining and enjoining Defendants, PACIFICA FOUNDATION RADIO, RODRIGO ARGUETA, LYDIA BRAZON, JIM BROWN, BENITO DIAZ, ADRIANA CASANAVE, BRIAN EDWARDS-TIEKERT, JOSE LUIS FUENTES, HANK LAMB, TONY NORMAN, LAWRENCE REYES, CERENE ROBERTS, and MARGY WILKINSON, from continuing to engage in the following conduct for the remainder of this litigation:

1. violating Pacifica Foundation Radio’s Bylaws dated January 20, 2012;
2. approving or executing on any board decision resulting from or otherwise the subject of procedural violation of the Bylaws in reaching such decision or performing such execution;
3. breaching the terms of the January 30, 2014 employment contract Pacifica Foundation Radio holds with their Executive Director, Summer Reese;
4. taking or causing to be taken any action in furtherance of purported Board decisions— including but not limited to the attempted termination of Ms. Reese and re-hiring of Mr. Salvador—absent documentation of Board approval of such decision in compliance with PFR’s Bylaws, said documentation being either unanimous written consent where action was taken outside of a meeting or the corresponding meeting minutes and Board approval of the minutes for actions taken during properly held Board meetings; and
5. making any further personnel decisions within the purview of the Board without proper Board approval and recordation of such decisions, including documentation of the corresponding meeting minutes and Board approval of the minutes.

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1 Pending a hearing on a Preliminary Injunction, Plaintiff hereby applies for, and submits that
2 the interests of justice require that, a Temporary Restraining Order issue restraining and enjoining
3 Defendants from continuing to engage in the aforesaid conduct.

4 As stated in the Declarations of putative Executive Director Summer Reese and Board
5 Director Carolyn Birden, filed with the verified complaint and incorporated herein by reference,
6 absent said Temporary Restraining Order, Pacifica Foundation Radio and its directors, officers,
7 employees, members, affiliates, listeners, other specific and general beneficiaries, and the general
8 public (collectively "PFR Members") will suffer great and immediate irreparable harm as described
9 herein in that, *inter alia*, PFR faces imminent and substantial risk of potentially fatal financial
10 hardships, as well as irreparably lost opportunities to investigate questionable internal financial
11 reporting.
12

13
14 II. A TEMPORARY RESTRAINING ORDER MAY ISSUE WHERE GREAT AND
15 IRREPARABLE INJURY WILL RESULT TO THE APPLICANT UNLESS THE
16 OFFENDING CONDUCT IS IMMEDIATELY RESTRAINED
17

18 A TRO may issue when "[i]t appears from the facts shown by affidavit or by the verified
19 complaint that great or irreparable injury will result to the applicant before the matter can be heard
20 on notice..." (Code Civ. Proc. § 527(c)(1).)

21 The Court should evaluate two interrelated factors when deciding whether or not to issue a
22 temporary restraining order. The first is the likelihood that the plaintiff will prevail on the merits at
23 trial. The second is the interim harm that the plaintiff is likely to sustain if the restraining order is
24 denied, as compared to the harm that the defendant is likely to suffer if the order is issued. *Church of*
25 *Christ in Hollywood v. Superior Court*, 99 Cal. App. 4th 1244, 1251, 121 Cal. Rptr. 2d 810 (2d Dist.
26 2002).
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28

1 A TRO is distinguishable from a preliminary injunction in the following respects: It may be
2 issued *ex parte*; a bond, though commonly required, is not essential; and it is of short duration,
3 normally expiring at the time of the hearing on the preliminary injunction. *Chico Feminist Women's*
4 *Health Center v. Scully*, 208 Cal. App. 3d 230, 237, 256 Cal. Rptr. 194 (3d Dist. 1989).

5
6 The granting or denial of a temporary restraining order is discretionary with the trial judge
7 and amounts to a mere preliminary or interlocutory order to keep the subject of the litigation in
8 *status quo* pending the determination of the action on its merits. *Gray v. Bybee*, 60 Cal. App. 2d 564,
9 571, 141 P.2d 32 (3d Dist. 1943).

