

1 Daniel Rapaport (Bar No. 67217)
2 **WENDEL, ROSEN, BLACK & DEAN, LLP**
3 1111 Broadway, 24th Floor
4 Oakland, California 94607-4036
5 Telephone: (510) 834-6600
6 Fax: (510) 834-1928

7 Alan E. Walcher (Bar No. 089717)
8 **EPSTEIN, BECKER & GREEN, P.C.**
9 1875 Century Park East, Suite 500
10 Los Angeles, California 90067-2506
11 Telephone: (310) 556-8861

12 Attorneys for Defendants
13 **THE PACIFICA FOUNDATION, et al.**

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 THE PEOPLE OF THE STATE OF
17 CALIFORNIA, ex rel. CAROL SPOONER,
18 KURT GUERDRUM, ARTURO
19 GRIFFITHS, AMBURN R. HAGUE,
20 LEIGH HAUTER, PATRICIA HEFFLEY,
21 BARBARA MacQUIDDY, RICK
22 POTHOFF, CHARLES P.H. SCURICH,
23 RONALD SWART, individually and on
24 behalf of PACIFICA FOUNDATION,

25 Plaintiffs,

26 vs.

27 PACIFICA FOUNDATION, a California
28 non-profit public benefit corporation and
charitable trust, MARY FRANCES BERRY,
JUNE MAKELA, FRANK MILLSPAUGH,
ANDREA CISCO, KEN FORD, ROB
ROBINSON, DAVID ACOSTA,
MICHAEL PALMER, ROBERT
FARRELL, AARON KRIEGLER, PETER
BRAMSON, KAROLYN VAN PUTTEN,
TOMAS MORAN, WENDELL JOHNS,
LESLIE CAGAN, VALRIE CHAMBERS,
BERTRAM LEE, BETH LYONS, JOHN
MURDOCK, LYNN CHADWICK, and
DOES 1-100, inclusive,,

Defendants.

Case No. **00 3815 WHA**
NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C. §1441(b)
(FEDERAL QUESTION)

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE that defendants, Pacifica Foundation, Mary Frances
3 Berry, June Makela, Frank Millspaugh, Andrea Cisco, Ken Ford, David Acosta, Micheal
4 Palmer, Karolyn Van Putten, Wendell Johns, Valrie Chambers, Bertram Lee, Beth Lyons,
5 John Murdock, Robert Farrell, and Lynn Chadwick ("Defendants") by their undersigned
6 counsel, and file this Notice of Removal of this cause from the Alameda County Superior
7 Court, Case No. 831252-3, where it now is pending, to the United States District Court
8 for the Northern District of California, and for grounds in support hereof, state as follows:

9 1. Defendants in the referenced civil action, which was filed on or about
10 September 15, 2000, apparently were served on September 17, 2000.¹ Therefore, this
11 Petition is timely filed pursuant to 28 U.S.C. § 1446(b). The documents attached hereto
12 as Exhibit A comprise all of the process and pleadings served upon Defendants to date.

13 2. This action is removable to this Court pursuant to 28 U.S.C. § 1441 as
14 Plaintiffs' claims involve a federal question. This Court has personal jurisdiction over the
15 parties.

16 3. The Plaintiffs' claims arise under the Public Broadcasting Act ("PBA"), 47
17 U.S.C. § 390, et seq., and other provisions of Federal Communications Act ("FCA"), 47
18 U.S.C. § 301, et seq. This is a civil action to clarify and enforce rights under the PBA and
19 the FCA and, thus, invokes subject matter jurisdiction of the United States District Court.

20 4. All defendants need not join in this petition for removal for the following
21 reasons:²

22 (a) The Directors are sham defendants and nominal parties, not required
23 to join this notice for removal under Cal. Corp. Code § 5231(c). In addition, the Plaintiffs
24 fraudulently joined some Directors to prevent removal by Pacifica: it was clear at the time

25
26 ¹ It is not clear that all, or any of the defendants were properly served. Rather than
27 risk an untimely filing of a petition for removal, each of the defendants instead reserves
the right to challenge the sufficiency and adequacy of service.

28 ² Defendants are filing a separate motion herewith to realign the parties.

1 of filing of this action that approximately five Directors were aligned with the Plaintiffs.

2 (1) Robert Robinson and Aaron Kriegel are sham-defendants as
3 they have filed their own action against the actual Defendants asserting substantially the
4 same claims and seeking the same type of relief. Evidence that the Relators named
5 Robinson and Kriegel as defendants for a sham purpose is provided on the face of the
6 Complaint itself. For example, the Complaint fails to allege any causes of action against
7 either Robinson or Kriegel. In contrast, the first, second, third, fourth, fifth, and tenth
8 causes of action name specific defendants. The seventh, eighth, and ninth "causes of
9 action" seek no relief against individuals but only requests for declaratory relief. The
10 sixth cause of action is an action for an accounting against The Pacifica Foundation alone.

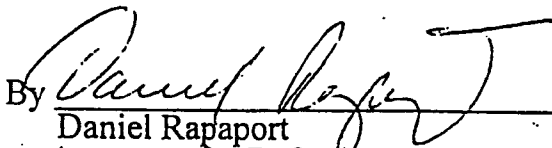
11 (2) The putative defendants Tomas Moran and Leslie Cagan
12 publicly aligned themselves with the plaintiffs. Tomas Moran aligned himself with the
13 plaintiffs in an interview with Dennis Bernstein, attached as Exhibit B. Leslie Cagan
14 aligned herself with the plaintiffs in a flyer, attached as Exhibit C.

15 (3) Peter Bramson gave an affidavit in support of the Plaintiffs'
16 position, attached as Exhibit D.

17 Dated: October 16, 2000

EPSTEIN, BECKER & GREEN, P.C.

18
19 WENDEL, ROSEN, BLACK & DEAN, LLP

20
21 By 
22 Daniel Rapaport
23 Attorneys for Defendants
24 PACIFICA FOUNDATION, MARY
25 FRANCES BERRY, JUNE MAKELA,
26 FRANK MILLSPAUGH, ANDREA CISCO,
27 KEN FORD, DAVID ACOSTA, MICHEAL
28 PALMER, ROBERT FARRELL,
KAROLYN VAN PUTTEN, WENDELL
JOHNS, VALRIE CHAMBERS, BERTRAM
LEE, BETH LYONS, JOHN MURDOCK
and LYNN CHADWICK