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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

DAVID ADELSON, LAUREN AYERS,
MARY BERG, JOANNE BOBB, LYDIA
BRAZON, CECELIA CARUSO, GAIL DIXON,
ANNE EMERMAN, SHERRY GENDELMAN,
TERRENCE GUY, JIM HORWITZ, KAHLIL
JACOBS-FANTAUZZI, DAWUD KHALIL-ULLAH,
PELE DE LAPPE, STEVE LUSTIG, ERROL
MAITLAND, MIGUEL MALDONADO, ANDREW
NORRIS, LEWIS O. SAWYER JR., MARIALICE
WILLIAMS, and FRIEDA ZAMES, individually,
and on behalf of all others similarly situated,
and on behalf of the Pacifica Foundation,

No. 814461-0

Plaintiffs,

v.

PACIFICA FOUNDATION, a California Nonprofit
Corporation, MARY FRANCES BERRY, DAVID
ACOSTA, JUNE MAKELA, ANDREA CISCO,
FRANK MILLSPAUGH, KEN FORD,
MICHEAL PALMER, WILLIAM LUCY,
and DOES 1-25, inclusive,

Defendants.

VERIFIED SECOND AMENDED
COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF AND FOR
DAMAGES FOR VIOLATIONS OF
THE CORPORATIONS CODE AND
FOR UNFAIR BUSINESS PRACTICES.

1
2 PRELIMINARY STATEMENT

3 1. Plaintiffs are members, contributors, and leaders of defendant PACIFICA FOUNDATION.
4
5 They bring this action (1) to restrain and enjoin the unlawful and undemocratic actions of a majority of
6 the Foundation's Board of Directors and (2) to restrain and prevent the unlawful waste of the
7 Foundation's assets for uses inconsistent with the purposes of the Foundation. The Board of
8 Directors, without proper notice and in excess of its lawful authority, has purported to amend the
9 Foundation's bylaws to eliminate the membership's role in the election of directors and to thereby
10 create a self-perpetuating Board without any accountability to the members and subscribers of the
11 Foundation. Unless restrained, the Board now threatens to utilize its newly created powers to abandon
12 the mission and historic role of the Pacifica radio network and threatens to sell one or more of the
13 Foundation's five radio stations and/or station licenses.
14

15 PARTIES AND JURISDICTION

16 2. Plaintiff DAVID ADELSON is a member of defendant PACIFICA FOUNDATION within the
17 meaning of Corporations Code §5056, a donor to the Foundation, and a member and acting chair of
18 the Local Advisory Board for Pacifica Radio Station KPFK in Los Angeles, California.
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20 3. Plaintiff LAUREN AYERS is a member of defendant PACIFICA FOUNDATION within the
21 meaning of Corporations Code §5056, a donor to the Foundation, and a member of the Local
22 Advisory Board for Pacifica Radio Station KPFA in Berkeley, California.
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24 4. Plaintiff MARY BERG is a member of defendant PACIFICA FOUNDATION within the
25 meaning of Corporations Code §5056, a donor to the Foundation, and a member of the Local
26 Advisory Board for Pacifica Radio Station KPFA in Berkeley, California.
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1 5. Plaintiff JOANNE BOBB is a member of defendant PACIFICA FOUNDATION within the
2 meaning of Corporations Code §5056, a donor to the Foundation, and a member of the Local
3 Advisory Board for Pacifica Radio Station WBAI in New York, New York.
4

5 6. Plaintiff LYDIA BRAZON is a member of defendant PACIFICA FOUNDATION within the
6 meaning of Corporations Code §5056, a donor to the Foundation, and a member of the Local
7 Advisory Board for Pacifica Radio Station KPFK in Los Angeles, California.
8

9 7. Plaintiff CECILIA CARUSO is a member of defendant PACIFICA FOUNDATION within
10 the meaning of Corporations Code §5056, a donor to the Foundation, and a member of the Local
11 Advisory Board for Pacifica Radio Station WBAI in New York, New York.
12