10 As fully provided in the Declarations of Amy Sommer Anderson, and shown by the verified
11 complaint and supporting Declarations of Summer Reese and Carolyn Birden, if Defendants are not
12 immediately restrained and enjoined from continuing to engage in the aforesaid conduct, PFR
13 Members will suffer great and immediate irreparable harm to its financials, its operational abilities
14 and its public image, on which it so heavily relies for funding and support. Reese Dec. ¶ 37; Birden
15 Dec. ¶ 52-54. The present and anticipated harm to PFR Members is fully set out below. On the other
16 hand, the Defendant is not likely to suffer any damages by reason of granting the TRO, as the TRO
17 is in the defendant organization's best interest.

18
19
20 As further stated in the Declaration of Carolyn Birden, there is a high likelihood that Plaintiff
21 will prevail on the merits at trial, in that Defendants' actions in terminating Ms. Reese's employment
22 contract and making other damaging and baseless personnel decisions directly flow from unlawful
23 and unsanctioned corporate activities, as provided in detail in the verified complaint and the
24 declaration attached hereto.

25
26 For the above reasons, a Temporary Restraining Order should be immediately issued to
27 prevent further harm to PFR Members.
28

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2 issued *ex parte*; a bond, though commonly required, is not essential; and it is of short duration,
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4 *Health Center v. Scully*, 208 Cal. App. 3d 230, 237, 256 Cal. Rptr. 194 (3d Dist. 1989).

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22 contract and making other damaging and baseless personnel decisions directly flow from unlawful
23 and unsanctioned corporate activities, as provided in detail in the verified complaint and the
24 declaration attached hereto.
25

26 For the above reasons, a Temporary Restraining Order should be immediately issued to
27 prevent further harm to PFR Members.
28

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1 violation of PFR’s Bylaws and the laws of the State of California. Consistent with their actions to
 2 date, Defendants are presumed to continue taking action in furtherance of removing Ms. Reese from
 3 her rightful position as Executive Director of PFR, including removing her permissions to act on
 4 behalf of PFR, such as with PFR’s lending institutions, and physically preventing Ms. Reese from
 5 performing her employment duties such as by lockout or even arrest. Reese Dec. ¶ 19. As further
 6 explained below, PFR cannot afford any further lapse in operations, and it cannot operate without a
 7 competent and loyal Executive Director.
 8

9
 10 **(2) When it appears by the complaint or affidavits that the commission or continuance**
 11 **of some act during the litigation would produce waste, or great or irreparable injury, to a**
 12 **party to the action (Code Civ. Proc. § 526(a)(2)).** Here, if unrestrained, Defendants ongoing
 13 actions will cause immediate and irreparable injury to PFR Members in that:

- 14 a) PFR is susceptible to a likely and imminent lawsuit from the unlawfully discharged
 15 Executive Director, Ms. Reese, for breach of her three-year employment contract, which
 16 poses a financial risk to PFR of at least \$315,000 in compensatory damages plus costs
 17 and fees;
- 18 b) PFR will be subject to debilitating financial risk caused by unlimited liability to lawsuits
 19 due to likely cancellation and non-renewal of directors and officers, employment, and
 20 possibly other types of currently-held liability insurance;
- 21 c) PFR will suffer damage by paying a salary for the re-hired CFO who was under
 22 investigation for a sexual harassment complaint and who further puts PFR at risk of
 23 committing regulatory infractions due to his demonstrated inability to produce the
 24 required financial reports for the PFR BoD and the audit firm, including filing an
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1 incomplete 990 form requiring extensive amendment and allowing books to remain
2 unreconciled at a minimum of two divisions for up to a year; and
3 d) PFR will suffer a substantial risk of loss of the Federal Communications Commission
4 broadcasting license at PFR's station WBAI, which is worth an estimated \$65 million,
5 resulting from that station's failure to succeed in the imminent license renewal process
6 due to PFR's inability to demonstrate financial viability because of the reckless actions of
7 the PFR BoD.
8

