

1 SUPERIOR COURT OF CALIFORNIA

2 COUNTY OF ALAMEDA

3 BEFORE THE HONORABLE IOANA PETROU, JUDGE PRESIDING

4 DEPARTMENT NUMBER 15

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6
7 PACIFICA DIRECTORS FOR GOOD)
GOVERNANCE, et al.,)

8 Plaintiffs,)

9 vs.)

10
11 PACIFICA FOUNDATION RADIO, et al.,)

12 Defendants.)

13 AND RELATED CROSS-ACTIONS.)
_____)

14
15
16 Reporter's Transcript of Proceedings

17 Monday, May 6, 2014

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19 APPEARANCES OF COUNSEL:

20 For Plaintiff:

21 Siegel & Yee
499 14th Street, Suite 220

22 Oakland, CA 94612

23 By: DAN SIEGEL, ESQ.

ALAN S. YEE, ESQ.

24
25 Reported By: Patty Lee Hubble, CSR #3058

1 APPEARANCES OF COUNSEL:

2 For Defense:

3 Aroplex Law
4 San Francisco, CA
5 By: AMY SOMMER ANDERSON, ESQ.

6 Law Offices of Eric C. Jacobson
7 Post Office Box 67674
8 Los Angeles, CA 90067
9 By: ERIC C. JACOBSON, ESQ.

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1 MONDAY, MAY 6, 2014

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3 THE COURT: Good morning, everybody.

4 Step on up, counsel.

5 Appearances on Pacifica Directors for
6 Good Governance vs. Pacifica Foundation Radio, et
7 al, case number HG14720131.

8 MR. SIEGEL: Good morning, Your
9 Honor. Dan Siegel and Alan Yee of Siegel & Yee for
10 the Pacifica Foundation and Margy Wilkinson.

11 MS. ANDERSON: Amy Anderson for
12 Pacifica Directors for Good Governance.

13 THE COURT: Counsel, you're appearing
14 this morning or not?

15 MR. JACOBSON: Um, I'm appearing for
16 Summer Reese. But your first item is PPGG --

17 THE COURT: Just come on up.

18 MR. JACOBSON: Okay.

19 THE COURT: Your appearance.

20 MR. JACOBSON: Good morning, Your
21 Honor. Eric C. Jacobson appearing for Summer Reese.

22 THE COURT: Feel free to have a seat,
23 everyone.

24 We are here on both matters. We're
25 here on the OSC re preliminary injunction on one

1 side and request for temporary restraining order on
2 the other side. I have everyone's papers including
3 the papers that Mr. Jacobson -- first of all,
4 Mr. Jacobson, this arrived here after 4:00 o'clock
5 yesterday and it's not file stamped.

6 Was this actually filed with the
7 clerk?

8 MS. REESE: Yes, Your Honor.

9 THE COURT: Do you have a
10 file-stamped version or can we tell online,
11 Ms. Williams?

12 MR. JACOBSON: I'll look, Your Honor.

13 THE COURT: Meanwhile, Mr. Jacobson,
14 I don't see any request for leave to file papers
15 that are more than twice the length permitted by
16 California Rules of Court 3.1113. Why should this
17 not be stricken?

18 MR. JACOBSON: Your Honor, this was
19 prepared under enormous time pressures, and
20 candidly, there was inadequate time to research the
21 superparticulars. I apologize if I greatly exceeded
22 the pages on this. My understanding was based on --

23 THE COURT: Counsel --

24 MR. JACOBSON: Can I --

25 THE COURT: No. Research -- I'm not

1 quite sure what you are referencing by research.
2 This is the same rule that applies to every single
3 opposition paper filed in any case. It's a
4 15-page limit.

5 MR. JACOBSON: If I may. I've been
6 practicing in federal courts for the last 12 years,
7 before that in the state courts. I have no excuse
8 about violating the rules on the length of the
9 filing. I concede the point and ask that you at
10 least take into consideration the fact that we're
11 under enormous time pressures to educate the Court
12 about this very serious matter, with very little to
13 no time compared to what it would take in any type
14 of normal situation.

