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SUPERIOR COURT OF STATE OF CALIFORNIA, COUNTY OF ALAMEDA

RENE C. DAVIDSON COURTHOUSE, UNLIMITED CIVIL JURISDICTION

PACIFICA DIRECTORS FOR GOOD GOVERNANCE, an Unincorporated Association; Plaintiff v. PACIFICA FOUNDATION RADIO, a California Nonprofit Public Benefit Corporation; RODRIGO ARGUETA, LYDIA BRAZON, JIM BROWN, ADRIANA CASENAVE, BENITO DIAZ, BRIAN EDWARDS-TIEKERT, JOSE LUIS FUENTES, LAWRENCE REYES, CERENE ROBERTS, and MARGY WILKINSON ; as individuals and in their official capacities as members of the Board of Directors of Pacifica Foundation Radio, a California Nonprofit Public Benefit Corporation; and HANK LAMB and TONY NORMAN, as individuals and Directors de facto of said Corporation; Defendants PACIFICA FOUNDATION RADIO, Cross-complainant v. Summer Reese, and "ROES" 1 to 100, inclusive Cross-defendants	Case No. HG14720131 **CROSS-DEFENDANT'S REPLY TO CROSS-COMPLAINANT'S OPPOSITION TO CROSS-DEFENDANT'S MOTION TO STRIKE ALL DOCUMENTS FILED HEREIN FOR ALAN YEE AND/OR SIEGEL & YEE AS ATTORNEYS OF CROSS-COMPLAINANT OR, IN THE ALTERNATIVE, TO DISMISS THE PURPORTED APRIL 25, 2014 CROSS-COMPLAINT** Date: Feb. 11, 2015 Time: 9:00 a.m. Dept: 15

Summer Reese, the Cross-defendant in the above captioned matter (hereinafter, "Reese"), replies to Cross-complainant's (hereinafter, "counsel") Opposition to Cross-defendant's Motion to Strike All Documents Filed Herein for Alan Yee and/or Siegel & Yee as Attorneys of Cross-complainant or, in

the Alternative, to Dismiss the Purported April 25, 2014 Cross-complaint, as follows:

6. Counsel misrepresents the basis on which Reese brings the underlying motion

At the top of her memorandum filed in support of the underlying motion, Reese cites only California court cases as forming the basis for making her motion:

> *Pacific Paving Co. v. Vizelich* (1903) 141 Cal. 4, 8; *Sullivan v. Dunne* (1926) 198 Cal. 183; *People v. Honey Lake Valley Irr. Dist.* (App. 3 Dist. 1926) 77 Cal.App. 367; *Vallejo v. Montebello Sewer Co.* (App. 2 Dist. 1962) 209 Cal.App.2d 721, 729—730; *Slack v. Slack* (App. 2 Dist. 1966) 241 Cal.App.2d 520; *Gagnon Co. v. Nev. Desert Inn* (1955) 45 Cal.2d 448; *Parkside Realty Co. v. MacDonald* (1914) 167 Cal. 342); *Asbestos Claims Facility v. Berry & Berry* (App. 1 Dist. 1990) 219 Cal.App.3d 9, 19; *First State Ins. Co. v. Superior Court (Jalisco Corporation, Inc.)* (App. 2 Dist. 2000) 79 Cal.App.4th 324, 334.
> (Jan. 19, 2014 Memorandum, 1:5—21)

In his January 29, 2014 opposition to Reese's said motion, counsel alleges "Code Civ. Proc. § 435 and Cal. Rules of Court, rule 3.1322" (*id.*, 2:2) are the bases for the motion. Counsel further argues for applicability of time and other procedural requirements contained in those statutory bodies of law.