9 Birden Dec. ¶ 52.

10 In addition to posing risk of significant loss as described above, Defendants' actions have
11 directly resulted in substantial delay in the start of fieldwork on the fiscal 2013 audit, which should
12 have already been completed by now. The audit has been specifically delayed and consequently
13 postponed by the refusal of station KPFA to produce reconciled books for the last eighteen months,
14 making it impossible for the organization to have its financial records independently audited, as
15 required by law. The Corporation for Public Broadcasting ("CPB") has been withholding over a
16 million dollars in grant funding for a variety of reasons, including compliance with the
17 Communications Act. The CPB requires current audited financial statements before the release of
18 grant funds will be allowed. PFR simply cannot afford further delay in the release of these much-
19 needed funds and has already suffered extreme hardship by the delay, which has already occurred.
20

21 Reese Dec. ¶ 28-31.
22

23 PFR is in a fragile state of financial affairs due to longstanding debt and significant and
24 expensive employment litigation, and—absent day-to-day functions of an experienced Executive
25 Director with a track record of successfully managing corporate operations, who has never received
26 so much as a negative review or complaint, and who demonstrates resolve to implement internal
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1 controls to cure and prevent fraud and other unlawful or otherwise inappropriate corporate
2 conduct—PFR stands to quickly lose grasp of the remaining hold it has over its own sustainability.
3 *See*, Reese Declaration, Birden Declaration.

4 **(3) When it appears, during the litigation, that a party to the action is doing, or**
5 **threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the**
6 **rights of another party to the action respecting the subject of the action, and tending to render**
7 **the judgment ineffectual (Code Civ. Proc. § 526(a)(3)).** Plaintiff cannot be fully compensated in
8 damages, is without an adequate remedy at law because the exact amount of damage plaintiff will
9 sustain will be difficult to determine, and the threat that Defendants will continue to place PFR at
10 further risk of criminal and civil sanctions by further violating the Bylaws, violating their duties and
11 fiduciaries to the public trust and potentially taking extreme and deliberate action to obstruct PDGG
12 and Executive Director Reese’s painstaking efforts to implement and enforce internal operational
13 controls is likely and substantial based on Defendants’ actions as described and referenced herein.
14 *See*, generally, Reese Declaration, Birden Declaration.

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17 Further, if the Board’s decision to terminate Ms. Reese’s employment contract and the
18 decision to re-hire Salvador as Chief Financial Officer are allowed to stand, PFR not only faces
19 imminent and substantial risk of potentially fatal financial hardships, it will irreparably lose
20 opportunities to investigate questionable internal financial reporting, which is the subject of over \$7
21 million in questionable accounting cited in the last audited year, which was fiscal 2012. Reese Dec.
22 ¶ 28-31, 35-37.

23
24 **(4) When pecuniary compensation would not afford adequate relief (Code Civ. Proc. §**
25 **526(a)(4)).** Defendants have placed in serious and imminent peril the insurability of PFR for
26 employment, governance and likely other types of loss. Reese Dec. ¶ 12-13. Thus, even if Defendant
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1 directors are indemnified for their activities by PFR—which, incidentally, is questionable given their
2 conduct outside the scope of their duties as fiduciaries—any award for pecuniary relief would be
3 borne entirely by PFR, its members, employees, listeners and others for whose interest injunctive
4 relief is sought and will not be covered by PFR’s D&O coverage, which will be lost due to
5 Defendants’ acts.

7 Defendants have refused to comply with PFR Bylaws and the terms of existing, Board-
8 approved employment contracts and other high-level personnel decisions and have continued to take
9 actions preventing Ms. Reese and other employees from performing their critical duties in operating
10 PFR, including padlocking the PFR premises, terminating Ms. Reese’s access to her PFR email and
11 electronic files, and attempting to change PFR security access codes and access to bank accounts.
12 Additionally, defendant Margy Wilkinson has continuously harassed the employees who report to
13 Ms. Reese, and has suppressed the workplace investigation that would serve to protect the
14 complaining employees from the actions of the CFO, Raul Salvador, who was the subject of said
15 workplace investigation. These are among the types of activities that will continue to follow from
16 Defendants’ unlawful actions, and such activities performed in purposeful obstruction of the PFR
17 operations necessarily pose significant risk to the sustainability of the organization, which is both
18 short- and long-term harm that no remedy at law can repair. Recsc Dec. ¶ 19, 23-27.