15 One last point, I made an inquiry
16 about whether there was any applicable rule for an
17 opposition to a TRO and I was told there is no
18 specific rule for an opposition to a TRO in
19 particular. So I allowed myself the luxury --

20 THE COURT: So, Counsel, I recommend
21 next time you actually read the rules. California
22 Rule of Court 3.1113, I believe it's subdivision
23 (d), says:

24 "An opposition to anything, other
25 than a motion for summary judgment,

1 has a limit of 15 pages. If it's more
2 than that, it is to be treated as a
3 late filed paper. It's then up to the
4 Court whether to consider it or not."

5 I will think about it. I will consider
6 the declarations that were attached to it.

7 MR. JACOBSON: May I put in an
8 ex parte application for exceeding the page limit?

9 THE COURT: It's too late. I will
10 take you as having made the request and I will use
11 my discretion to do so, you don't need to do that.

12 Have we confirmed that this is even
13 filed?

14 THE CLERK: No, it's not filed, Your
15 Honor.

16 THE COURT: Ms. Reese, do you have a
17 filed version?

18 MS. REESE: I dropped it off with a
19 check for \$445 yesterday at the clerk's office,
20 right before 4:00, and came across the street to
21 here.

22 THE CLERK: It's in the drop box.

23 THE COURT: Back to the big picture,
24 the big picture for the papers on all sides. As
25 counsel notes there are a lot of different issues in

1 here. A lot of the issues, though -- and I say this
2 to everyone, as to all the papers -- really don't
3 have to do with what is in front of the Court here
4 today, right? Because we're really not here to
5 determine whether Mrs. Reese's termination was valid
6 in the sense as to whether there actually was cause.
7 There are a lot of things in here that are not at
8 issue.

9 The things that I am deeply
10 interested in, because I think it goes straight to
11 the heart of the request on -- I'll just say all
12 sides rather than both sides -- I would really
13 appreciate it if you could focus on a few things:
14 Whether the Board had the authority to take the
15 actions that it took on -- I believe it was
16 February 9th of this year; whether it had the
17 authority to take the actions it took on
18 March 13th of this year.

19 And I think really it's up to
20 plaintiffs to show any irregularity given the
21 declarations that have been filed.

22 And also whether there is any
23 evidence that I missed in here, somehow, that the
24 January 30th, 2014 employment agreement of Ms. Reese
25 was approved by the Board. I would like to know if

1 there is any evidence of Board approval.

2 So obviously say what you wish, but I
3 want you to know at the outset that those are the
4 questions that I think to be the most pertinent to
5 the hearing this morning that really go to the heart
6 of things I need to decide in regard to these
7 motions as opposed to, bigger picture, all the
8 additional issues that will have to be dealt with
9 down the road.

10 All right. Let's start with either
11 Mr. Siegel or Mr. Yee.

12 MR. SIEGEL: Well, Your Honor, first
13 of all, I think the January 30th agreement is
14 critical to the Court's consideration as Margy
15 Wilkinson indicated in her declaration. That
16 agreement was never authorized or approved by the
17 Board. The Board never gave anyone leave to write
18 that agreement and, in fact, when it came before the
19 board approximately a week later, the Board rejected
20 it.

21 What is very interested to me is that
22 nowhere in the opposing papers is there any evidence
23 that contradicts that statement. One would have
24 expected either Ms. Reese or Ms. Grey or Mr. Uzzell,
25 who are the signatories to that agreement, to have

1 filed a declaration saying we had the authority to
2 enter into this agreement and therefore we did.

3 Your Honor, we believe -- again, the
4 evidence is uncontradicted, that the
5 January 30th agreement was never authorized, was
6 never approved, and that then takes us back to the
7 November agreement. And the November agreement,
8 which I don't think there's any contradiction about
9 this, was signed on behalf of the Board, was signed
10 by Ms. Reese, and includes an expiration date of
11 December 1st. In other words, it was an offer
12 letter that says on its face that it was to remain
13 open until December 1.

14 There was a provision in that
15 agreement that said subject to the submission of a
16 background check, approved by the Board -- not just
17 a background check, but a background check approved
18 by the Board -- Ms. Reese's employment would begin
19 in December of 2013.

20 Again, the evidence is without
21 contradiction that there was no background check
22 approved by the Board either by December 1st or at
23 any other time.