The time and other statutory requirements applicable to a statutory motion to strike do not apply to the underlying motion, which is made pursuant to the courts' "inherent supervisory and administrative powers enabling them to carry out their duties" (*Asbestos Claims Facility v. Berry & Berry* (*supra*) 219 Cal.App.3d at p. 19). To avoid estoppel to deny S & Y's purported representation of PFR herein, the promptness with which a party like Reese must act is not provided in the statutes and rules cited by counsel. In fact, neither the Code of Civil Procedure nor the California Rules of Court is cited anywhere in the notice or supporting memorandum of her said motion, to which counsel makes his frivolous opposition. In *Pacific Paving Co. v. Vizelich* (*supra*) 141 Cal. at p. 8, the Supreme Court held a party was estopped to deny representation by an attorney in an action five years after the attorney filed the action. Counsel's references to "months", whether 4 or 7, are unavailing.

7. The April 14, 2014 meeting, at which Defendant-individuals (i.e., non-PDGG Directors of the PFR Board) purported to authorize the chair thereof to retain counsel for Defendant-corporation

a. Requirement to give meaningful notice of the April 14th meeting

There is no dispute Defendant-individuals—who Reese alleges include two de facto directors (see *John Paul Lumber Co. v. Agnew* (App. 3 Dist. 1954) 125 Cal.App.2d 613, 619 [defining de facto officer])—held their April 14, 2014 meeting telephonically, using a number hitherto unknown to anyone in Defendant-corporation PFR; and that all Directors belonging to the Plaintiff PDGG were shut out of that meeting. Therefore, the Defendant-individuals' meeting of April 14th is, per se,

unauthorized, as is the resultant retention of Siegel & Yee.

b. Requirement of quorum to transact business of PFR

As a general rule applicable to corporate boards, a board's action is invalid if taken when no quorum is present. (*Santandrea v. Siltec Corp.* (App. 1 Dist. 1976) 56 Cal.App.3d 525, 528 [informal approval by two corporate directors did not validate alleged corporate action]; *Gieselmann v. Stegeman* (Mo. 1969) 443 S.W.2d 127, 135—136 [so-called meeting of corporate directors, held without notice or quorum, was illegal].) Exceptions to that rule exist in fact-specific settings. (See *Forrest City Box Co. v. Barney* (8th Cir. 1926) 14 F.2d 590, 592 [even without meeting of directors of corporation, officers thereof, whom it held out as empowered to transact all business on its behalf, and by reason of its articles, could act on its behalf to enter into lease]; and *CDB Software, Inc. v. Kroll* (*supra*) 992 S.W.2d at p. 40 [corporate board's informal approval of compensation contracts]. See also *New Blue Point Min. Co. v. Weissbein* (1926) 198 Cal. 262, 270—271 [corporate officers committed no fraud in carrying out duties to ratify contracts].)

Corporations Code § 5211(a)(7) provides: "A majority of the number of directors authorized in or pursuant to the articles or bylaws constitutes a quorum of the board for the transaction of business." (See 2 Fletcher Cyc.Corp. (1969) § 409, p. 259.)

To compute a majority, the total number must first be ascertained:

"There shall be a minimum of twenty-two (22) and a maximum of twenty-three (23) directors of the [PFR Board]." (PFR Bylaws, art. 5, § 1, ¶ C.) There being no resolution to fill the twenty-third seat (Bylaws, art. 5, § 5.A), the Bylaws' minimum limitation is set at 22 Director-seats, so that 12 normally constitutes quorum for said Board to begin transacting business (RONR, § 44, p. 400). (Cf. *Blish v. Thompson Automatic Arms Corp.* (Del. 1948) 64 A.2d 581, 602 [under a bylaw prescribing the maximum and minimum number of directors, but not fixing any number, a quorum is the majority of the number within the minimum and maximum limitations who have been elected and who have accepted the office].)

Although 12 *normally* constitutes quorum, *supra*, the significance of the following PFR Bylaw section is at issue herein: "A quorum at any meeting of the Board of Directors shall consist of a majority of the then serving Directors. . . " (*id.*, art. 6, § 5).

c. Counsel's bad faith acceptance of Defendant Norman's outstanding claim to Director-seat despite the underlying motion's showing Norman putatively resigned therefrom

"In the June 3, 2014 order, the Court rejected Reese's argument that 'Tony Norman was ineligible to serve on the PFR board and that his presence on the board made any decision to discharge Reese a

"nullity".' (June 3, 2014 Order of Judge Ioana Petrou, ¶ 4.)"