21 **(5) Where it would be extremely difficult to ascertain the amount of compensation**
22 **which would afford adequate relief (Code Civ. Proc. § 526(a)(5)).** The likely repercussions of
23 allowing Defendants’ actions to stand extend far beyond foreseeable economic hardships to PFR and
24 cause a cascade of resulting events that present a very real risk of obliterating the confidence and
25 support of the public, on whom it relies for funding, directorship and its very existence as a public
26 broadcasting organization. Without public confidence and support, PFR will lose its listenership,
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1 public funding and interest, participation and advocacy of its current and would-be directors. *See*,
2 Reese Declaration, Birden Dec. ¶52.

3 **(6) Where the restraint is necessary to prevent a multiplicity of judicial proceedings**
4 **(Code Civ. Proc. § 526(a)(6)).** Here, there would result a multiplicity of judicial proceedings in that
5 employment actions for, *inter alia*, unlawful termination, as well as multiple director and member
6 lawsuits to manage the ramifications of the unlawful actions Plaintiff seeks to be enjoined would
7 ensue. Birden Dec. ¶52.

8 **(7) Where the obligation arises from a trust (Code Civ. Proc. § 526(a)(7)).** Here, PFR is
9 nonprofit, community-supported radio network, having five main broadcasting stations and ~180
10 affiliates in most parts of the country. Approximately 80,000 of its listeners donate their own money
11 to maintain its operations. Gifts to charitable corporations are deemed given in trust to carry out the
12 objectives of the corporation, and the assets thereof are deemed to be impressed with a charitable
13 trust by virtue of the declaration of corporate purposes. *Brown v. Mem'l Nat. Home Found.* (1958)
14 162 Cal.App.2d 513, 521; *Lynch v. John M. Redfield Found.* (1970) 9 Cal.App.3d 293, 298.)
15 Accordingly, charitable corporations are generally governed by the same rules as those applicable to
16 charitable trusts. *Holt v. College of Osteopathic Physicians & Surgeons* (1964) 61 Cal.2d 750, 756-
17 757; 4 Scott on Trusts (1967) § 348.1, p. 2778. Thus, obligations of the Defendants in this matter
18 arise from a trust for the purposes of Code Civ. Proc. § 526(a). *See*, Reese Declaration, Birden
19 Declaration.

20 To obtain a preliminary injunction, the plaintiff must establish that the defendant should be
21 restrained from the challenged activity pending trial. *Trader Joe's Co. v. Progressive Campaigns*, 73
22 Cal. App. 4th 425, 429, 86 Cal. Rptr. 2d 442 (1st Dist. 1999). As with a Temporary Restraining
23 Order, the Court weighs two interrelated factors; the likelihood the moving party will prevail on the
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1 merits, and the relative interim harm to the parties from the issuance or nonissuance of the
2 injunction. *Whyte v. Schlage Lock Co.*, 101 Cal. App. 4th 1443, 1449, 125 Cal. Rptr. 2d 277 (4th
3 Dist. 2002). As shown in the verified complaint and supporting declarations submitted therewith,
4 sufficient grounds exist, and will be shown to exist, at the hearing on a preliminary injunction such
5 that the Court should issue same upon the grounds and facts as alleged herein which support the
6 issuance of a Temporary Restraining Order.
7

8 IV. EX PARTE RELIEF IS PERMITTED UNDER THESE CIRCUMSTANCES AND PLAINTIFF
9 HAS COMPLIED WITH CALIFORNIA RULES OF COURT

10 **A. Showing Required For Ex Parte Relief.**

11 Cal. Rules of Court, rule 3.1150 provides that "[a]pplications for ex parte temporary re-
12 straining orders are governed by the ex parte rules in chapter 4 of this division."
13

14 "An applicant [for an ex parte application] must make an affirmative factual showing in a
15 declaration containing competent testimony based on personal knowledge of irreparable harm,
16 immediate danger, or any other statutory basis for granting relief ex parte." Cal. Rules of Court, rule
17 3.1202(c).
18

19 As described in detail heretofore and shown by the attached Declaration of Amy Sommer
20 Anderson, there is an imminent danger of irreparable harm and other statutory basis for granting
21 relief *ex parte*, in that, due to Defendants' actions, PFR Members face, *inter alia*, imminent and
22 substantial risk of potentially fatal financial hardships, as well as irreparably lost opportunities to
23 investigate questionable internal financial reporting.
24