13 8. Plaintiff GAIL DIXON is a member of defendant PACIFICA FOUNDATION within the
14 meaning of Corporations Code §5056, a donor to the Foundation, and a member of the Local
15 Advisory Board for Pacifica Radio Station WPFW in Washington, D.C.
16

17 9. Plaintiff ANNE EMERMAN is a member of defendant PACIFICA FOUNDATION within the
18 meaning of Corporations Code §5056, a donor to the Foundation, and a member of the Local
19 Advisory Board for Pacifica Radio Station WBAI in New York, New York.
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21 10. Plaintiff SHERRY GENDELMAN is a member of defendant PACIFICA FOUNDATION
22 within the meaning of Corporations Code §5056, a donor to the Foundation, and a member and chair
23 of the Local Advisory Board for Pacifica Radio Station KPFA in Berkeley, California.
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25 11. Plaintiff TERRENCE GUY is a member of defendant PACIFICA FOUNDATION within the
26 meaning of Corporations Code §5056, a donor to the Foundation, and a member of the Local
27 Advisory Board for Pacifica Radio Station KPFK in Los Angeles, California.
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1 12. Plaintiff JIM HORWITZ is a member of defendant PACIFICA FOUNDATION within the
2 meaning of Corporations Code §5056, a donor to the Foundation, and a member of the Local
3 Advisory Board for Pacifica Radio Station KPFK in Los Angeles, California.
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5 13. Plaintiff KAHLIL JACOBS-FANTAUZZI is a member of defendant PACIFICA
6 FOUNDATION within the meaning of Corporations Code §5056, a donor to the Foundation, and a
7 member of the Local Advisory Board for Pacifica Radio Station KPFA in Berkeley, California.
8

9 14. Plaintiff DAWUD KHALIL-ULLAH is a member of defendant PACIFICA FOUNDATION
10 within the meaning of Corporations Code §5056, a donor to the Foundation, and a member of the
11 Local Advisory Board for Pacifica Radio Station KPFK in Los Angeles, California.
12

13 15. Plaintiff PELE DE LAPPE is a member of defendant PACIFICA FOUNDATION within the
14 meaning of Corporations Code §5056, a donor to the Foundation, and a member of the Local
15 Advisory Board for Pacifica Radio Station KPFA in Berkeley, California.
16

17 16. Plaintiff STEVE LUSTIG is a member of defendant PACIFICA FOUNDATION within the
18 meaning of Corporations Code §5056, a donor to the Foundation, and a member of the Local
19 Advisory Board for Pacifica Radio Station KPFA in Berkeley, California.
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21 17. Plaintiff ERROL MAITLAND is a member of defendant PACIFICA FOUNDATION within
22 the meaning of Corporations Code §5056, a donor to the Foundation, and a member of the Local
23 Advisory Board for Pacifica Radio Station WBAI in New York, New York.
24

25 18. Plaintiff MIGUEL MALDONADO is a member of defendant PACIFICA FOUNDATION
26 within the meaning of Corporations Code §5056, a donor to the Foundation, and a member of the
27 Local Advisory Board for Pacifica Radio Station WBAI in New York, New York.
28

1 19. Plaintiff ANDREW NORRIS is a member of defendant PACIFICA FOUNDATION within
2 the meaning of Corporations Code §5056, a donor to the Foundation, and a member of the Local
3 Advisory Board for Pacifica Radio Station WBAI in New York, New York.
4

5 20. Plaintiff LEWIS O. SAWYER JR. is a member of defendant PACIFICA FOUNDATION
6 within the meaning of Corporations Code §5056, a donor to the Foundation, and a member of the
7 Local Advisory Board for Pacifica Radio Station KPFA in Berkeley, California.