24 There is a dispute about whether a
25 background check was completed. Attached to

1 Ms. Wilkinson's declaration is a, quote, summary of
2 the background check, which is not the background
3 check.

4 And further, there is evidence in
5 Ms. Wilkinson's declaration that the Board ordered
6 Heather Grey and/or Ms. Reese to produce the
7 background check within ten days, and it never did
8 so. So our position is that there never was an
9 employment agreement between Ms. Reese and the
10 foundation. There is no evidence, either, that the
11 January 30th agreement was approved or that the
12 November agreement condition precedent to its
13 effectiveness ever occurred.

14 So what we are left with is, again,
15 the uncontested facts that Ms. Reese became the
16 acting executive director of the foundation in late
17 2012 under the provisions of the California
18 Corporations Code and solely under those provisions,
19 and that her status under the code expired on
20 January 30th, 2014 when her position as chair of the
21 Board expired.

22 Because she held the position only by
23 virtue of the code -- that's not contested. She,
24 herself, acknowledges as of January 30, 2014, she
25 was no longer the chair; therefore, she was no

1 longer the executive director. So as of January 30,
2 2014, there is no legal basis for Ms. Reese to claim
3 that she continued to be the executive director of
4 the foundation.

5 Now, with respect to the Court's
6 concerns about whether the Pacifica National Board
7 had authority with respect to its actions on
8 February 9, March 13, I'm not sure what aspect of --

9 THE COURT: As I indicated, you
10 submitted declarations. I believe it was someone's
11 first name was Cerene -- I have a note somewhere --
12 Cerene Roberts in regards to both of those meetings.

13 So really I'm going to turn to
14 Ms. Anderson to hear their position. And
15 Ms. Anderson, it would be very helpful if you could
16 actually point to where in the bylaws -- as I was
17 going through all the various papers trying to
18 figure out when statements were being made -- if
19 these meetings were not called properly or a vote
20 wasn't taken properly, it has to be tied into the
21 actual bylaws. And so papers don't really tie it in
22 at all. It would be very helpful if you could try
23 to connect the dots.

24 MS. ANDERSON: To begin in response
25 to Mr. Siegel.

1 The employment agreement that was
2 entered in January 30th was not disputed by the
3 Board at the --

4 THE COURT: Counsel, my specific
5 question was: Is there any evidence at all --
6 before you can talk about whether there was dispute,
7 is there any evidence that the Board ratified or
8 approved the January 30th, 2014 agreement?

9 MS. ANDERSON: They approved the
10 offer letter contingent on --

11 THE COURT: Give me a date.

12 MS. ANDERSON: In November.

13 THE COURT: The initial offer letter.

14 MS. ANDERSON: They approved the
15 terms of her employment contingent, I believe, on
16 the background check being done, which was done, and
17 which has -- which was produced prior to
18 January 30th. I'm not aware of this -- of the
19 provision stating that the Board had to then approve
20 her actual contract. The contract reflects the
21 terms that were approved by the Board.

22 THE COURT: So it's your position --
23 if I'm understanding you correctly, is it your
24 position that the January 30th employment agreement
25 contained the same terms as the offer letter that

1 had gone out late in the year before, absent a
2 requirement for further background check?

3 MS. ANDERSON: Yes, and including
4 certain employment --

5 THE COURT: You need --

6 MS. ANDERSON: -- certain boilerplate
7 provisions.

8 THE COURT: To be quite clear, it's
9 your position that the Board has de facto approved
10 this because the terms were the same as the terms in
11 the 2013 offer?

12 MS. ANDERSON: Yes.

13 THE COURT: And do you have, other
14 than that statement -- and I would go back and
15 compare and contrast terms -- any evidence of board
16 approval or ratification of the January 30th, 2014
17 employment agreement?

18 MS. ANDERSON: In addition to the
19 approval of the offer letter -- and there is
20 ratification of the terms of the offer letter, which
21 I suppose is the same thing. In addition to that,
22 the --

23 THE COURT: Tell me what you mean.
24 When you say "there's ratification," what happened?

25 MS. ANDERSON: I believe all the

1 directors ratified --

2 THE COURT: You can take your time.

3 MS. ANDERSON: I can look that up for
4 you -- let me look it up and get the exact language
5 here.

6 THE COURT: Take your time.

7 MS. ANDERSON: All right. We have at
8 least 12 declarations from directors.

9 THE COURT: Where? Declarations
10 attached to what?

11 MS. ANDERSON: Um --

12 THE COURT: No, no, no. Papers that
13 I have. Do I have those declarations?

14 MS. ANDERSON: I don't believe so.

15 THE COURT: Okay. Then I can't
16 consider them.

17 MS. ANDERSON: Okay. So on
18 March 14th, at least 12 of the directors from the
19 2013 to 2014 term signed declarations stating that
20 they approved hiring Ms. Reese for a three-year
21 term.

