Summer Reese
449 – 43rd St.
Richmond, California 94805
(510) 680-5019
Cross-defendant in pro. per.

SUPERIOR COURT OF STATE OF CALIFORNIA, COUNTY OF ALAMEDA

RENE C. DAVIDSON COURTHOUSE, UNLIMITED CIVIL JURISDICTION

PACIFICA DIRECTORS FOR GOOD GOVERNANCE, an Unincorporated Association;

Plaintiff

v.

PACIFICA FOUNDATION RADIO, a California Nonprofit Public Benefit Corporation;

RODRIGO ARGUETA, LYDIA BRAZON, JIM BROWN, ADRIANA CASENAVE, BENITO DIAZ, BRIAN EDWARDS-TIEKERT, JOSE LUIS FUENTES, LAWRENCE REYES, CERENE ROBERTS, and MARGY WILKINSON ; as individuals and in their official capacities as members of the Board of Directors of Pacifica Foundation Radio, a California Nonprofit Public Benefit Corporation; and

HANK LAMB and TONY NORMAN, as individuals and Directors de facto of said Corporation;

Defendants

PACIFICA FOUNDATION RADIO,

Cross-complainant

v.

Summer Reese, and "ROES" 1 to 100, inclusive

Cross-defendants

Case No. HG14720131

NOTICE OF MOTION AND MOTION TO STRIKE ALL DOCUMENTS FILED HEREIN FOR ALAN YEE AND/OR SIEGEL & YEE AS ATTORNEYS OF CROSS-COMPLAINANT OR, IN THE ALTERNATIVE, TO DISMISS THE PURPORTED APRIL 25, 2014 CROSS-COMPLAINT ;

DECLARATION OF SUMMER REESE ;

POINTS AND AUTHORITIES IN SUPPORT OF MOTION

Date: 02/11/2015
Time: 9:00 a.m.
Dept: 15
Judge: Hon. Ioana Petrou

Reservation #: R-1574623

To Alan Yee, Purported Attorney for the Cross-complainant in the Above Captioned Matter:

PLEASE TAKE NOTICE that on February 11, 2015 at 9:00 a.m. or as soon thereafter as

the matter can be heard, Summer Reese ("Reese"), the cross-defendant in said matter, will appear in Department 15 of the Court, situated at 1221 Oak Street, Third Floor in Oakland, California and will move for an order striking all documents filed herein for Alan Yee and/or Siegel & Yee as attorneys of Cross-complainant or, in the alternative, to dismiss the purported April 25, 2014 cross-complaint.

Said motion is made on the grounds that because the June 3, 2014 order purports notice was given that the Board of Directors of Pacifica Foundation Radio ("PFR") would meet on March 13, 2014 for the purpose of "decid[ing]" (June 3rd order) whether Reese should remain employed as Executive Director thereof and because March 13th notice is devoid of such term but only gives notice "discussion" (*id.*) would be held regarding personnel matters at that meeting and because nine Directors de jure nevertheless cast votes to terminate her employment and because seven cast theirs in opposition while three more were not notified such action was proposed but only "discussion" would be held, therefore, said meeting was unauthorized and unlawful and the April 25th cross-complaint alleging Reese was thereby "discharged from Foundation employment" (*id.*, p. 2, lines 8—9) is a sham and should be stricken from the records of the above entitled Court.

Said motion is made on the grounds that because interpretation of the November 15, 2013 Contract (or Nov. 11, 2013 "offer letter") offered Reese permanent employment "subject to completion of a background check as approved by the [Board]" is governed by rules of grammar providing the *completion* as the nearest antecedent is the condition to which she was subject and because the above quoted phrase has no comma that if placed between *check* and *as* would indicate the Board must approve the check and because a corporate board need not formally vote to take action and Cross-complainant's Bylaws and parliamentary law so provide and because the said November 15, 2013 Contract provided the-then (acting) Board chair Heather Gray would complete the check and because the January 30, 2014 Contract is to be interpreted with the implied covenant that Board secretary Richard Uzzell sign it as a matter of legal necessity (Corp. Code § 5214) and without such covenant that the Board formally vote to approve it as to which there is no legal necessity and because the National Office of Cross-complainant was unoccupied on March 17th, therefore, under Civil Code § 3495 Reese could remove Defendant-individuals' nuisance-causing lock from the outside door thereof as she did on March 17th and could then continue performing her contractual duties and mitigate damages resulting from their said March 13th vote and installation of said lock and the April 25th cross-complaint about her removal thereof and alleged torts on her part is a sham and should be stricken.

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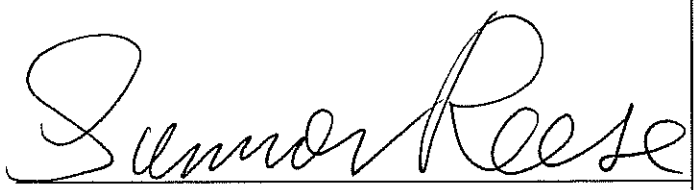
Said motion is made on the further grounds that because some or all of the 12 Defendant-individuals held a secretive meeting on April 14, 2014 from which 10 members of the 22-seat Board were excluded and because some or all of those 12 voted to initiate a process whereby Siegel & Yee would be retained to represent Cross-complainant and because two of those 12 are Directors de facto lacking the power to cast a lawful vote and because another of those 12 is an attorney employed by the same firm who may not have attended the April 14th meeting and could not cast a vote for such retention in any event and because (as alleged in Reese's declaration) a possible maximum of 10 Directors de jure could have attended the meeting with only 9 Directors de jure casting a vote to initiate such process and because Cross-complainant cannot take action without the presence of 12 Directors de jure, therefore, the said April 14th vote of no more than 9 Directors to delegate Cross-complainant's authority to legally represent it was not authorized by Cross-complainant nor was any act ensuing thereon so that all documents filed herein for Siegel & Yee as though having the authority to represent Cross-complainant herein are void and should be stricken from the Court's records.



Summer Reese, Cross-defendant in pro. per.

DECLARATION OF SUMMER REESE

I, Summer Reese, declare as follows:

1. I am the cross-defendant in the above captioned matter.

2. The purpose of this Declaration is to allege facts in support of my Motion to Strike All Documents Filed Herein for Alan Yee and/or Siegel & Yee as Attorneys of Cross-complainant or, in the Alternative, to Dismiss the Purported April 25, 2014 Cross-complaint.

