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11 Not-for-profit Corporation

FILED
ALAMEDA COUNTY
APR 25 2014
CLERK OF THE SUPERIOR COURT
By R. Snodgrass Deputy

12 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **IN AND FOR THE COUNTY OF ALAMEDA**

14 PACIFICA DIRECTORS FOR GOOD
15 GOVERNANCE, an unincorporated
16 association,

17 Plaintiff,

18 vs.

19 PACIFICA FOUNDATION RADIO, a California
20 Not-for-Profit Corporation; RODRIGO
21 ARGUETA, LYDIA BRAZON, JIM BROWN,
22 BENITO DIAZ, ADRIANA CASENAVE, BRIAN
23 EDWARDS-TIEKERT, JOSE LUIS FUENTES,
24 HANK LAMB, TONY NORMAN, LAWRENCE
25 REYES, CERENE ROBERTS, and MARGY
26 WILKINSON in their official capacities as
27 members of the Board of Directors of Pacifica
Foundation Radio; and DOES 1-100, inclusive,

Defendants.

Case No.: HG14720131

PROOF OF SERVICE

Date: May 6, 2014
Time: 9 a.m.
Dept: 15

Hon. Ioana Petrou
Action Filed: April 3, 2014
No Trial Date Set

1
2 PROOF OF SERVICE

3 I am a citizen of the United States and a resident of the County of Alameda. I am
4 over the age of eighteen years and not a party to the within entitled action; my business
address is 499 14th Street, Suite 300, Oakland, California 94612.

5 On April 23, 2014, I served the following document:

6 **MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION FO REQUEST
FOR PRELIMINARY INJUNCTION; DECLARATIONS IN OPPOSITION**

7 on the Parties in said action,

8	Via U.S. Mail	by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Siegel & Yee, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of Oakland, California.
9		
10	Via Overnight Delivery	by depositing a true copy thereof in a collection box or by having the sealed packet picked up by Untied Parcel Service, with charges thereon fully prepaid, at Oakland, California, and addressed as set forth below.
11		
12	Via Hand Delivery	By having a messenger service who is a non-interested party employed by the law firm of Siegel & Yee deliver a true copy thereof to the firm/person listed below.
13		
14	Via Facsimile	By transmitting said document(s) from our office facsimile machine (510) 444-6698, to a facsimile machine number(s) shown below. Following transmission, I received a "Transmission Report" from our fax machine indicating that the transmission has been transmitted without error. After faxing, a copy was forwarded via U.S. Mail.
15		
16		
17	x Via Email	By transmitting said document(s) from our office email to the email address(es) shown below.
18		

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Attorneys for Plaintiff
PACIFICA DIRECTORS
FOR GOOD GOVERNANCE

23
24 I declare under penalty of perjury that the foregoing is true and correct.
Executed on April 23, 2014, at Oakland, California.

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EDWARDS-TIEKERT, JOSE LUIS FUENTES,
HANK LAMB, TONY NORMAN, LAWRENCE
REYES, CERENE ROBERTS, and MARGY
WILKINSON in their official capacities as
members of the Board of Directors of Pacifica
Foundation Radio; and DOES 1-100, inclusive,

Defendants.

Case No.: HG14720131

**DECLARATION OF MARGY
WILKINSON IN OPPOSITION TO
REQUEST FOR PRELIMINARY
INJUNCTION**

Date: May 6, 2014
Time: 9 a.m.
Dept: 15

Hon. Ioana Petrou
Action Filed: April 3, 2014
No Trial Date Set

I, Margy Wilkinson, declare as follows:

1. I am the chair of the Pacifica National Board, the governing body for the
Pacifica Foundation Radio. Attached hereto as Exhibit A is a true copy of the bylaws of the
Pacifica Foundation Radio.

1 2. I am a retired employee of the University of California, Berkeley, where I
2 worked for 40 years as a clerical worker. During that time I was an active member of Local
3 1695 of the American Federation of State County and Municipal Employees and its successor
4 union, the Coalition of University Employees (CUE). In both unions I held officer positions
5 and in CUE served as chief negotiator for 18,000 represented clerical employees throughout
6 the UC system.
7

8 3. In 2010 I was elected as a listener representative to the Local Station Board of
9 Radio Station KPFA FM 94.1, one of five stations owned and operated by the Pacifica
10 Foundation Radio.

11 4. In addition to KPFA in Berkeley, the Pacifica Foundation Radio owns and
12 operates stations in Los Angeles, Houston, New York City, and Washington, D.C.

13 5. Pacifica Foundation Radio is governed by a board of directors, popularly
14 known as the "Pacifica National Board" or "PNB." Twenty of Pacifica's 22 directors are
15 elected by delegates, four from each station. Two are elected by the PNB itself to represent
16 radio stations affiliated with, but not owned by, Pacifica Foundation Radio.
17

18 6. Each station's delegates meet annually in January to elect directors to serve on
19 the Pacifica National Board (Bylaws Article 5, Section 3). Each station's delegates elect four
20 directors (Bylaws Article 5, Section 1(c)) for terms of one year (Bylaws Article 5, Section 2).
21 All directors serve without compensation. (Bylaws Article 5, Section 9).
22

23 7. On January 12, 2013, KPFA's delegates first elected me to serve as a director on
24 the Pacifica National Board. At that time, Summer Reese, a director elected by delegates
25 from KPFA in Los Angeles, was serving as the chair of the PNB. Ms. Reese had also been
26 acting as the Interim Executive Director of the Pacifica Foundation, because the previous
27 Executive Director, Arlene Engelhardt, had resigned from her position in late 2012, and the

1 board did not appoint a replacement. Under California Corporations Code Section 5213(a),
2 executive authority defaults to the chair of a corporation's board: "The president, or if there
3 is no president, the chair of the board, is the general manager and chief executive officer of
4 the corporation, unless otherwise provided in the articles or bylaws."

5
6 8. During 2013, Pacifica searched for a new Executive Director. At a Pacifica
7 National Board meeting held in November 2013, the PNB, by a one-vote margin, offered Ms.
8 Reese employment as Executive Director. Despite the divisions on the PNB, the Board
9 agreed to support Ms. Reese and to assist her in becoming a successful Executive Director,
10 reaching a near-consensus on what the terms and conditions of her employment should be.

11 9. On Monday, November 11, 2013, the PNB approved an agreement with Ms.
12 Reese by a vote of 13-2. A true copy of that agreement is attached hereto as Exhibit B. That
13 agreement contains certain conditions precedent to Ms. Reese's employment. One condition
14 required that Ms. Reese undergo a background check approved by the PNB: "Subject to the
15 completion of a background check as approved by the PNB, you shall be employed under
16 this agreement for a term of three years, beginning December 1, 2013." Another condition
17 required Ms. Reese to complete employment documentation including proof of eligibility to
18 work in the U.S. for I-9 purposes: "As a condition of employment, you will be required to
19 complete new hire forms and bring related documentation, including proof that you are
20 presently eligible to work in the United States for I-9 purposes. "
21

22
23 10. A complete background check for Ms. Reese was never presented to the PNB
24 for approval. Additionally, employment documentation for Ms. Reese was never presented
25 to the PNB, despite its requests. Heather Gray, who was the Vice Chair of the PNB in 2013,
26 claimed that a background check had been completed but refused to provide that
27

1 background check to the PNB for approval. By the terms of the agreement, the offer
2 terminated on December 1, 2013.

3 11. On or about January 30, 2014, Summer Reese, Heather Gray, and then-PNB
4 Secretary Richard Uzzell fraudulently purported to enter into a new contract with Ms. Reese
5 that eliminates the background check condition and makes other material changes to her
6 terms of employment. A true copy of that document is attached as Exhibit A-1 to the
7 Declaration of Summer Reese, filed by plaintiffs. The PNB did not authorize Ms. Reese, Ms.
8 Gray, and/or Mr. Uzzell to negotiate or execute Exhibit A-1 and has never ratified it. In fact,
9 when the new contract was first presented to the PNB a week later, the PNB voted to reject
10 it.
11

12 12. On January 30, 2014, the 2014 PNB was seated. Ms. Reese is not a member of
13 the 2014 PNB. Accordingly, as of that date she was no longer the Acting Interim Executive
14 Director under Corporations Code Section 5213(a).
15

16 13. During a PNB meeting on February 7, 2014, Heather Grey provided her own
17 summary of a background check and a printed summary report apparently prepared by a
18 company that prepared a background report on Summer Reese to the Pacifica National
19 Board. A true copy of the document presented to the PNB by Ms. Gray is attached hereto as
20 Exhibit C. The PNB voted to direct Gray and/or Reese to provide the board a complete copy
21 of Reese's background check and personnel file within 10 days. Despite repeated requests
22 from me, neither party has done so to date, and the PNB has never voted to approve Reese's
23 background check. As a result, Ms. Reese never commenced employment under Exhibit B.
24

25 14. On February 9, 2014, the PNB elected me to serve as its chair. The election
26 was conducted according to the voting methods provided in Article Fifteen of the Bylaws. A
27

1 signed declaration by Pacifica Secretary Cerene Roberts to that effect is attached hereto as
2 Exhibit D.

3 15. On March 13, 2014, out of an abundance of caution and confronted with the
4 fraudulent employment agreement for Ms. Reese dated January 30, 2014, the PNB voted to
5 terminate any employment of Ms. Reese effective March 14, 2014. A true copy of the
6 minutes of the PNB meeting at which that action was taken is attached hereto as Exhibit E.

7 16. As a result of the termination of any employment relationship with Summer
8 Reese's while I was chair of the PNB, I became the Acting Executive Director of the
9 Foundation.

10 17. On March 20, 2014, at a meeting attended by all members, the PNB authorized
11 me to offer Bernard Duncan the job of serving as Pacifica's Interim Executive Director. I did
12 so, and he accepted the position.

13 18. Despite the facts that (1) Ms. Reese is no longer Pacifica's Acting Interim
14 Executive Director since she is no longer the chair of the PNB; (2) Ms. Reese never became
15 even the Probationary Executive Director under the November 11, 2013, agreement; and (3)
16 the Pacifica National Board voted affirmatively to end any employment with her effective
17 March 14, 2014, Reese has broken into and refused to leave Pacifica's National Office at 1925
18 Martin Luther King Jr. Way in Berkeley, California. She, her mother, and up to 20
19 supporters have remained in Pacifica's offices. They refuse to leave, have barricaded the
20 door, have prevented me from entering, and have prevented the Foundation from
21 conducting its business. Ms. Reese's conduct and unlawful actions have caused irreparable
22 injury and damage to Pacifica as more particularly described in the cross-complaint and
23 application for order to show cause and temporary restraining order filed in this case.

24 19. The allegations that have been made by the plaintiffs against me and other
25 board members have no merit. As stated above, I was elected as Chair of the PNB on
26
27

1 February 8, 2014 and the election was certified by the secretary. The Pacifica Bylaws, Article
2 Fifteen, subsection B, provides for an instant runoff method when there is no majority.
3 Those procedures were followed, and I was elected Chair.

4
5 20. Tony Norman is a duly elected member of the PNB. He has never been elected
6 or appointed to a public office as defined by Pacifica's Bylaws and California law. Mr.
7 Norman's position on a District of Columbia Advisory Neighborhood Commission is not a
8 public office because it provides for no exercise of sovereign power but was merely advisory.
9 This issue was resolved by the PNB more than a year ago on February 22, 2013, when Mr.
10 Norman was first elected to the PNB. Mr. Norman disclosed well in advance of the meeting
11 that he held a position on the Advisory Neighborhood Commission. The matter was debated
12 by the PNB, and the PNB voted to seat Mr. Norman. The motion to seat Mr. Norman on the
13 PNB was made by Carolyn Birden and supported by Richard Uzzell, Janet Coleman,
14 Manijech Saba and Heather Gray, who are all now plaintiffs in this action.

15
16 21. Cerene Roberts was elected as Secretary to the PNB on February 9, 2014.
17 Since assuming office, she has provided all required public notices required by California law
18 and the Corporation for Public Broadcasting Open Meeting Requirements. Notices
19 regarding closed sessions of the PNB and the reasons for them are made available to the
20 public before the meeting on the foundation's calendar at
21 <http://kpftx.org/pacalendar/index.php>. To read the particulars, one must click on the
22 actual meeting date. Reports-out of closed session business are generally prepared and
23 sent to the technical staff for posting within 24 hours of the meeting's end. To read those,
24 one can visit the Foundation's main site <http://pacifica.org/> and click the grey box in the
25 lower left hand corner labeled "Reports on PNB Exec Sessions" or go directly to the page
26 http://pacifica.org/notices_home.php. Draft minutes that have been finalized of open and
27

1 closed meetings of the PNB since February 7, 2014, have been distributed to the PNB.

2 Some of those have been approved while others have not yet been brought for a vote. Since
3 assuming office, Ms. Roberts has provided draft minutes to the PNB more expeditiously
4 than before. The prior secretary, plaintiff Richard Uzzell, failed to produce several months
5 of outstanding minutes of the PNB meetings despite promised delivery.
6

7 22. The charges against Mr. Jose Luis Fuentes have no merit. Like any other
8 member of the PNB, he was entitled to express his opinions regarding the issues before the
9 board and to contribute to the discussions before resolution. When he has contacted third
10 party vendors to remove unauthorized signers, he did so at my direction as Chair of the PNB,
11 and he clearly identified himself as a member of the PNB.

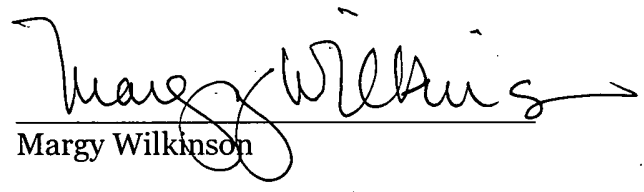
12 23. Article Five, Section 7 of the Pacifica Bylaws establishes Pacifica's internal
13 procedures for removing directors. At no time have the plaintiffs in this action complied
14 with the procedures established by the Pacifica Bylaws for removing any of the defendants in
15 this action as directors.
16

17 24. Raul Salvador has been the CFO of Pacifica since May 9, 2013. While
18 performing his duties in the fall of 2013, Mr. Salvador discovered that Summer Reese had
19 authorized cash advances in violation of Pacifica policy and had reimbursed herself for
20 expenses without the proper invoices. Ms. Reese did not deny these allegations. Shortly
21 thereafter, one of Ms. Reese's subordinates made a claim of sexual harassment against Mr.
22 Salvador. Mr. Salvador was placed on paid administrative leave pending an internal
23 investigation. The allegations were investigated, and no cause was found for any discipline
24 of Mr. Salvador. He was accordingly reinstated on March 27, 2014.
25

26 25. Pacifica Foundation Radio contracts with a professional human resources firm
27 which provides HR guidance as needed and when needed. The organization is insured and

1 the PNB has been careful to avoid any actions that would make the organization
2 uninsurable.

3 I declare under penalty of perjury that the foregoing is true and correct. Executed on
4 April 25, 2014, at Oakland, California.

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7 Margy Wilkinson

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Amended and Restated Bylaws of Pacifica Foundation

With Revisions and Amendments as of January 1, 2013

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Article One, Identity and Purpose

Article One, Identity and Purpose, Section 1: Name

The name of this corporation is the PACIFICA FOUNDATION, and it shall be referred to in these Bylaws as the "Foundation".

Article One, Identity and Purpose, Section 2: Purposes

The purposes of the Foundation, as stated in Article II of the Articles of Incorporation, are as follows:

To establish a Foundation organized and operated exclusively for educational purposes no part of the net earnings of which inures to the benefit of any member of the Foundation.

To establish and operate for educational purposes, in such manner that the facilities involved shall be as nearly self-sustaining as possible, one or more radio broadcasting stations licensed by the Federal Communications Commission ("Commission") and subject in their operation to the regulatory actions of the Commission under the Federal Communications Act of 1934, as amended.

In radio broadcasting operations to encourage and provide outlets for the creative skills and energies of the community; to conduct classes and workshops in the writing and producing of drama; to establish awards and scholarships for creative writing; to offer performance facilities to amateur instrumentalists, choral groups, orchestral groups and music students; and to promote and aid other creative activities which will serve the cultural welfare of the community.

In radio broadcasting operations to engage in any activity that shall contribute to a lasting understanding between nations and between the individuals of all nations, races, creeds and colors; to gather and disseminate information on the causes of conflict between any and all of such groups; and through any and all means compatible with the purposes of this Foundation to promote the study of political and economic problems and of the causes of religious, philosophical and racial antagonisms.

In radio broadcasting operations to promote the full distribution of public information; to obtain access to sources of news not commonly brought together in the same medium; and to employ such varied sources in the public presentation of accurate, objective, comprehensive news on all matters vitally affecting the community.

Article One, Identity and Purpose, Section 3: Principles

The Foundation is committed to peace and social justice, and seeks to involve in its governance and operations individuals committed to these principles.

Article One, Identity and Purpose, Section 4: Commitment to Diversity

The Foundation is committed to diversity and inclusion of all nations, races, ethnicities, creeds, colors, classes, genders, sexual orientations, ages and people with disabilities in its programming, staff, management, committees and governance

Article Two, Offices of the Foundation

Article Two, Offices of the Foundation, Section 1: Principal Office

The principal office and place of business of the Foundation shall be located in the County of Alameda, State of California, or at such other place as the Board of Directors may designate.

Article Two, Offices of the Foundation, Section 2: Other Offices

The Foundation shall also have other offices at other places within or without the State of California as the Board of Directors may from time to time designate.

Article Three, Members of the Foundation

Article Three, Members of the Foundation, Section 1: Members Defined

There shall be two classes of members: (A) "Listener-Sponsor Members" and (B) "Staff Members", who shall collectively be referred to as "Members."

A. LISTENER-SPONSOR MEMBERS

"Listener-Sponsor Members" shall be any natural persons who within the preceding 12-month period: (1) have contributed a minimum of \$25 to any Foundation radio station, or such minimum amount as the Board of Directors may from time to time decide; or (2) have volunteered a minimum of three (3) hours of service to any Foundation radio station. Said contribution shall be considered non-refundable. Said volunteer work shall be performed under the supervision of the Foundation radio station management, and shall include volunteer work on committees of the Local Station Board. Where a contribution is made jointly by two individuals and the contribution is in an amount equal to or more than the annual membership contribution required for two memberships (as set by the Board from time to time), then each of the joint donors shall be considered an individual and separate Listener-Sponsor Member. (For example, if John and Mary Smith jointly contribute \$50.00 or more, then John Smith and Mary Smith will each be Members and will each have individual and separate Membership rights. However, if John and Mary Smith jointly contribute \$40.00, then they shall jointly share one membership.)

B. STAFF MEMBERS

"Staff Members" shall be: (1) any non-management full-time or part-time paid employee of a Foundation radio station; or (2) any member of a Foundation radio station "Unpaid Staff Organization" or "Unpaid Staff Collective Bargaining Unit" which has been recognized by station management, or, if the station has neither such organization or bargaining unit, then any volunteer or unpaid staff member of a Foundation radio station who has worked for said radio station at least 30 hours in the preceding 3 months, exclusive of fund-raising marathon telephone room volunteer time. Said volunteer work shall be performed under the supervision of the Foundation radio station management and shall not include volunteer work on committees of a Local Station Board. Radio station management employees and Foundation staff employees who are not employed at a Foundation radio station shall not qualify as Staff Members, however, such employees may qualify as Listener-Sponsor Members by contributing the requisite minimum dollar amount as set forth in Section 1(A) of this Article of these Bylaws.

Article Three, Members of the Foundation, Section 2: Term

A Listener-Sponsor membership term shall expire twelve (12) months from that date on which said Member: (A) contributed a minimum of \$25 to any Foundation radio station, or such minimum amount as the Board of Directors may from time to time decide; or (B) volunteered a minimum of 3 hours of service to any Foundation radio station. A Staff membership term shall expire: (A) on that date on which s/he is no longer a member of a radio station Unpaid Staff Organization or Bargaining Unit, or if the radio station has no such organization, then on that date on which s/he failed to volunteer a minimum of 30 hours in the preceding 3-month period; or (B) upon termination of employment as a non-management employee of a Foundation radio station, as applicable.

Membership terms shall be considered "rolling," and calculated forward from the last date of a Member's qualifying act. For example, if a Listener-Sponsor Member makes a \$25 contribution on January 1, 2003 and does not make any additional contribution or volunteer at least 3 hours within the following 12-month period, said Member's membership would expire on December 31, 2003. If, however, in the same example, said Member contributes at least \$25 on August 1, 2003, or volunteers for at least 3 hours, then his/her membership will not expire until July 31, 2004, provided no additional contribution or volunteer time is made after the August 1, 2003 contribution.