Counsel correctly states the fact of that rejection (Jan. 29, 2015 Opp., 3:17—21). Counsel omits it was based on said order's finding of "no showing that the Washington DC Advisory Commission has been delegated any portion of the sovereign functions of government". But in the underlying motion (*id.*, 1:23—4:19), Reese does show how Tony Norman was and is ineligible to hold a Director-seat, he having resigned therefrom as imputed under an explicit requirement of the PFR Bylaws. And, notwithstanding counsel's allegations to the contrary, the showing is timely and otherwise appropriate where made in the underlying motion invoking courts' "inherent supervisory and administrative powers enabling them to carry out their duties" (*Asbestos Claims Facility v. Berry & Berry* (*supra*) 219 Cal.App.3d at p. 19; *Pacific Paving Co. v. Vizelich* (*supra*) 141 Cal. at p. 8).

The Court must not entertain legal representation of a corporation procured by a faction of corporate directors whose claims of quorum, and of majority vote, require acceptance of unlawful and invalid claim to a director-seat by any individual not entitled to hold it, i.e., a de facto director, contrary to the PFR Bylaws and the Nonprofit Public Benefit Corporation Law. (See Reese's Reply, filed simultaneously herewith, to counsel's opposition to her motion to set aside June 3, 2014 void order; 3:18—32 and authorities cited therein.) Despite counsel's insistence the Court may summarily reject Reese's interpretation of the Bylaws without citation to any authority, the Court may enforce corporate bylaws. (Cf. *California Trial Lawyers Assn. v. Superior Court (Mills)* (App. 3 Dist. 1986) 187 Cal.App.3d 575 [judicial reluctance to intervene in voluntary association to enforce its bylaws].)

d. Considered in the aggregate, the invalid claims to Director-seats of Norman* (supra) *and Lamb* (infra) *result in computation of quorum at 11

The Court is requested to take judicial notice of the felony drug conviction of Hank Lamb, a Defendant herein.

Although denominated as a defendant, Pacifica Foundation Radio ("PFR") is actually a plaintiff by reason of the fact it stands to benefit for recovery of the Defendant-individuals' actions if allegations thereof in Plaintiff's April 15, 2014 FAC are proven (*Forrest v. Baeza* (App.1 Dist 1997) 58 Cal.App.4th 65, 74). Moreover, as a disinterested officer of PFR at all times relevant herein, Reese may interpose a defense on behalf of PFR (*Gallagher v. Texagon Mills* (S.D.N.Y. 1946) 67 F.Supp, 845, 846, cited with apparent approval in *Sealand Inv. Corp. v. Emprise, Inc.* (App. 2 Dist. 1961) 190 Cal.App.2d 305, 315).

In exercising its "inherent supervisory and administrative powers enabling [it] to carry out [its] duties" (*Asbestos Claims Facility v. Berry & Berry* (*supra*) 219 Cal.App.3d at p. 19), the Court

should not sustain any violation of law, whether committed by an individual while occupying an office or Director-seat of Defendant-corporation, or by said corporation through their inducement. As argued here, the Court should sustain no vote or other act taken by any individual whose *very occupation* of either of those positions of PFR violates equity, or is per se unlawful. (See *Choi v. Orange County Great Park Corp.* (App. 4 Dist. 2009) 175 Cal.App.4th 524, 531[corporate directors have a fiduciary duty to select a suitable CEO]; *American Center for Education, Inc. v. Cavnar* (App. 2 Dist. 1978) 80 Cal.App.3d 476, 499 ["courts possess the equitable power to remove directors independent of any statutory authorization."].) And, where the claims to Director-seats of both Defendant Tony Norman (*supra*) and Defendant Hank Lamb (*infra*) are unlawful, violative of the fiduciary duties of honesty and loyalty to PFR, "the then serving Directors" (Bylaws, art. 6, § 5, *supra*) total 20 and a quorum thereof 11.