3. Since that cross-complaint was filed, I have agreed to stay away from the National Office of Pacifica Foundation Radio, which is named as a defendant and the cross-complainant.

4. Abiding by my agreement to do so and also as a result of the preliminary injunction issued June 3, 2014, I have been without gainful employment and left with only very modest financial means to provide the necessaries of life for myself and my child, who is a minor. Under these circumstances, I have been unable to acquire the means of pro bono legal aid enabling me to present to the court the arguments in my May 30, 2014 Reply until just three days before. As soon as attorney Jacobson and his assistant finished reviewing the Reply, I began preparing the request for

waiver and Substitution of Attorneys filed May 28, 2014.

5. Once the request was granted and it and the Substitution were filed, I submitted the Reply. I did wish to respect the May 20th deadline in Judge Petrou's May 12th order. However, the difficult circumstances hindered my efforts to do so.

6. The website on which agenda and minutes of Board of Directors and other governance bodies of PFR are uploaded is at: www.kpftx.org. On March 13, 2014, about 11:45 p.m. EST, Jose Luis Fuentes, a member of the California State Bar (#192236), moved to terminate my employment immediately, and without any notice appearing such corporate action would be taken on that date.

7. Mr. Fuentes also did so without ever making any attempt to comply with any of the requirements contained in Article V of my January 30, 2014 Contract. At no time did I ever receive any formal complaint with respect to my on-the-job conduct or performance during my 19-month tenure, or any have any opportunity under Article V of the Contract. Nor did I breach the Contract.

8. Within moments after Mr. Fuentes made his March 13th motion, the Defendant-individuals—Rodrigo Argueta, Lydia Brazon, Jim Brown, Adriana Casenave, Benito Diaz, said Jose Luis Fuentes, Hank Lamb, Tony Norman, Brian Edwards-Tiekert, Lawrence Reyes, and Cerene Roberts—cast a vote, or purported vote, in favor. Margy Wilkinson, presiding, cast no vote.

9. The seven following individuals, the majority of whom are of Pacifica Directors for Good Governance ("PDGG"), which is the Plaintiff-association, voted in opposition to Mr. Fuentes's said motion: Carolyn Birden, Janet Coleman, Heather Gray, Kim Kaufman, Janet Kobren, George Reiter, and Richard Uzzell. Three additional Directors of Defendant-corporation were absent at the time the vote was taken on Fuentes's said motion. Those three, who are also of PDGG, are: (1) Janis Lane-Ewart, whose absence was excused; and (2) Luzette King, who was in attendance until she disconnected from the meeting in protest of Fuentes's unnoticed motion, entertained without regard to any procedure required in Article V of my Contract. Finally, (3) Manijeh Saba was absent from the March 13th meeting because she was not notified such action would be proposed or discussed, much less voted upon. In subsequent conversations between me and each of the three last-mentioned individuals, I was told I am the rightful Executive Director of PFR and would be supported in my rightful claim for that office. Further, I believe all ten of the above referenced directors are Directors de jure.

10. Therefore, I believe that if notice of action regarding my employment had been posted as to the March 13th meeting, ten lawful votes would then have been cast in opposition to Mr. Fuentes's said motion, and nine such votes in opposition thereto. And as the purported chair, Margy

Wilkinson would not be authorized to cast any vote, as it would not affect the result, i.e., failure of Mr. Fuentes's motion in either case.

11. Visiting www.kpftx.org on or about April 15, 2014, I learned that a "Pacifica National Board Meeting" had been held "April 14, 2014" by and for the defendants in this case. I believe the April 14th meeting was held telephonically. To hold that meeting, the Defendant-individuals used a telephone number that PFR had never before used. I believe their selection of a phone number is part of a voting agreement made between and among them. None of those nine attended any part of such April 14th meeting. No member of PDGG, whether in or out of meeting, has ever consented to the hiring of Siegel & Yee to represent PFR or to initiate any process whereby that firm would be hired or retained.

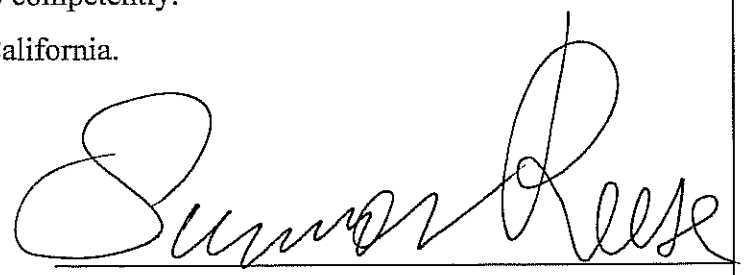
12. Based on the foregoing, I believe that the greatest number of Directors de jure who could have voted to initiate the process whereby Siegel and Yee was retained to represent PFR was ten. This total excludes two Directors de facto: (1) Mr. Norman, who is a Director de facto for reasons already explained, and (2) Mr. Lamb who I believe is barred by requirements of the Federal Communications Commission pertaining to any person, who has a public record like his, from serving on the governing body of a radio operator.

13. In addition, I believe Mr. Fuentes's vote was self-interested and unlawful, so that only nine lawful votes were cast in favor of initiating that process. At no time was any step attempted to determine if such self-interested action should be taken, or to disclose it in the minutes.

VERIFICATION (Code Civ. Proc., §§ 446 and 2015.5)

I, Summer Reese, declare that the foregoing is true and correct, except as to matters stated on information and belief and as to those matters I believe it to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and if called upon to testify thereto I could and would do so competently.

Executed on January 20, 2015 at Richmond, California.



Summer Reese

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TABLE OF AUTHORITIES

OF MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO STRIKE ALL DOCUMENTS FILED HEREIN FOR ALAN YEE AND/OR SIEGEL & YEE AS ATTORNEYS OF CROSS-COMPLAINANT OR, IN THE ALTERNATIVE, TO DISMISS THE PURPORTED CROSS-COMPLAINT

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Other Secondary Authorities

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO STRIKE ALL DOCUMENTS FILED HEREIN FOR ALAN YEE AND/OR SIEGEL & YEE AS ATTORNEYS OF CROSS-COMPLAINANT OR, IN THE ALTERNATIVE, TO DISMISS THE PURPORTED CROSS-COMPLAINT

The instant motion being prompt avoids estoppel to challenge the presumption that Siegel & Yee represents PFR. (See *Pacific Paving Co. v. Vizelich* (1903) 141 Cal. 4, 8.) Motion to strike is the usual method. (*Sullivan v. Dunne* (1926) 198 Cal. 183; *People v. Honey Lake Valley Irr. Dist.* (App. 3 Dist. 1926) 77 Cal.App. 367.)