Article Three, Members of the Foundation, Section 3: Membership Affiliation by Radio Station

All Members shall be members of the Foundation. For purposes of voting and exercising their rights hereunder, Members shall be affiliated with one of the Foundation's five radio stations: KPFA in Berkeley, California, KPFK in North Hollywood, California, WBAI in New York, New York, KPFT in Houston, Texas, or WPFW in Washington, D.C. Members shall be affiliated with that Foundation radio station: (A) in the case of a Listener-Sponsor Member, to which said member made a contribution or volunteered time in the preceding 12 months; or (B) in the case of a Staff Member, by which said member is employed or for which said member volunteers and/or serves as unpaid staff. Each Foundation radio station shall maintain a register of its Listener-Sponsor Members and Staff Members. In the event that a person qualifies for membership affiliation with more than one Foundation radio station, s/he shall be entitled to only one membership and shall notify the Foundation and each applicable Foundation radio station of which radio station s/he wishes to be affiliated as a Member. In the event that a Member does not notify the Foundation of which radio station s/he wishes to be affiliated, s/he shall be deemed to be affiliated with that radio station to which said Member last contributed or volunteered. In the event that a person qualifies as both a Listener-Sponsor Member and as a Staff Member, such person shall be deemed to be a Staff Member.

Article Three, Members of the Foundation, Section 4: Waiver of Requirements

The Local Station Board for each Foundation radio station (also referred to herein as "LSB") may adjust or waive the contribution requirement for Listener-Sponsor Membership set forth in Section 1(A) of this Article of these Bylaws on a case by case basis for reasons of financial hardship, where said LSB, in its discretion, determines that the proposed member has demonstrated a sincere interest in becoming a Member of the Foundation and is also genuinely unable to afford the contribution amount or to volunteer the minimum 3 hours of service.

Article Three, Members of the Foundation, Section 5: Rights

All Members shall have all rights granted to them by law or by these Bylaws, including without limit the right to vote, on the terms and in the manner set forth in these Bylaws, on the election and removal of Delegates; on the sale, exchange, transfer or disposition of all or substantially all of the Foundation's assets; on the sale, exchange, transfer or disposition of any of the Foundation's broadcast licenses; on any merger, its principal terms and any amendment of its principal terms; on any election to dissolve the Foundation; on any amendment to these Bylaws for which Member approval is required or permitted as set forth in Section 1(B) of Article 17 of these Bylaws; and on any amendment to the Articles of Incorporation.

Article Three, Members of the Foundation, Section 6: Meetings of the Members

A. ANNUAL MEETING

No annual meeting of the Members shall be required.

B. SPECIAL MEETINGS

The Board of the Directors, a Local Station Board, the Foundation's Executive Director, the Chairperson of the Board, or one percent (1%) or more of the Members may call a special meeting of the Members for any lawful purpose at any time. Said request for a special meeting shall be made in writing and shall specify the general nature of the business proposed to be transacted at said meeting. Said written request must be submitted to the Chairperson of the Board, the Executive Director or the Foundation's Secretary. The officer receiving the request must promptly give notice to all Members of record entitled to vote. Said notice must state the location, date and time of the meeting, specify the general nature of the business to be transacted and provide that no other business than that set forth in said notice shall be transacted at said meeting. Said notice shall be given at least 20 days and no more than 90 days before the meeting date. The meeting date must be at least 35 days, but no more than 90 days after receipt of the written request for the special meeting. If notice of the special meeting is not provided to the Members within 20 days after the written request is received, the person(s) requesting the meeting may give notice to the Members in a manner consistent with this Section. Voting on any matter discussed at a special meeting shall be by written ballot consistent with the provisions of Section 8 of this Article of the Bylaws.

C. ACTION IN LIEU OF A MEETING

Any action that may be taken at any special meeting of Members may be taken without a meeting if the Foundation distributes, or otherwise makes available, a written ballot to every Member entitled to vote on the matter. Such written ballot shall set forth the proposed action, provide an opportunity to specify approval or disapproval of any proposal, provide a reasonable time within which to return the written ballot to the Foundation and otherwise conform to the requirements of Section 8 of this Article of the Bylaws. Said ballots shall also be accompanied by brief written arguments in favor of and against the proposed action, which arguments may be prepared and submitted by the Board of Directors, any LSB or by 10 or more Members, if they are provided no later than thirty (30) days prior to the date of mailing of said ballot.

Article Three, Members of the Foundation, Section 7: Quorum

For purposes of any election or written ballot, a quorum of the Listener-Sponsor Members shall be ten

percent (10%) of those Listener-Sponsor Members entitled to vote on the matter as of the applicable record date. A quorum of the Staff Members shall be one-fourth (1/4) of those Staff Members entitled to vote on the matter, as of the applicable record date. A quorum for any action requiring the approval of "the Members", as opposed to a separate vote by each class of Members, shall be 10% of all Members entitled to vote on the matter as of the applicable record date.

Article Three, Members of the Foundation, Section 8: Voting: Voting by Written Ballot

To ensure the opportunity for all Members to participate in the voting process, all voting shall be by written ballot distributed by mail, or otherwise made available, by the Foundation, or the Local Station Board with which the Members are affiliated, as appropriate, to each of the Members entitled to vote.

A. ELIGIBILITY TO VOTE

All Members in good-standing on the record date as determined under Section 10 of this Article of these Bylaws shall be entitled to vote by written ballot as to any matter that properly comes before the Members for a vote.

B. DISTRIBUTION OF BALLOTS

The Foundation shall make reasonable efforts to distribute, or otherwise make available, one written ballot to each Member entitled to vote on the matter. Where the Members are required to vote in classes, there shall be a ballot for Listener-Sponsor Members and a separate ballot for Staff Members. In the case of election of Delegates, there shall also be separate sets of ballots for the Members affiliated with each Foundation radio station. The ballots shall be mailed, or notice of the posting of the ballot on the Foundation's website shall be delivered, to Members at their postal address or electronic mailing address of record. All solicitations of votes by written ballot shall: (1) state the number of responses needed to meet the quorum requirement; (2) state, with respect to ballots other than for the election of Delegates, the percentage of approvals necessary to pass the measure or measures; (3) specify the time by which the ballot must be received in order to be counted; (4) include instructions for where to return the completed ballot; and (5) provide a reasonable time in which to return the ballot to the Foundation. With the exception of ballots related to the election of Delegates, each ballot so distributed shall also: (6) set forth the proposed action; and (7) give the Members an opportunity to specify their approval or disapproval of each proposal. Ballots relating to the election of Delegates shall also: (8) set forth the names of the candidates; and (9) give the Member an opportunity to select his/her choice(s) or rank his/her choices. The Foundation may, in its discretion, provide a secure means of voting by electronic means via the internet, provided however that Members shall still have the option of returning written ballots by mail. Any such internet voting shall have a coded system to identify Members and to prevent Members from casting more than one vote electronically or from voting by both mail and by internet.

C. NUMBER OF VOTES AND APPROVALS REQUIRED

Each Member shall be entitled to cast one vote on each matter submitted to the vote of the Members. Approval by written ballot shall be valid only when: (1) the number of votes cast by ballot within the time specified equals or exceeds the quorum required to authorize the action; and (2) the number of approvals equals or exceeds the percentage of votes required for approval of said action as set forth in these Bylaws. Unless otherwise specifically set forth in these Bylaws, when the Members vote in classes, a vote of a majority of those Listener-Sponsor Members voting in any matter and a vote of a majority of those Staff Members voting in any matter, provided that a quorum of votes for each class is obtained, shall be sufficient to approve an action or consent to any matter. Unless otherwise specifically

set forth in these Bylaws, when the Members vote collectively as a group, a majority vote of the Members together, provided there is a quorum, shall be sufficient to approve an action or consent to any matter.

D. VALIDITY OF WRITTEN BALLOT

A PIN identification system shall be used, whereby each Member entitled to vote will be assigned a PIN Number that is printed on the ballot. The Foundation is entitled to reject a ballot if the ballot does not bear, or does not bear a valid, PIN Number. The Foundation and any officer or agent thereof who accepts or rejects a ballot in good faith and in accordance with the standards of this Section shall not be liable in damages to the Member for the consequences of the acceptance or rejection of his/her ballot. Action by the Foundation or its agent(s) based on the acceptance or rejection of a ballot under this Section is valid unless a court of competent jurisdiction determines otherwise.

E. ELECTION AND VOTING SUPERVISION

Consistent with the provisions of Article 4 of these Bylaws, the Members' elections of Delegates shall be supervised by a national elections supervisor and local elections supervisors and all said ballots shall be counted under their supervision at such place or places designated by the national elections supervisor. All other voting by Members shall be supervised by the Board of Directors, or the Board's designated agent, which shall also be responsible for ensuring and monitoring compliance with its voting procedures and processes and for counting ballots consistent with these Bylaws.

Article Three, Members of the Foundation, Section 9: Manner of Notice

Whenever notice to Members is required under these Bylaws, notices shall be submitted, at the Foundation's sole discretion, either personally, by first class, registered or certified mail, by electronic mail or by other means of written communication, charges, pre-paid, and shall be addressed to each Member entitled to vote at the postal address or email address of that Member as it appears on the Foundation's books or at the address given by the Member to the Foundation for purposes of notice.

If no address appears on the Foundation's books and no address has been given, then notice shall be deemed to have been given if notice is broadcast at least twenty-one (21) times on the Foundation radio station with which the Member is affiliated. Such broadcast notice shall be made at least 3 times per day on 7 consecutive days and shall state the web page address where the full notice is posted.

Article Three, Members of the Foundation, Section 10: Record Date

The record date for purposes of determining the Members entitled to receive notice of any meeting, entitled to vote by written ballot or entitled to exercise any other lawful membership action, shall be forty-five (45) days before the date of the special meeting, 45 to 60 days before the day on which the first written ballot is distributed or made available to the Members (based on the reasonable discretion of the National Election Supervisor), or 45 days before the taking of any other action, as applicable.

Article Three, Members of the Foundation, Section 11: Proxies Not Permitted

The voting rights of the Members shall be exercised by the Member personally and may not be exercised by alternates, by proxy or the like.

Article Four, Delegates

Article Four, Delegates, Section 1: Delegates Defined

The Members of each class for each Foundation radio station shall separately elect Delegates who shall serve as representatives of the Members in the election of Foundation Directors from each radio station area and who shall have such other duties and powers as are specified in these Bylaws.

Article Four, Delegates, Section 2: Eligibility; Nomination of Delegates

A. ELIGIBILITY

Any Listener-Sponsor Member in good standing, except radio station management personnel or Foundation management personnel or staff members, may be nominated for the position of Listener-Sponsor Delegate for the Foundation radio station with which s/he is affiliated by the signatures of fifteen (15) Listener-Sponsor Members in good standing who are also affiliated with that radio station, provided, however, that no 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 Delegate. A Delegate shall be deemed to have resigned the position of Delegate if s/he becomes a candidate for public office or accepts a political appointment during his or her term as a Delegate. This restriction shall not apply to civil service employment by governmental agencies.

Any Staff Member in good standing may be nominated for the office of Staff Delegate for the Foundation radio station with which s/he is affiliated by the signatures of five (5) Staff Members in good standing who are also affiliated with that radio station, provided, however, that no 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 Delegate. A Delegate shall be deemed to have resigned the position of Delegate if s/he becomes a candidate for public office or accepts a political appointment during his or her term as a Delegate. This restriction shall not apply to civil service employment by governmental agencies.

B. NOMINATION PROCEDURES

Each Member seeking to be a nominee shall submit: (1) the required number of nominating signatures on the form provided by the local elections supervisor; (2) a statement of whether the candidate is running for election as a Listener-Sponsor Delegate or a Staff Delegate; (3) a written statement of up to 500 words in length by the candidate introducing himself/herself and his/her interest in, or qualifications for, serving as a Delegate, which statement shall be distributed, or otherwise made available, to the Members entitled to vote along with the written ballot; and (4) a statement acknowledging that s/he has read and understood the "Fair Campaign Provisions" set forth in Section 6 of this Article of the Bylaws. The names of up to five (5) of the candidate's nominators may be listed at the end of a candidate's statement. Each candidate also may, but is not required to, for informational purposes indicate his/her gender and racial or ethnic heritage.

Article Four, Delegates, Section 3: Election of Delegates

All elections for Delegates shall be by written ballot, provided, however, that the elections supervisor shall also have the option of providing a secure electronic means of voting via the internet. Members shall only have the right to vote for Delegates for the Foundation radio station with which the Member is affiliated. Members shall vote in classes: Listener-Sponsor Members shall elect 18 Delegates for

each radio station and Staff Members shall elect 6 Delegates for each radio station, for a total of twenty-four (24) Delegates for each Foundation radio station. Elections of Delegates shall be staggered over a 3-year period with elections for 3 Staff Delegates and 9 Listener-Sponsor Delegates held in the first year, elections for 3 Staff Delegates and 9 Listener-Sponsor Delegates held in the second year and no elections in the third year. The ballots shall be counted by the Single Transferable Voting method. All ballots related to the election, and the removal, of any and all Delegates shall be filed with the Foundation Secretary and maintained with the corporate records for a period of three (3) years.

Article Four, Delegates, Section 4: Election Supervisors

A. NATIONAL ELECTIONS SUPERVISOR

In March of each year in which there will be an election of Delegates by the Members, or by a date no less than 90 days before nominations are set to open, whichever is earlier, the Executive Director shall appoint a national elections supervisor whose role shall be to oversee and certify the fairness of the Delegates elections in each station area and to confirm said elections' compliance with these Bylaws. The national elections supervisor shall also oversee the nominations process, the preparation of the ballots and the counting of the ballots and shall prepare a written statement reporting the results of every election for distribution to the Members or posting on the Foundation's and radio station's websites. To be eligible for appointment to the position of the national elections supervisor, said person shall not be an employee of the Foundation or any Foundation radio station or a Delegate, Officer, or Director of the Foundation or any LSB, or a radio station staff member, paid or unpaid. The national elections supervisor should be experienced with election procedures and supervision and preferably recommended by an organization experienced in elections procedures and supervision. The national elections supervisor does not have to be a Member of the Foundation. Upon the completion of, and certification of the results for, all of the elections, the national elections supervisor's term shall end.

B. LOCAL ELECTION SUPERVISORS

In preparation for an election of Delegates, the National Elections Supervisor shall appoint, subject to approval of the Executive Director, a local election supervisor for each Foundation radio station area. A local elections supervisor may not be an employee of the Foundation or any Foundation radio station or a Delegate, Officer, or Director of the Foundation or any LSB, or a radio station staff member, paid or unpaid. The local elections supervisors preferably should be experienced with election procedures and supervision. Under the direction and supervision of the National Elections Supervisor, each local election supervisor shall coordinate the elections of the Delegates for the radio station area to which s/he is assigned to ensure a fair election in compliance with the terms of these Bylaws. His/her duties shall include preparing a nomination petition form for use by all potential nominees, reviewing each potential candidate's nomination papers for eligibility and completeness, overseeing the preparation and distribution of the election ballot, closing the election, and counting and assisting with ballot counting, as requested. To assist him/her in the conduct and oversight of the election, each local elections supervisor may appoint a committee of volunteer Members, all of which volunteer Members the local elections supervisor must, in good faith and in his/her sole discretion, believe to be neutral individuals. Said committee shall consist of that number of volunteer Members the local elections supervisor deems necessary. The local elections supervisors do not have to be Members of the Foundation. Upon the completion of, and certification of the results for, the elections s/he supervised, each local elections supervisor's term shall end.

Article Four, Delegates, Section 5: Election Time Frame

In a Delegate election year, the nominations period for seats being vacated shall open on June 1 and remain open for thirty (30) days, closing on June 30. The national and local election supervisors shall thereafter prepare the written ballots for each radio station, listing all of the candidates and setting forth all other information required by these Bylaws. Ballots shall be mailed, or otherwise made available, to the Members on August 15 (or the following day if August 15 is a mail holiday). To be counted a ballot must be received on or before September 30 (the "Election Close Date").

All ballots shall be held sealed until the Election Close Date. If the required quorum of ballots is not received by the Elections Close Date, then the Elections Close Date shall be extended by up to four additional weeks until closed by the National Election Supervisor. The national and local elections supervisors shall have up to 15 days after the Election Close Date to count the ballots and to certify the results to the LSBs, the Board, and the Members, which results must be reported by October 15 or, if the Election Close Date was extended, by 15 days after the extended Election Close Date, and shall be posted on the Foundation's and the radio stations' websites. If no quorum of ballots is obtained by the extended date, then those Delegates whose terms would have expired upon the election of new Delegates shall remain in office until the next regularly scheduled Delegate election.

If in the year preceding Delegate elections, the Pacifica National Board determines by a 2/3 vote of the total number of Directors conducted by email or paper ballot, that the schedule above cannot be executed due to exigent circumstances, they may by November 30 adopt a schedule subject to the constraints herein:

- 1) Avoids where possible conflicts between major fund drives and the period between the close of nominations and the election close date
- 2) Includes a period of not less than 30 days for nomination of candidates;
- 3) Allows no less than 35 days after the mailing of ballots, on or before which completed ballots must be received to be counted ("Election Close Date")
- 4) Provides that all other intervals within the time-line remain as stated in the preceding paragraph, and
- 5) Allows for seating in December as provided for in Article 7, Section 6 (B).

Article Four, Delegates, Section 6: Fair Campaign Provisions

No Foundation or radio station management or staff (paid or unpaid) may use or permit the use of radio station air time to endorse, campaign or recommend in favor of or against any candidate(s) for election as a Listener-Sponsor Delegate, nor may air time be made available to some Listener-Sponsor Delegate candidate(s) but not to others. All candidates for election as a Listener-Sponsor Delegate shall be given equal opportunity for equal air time, which air time shall include time for a statement by the candidate and a question and answer period with call-in listeners. No Foundation or radio station management or staff (paid or unpaid) may give any on-air endorsements to any candidate(s) for Listener-Sponsor Delegate. The Board of Directors may not, nor may any LSB nor any committee of the Board or of an LSB, as a body, endorse any candidate(s) for election as a Delegate. However, an individual Director or Delegate who is a Member in good standing may endorse or nominate candidate(s) in his/her individual capacity. In the event of any violation of these provisions for fair campaigning, the local elections supervisor and the national elections supervisor shall determine, in good faith and at their sole discretion, an appropriate remedy, up to and including disqualification of the candidate(s) and/or suspension from the air of the offending staff person(s) (paid or unpaid) for the remainder of the

elections period. All candidates and staff members (paid and unpaid) shall sign a statement certifying that they have read and understood these fair campaign provisions.

Article Four, Delegates, Section 7: 2003 Transition Election

Following the adoption of these Bylaws, and consistent with that Settlement Agreement dated December 12, 2001, there shall be an election for all Delegates for each radio station area. The interim Board of Directors, by resolution, shall establish a nomination and election time-frame for said elections, which time-frame may be shorter and on dates other than those set forth in Section 5 of this Article of these Bylaws.

For this transition election only, the 3 Staff Delegates and 9 Listener-Sponsor Delegates for each radio station highest ranked in this first election shall serve for a term expiring December 2006, and the next highest ranked 3 Staff Delegates and 9 Listener-Sponsor Delegates shall serve for a term expiring in December 2004. Beginning with the 2004 election of Delegates, Delegate elections shall thereafter proceed in accordance with the remainder of the provisions of this Article of these Bylaws.

Article Four, Delegates, Section 8: Terms of Office; Term Limits

A Delegate's term of office, shall be three (3) years, beginning in December. A Delegate may serve a maximum of two consecutive 3-year terms, and in no event more than six (6) consecutive years. A Delegate shall not be eligible for further service as a Delegate until one year has elapsed after the termination of the Delegate's second consecutive three-year term.