That Hank Lamb ("Lamb") is a de facto director of Pacifica Foundation Radio ("PFR"), Cross-complainant and Defendant herein, is a conclusion based on his common law-based fiduciary duties of honesty and loyalty thereto; the Listener-sponsor Delegate Nomination Cover Sheet of PFR, wherein he represented was an eligible Listener-Sponsor Member of PFR "in good standing"; and the material falseness of his said representation by reason of his felony drug conviction, whereby he fraudulently procured a Director-seat and performed the functions thereof in violation of equity.

By no means could Lamb serve as a Director de jure of PFR, although its Bylaws (at art. 3, § 1(A)), define a Listener-Sponsor Member as "any" natural person who either paid dues or worked them off during the preceding 12 months. Even while such a Member of PFR, Lamb had a fiduciary duty to represent the facts in accordance with his fiduciary duties of honesty and loyalty to PFR. (See *American Master Lease LLC v. Idanta Partners, Ltd.* (App. 2 Dist. 2014) 225 Cal.App.4th 1451 [defendant can be liable for aiding and abetting breach of fiduciary duty without owing the plaintiff a fiduciary duty].) Based on that duty, Lamb was obliged to complete the Delegate Nomination Cover Sheet with honesty, loyalty, and good faith.

Federal regulation requires that every director (and officer) of a radio operator like PFR "certify that neither the applicant nor any party to the application is subject to a denial of Federal benefits that includes FCC benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988. 21 U.S.C. 862." (47 C.F.R. § 1.2002(b)(2).) The regulation is necessary "[i]n order to be eligible for any new, modified, and/or renewed instrument of authorization from the [FCC], including but not limited to" radio channel license (47 U.S.C. § 301), qualification of station operators (*id.*, § 303(*l*)), issuance

of construction permits and station licenses (*id.*, § 308), permission to dispose of construction permit and station license (§ 310(d)), and issuance of radio station operator's license (§ 319).

PFR's certification to the FCC denies Lamb is either "convicted of any Federal or State offense consisting of the distribution of controlled substances" (21 U.S.C. § 862(a)) or "convicted of any Federal or State offense involving the possession of a controlled substance" (*id.*, (b)) when in fact he has been convicted of those offenses.

Concealment of drug conviction, though later learned by PFR, justifies immediate expulsion

Based on his promise he was "in good standing," PFR had a reasonable expectation he would not jeopardize PFR's licenses and permits by FCC vital to the success of PFR's mission. (See *Prakashpalan v. Engstrom, Lipscomb and Lack* (App. 2 Dist. 2014) 223 Cal.App.4th 1130 [elements of fraudulent concealment].) Courts have defined professionalism largely by usage within varying contexts, each clarified by the ethical norms of the respective profession. (See *Board of Education v. Swan* (1953) 41 Cal.2d 546, 553 [citing Cal.Jur., § 122, p. 745 defining "unprofessional conduct"]. Moreover, membership in a profession "in good standing" connotes adherence to the ethical norms of the particular profession. See Diss. Schottky, J. in *Bd. of Trustees v. Owens* (App. 3 Dist. 1962) 206 Cal.App.2d 147, 164—165 [citing 66 Corpus Juris, p. 55 defining 'unprofessional conduct' as, inter alia, such 'conduct which is unbecoming a member of a profession in good standing.']. Interpretation of the phrase "in good standing" must be made in accordance with the ethical or fiduciary norms of the nonprofit corporation to which Lamb owes his fiduciary duties. (Cf. *Walsh v. Dept. Alcoholic Bev. Control* (1963) 59 Cal.2d 757, 764—765 [in civil action, resolving application of penal statute according to principle that resolution of ambiguity is to be made "as favorably to the defendant as the language of the statute and the circumstances of its application may reasonably permit"].) It cannot be rightly said Lamb's jeopardizing PFR's FCC licenses and permits by his de facto directorship comports with loyalty to PFR when PFR's mission depends on their issuance.