25 **B. Document And Notice Requirements For Ex Parte Application For TRO and OSC**

26 "An ex parte application for an order must be accompanied by an affidavit or declaration
27 showing: (1) that, within the applicable time period, the applicant informed the opposing party when
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1 and where the application would be made; or (2) that the applicant in good faith attempted to inform
 2 the opposing party but was unable to do so, specifying the efforts made to inform the opposing
 3 party; or (3) that, for reasons specified, the applicant should not be required to inform the opposing
 4 party." Cal. Rules of Court, rule 3.1201, Cal. Rules of Court, rule 3.1204(b).

- 5 An *ex parte* application must be accompanied by a declaration regarding notice stating:
 6
- 7 (1) The notice given, including the date, time, manner, and name of the party informed, the relief
 8 sought, any response, and whether opposition is expected and that, within the applicable time
 9 under rule 3.1203, the applicant informed the opposing party where and when the application
 10 would be made;
 - 11 (2) That the applicant in good faith attempted to inform the opposing party but was unable to do
 12 so, specifying the efforts made to inform the opposing party; or
 - 13 (3) That, for reasons specified, the applicant should not be required to inform the opposing party.
 14 Cal. Rules of Court, rule 3.1204(b).

15
 16
 17 As stated in the Declaration of Amy Sommer Anderson, submitted herewith, Plaintiff should
 18 not be required to inform Defendants of this application because at least one defendant has stated an
 19 intent to physically restrain, by arrest, Summer Reese from performing her duties as Executive
 20 Director of Pacifica Foundation Radio, and one or more defendant has threatened to and/or actually
 21 taken action to physically prevent Ms. Reese and other employees from performing under the terms
 22 of their employment and in furtherance of operating and enabling the continued operation of
 23 Pacifica Foundation Radio. Further, Defendants are aware that Ms. Reese and Plaintiff PDGG intend
 24 to conduct an internal investigation into why Pacifica Radio Foundation's general ledger has not
 25 been reconciled in one division for over one year, why the terminated Chief Financial Officer
 26 intentionally did not or was not able to accomplish said reconciliation, why the workplace
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1 investigation of the CFO has been absconded and suppressed by Margy Wilkinson, and causes for
 2 PFR’s general lack of financial accountancy and transparency, and such notice to Defendants would
 3 likely accelerate Defendants’ unlawful obstruction with said investigation, including usurping,
 4 destroying or otherwise altering the records at issue, before the court could hear the application for
 5 temporary restraining order. Anderson Dec. ¶ 10.
 6

7 V. CONCLUSION

8 For all of the foregoing reasons and supporting facts and authorities, it is respectfully re-
 9 quested that the Court issue a Temporary Restraining Order and set an Order to Show Cause hearing
 10 for Preliminary Injunction consistent with this Application ([Proposed] Order for TRO and
 11 [Proposed] Order to Show Cause also submitted herewith).
 12

13 DATED: April 4, 2014

AROPLEX LAW

14
 15 By: 
 16 Amy Sommer Anderson
 17 AROPLEX LAW
 18 156 2nd Street
 19 San Francisco, CA 94105
 20 Phone: 415-529-5148
 21 Attorney for Plaintiff,
 22 PACIFICA DIRECTORS FOR
 23 GOOD GOVERNANCE
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11 SUPERIOR COURT OF CALIFORNIA

12 COUNTY OF ALAMEDA

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**[PROPOSED] TEMPORARY
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Date: April 9, 2014
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After considering the moving papers filed in this action, the Court finds (1) that this is a proper case for issuance of an order to show cause, and (2) that, unless the Court issues a temporary restraining order, plaintiffs will suffer irreparable injury before the matter can be heard on formal notice.