Article Four, Delegates, Section 9: Removal of Delegates

Any delegate shall be removed from the position of Delegate, and cease to be a Delegate, upon the occurrence of any of the following: (A) said Delegate's death or resignation; (B) upon the occurrence of a disqualifying act, e.g. the appointment to an elected political office; (C) failure of a Delegate to attend three consecutive Local Station Board meetings, which absences have not been excused by a majority vote of the LSB members present at the meetings in question; (D) upon the fair and reasonable determination, by a 2/3 vote of all the Directors of the Foundation, or a 2/3 vote of all the Delegates for the same radio station as the Delegate in question, at a meeting on said issue, after a review of the facts, that, in its sole discretion, said Delegate has exhibited conduct that is adverse to the best interests of the Foundation or the radio station; or (E) upon the majority vote of the class of Members associated with the radio station who originally elected the Delegate voting by written ballot in an election to remove said Delegate, provided that a quorum is established by written ballot, and further provided that before any such election may be held the Secretary of the appropriate Local Station Board shall first have received a petition signed by at least two percent (2%) of the appropriate class of Members affiliated with that radio station seeking said Delegate's removal due to conduct by the Delegate that is specifically alleged in the petition to be adverse to the best interest of the Foundation or the local radio station. In the event of a removal proceeding pursuant to this Section 9(D) or 9(E), the Delegate must be afforded reasonable and appropriate due process according to the circumstances, including notice and an opportunity to be heard at the meeting or in writing if a written ballot is submitted to the Members. Any Delegate who is removed who was simultaneously serving as a Foundation Director or an officer of the Foundation or an LSB shall also be deemed removed from any and all of these positions and from any positions on a committee that s/he held by reason of his/her role as a Delegate or Director. Notice of a meeting to remove a Delegate must be given in writing at least thirty (30) days

in advance. A Delegate removed pursuant to this Section 9(D) or 9(E) shall not be eligible for reelection as a Delegate for a period of three (3) years.

Article Four, Delegates, Section 10: Filling of Vacancies

If a Delegate position becomes vacant mid-term, that Delegate shall be replaced for the remainder of his/her term by the highest ranked candidate from the last election of Delegates for that Class of Members for that station who was not elected and who is available and continues to meet the Delegate eligibility requirements as set forth in Section 2(A) or 2(B) of this Article of these Bylaws. In the event that no eligible and available candidate from the last election is found, then the Delegates for that radio station shall appoint a Member of the appropriate class to serve as Delegate and fill the seat for the remainder of the term.

Article Four, Delegates, Section 11: Compensation

Delegates shall serve without compensation except that they shall be allowed reasonable advancement or reimbursement of expenses incurred in the performance of their regular duties.

Article Five, Board of Directors of the Foundation

Article Five, Board of Directors of the Foundation, Section 1: Board of Directors - Eligibility, Number, Powers and Duties

A. DIRECTORS DEFINED

Directors are those natural persons who have been elected to and are serving on the Foundation's Board of Directors ("Board").

B. ELIGIBILITY

Any Delegate who is currently serving as a Delegate and has served at least one (1) year as a Delegate is eligible for election to the office of Director by the Delegates for his/her radio station area subject to Section 3 of this Article of the Bylaws. Any natural person who is not currently serving as a Delegate for any radio station area is eligible for nomination and election as an "affiliate" director or an "at large" director, subject to Section 4 or 5 of this Article of the Bylaws. Notwithstanding the foregoing, no 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. This restriction shall not apply to civil service employment by governmental agencies.

C. NUMBER

There shall be a minimum of twenty-two (22) and a maximum for twenty-three (23) Directors of the Foundation. The Board of Directors shall fix by resolution, from time to time, the exact number of Directors within the minimum and maximum numbers permitted herein. The Board shall have equal representation from each of the Foundation's five radio stations. The Delegates from the five Foundation radio stations shall each elect four (4) Directors : three (3) of whom shall be Listener-Sponsor Delegates and one (1) of whom shall be a Staff Delegate -- for a total of twenty (20) "Station Representative" Directors, as set forth in Section 3 of this Article of the Bylaws. In addition, the Board

shall elect two (2) "Affiliate Representative" Directors from nominees submitted as set forth in Section 4 of this Article of the Bylaws. If the Board, by resolution, fixes the number of Directors at 23, then one additional Director shall be nominated and elected as an "At-large" Director as set forth in Section 5 of this Article of the Bylaws.

D. GENERAL POWER AND AUTHORITY

Subject to the provisions of the California Nonprofit Public Benefit Corporation law, and any limitations in the Articles of Incorporation and these Bylaws relating to action required or permitted to be taken or approved by the Members or Delegates of the Foundation, the activities and affairs of the Foundation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board.

E. SPECIFIC POWERS AND DUTIES

Without prejudice to the general power of the Board set forth above in Section 1D of this Article of these Bylaws, and subject to any limitations set forth in these Bylaws, the ongoing duties and powers of the board shall include, but not be limited to:

- (1) Ensuring and facilitating fulfillment of the purposes of the Foundation as set forth in the Articles of Incorporation;
- (2) Ensuring compliance with applicable state and federal laws;
- (3) Ensuring the financial health of the Foundation by adopting and monitoring an annual budget and overseeing an independent annual audit of the Foundation's books and accounts;
- (4) Ensuring regular communication with the Members;
- (5) Appointing, supervising and discharging the Foundation's Executive Director, Chief Financial Officer and all Foundation officers, prescribing powers and duties for them as are consistent with the law and these Bylaws, and setting salaries and wages;
- (6) Overseeing the conduct, management and control of the Foundation's affairs and activities, including the monitoring of the activities and actions of its radio stations and national staff consistent with applicable law and regulations, the Articles of Incorporation and these Bylaws;
- (7) Meeting at such regular times and places as required by these Bylaws and meeting at such other times as may be necessary in order to carry out the duties of the Board;
- (8) Registering their addresses, telephone numbers, facsimile telephone numbers and email addresses with the Foundation's Secretary. Notices of meetings mailed, transmitted by telecopier or facsimile, or emailed to them at such addresses shall be deemed valid notices thereof.

Article Five, Board of Directors of the Foundation, Section 2: Term

The term of a Director shall be one (1) year. A Director may serve no more than five consecutive one-year terms. A Director shall not be eligible for further service as a Director until one year has elapsed after the termination of a Director's fifth consecutive one-year term.

Article Five, Board of Directors of the Foundation, Section 3: Nomination and Election of Station Representative Directors

A. NOMINATION

Any current Delegate of any class of Members may nominate any other current Delegate of any class of Members serving the same radio station for the office of Director, provided that the nominee has served at least one year as a Delegate for that radio station. Said nominations shall be given in writing to the Recording Secretary for the radio station Local Station Board ("LSB") by December 31 prior to the election of Directors in January..

B. ELECTION

The Delegates for each radio station shall meet annually in early January to elect four Directors to represent that radio station on the Board. The Delegates of both classes of Members, voting together, shall elect three Listener-Sponsor Directors using the Single Transferable Voting method, and shall elect one Staff Director using the Instant Runoff Voting method, to represent that radio station on the Board. The Staff Director must be a Staff Delegate. The Listener-Sponsor Directors must be Listener-Sponsor Delegates.

C. SEATING OF STATION REPRESENTATIVE DIRECTORS

All newly elected Station Representative Directors shall be seated at the Meeting of the Board of Directors held in late January each year, when their terms shall commence.

Article Five, Board of Directors of the Foundation, Section 4: Nomination and Election of Affiliate Representative Directors

A. NOMINATION

Any Foundation "affiliate station" (as defined below) or any association of affiliate stations may nominate one or more candidates for the two Affiliate Director positions on the Board. Nominations shall close on November 15th each year and shall be submitted in writing to the Foundation Secretary for forwarding to the board. Every affiliate station or association of affiliate stations submitting nominee(s) shall include with said nomination(s) a written explanation of its procedure for selecting the nominee(s). Said statement shall be certified by the station general manager or the governing board secretary of each affiliate station nominating said candidate(s) or by the secretary of the association of affiliate stations, as appropriate. In addition, each nominee shall submit his/her resume and a statement of his/her interest in serving as a Director of the Foundation. The Foundation Secretary shall forward to all Foundation Directors all materials submitted supporting each nominee not later than December 1st.

For purposes of this Section, an "affiliate station" shall be defined as any non-profit non-commercial broadcaster that broadcasts programming provided or distributed by the Foundation pursuant to a written agreement with the Foundation, including, for example, community radio stations, internet broadcasters or digital broadcasters, as such technology may be developed. An affiliate station shall not be a radio station whose broadcast license is held by the Foundation. For purposes of this Section, an "association of affiliate stations" shall be defined as any group of affiliate stations that have joined together to form an association, provided that said association has adopted bylaws and its membership is limited solely of affiliate stations.

B. ELECTION

As the first order of business, and given 30 days advance notice, at a Board meeting in December each year, the Directors present and voting (excluding any then current Affiliate or At-Large Directors from the vote) shall establish a protocol for balloting and shall elect two (2) Affiliate Representative Directors from the nominees submitted by affiliate stations and/or affiliate station associations, using the Single Transferable Voting method. Affiliate Directors shall serve for a one-year term which shall commence with their seating at the regular January Board meeting.

Article Five, Board of Directors of the Foundation, Section 5: Nomination and Election of At-Large Directors

A. NOMINATION

In the event that the Board resolves that there shall be twenty three (23) Foundation Directors (the maximum number of Directors permitted under these bylaws) then there shall be one "At-Large" Director elected each year. Candidates for election as an "At-Large" Director shall be nominated by majority vote of the Delegates from a minimum of three radio stations, with the Delegates from each station voting separately by station area. Nominations shall close on February 15th each year and shall be submitted in writing by that date to the Foundation Secretary together the nominee's resume and a statement of his/her interest in serving as a Director of the Foundation. The Foundation Secretary shall forward to all Directors all materials submitted supporting each nominee not later than March 1st.

B. ELECTION

As the second order of business at the Board meeting in March each year in which an At-large director is to be elected, the Directors present and voting (excluding any then current Affiliate Representative or At-Large Directors from the vote) shall elect one (1) At-Large Director from the nominees submitted by the Delegates, using the Instant Runoff Voting method. The At-Large Director shall serve for a one year term which shall commence immediately upon his/her election.

Article Five, Board of Directors of the Foundation, Section 6: Transition Election

Following the adoption of these Bylaws, and within the time-frame established by the interim Board, and following the election of Delegates pursuant to Section 7 of Article 4 of these Bylaws, the Delegates from each station area shall meet and elect four (4) Directors : three (3) of whom shall be Listener-Sponsor Directors elected by Single Transferable voting, and one (1) of whom shall be a Staff Director elected by Instant Runoff Voting. For the purposes of this election only, and contrary to the provisions of Section 3(A) of this Article, one year's previous service as a Delegate shall not be an eligibility requirement. The term of these Station Representative Directors shall expire upon the election and seating of their successors in January 2005. In addition, nominations for the two (2) Affiliate Directors shall be opened.

Article Five, Board of Directors of the Foundation, Section 7: Removal of Directors

Consistent with applicable law, any Director shall be removed from the position of Director, and cease to be a Director upon the occurrence of any of the following: (A) said Director's death or resignation; (B) upon the occurrence of a disqualifying act, e.g. candidacy, election or appointment to a political office; (C) failure of a Director to attend three consecutive Board meetings, which absences have not been excused by a majority vote of the Directors present and voting at the meetings in question; (D) upon the fair and reasonable determination by a 2/3 vote of all the Directors on the Board (excluding the Director in question) after a review of the facts that said Director has exhibited conduct that is adverse to the best interests of the Foundation; (E) upon the 2/3 vote of the Delegates present and voting (but not less than a majority of all the Delegates) of the radio station that elected said Director (excluding the vote of the Director in question) that said Director has exhibited conduct that is adverse to the best interests of the Foundation; or, in the case of an "Affiliate Representative" or "At-Large" Director, upon the vote of the Delegates from a minimum of three radio stations, voting separately, that

said Director has exhibited conduct that is adverse to the best interests of the Foundation, provided that a 2/3 vote of the Delegates present and voting (but not less than a majority of all the Delegates) for each radio station shall be required to remove an "Affiliate Representative" or "At-Large" Director; or (F) upon the expiration or termination for any reason of said Director's term as a Delegate for his/her radio station s/he represents or upon the removal of the Director as a Delegate by the Members pursuant to Section 9 of Article 4 of these Bylaws. In the event of a removal proceeding pursuant to this Section 7(D) or 7(E), the Director shall be afforded reasonable and appropriate due process according to the circumstances, including notice and an opportunity to be heard. Removal of a Director hereunder shall also constitute removal of said Director from any position as a Foundation Officer and from any positions on a committee that s/he held by nature of his/her role as a Director. Notice of a meeting to remove a Director must be given at least 30 days in advance of said meeting.

Article Five, Board of Directors of the Foundation, Section 8: Filling Vacancies on the Board

If a Director's seat previously held by a "Station Representative" Director becomes vacant for any reason, that seat shall be immediately filled for the remainder of the term by a Director elected by the Delegates from that radio station, provided, however, that if the previous Director was a Staff Director, the Delegates shall election a Staff Director and if the previous Director was a Listener-Sponsor Director, then a Listener-Sponsor Director shall be elected. If a Director's seat previously held by an "Affiliate Representative" or "At-Large" Director becomes vacant for any reason, that seat shall be filled for the remainder of that term by the majority vote of the Board from the most recent list of nominees it had received for "Affiliate Representative" or "At-Large" Directors, as applicable, or if none, then nominations shall be declared open and the seat shall be filled the following March for a new one-year term.

Article Five, Board of Directors of the Foundation, Section 9: Compensation

Directors shall serve without compensation except that they shall be allowed reasonable advancement or reimbursement of expenses incurred in the performance of their regular duties.

Article Five, Board of Directors of the Foundation, Section 10: Restriction Regarding Interested Directors

Notwithstanding any other provision of these Bylaws, not more than forty-nine percent (49%) of the persons serving on the Board may be interested persons. For purposes of this Section, "interested person" means either: (1) Any person who currently is being or has been compensated by the Foundation for services rendered within the previous 12 months, whether as a full-time or part-time officer, employee, independent contractor, or otherwise, or (2) any brother, sister, ancestor, descendant, spouse, domestic partner, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person.

Article Six, Meetings of the Board of Directors

Article Six, Meetings of the Board of Directors, Section 1: Time and Place of Meetings

The "Annual Meeting" of the Board of Directors shall take place in late January each year, or at such other times and places as agreed by a majority vote of the Board of Directors. The Board shall also regularly meet in March, June and September of each year. The four regular Board meetings shall rotate through the five Foundation radio station areas so that meetings do not take place twice in the radio same station area until a meeting has been held in all other station areas.

Article Six, Meetings of the Board of Directors, Section 2: Special Meetings

Special meetings of the Board of Directors may be called by the Chairperson of the Board, any two Officers of the Foundation, or by any three Directors.

Article Six, Meetings of the Board of Directors, Section 3: Telephonic Meetings

The Board may hold special meetings, but not regular meetings, by telephone conference, video screen communication or other communications equipment, provided, however, that telephone appearance at meetings scheduled as "in-person" meetings is not permitted. Participation in a telephonic meeting under this Section shall constitute presence at the meeting if all of the following apply:

- A. Each Director participating in the meeting can communicate concurrently with all other Directors.
- B. Each Director is provided the means of participating in all matters for the Board, including the capacity to propose, or to interpose an objection to, a specific action to be taken by the Foundation.
- C. The Board has a means of verifying that the person participating at the meeting is a Director and that all votes cast during said meeting are cast only by Directors.

Article Six, Meetings of the Board of Directors, Section 4: Notice

Notice of every regular meeting of the Board of Directors, stating the time and place of said meeting, and the purposes thereof, shall be sent to each Director by first class mail, facsimile or email, according to the preference each Director specifies in writing to the Foundation's Secretary, at least thirty (30) days before any such meeting. Special meetings shall require only seven (7) days advance notice, but shall also require telephonic notice by leaving a message at the telephone number given to the Foundation's Secretary for such notice by each Director, and shall specify the purpose of the meeting. No additional business not stated in the notice shall be conducted at a special meeting. Notice of all meetings shall be placed on the Foundation's website and announced a minimum of 3 times daily on air for five consecutive days on all Foundation radio stations, beginning, whenever reasonably possible, no later than ten days before the date of said meeting.

Notice of a meeting hereunder will be deemed waived by a Director who affirmatively agrees to attend a meeting or to waive this advance notice requirement, signs a waiver of notice or a written consent to hold the meeting, or who attends the meeting without protesting prior to the meeting or upon commencement of the meeting to the lack of notice to that Director.

Article Six, Meetings of the Board of Directors, Section 5: Quorum and Approval

A quorum at any meeting of the Board of Directors shall consist of a majority of the then serving Directors. If after a quorum has been established at a meeting of the Directors some Directors leave the meeting and there is no longer a quorum present, those Directors remaining may continue to take action so long as a resolution receives at least that number of affirmative votes as would constitute a majority of a quorum. (E.g., if the quorum is 12 Directors, and a majority of a quorum is 7 Directors, then so long as 7 Directors remain present and vote in the affirmative the resolution shall be adopted.) Except as otherwise expressly provided herein, the approval of a majority of the Board present and voting shall be required for any action of the Board.

Article Six, Meetings of the Board of Directors, Section 6: Proxies

All action taken by Directors shall be taken by the elected Director personally. The powers of members of the Board may not be exercised by alternates, by proxy or the like.

Article Six, Meetings of the Board of Directors, Section 7: Open Meetings

All meetings of the Board of Directors and its committees shall be open to the Members and to the public, with the exception of those meetings dedicated to or predominantly regarding personnel, proprietary information, litigation and other matters requiring confidential advice of counsel involving commercial or financial information obtained on a privileged or confidential basis, or relating to a purchase of property or the use or engagement of services whenever the premature exposure of said purchase or sale, in the Board's sole opinion may compromise the legitimate business interest of the Foundation. In the event that all or a portion of a meeting is closed, the Board shall indicate in its notice of said meeting that the meeting or a part of it shall be closed. In addition, within a reasonable period after the closed meeting, the Foundation's Secretary shall post on the Foundation's website a general statement of the basis on which all or part of said meeting was closed.

No person shall be required, as a condition for attendance at any public meeting or to publicly comment, to register his/her name or to provide any other information. With the exception of telephone meetings, all public meetings of the Board and its committees shall include public comment periods. Public comment periods at Board meetings shall be not less than one hour, and at committee meetings, not less than one-half hour.

The Board shall make reasonable efforts to broadcast or webcast all its public meetings, and committee meetings, whether such meetings are in-person or telephonic.

Article Six, Meetings of the Board of Directors, Section 8: Action by Unanimous Written Consent

Any action that the Board is required or permitted to take may be taken without a meeting if all

Directors consent in writing to the action; provided, however, that the consent of any Director who has a material financial interest in a transaction to which the Foundation is a party and who is an "interested director" as defined in California Corporations Code Section 5233 (as it may be amended from time to time) shall not be required for approval of said transaction. Such action by written consent shall have the same force and effect as any other validly approved action of the Board. All such consents shall be filed with minutes of the proceedings of the Board.

Article Six, Meetings of the Board of Directors, Section 9: Accessibility

All public Board meetings shall be held in spaces fully accessible as defined in the Americans with Disabilities Act and any other applicable state and federal laws. Properly closed sessions may be held otherwise unless this would preclude access for any individual entitled to attend.

Article Seven, Local Station Boards

Article Seven, Local Station Boards, Section 1: Local Station Boards

There shall be a standing committee of the Board of Directors for each Foundation radio station which shall be known as the Local Station Board ("LSB"). The powers, duties and responsibilities of the LSBs shall be those set forth in these Bylaws and such other powers, duties and responsibilities as the Board of Directors may from time to time delegate to them.

Article Seven, Local Station Boards, Section 2: Composition of Local Station Boards

Each LSB shall consist of the 24 Delegates elected by the Members for that radio station - 18 Listener-Sponsor Delegates and 6 Staff Delegates. (Four of the Delegates for each radio station shall also concurrently serve as Directors of the Foundation, as set provided in Section 3 of Article 5 of the Bylaws.)

In addition, an "associate station," if any, as that term is defined in Section 8 of this Article, may appoint one representative to the LSB of the radio station with which it is associated. Associate station representatives shall be voting members of the LSB; provided, however, that no associate station representative shall have the right to vote for the election or removal of any Foundation Director or Delegate nor may s/he be eligible for election by the Delegates to the office of Director. No LSB shall have more than a total of three (3) associate station representatives (and no more than one (1) from any one associate station) at any given time. The term of office of an associate station representative shall be three years, with a maximum of two consecutive three-year terms of service on an LSB.

The station's General Manager shall serve as a non-voting member of the station's LSB.