8 21. Plaintiff MARIALICE WILLIAMS is a member of defendant PACIFICA FOUNDATION
9 within the meaning of Corporations Code §5056, a donor to the Foundation, and a member and chair
10 of the Local Advisory Board for Pacifica Radio Station WPFW in Washington, D.C.
11

12 22. Plaintiff FRIEDA ZAMES is a member of defendant PACIFICA FOUNDATION within the
13 meaning of Corporations Code §5056, a donor to the Foundation, and a member of the Local
14 Advisory Board for Pacifica Radio Station WBAI in New York, New York.

15 23. Each of the plaintiffs named above brings this action on his or her own behalf and as a
16 derivative action pursuant to Corporations Code §5710 on behalf of the Pacifica Foundation.
17

18 24. Plaintiffs bring their third claim for relief herein on behalf of themselves and all other persons
19 similarly situated. The class of persons that plaintiffs represent in connection with the third claim for
20 relief consists of those individuals, whether members of the PACIFICA FOUNDATION or not, who
21 within the three years preceding the filing of this lawsuit have made financial contributions to
22 defendant PACIFICA FOUNDATION based upon defendants' representations (1) that such
23 contributions would be utilized to carry out the well publicized, long-standing and historic purposes of
24 the PACIFICA FOUNDATION as set forth in the Foundation's Articles of Incorporation and Bylaws
25 and in ¶¶ 30 and 31, below; and (2) that such contributions would be utilized to develop and construct
26 a permanent national headquarters for the PACIFICA FOUNDATION in the City of Berkeley. The
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1 class of persons whom plaintiffs seek to represent in this matter is ascertainable, but its members are
2 so numerous that it would be impractical to join them all in this action.

3 25. Defendant PACIFICA FOUNDATION is a California Nonprofit Corporation which
4 maintained, as of the date this lawsuit was filed, its headquarters and principal place of business in the
5 City of Berkeley, County of Alameda.
6

7 26. Defendants MARY FRANCES BERRY, DAVID ACOSTA, JUNE MAKELA, ANDREA
8 CISCO, FRANK MILLSPAUGH, KEN FORD, MICHEAL PALMER, WILLIAM LUCY, and Doe 1
9 through Doe 10 are and were at all times relevant hereto directors of the defendant PACIFICA
10 FOUNDATION.
11

12 27. The true names and capacities of the defendants named herein as Doe 1 through Doe 25,
13 inclusive, whether individual, corporate, associate, or otherwise, are unknown to plaintiffs, who
14 therefore sue such defendants by fictitious names pursuant to Code of Civil Procedure section 474.
15 Plaintiff will amend this complaint to show their true names and capacities when they have been
16 determined.
17

18 28. Plaintiffs are informed and believe, and based on that information and belief allege, that at all
19 times mentioned in this complaint defendants were the agents and employees of their codefendants and
20 in doing the things alleged in this complaint were acting in the course and scope of such agency and
21 employment.
22

23 STATEMENT OF FACTS

24 29. The Pacifica Foundation was incorporated on August 24, 1946, by Lewis Hill, H. Don
25 Kirschner, Homer Sisson, William Triest, and John Waldron.

26 30. The Articles of Incorporation of the Pacifica Foundation, as filed with the Secretary of State
27 of the State of California on August 20, 1948, and at all times since said date, have stated, and do now
28

1 state, that the purposes of the Pacifica Foundation are, inter alia: “to establish and operate for
2 educational purposes...one or more radio broadcasting stations;” “to encourage and provide outlets
3 for the creative skills and energies of the community;” “to...contribute to a lasting understanding
4 between nations and between the individuals of all nations, races, creeds, and colors; to gather and
5 disseminate information of the causes of conflict between any and all of such groups;... to promote the
6 study of political and economic problems and of the causes of religious, philosophical and racial
7 antagonisms;” “to promote the full distribution of public information; to obtain access to sources of
8 news not commonly brought together in the same medium; and to employ such varied sources in the
9 public presentation of accurate, objective, comprehensive news on all matters vitally affecting the
10 community.”
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13 31. Consistent with the purposes set forth in Articles of Incorporation, the Pacifica Foundation
14 now owns and operates five listener supported and publicly supported radio broadcasting stations in
15 the cities of Berkeley, California; Los Angeles, California; New York, New York; Washington, D.C.;
16 and Houston, Texas. To carry out the purposes of the Articles of Incorporation, the Pacifica
17 Foundation has operated its radio stations in a manner consistent with the principles of freedom of
18 speech and as forums for the expression of free speech.
19