The court has inherent power to strike or dismiss a complaint when it is made to appear by extraneous evidence that it was sham and based on false allegations. (*Vallejo v. Montebello Sewer Co.* (App. 2 Dist. 1962) 209 Cal.App.2d 721, 729—730.) See Reese Declaration, *supra*.

Moreover, the presumption of an attorney's authority to appear on behalf of a client is rebuttable (*Slack v. Slack* (App. 2 Dist. 1966) 241 Cal.App.2d 520). It may be weighed against evidence to the contrary (*Gagnon Co. v. Nev. Desert Inn* (1955) 45 Cal.2d 448; *Parkside Realty Co. v. MacDonald* (1914) 167 Cal. 342).

Where Cross-complainant did not authorize the delegation of authority to act, leading to the purported retention of Siegel and Yee and/or Alan Yee, all documents filed by said attorneys on behalf of Cross-complainant should be stricken. (*Asbestos Claims Facility v. Berry & Berry* (App. 1 Dist. 1990) 219 Cal.App.3d 9, 19 [courts have inherent supervisory and administrative powers enabling them to carry out their duties]. Accord, *First State Ins. Co. v. Superior Court (Jalisco Corporation, Inc.)* (App. 2 Dist. 2000) 79 Cal.App.4th 324, 334.) Alternatively, where the April 25, 2014 Cross-complaint herein is a sham, it should therefore be stricken from the Court's records.

1. Ineligibility of Tony Norman to cast a vote on April 14, 2014 on whether to delegate task of Selecting and hiring counsel to represent PFR, or at any time since at least January 30, 2014

On June 3rd the Court "reject[ed] Reese's argument that Tony Norman was ineligible to serve on the PFR board and that his presence on the board made any decision to discharge Reese a 'nullity'."

As a contract of association between PFR and the members thereof (see *Hispanic College Fund, Inc. v. Nat. Collegiate Athletic Assn.* (Ind.App. 2005) 826 N.E.2d 652, 658 [nonprofit bylaws constitute contract between corporation and its members and among members themselves]; *Schroeter v. Bartlett Syndicate Bldg. Corp.* (1936) 8 Cal.2d 12, 14 and cases cited therein [for-profit corporation's bylaws constitutes contract with members thereof]; *Stolow v. Greg Manning Auctions Inc.* (S.D. N.Y. 2003) 258 F.Supp.2d 236, 249 [same]), the PFR Bylaws set the eligibility

requirements to campaign for and hold a Director-seat. Among these requirements is:

> [N]o person who holds any elected or appointed public office at any level of government -- federal, state, or local -- or is a candidate for such office, shall be eligible for election to the position of Director. A Director shall be deemed to have resigned the position of Director if s/he becomes a candidate for public office or accepts a political appointment during his or her term as a Director. . .
> PFR Bylaws, art. 5, § 1, ¶ B.

Based on the points and authorities in Reese's May 30th Reply (see *id.*, pp. 2—4), and as further alleged in her Declaration, *supra*, said Tony Norman ("Norman"), at the time he submitted his declaration of candidacy, did indeed resign from any Director-seat of PFR, by reason of his simultaneous holding of "public office."

Generally, members of boards or commissions, which like ANC are not incidental or temporary, have been historically regarded as "public officers." (*Wharton v. Everett* (Del.Super.Ct. 1967) 229 A.2d 492, 494.) In *State ex rel. Webb v. Pigg* (1952) 249 S.W.2d 435, the Supreme Court of Missouri said:

> If specific statutory and independent duties are imposed upon an appointee in relation to the exercise of the police powers of the state, if the appointee is invested with independent power in the disposition of public property or with power to incur financial obligations upon the part of the county or state [e.g., **employ staff and expend, for public purposes . . . , public funds pursuant to D.C. Code § 1-207.38(c)(1)**], if he is empowered to act in those multitudinous cases involving business and political dealings between individuals and the public [e.g., **advise the government on public policy matters pursuant to § 1-207.38(c)(3)**], wherein the latter must necessarily act through an official agency [e.g., ANC], then such functions are a part of the sovereignty of the state. (Citations omitted.) . . .
> *State ex rel. Webb v. Pigg* (*supra*) 249 S.W.2d at 438.

A seat on the ANC is "public office" because it was created by statute (D.C. Code § 1-207.38) and filled by public election. (Cf. *Howard Jarvis Taxpayers' Assn. v. Fresno Metropolitan Projects Authority* (App. 5 Dist. 1995) 40 Cal.App.4th 1359, 1383—1388 [authority was not public where it was in all but one respect public, i.e., 11 of 13 directors were chosen by private entities having no public accountability so that public lacked control].) Under subparagraphs (1) and (3) of § 1-207.38(c) of the D.C. Code, *supra*, ANC does perform part of the sovereign function of the District of Columbia in employing staff and expending public funds, irrespective of ownership of facilities used by ANC (see *Board of Directors v. Nye* (App. 3 Dist. 1908) 8 Cal.App. 527, 532—533). The June 3rd finding about Reese making "no showing that the Washington DC Advisory Commission has been delegated any portion of the sovereign functions of government" must be reversed.

The meaning of "public office" in the Bylaws is controlling; that of "Advisory" in the title of the ANC is of no consequence. Modest as an Advisory Neighborhood Commission may be in the body politic, it did (and does) exercise part of D.C.'s sovereign function. (See, e.g., *McCarthy v. State* (Ariz. 1940) 101 P.2d 449, 452 [membership on a welfare board is public office])

Norman, a Pennsylvania active attorney at law, had constructive notice that the ANC on which he served may perform the aforesaid sovereign functions is "public office" under PFR Bylaws, art. 5, § 1, ¶ B, which has been consistently and positively interpreted and (prior to Norman) enforced by directors and officers of PFR to include such "public office" as a commissionership of the D.C. Advisory Neighborhood Commission. The Court's finding in support of its construction, which is to opposed PFR's said interpretation of its own Bylaw, must be reversed. (See *Williams v. Board of Realtors* (App. 2 Dist. 1963) 219 Cal.App.2d 479, 487—478 [citing C.J.S. § 183, p. 595].)