Article Seven, Local Station Boards, Section 3: Specific Powers and Duties

Each LSB, acting as a standing committee of the Foundation's Board of Directors, shall have the following powers, duties and responsibilities related to its specific radio station, under the direction and supervision of the Foundation's Board of Directors:

- A. To review and approve that station's budget and make quarterly reports to the Foundation's Board of Directors regarding the station's budget, actual income and expenditures.
- B. To screen and select a pool of candidates for the position of General Manager of its respective radio station, from which pool of approved candidates the Executive Director shall hire the station's General Manager. The LSB may appoint a special sub-committee for this purpose.
- C. To prepare an annual written evaluation of the station's General Manager.
- D. Both the Executive Director and/or an LSB may initiate the process to fire a station General Manager. However, to effectuate it, both the Executive Director and the LSB must agree to fire said General Manager. If the Executive Director and the LSB cannot agree, the decision to terminate or retain said General Manager shall be made by the Board of Directors.
- E. To screen and select a pool of candidates for the position of station Program Director, from which pool of approved candidates the station's General Manager shall hire the station's Program Director. The LSB may appoint a special sub-committee for this purpose.
- F. To prepare an annual written evaluation of the station's Program Director.
- G. To work with station management to ensure that station programming fulfills the purposes of the Foundation and is responsive to the diverse needs of the listeners (demographic) and communities (geographic) served by the station, and that station policies and procedures for making programming decisions and for program evaluation are working in a fair, collaborative and respectful manner to provide quality programming.
- H. To conduct "Town Hall" style meetings at least twice a year, devoted to hearing listeners views, needs and concerns.
- I. To assist in station fund-raising activities.
- J. To actively reach out to underrepresented communities to help the station serve a diversity of all races, creeds, colors and nations, classes, genders and sexual orientations, and ages and to help build collaborative relations with organizations working for similar purposes.
- K. To perform community needs assessments, or see to it that separate "Community Advisory Committees" are formed to do so.
- L. To ensure that the station works diligently towards the goal of diversity in staffing at all levels and maintenance of a discrimination-free atmosphere in the workplace.
- M. To exercise all of its powers and duties with care, loyalty, diligence and sound business judgment consistent with the manner in which those terms are generally defined under applicable California law.

Article Seven, Local Station Boards, Section 4: Other Local Station Board Powers and Authority

By resolution, the Foundation's Board of Directors may delegate any other corporate powers it deems appropriate to an LSB with regard to that specific radio station. Any such power delegated to an LSB is subject to revocation at any time by the Board of Directors. Any and all actions, resolutions and policies taken or adopted by an LSB may be overridden by a majority vote of the Directors if said action, resolution or policy is found by the Board of Directors to be adverse to the mission and/or charitable or business purposes of the Foundation, to exceed the power or authority granted to said LSB or to be inconsistent with these Bylaws, the Articles or applicable laws and regulations.

Article Seven, Local Station Boards, Section 5: Election of Officers

Each Local Station Board shall elect a Chair, a Vice-Chair, a Recording Secretary, and a Treasurer, who shall be elected annually at the December meeting of the LSB for a term of one year using the Instant Runoff Voting method. Each of these officers shall serve at the pleasure of the LSB and shall have those powers and shall perform those duties as may be prescribed by its LSB. With the exception of the Chair and the Vice Chair, an officer of an LSB is not required to be a Delegate. Local Station Board officers may not serve concurrently as Foundation Directors, and must resign their position as an LSB officer if elected to the Board of Directors.

Article Seven, Local Station Boards, Section 6: Meetings

A. FREQUENCY

Each LSB shall meet as often as required to accomplish its duties, but not less than every other month.

B. TIME AND PLACE

The LSB shall establish, by majority vote, the time and place of each meeting, provided, however that no meeting shall occur sooner than ten (10) days from the date of the vote scheduling said meeting without the unanimous agreement of all the LSB officers that a shorter period is required to address urgent matters and, in the event of less than 10-days notice, notice shall be given by telephone message to all LSB members at least 24 hours before the meeting. There shall be a meeting of the LSB in December each year to seat newly elected Delegates and to elect LSB officers, and in early January to elect Director(s). Meetings shall be held within the local radio station area in facilities of sufficient size to accommodate Members affiliated with that radio station and the public, preferably in the station.

C. MEMBERS & PUBLIC PARTICIPATION

LSB meetings shall be open to the public and to all Members, with the exception of those meetings dedicated to, or predominantly regarding, personnel, proprietary information, litigation and other matters requiring confidential advice of counsel, involving commercial or financial information obtained on a privileged or confidential basis or relating to a purchase of property or the use or engagement of services whenever the premature exposure of said purchase or sale, in the LSB's sole opinion, may compromise the legitimate business interest of said radio station or the Foundation. In the event that all or a portion of a meeting is closed, the LSB shall indicate in its notice of said meeting that the meeting or a part of it shall be closed. In addition, within a reasonable period after the closed meeting, the LSB's Secretary shall post on the station's website a general statement of the basis on which all or part of said meeting was closed. Each meeting shall include a public comment period of not less than thirty (30) minutes. No person shall be required, as a condition for attendance at any public meeting or to publicly comment, to register his/her name or to provide any other information.

D. NOTICE

The public and all Members shall be notified of each LSB meeting. Four on-air announcements, made during prime time on the radio station on four different days, beginning, whenever feasible, at least 7 days prior to the date of each meeting, shall be considered adequate notice. In the event of LSB meetings convened on short notice for urgent business, all reasonable efforts shall be made to broadcast notice of the meeting at least three times during prime time for two days prior to the meeting. Whenever feasible, notice shall also be posted on the station's website at least 7 days prior to the date of each meeting.

E. RECORDKEEPING AND RULEMAKING

Meetings and actions of the LSB shall be governed by the provisions of these Bylaws. A book of Minutes of all meetings and actions of the LSB shall be kept and shall be filed with the records of the LSB, which book shall include the time and place of each meeting, the notice given, how authorized, any waivers or consents, the names of those present, and a summary of the proceedings. Minutes of closed meetings shall be maintained, but sealed as confidential. A copy of all Minutes and actions of the LSB shall also be forwarded to the Foundation's Secretary for maintenance pursuant to Section 1(A) of Article 12 of these Bylaws. Each LSB may adopt additional rules for the governance of its LSB so long as the rules are not inconsistent with these Bylaws.

Article Seven, Local Station Boards, Section 7: Quorum and Approval

A quorum at any meeting of an LSB shall be a majority of the then currently serving LSB members, not including the Station Manager. Associate station representatives shall not be counted for purposes of establishing a quorum for matters on which they are not entitled to vote. If after a quorum has been established at a meeting of the LSB some of the LSB members leave the meeting and there is no longer a quorum present, those LSB members remaining may continue to take action so long as a resolution receives at least that number of affirmative votes as would constitute a majority of a quorum. (E.g., if the quorum is 13 LSB members, and a majority of a quorum is 7, then so long as 7 LSB members remain present and vote in the affirmative the resolution shall be adopted.) Except as otherwise expressly provided in these Bylaws, the approval of a majority of the LSB members present and voting shall be required for any action of said LSB. In the event that the vote on any motion results in a tie, the motion shall not pass.

Article Seven, Local Station Boards, Section 8: Associate Stations

A. A Foundation radio station may choose to associate with any geographically contiguous community radio station for the purpose of re-broadcasting no less than seventy-five percent (75%) of that Foundation radio station's programming. The terms of said association shall be memorialized in a written agreement between the Foundation radio station and the community radio station, which agreement must first be approved by the Board of Directors to be effective. Such a community radio station must produce some local programming, operate under a mission statement compatible with that of the Foundation and have a democratically elected station board. Such a community radio station will be referred to as an "associate station", which station is different from an "affiliate station" as referenced in Section 4(A) of Article 6 of these Bylaws. An associate station may be permitted to appoint one (1) representative to the LSB of the Foundation radio station with which it is affiliated for a term of three years commencing in December of the year of appointment, provided, however, that no LSB shall have representatives from more than 3 associate stations on its LSB.

B. Associate station representatives sitting on LSBs are subject to removal by either their own station boards according to their own respective terms of accountability and appropriateness or by the majority vote of all the LSB (excluding the vote of the associate station representative in question). The LSB must notify the associate station board at least 30 days prior to any vote to remove its representative about any difficulties or concerns regarding its associate station representative in order to provide said associate radio station the opportunity to consult with its representative about the LSB's concerns and/or to designate a replacement representative.

Article Seven, Local Station Boards, Section 9: Proxies Not Permitted

All actions taken by LSB members shall be taken personally. The powers of Delegates and associate station representatives may not be exercised by alternates, by proxy or the like.

Article Seven, Local Station Boards, Section 10: Local Station Board Advisory Committees

A. An LSB may, by resolution, designate one or more advisory committees, to serve at the pleasure, direction, and supervision of the LSB. Any such advisory committee shall include, at least, two (2) LSB members. Members affiliated with that radio station shall be eligible for appointment to a committee. Station Advisory Committee members shall not be considered agents of the Foundation or the radio station and shall not have the authority to bind the Foundation or the radio station with which it is affiliated.

B. Meetings and actions of local station advisory committees shall be governed by the provisions of Section 6 of this Article of these Bylaws with such changes as are necessary in said provisions to substitute the committee(s) and its members for the LSB and its members, except that the time of regular meetings of committees may be determined by resolution of the LSB as well as a vote of the committee and that the committees shall not be required to meet in December or January unless they otherwise agree, or the LSB resolves that it should do so, and provided that notice of committee meetings shall be deemed adequate if announced at LSB meetings and, when feasible, posted on the station's web page. Special meetings of committees may also be called by resolution of the LSB or the committee. The LSB may adopt additional rules for government of any committee that are not inconsistent with the provisions of these Bylaws.

C. The general duty of advisory committees shall be to advise the LSB on the issues for which the committee was created. Advisory committees shall have only those duties and powers set forth by resolution of the LSB, which powers shall not include the power to: (1) approve any action which, under the California Nonprofit Public Benefit Corporation Law or these Bylaws, requires the approval of the Members, Directors, the LSB, or the Delegates; (2) fill vacancies on the Board, LSB or on any committee; (3) amend or repeal these Bylaws or adopt new bylaws; (4) amend or repeal any resolution of the Board or the LSB; (5) create any other committees of the Board or LSB; (6) approve or execute any contract or transaction; or (7) incur any indebtedness, or borrow money, on behalf of the Foundation or any LSB.

Article Eight, Other Committees of the Board of Directors

Article Eight, Other Committees of the Board of Directors, Section 1: Committees of the Board

In addition to the Local Station Boards, the Board of Directors may, by resolution, designate one or more committees, to serve at the pleasure of the Board. Any such committee shall have only such authority as provided by resolution of the Board and no committee may without full Board review and approval:

A. Approve any action which, under the California Nonprofit Public Benefit Corporation Law or these

Bylaws, also requires the approval of the Members or the Delegates;

B. Fill vacancies on the Board or in any committee (except that Delegates may fill vacancies on the board for their local station area);

C. Fix compensation for Directors for serving on the Board or on any committee;

D. Amend or repeal these Bylaws or adopt new bylaws;

E. Amend or repeal any resolution of the Board;

F. Create any other committees of the Board or appoint members of the committees to the Board, provided, however, LSBs shall be entitled to create subcommittees of the LSB;

G. Approve or execute any contract or transaction to which the Foundation is a party; or

H. Incur any indebtedness, or borrow money, on behalf of the Foundation.

Article Eight, Other Committees of the Board of Directors, Section 2: Composition of Board Committees

Except as otherwise provided in these Bylaws, all committees shall include at least one Director from each Foundation radio station and two Delegates, who are not then serving as Directors, from each radio station, provided, however, that the inclusion of Delegates on a committee shall not be required where the Board by a majority vote determines that the privileged, sensitive or confidential nature of the matters to be addressed by said committee preclude the inclusion of Delegates as committee members in order for said committee to effectively and efficiently perform its duties. The Board may designate one or more Directors as alternate members of any committee. Director committee members shall be selected by a majority vote of the Board using the Instant Runoff Voting method, provided however that if there is an election for more than one committee member, then the Board shall use the single transferable method of voting to select committee members. Delegate committee members shall be elected by their respective LSBs using the Instant Runoff Voting method, provided however that if there is an election for more than one committee member, then the LSBs shall use the single transferable method of voting to select committee members.

Article Eight, Other Committees of the Board of Directors, Section 3: Standing Committees

In addition to the LSBs for each of the Foundation's radio stations, the Board of Directors shall also have the following standing committees: (A) a Coordinating Committee, which shall coordinate Board activities between meetings, which committee shall include as members all Foundation officers and at least one Director from each radio station area, but shall not include any non-Director LSB Delegates, provided however that the Coordinating Committee shall not be considered an "executive committee" and shall not exercise any powers of the Board without Board approval; (B) a Governance Committee, which shall regularly review the Foundation's bylaws and policies for governance of Board activities; (C) a Finance Committee, which shall review and recommend the annual budget for board approval and shall monitor and report Foundation financial activities at least quarterly and shall include as members the Chief Financial Officer, a Director from each radio station area and the treasurers of each LSB. (The chair of the Finance Committee shall be a Director who may be referred to as the Board "Treasurer". However, the Board Treasurer shall not be an officer of the Foundation. The Foundation's Chief Financial Officer shall be an employee of the Foundation and shall not be the Board Treasurer.

The Board Treasurer shall not represent him/herself to any party as an officer of the Foundation nor may s/he sign documents on behalf of the Foundation requiring the signature of the Chief Financial Officer nor represent him/herself to have any authority to bind the Foundation.); and (D) an Audit Committee, which shall oversee the annual audit of the Foundation's books and shall not include Finance committee members.

Article Eight, Other Committees of the Board of Directors, Section 4: Committees of Inclusion

In addition, there shall be established, in each of the Foundation's radio station areas, standing committees of the Board to monitor the under-representation of communities in their respective radio station areas. These "Committees of Inclusion" shall include one Director and three LSB members from each radio station area who shall be elected by their respective LSBs, and such additional individuals as those four shall choose by majority vote. The Committees of Inclusion will monitor both station programming and staffing in consultation with the LSBs. They will also monitor the diversity of election candidates and work with the LSBs' appropriate committees to improve the diversity of election candidates at the local and national level. These Committees of Inclusion shall monitor diversity participation in consultation with the general manager, local committees and the Board, the status of which will be published and maintained in each respective radio station area. Communities deemed to be under-represented by the Committees of Inclusion will be identified and the extent of their under-representation shall be communicated to the Board, the respective LSBs and any local outreach committees. Station managers and appropriate LSB committees will be expected to consider these communities in their future decisions about staffing, programming, and candidate outreach, subject to any applicable state and federal laws and regulations. All station managers and Committees of Inclusion will report to the Board and their respective LSBs quarterly on the status of diversity within their radio station areas. The Board shall query and monitor radio station areas with identified under-represented communities and any plans for addressing these under-represented communities' increased participation. Where necessary with due notice, the Board will suggest and/or direct managers and committees to implement specific measures to improve the status of under-represented communities in their respective radio station areas. The Board will assist and encourage station managers and Committees of Inclusion in finding new ways to improve recruitment efforts in their respective radio station areas.

Article Eight, Other Committees of the Board of Directors, Section 5: Meetings and Actions of Committees

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of Article 6 of these Bylaws with such changes in the context of those sections as are necessary to substitute the committee and its members for the Board and its members, except that the time of regular meetings of committees may be determined by resolution of the Board as well as the committee. Special meetings of committees may be called by resolution of the Board or by the committee Chair or by any two committee members and notice of special meetings of committees shall also be given to all alternate committee members, who shall have the right to attend all meetings of the committee. Any committee member shall have the right to place a matter on the agenda for discussion by the committee. The Board may adopt additional rules for the government of any committee that are not inconsistent with the provisions of these Bylaws.

Article Nine, Officers of the Foundation

Article Nine, Officers of the Foundation, Section 1: Designation of Officers

The officers of the Foundation shall be a Chairperson, a Vice Chairperson, an Executive Director, a Secretary, and a Chief Financial Officer. The Foundation may also have, at the discretion of the Board of Directors, one or more Assistant Secretaries. Any number of offices may be held by the same person, except that neither the Secretary nor the Chief Financial Officer shall serve concurrently as the Chairperson of the Board or the Executive Director. With the exception of the Chairperson of the Board and the Vice-Chairperson of the Board, no officer is required to be a Director.

Article Nine, Officers of the Foundation, Section 2: Election of Officers; Term

The officers of the Foundation shall be appointed and/or elected by the Board of Directors, and each shall serve at the pleasure of the Board (subject to the rights, if any, of an officer under any contract of employment, if any). With the exception of the Executive Director and the Chief Financial Officer, all officers shall serve for a term of one (1) year, unless s/he resigns, is removed or is otherwise disqualified to serve prior to the expiration of his/her term, and shall be elected by the Board at its annual meeting in January each year using the Instant Runoff Voting method. (The Chair, Vice Chair and Secretary shall be elected at the first meeting of the Board following the adoption of these Bylaws for terms to expire in January 2005, subject to the rights, if any, of an officer under any contract of employment, if any.)

Article Nine, Officers of the Foundation, Section 3: Removal and Resignation of Officers

A. Subject to the rights, if any, of an officer, under any contract of employment, any officer may be removed, either with or without cause, by the Board at any regular or special meeting thereof.

B. Any officer may resign at any time by giving written notice to the Board. Any such resignation shall take effect upon the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any such resignation is without prejudice to the rights, if any, of the Foundation under any contract to which the officer is a party.

Article Nine, Officers of the Foundation, Section 4: Vacancies in Offices

A vacancy in any office of an officer because of death, resignation, removal, disqualification or any other cause shall be filled for the remainder of the term by the Board.

Article Nine, Officers of the Foundation, Section 5: Chairperson of the Board

The Chairperson of the Board shall, if present, preside at all meetings of the Board of Directors and exercise and perform such other powers and duties as may be from time to time assigned to him/her by

the Board or prescribed by these Bylaws.

Article Nine, Officers of the Foundation, Section 6: Vice Chairperson of the Board

The Vice Chairperson of the Board shall, in the absence of the Chairperson, preside at meetings of the Board of Directors and exercise and perform such other powers and duties as may be from time to time assigned to him/her by the Board or prescribed by these Bylaws.

Article Nine, Officers of the Foundation, Section 7: Executive Director

A. The President of the Foundation shall be referred to as the "Executive Director." The Executive Director shall be the general manager, chief executive officer and chief administrator of the Foundation. S/he shall be selected, supervised and discharged by the Board. In addition, his/her performance will also be subject to annual evaluation by each LSB, which may make recommendations to the Board.

B. Subject to the control of the Board, the Executive Director shall have general supervision, direction and control of the business and the officers of the Foundation and the primary responsibility for implementing the directives, decisions and policies of the Foundation and the Board pertaining to administration, personnel, programming, financing and public relations. The Executive Director shall generally promote, coordinate and supervise the mission of the Foundation and shall have such powers and perform such duties as may be delegated or assigned to him/her by the Board.

Article Nine, Officers of the Foundation, Section 8: Secretary

A. The Secretary shall keep or cause to be kept at the principal executive office, or such other place as the Board may designate, a book of minutes of all meetings and actions of the Board and committees of the Board, with the time and place of holding, whether regular or special, and, if special, how authorized, the notice thereof given, any waivers or consent the names of those present at every Board and committee meetings, and the proceedings thereof. Minutes of closed meetings shall be maintained but sealed as confidential.

B. The Secretary shall give, or cause to be given, notice of all meetings of the Board required by the Bylaws or by law to be given, and s/he shall keep the seal of the Foundation, if one be adopted, in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board or by the Bylaws.

Article Nine, Officers of the Foundation, Section 9: Chief Financial Officer

A. The Chief Financial Officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Foundation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, and retained earnings. . The books of account shall be open at all reasonable times to inspection by any Director upon demand.

B. The Chief Financial Officer shall cause to be deposited all moneys and other valuables in the name and to the credit of the Foundation with such depositories as may be designated by the Board. S/he

shall cause the funds of the Foundation to be disbursed as s/he may be properly directed from time to time, shall render to the Executive Director and the Board an account of all of his/her transactions as Chief Financial Officer and of the financial condition of the Foundation whenever requested, and shall have other such powers and perform such other duties as may be prescribed by the Board or the Bylaws.

Article Ten, General Provisions

Article Ten, General Provisions, Section 1: Membership Not Transferable

One's position as a Member, Delegate, Director or Officer of the Foundation shall not be transferable and may not be assigned or inherited.

Article Ten, General Provisions, Section 2: Effect of Termination of Membership or Position: No Claims or Refunds

Except as specifically set forth herein, no withdrawn or terminated Members, Delegates, Directors or Officers (nor their heirs or personal representatives) shall have any claim whatsoever upon the assets of the Foundation, or any claim whatsoever arising out of said membership or the holding of any office or position in the Foundation. Furthermore, no Member, Delegate, Directors or Officers shall be entitled to the return of any monies contributed to the Foundation or any Foundation radio station.