20 32. In order to carry out its purposes and mission as described above, the Pacifica Foundation has
21 solicited donations from plaintiffs, and the class they represent, for the purposes of acquiring and
22 operating its five radio broadcasting stations. In soliciting such contributions, and in continuing to do
23 so to the present day, the PACIFICA FOUNDATION has explicitly represented to plaintiffs and to the
24 class they represent, that all funds so contributed would be utilized to assist the Pacifica Foundation in
25 carrying out its purposes and mission as set forth above in ¶¶ 30 and 31, above, and in its Articles of
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1 Incorporation, and/or would be specifically utilized to develop and construct a permanent national
2 headquarters for the PACIFICA FOUNDATION in the City of Berkeley.

3 33. Plaintiffs, and the class they represent, have contributed millions of dollars to the Pacifica
4 Foundation. In doing so, they have relied upon the explicit assurances of the Pacifica Foundation that
5 the funds they contributed would be utilized solely for the purposes of carrying out the mission and
6 purposes of the Pacifica Foundation as set forth above and in its Articles of Incorporation and/or
7 would be specifically utilized to develop and construct a permanent national headquarters for the
8 PACIFICA FOUNDATION in the City of Berkeley.
9

10 34. At all times since August 24, 1946, the Articles of Incorporation of the Pacifica Foundation
11 have provided that the Pacifica Foundation would be governed by its directors and that the number of
12 directors and their method of election would be as set forth in the Bylaws of the Pacifica Foundation.
13

14 35. As of and since September 30, 1961, the Bylaws of the Pacifica Foundation have provided
15 that: "There shall be such number of directors as the Board of Directors shall from time to time
16 decide."
17

18 36. Beginning on January 9, 1988, and perhaps earlier, the Bylaws of the Pacifica Foundation
19 provided that:

20 SECTION 2 ELECTION OF DIRECTORS: In order to be elected, a member must
21 receive the nomination and vote of a majority of the station board which s/he
22 represents, unless such member is classified as an "at large" member, in which
23 event s/he must be elected by a 2/3 vote of the Board of Directors of the Foundation,
24 voting by secret ballot, subject to approval of FCC council or FCC.

25 37. Pursuant to the Bylaw provision set forth above and the procedures that the Pacifica
26 Foundation adopted pursuant thereto, each station board (also known as "Local Advisory Board")
27 elected two members of the Board of Directors of the Pacifica Foundation. Each person so elected
28 assumed his or her seat on the Board of Directors. Likewise pursuant to such procedures, the number

1 of at large members of the Board of Directors was limited to a number not to exceed one-half of the
2 number of station representatives.

3 38. On or about September 28, 1997, and/or on or about February 28, 1999, the Board of
4 Directors of the Pacifica Foundation purported to amend the Foundation's bylaws to provide as
5 follows: (1) to eliminate the role of the station boards in electing members of the Pacifica Board of
6 Directors; (2) to vest all authority for nominating members of the Board of Directors in the Board of
7 Directors' "Board Development Committee;" and (3) to provide that all members of the Board of
8 Directors would be elected by majority vote of the Board of Directors.

9
10 39. Since on or about February 28, 1999, in reliance upon its actions as set forth in ¶38, above,
11 the Board of Directors of the PACIFICA FOUNDATION has refused to seat as members of the
12 Board of Directors persons duly elected as members of the Board of Directors by Pacifica's station
13 boards, also known as local advisory boards, pursuant to the provisions set forth in ¶¶36-37, above.