The Court's acceptance of Cross-complainant's argument ratifying Norman's claim to a Director-seat, also violates "well-settled law that, . . . , [w]hen one party performs under the contract and the other party accepts his performance without objection it is assumed this was the performance contemplated by the agreement." (*Bohman v. Berg* (1960) 54 Cal.2d 787, 794—795; underline added.) There is no dispute that on February 22, 2013, Luzette King, a PFR Director de jure, "moved that the Pacifica Foundation Board declare that Tony Norman be judged to be an elected public official and therefore he is not qualified to be seated on this Board." (PFR Board minutes, Feb. 22—25, 2013, p. 1.) The Court's finding that Norman was not "elected" but appointed ignores the Bylaws, which make no such distinction. And the Court's acceptance he could simultaneously hold a Director-seat and ANC commissionership over King's said objection does not support a finding of assumed performance, which may be found as to contracting parties who "without objection . . . assumed this was the performance contemplated by the agreement" (*Bohman v. Berg* (1960) 54 Cal.2d at 794—795; underline added). The findings are erroneous.

Further, Cross-complainant's fraudulent procurement of said findings—in violating that eligibility requirement of PFR's contract of association, i.e., the Bylaws—is prejudicial to the rights of PFR's estimated 80,000 members who are parties to said contract. (See *Braude v. Havenner* (App. 1 Dist. 1974) 38 Cal.App.3d 526, 530 [because nonprofit corporations generally do not issue stock, the ultimate governing interest rests with members rather than with shareholders]; see *Braude v. Automobile Club of Southern Cal.* (App. 5 Dist. 1986) 178 Cal.App.3d 994, 1015 [court's scrutiny and invalidation of bylaw upon Court of Appeal's order bylaws be revised to give "approval to a fair and legal method for the election of directors satisfactory to both management and membership"].)

Norman was not voted into a Director-seat by unanimous vote. Hence there can be no assumed performance (*Bohman v. Berg, supra*) by the members, whose rights are thereby affected, somehow accepted it without objection. (Cf. 14 Ops.Cal.Atty.Gen. 160 [provisions of a corporate bylaw may be waived if the members consent to have it disregarded by the directors].) Nor could the directors assume such performance, even assuming *arguendo* all of them purportedly accepted it notwithstanding members' rights, by reason of members' ultimate governing interest and of the directors' adoption of parliamentary law which recognizes that a continuing breach of order can be raised "at any time during the continuance of the breach" (RONR § 23, p. 251; see *McFadden v. Board of Supervisors of L.A. County* (1888) 74 Cal. 571 [a member of a corporation is bound by the articles and bylaws of thereof, whether he has signed them or not].)

In sum, although the allegation about Cross-defendants "caus[ing] profound damage to interstate and international commerce, affecting business and individuals throughout the country" (Cross-complainant's Apr. 25th Memorandum, p. 4, lines 21—23) has been shown to lack factual foundation, a statement of that magnitude instead appears befitting of Cross-complainant's fraudulent inducement of the Court to find Norman somehow did not simultaneously hold "public office," and of attorney Yee's apparent personal appropriation of the judicial machinery to undermine that bylaw and to threaten the institutional integrity of PFR. (Re opposing counsel's conflict of interest in defending the integrity of Bylaws, whose drafting was shepherded by S & Y, with that of Yee's representation of Norman, Reese intends to file motion for disqualification.)

2. The November 15, 2013 Contract—properly construed, notwithstanding the June 3rd Findings—paved the agreed-upon way to the January 30, 2014 Contract

a. Rules of grammar and contractual interpretation governing said November 15, 2013 writing

The June 3rd order states in part: "Reese's assertion that the phrase 'subject to the completion of a background check as approved by the PNB' meant only that the board approved the requirement of having a background check completed - and not that the board would actually have to approve the results of that check - remains unpersuasive."

The subordinate clause, "as approved by the PNB" means the check would be completed in the manner approved by the "PNB" or Board. (May 30th Reply.)

> The meaning usually attributed to such words as 'subject to' is that a promise that is so limited is a conditional promise, one that is different from that for which the offeror bargained. (Citations omitted.) . . .
> *Lawrence Block Co. v. Palston* (App. 2 Dist. 1954) 123 Cal.App.2d 300, 310.

(And it appears if the check of Reese's background had not been completed as approved by the

Board, her claim of contract would lack an essential element of contract, i.e., mutual assent. *Trew v. Internat. Game Fish Assn.* (N.D.Cal. 2005) 404 F.Supp.2d 1173, 1177—1178.)

Cross-complainant misconstrues the language of the 2013 Contract, and the June 3rd order purports to sustain that misconstruction. Reese's completion of the check is *not* "subject to" approval of the Board. Cross-complainant's misconstruction of that phrase disregards the rule of grammar defining the prepositional phrase *subject to completion*, wherein the phrase *subject to* precedes the noun *completion*. (*Connecticut Ins. Guar. Assn. v. Drown* (Conn.App. 2012) 37 A.3d 820, 826—827 [relative and qualifying or modifying words should be referred to the word with which they are connected]; *United States v. Hagerman* (N.D. N.Y. 2011) 827 F.Supp.2d 102, 113 [same].)

In addition to the last-antecedent rule, a rule of statutory construction—and generally, of contractual interpretation—provides that if a comma is present between a modifying clause and a preceding clause, the comma indicates the modifying clause was intended to modify all preceding and not only the last antecedent. (*Orthopedic Sys., Inc. v. Schlein* (App. 1 Dist. 2011) 202 Cal.App.4th 529, 545, citing *White v. County of Sacramento* (1982) 31 Cal.3d 676, 680 [evidence that "a qualifying phrase is supposed to apply to all antecedents instead of only to the immediately preceding one may be found in the fact that it is separated from the antecedents by a comma."].) Thus, if a comma were present between *background check* and *as approved by the PNB* in the language of 2013 Contract, the comma would signify *approval* is required of all preceding clauses, including the one beginning with the word *completion*.