Article Eleven, Indemnification of Directors, Officers, Delegates, Employees and Other Agents

Article Eleven, Indemnification of Directors, Officers, Delegates, Employees and Other Agents, Section 1: Non-Liability of Directors, Officers & Delegates

Directors, Officers and Delegates shall not be personally liable for the debts, liabilities, or other obligations of the Foundation and private property of such individuals shall be exempt from Foundation debts or liabilities, subject to the applicable provisions of California's Corporation Code, unless said debts, liabilities or other obligations are the direct result of intentional misconduct by a Director, Officer or Delegate. The personal liability of Directors, Delegates and Officers shall be eliminated to the fullest extent permitted by California law.

Article Eleven, Indemnification of Directors, Officers, Delegates, Employees and Other Agents, Section 2: Definitions: Agents, Proceedings and Expenses

For the purposes of this Article 11, "agent" means any person who is or was a Director, Officer, Delegate, employee or agent of this Foundation; "proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative, or investigative; and "expenses" includes, without limitation, attorneys' fees and any expenses of establishing a right to indemnification under Section 3 or Section 4 of this Article.

Article Eleven, Indemnification of Directors, Officers, Delegates, Employees and Other Agents, Section 3: Actions Other Than by the Foundation

Subject to the provisions of Section 5238 of the California Corporations Code (as amended from time to time), the Foundation shall indemnify any person who was or is a party, or is threatened to be made a party, to any proceeding (other than an action by or in the right of this Foundation to procure a judgment in its favor, an action brought under Section 5233 of the California Corporations Code or an action brought by the Attorney General or a person granted relator status for any breach of duty relating to assets held in charitable trust) by reason of the fact that such person is or was an agent of the Foundation, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if that person acted in good faith and in a manner that person reasonably believed to be in the best interests of this Foundation, and, in the case of a criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of this Foundation or that the person had reasonable cause to believe that his or her conduct was unlawful.

Article Eleven, Indemnification of Directors, Officers, Delegates, Employees and Other Agents, Section 4: Actions by the Foundation

Subject to the provisions of Section 5238 of the California Corporations Code (as amended from time to time), the Foundation shall indemnify any person who was or is a party, or is threatened to be made a party, to any proceeding (other than an action by or in the right of this Foundation to procure a judgment in its favor, an action brought under Section 5233 of the California Corporations Code or an action brought by the Attorney General or a person granted relator status for any breach of duty relating to assets held in charitable trust) by reason of the fact that such person is or was an agent of the Foundation, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if that person acted in good faith and in a manner that person reasonably believed to be in the best interests of this Foundation, and, in the case of a criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of this Foundation or that the person had reasonable cause to believe that his or her conduct was unlawful.

A. In respect of any claim, issue or matter as to which that person shall have been adjudged to be liable to this Foundation in the performance of that person's duty to this Foundation, unless and only to the extent that the court in which that action was brought shall determine upon application that, in view of all the circumstances of the case, that person is fairly and reasonably entitled to be indemnified for the expenses which the court shall determine; or

B. Of amounts paid in settling or otherwise disposing of a threatened or pending action, with or without court approval, if said settlement or disposition was not first approved by the Board.

Article Eleven, Indemnification of Directors, Officers, Delegates, Employees and Other Agents, Section 5: Successful Defense by Agent

To the extent that an agent of this Foundation has been successful on the merits in defense of any proceedings referred to in Section 3 or Section 4 of this Article, or in defense of any claim, issue, or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

Article Eleven, Indemnification of Directors, Officers, Delegates, Employees and Other Agents, Section 6: Required Approval

Except as provided in Section 5 of this Article, any indemnification under this Article shall be made by this Foundation only if authorized upon a determination that indemnification of the agent in the specific case is proper because the agent has met the applicable standard of conduct set forth in Section 3 or Section 4 of this Article, by:

- A. A majority vote of a quorum of the Board who are not parties to the proceeding; or
- B. The court in which the proceeding is or was pending, upon application made by this Foundation or the agent or the attorney or other person rendering services in connection with the defense, whether or not such application by the agent, attorney, or other person is opposed by this Foundation.

Article Eleven, Indemnification of Directors, Officers, Delegates, Employees and Other Agents, Section 7: Advance of Expenses

Subject to the provisions of Section 5238 of the California Corporations Code (as amended from time to time), expenses incurred in defending any proceeding may be advanced by this Foundation before the final disposition of the proceeding upon receipt of an undertaking by or on behalf of the agent to repay the amount of the advance unless it shall be ultimately determined that the agent is entitled to be indemnified as authorized in this Article.

Article Eleven, Indemnification of Directors, Officers, Delegates, Employees and Other Agents, Section 8: Other Contractual Rights

Nothing contained in this Article 11 shall affect any right to indemnification to which persons other than Directors and Officers of this Foundation or any subsidiary hereof may be entitled by contract or otherwise.

Article Eleven, Indemnification of Directors, Officers, Delegates, Employees and Other Agents, Section 9: Limitations

No indemnification shall be made hereunder, except as provided in Section 5 and Section 6(B) of this Article, or as otherwise required by law, in any circumstance where it appears:

- A. That it would be inconsistent with a provision of the Articles of Incorporation, the Bylaws, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid which prohibits or otherwise limits indemnification; or
- B. That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

Article Eleven, Indemnification of Directors, Officers, Delegates, Employees and Other Agents, Section 10: Insurance

The Foundation may, upon a determination by the Board, purchase and maintain insurance on behalf of any agent of the Foundation against any liability which might be asserted against or incurred by the agent in such capacity, or which might arise out of the agent's status as such, whether or not this Foundation would have the power to indemnify the agent against that liability under the provision of this Article.

Article Eleven, Indemnification of Directors, Officers, Delegates, Employees and Other Agents, Section 11: Fiduciaries of Corporate Employee Benefit Plan

This Article does not apply to any proceeding against any trustee, investment manager, or other fiduciary of an employee benefit plan in that person's capacity as such, even though that person may also be an agent of this Foundation as defined in Section 1 of this Article. Nothing contained in this Article shall limit any right to indemnification to which such a trustee, investment manager, or other fiduciary may be entitled by contract or otherwise, which shall be enforceable to the extent permitted by applicable law.

Article Eleven, Indemnification of Directors, Officers, Delegates, Employees and Other Agents, Section 12: Amendment to California Law

In the event that California Law regarding indemnification of directors, officers, employees and other agents of this Foundation, as in effect at the time of adoption of these Bylaws, is subsequently amended to in any way increase the scope of permissible indemnification beyond that set forth herein, the indemnification authorized by this Article 11 shall be deemed to be coextensive with the maximum afforded by the California Law as so amended.

Article Twelve, Corporate Records, Report and Seal

Article Twelve, Corporate Records, Report and Seal, Section 1: Maintenance of Corporate Records

The Foundation shall keep at its principal office in the State of California:

A. MINUTES

Minutes of all meetings of the Board of Directors, LSBs, of committees of the Board and LSBs and, if held, of Members, indicating the time and place of the holding of such meetings, whether regular or special, how called, the notice given, and the names of those present and the proceedings thereof; as well as all waivers of notice and consents to holding of Board or LSB meetings, notices and statements regarding closed meetings, approval of board minutes and written consents to Board action without a meeting. Minutes of closed meetings must be put under seal.

B. BOOKS AND RECORDS

Adequate and correct books and records of account.

C. MEMBERSHIP RECORD

A record of its Members indicating their names, addresses, class of membership, the radio station s/he is affiliated with and the termination date of any membership.

D. ARTICLES AND BYLAW

A copy of the Foundation's Articles of Incorporation and Bylaws, as amended from time to time, which shall be open to inspection by the Members of the Foundation at all reasonable times during office hours or available upon written request.

E. TAX RECORDS

A copy of the Foundation's annual information return on IRS Form 990 for each of the preceding 3 years and a copy of the Foundation's approved application for recognition of exemption.

Article Twelve, Corporate Records, Report and Seal, Section 2: Corporate Seal

The Board may adopt, use, and, at will, alter, a corporate seal. Such seal shall be kept at the principal office of the Foundation. Failure to affix the seal to corporate instruments, however, shall not affect the validity of any such instrument.

Article Twelve, Corporate Records, Report and Seal, Section 3: Directors: Inspection Rights

Every Director, or his or her designated agent, shall have the absolute right at any reasonable time to inspect and copy all of the Foundation's books, records and documents of every kind and to inspect the physical properties of the Foundation.

Article Twelve, Corporate Records, Report and Seal, Section 4: Members: Inspection Rights

Members of the Foundation shall have the following inspection rights, but only for a purpose reasonably related to such person's interests as a Member of the Foundation, and subject to the Foundation's right to provide a reasonable alternative method for achieving the Member's articulated purpose:

- A. To inspect and copy the record of all Members' names, addresses and voting rights, at reasonable times, upon five (5) business days' prior written demand on the Foundation, which demand shall state the purpose for which the inspection rights are requested. Where the Foundation reasonably believes that the information will be used for an improper purpose, or where the Foundation provides a reasonable alternative to achieve the Member's articulated purpose, the Foundation may deny the Member access to its membership list and information;
- B. To inspect at any reasonable time the books, records, or minutes of proceedings of the Members or of the Board or committees of the Board, upon written demand on the Foundation by the Member, for a purpose reasonably related to such person's interests as a Member, provided, however, that said Member will not be permitted to review sealed Minutes from closed meetings; and
- C. To inspect and review copies of reports filed by the Foundation with the Attorney General consistent with Section 6324 of the California Corporations Code.

Article Twelve, Corporate Records, Report and Seal, Section 5: Right to Copy and Make Extracts

Any inspection under the provisions of this Article may be made in person or by agent or attorney and the right to inspection includes the right to copy and make extracts.

Article Twelve, Corporate Records, Report and Seal, Section 6: Corporate Records, Report and Seal

The Foundation shall cause an annual report to be prepared and furnished to the Board not later than one hundred and twenty (120) days after the close of the Foundation's fiscal year and, upon payment of reasonable copying costs by the Member, to any Member who requests it in writing, which report shall contain the following information in appropriate detail:

- A. The assets and liabilities, including the trust funds, of the Foundation as of the end of the fiscal year;
- B. The principal changes in assets and liabilities, including trust funds, during the fiscal year;
- C. The revenue or receipts of the Foundation, both unrestricted and restricted to particular purposes, for the fiscal year; and
- D. The expenses or disbursements of the Foundation, for both general and restricted purposes, during the fiscal year.

The annual report shall be accompanied by any report thereon of independent accountants, or, if there is no such report, the certificate of an authorized officer of the Foundation that such statement(s) were prepared without audit from the books and records of the Foundation.

Article Twelve, Corporate Records, Report and Seal, Section 7: Annual Statement of Specific Transactions

The Foundation must furnish a statement to its Members and Directors by posting it at each of its radio stations and posting it on the Foundation's website and, at the Foundation's discretion, by otherwise delivering it to them within one hundred and twenty (120) days after the close of its fiscal year. Said statement shall briefly describe:

- A. The amount and circumstances of any indemnifications or advances aggregating more than ten thousand dollars (\$10,000) paid during the fiscal year to any Officer, Delegate or Director of the Foundation pursuant to Section 5238 of the California Corporations Code, provided that no such report need be made if the indemnification or advance was approved in advance by the Members;
- B. Any transaction involving fifty thousand dollars (\$50,000) to which the Foundation was a party during the previous fiscal year in which a Director, Delegate or Officer had a direct or indirect material financial interest or which was one of a number of transactions involving the same Director, Delegate or Officer and which transactions in the aggregate involved more than \$50,000. Said statement shall briefly indicate the names of the interested persons involved in such transactions, stating each person's relationship to the Foundation, the nature of such person's interest in the transaction and, where practical, the amount of such interest, provided that in the case of a transaction with a partnership of which such person is a partner, only the interest of the partnership need be stated.

Article Twelve, Corporate Records, Report and Seal, Section 8: Annual Reports to Third Parties

A. The Foundation shall file with the California Secretary of State a biannual statement containing the names and addresses of its Executive Director, Secretary and Chief Financial Officer, the street address of its principal California office, and a designation of an agent for the service of process, which statement must be provided on the appropriate Secretary of State form.

B. In addition to providing a copy of the Foundation's annual report set forth in Section 6 of this Article and the annual statement in Section 7 of this Article, the Foundation shall also annually file with the Attorney General a Registration/Renewal Fee Report within four months and 15 days after the end of the Foundation's fiscal year.

Article Twelve, Corporate Records, Report and Seal, Section 9: Exempt Activities

Notwithstanding any other provision of these Bylaws, no Member, trustee, Officer, employee, Director, Delegate or representative of this Foundation shall take any action or carry on any activity by or on behalf of the Foundation not permitted to be taken or carried on by an organization exempt under section 501(c)(3) of the Internal Revenue Code and its regulations as they now exist or as they may hereafter be amended, or by an organization, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code and regulations as they now exist or as they may hereafter be amended.

Article Thirteen, Conflicts of Interest

Article Thirteen, Conflicts of Interest, Section 1: Definitions

A "CONFLICT OF INTEREST" is any circumstance described in Section 2 of this Article, or such substantially similar circumstances.

An "INTERESTED PERSON" is any person serving as a Director, Officer, Delegate, associate station representative, employee, or member of a committee of the Board or LSB.

A "FAMILY MEMBER" is a brother, sister, ancestor, descendant, spouse, domestic partner, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of an Interested Person

A "FINANCIAL INTEREST" in an entity is a direct or indirect financial interest, which, in view of all the circumstances, would, or reasonably could, affect an Interested Person's or Family Member's judgment with respect to transactions to which the entity is a party.

Article Thirteen, Conflicts of Interest, Section 2: Conflict of Interest Defined

A Conflict of Interest exists where the financial or business interests of an Interested Person are or may be inconsistent with the best interests of the Foundation. The following circumstances shall be deemed to create a Conflict of Interest:

A. A contract or transaction between the Foundation (or a Foundation radio station) and an Interested Person or Family Member.

B. A contract or transaction between the Foundation (or a Foundation radio station) and an entity in which an Interested Person or Family Member has a Financial Interest or with which such Person has a

relationship, for example as a director, officer, trustee, partner, or guardian

C. A compensation arrangement between any entity or individual with which the Foundation (or a Foundation radio station) has a contract or transaction and an Interested Person or Family Member.

D. A compensation arrangement between any entity or individual with which the Foundation (or a Foundation radio station) has a contract or transaction and an entity in which an Interested Party or Family Member has a Financial Interest.

E. An Interested Person competing with the Foundation in the rendering of services or in any other contract or transaction with a third party.

F. An Interested Person accepting gifts, entertainment or other favors from any individual or entity that: (1) does or is seeking to do business with, or is a competitor of, the Foundation (or a Foundation radio station); or (2) has received, is receiving or is seeking to receive a loan or grant, or to secure other financial commitments from the Foundation (or a Foundation radio station), in both cases under circumstances where it might be reasonably inferred that such action was intended to influence or would likely influence the Interested Person in the performance of his or her duties.

Article Thirteen, Conflicts of Interest, Section 3: Disclosures, Findings and Approval Procedures

An Interested Person must disclose in writing all material facts related to an actual or potential Conflict of Interest to the Board and/or the members of a committee considering a proposed contract or transaction to which the Conflict of Interest relates. If a contract or transaction is not being considered by the Board or a committee, the required disclosure must be made to the Board Chairperson. Until a Conflict of Interest has been voted upon by the Board in accordance with this Section 3, an Interested Person shall refrain from any action that might affect the Foundation's participation, or that of any of its radio stations, in any contract or transaction affected by a Conflict of Interest.

After disclosure of the Conflict of Interest and all material facts, and after the Interested Person responds to any questions that the Board may have regarding the Conflict of Interest, the Board shall discuss the matter, outside the Interested Party's presence, and vote on the contract or transaction in question. If the Interested Person is a Director, s/he may not vote on the contract or transaction to which the Conflict of Interest relates, but may be counted in determining the presence of a quorum for purposes of the vote.

After disclosure of the Conflict of Interest and all material facts, and after the Interested Person responds to any questions that the Board may have regarding the Conflict of Interest, the Board shall discuss the matter, outside the Interested Party's presence, and vote on the contract or transaction in question. If the Interested Person is a Director, s/he may not vote on the contract or transaction to which the Conflict of Interest relates, but may be counted in determining the presence of a quorum for purposes of the vote.

The Board shall determine by a majority vote of the disinterested Directors whether a Conflict of Interest exists and, if so, whether it is in the Foundation's (or a Foundation radio station's) best interest to nonetheless enter into the contract or transaction. If appropriate, the Board Chairperson may appoint a disinterested person or committee to investigate alternatives to a proposed contract or transaction. In order to approve the contract or transaction, the Board must in good faith after reasonable investigation make the following determinations:

(A) that the contract or transaction is for the benefit of the Foundation; and

(B) that the contract or transaction is fair and reasonable; and

(C) that the Foundation is not likely to obtain a more advantageous arrangement with reasonable effort under the circumstances.

The minutes of the Board or committee meeting shall reflect: (D) that the Conflict of Interest was disclosed; (E) the Board or committee's decision regarding the Conflict of Interest, including a statement that the Interested Person was not present during the final discussion and vote; and (F) that the Interested Person abstained from voting.

Article Thirteen, Conflicts of Interest, Section 4: Violations of the Conflicts of Interest Procedures

If the Board or committee believes that an Interested Person has failed to disclose an actual or potential Conflict of Interest, it shall inform the Interested Person of the basis for such belief and afford the Interested Person an opportunity to explain the alleged failure to disclose.

If, after hearing the response of the Interested Person and making any further investigation, the Board reasonably believes is warranted in the circumstances, the Board determines that the Interested Person has in fact failed to disclose an actual or potential Conflict of Interest, it shall take that action it, in its sole discretion, believes to be appropriate in light of the circumstances.

Article Fourteen, Voluntary Dissolution and Prohibition Against Sharing Foundation Profits and Assets

Article Fourteen, Voluntary Dissolution and Prohibition Against Sharing Foundation Profits and Assets, Section 1: Method

In addition to the provisions of California Corporations Code §6610(b), the Members of the Foundation may elect to voluntarily dissolve the Foundation in the following manner:

A. A petition for the voluntary dissolution must be signed by ten (10%) percent of the Members of the Foundation and submitted to the Foundation's Secretary. Within 45 days of the Board's receipt of said petition, a vote of the Board on said petition for voluntary dissolution shall be held.

B. If a majority of all Directors of the Board vote in favor of voluntary dissolution, then the matter shall be submitted to a vote of the Members (within 45 days after the Board's vote) via a ballot prepared and distributed in accordance with the terms of Sections 8(A), 8(B), 8(C) and 8(D) of Article of these Bylaws. An action for voluntary dissolution shall be deemed approved upon the majority vote of the Members voting, provided that a quorum is met.

C. If the Directors of the Board vote against, or fail to approve, voluntary dissolution, then the matter shall be submitted to a vote of the Members (within 45 days after the Board's vote) via a ballot prepared and distributed in accordance with the terms of Sections 8(A), 8(B), 8(C) and 8(D) of Article of these Bylaws. An action for dissolution under this Section 1(C) shall be deemed approved upon the majority vote of all the Members.

D. The Attorney General must be notified in the event of the commencement of a voluntary dissolution of the Foundation.

Article Fourteen, Voluntary Dissolution and Prohibition Against Sharing Foundation Profits and Assets, Section 2: Disposition of Assets

Upon the dissolution of the Foundation, the Board shall, after paying or making provisions for payment of all known debts and liabilities of the Foundation, dispose of the assets in a manner consistent with the Foundation's mission as set forth in its Articles of Incorporation and/or to such organization(s) as shall at the time appear devoted to the same mission as this Foundation, subject to the approval of the Attorney General.

Article Fourteen, Voluntary Dissolution and Prohibition Against Sharing Foundation Profits and Assets, Section 3: No Benefit Shall Inure to Any Member, Director, Officer or Employee of the Corporation

No Member, Director, Delegate, Officer, employee, or other person connected with the Foundation, or any private individual, shall receive at any time any of the net earnings or pecuniary profit from the operations of the Foundation, provided, however, that this provision shall not prevent payment to any such person of reasonable compensation for services performed for the Foundation in effecting any of its public or charitable purposes, provided that such compensation is otherwise permitted by these Bylaws or is fixed by resolution or approval of the Board. No person(s) shall be entitled to share in the distribution of, and shall not receive, any of the corporate assets on dissolution of the Foundation. All Members of the Foundation shall be deemed to have expressly consented and agreed that on such dissolution or winding up of the affairs of the Foundation, whether voluntarily or involuntarily, the assets of the Foundation, after all debts have been satisfied, shall be distributed as required by the Articles of Incorporation, Bylaws and/or California law and not otherwise.