22 Now, the 2014 board may not have
23 approved it, but they weren't the ones who hired
24 her. It was the 2013 board.

25 THE COURT: You're saying -- I can't

1 consider evidence that's not in front of me. But
2 you're saying the 12 declarations of people who were
3 on the 2013 board --

4 MS. ANDERSON: When Ms. Reese was
5 actually hired which is --

6 THE COURT: Okay. So let's say
7 you're right. I have no idea and I can't compare
8 the evidence.

9 Let's say the 2013 board folks said:
10 We want to hire her for at least three years.

11 What stops the 2014 board from
12 calling a meeting and getting together and saying
13 we're firing her?

14 MS. ANDERSON: Well, it appears
15 that's what happened.

16 THE COURT: Why can't they do that?

17 MS. ANDERSON: Because only -- you
18 want to know what's in the bylaws that prevents them
19 from doing so?

20 THE COURT: Well, I want to know if
21 you have any evidence that the meeting was not
22 properly called according to the bylaws; that the
23 vote was not properly taken according to the bylaws.

24 Again, we're not going to get into
25 the substance of her performance, okay, because

1 whether or not it was a valid termination for cause
2 is an employment question which everybody seems to
3 think is going to go to binding arbitration which is
4 really not what we're dealing with for purposes of
5 today.

6 MS. ANDERSON: Agreed.

7 I can point to the bylaws where it
8 requires that the items for discussion be provided
9 on the agenda, that there be adequate notice so the
10 directors can -- all directors can have the
11 opportunity to discuss and consider a point before
12 making a decision or taking a vote. And I can point
13 to those, but one point that I don't believe has
14 even been disputed that I believe is important is
15 whether her -- they say that her agreement was never
16 valid in the first place, but then they have also
17 presented arguments that the Board, 2014 board
18 simply didn't ratify it, even though the 2013 board
19 apparently hired her.

20 THE COURT: It's more than that. The
21 2014 board fired her.

22 MS. ANDERSON: And then that the 2014
23 board fired her. They have stacked up all of these
24 causes that not one of them can stand.

25 In the February 8th or 9th meeting,

1 they didn't even challenge the validity of the
2 contract. They challenged -- they claimed that
3 she --

4 THE COURT: Counselor, I'm going to
5 ask you again, I really need you to focus on these
6 questions, okay.

7 I want to know if you have any
8 evidence at all that the Board did not follow the
9 bylaws of Pacifica Foundation when calling their
10 meetings and making their decisions on
11 February 9th and March 13th of this year.

12 MS. ANDERSON: I don't recall whether
13 the complaint was provided. We can certainly
14 provide the agenda and the resulting items that were
15 presented. That's the evidence I can --

16 MR. JACOBSON: Your Honor, if I may,
17 the notice itself of the meeting made no reference
18 to the subject matter including Ms. Reese's
19 termination.

20 THE COURT: So where in the bylaws
21 does it say it has to, and where is there evidence
22 concerning the notice?

23 MR. JACOBSON: Not just the bylaws,
24 the communications act.

25 THE COURT: Can you start with the

1 bylaws and tell me if there is something in the
2 bylaws that was violated?

3 If the answer is no, you wanted me to
4 look at the communication act, then tell me that.

5 MS. ANDERSON: In Section 4, Page 17
6 of the January 12th, 2012 --

7 THE COURT: I'm sorry.

8 MS. ANDERSON: Article 6, Section 4.

9 THE COURT: Okay. Article 6, you
10 said?

11 MS. ANDERSON: Yes.

12 THE COURT: Article 6, Section 4
13 about notice.

14 MS. ANDERSON: First paragraph, a
15 little over halfway down:

16 "No additional business not
17 stated in the notice shall be
18 conducted at a special meeting.
19 Notice of all meetings shall be placed
20 on the foundation's website and
21 announced a minimum of three times
22 daily on air for five consecutive days
23 on all foundation radio stations
24 beginning whenever reasonably
25 possible, no later than ten days

1 before the date of said meeting."

