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11 **FARRELL, KAROLYN VAN PUTTEN, WENDELL JOHNS, VALRIE CHAMBERS,**
BERTRAM LEE, JOHN MURDOCK, LYNN CHADWICK

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF ALAMEDA**

14 **THE PEOPLE OF THE STATE OF**) **CASE NO. 831252-3**
CALIFORNIA, ex rel. CAROL SPOONER,)
15 **KURT GUERDRUM, ARTURO**)
GRIFFITHS, AMBURN H. HAGUE, LEIGH)
16 **HAUTER, PATRICIA HEFFLEY,**) **DECLARATION OF JOHN M.**
BARBARA MacQUIDDY, RICK POTHOFF,) **MURDOCK IN OPPOSITION TO**
17 **CHARLES P.H. SCURICH, RONALD**) **ORDER TO SHOW CAUSE RE**
SWART, individually and on behalf of) **PRELIMINARY INJUNCTION**
18 **PACIFICA FOUNDATION,**)
19 **Plaintiffs,**) **Date: April 10, 2001**
Time: 9:00 a.m.
Department: 31
Name of Judge: Judith D. Ford

20 **v.**
21 **PACIFICA FOUNDATION, a California**
nonprofit public benefit corporation and
22 **charitable trust, MARY FRANCES BERRY,**
JUNE MAKELA, FRANK MILLSPAUGH,
23 **ANDREA CISCO, KEN FORD, ROB**
ROBINSON, DAVID ACOSTA, MICHAEL
24 **PALMER, ROBERT FARRELL, AARON**
KRIEGEL, PETER BRAMSON, KAROLYN
25 **VAN PUTTEN, TOMAS MORAN,**
WENDELL JONES, LESLIE CAGAN,
26 **VALRIE CHAMBERS, BERTRAM LEE,**
BETH LYONS, JOHN MURDOCK, LYNN
27 **CHADWICK, and DOES 1-100, inclusive,**
28 **Defendants.**

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3 1. I am a Director of the Board of the Pacifica Foundation and I am also the Chair of the
4 Governance Committee of the Board of the Pacifica Foundation.

5 2. At the September 17, 2000 meeting of the Pacifica Foundation Board of Directors, I
6 offered to prepare a draft set of revised bylaws for the Pacifica Foundation.

7 3. Attached as Exhibit A is a memorandum dated January 19, 2001, attaching a draft set
8 of bylaws. I distributed this memorandum and draft set of bylaws to the members of the Board of
9 the Pacifica Foundation. I prepared this draft solely to initiate a discussion regarding the bylaws
10 and invited comment on the draft. In fact, the memorandum specifically states: "This is a
11 DRAFT for discussion ... I strongly urge all members of the Board to cast widely for comments
12 and suggestions on the bylaws."

13 4. Attached as Exhibit B is a memorandum dated February 13, 2001, which I
14 distributed to the members of the Board of the Pacifica Foundation. This memorandum discussed
15 the agenda for the Governance Committee meeting that occurred during the March Board
16 meeting. Specifically, in numbered paragraphs 2 through 4 on the first page, it provided that the
17 Governance Committee agenda would include the following items: "Discuss and vote on which
18 four provisions of the draft bylaws to work on first for development of a second draft to be
19 circulated for further specific comments and suggestions." It also provided, on page 2, that "This
20 is only the first draft. There will, no doubt, be many more, so that there will also be plenty of
21 opportunities for one and all to make suggestions about specific proposed bylaw revisions."

22 5. Pursuant to Article Nine of the current bylaws of the Pacifica Foundation (attached
23 hereto as Exhibit C), the bylaws of the Pacifica Foundation "may be amended, altered or
24 repealed in whole or in part" only if "the proposed changes have been submitted to each member
25 of the Governing Board with the notice of the meeting." No such action preceded the meeting.

26 6. No vote to amend the Bylaws occurred at the March 3 and 4, 2001 Pacifica
27 Foundation Board meeting. What did occur was that the Governance Committee and the full
28 Board voted unanimously upon a process to review, revise and ultimately amend the bylaws. The

1 process is described in the text of the resolution as read into the record of the meeting. The
2 relevant portion of the transcript is attached hereto as Exhibit D. I anticipate that this process
3 will be a lengthy one and that it may take over a year before the Board will be ready to even
4 consider voting on amendments to its current Bylaws. There is no probability of any amendment
5 to the Bylaws in the near future (other than perhaps some *de minimus* or non-controversial
6 change dependent upon unanticipated circumstances). In any event, all Directors would have to
7 be given notice prior to any Board meeting at which an amendment to the Bylaws was to be put
8 on the agenda.

9 7. No new directors of Pacifica Foundation were elected at the March 3 and 4, 2001
10 Board meeting. However, director Robert Robinson was re-elected to the Board. No current
11 Directors of the Pacifica Foundation were removed at the March 3 and 4, 2001 Pacifica
12 Foundation Board meeting.

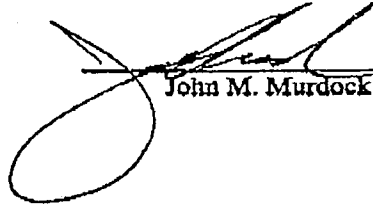
13 8. In the year 2000, the Pacifica Foundation office in Berkeley, California was moved to
14 Washington, DC. Pacifica also had a financial office in Los Angeles. To conserve resources and
15 enhance efficiency, the function of that office also will be consolidated in Washington, DC. The
16 location of that office has nothing to do with the availability of documents. Documents will
17 simply be in a different locale. Moreover, financial records of the Pacifica Foundation are being
18 placed into a computer system that will provide the managers of all five Pacifica stations with
19 real time access to those documents. Thus, the location of the hard copies of the documents in
20 Washington, DC will not harm the Plaintiffs. Conversely, maintaining the documents in Los
21 Angeles will be administratively and financially burdensome to the Foundation.

22 9. It is true that, some time ago, a single member of the Board drafted a memorandum
23 suggesting that the Board evaluate the possibility of selling a station. However, since then, the
24 Board has never taken any action to sell any station and I know of no plans to do so. By way of
25 example, attached hereto as Exhibit E is a press release dated July 19, 1999 by then Board Chair
26 Dr. Mary Frances Berry.

27 10. I have received almost *two thousand* threatening and hostile calls, e-mails, post cards,
28 faxes and letters from individuals purporting to support Plaintiffs' positions in this lawsuit.

1 Several examples of these materials are attached as Exhibit F. Similar individuals have made
2 obscene and threatening phone calls to my colleagues, at work and at home, and have engaged in
3 illegal activities such as storming into one of our firm's offices and refusing to leave until
4 escorted out by police and breaking into client briefings attended only by persons uninvolved
5 with Pacifica Foundation. Additionally, offensive and harassing materials are being
6 disseminated on the Internet. Several examples are attached as Exhibit G. Further, several
7 websites on the Internet are encouraging individuals not to donate funds to Pacifica and, instead,
8 to donate them to support Plaintiffs' lawsuit. Examples of these websites are attached as Exhibit
9 H.

10 I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct and that this Declaration was executed on March 29, 2001, in
12 Nashville, Tennessee.

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15 John M. Murdock
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