Article Fifteen, Voting Methods

Article Fifteen, Voting Methods, Section 1: Voting Methods

Unless otherwise expressly provided in these Bylaws, all elections by the Members, Delegates, Directors, and LSBs, shall be conducted by the Single Transferable Voting method where there is more than one seat or position to be filled, and by the Instant Runoff Voting Method where there is only one seat or position to be filled. In any phase of evaluating IRV results, in the event of a tie, the next tier of choices are evaluated until the tie is resolved (if tied on first place votes, add up the 2nd choice votes, and so on. If this does not resolve the tie, the winner will be selected by lot (flipping a coin or other agreed upon method of chance.)

A. SINGLE TRANSFERABLE VOTING METHOD.

The following manner of single transferable voting shall be used in order to achieve proportional representation:

1. Each ballot shall list all candidates for the position and give each voter the option of voting for one candidate or of ranking the candidates in order of preference.
2. Vote counting shall start with a tabulation of each voter's first, or only, choice vote.
3. A threshold number of votes a candidate needs to be elected shall then be established ("Threshold"). The Threshold shall be that number which is equal to the integer part of: the total number of valid ballots cast divided by the sum of one plus the number of seats to be filled, plus one {integer part of [total number of valid ballots cast/(1 + the number of seats to be filled)] + 1}.
4. Those candidates receiving the Threshold number of votes, or more, shall be declared elected. Votes

acquired by a candidate in excess of the Threshold shall be deemed that candidate's "surplus."

5. If no candidates, or an insufficient number of candidates, obtain a winning number of votes to be elected, then in order to fill those remaining seat(s), votes shall be transferred as follows:

a. Transfer of surplus votes shall commence with the candidate having the largest surplus. A portion of that candidate's surplus votes shall be transferred to the next candidate choice of those voters who elected him/her. The portion of the surplus distributable to the next candidate choice shall be that amount determined by dividing the transferring candidate's surplus amount by the total number of votes received by that candidate. (For example, if the candidate received 1000 votes and the threshold was 900 votes, then s/he had a surplus of 100 votes. Therefore 0.10 (100/1000) of a vote from each of those 1,000 ballots is transferred to those voters' next choices.) Votes may not be transferred to candidates who have already been elected (nor may votes be transferred to candidates who have been eliminated as set forth below.) When a voter's next choice is not eligible for receipt of transferred votes, that portion of a vote shall be transferred to that voter's next indicated choice unless all choices on that ballot have been exhausted. If all choices on that ballot have been exhausted, that portion of a vote shall be transferred to a special "exhausted vote" tally. After the transfer of all that candidate's surplus votes, a tally shall be taken.

b. If said tally does not result in a sufficient number of winning candidates to fill the remaining seats and if the previous transfer of surplus votes creates a new surplus, then surplus votes of the candidate then having the largest surplus shall be transferred to those voters' next choices, consistent with subsection (a) above, until all said candidate's surplus has been transferred or all declared choices on a ballot have been exhausted.

c. After each distribution of a candidate's surplus, a tally shall be taken to determine the winning candidate(s). This process of distributing surplus votes shall continue until all open seats are filled, until all surplus votes have been transferred or until ballot choices have been exhausted.

d. If, after all surplus votes have been distributed in the manner described above, there remain unfilled seats, the candidate with the least number of votes shall be eliminated and his/her votes at their current value shall be transferred to those voters' next choice candidates who have not been previously declared elected or eliminated. The order in which candidates are eliminated shall be recorded as their ranking (highest rank given to the last eliminated, lowest rank given to the first eliminated). If there is a tie as to the candidate with the least number of votes, the candidate to be first eliminated shall be decided by drawing straws. Once all of that eliminated candidate's votes have been transferred, a new tally shall be taken to determine new winning candidates, if any. If there are no new winning candidates, then the candidate remaining with the least number of votes shall be eliminated and his/her votes at their current value shall be transferred, as above, until there are one or more new winning candidates. The new winning candidate(s) surplus votes shall then be distributed as in (a) through (c) above.

e. If, at any point when eliminating candidates under point (d) above, it can be determined that the elimination of more than one candidate is mathematically inevitable, then all such candidates may be eliminated at the same time. Elimination of multiple candidates is mathematically inevitable when:

i. The number of unelected candidates remaining after the elimination is equal to or greater than the number of unfilled seats; and

ii. The total of all votes allocated to the candidates in question is less than the total number of votes of the candidate with the next higher vote count.

f. This process of distributing surplus votes of winning candidates and eliminating losing candidates, as described in (b) through (e) above, shall be repeated until all seats have been filled, or until the number of unfilled seats equals the number of continuing candidates. In the latter case, all remaining continuing

candidates are declared elected.

B. INSTANT RUNOFF VOTING METHOD

For purposes of these Bylaws, the method for Instant Runoff Voting shall be as follows:

1. Each voter shall have one vote.
2. Each ballot shall list all candidates for the position, on which ballot the voter shall rank the candidates in order of preference (with 1 representing the voter's first choice, 2 representing the voter's second choice and so on).
3. Vote counting shall start with a tabulation of all first choices among the voters. If any candidate receives a majority of the first choice votes, that candidate is declared the winner.
4. If no candidate achieves a majority, the "last place candidate" (defined as the candidate receiving the least number of first choice votes) is eliminated. In the case of a tie for last place, the first to be eliminated will be decided by lot. The votes of the voters who ranked the eliminated candidate as their first choice are redistributed to said voters' next-choice candidate(s) as indicated on their ballots. Any votes where there is no second choice indicated on the ballot go to an "exhausted vote" tally.
5. After this redistribution, the votes are tabulated again. If no candidate receives a majority of the non-exhausted votes, then the last place candidate after this vote is eliminated and the votes of those voters who ranked him/her as their highest choice among continuing candidates are redistributed to each of said voter's next-choice candidate, or to the "exhausted vote" tally if no further choices remain on the ballot. Another tabulation is then done.
6. This process of successively eliminating last place candidates, redistributing votes and tabulating continues until only one candidate remains or a candidate gains more than 50% of the non-exhausted votes.

Article Sixteen, Parliamentary Procedure

Article Sixteen, Parliamentary Procedure

The rules contained in Robert's Rules of Order Newly Revised, as amended from time to time, shall govern the Foundation in all cases where they are applicable and in which they are not inconsistent with these Bylaws or any special rules of order which the Foundation may adopt.

Article Seventeen, Amendment of Articles of Incorporation and Bylaws

Article Seventeen, Amendment of Articles of Incorporation and Bylaws, Section 1: Proposing Amendments

A. PROPOSING AMENDMENTS

Amendments may be proposed by:

- (1) six (6) Directors;
- (2) a majority vote of the Delegates of each of two radio stations;; or

(3) a petition signed by at least one percent (1%) of all Members, which petition to be considered "proposed" must be delivered to the Foundation's Secretary.

B. VOTING AND APPROVAL

(1) Unless the Board by a 2/3 vote decides otherwise, there shall be a maximum of one ballot per calendar year related to the amendment of the Foundation's Bylaws, which annual voting period shall be determined by the Board. All properly proposed Bylaw amendments shall be held until that date which is 45 days before the earliest of the voting dates of the Board and of the Delegates, as determined by the Board (the "Notice Date"). On the Notice Date, the proposed amendment(s) to the Bylaws shall be posted on the Foundation's website and the Foundation's radio stations shall broadcast an announcement three times a day - twice between 6:00 AM and 11:00 PM and once between 11:00 PM and 6:00 AM for a period of 45 days (the "Notice Period") regarding the existence of the proposed amendment(s) on the Foundation's website for review and the upcoming vote by the Board and Delegates regarding said amendment(s). The results of said voting by the Board and the Delegates on the proposed amendment(s) shall be reported within 15 days of the Board and Delegates meetings to vote on these amendments.

(2) In order for new Bylaws to be adopted, or these Bylaws amended or repealed and subject to Section 1(B)(3) below:

(i) except as provided in Section 1(B)(3) below, the proposed amendment(s) must be approved by the majority of all Directors on the Board and by the majority vote of all the Delegates of at least three of the Foundation radio stations.. The Delegates shall vote on the proposed amendment(s) within the 60 day period beginning with the voting date of the PNB.; or

(ii) in the case of amendment(s) proposed by Member petition pursuant to Section 1(A)(3) above, said proposed amendment(s) must first be presented to the Board and the Delegates for approval as set forth in Section 1(B)(2)(i) above. If any proposed amendment is approved by the Board and the Delegates, then, unless membership approval is required under Section 1(B)(3) below, the amendment shall be adopted. If any proposed amendment is not approved by the Board and Delegates, then it shall be submitted to the Members for approval and shall be adopted if approved by the Members as set forth in Section 1(B)(4) below. Voting shall be completed by December 31 of the year in which the amendments are proposed.

(3) The Members shall vote on any proposed amendment approved by the Board and the Delegates, even if said amendment was not proposed by Member petition, if said amendment would do any of the following:

(i) increase or extend the terms of Directors or Delegates;

(ii) increase the quorum for Members' meetings or Members' actions;

(iii) change proxy rights;

(iv) authorize cumulative voting or a change in the voting method or manner of counting ballots; or

(v) materially and adversely affect a Member's rights as to voting or transfer.

In the event that a proposed amendment would do any one of the above-mentioned things, it shall not be adopted unless also approved by the Members; provided however, that such adoption, amendment or repeal also requires approval by the members of a class if such action would materially and adversely affect the rights of that class as to voting or transfer in a manner different than such action affects another class.

(4) If a vote of the Members is required hereunder for the approval of any proposed amendment, then

no later than 60 days after the vote of the Board and Delegates above, written ballots shall be distributed, or otherwise made available to the Members, pursuant to the provisions of Sections 8(A), 8(B), 8(C) and 8(D) of Article 3 of these Bylaws, to vote on the proposed amendments. To be approved, a proposed amendment must receive the approval of the Members by a majority vote, provided that a quorum must be established by written ballot. If the proposed amendment would impact one class of Members differently from another class, the Members shall vote in classes and the majority vote of the Members of each class shall be required to approve the amendment, provided that a quorum of each class must be established by written ballot. The results of said amendment ballot shall be reported within 30 days of the date the ballots must be returned to be counted and shall be posted on the Foundation's website.

(5) Notwithstanding any of the provisions of this Section 1(B), these bylaws may not be amended or repealed if said amendment or repeal would: (i) violate any state or federal statute or regulation; (ii) conflict with the Foundation's Articles of Incorporation; or (iii) create conflicting provisions in these bylaws.

Article Seventeen, Amendment of Articles of Incorporation and bylaws, Section 2: Amendment of Articles of Incorporation

A. PROPOSING AMENDMENTS

Amendments to the Articles of Incorporation may be proposed by:

- (1) 6 Directors;
- (2) a majority vote of the Delegates of each of two Foundation radio stations; or
- (3) by a petition signed by 2% of all Members, which petition to be considered "proposed" shall be delivered to the Foundation's Secretary.

B. APPROVING AMENDMENTS

(1) The Board and Delegates shall vote on all amendments to the Articles proposed pursuant to Section 2(A) of this Article, above, within 90 days from that date on which the Foundation's Secretary receives the Members' petition or receives notice of the Board proposal or the Delegates' vote proposing said amendment.

(2) In order for an amendment to the Articles proposed pursuant to Section 2(A) of this Article, above, to be approved or adopted, and subject to Section 2(B)(5) of this Article, below:

(i) the proposed amendment(s) must be approved by: (a) the 2/3 vote of all Directors; (b) the 2/3 vote of all the Delegates of at least three the Foundation radio stations (the Delegates shall vote on the proposed amendment(s) within the same calendar month as the Board); and (c) the 2/3 vote of the Members, provided a quorum of the Members has been established by written ballot; OR

(ii) in the case of an amendment(s) proposed by Member petition pursuant to Section 2(A)(3) above, said amendment may be adopted in the absence of an affirmative vote by the Board and/or the Delegates if said proposed amendment(s) is approved by a 3/4 vote of the Members, provided a quorum of the Members has been established by written ballot.

(3) Notice of a proposed amendment to the Articles shall be shall be posted on the Foundation's website on that date which is 60 days before the earliest of the voting dates of the Board and of the Delegates, as determined by the Board (the "Notice Date") and the Foundation's radio stations shall broadcast an announcement twice a day for a period of 60 days (the "Notice Period") regarding the existence of the

proposed amendment(s) on the Foundation's website for review and the upcoming vote by the Board and Delegates regarding said amendment(s). The results of said voting by the Board and the Delegates on the proposed amendment(s) shall be reported within 15 days of the Board and Delegates meetings to vote on these amendments.

(4) No later than 30 days after the vote of the Board and the Delegates, written ballots shall be distributed, or otherwise made available to the Members, pursuant to the provisions of Sections 8(A), 8(B), 8(C) and 8(D) of Article 3 of these Bylaws, to vote on the proposed amendment(s). The results of said amendment ballot shall be reported within 30 days of the date the ballots must be returned to be counted and shall be posted on the Foundation's website.

(5) Notwithstanding any of the provisions of this Section 2(B), these Articles may not be amended or repealed if said amendment would (i) violate any state or federal statute or regulation; or (ii) conflict with other provisions of the Articles.

Article Eighteen: Savings Clause

In the event that any provision of these Bylaws is or becomes illegal, unenforceable or invalid in whole or in part for any reason, the Board of Directors shall have the right to amend said provision, pursuant to Sections 1(A) and 2(B) of Article 17 of these Bylaws and in a time-frame shorter than that set forth in Article 17, to bring said provision in conformity with applicable law.

Certification

Certification of Bylaws

THIS IS TO CERTIFY, that I am the duly elected, qualified and acting Secretary of PACIFICA FOUNDATION, a California non-profit corporation, and that the foregoing First Amended and Restated Bylaws were approved for the Foundation by 2/3rds of the Interim Board of Directors present and voting at a Directors' meeting on July ____, 2003. I also certify that, consistent with the requirements of that certain settlement agreement dated December 12, 2001 of the consolidated lawsuits of Adelson et al v. Pacifica Foundation et al, The People of the State of California, ex rel Spooner et al v. Pacifica Foundation et al, and Robinson et al v. Pacifica Foundation et al., Alameda County Superior Court Case No. 814461-0, certain portions of these Bylaws were approved by majority vote of at least three of the Foundation's radio station Local Advisory Boards ("LABs") as follows: KPFA LAB approved/disapproved on July ____, 2003; KPFK LAB approved/disapproved on July ____, 2003; WBAI LAB approved/disapproved on July ____, 2003; KPFT LAB approved/disapproved on July ____, 2003 and WPFW LAB approved/disapproved on July ____, 2003.

IN WITNESS WHEREOF, I have hereto set my hand this ____ TH day of ____, 2003.

Carol Spooner, Secretary

B

11/15/13

J&F Digital Photo Mail - Fwd: CONFIDENTIAL ED Offer Letter



Fwd: CONFIDENTIAL ED Offer Letter

Summer Reese <summer@pacifica.org>
To: info@jfdigitalphoto.net

Fri, Nov 15, 2013 at 5:15 PM

—— Forwarded message ——

From: John Cromshaw
Date: Monday, November 11, 2013
Subject: CONFIDENTIAL ED Offer Letter
To: Summer Pacifica <summer@pacifica.org>

PERSONAL AND CONFIDENTIAL

November 11, 2013

Summer Reese

449 43rd Street

Richmond, CA 94805

(510) 333-1965

summer@pacifica.org

Dear Summer,

On behalf of the Pacifica Foundation Radio, I am pleased to offer you the position of Executive Director (ED), reporting directly to the Pacifica National Board. This letter sets forth the material terms of our employment relationship and supersedes any other statement or agreements, expressed or implied, which may have been made to you. This employment agreement may not be modified or changed except by another written agreement between us, signed by you and by the Pacifica National Board Secretary.

Subject to the completion of a background check as approved by the PNB, you shall be employed under this agreement for a term of three years, beginning December 1, 2013. You will be paid an annual salary of

11/15/13

J&F Digital Photo Mail - Fwd: CONFIDENTIAL ED Offer Letter

\$105,000.00, less applicable taxes, deductions and withholdings, as regular full time as Executive Director. The Foundation may offer you increases in salary at the end of each year of employment, following an annual performance evaluation.

You will be provided up to \$5,000, with receipts, for moving expenses and, for a reasonable airfare for your initial trip to Berkeley, California. The Foundation will provide you with a credit card for business use and will reimburse you for business expenses not charged to the credit card. You shall submit records of your business expenses for review and approval by the Senior Financial Officer on a monthly basis.

The Executive Director position is an exempt, non-union position with supervisory and managerial responsibilities. Your contracted term of employment will be for three (3) years, which include a probationary period of six (6) months, with performance evaluation prior to the end of the six (6) month period. If the evaluation is positive or if the PNB fails to perform the evaluation, by the end of the probationary period you will become the Executive Director. The PNB will perform an annual evaluation of your performance.

As an employee of the Pacifica Foundation, the following benefits are available to you:

- Medical
- Dental
- Vision
- Life Insurance (amount to be determined)
- AD&D (amount to be determined)
- Vacation accrual will begin the 1st day of the month after you begin employment (monthly vacation is accrued at 1.66 days per month)
- Sick leave is accrued at one day per month and will be forfeited at year's end if sick leave is not used.
- National Office will provide you a business cell phone and pay for the service.

You are invited to take advantage of these benefits and to discuss their details with Tamika Miller, Director of Administrative Services, Pacifica Foundation Radio at (510) 849-2590 x206.

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As a condition of employment, you will be required to complete new hire forms and bring related documentation, including proof that you are presently eligible to work in the United States for I-9 purposes. Failure to provide appropriate documentation within three (3) days of hire will result in immediate termination of employment in accordance with the terms of the Immigration Reform and Control Act.

Your duties will be as described in the job description (copy attached). In addition you will provide the PNB with a monthly written summary of your activities and will promptly advise the PNB of all hiring in the National Office and of lawsuits against the Foundation or its employees.

Arbitration Agreement: In the unlikely event of a dispute between Pacifica and you arising out of your employment or the termination of your employment, we each agree to submit our dispute to final and binding arbitration with the American Arbitration Association (AAA). The arbitration will be held in San Francisco, California in accordance with AAA's then applicable rules for the resolution of employment disputes, as the exclusive remedy for such controversy, claim or dispute. A copy of the current AAA employment arbitration rules is available at <http://www.adr.org/employment>, or you may request a copy from me. Except as otherwise required by law or AAA's rules, you and Pacifica will share equally the administrative cost and arbitrator's fees for that arbitration.

By agreeing to arbitration, you and Pacifica are agreeing that there will be no court or jury trial of disputes between us concerning your employment or the termination of your employment. The arbitrator will have the discretion to award to the prevailing party reasonable costs and attorney fees incurred in either bringing or defending an action under this agreement, if such cost or fees would be available under the law giving rise to the claim(s) arbitrated. This agreement to arbitrate is intended to be broad (and covers, for example, claims under state and federal laws prohibiting discrimination on the basis of race, sex, age and disability, family leave, etc. under Title VII of the Civil Rights Act, the California Fair Employment and Housing Act, the Americans with Disabilities Act, the Employee Retirement Income Security Act, the Fair Labor Standards Act, and the California Labor Code) and the claims excluded from final and binding arbitration shall be claims that Pacifica and you shall have the right to seek judicial relief in the form of injunctive and /or other equitable relief under the California Arbitration Act, Code of Civil Procedure section 1281.8.

To indicate your acceptance of this employment offer, please sign and date this letter in the space provided on this document and return a

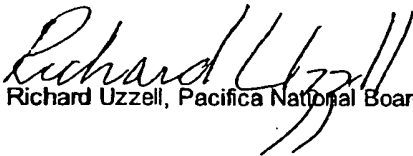
11/15/13

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completed, signed copy to me as soon as possible.

I look forward to a long and productive relationship!

Regards,

 11-15-13
Richard Uzzell, Pacifica National Board Secretary

The provisions of this offer of employment of Executive Director have been read, are understood, and the offer is herewith accepted. This offer shall remain open until December 1, 2013.