14
15 40. Since February 28, 1999, the Board of Directors has abandoned and threatens to further
16 abandon the mission and purposes of the Pacifica Foundation as set forth in its Articles of
17 Incorporation and in ¶¶ 30-31, above, by (1) eliminating diverse and community oriented programming
18 from Pacifica's radio stations; (2) censoring and attempting to censor the speech of its paid and
19 volunteer journalists; (3) firing or otherwise removing from their broadcast positions persons who
20 violated the limitations on free speech imposed by the Board of Directors; and (4) threatening to sell
21 one or more of Pacifica's radio stations to commercial broadcasting companies in order to realize a
22 profit.

23
24 41. Since February 28, 1999, defendants have utilized the resources of the Pacifica Foundation for
25 improper purposes, including but not limited to (1) the hiring of armed guards to prevent staff and
26 volunteers from carrying out their work at Pacifica Station KPFA in Berkeley; (2) violating the free
27

1 speech rights of Pacifica paid and volunteer staff by firing them and/or by barring them from their
2 broadcasting duties through the use of threats, force, and arrests, and locking them out of the stations'
3 studios; (3) eliminating virtually all local community affairs and news programming at Pacifica Station
4 KPFT in Houston; (4) conducting citizens' arrests of citizens involved in peaceful protests against
5 defendants' actions; and (5) moving the Foundation's headquarters from Berkeley to Washington,
6 D.C. Defendants have wasted the Foundations assets as set forth herein while at the same time
7 announcing that they lack the funds to pay the routine operating costs of the Foundation's radio
8 stations, particularly the costs of operating radio station KPFA, the Foundation's flagship station. On
9 information and belief, defendants have further utilized the resources of the Pacifica Foundation for the
10 purposes of marketing the Foundation's radio broadcasting stations and/or station licenses.
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12

13 DEMAND ON BOARD OF DIRECTORS

14 42. On June 14, 1999, plaintiffs, through counsel, informed the Board of Directors of the Pacifica
15 Foundation, in writing, of the ultimate facts and contentions set forth in this complaint, and requested
16 that the Board take action to remedy and rectify the concerns set forth herein.
17

18 43. On June 28, 1999, the Board of Directors of the Pacifica Foundation, through staff, advised
19 plaintiffs that it rejected their contentions and would take no action upon their requests.
20

21 FIRST CLAIM FOR RELIEF

22 (California Corporations Code)

23 44. Plaintiffs hereby incorporate as though fully set forth herein, the allegations set forth in
24 paragraphs 1-43 above, inclusive.
25

26 45. At all times relevant hereto, plaintiffs were and are members of the Pacifica Foundation within
27 the meaning of California Corporations Code §5056(a), by virtue of their right, pursuant to the
28 Foundation's bylaws, to vote for the election of directors.

1 46. Pursuant to the provisions of California Corporations Code §5150 and/or §5813, defendant
2 Pacifica Foundation was required to submit the proposed changes to the Bylaws of the Pacifica
3 Foundation that were considered on or about September 28, 1997, and/or February 28, 1999, as
4 described in ¶ 38, above, to the members of Pacifica’s local advisory boards, including plaintiffs, for
5 their consideration and vote.
6

7 47. Defendant Pacifica Foundation failed to submit the proposed bylaw changes to members of
8 Pacifica’s local advisory boards for their consideration and vote.

9 48. By virtue of the foregoing, defendant Pacifica Foundation violated its statutory obligation to
10 submit proposed changes in the Bylaws of the Pacifica Foundation to the members of the corporation,
11 including plaintiffs, for their consideration and vote.
12

13 49. In taking the actions described above, and in allowing the officers and employees of the
14 Pacifica Foundation to take such actions in their names, the individual defendants MARY FRANCES
15 BERRY, DAVID ACOSTA, JUNE MAKELA, ANDREA CISCO, FRANK MILLSPAUGH, KEN
16 FORD, MICHEAL PALMER, and WILLIAM LUCY, failed to act in good faith in the best interests
17 of the Pacifica Foundation and failed to act with the care, including reasonable inquiry, that ordinary
18 prudent persons in like positions would exercise under similar circumstances. Said individual
19 defendants, although placed on actual notice of the illegality of their actions, directed and/or failed to
20 restrain the officers and executive employees of PACIFICA FOUNDATION from taking the actions
21 described herein and thereby committed gross abuses of their authority and/or discretion.
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25 SECOND CLAIM FOR RELIEF

