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5 Attorneys for Defendants
PACIFICA FOUNDATION,
6 DAVID ACOSTA, MARY FRANCES BERRY,
LYNN CHADWICK, VALRIE CHAMBERS,
7 ANDREA CISCO, ROBERT FARRELL, KEN FORD,
WENDELL JOHNS, BERTRAM LEE, BETH LYONS,
8 JUNE MAKELA, FRANK MILLSPAUGH,
JOHN MURDOCK, MICHEAL PALMER, and
9 KAROLYN VAN PUTTEN

10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 THE PEOPLE OF THE STATE OF
14 CALIFORNIA, ex rel. CAROL SPOONER,
et al.,

15
16 Plaintiffs,

17 vs.

18 PACIFICA FOUNDATION, a California
non-profit public benefit corporation and
charitable trust, et al.,

19
20 Defendants.

Case No. C 00 3815 MJJ

**DECLARATION OF DANIEL
RAPAPORT IN OPPOSITION TO
MOTION TO DISQUALIFY
WENDEL, ROSEN, BLACK &
DEAN, LLP AS DEFENDANTS'
COUNSEL**

Date: January 9, 2001
Time: 9:30 a.m.
Courtroom: 11
Judge: Hon. Martin J. Jenkins

21
22 I, Daniel Rapaport, declare:

23 1. I am an attorney duly licensed to practice law before all of the Courts of the
24 State of California. I am a partner in the law firm of Wendel, Rosen, Black & Dean, LLP
25 ("Wendel, Rosen"), and we are counsel of record for defendants Pacifica Foundation,
26 David Acosta, Dr. Mary Frances Berry, Lynn Chadwick, Valrie Chambers, Andrea Cisco,
27 Robert Farrell, Ken Ford, Wendell Johns, Bertram Lee, Beth Lyons, June Makela, Frank
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1 Millsbaugh, John Murdock, Micheal Palmer and Karolyn Van Putten (hereinafter, these
2 individual defendants shall collectively be referred to as the “director defendants”).

3 I have been practicing law continuously in the State of California since 1975. During that
4 time I have never, to my knowledge, been the subject of either a disciplinary inquiry or a
5 motion to disqualify me as counsel for a party in litigation.

6 2. Prior to the filing of the case of *Adelson v. Pacifica*, Alameda County
7 Superior Court Case No. 814461-0 in July of 1999, neither I nor Wendel, Rosen had ever
8 represented the Pacifica Foundation (“Pacifica”) or any of its directors or officers.
9 At that time, Wendel, Rosen was asked by the then-Executive Director of Pacifica, Lynn
10 Chadwick, to represent Pacifica Foundation in the *Adelson* action, which was brought by
11 certain individuals who alleged violations of Pacifica’s bylaws by Pacifica’s Directors in
12 1997 and 1999, which allegedly took away plaintiffs’ claimed right to elect directors.
13 Ms. Chadwick also agreed that Wendel, Rosen should represent the individual Pacifica
14 directors who had been named as defendants in the *Adelson* complaint. That case is still
15 pending in state court.

16 3. When Carol Spooner and others applied to the California Attorney General
17 in November, 1999 for leave to sue Pacifica and its directors in a *quo warranto* action,
18 Ms. Chadwick, in her capacity as Pacifica’s Executive Director, again retained Wendel,
19 Rosen to represent Pacifica in connection with that matter. She again agreed that Wendel,
20 Rosen should also represent the individual Pacifica directors who had been named as
21 defendants in the proposed *Spooner* complaint. Neither Ms. Spooner nor the other
22 relators ever objected to Wendel, Rosen’s representation of Pacifica and its directors prior
23 to the filing of the present motion to disqualify.

24 4. After the *Spooner* complaint was filed in state court on September 15, 2000,
25 Wendel, Rosen was requested by the current Executive Director, Bessie Wash, to
26 represent Pacifica in that action. Ms. Wash also agreed that Wendel, Rosen should also
27 represent every Pacifica director who requested representation and with whom there was
28 no conflict of interest.

1 5. Following my written disclosure and discussion of issues of conflict of
2 interest and representation on or about September 29, 2000, I have been asked in writing
3 by each of the directors we currently represent in this matter to represent them in this
4 action. I evaluated each of the following factors to determine whether an actual conflict
5 existed or would potentially arise in connection with the dual representation of Pacifica
6 and the director defendants: (1) whether I would receive conflicting instructions from the
7 clients in which I could not follow one client's instruction without violating another
8 client's instruction; (2) whether there were conflicting objectives of the clients that would
9 preclude me from effectively advancing one client's objective without detrimentally
10 affecting another client's objective; (3) whether the clients had antagonistic positions that
11 would require me to advocate both sides of a negotiation or a legal position at the same
12 time; (4) whether the clients had inconsistent expectations of confidentiality in which one
13 client would expect me not to disclose information I would be required to impart to the
14 other client; (5) whether there was a preexisting relationship with one client that would
15 adversely affect my independent judgment on behalf of the other client; and (6) whether
16 there would be conflicting demands by the clients for the original file once the
17 representation ended. I concluded that there is no actual or potential conflict of interest
18 nor would any potentially arise during the representation of Pacifica and the director
19 defendants. I have determined that all of the director defendants we represent in this
20 matter are aligned with prior and existing legal positions taken by Pacifica. The director
21 defendants then petitioned to remove this case to this Court. As the Court can easily
22 adduce from the filing of Related Case C-00-3814 in this Court, Pacifica Directors Rob
23 Robinson and Rabbi Aaron Kriegel are aligned with the *Spooner* plaintiffs.

24 6. Similarly, Pacifica Directors Leslie Cagan ("Cagan"), Tomas Moran
25 ("Moran") and Peter Bramson ("Bramson") have also been named as defendants in this
26 action, but each has taken numerous actions antithetical to the majority of Directors, such
27 that Cagan, Moran and Bramson are also aligned with plaintiffs in this action.

28 7. For example, in the *Adelson* action plaintiffs filed Bramson's declaration in

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support of plaintiffs' motion for an injunction. That motion was denied.

8. Even the plaintiffs in the *Adelson* case explicitly acknowledged that Directors Bramson, Moran, Kriegel, Robinson and Cagan support plaintiffs' views in connection with the pending lawsuits. On November 13 and 14, 2000, I took the deposition of one of the lead plaintiffs in the *Adelson* action, Sherry Gendelman. Attached hereto as **Exhibit A** are true and correct copies of relevant pages of her deposition transcript that support Pacifica's contention that Bramson, Moran, Kriegel, Robinson and Cagan should be realigned as requested by Pacifica and the Director Defendants. The relevant deposition pages accurately depict my questions and Ms. Gendelman's responses.

9. On November 17, 2000, I took the deposition of Mary Berg, another plaintiff in the *Adelson* case. Attached hereto as **Exhibit B** are true and correct copies of relevant pages of her deposition transcript that support Pacifica's contention that Bramson, Moran, Kriegel, Robinson and Cagan should be realigned as requested by Pacifica and the Director Defendants. The relevant deposition pages accurately depict my questions and Ms. Berg's responses.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed at Oakland, California, on November 21, 2000.


Daniel Rapaport