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IT IS ORDERED that:

1. Defendants, PACIFICA FOUNDATION RADIO RODRIGO ARGUETA, LYDIA BRAZON, JIM BROWN, BENITO DIAZ, ADRIANA CASENAVE, BRIAN EDWARDS-TIEKERT, JOSE LUIS FUENTES, HANK LAMB, TONY NORMAN, LAWRENCE REYES, CERENE ROBERTS, and MARGY WILKINSON, appear before this Court at the above date and time to show cause why a preliminary injunction should not be issued enjoining them from engaging in or performing the following acts:

- (a) violating Pacifica Foundation Radio’s Bylaws dated January 20, 2012;
- (b) approving or executing on any board decision resulting from or otherwise the subject of procedural violation of the Bylaws in reaching such decision or performing such execution;
- (c) breaching the terms of the January 30, 2014 employment contract Pacifica Foundation Radio holds with their Executive Director, Summer Reese;
- (d) taking or causing to be taken any action in furtherance of purported Board decisions—including but not limited to the attempted termination of Ms. Reese and re-hiring of Mr. Salvador—absent documented Board approval of such decision in compliance with PFR’s Bylaws, said documentation being either unanimous written consent where action was taken outside of a meeting or the corresponding meeting minutes and Board approval of the minutes for actions taken during properly noticed and held Board meetings; and
- (e) making any further personnel decisions within the purview of the Board without proper Board approval and recordation of such decisions, including documentation of the corresponding meeting minutes and Board approval of the minutes.

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1 2. Pending the hearing on the order to show cause, defendant, their agents, officers,
2 employees, and representatives, and all persons acting in concert or participating with them, be
3 enjoined from engaging in or performing the following:

- 4 (a) violating Pacifica Foundation Radio’s Bylaws dated January 20, 2012;
- 5
- 6 (b) approving or executing on any board decision resulting from or otherwise the subject of
7 procedural violation of the Bylaws in reaching such decision or performing such
8 execution;
- 9 (c) breaching the terms of the January 30, 2014 employment contract Pacifica Foundation
10 Radio holds with their Executive Director, Summer Reese;
- 11 (d) taking or causing to be taken any action in furtherance of purported Board decisions—
12 including but not limited to the attempted termination of Ms. Reese and re-hiring of Mr.
13 Salvador—absent documentation of Board approval of such decision in compliance with
14 PFR’s Bylaws, said documentation being either unanimous written consent where action
15 was taken outside of a meeting or the corresponding meeting minutes and Board approval
16 of the minutes for actions taken during properly noticed and held Board meetings; and
17 (e) making any further personnel decisions within the purview of the Board without proper
18 Board approval and recordation of such decisions, including documentation of the
19 corresponding meeting minutes and Board approval of the minutes.
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23 3. A copy of the complaint, declaration(s), and memorandum, together with a copy of this
24 order to show cause and temporary restraining order, be served by

25 _____ (manner of service) on defendants by no later than

26 _____ (date). Any opposition must be filed and served by

27 _____ (manner of service) by _____ (date). Any reply
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1 must be filed and served by _____ (manner of service) by
2 _____ (date).

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4 DATE: _____
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Judge Ioana Petrou

FILED BY FAX

ALAMEDA COUNTY

April 04, 2014

CLERK OF
THE SUPERIOR COURT
By Burt Moskaira, Deputy

CASE NUMBER:
HG14720131

1 Amy Sommer Anderson #282634
2 AROPLEX LAW
3 156 2nd Street
4 San Francisco, CA 94105
5 Phone: 415-529-5148
6 Facsimile: 415-970-5016
7 Email: Anderson@aroplex.com

8 Attorney for Plaintiff,
9 PACIFICA DIRECTORS FOR GOOD
10 GOVERNANCE

11 SUPERIOR COURT OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 PACIFICA DIRECTORS FOR GOOD
14 GOVERNANCE, an unincorporated
15 association,

16 Plaintiff(s),

17 v.

18 PACIFICA FOUNDATION RADIO, California
19 Not-for-Profit Corporation;
20 RODRIGO ARGUETA, LYDIA BRAZON, JIM
21 BROWN, BENITO DIAZ, ADRIANA
22 CASENAVE, BRIAN EDWARDS-TIEKERT,
23 JOSE LUIS FUENTES, HANK LAMB, TONY
24 NORMAN, LAWRENCE REYES, CERENE
25 ROBERTS, and MARGY WILKINSON in their
26 official capacities as members of the Board of
27 Directors of Pacifica Foundation Radio; and
28 DOES 1-100, inclusive,

Defendant(s).