26 (Breach of Articles of Incorporation and Bylaws)
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28

1 50. Plaintiffs hereby incorporate as though fully set forth herein, the allegations set forth in
2 paragraphs 1-49 above, inclusive.

3 51. By taking the actions described in ¶¶ 38 and 39, above, defendants breached the Bylaws of the
4 Pacifica Foundation by failing and refusing to allow duly elected members of the Board of Directors to
5 take and hold office.
6

7 52. By taking the actions described in ¶¶ 40 and 41, above, defendants breached the Articles of
8 Incorporation of the Pacifica Foundation by allowing the resources of the Foundation to be utilized for
9 purposes contrary to those set forth in the Articles of Incorporation and in ¶¶ 30 and 31, above.
10

11 53. From June 15, 1997, to the present date, Article Nine of the Bylaws of the Pacifica
12 Foundation has read, in part, as follows:

13 These by-laws may be amended, altered or repealed in whole or in part at
14 any meeting of the Governing Board, provided that the proposed changes
15 have been submitted to each member of the Governing Board with the notice
16 of the meeting and provided further that the right of waiver of notice of meeting
17 shall not apply.

18 54. Pursuant to the Bylaws of the Pacifica Foundation, defendant Pacifica Foundation was
19 required to give notice of the exact text of the proposed bylaws changes to the members of the Board
20 of Directors along with the notices of the meetings for September 28, 1997, and/or February 28, 1999.

21 55. Defendant Pacifica Foundation breached the Bylaws of the Pacifica Foundation by failing to
22 give notice of the exact text of the proposed bylaws changes to the members of the Board of Directors
23 along with the notices of the meetings for September 28, 1997, and/or February 28, 1999.

24 56. From June 15, 1997, to the present date, Article Three of the Bylaws of the Pacifica
25 Foundation has read, in part, as follows:

26 SECTION 4 LIMITATION OF TERMS: Directors may serve for two
27 consecutive three year terms. Such persons shall not be eligible for further
28 service until one year has elapsed after the termination of the second
consecutive three year term, or unless elected to serve in a different

1 capacity or category.

2 57. Within the three years preceding the filing of this action, defendant Pacifica Foundation
3 breached the Bylaws of the Pacifica Foundation by extending the terms of members of the Board of
4 Directors contrary to the requirements of the Bylaws. Specifically, defendant Pacifica Foundation
5 violated the bylaws by allowing persons, including but not limited to defendants David Acosta and
6 June Makela, whose terms on the Board of Directors had expired, to continue to serve on the Board
7 of Directors.
8

9 58. From June 15, 1997, to the present date, Article Seven of the Bylaws of the Pacifica
10 Foundation has read, in part, as follows:
11

12 SECTION 1 ELECTION AND MEMBERSHIP:

13 The Executive Committee shall be comprised of the officers of the
14 Governing Board and include such other members to ensure that each
15 signal area has representation on the Executive Committee. Election of
16 Executive Committee shall occur at the same meeting as the election of
17 Officers of the Governing Board.

18 59. From June 15, 1997, to the present date, Article Five of the Bylaws of the Pacifica Foundation
19 has read, in part, as follows:
20

21 SECTION 2 ELECTION AND REMOVAL OF OFFICERS:

22 A. ELECTION AND TERM OF OFFICES: The officers of the
23 Foundation shall be elected every three years by the Governing Board,
24 or until the election of their successors.
25

26 60. The historical practice and interpretation of the above bylaw provisions and their predecessor
27 provisions by the Pacifica Board of Directors has been that when a vacancy occurred on the Executive
28 Committee, the person selected to fill the vacancy served only the unexpired portion of the person
whose place he or she was elected to take.