Expulsion of drug-convicted director(s) from PFR Board is automatic, requiring no process

Under the after-acquired-evidence doctrine, the fact that a director's or officer's felony drug conviction was discovered after (s)he took a Director-seat from PFR does not preclude the individual's removal therefrom in restitutionary remedy. In *Camp v. Jeffer, Mangels, Butler & Marmaro* (App. 2 Dist. 1995) 35 Cal.App.4th 620 (*Camp*), the Court of Appeal applied the after-acquired-evidence doctrine to wrongful discharge claims which also included one claim under the FEHA. When the plaintiffs applied for employment with a law firm, they failed to reveal that they had been convicted of felonies and positively misrepresented that they had not been so convicted.

(*Camp*, at p. 626.) The law firm later acquired a contract with the Resolution Trust Corporation (RTC). "[They] thus put [the defendant] not only in jeopardy of losing its contract with the RTC but also of being accused of making false statements itself" (*Camp*, at p. 637).

Similarly, Lamb has put PFR not only in jeopardy of losing its FCC radio- channel and -operator licenses and permits, but also of being accused of making false statements. Wherefore, Cross-defendant Reese prays the Court exercise its aforesaid supervisory and equitable powers.

e. Computation of quorum of PFR Directors in status quo under Defendants' usurpation of PFR

Based on the foregoing, the PFR Bylaws provide that no more than 20 Directors de jure are now serving on the PFR Board. Further, the Bylaws provide that valid corporate business may be transacted at a meeting of the Board of Directors commenced with a quorum of 11 Directors de jure (p. 2, line 28, et seq. *supra*); who must have been given due notice of the business; which must be transacted while at least 7 of them remain in attendance. (See Part. 6, § 5; Corp. Code, § 5211(a)(8).) As alleged in Reese's declaration, those three procedural requirements were not satisfied as to the April 14, 2014 meeting at which authorization was purportedly made whereby S & Y was retained (nor as to the March 13, 2014 meeting at which Defendant-individuals voted to terminate her employment).

f. Jose Fuentes, and the April 14th meeting which he did or did not attend

Counsel alleges, "Reese provides no evidence that Jose Fuentes, an attorney employed at Siegel & Yee, was present at the April 14, 2014, meeting when the retention of counsel to defend PFR was discussed" (May 30th Reply, p. 5, lines 21—23). If Fuentes did *not* attend that meeting, no more than 10 Directors de jure—one less than quorum—could have been in attendance.

Or if Fuentes *did* attend that meeting, his presence would normally count toward quorum (Corp. Code, § 5233(g). Cf. *Gumaer v. Cripple Creek Tunnel Transp. & Min. Co.* (1907) 90 P. 81 [same under Colo. law]; *Fountain v. Oreck's, Inc.* (1955) 71 N.W.2d 646 [same under Minn. law].) Even though his presence at that meeting might appear to be that of the decisive eleventh Director de jure there, the April 14th decision leading to the retention of his employer, i.e., Siegel & Yee, is, at least, voidable. (*New Blue Point Min. Co. v. Weissbein* (*supra*) 198 Cal. at 268.) It is the rule such corporate act, taken at meeting attended by interested director necessary to constitute quorum, is voidable (*Goldie v. Cox* (8th Cir. 1942) 130 F.2d 695, 717, citing 13 Am.Jur. 919, notes 10—13; see 3 Fletcher Cyc.Corp. (Perm. Ed.) § 936, p. 381). This rule applies regardless of actual injury or detriment (*id.*, § 938, p. 387), and:

It is reached where the claim asserted is void or voidable because the vote of the

> interested director or stockholder helped bring it into being or where the history of the corporation shows dominancy and exploitation on the part of the claimant. *Pepper v. Litton* (1939) 308 U.S. 295, 309.

Fuentes's vote or assent "helped bring it into being" (*Pepper v. Litton* (*supra*) 308 U.S. at 309).