Summer Reese

Date 11-15-2013

Att. Executive Director Job Description

JC, TN, DS

Summer Reese

Interim Executive Director and

Chair of the National Board

Pacifica Foundation

1925 Martin Luther King Jr Way

11/15/13

J&F Digital Photo Mail - Fwd: CONFIDENTIAL ED Offer Letter

Berkeley, CA 94704

Ph: (510) 849-2590 ext 208

Cell: (510) 333-1965

summer@pacificca.org

www.pacificca.org

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 **ED Job Description FINAL by PNB with Annotations.pdf**
100K

C

CONFIDENTIAL * CONFIDENTIAL * CONFIDENTIAL

February 2, 2014

Dear Pacifica Directors:

Given there appears to be concern that the report given by me to the board regarding the background check of Summer Reese was not adequate, I want to supplement what was submitted to the previous board members. I am providing this attached summary to all of you in which private information has been removed as per the directive of Holman HR. This is confidential information.

Attached please find a one-page summary of the background check for Summer Reese. As directed by the board at the Houston meeting, a comprehensive background check was conducted. It was performed by Employment Screening Services (ESS).

SUMMARY OF BACKGROUND CHECK

As noted to the board in a previous message, the background check by Employment Screening Services of Summer Reese included the following (please also see the attached summary graphs of the Background Check):

- County Criminal
- Federal Criminal
- Instant Criminal Multi-Jurisdiction
- Motor Vehicle Report California
- Past Employment Verification
- Education Verification
- Credit Report

The summary from the background check of all of these areas is in the attached graph.

CRIMINAL CHECK

As you can see from the attached graph, there are "no records" for any of the County Criminal, Federal Criminal, or Instant Criminal Multi-Jurisdiction reviews.

EXPLANATION OF ORANGE ARROWS

You will note on the summary page there are 3 orange arrows. I inquired with Employment Screening Services to explain these and here are the explanations:

A. (First Arrow) Summer Reese had a consulting business offering contractual paralegal services. The existence of her business was verified by the source. The arrow is there indicating that rather than being an "owner" the source stated the Summer Reese was "contracting" her paralegal services.

B. (Second Arrow) Where it states "not verified" this regards past employment information in California 19 years ago. As this company is no longer in existence information needs to be retrieved from the government. There is a copy of the organizational file of this company entitled "Business Filing and Registration Form" provided by Summer Reese from the California Recorder Clerk in Los Angeles from 1994. This was provided when she submitted her resume and additional sources for verification.

The orange arrow is on the graph as the California Recorder Clerk has not yet sent another "Business Filing and Registration Form" to ESS to verify this company.

Note: It is rare that employment verification longer than 10 years in the past is requested in background checks. This past employment referred to in the background check, as mentioned, was 19 years ago.

C. (Third Arrow) Summer Reese took a college course in 1996-1997. The college verified this attendance. The arrow is there because she listed that she took the course in 1995-1996 rather than in 1996-1997.

CREDIT REPORT

The credit inquiry was "0" for any kind of credit irregularities. Regarding inquiries there was "one" from ATT in November 2013 prior to opening an account and the "two" employment inquiries were from ESS in December 2013. ESS was the company engaged by Pacifica to perform background check which was occurring at that time.

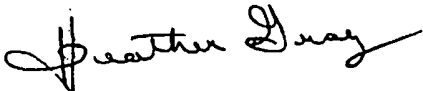
SUMMARY COMMENTS

Prior to sending out the background information to the board previously, I consulted with HR and the attorney Terry Gross.

- I was told by HR that there is always concern when private information is sent out because of possible breach of confidentiality and I was advised not to do this given concerns about lawsuits and disparate treatment. It is for this reason that I sent the earlier report to the board and it is also why there is no private information in this report.

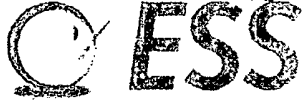
- Regarding the disparate treatment issue as mentioned above, previous employees of the board did not have their background checks revealed. So the question is why would this be the case with Summer Reese? In summary, she has been vetted by the Personnel Committee, selected by the PNB to serve as Executive Director, undergone a comprehensive background check, and finally, she has affirmed and accepted an offer letter from the board to serve as Pacifica's Executive Director.

Sincerely,



Heather Gray
PNB Acting Chair

CONFIDENTIAL



Employment Screening Services

Phone: 866-859-0143

Pacifica Foundation Radio
1925 MLK Jr. Way
Berkeley, CA 94704

Profile Information

Name: Summer J. Reese

This is a CONFIDENTIAL REPORT and has been prepared exclusively for the above named client. This report does not guarantee the accuracy or truthfulness of the information as to the subject of the investigation, but only that it is accurately copied from public records. Information generated as a result of identity theft, including evidence of criminal activity, may be inaccurately associated with the consumer who is the subject of the report. Additionally, Employment Screening Services makes no recommendation as to interpretation of the information. By acceptance of this report, the client accepts full responsibility for any use or disclosure of this report or its contents. Employment Screening Services, 2500 Southlake Park Birmingham, AL 35244, 866-859-0143. Our files are available for review at no charge in person, by certified mail or telephonically with proper identification. Nuestros archivos se pueden revisar sin ningun cargo a usted, en persona, o por correo certificado o por telefono con la identificacion adecuada.

The following are included in this report:

Table with 3 columns: Search Type, Detail, Status. Rows include County Criminal, Federal Criminal, Instant Criminal, Motor Vehicle Report, Past Employment Verification, Education Verification, and Credit Report.

CREDIT INFORMATION

THE FOLLOWING CREDIT SUMMARY REPRESENTS THE SUBJECT'S TOTAL FILE HISTORY

PUBLIC RECORDS: 0 CURRENT NEGATIVE ACCTS: 0 REVOLVING ACCTS: 0
COLLECTIONS: 0 PREVIOUS NEGATIVE ACCTS: 0 INSTALLMENT ACCTS: 0
TRADE ACCTS: 0 PREVIOUS TIMES NEGATIVE: 0 MORTGAGE ACCTS: 0
CREDIT INQUIRIES: 1 EMPLOYMENT INQUIRIES: 7 OPEN ACCTS: 0

THE FOLLOWING COMPANIES HAVE REQUESTED A COPY OF THE SUBJECT'S CREDIT REPORT

DATE SUBCODE SUBSCRIBER NAME
11/26/2013 AT&T SERVICE

THE FOLLOWING COMPANIES HAVE REQUESTED THE SUBJECT'S FILE FOR EMPLOYMENT USE:

DATE SUBCODE SUBSCRIBER NAME
12/04/2013 ESS
12/04/2013 ESS

D

DECLARATION OF CERENE ROBERTS

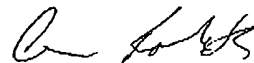
I, Cerene Roberts, am the Secretary of Pacifica Foundation Radio Board of Directors, a State of California public charity. I make this declaration based on my personal knowledge and as custodian of records for Pacifica Foundation Radio Board of Directors. I can testify competently to the truth and accuracy of the maintenance and adequacy of Corporate Records of Pacifica Foundation Radio if called as a witness.

I was elected by the majority of the Board of Directors on February 9, 2014 as Secretary of the Pacifica Foundation Radio Board of Directors.

On February 9, 2014, upon proper notice and upon quorum being established, the majority of the Pacifica Foundation Radio Board of Directors met in public session and elected Margy Wilkinson as Chair of Pacifica Foundation Radio Board of Directors.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 18, 2014, at New York, New York.



Cerene Roberts
Pacifica Foundation Radio
National Board Secretary

E

DECLARATION OF CERENE ROBERTS

I, Cerene Roberts, am the Secretary of Pacifica Foundation Radio Board of Directors, a State of California public charity. I make this declaration based on my personal knowledge and as custodian of records for Pacifica Foundation Radio Board of Directors. I can testify competently to the truth and accuracy of the maintenance and adequacy of Corporate Records of Pacifica Foundation Radio if called as a witness.

I was elected by the majority of the Board of Directors on February 9, 2014 as Secretary of the Pacifica Foundation Radio Board of Directors.

On March 13, 2014, upon proper notice and upon quorum being established, the majority of the Pacifica Foundation Radio Board of Directors met in executive session and passed the following motion:

The PNB directs Chair, Margy Wilkinson, to thank Summer Reese for her service to date and to inform her that she is being discharged during probation effective March 14, 2014. Ms. Reese will be paid through April 30, 2014, in exchange for signing a release of claims. Ms. Reese is directed to deliver to the PNB Chair or Vice Chair any keys, a Pacifica issued laptop, passwords, a Pacifica cell phone and a Pacifica issued parking card, which are currently in her possession by Friday, March 14, 2014.

On March 14, 2014, I notified Summer Reese of the approval of the above motion by the Pacifica Foundation Radio Board of Directors, by stating:

The Pacifica National Board met in closed session to discuss personnel matters related to individual employees of the foundation. We thank Summer Reese for her service to date and will not continue her employment effective March 14, 2014

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 18, 2014, at New York, New York.



Cerene Roberts
Pacifica Foundation Radio
National Board Secretary



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PACIFICA FOUNDATION RADIO, a California
Not-for-profit Corporation

FILED
ALAMEDA COUNTY
APR 25 2014
CLERK OF THE SUPERIOR COURT
By [Signature] Deputy

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

PACIFICA DIRECTORS FOR GOOD
GOVERNANCE, an unincorporated
association,

Plaintiff,

vs.

PACIFICA FOUNDATION RADIO, a California
Not-for-Profit Corporation; RODRIGO
ARGUETA, LYDIA BRAZON, JIM BROWN,
BENITO DIAZ, ADRIANA CASENAVE, BRIAN
EDWARDS-TIEKERT, JOSE LUIS FUENTES,
HANK LAMB, TONY NORMAN, LAWRENCE
REYES, CERENE ROBERTS, and MARGY
WILKINSON in their official capacities as
members of the Board of Directors of Pacifica
Foundation Radio; and DOES 1-100, inclusive,

Defendants.

Case No.: HG14720131

**MEMORANDUM OF POINTS AND
AUTHORITES IN OPPOSITION TO
REQUEST FOR PRELIMINARY
INJUNCTION**

Date: May 6, 2014
Time: 9 a.m.
Dept: 15

Hon. Ioana Petrou
Action Filed: April 3, 2014
No Trial Date Set

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I. INTRODUCTION

Plaintiff, Pacifica Directors for Good Governance, (PDGG), an unincorporated association of nine individual members of the Board of Directors of Pacifica Foundation Radio, (Pacifica), seeks by its First Amended Complaint an injunction to force Pacifica to rehire a terminated executive director who has now broken into the Pacifica National Office and barricaded herself in, preventing Pacifica from conducting its business. PDGG's claim has no merit, is barred by law, and would do irreparable harm to Pacifica.

II. STATEMENT OF FACTS

10 Pacifica Foundation Radio is a not-for-profit corporation operating five radio stations
11 located in Berkeley, Los Angeles, Houston, New York City, and Washington, D.C. Pacifica
12 Foundation Radio is governed by a board of directors, popularly known as the "Pacifica
13 National Board" or "PNB." Twenty of Pacifica's 22 directors are elected by delegates, four
14 from each station. Two are elected by the PNB itself to represent radio stations affiliated
15 with, but not owned by, Pacifica Foundation Radio. (Decl. of M. Wilkins, ¶¶ 4, 5.)
16

17 Each station's delegates meet annually in January to elect directors to serve on the
18 Pacifica National Board (Bylaws Article 5, Section 3). Each station's delegates elect four
19 directors (Bylaws Article 5, Section 1(c)) for terms of one year (Bylaws Article 5, Section 2).
20 In 2013, Summer Reese was the chair of the PNB and was acting as the Interim Executive
21 Director of the Pacifica Foundation, because the previous Executive Director, Arlene
22 Engelhardt, had resigned from her position in late 2012, and the board did not appoint a
23 replacement. Under California Corporations Code Section 5213(a), executive authority
24 defaults to the chair of a corporation's board: "The president, or if there is no president, the
25 chair of the board, is the general manager and chief executive officer of the corporation,
26 unless otherwise provided in the articles or bylaws." (Decl. of M. Wilkins, ¶¶ 6, 7.)
27

1 During 2013, Pacifica searched for a new Executive Director. At a Pacifica National
2 Board meeting held in November 2013, the PNB, by a one-vote margin, offered Ms. Reese
3 employment as Executive Director. Despite the divisions on the PNB, the Board agreed to
4 support Ms. Reese and to assist her in becoming a successful Executive Director, reaching a
5 near-consensus on what the terms and conditions of her employment should be. (Decl. of
6 M. Wilkins, ¶ 8.)
7

8 The PNB approved an agreement with Ms. Reese that contains certain conditions
9 precedent to Ms. Reese's employment. One condition required that Ms. Reese undergo a
10 background check approved by the PNB: "Subject to the completion of a background check
11 as approved by the PNB, you shall be employed under this agreement for a term of three
12 years, beginning December 1, 2013." Another condition required Ms. Reese to complete
13 employment documentation including proof of eligibility to work in the U.S. for I-9
14 purposes: "As a condition of employment, you will be required to complete new hire forms
15 and bring related documentation, including proof that you are presently eligible to work in
16 the United States for I-9 purposes." (Decl. of M. Wilkins, ¶ 9.)
17

18 A complete background check for Ms. Reese was never presented to the PNB for
19 approval. Additionally, employment documentation for Ms. Reese was never presented to
20 the PNB, despite its requests. Heather Gray, who was the Vice Chair of the PNB in 2013,
21 claimed that a background check had been completed but refused to provide that
22 background check to the PNB for approval. By the terms of the agreement, the offer
23 terminated on December 1, 2013. (Decl. of M. Wilkins, ¶ 10.)
24

25 On or about January 30, 2014, Summer Reese, Heather Gray, and then-PNB
26 Secretary Richard Uzzell fraudulently purported to enter into a new contract with Ms. Reese
27 that eliminates the background check condition and makes other material changes to her

1 terms of employment. The PNB did not authorize Ms. Reese, Ms. Gray, and/or Mr. Uzzell to
2 negotiate or execute the agreement and has never ratified it. When the new contract was
3 later presented to the PNB, the PNB voted to reject it. (Decl. of M. Wilkins, ¶ 11.)

4 On January 30, 2014, the 2014 PNB was seated. Ms. Reese is not a member of the
5 2014 PNB. Accordingly, as of that date she was no longer the Acting Interim Executive
6 Director under Corporations Code Section 5213(a). (Decl. of M. Wilkins, ¶ 12.)

7 On February 9, 2014, the PNB elected Margy Wilkinson to serve as its chair. The
8 election was conducted according to the voting methods provided in Article Fifteen of the
9 Bylaws. The election was certified by Pacifica Secretary Cerene Roberts. (Decl. of M.
10 Wilkins, ¶ 14.)

11 On March 13, 2014, out of an abundance of caution and confronted with the
12 fraudulent employment agreement for Ms. Reese dated January 30, 2014, the PNB voted to
13 terminate any employment of Ms. Reese effective March 14, 2014. (Decl. of M. Wilkins, ¶
14 15.) As a result of the termination of any employment relationship with Summer Reese,
15 Margy Wilkinson as Chair of the PNB became the Acting Executive Director of the
16 Foundation. (Decl. of M. Wilkins, ¶ 16.) On March 20, 2014, at a meeting attended by all
17 members, the PNB authorized the hiring of Bernard Duncan to serve as Pacifica's Interim
18 Executive Director. He accepted the position. (Decl. of M. Wilkins, ¶ 17.)

19 Despite the facts that (1) Ms. Reese is no longer Pacifica's Acting Interim Executive
20 Director since she is no longer the chair of the PNB; (2) Ms. Reese never became even the
21 Probationary Executive Director under the November 11, 2013, agreement; and (3) the
22 Pacifica National Board voted affirmatively to end any employment with her effective March
23 14, 2014, Reese has broken into and refused to leave Pacifica's National Office at 1925
24 Martin Luther King Jr. Way in Berkeley, California. She, her mother, and up to 20

1 supporters have remained in Pacifica's offices. They refuse to leave, have barricaded the
2 door, have prevented others from entering, and have prevented the Foundation from
3 conducting its business. Ms. Reese's conduct and unlawful actions have caused irreparable
4 injury and damage to Pacifica. (Decl. of M. Wilkins, ¶ 18.)
5

6 III. DISCUSSION

7 A. PDGG HAS NO STANDING AND IS BARRED FROM BRINGING THIS 8 ACTION

9 PDGG in this action claims to be an unincorporated association comprised of nine
10 individuals: Carolyn Birden, Janet Coleman, Heather Gray, Kim Kaufman, Luzette King,
11 Janet Kobren, Janis Lane-Ewart, Manijeh Saba, and Richard Uzzell, who are also members
12 of the PNB. (First Amended Complaint, "FAC", ¶ 5.) They bring this action against Pacifica
13 and twelve members of the PNB seeking a court injunction directing Pacifica and the PNB to
14 rehire its former interim executive director, Summer Reese, who was terminated.

15 1. PDGG's Lawsuit is Barred by Its Failure to Comply With C.C.P. § 425.15.

16 It is undisputed that the twelve individual defendants in this case are uncompensated
17 directors of Pacifica, a non-profit corporation organized to provide educational services.
18 (Pacifica Bylaws, Article One, Section 2; Article Five, Section 9.) A cause of action against an
19 uncompensated officer or director based on an alleged negligent act or omission may not be
20 included in a pleading in the absence of a court order based on a finding that the party filing
21 the pleading has introduced evidence that substantiates the claim. C.C.P. § 425.15(a)
22 provides:
23

24 (a) No cause of action against a person serving without compensation as a
25 director or officer of a nonprofit corporation described in this section, on account of
26 any negligent act or omission by that person within the scope of that person's duties
27 as a director acting in the capacity of a board member, or as an officer acting in the
capacity of, and within the scope of the duties of, an officer, shall be included in a
complaint or other pleading unless the court enters an order allowing the pleading
that includes that claim to be filed after the court determines that the party seeking to

1 file the pleading has established evidence that substantiates the claim. The court may
2 allow the filing of a pleading that includes that claim following the filing of a verified
3 petition therefore accompanied by the proposed pleading and supporting affidavits
4 stating the facts upon which the liability is based. The court shall order service of the
5 petition upon the party against whom the action is proposed to be filed and permit
6 that party to submit opposing affidavits prior to making its determination. The filing
7 of the petition, proposed pleading, and accompanying affidavits shall toll the running
8 of any applicable statute of limitations until the final determination of the matter;
9 which ruling, if favorable to the petitioning party, shall permit the proposed pleading
10 to be filed.

11 Here, PDGG has made various claims against the individual defendants, alleging that
12 they have failed to act properly as directors of the PNB when they voted to terminate
13 Summer Reese and when they voted to reinstate Pacifica CFO Raul Salvador. PDGG seeks
14 injunctive relief against these defendants and also seeks to remove them as directors of the
15 corporation. However, PDGG has failed to petition the court as required by C.C.P. § 425.15.
16 Accordingly, PDGG's claims against the individual defendants are barred.

17 **2. PDGG Lacks Standing to Seek Declaratory Relief.**

18 Here, plaintiff, an association of nine members of the Board of Directors of the
19 Pacifica Foundation Radio, lacks sufficient personal interest in the alleged controversies to
20 support a claim for declaratory relief. Declaratory relief requires "an actual controversy that
21 is currently active . . . and both standing and ripeness are appropriate criteria in that
22 determination." *Otay Land Co. v. Royal Indemnity Co.* (2008) 169 Cal.App.4th 556, 563.
23 Where the alleged controversies are, in essence, issues that concern the interest of the
24 organization or the public in the orderly and competent exercise of a nonprofit organization,
25 they are not a personal interest distinct from the public or non-profit organizational interest.
26 See, e.g. *Holbrook v. City of Santa Monica* (2006) 144 Cal.App.4th 1242, 1253-1254.