61. Within the three years preceding the filing of this action, defendant Pacifica Foundation
breached the Bylaws of the Pacifica Foundation by allowing the President of the Board of Directors,

1 defendant Mary Frances Berry, to appoint persons, including but not limited to defendants Frank
2 Millspaugh and Ken Ford, to the Executive Committee for three-year terms when her authority was
3 limited to filling the unexpired portions of the terms of the persons who had resigned from or had
4 otherwise left the Executive Committee.
5

6 62. In taking the actions described above, and in allowing the officers and employees of the
7 Pacifica Foundation to take such actions in their names, the individual defendants MARY FRANCES
8 BERRY, DAVID ACOSTA, JUNE MAKELA, ANDREA CISCO, FRANK MILLSPAUGH, KEN
9 FORD, MICHEAL PALMER, and WILLIAM LUCY, failed to act in good faith in the best interests
10 of the Pacifica Foundation and failed to act with the care, including reasonable inquiry, that ordinary
11 prudent persons in like positions would exercise under similar circumstances. Said individual
12 defendants, although placed on actual notice of the illegality of their actions, directed and/or failed to
13 restrain the officers and executive employees of PACIFICA FOUNDATION from taking the actions
14 described herein and thereby committed gross abuses of their authority and/or discretion.
15

16 THIRD CLAIM FOR RELIEF

17 (Unfair Business Practices)
18

19 63. Plaintiffs hereby incorporate as though fully set forth herein, the allegations set forth in
20 paragraphs 1-62, above, inclusive.

21 64. Defendants solicited contributions from plaintiffs, and the class they represent, under false
22 pretenses, in that defendants represented that all contributions made to the Pacifica Foundation would
23 be utilized to carry out the purposes of the Pacifica Foundation set forth in its articles of incorporation.
24 In truth, defendants have utilized portions of the funds so solicited for radio programming activities
25 and other activities inconsistent with the purposes and principles upon which the Pacifica Foundation
26 was created. By virtue of such actions, defendants have engaged in false advertising and committed
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1 unfair business practices and have wrongfully obtained money from plaintiffs and the class they
2 represent.

3 65. Specifically, defendants committed unfair business practices as follows:

4 a. In order to carry out its purposes and mission as described above, the Pacifica Foundation
5 has solicited donations from plaintiffs, and the class they represent, for the purposes of acquiring
6 and operating its five radio broadcasting stations. In soliciting such contributions, and in
7 continuing to do so to the present day, the PACIFICA FOUNDATION has explicitly represented
8 to plaintiffs and to the class they represent, that all funds so contributed would be utilized to assist
9 the Pacifica Foundation in carrying out its purposes and mission as set forth above in ¶ 30 and in
10 its Articles of Incorporation, and/or would be specifically utilized to develop and construct a
11 permanent national headquarters for the PACIFICA FOUNDATION in the City of Berkeley.

12 b. Plaintiffs, and the class they represent, have contributed millions of dollars to the Pacifica
13 Foundation. In doing so, they have relied upon the explicit assurances of the Pacifica Foundation
14 that the funds they contributed would be utilized solely for the purposes of carrying out the
15 mission and purposes of the Pacifica Foundation as set forth above and in its Articles of
16 Incorporation and/or would be specifically utilized to develop and construct a permanent national
17 headquarters for the PACIFICA FOUNDATION in the City of Berkeley.

18 c. Since February 28, 1999, the Board of Directors has abandoned and threatens to further
19 abandon the mission and purposes of the Pacifica Foundation as set forth in its Articles of
20 Incorporation and in ¶¶ 30-31, above, by (1) eliminating diverse and community oriented
21 programming from Pacifica's radio stations; (2) censoring and attempting to censor the speech of
22 its paid and volunteer journalists; (3) firing or otherwise removing from their broadcast positions
23 persons who violated the limitations on free speech imposed by the Board of Directors; and (4)
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1 threatening to sell one or more of Pacifica's radio stations to commercial broadcasting companies
2 in order to realize a profit.