Section 5233(g)'s provision for quorum is distinguishable from the California Supreme Court's decision in *New Blue Point Mining Co.* where Fuentes's presence is not merely to be counted toward quorum (which is all that § 5233(g) requires) but as the eleventh Director appearing "necessary" to constitute quorum. The Board did not authorize the retention of Siegel & Yee herein.

Nor could Margy Wilkinson, the purported chair of the Board, have taken her own initiative to seek legal representation for PFR. (See *Anmaco, Inc. Bohlken* (App. 1 Dist. 1993) 13 Cal.App.4th 891, 899, fn. 2 [questioning *American Center for Ed., Inc. v. Cavnar* (1978) 80 Cal.App.3d 476, 498 as to whether "it is well settled that a corporation may sue . . . upon the initiative of its president or managing officer"].)

Therefore, neither the April 25, 2014 cross-complaint nor any other pleading of Siegel & Yee herein was ever authorized by PFR. Because of the exclusive manner in which said April 14, 2014 meeting was held, the hiring of Siegel & Yee to represent PFR herein appears the result of voting agreement. Voting agreements are unenforceable. (Corp. Code, § 5614.) Business & Professions Code § 6104 provides: "Corruptly or willfully and without authority appearing as attorney for a party to an action or proceeding constitutes a cause for disbarment or suspension." (Underlines added.)

8. The April 25, 2014 Cross-complaint is a sham

The April 25th cross-complaint has two main legal premises, both of which are legally incorrect. (Re cross-complaint's confounding of "private nuisance" with public nuisance, see May 30th Demurrer, p. 10, line 8, et seq.) First, under Corporations Code § 5214, the officers of the PFR Board *did* have authority to enter into the 2014 Contract which is therefore valid.

Notwithstanding the June 3, 2014 order's finding made in disregard of § 5214 and counsel's wholly unsubstantiated allegations about the 2014 Contract being "fraudulent" for lack of formal vote to ratify it, the premise that a "majority" of Directors took action at the March 13, 2014 meeting is unsustainable where Norman putatively resigned his Director-seat, and where Fuentes did not or could not cast a vote. Lack of quorum—consisting of 12 Directors de jure, as discussed *supra*—is the inescapable result. The meeting was also called and held illegally (notwithstanding the Court's June 3, 2014 finding).

Even assuming *arguendo* the 2014 Contract were fraudulent, counsel's remedy is not to take

"exclusive" possession of the National Office by its apparently causing installation of a padlock on the outside door thereof, under counsel's misrepresentation, made in its April 25, 2014 purported cross-complaint (*id.*, ¶ 1), of the Nonprofit Public Benefit Corporation Law by inserting the terms "exclusive" and "management" into the language of Corporations Code § 5210. Rather, in such a hypothetical, a contracting party's remedy is to seek rescission of contract:

> In the case of fraud (citation omitted), or such mistakes as justifies rescission, and even in the case of a material breach of the promise in the preliminary contract, the second transaction should be set aside and rescission allowed, if the parties can be put in *statu quo*, but not otherwise. (Citation.)
> Williston on Contracts (4th ed. 2000) § 44:31, pp. 149—151.

(See *M. F. Kemper Constr. Co. v. City of L.A.* (1951) 37 Cal.2d 696, 702 ["knowledge by one party that the other is acting under mistake is treated as mutual mistake for purposes of rescission"].) The April 25th cross-complaint, stating a legal conclusion about such second transaction (i.e., the 2014 Contract) being "fraudulent" without alleging facts in support thereof—other than the bare allegation about Reese being a "discharged" Foundation employee—is a sham.

9. Reese's 2013 and 2014 Contracts are valid, and counsel is estopped to complain of acts she took under said Contracts to remedy individual directors' breach thereof

There is no dispute the 2014 Contract was signed by officers de jure of the PFR Board—one of them (i.e., Gray) in the "operational" and the other (i.e., Uzzell) of the "financial" category under Corporations Code § 5214, which vests them with at least apparent if not also actual authority to execute said Contract, which is to be treated with solemnity, notwithstanding the fraudulently procured June 3rd order. (See Rest.3d Agency § 2.03, p. 115 [estoppel to deny apparent authority]; and *Forrest City Box Co. v. Barney* (*supra*) 14 F.2d at 592—593.)