The April 25th cross-complaint and June 3rd order insert a comma into that contract which simply isn't there. The earlier phrase *subject to* does <u>not</u> modify *as approved by the PNB*, but <u>only</u> the immediately succeeding noun *completion*. The 2013 Contract calls for *completion* of the check as approved by the Board. (And, "as" means *in the manner of*; see May 30th Reply.)

b. Gray's duty to complete the background check

Under the November 15, 2013 Contract (hereinafter, "the 2013 Contract"), Gray had a duty to complete the background check and Reese had an implied duty to cooperate with Gray in that regard:

> A bilateral contract may bind the parties to enter into another contract in the future. If the parties both fulfill their obligations, two successive contracts will be formed. The second contract may be either bilateral or unilateral. . . The performances of the mutual promises in the preliminary contract are the exchange for one another. Neither of these performances is the exchange for a performance under the subsequent contract. . . . [¶] . . . [¶] . . . In the case of fraud (citation omitted), or such mistakes as justifies rescission, and even in the case of a material breach of the promise in the

> preliminary contract, the second transaction should be set aside and rescission allowed, if the parties can be put in *statu quo*, but not otherwise. (Citation.) Williston on Contracts (4th ed. 2000) § 44:31, pp. 149—151.

Pursuant to the 2013 Contract, a special committee was created with Reese, Gray, and such PFR employee(s) as Gray might have called upon to assist in performing the check, which was completed January 10, 2014. (See RONR § 50, p. 492 [formation of special committee]. Cross-complainant, though alleging the 2014 Contract is "fraudulent", does not seek rescission thereof. Notwithstanding the above quoted treatise, the April 25th cross-complaint seeks only noncontractual remedies. (See Reese's June 9th Memorandum, p. 14, line 8—p. 15, line 4.)

c. Reese committed no violation of law

Assuming she had no personal interests in becoming Executive Director which were not common to other Directors, Reese could have voted in the November 8, 2013 election by which she was elected to that position (RONR § 45, pp. 407—408). Knowing Executive Director to be a paid position, she abstained from voting in that election, in which she was elected by only 11 votes, one greater than the number of votes received by her opponent. (And Jessica Apollinar, then a Director who voted for Reese's opponent in that election, has since reversed her position. With unanimous consent of the Board, including five members thereof who are Defendant-individuals herein, Apollinar could have so changed her vote. RONR § 45, p. 408. Apollinar did assent to ratification of the Jan. 30, 2014 Contr., which therefore received the assent of a majority of 12.)

Reese assented to the January 10, 2014 completion of her background check and the PFR Board's acceptance of the special committee's report thereof. (Declaration, *supra*.)

Reese abstained from voting to approve the January 30, 2014 Contract (RONR § 45, pp. 407—408) due to the imminent (Jan. 30th) expiration of her term as Director, so that she could not vote whether to approve said Contract without engaging in a self-dealing transaction. (See Corp. Code § 5233(b)(1) [excluding from definition of self-dealing transaction the fixing of the compensation "of a director" as a director or officer of the corporation]; *Anderson v. Calaveras Central Mining Corp.* (App. 3 Dist. 1946) 13 Cal.App.2d 338, 346—347 [under bylaws requiring formal vote to set corporate president's salary, president could vote thereon and effect adoption thereof, provided salary was fair].) Under normal procedures in the nonprofit and other sectors, she was not invited to, nor did she participate in every meeting at which her 2014 Contract was approved or ratified; she had no opportunity to personally discuss with every Director each provision in the 2014 Contract different from the 2013 Contract.

The Court need make no further inquiry but, inasmuch as fraud is not presumed, can and should adhere to the presumption the PFR Board informally took action ratifying Reese's January 30, 2014 Employment Contract. (Re said presumption, see p. 9, lines 4—p. 10, line 32, *infra*; *Pixley v. W. P. R. R. Co.* (1867) 33 Cal. 183.) Notwithstanding the foregoing, and based on points and authorities hereinafter alleged, both Contracts are valid and enforceable, notwithstanding Cross-complainant's election of purported noncontractual remedies and the Court's purported June 3rd order.

3. The June 3rd order applies an incorrect standard with respect to the agency relationship Of Gray and Uzzell to PFR at the time it entered into the January 30, 2014 Contract

> Second, the Court rejects Reese's argument that her purported January 30, 2014 employment agreement (the terms of which were not authorized or approved by a majority of the PFR board) is legally binding on PFR. As a party to both the November 11, 2013 offer letter and the materially different January 30, 2014 purported employment contract, the Court is not persuaded that Reese could have reasonably believed Richard Uzzell and Heather Gray had actual or ostensible authority to enter the January 30, 2014 contract on behalf of the PFR board. . . Court's June 3rd order (stating here a standard broader than actual knowledge; see *Government Employees Ins. Co. v. Kinyon* (App. 4 Dist. 1981) 119 Cal.App.3d 213, 220—221)

a. Corporations Code § 5214 sets the standard defining agency relationship of agents of a nonprofit public benefit corporation executing a written instrument on its behalf

Attached to and in support of Reese's May 30th General Demurrer is a request to take judicial notice of the articles of incorporation of Cross-defendant, which therefore the Court's record showed was a nonprofit public benefit corporation at the time Judge Petrou made her June 3rd order. (PFR is not a "charitable corporation or unincorporated association" as would be required to take certain formal steps in initially hiring the Executive Director (Corp. Code § 5213(a); Gov. Code § 12586(g)). Although qualifying under the broad definition of "charitable corporation" (*Lynch v. Spilman* (1967) 67 Cal.2d 251, 260—261), PFR is "organized and operated primarily operated as a[n] . . . educational institution . . . " (Gov. Code § 12583).)

Moreover, the Court's June 3rd finding applies the wrong standard with respect to knowledge on the part of Reese. There is no dispute that at the time the said January 30, 2014 Contract was signed, Heather Gray was(acting) chair of the Board of Directors of PFR and Richard Uzzell the secretary thereof. And if all of the elements in Corporations Code, § 5214 existed with respect to the 2013 and January 30, 2014 Contracts (hereinafter "2013 Contract" and "2014 Contract," resp.), conclusive evidence exists as to Gray and Uzzell's authority. (See *Snukal v. Flightways Mfg., Inc.* (2000) 23 Cal.4th 754, 784, fn. 11 [construing the "nearly identical language" of Corp. Code § 313, §

5214, § 7214, and § 12354].) But, ordinarily, " '[t]he law indulges in no presumption that an agency exists but instead presumes that a person is acting for himself and not as agent for another.' " (*K. King and G. Shuler Corp. v. King* (1968) 259 Cal.App.2d 383, 393 disapproved on another point in *Liodas v. Sahadi* (1977) 19 Cal.3d 278, 290.)