27 As elected members of the Board of Directors of Pacifica Foundation Radio, the
plaintiff directors are subject to Corporations Code § 5231 and owe a duty of loyalty to
Pacifica Foundation Radio. They may not sue Pacifica Foundation Radio since this would be

1 a violation of their duty of loyalty to the organization and their duties under the Pacifica
2 Bylaws. See, e.g., Bylaws Article 5, Section E. As directors of the organization, they are in
3 effect suing themselves by suing Pacifica. Though stated in the context of governmental
4 boards and agencies, the Supreme Court has explained the legal and policy reasons why such
5 lawsuits are not permitted.
6

7 The Supreme Court offered what it termed “persuasive legal and policy reasons” why
8 citizen-taxpayer standing may not be exercised by public officials to sue the
9 governmental body on which they serve. (*Carsten v. Psychology Examining*
10 *Committee of the Board of Medical Quality Assurance* (1980) 27 Cal.3d 793, 798, 166
11 Cal.Rptr. 844, 614 P.2d 276.) First, it places the courts in the position of
12 offering advisory opinions: “Since petitioner has no personal interest in the outcome
13 of the litigation, she is in effect seeking to have the courts render an advisory opinion
14 on the propriety of an administrative action. A judgment here would affect no person
15 either favorably or detrimentally; it would purely and simply offer gratuitous advice
16 to the board....” (*Ibid.*) Second, such a petitioner is in effect suing him or herself, and
17 courts should not “encourage or permit this type of narcissistic litigation ... because of
18 the inevitable damage such lawsuits will inflict” upon the process of
19 government. (*Ibid.*)

20 Finally, significant policy concerns “militate against permitting disgruntled
21 governmental agency members to seek extraordinary writs from the courts.
22 Unquestionably the ready availability of court litigation will be disruptive to the
23 administrative process and antithetical to its underlying purpose of providing
24 expeditious disposition of problems in a specialized field without recourse to the
25 judiciary. Board members will be compelled to testify against each other, to attack
26 members with conflicting views and justify their own positions taken in
27 administrative hearings, and to reveal internal discussions and deliberations.
28 Litigation, even the threat of litigation, is certain to affect the working relationship
29 among board members. In addition, the defense of lawsuits brought by dissident
30 board members—and such suits would undoubtedly be frequent—will severely tax the
31 limited budgetary resources of most public agencies.” (*Carsten, supra*, 27 Cal.3d at p.
32 799, 166 Cal.Rptr. 844, 614 P.2d 276.) Moreover, “[f]rom the vantage point of the
33 judiciary such litigation has ominous aspects. It is purely and simply duplicative, a
34 rerun of the administrative proceedings in a second, more formal forum. The
35 dissident board member, having failed to persuade her four colleagues to her
36 viewpoint, now has to persuade merely one judge. The number of such suits
37 emanating from members on city, county, special district and state boards, will add
38 significantly to court calendar congestion.” (*Ibid.*)

39 *Holbrook v. City of Santa Monica* (2006) 144 Cal.App.4th 1242, 1257-1258.

40 These same policy concerns apply to a board member of a non-profit organization
41 who has accepted the elected position of director. By accepting the elected position, they
42 have waived any right to sue Pacifica Foundation Radio as a member of the organization.
43

1 Such lawsuits brought by dissident board members severely tax the limited budgetary
2 resources of the organization. They affect the working relationships among board members,
3 compelling board members to testify against each other, to attack members with conflicting
4 views to justify their own positions, and to reveal internal and confidential discussions and
5 deliberations. To allow such lawsuits would allow dissident board members who have failed
6 to persuade their colleagues to their viewpoint to try to persuade one judge.
7

8 Accordingly, an elected director of a non-profit organization, by accepting the duties
9 imposed by Corporations Code § 5231 and the Bylaws of the organization, forfeits his or her
10 standing to sue as a member.

11 **3. PDGG's Derivative Lawsuit is Barred for Failure to Comply With**
12 **Statutory Procedures Under Corporations Code § 800.**

13 Even if we assume that plaintiff as an unincorporated association of nine individual
14 directors is not barred from suing Pacifica Foundation Radio and twelve directors of the
15 Foundation, plaintiff has failed to show that it has standing to bring a derivative suit on
16 behalf of the Foundation.
17

18 Standing in a derivative action requires the shareholder/member plaintiff to show
19 he/she presented the basis of the litigation to the corporation's board and tried to "secure
20 from the board such action as the plaintiff desires." Corporations Code § 800, subd. (b)(1),
21 (2). Demand on the board will be excused only when plaintiff sufficiently establishes that
22 demand would have been futile. Corp. Code § 800, subd. (b)(2); *Shields v. Singleton* (1993)
23 15 Cal.App.4th 1611, 1618-1619.
24

25 Mere allegations of the futility of a demand on the directors is not sufficient to satisfy
26 plaintiff's duty. *Oakland Raiders v. National Football League* (2001) 93 Cal.App.4th 572,
27 587. The proof must be shown from facts specific to each director from which the trier of

1 fact can find a reasonable doubt that the particular director could be expected to fairly
2 evaluate the claim of the shareholder plaintiff. A showing of structural bias in lieu of these
3 specific facts is insufficient: *Id.*

4 It is undisputed that the nine individuals failed to make any effort to secure action
5 from the Board of Directors of the Pacifica Foundation prior to prosecuting this lawsuit.
6 Plaintiff has failed to allege any specific facts demonstrating why a demand to the Board of
7 Directors would be futile. The complaint must allege *specific* facts as to *each director*
8 showing why demand would be futile. Corporations Code § 800(b)(2); *Bader v. Anderson*
9 (2009) 179 CalApp.4th 775, 790. Plaintiff has alleged no such facts.

11 Well-established common law requires “extraordinary conditions” to allow a
12 derivative suit to prevent the abuse of the derivative suit remedy. *Kamen v. Kemper*
13 *Financial Services, Inc.* (1991) 500 U.S. 90, 95-96. California has adopted the test employed
14 by the Delaware courts requiring that to show demand futility, the plaintiff must allege facts
15 creating a *reasonable doubt* that the board of directors could have properly exercised its
16 *independent and disinterested business judgment* in responding to the shareholder’s
17 demand. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 791-792. Prior to *Bader v.*
18 *Anderson*, there were few California cases that had attempted to delineate the circumstances
19 constituting demand futility required by Corporations Code § 800(b)(2). *Id.*, at 790.

21 PDGG fails to plead any facts to show that a rejection of its derivative lawsuit by the
22 Pacifica Board would not have been done in good faith. A showing of bad faith by the
23 Pacifica Board is required before plaintiff may sue the Pacifica Board. Such a showing is part
24 of the derivative lawsuit.

26 A derivative lawsuit is in essence a consolidation in equity of two suits, one by
27 the shareholder against the directors seeking an order that they sue those who have

1 wronged the corporation, and the other by the corporation against the wrongdoers.
2 [citation.]

3 *Bader v. Anderson, supra*, 179 Cal.App.4th at 789.

4 A director will be deemed not to be disinterested if the facts alleged demonstrate a
5 potential personal benefit or detriment to the director as a result of the decision. The
6 personal benefit must arise out of the transaction being challenged. A showing that a
7 director may not be disinterested cannot be made through general allegations. *Bader v.*
8 *Anderson, supra*, 179 Cal.App.4th at 792.

9 Thus, even where the board approved the challenged transaction, that decision, of
10 itself, would not establish demand futility under the theory that such approval
11 “automatically connotes ‘hostile interest’ and ‘guilty participation by directors.’” [citation.]
12 *Bader v. Anderson, supra*, 179 Cal.App.4th at 793. Thus, even general averments that the
13 directors were involved in a conspiracy or aided and abetted the wrongful act complained of
14 will not suffice to show demand futility.

15 The test of demand futility is not whether or not the board would have rejected the
16 lawsuit proposed by plaintiff. Plaintiff must apprise the court of facts specific as to each
17 director from which it can conclude that that particular director could or could not be
18 expected to fairly evaluate the claims of the shareholder plaintiff without being influenced by
19 improper considerations. PDGG has failed to do so. As the *Bader* court emphasized, a
20 board decision that the corporation should not bring an action may itself be an exercise of
21 the business judgment rule, not a showing of futility. *Bader v. Anderson, supra*, 179
22 Cal.App.4th at 789.

23 PDGG failed to make any effort to secure action from the Board of Directors of the
24 Pacifica Foundation prior to prosecuting this lawsuit. The complaint fails to make any
25 26
27

1 allegations of *specific* facts as to *each director* showing why demand would be futile.

2 Accordingly plaintiff has no standing to bring this suit against Pacifica Foundation Radio
3 and each of the other defendants.

4
5 **4. PDGG's Claims Under Corporations Code § 5223 are Barred for Failure to Exhaust Internal Administrative Remedies**

6
7 Article Five, Section 7 of the Pacifica Bylaws establishes Pacifica's internal procedures
8 for removing directors. The director is afforded reasonable and appropriate due process,
9 including notice and an opportunity to be heard. At no time prior to bringing its lawsuit to
10 remove defendants as directors has the plaintiff in this action exhausted the administrative
11 procedures established by the Pacifica Bylaws for removing any of the defendants in this
12 action as directors.

13 It is well established in California that a party must exhaust internal administrative
14 remedies as prerequisite to filing a lawsuit with the courts. The California Supreme Court
15 explained in *Rojo v. Kliger* (1990) 52 Cal.3d 65:

16
17 The reason for the exhaustion requirement in this context is plain. As we
18 stated in *Pinsker v. Pacific Coast Society of Orthodontists*, (1974) 12 Cal.3d 541 at
19 page 557: "[W]e believe as a matter of policy that the association itself should in the
20 first instance pass on the merits of an individual's application rather than shift this
burden to the courts. For courts to undertake the task 'routinely in every such case
constitutes both an intrusion into the internal affairs of [private associations] and an
unwise burden on judicial administration of the courts.' [Citation.]"

21 *Id.*, 52 Cal.3d at 86 -87.

22 Having failed to exhaust internal administrative procedures, PDGG is barred from bringing
23 any action under Corporations Code § 5223.

24 **5. PDGG's Claim For Injunctive Relief To Terminate Pacifica's CFO Is Barred For Failure to Join an Indispensable Party.**

25
26 By its Amended Complaint, PDGG seeks an injunction directing Pacifica Foundation
27 Radio to terminate the employment of its CFO. The CFO is therefore an indispensable party

1 to plaintiff's complaint. "Where the plaintiff seeks some type of affirmative relief which, if
2 granted, would injure or affect the interest of a third person not joined, that third person is
3 an indispensable party." *Sierra Club, Inc. v. California Coastal Comm'n* (1979) 95 CA3d
4 495, 501, 194; see *Olszewski v. Scripps Health* (2003) 30 C4th 798, 808, (a person is an
5 indispensable party "when the judgment to be rendered *necessarily must affect his rights*"
6 [emphasis added])
7

8 When an action cannot proceed in the absence of an indispensable party, the action
9 should be dismissed on the ground that "justice requires that the action not proceed" in the
10 party's absence. *Union Carbide Corp. v. Sup.Ct. (Villmar Dental Labs, Inc.)* (1984) 36 C3d
11 15, 22.
12

13 **B. PLAINTIFF HAS FAILED TO SHOW IRREPARABLE HARM**

14 Here, PDGG claims irreparable harm based on the likelihood of an unlawful
15 discharge lawsuit by Summer Reese, the consequential financial risk of a lawsuit, the
16 damages resulting from reinstating its CFO, and other risks of loss related to these two
17 matters. (Plaintiff's Amended Points and Authorities In Support of Preliminary Injunction,
18 page 12.) PDGG's claim is at most speculative and is not supported by any concrete facts.
19 There is no evidence that Ms. Reese may sometime in the future prevail in a lawsuit based
20 on a fraudulent contract. Even if there was, there would be clearly a legal remedy in the
21 form of damages.
22

23 C.C.P. § 526(a)(2) includes the traditional consideration of 'irreparable harm.'
24 Irreparable harm is often related to the 'inadequate legal remedy' (i.e., the damages remedy
25 is inadequate because some immeasurable harm is threatened). But, it is also a separate
26 consideration. The court seeks more than a mere dispute. Relief is unlikely unless someone
27

1 will be significantly hurt in a way that cannot be later repaired. *People ex rel. Gow v.*
2 *Mitchell Brothers' Santa Ana Theater* (1981) 118 CA3d 863, 870-871.

3 Moreover, the threat of 'irreparable harm' must be *imminent* as opposed to a
4 mere possibility of harm sometime in the future: "An injunction cannot issue in a vacuum
5 based on the proponents' fears about something that may happen in the future. It must be
6 supported by actual evidence that there is a realistic prospect that the party enjoined intends
7 to engage in the prohibited activity." *Korean Philadelphia Presbyterian Church v.*
8 *California Presbytery* (2000) 77 CA4th 1069, 1084.

10 **C. PLAINTIFF CANNOT PREVAIL ON THE MERITS**

11
12 A preliminary injunction *must not* issue unless it is "reasonably probable that the
13 moving party will prevail on the merits." *San Francisco Newspaper Printing Co., Inc. v.*
14 *Sup.Ct. (Miller)* (1985) 170 CA3d 438, 442—abuse of discretion to grant injunction where
15 plaintiff lacked standing to sue; see *Costa Mesa City Employees' Ass'n v. City of Costa*
16 *Mesa* (2012)298209 CA4th 298, 310. Here, plaintiff cannot prevail on the First Amended
17 Complaint.

18 **1. The Gravamen of Plaintiff's Complaint is Prohibited by Civil Code § 3390.**

19 The gravamen of plaintiff's complaint is for declaratory and injunctive relief to force
20 Pacifica Foundation Radio to employ Summer Reese and to terminate the employment of
21 Raul Salvador. This relief is prohibited. Civil Code § 3390 provides as follows:

22 The following obligations cannot be specifically enforced:

23 . . .

24 2. An obligation to employ another in personal service;

25 The rationale for prohibiting injunctions compelling performance of employment
26
27

1 contracts was summarized by the court in *Barndt v. County of Los Angeles* (1989) 211
2 Cal.App.3d 397:

3 It has long been established that a contract to perform personal services cannot be
4 specifically enforced, regardless of which party seeks enforcement. (*Poultry*
5 *Producers etc. v. Barlow* (1922) 189 Cal. 278, 288 [208 P. 93]; 5A Corbin, Contracts,
6 § 1204, p. 398; Dobbs, Remedies, § 12.25, pp. 929-931.) The rule evolved because of
7 the inherent difficulties courts would encounter in supervising the performance of
8 uniquely personal efforts. . . . More importantly, however, the common law
9 disfavored specific performance to avoid the friction and social costs that often result
10 when employer and employee are reunited in a relationship that has already failed.
11 (See *Poultry Producers etc. v. Barlow*, *supra*, 189 Cal. at p. 288; Rest.2d, Contracts, §
12 367 com. (a) at p. 192.) **This rationale is particularly applicable where the**
13 **services to be rendered require mutual confidence among the parties and**
14 **involve the exercise of discretionary authority.**
15 (See *Rautenberg v. Westland* (1964) 227 Cal.App.2d 566, 573 [38 Cal.Rptr. 797].)

16 *Id.*, 211 Cal.App.3d at 403 -404. (emphasis added).

17 The rule applies both where an employer sues to compel the employee to return to
18 work and where an employee sues to get his or her job back. In either case, "the remedy of
19 specific performance is simply not available ..." *Barndt v. County of Los Angeles*, *supra*, 211
20 CA3d at 405.

21 Additionally, Civil Code § 3390 subsection 3 prohibits the court from forcing a party
22 to perform an act which it cannot perform lawfully. Here, Summer Reese has refused to
23 provide Pacifica Foundation Radio with a social security number. An employer is required
24 by law to obtain an employee's social security number. Specifically, the Internal Revenue
25 Code, 26 U.S.C. §6109(a)(3) & (d), requires employers to provide the social security
26 numbers of their employees. Similar laws have been enacted by the State of California.
27 Additionally, employers are required to have an employee complete an Immigration Form I-
9. 8 C.F.R. § 274a.2(a) & (b)(1)(i), § 274a.10(b)(2). Even if she sincerely believes that her
religion prevents her from providing a social security number, the Courts agree that an
employer is not liable under Title VII when accommodating an employee's religious beliefs

1 would require the employer to violate federal or state law. *Sutton v. Providence St. Joseph*
2 *Medical Center* (C.A.9 (Cal.), 1999) 192 F.3d 826, 830. See also, *Seaworth v.*
3 *Pearson* (C.A.8 (Minn.), 2000) 203 F.3d 1056, 1057 -1058 (Requiring an employer to seek a
4 waiver of IRS penalties caused by employee's refusal to provide a social security number
5 imposed an undue hardship on the employer under Title VII.)

6
7 Requiring Pacifica to employ a person who refuses to provide a social security
8 number would violate both state and federal law and is prohibited by Civil Code § 3390.

9 **2. Plaintiff Has Failed to Allege Facts That Support a Cause of Action Under**
10 **Corporations Code § 5223.**

11 The allegations that have been made by PDGG against defendants fail to include any
12 facts that would justify the removal of any director under Corporations Code § 5223.

13 Margy Wilkinson was elected as Chair of the PNB on February 8, 2014, and the
14 election was certified by the Board secretary. The Pacifica Bylaws, Article Fifteen,
15 subsection B, provides for an instant runoff method when there is no majority. Those
16 procedures were followed, and she was elected Chair.

17 Tony Norman is a duly elected member of the PNB. He has never been elected or
18 appointed to a public office as defined by Pacifica's Bylaws and California law. Mr.
19 Norman's position on a District of Columbia Advisory Neighborhood Commission is not a
20 public office because it provides for no exercise of sovereign power but was merely advisory.
21 This issue was resolved by the PNB more than a year ago on February 22, 2013, when Mr.
22 Norman was first elected to the PNB. Mr. Norman disclosed well in advance of the meeting
23 that he held a position on the Advisory Neighborhood Commission. The matter was debated
24 by the PNB and the PNB voted to seat Mr. Norman. The motion to seat Mr. Norman on the
25 PNB was made by Carolyn Birden and supported by Richard Uzzell, Janet Coleman,
26
27

1 | Manijech Saba and Heather Gray, who are all now plaintiffs in this action.

2 | Cerene Roberts was elected as Secretary to the PNB on February 9, 2014. Since
3 | assuming office, she has provided all required public notices required by California law and
4 | the Corporation for Public Broadcasting Open Meeting Requirements. Notices regarding
5 | closed sessions of the PNB and the reasons for them are made available to the public before
6 | the meeting on the foundation's calendar at <http://kpftx.org/pacalendar/index.php>. To
7 | read the particulars, one must click on the actual meeting date. Reports-out of closed
8 | session business are generally prepared and sent to the technical staff for posting within 24
9 | hours of the meeting's end. To read those, one can visit the Foundation's main site
10 | <http://pacificafoundation.org/> and click the grey box in the lower left hand corner labeled "Reports on
11 | PNB Exec Sessions" or go directly to the page http://pacificafoundation.org/notices_home.php. Draft
12 | minutes that have been finalized of open and closed meetings of the PNB since February 7,
13 | 2014, have been distributed to the PNB. Some of those have been approved while others
14 | have not yet been brought for a vote. Since assuming office, Ms. Roberts has provided draft
15 | minutes to the PNB more expeditiously than before. The prior secretary, plaintiff Richard
16 | Uzzell, failed to produce several months of outstanding minutes of the PNB meetings despite
17 | promised delivery.

18 | The charges against Mr. Jose Luis Fuentes similarly have no merit. Like any other
19 | member of the PNB, he was entitled to express his opinions regarding the issues before the
20 | board and to contribute to the discussions before resolution. When he contacted third party
21 | vendors to remove unauthorized signers, he did so at Ms. Wilkinson's direction as Chair of
22 | the PNB, and he clearly identified himself as a member of the PNB.

23 | No specific allegations are made against any of the other director defendants. As
24 | discussed above, the termination of the employment of Summer Reese, who has now broken

1 into the Pacifica National Office and barricaded herself in, and prevented the Foundation
2 from conducting its business, was more than justified.

3 Raul Salvador has been the CFO of Pacifica since May 9, 2013. While performing his
4 duties in the fall of 2013, Mr. Salvador discovered that Summer Reese had authorized cash
5 advances in violation of Pacifica policy and had reimbursed herself for expenses without the
6 proper invoices. Ms. Reese did not deny these allegations. Shortly thereafter, one of Ms.
7 Reese's subordinates made a claim of sexual harassment against Mr. Salvador. Mr. Salvador
8 was placed on paid administrative leave pending an internal investigation. The allegations
9 were investigated and no cause was found for any discipline of Mr. Salvador. He was
10 accordingly reinstated on March 27, 2014.

11
12 Pacifica contracts with a professional human resources firm which provides HR
13 guidance as needed. The organization is insured, and PNB has been careful to avoid any
14 actions that would make the organization uninsurable.

15 16 IV. CONCLUSION

17 For all of the foregoing reasons, Plaintiff's request for a preliminary injunction must
18 be denied.

19
20 Dated: April 25, 2014

SIEGEL & YEE

21
22 By 

ALAN S. YEE

23 Attorneys for Defendant/Cross-Complainant
24 PACIFICA FOUNDATION RADIO
25
26
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