Reese performed her duty under the 2014 Contract to mitigate damages resulting from Cross-complainant PFR's breach thereof. She did use bolt-cutters (see Apr. 25th x-compl., ¶ 7), but only as necessary for the purpose of removing a lock installed as directed by a faction of Directors of PFR who comprise the Defendant-individuals, each of whom either believes (whether mistakenly or negligently) their votes constitute a lawful majority on the PFR Board or intentionally defrauds PFR and Reese. After the lockout of five or more employees including herself (cf. Lab. Code § 1132.8), Reese was well within her rights to continue performing under the 2014 Contract. Though sensationalized in blogs on the savekpfa.org website maintained by one or more Defendant-individuals, Reese was (and is) within her rights to do "everything reasonably possible" to mitigate their breach. (*Sackett v. Spindler* (App. 1 Dist. 1967) 248 Cal.App.2d 220, 238; *Spurgeon v.*

Drumheller (App. 4 Dist. 1985) 174 Cal.App.3d 659, 665; *Winans v. Sierra Lumber Co.* (1884) 66 Cal. 61, 65; *Russell v. Ross* (1910) 157 Cal. 174, 181.)

She made reasonable exertions to mitigate Defendant-individuals' breach (*Valencia v. Shell Oil Co.* (1944) 23 Cal.2d 840, 844 (en banc)) by her March 17, 2014 abatement of the nuisance and removal of the lock, which is an item of small expense vis-à-vis the loss of opportunity to carry out mandated fiscal audits (see *Severini v. Sutter-Butte Canal Co.* (App. 3 Dist. 1922) 59 Cal.App. 154, 156), thereby permitting herself and other employees of PFR to so use its National Office in the only manner left possible by that faction of Directors. She had the right and duty to so abate said nuisance and to continue performing until counsel made it impossible for her to do so any longer by his fraudulent inducements of the Court up to and including the June 3, 2014 Preliminary Injunction.

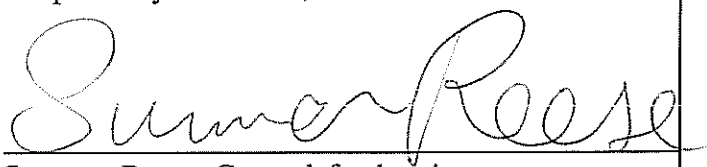
Conclusion

In view of Reese's 2013 Contract, which followed the November 8, 2013 election by which she was undisputedly elected as Executive Director of PFR, the 2014 Contract could well have received the unanimous consent of the PFR Board (*CDB Software,* 992 S.W.2d at p. 40;). Therefore, Gray and Uzzell had actual authority to enter into the 2014 Contract, whose solemnity is to be observed by the Court, despite the Honorable Ioana Petrou's June 3, 2014 statement about formal vote being needed to ratify it under a purported requirement appearing nowhere on record in this case. (See Reese's memorandum in support of underlying motion, 9:26—11:24; and her Reply, filed simultaneously herewith, to opposition to motion to set aside; 4:2—21, and authorities cited therein.)

Moreover, counsel's procurement of the "fraud" finding is a sham, as is counsel's retention purportedly authorized at the April 14, 2014 meeting of less than a quorum of Directors de jure and while shutting out Directors in Plaintiff-association. It was Reese's right and duty to carry on her contractual and PFR's statutory duties in PFR's National Office, despite counsel's procurement of the June 3, 2014 finding Reese's presence there to be "trespass and a nuisance" which counsel procured in complete disregard of said 2014 Contract; PFR's Bylaws and said parliamentary authority; and the Nonprofit Public Benefit Corporation Law, *supra.*

Accordingly, Cross-defendant's motion should be granted.

Respectfully submitted,



Summer Reese, Cross-defendant in pro. per.