Case No. HG 14720131

**DECLARATION OF AMY
SOMMER ANDERSON RE
NOTICE OF EX PARTE
HEARING**

Date: April 9, 2014
Time: 9:00 AM
Dept: 15
Hearing judge: Hon. Ioana Petrou
Action Filed: April 3, 2014
Trial date: NOT SET

I, Amy Sommer Anderson, declare as follows:

1. I am an attorney licensed to practice law in the State of California and currently serve as counsel to Plaintiff Pacifica Directors for Good Governance (“PDGG”). This declaration is submitted in support of Plaintiff’s Ex Parte Application for Temporary Restraining Order and Order

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1 to Show Cause Re Preliminary Injunction. The following facts are within my personal knowledge
2 and, if called as a witness herein, I can and will competently testify thereto.

3 2. On April 3, 2014, Plaintiff filed a complaint for declaratory and injunctive relief
4 against the named defendants.

5 3. Plaintiff seeks a Temporary Restraining Order against Defendants PACIFICA
6 FOUNDATION RADIO, RODRIGO ARGUETA, LYDIA BRAZON, JIM BROWN, BENITO
7 DIAZ, ADRIANA CASENAVE, BRIAN EDWARDS-TIEKERT, JOSE LUIS FUENTES, HANK
8 LAMB, TONY NORMAN, LAWRENCE REYES, CERENE ROBERTS, and MARGY
9 WILKINSON pending hearing on a Preliminary Injunction. Said Temporary Restraining Order
10 should issue because Defendants are engaging in and threatening to engage in the following conduct
11 which is resulting and will result in great and irreparable injury to Plaintiffs and Pacifica National
12 Radio if not restrained as fully set forth in the Reese and Birden Declarations filed with Plaintiff's
13 verified complaint.
14

15 4. Therefore, Plaintiff respectfully requests that the Court issue an immediate
16 Temporary Restraining Order, restraining and enjoining Defendants, each and all of them, from the
17 following acts pending hearing on the Preliminary Injunction:
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- 20 • violating Pacifica Foundation Radio's Bylaws dated January 20, 2012;
 - 21 • approving or executing on any board decision resulting from or otherwise the subject of
22 procedural violation of the Bylaws in reaching such decision or performing such execution;
 - 23 • breaching the terms of the employment contract Pacifica Foundation Radio holds with their
24 Executive Director, Summer Reese, which was ratified by the Pacifica Foundation Radio's
25 BoD on March 13, 2014;
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- taking or causing to be taken any action in furtherance of purported Board decisions— including but not limited to the attempted termination of Ms. Reese and re-hiring of Mr. Salvador— absent documented Board approval of such decision in compliance with PFR’s Bylaws, said documentation being either unanimous written consent where action was taken outside of a meeting or the corresponding meeting minutes and Board approval of the minutes for actions taken during properly noticed and held Board meetings; and
- making any further personnel decisions within the purview of the Board without proper Board approval and recordation of such decisions, including documentation of the corresponding meeting minutes and Board approval of the minutes.

5. Immediate and irreparable injury is being and will be suffered by Plaintiff and PFR absent such a restraining order, as fully set forth in the Reese and Birden Declarations filed with Plaintiff’s verified complaint.

6. There is a high likelihood that Plaintiff and PFR will prevail at trial of the within action, as fully set forth in the Reese and Birden Declarations filed with Plaintiff’s verified complaint.

7. Defendant will suffer negligible or no harm if the TRO is granted, as Defendants’ actions are supposed to be conducted in the best interest of PFR, and the TRO is in the best interest of PFR. Defendants have not presented any cause for their actions nor claims of harm they believe will be suffered absent taking such actions.

8. For the above reasons and in light of the facts presented, a Temporary Restraining Order should be immediately issued to prevent further harm to Plaintiff and the organization and members it represents.

1 9. I have arranged for a courtesy copy of the associated motion, supporting
2 documentation and verified complaint to be provided to Department 15 on Monday, April 7, 2014.