Under Corporations Code § 5214, however, a contracting party need not "reasonably believe" the two other signatories had actual or ostensible authority as agents of the nonprofit public benefit corporation. Rather, § 5214's standard is that the contractor have no actual knowledge about "any lack of authority of the signing officers" to represent the corporation to execute a contract or other written instrument. (Cf. June 3rd order's purported standard as to whether Reese could have "reasonably believed Richard Uzzell and Heather Gray had actual or ostensible authority. . ."; see *Doe 2 v. Superior Court (Calkins)* (2005) 132 Cal.App.4th 1504, 1517 [""A trial court abuses its discretion when it applies the wrong legal standards applicable to the issue at hand.' [Citation.]"].)

Cases wherein one contracting party actually knew of any lack of authority of the signing officers are quite unlike the instant case. (See, e.g., *Hatfield v. Control Sys., Internat.* (D.S.C. 1997) 21 F.Supp.2d 546, 550, affd. 155 F.3d 558 (4th Cir. 1998); *Bayless v. Christie, Manson & Woods Internat., Inc.* (10th Cir. 1993) 2 F.3d 347, 353 [third party's knowledge of limitation of terms of consignment agreement with no known enhancement of terms]; *Sphere Drake Ins. Ltd. v. All Am. Life Ins. Co.* (N.D.Ill. 2003) 300 F.Supp.2d 606, 619—620 [even though no custom expected third party to know ceiling limit on ins. premium, insurer's concession agent knew premium was excessive triggered third party's duty of inquiry]; *Sipes v. Kinetra, LLC* (E.D.Mich. 2001) 137 F.Supp.2d 901, 907—908, affd. 55 Fed.Appx. 322 (6th Cir. 2003) [LLC's CEO acted without apparent authority in granting equity to executive when executive had reviewed copy of LLC's formation agreement, under which CEO lacked unilateral authority to grant equity]; *Streetman v. Benchmark Bank* (Tex.App. 1994) 890 S.W.2d 212 [bank executive did not have apparent authority to promise customers bank would honor all overdrafts on customers' account when customers knew banks have lending limits and thus executive's authority would be subject to limits]; *Armagas Ltd. v. Mundogas S.A.* (1986) 1 A.C. 717, 777—778 (H.L.) [third party who knew agent, a corporate vice president, lacked authority to bind corporation to a ship charter for three years, could not rely on vice president's bare claim to such authority where no representation to augment the appearance of authority was made for which corporation's senior management was accountable]. See, generally, Rest.3d Agency § 2.03, pp. 129—130.)

Neither a matter of general knowledge (*Streetman, supra*), nor, as in other pertinent cases,

supra, could Reese have known of any written or other instrument purporting the chair and secretary of the PFR Board could not execute the 2014 Contract. Quite the contrary, the PFR Bylaws, the 2013 Contract, and Robert's Rules of Order Newly Revised (11th ed.) ("RONR"; PFR Bylaws, art. 16) all provide Gray had actual and apparent authority to complete the check of Reese.

b. Heather Gray's authority to act under the 2013 Contract providing for completion of check

While it's true a corporation does not act through individual directors but through its board of directors (*Lomes v. Hartford Fin. Serv. Group, Inc.* (App. 2 Dist. 2001) 88 Cal.App.4th 127, 133), an individual director can take action on behalf of the corporation with the consent of the board of directors thereof (*id.*). Moreover, by appointing Gray to conduct the check, the parties intended, by the 2013 Contract, not that a vote of the Board but that she, acting on behalf thereof, complete it.

The PFR Board could delegate its authority to act pursuant to the 2013 Contract and pursuant to discussion and negotiation among a majority of Directors de jure relating thereto, leading to the formation of the 2014 Contract. (Cf. *Lopez v. Charles Schwab & Co., Inc.* (App. 1 Dist. 2004) 118 Cal.App.4th 1224, 1230—1233; *Santandrea v. Siltec Corp.* (App. 1 Dist. 1976) 56 Cal.App.3d 525, 527.) Gray's said authority to act was also delegable where the Board had maintained its governing function with Reese as "acting" or "interim" Executive Director ever since August of 2012. (Corp. Code, § 5210 [all corporate powers exercisable under "ultimate" direction of the board].)

The Board's delegation to Gray to the authority to conduct the check under the 2013 Contract, at which time no allegation of any controversy existed with respect thereto, elucidates the intention of the parties thereto (*McManus v. Sequoyah Land Assn.* (App. 1 Dist. 1966) 240 Cal.App.2d 348, 354 [it is a well-established rule in California that the acts of the parties under and pursuant to an instrument afford one of the most reliable means of arriving at their intention].) Among the duties of chair are "[t]o expedite the business in every way compatible with the rights of members," and "[t]o authenticate by his or her signature, when necessary, all acts, orders, and proceedings of the assembly." (RONR § 47, p. 450.) Gray was obligated to complete the check.

c. The PFR Board need not have formally voted to approve the 2014 Contract

With respect to the 2014 Contract, the Court's second finding in support of the June 3rd order notes: "(the terms of which were not authorized or approved by a majority of the PFR board)". This parenthetical note is apparently based on Cross-complainant's reliance on PFR Bylaws, art. 6, § 5, providing: "Except as otherwise expressly provided herein, the approval of a majority of the Board present and voting shall be required for any ac-tion [*sic*] of the Board."

As alluded in the June 3rd order, "approval" is the operative word in that Bylaw provision

(hereinafter "§ 5"). The prepositional phrase concludes, "of a majority of the Board present and voting". The phrase contains three terms: (1) "majority," (2) "present," and (3) "voting."

> In bylaws, every punctuation mark may have an important effect; and what is omitted may carry as much significance as what is included. . . .Each sentence should be written so as to be impossible to quote out of context; that is, either its complete meaning should be clear without reference to sentences preceding or following, or it should be worded so as to compel the reader to refer to adjoining sentences . . . RONR § 56, pp. 568—569. (Adopted by PFR; Bylaws, art. 16.)

§ 5, *supra*, cannot be construed in isolation, but its final sentences uses three terms requiring reference to related Bylaw provisions: "majority" is defined earlier in § 5 to mean the majority of a quorum, which in turn is defined with reference to art. 5, § 1, ¶ C. (See p. 11, *infra*.) And, "present" is defined with reference to art. 6, § 3 [telephonic meetings], so that the ordinary lay meaning of presence, i.e., physical presence, is not uniformly required under § 5.