3 d. Since February 28, 1999, defendants have utilized the resources of the Pacifica Foundation
4 for improper purposes, including but not limited to (1) the hiring of armed guards to prevent staff
5 and volunteers from carrying out their work at Pacifica Station KPFA in Berkeley; (2) violating the
6 free speech rights of Pacifica paid and volunteer staff by firing them and/or by barring them from
7 their broadcasting duties through the use of threats, force, and arrests, and locking them out of the
8 stations' studios; (3) eliminating virtually all local community affairs and news programming at
9 Pacifica Station KPFT in Houston; (4) conducting citizens' arrests of citizens involved in peaceful
10 protests against defendants' actions; and (5) moving the Foundation's headquarters from Berkeley
11 to Washington, D.C. Defendants have wasted the Foundation's assets as set forth herein while at
12 the same time they have announced that they lack the funds to pay the routine operating costs of
13 the Foundation's radio stations, particularly the costs of operating radio station KPFA, the
14 Foundation's flagship station. On information and belief, defendants have further utilized the
15 resources of the Pacifica Foundation for the purposes of marketing the Foundation's radio
16 broadcasting stations and/or station licenses.

17 e. Additionally, defendants have utilized funds solicited from plaintiffs, and the class they
18 represent, for improper and wasteful purposes, such as the hiring of security personnel, public
19 relations consultants, and attorneys, all to assist defendants in carrying out activities designed to
20 divert the Pacifica Foundation from its historic mission and purposes.

21 66. In taking the actions described above, and in allowing the officers and employees of the
22 Pacifica Foundation to take such actions in their names, the individual defendants MARY FRANCES
23 BERRY, DAVID ACOSTA, JUNE MAKELA, ANDREA CISCO, FRANK MILLSPAUGH, KEN
24

1 FORD, MICHEAL PALMER, and WILLIAM LUCY, failed to act in good faith in the best interests
2 of the Pacifica Foundation and failed to act with the care, including reasonable inquiry, that ordinary
3 prudent persons in like positions would exercise under similar circumstances. Said individual
4 defendants, although placed on actual notice of the illegality of their actions, directed and/or failed to
5 restrain the officers and executive employees of PACIFICA FOUNDATION from taking the actions
6 described herein and thereby committed gross abuses of their authority and/or discretion.
7

8 WHEREFORE, plaintiffs request that this Court order relief as follows:

- 9 (1) Order injunctive relief to invalidate the purported September 28, 1997, and/or February 28,
10 1999, changes to the Bylaws of the Pacifica Foundation;
11
12 (2) Order injunctive relief to invalidate actions taken by the Board of Directors of the Pacifica
13 Foundation since September 28, 1997, and/or February 28, 1999, to the extent to which
14 those actions were the result of the composition of the Board consistent with the purported
15 bylaws changes;
16
17 (3) Order injunctive relief to restrain and enjoin defendants from utilizing the resources of
18 Pacifica Foundation contrary the purposes and mission of the Pacifica Foundation as set
19 forth in its Articles of Incorporation;
20
21 (4) Order injunctive relief to restrain and enjoin defendants from selling or otherwise disposing
22 of the assets of Pacifica Foundation;
23
24 (5) Issue injunctive relief ordering the removal from office of certain individual directors of the
25 Pacifica Foundation found to have committed gross abuses of their authority and/or
26 discretion;
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28 (6) On the Third Claim for Relief, award restitution of money wrongfully obtained to plaintiffs,
according to proof;

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(7) Award plaintiffs their costs of suit, including their reasonable attorney's fees; and

(8) Award such other relief as the Court deems just and proper.

Dated: February 7, 2000

SIEGEL & YEE

By _____
Dan Siegel

Attorneys for Plaintiffs
DAVID ADELSON, et al.