3 10. Plaintiff PACIFICA DIRECTORS FOR GOOD GOVERNANCE should not be
4 required to inform Defendants PACIFICA FOUNDATION RADIO, RODRIGO ARGUETA,
5 LYDIA BRAZON, JIM BROWN, BENITO DIAZ, ADRIANA CASANAVE, BRIAN EDWARDS-
6 TIEKERT, JOSE LUIS FUENTES, HANK LAMB, TONY NORMAN, LAWRENCE REYES,
7 CERENE ROBERTS, and MARGY WILKINSON because at least one defendant has stated an
8 intent to physically restrain, by arrest, Summer Reese from performing her duties as Executive
9 Director of Pacifica Foundation Radio, and one or more defendant has threatened to and/or actually
10 taken action to physically prevent Ms. Reese and other employees from performing under the terms
11 of their employment and in furtherance of operating and enabling the continued operation of
12 Pacifica Foundation Radio. Further, Defendants are aware that Ms. Reese and Plaintiff PDGG intend
13 to conduct an internal investigation into why Pacifica Radio Foundation's financial records have not
14 been reconciled in one division for over one year, why the terminated Chief Financial Officer
15 intentionally did not or was not able to accomplish said reconciliation, and causes for PFR's general
16 lack of financial accountancy and transparency, and such notice to Defendants would likely
17 accelerate Defendants' unlawful obstruction with said investigation, including usurping, destroying
18 or otherwise altering the records at issue, before the court could hear the application for temporary
19 restraining order.
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23 11. Corporate defendant Pacifica Foundation Radio is not represented by counsel in this
24 matter and has made no arrangements for representation as of the date of this declaration. Further,
25 the corporate defendant presently lacks general counsel. As such, Defendants—including the
26 corporate defendant and the individual defendants in their capacities as corporate officers—are
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willfully foregoing advice of counsel, thereby substantially increasing the likelihood that Defendants will commit further unlawful actions at the risk of causing irreparable damage before the requested ex parte hearing can be held.

I declare under penalty of perjury under the laws of the State of California that the foregoing declaration is true and correct. Executed April 4, 2014 at San Francisco, California.

AROPLEX LAW

By: 

Amy Sommer Anderson
AROPLEX LAW
156 2nd Street
San Francisco, CA 94105
Phone: 415-529-5148
Attorney for Plaintiff,
PACIFICA DIRECTORS FOR
GOOD GOVERNANCE

┌ Aroplex Law
┌ Attn: Anderson, Amy Sommer
┌ 156 2nd Street
┌ San Francisco, CA 94105
└

┌ Pacifica Foundation Radio, a
┌ California Not-for Profit Corporation
└

**Superior Court of California, County of Alameda
Hayward Hall of Justice**

Pacifica Directors For Good G Plaintiff/Petitioner(s) VS. Pacifica Foundation Radio, Defendant/Respondent(s) (Abbreviated Title)

No. HG14720131

NOTICE OF HEARING

To each party or to the attorney(s) of record for each party herein:
Notice is hereby given that the above entitled action has been set for:
Civil Ex-Parte

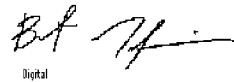
You are hereby notified to appear at the following Court location on the date and
time noted below:

Civil Ex-Parte:
DATE: 04/09/2014 TIME: 09:00 AM DEPARTMENT: 15
LOCATION: Administration Building, Third Floor
1221 Oak Street, Oakland

Dated: 04/04/2014

Executive Officer / Clerk of the Superior Court

By



Digital

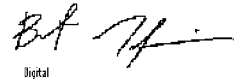
Deputy Clerk

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 04/04/2014.

By



Digital

Deputy Clerk

┌ Aroplex Law
┌ Attn: Anderson, Amy Sommer
┌ 156 2nd Street
┌ San Francisco, CA 94105
└

┌ Pacifica Foundation Radio, a
┌ California Not-for Profit Corporation
└

**Superior Court of California, County of Alameda
Hayward Hall of Justice**

Pacifica Directors For Good G Plaintiff/Petitioner(s) VS. Pacifica Foundation Radio, Defendant/Respondent(s) (Abbreviated Title)

No. HG14720131

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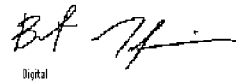
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By



Digital

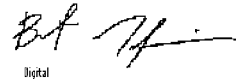
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Executed on 04/04/2014.

By



Digital

Deputy Clerk