Finally, § 5's "voting" qualifies, not what *must*, but what *may* be done by a "majority of the Board." § 5's requirement for a "voting" majority is no more literal than the other, similarly placed term "present" which need not be physical (art. 6, § 3, *supra*). But if less than a quorum of Directors remain at a meeting whence some of them have left, there is a substantive requirement that those remaining do vote on proposed action, such action being invalid unless "receiv[ing] at least that number of affirmative votes as would constitute a majority of a quorum," i.e., 7 Directors de jure.

Therefore, under the PFR Bylaws, there is *no* substantive requirement that each and every action, taken at a meeting where a quorum is present (whether physically or metaphysically), receive the majority vote of the quorum. One apparent purpose of § 5's term that a "voting" majority of the Board be "present" at meetings where valid action is taken is to exclude from the process of voting on a proposed action any Director having material financial interest therein. The Bylaw drafters contemplated such conflict, at least regarding unanimous written consent (art. 5, § 8). Another such purpose—also consistent with Reese's interpretation of the Bylaws and rendering no provision thereof nugatory—is to properly decide the voting result without counting the vote of anyone who is entitled to vote but absent, or who is ineligible to vote (as would pad or dilute the result). (See RONR § 44, p. 402 ["present and voting" are terms defining the set of members to which the proportion (majority) usually applies to reach voting decision].) If the drafters had intended a substantive requirement that valid action of PFR be taken at Directors' meeting only by the majority vote of a quorum of them, the drafters could and would have so specified in art. 6, § 5 as in § 1 of that same article. Cross-complainant's interpretation of § 5, insisting formal vote was needed to form the 2014

Contract, is without merit. (*Harrah's Entertainment, Inc. v. JCC Holding Co.* (Del.Ch. 2002) 802 A.2d 294, 309 [merely because the thoughts of the party litigants may differ relating to the meaning of stated language in a corporate instrument does not in itself establish in a legal sense that the language is ambiguous].)

From the PFR Board's retention of Reese as Executive Director on an acting or interim basis since August of 2012, and from the 2013 Contract by whose terms PFR was clearly proceeding towards retaining her in that position permanently, it was "very apparent" she would secure it at the time the said January 30, 2014 Contract was entered into. In such cases, the Board's parliamentary authority permits action taken *without any vote* but by unanimous consent. (RONR § 4, p. 56.) Nothing in the Articles or Bylaws of PFR, any standing order thereof, nor the Nonprofit Public Benefit Corporation Law hindered, obstructed, prevented or in any way estopped or otherwise prohibited the Directors from so expressing collective approval of Reese as permanent Executive Director as of January 30th, and at annual salary of $105,000.

Assuming *arguendo* the Board did not unanimously consent to the said 2014 Contract, Reese lacked the means of knowing Gray and Uzzell lacked any authority to enter it as would be required to invalidate it under Corporations Code § 5214. (*Consol. R. & P. Co. v. Scarborough* (1932) 216 Cal. 698, 703 (en banc) ["It is well settled, of course, that the means of knowledge are the equivalent of [actual] knowledge."]) Reese did not know what specific actions the Board took in closed session before arriving at the formation of the 2013 Contract. As the subject of discussion, she was not privy to every discussion. She does not have NSA-like technological ability to monitor a closed session which the directors of a "Not-for-Profit Corporation"—allegedly having "exclusive" management of five radio stations "across the country" (Apr. 25th cross-complaint, p. 2, lines 2—3)—could have held. Nothing prevented informal ratification of the 2014 Contract on January 30, 2014, prior to the election on the evening thereof, whereby Defendant-individuals claimed control of the Board.

d. The 2014 Contract is lawfully executed under Corporations Code § 5214

Therefore, lacking either knowledge, or the means to know, such unanimous consent was *not* reached, Reese lawfully entered into the 2014 Contract, undisputedly signed also by Gray and Uzzell as chair and secretary of the PFR Board, having the apparent (if not also actual) authority to do so. And where all of the elements in Corporations Code § 5214 exist with respect to the 2013 and 2014 Contracts, their existence is conclusive evidence as to Gray and Uzzell's authority to represent PFR in executing said Contracts. (See *Snukal v. Flightways Mfg., Inc.* (*supra*) 23 Cal.4th at 784, fn. 11.) The Court's said June 3rd finding (as all others made in support of the order, *infra*) is erroneous. (Cf.

In re Mediscan Research, Ltd. (9th Cir. BAP 1989) 109 B.R. 392, 396 [repeated rearrangement of party's contractual liability, made in complete disregard of representation made to investors, constituted common law fraud in resultant agreement made with respect to liability].)

e. Additional support for the foregoing conclusion, based in public employment law

This conclusion also finds support in the field of public employment (*Inglewood Teachers Assn. v. PERB* (App. 2 Dist. 1991) 227 Cal.App.3d 767, 776 (citing PERB Dec. No. 97: "The question of agency authority should be resolved by determining whether the employees had just cause to believe the supervisor or manager was acting with the apparent authority of the employer . . . even though the actions were not expressly authorized or ratified by the employer".)

4. The 2014 Contract's implied covenant is necessary, whereas The June 3rd order's inference of covenant is not

In the setting of the January 30, 2014 Contract (underlying the purported cross-complaint alleging only noncontractual remedies), California law provides additional support for the conclusion that the said Contract was executed. As a contract of employment of an officer of a nonprofit public benefit corporation, it is to be interpreted as if it had included in it provisions of the Nonprofit Public Benefit Corporations Law. (*Irey v. Len* (App. 2 Dist. 1961) 191 Cal.App.2d 13, 17—18 [interpretation of contract for work performed under Wherry Act on which it was silent].)

Under Corporations Code § 5214—a provision of that Law—the Court may infer a covenant that as Secretary, Uzzell was obligated to sign the Contract is necessarily an implied covenant, inasmuch as § 5214 required his signature, there having been no "assistant secretary, the chief financial officer or any assistant treasurer" of PFR at that time, so that Uzzell was then the sole officer in "'financial' category of officers" (23 Cal.4th at 785). (*Siva v. General Tire & Rubber Co.* (App. 4 Dist. 1983) 146 Cal.App.3d 152, 159 [regardless of his official title, managing agent is individual who has discretion to act in managerial capacity by making decisions that will ultimately determine corporate policy]. Cf. *People v. Internat. Steel Corp.* (L.A.Super. 1951) 102 Cal.App.2d Supp. 935 [corporate secretary, merely as such, is ministerial officer, without authority to transact corporate business upon his independent volition and judgment]).

Not being favored by the law, an implied covenant must meet a five-part test if a court is to infer such covenant (*Hinckley v. Bechtel Corp.* (App. 1 Dist. 1974) 41 Cal.App.3d 206, 211 [five-part test, citing *Stockton Dry Goods Co. v. Girsh* (1951) 36 Cal.2d 677]). Where Uzzell's signature is indispensable to effectuate the intention of the parties to the said 2014 Contract (pt. 1 of test), and where his secretarial or quasi-managerial (*People v. Internat. Steel Corp., supra*) duties are "such . . .

as may be prescribed by the Board or by the Bylaws" (*id.*, art. 9, § 8), his authorization of the Contract was so clearly within the contemplation of the parties under the 2013 Contract that its language provides for his mere "signature." (Pt. 2.) RONR, adopted by the PFR (*id.*, art. 16), provided Uzzell had duties "[t]o notify officers . . . of their election or appointment" and "[t]o furnish delegates with credentials" (RONR § 47, p. 459). Under Corporations Code § 5214, his signature on the 2014 Contract made it legally binding; therefore, an implied covenant exists that he sign it is a matter of legal necessity. (Pt. 3.) Based on Reese's 17-month tenure in the position and some Directors' apparent reluctance to finally hire her on a permanent basis, and on the apparent difficulties the PFR Board was experiencing in handling administrative matters generally, it can be rightfully assumed a promise or condition that Uzzell authorize, and not merely sign the 2014 Contract would have been included in the 2013 Contract had attention been called to it. (Pt. 4.) There being no dispute the parties did not fully express their intention in the 2013 Contract regarding each step in the process of screening and permanently hiring Reese, Uzzell's said duty to sign the 2014 Contract implies a covenant that he authorize it (Pt. 5; cf. RONR § 47, p. 459, *supra*).

On the other hand, that the Board take a formal vote on whether to hire Reese is not a matter of legal necessity. (See p. 6, line 17 et seq., *supra*.) California law supports the formation of the 2014 Contract without formal vote but signed by Uzzell as secretary or quasi-manager.

5. Notwithstanding the June 3rd finding, "decided," or any such word, appears nowhere In the notice of March 13, 2014 meeting, so that actions taken there are invalid

The third finding in support of the June 3rd order is that "the March 13, 2014 meeting notice posted on the PFR website - indicating that the agenda would be "discussion of matters pertaining to individual employees" - adequately notified the board of the topics to be considered and decided at that meeting."

There is no dispute that termination of the Executive Director is a matter of *un*usual business. In *Dolbear v. Wilkinson* (1916) 172 Cal. 366, the California Supreme Court considered the legality of a vague notice of meeting of corporate directors at which set the time for director elections at a time different from that specified in the bylaws. The high Court said:

> "[W]here unusual business is to be transacted even at a regular meeting, the notice of that meeting should state the unusual business" (Citations omitted.) Clearly, therefore, a special meeting will not be authorized to elect directors in the absence of a notice specifying that such election is one of the purposes of the meeting. (Citations omitted.)
> . . .
> 172 Cal. at 369.

The Supreme Court invalidated the election for want of notice thereof to all directors. Herein, notice was given only as to discussion (not proposed action, as purported in the June 3rd order) regarding personnel matters. Therefore, the Court should invalidate the purported action terminating Reese.

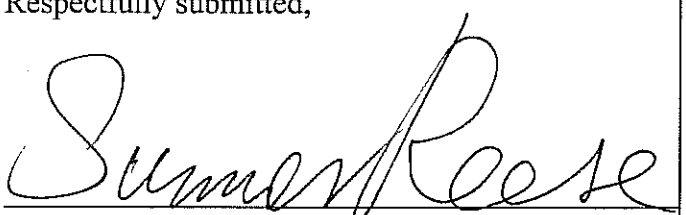
> Only moments after Fuentes stated his motion to terminate Reese did Wilkinson call the vote:
>
> It should be noted that, under legitimate parliamentary procedure, there is no such thing as "gaveling through" a measure. The right of members to debate or introduce secondary motions cannot be cut off by the chair's attempting to put a question to vote so quickly that no member can get the floor—either when the chair first states the question or when he believes debate is ended. Debate is not closed by the presiding officer's rising to put the question. . .
> RONR § 43, p. 387; underline added.

Wilkinson's gaveling through Fuentes's said motion is not legitimate parliamentary procedure. Further, there is no record of ratification of the March 13th vote purportedly terminating Reese. (See RONR § 9, p. 93.) Seven days' notice is required (Bylaws art. 6, § 4) of any meeting called for purpose of such ratification. After the March 13th vote, only one day elapsed until the March 14th lockout from the National Office, and only four days elapsed until Reese's March 17th abatement of the nuisance which Defendant-individual(s) apparently had installed on the outside door of said Office, so that she and PFR employees could return to work inside the Office. Therefore, the installation of a lock was not permitted under the Bylaws, which is the contract of association (*Schroeter v. Bartlett Syndicate Bldg. Corp.* (*supra*) 8 Cal.2d at 14 and cases cited therein) between and among all members of PFR, with whom the ultimate governing interest in PFR rests (*Braude v. Havenner* (*supra*) 38 Cal.App.3d at 530), and which binds each member whether or not the member signed it (*McFadden v. Board of Supervisors of L.A. County* (*supra*) 74 Cal. at 574).

Where neither the PFR Board nor chair thereof authorized delegation of authority to select and retain an attorney to represent PFR, striking all documents wherein Siegel & Yee purports to act in that capacity is warranted. Alternatively, dismissal of the April 25th cross-complaint will leave open other possible theories. (See, e.g., *Pat Rose Associates v. Coombe* (App. 4 Dist. 1990) 225 Cal.App.3d 9, 18; *Baker v. Superior Court* (App. 4 Dist. 1983) 150 Cal.App.3d 140, 145.)

Based on the foregoing points and authorities, Cross-defendant's motion should be granted

Respectfully submitted,



Summer Reese, Cross-defendant in pro. per.