2 THE COURT: So we're both on
3 February 9th and March 13th meetings, special
4 meetings?

5 MS. ANDERSON: The February -- I'm
6 sorry. The March 13th was a special meeting.

7 MR. SIEGEL: We disagree.

8 THE COURT: You have a
9 February 9th meeting announcement?

10 MS. ANDERSON: That was a regular
11 meeting.

12 THE COURT: February 9th meeting we
13 agree was a regular meeting.

14 As to March 13th, we disagree -- "We"
15 being the people sitting at the table there --
16 disagree whether it was a special or regular
17 meeting, fair? True?

18 MR. SIEGEL: Yes, Your Honor.

19 MS. ANDERSON: Yes.

20 THE COURT: Then where do you have
21 the notice in regards -- if there was one, because
22 apparently people disagree as to whether it was a
23 special or regular meeting.

24 Is there a notice in regards to the
25 March 13th meeting? If so, where is it in this

1 stack of papers that I have?

2 MS. ANDERSON: There is no notice --
3 there's no notice.

4 THE COURT: Okay. That's my
5 question.

6 MS. ANDERSON: Correct.
7 The only notice that was provided --
8 which has been provided in the declarations was that
9 there would be discussion as to the -- I believe the
10 title of Ms. Reese's position because following the
11 February meetings, prior to the March meetings, a
12 secretary and I believe the chairwoman began
13 referring to Ms. Reese as interim executive
14 director; whereas, she had been referred to as
15 executive director in the February meetings.

16 So somebody -- one of the other
17 directors raised the issue of why is she now being
18 referred to as interim? Who made this decision?
19 What is this about? That was the item on the
20 agenda. That was placed on the agenda by one of the
21 plaintiff directors.

22 There was no item noticed for the
23 meeting that had anything to do with making a
24 decision as to whether Ms. Reese should be
25 terminated and there was no discussion of such.

1 THE COURT: So I'm now looking at the
2 declaration of Cerene Roberts -- spelling it for the
3 court reporter, C-E-R-E-N-E, Roberts, common
4 spelling -- exhibit E, to the declaration of Margy
5 Wilkinson and Cerene Roberts indicates that she's
6 the secretary, and states on March 13th upon proper
7 notice and proper forum, et cetera.

8 Then I ask you to pause for a moment
9 and turn to Mr. Siegel and Mr. Yee. This doesn't
10 say on its face whether it was a regular or
11 specially called meeting. I understand it says it
12 was properly noticed.

13 Do you have something that you can
14 point to in regards to whether the March 13th
15 meeting was special or regular, and whether there
16 was notice?

17 MR. SIEGEL: There is nothing in the
18 record before the Court filed by either party. We
19 are prepared to make an offer of proof. The Court
20 indicated it would hear live testimony today. The
21 offer of proof would be that there was a regularly
22 called meeting of the Pacifica National Board on
23 March 6th. I don't think there's any issue about
24 that.

25 And at the conclusion of that

1 meeting, it was agreed to continue the meeting to
2 the March 13th date. And further, the offer of
3 proof is that it is a typical occurrence for the
4 Pacific National Board, when it does complete the
5 agenda on a regularly called meeting, to schedule a
6 continuation meeting to continue that.

7 THE COURT: Who do you have to
8 testify to that?

9 MR. SIEGEL: Mr. Brian
10 Edwards-Tiekert, who is a member of the Pacifica
11 National Board and is present.

12 THE COURT: You can be seated, sir.

13 MR. SIEGEL: Can I say one other
14 thing?

15 THE COURT: I would like to let
16 Ms. Anderson finish her argument before we do that.
17 Okay?

18 MR. SIEGEL: Okay.

19 THE COURT: Ms. Anderson, what else
20 would you like to say?

21 MS. ANDERSON: We're trying to locate
22 the provision but the bylaws do provide that any
23 telephonic meeting is a special meeting. Regular
24 meetings are not held telephonically.

25 Regular meetings require --

1 THE COURT: What are you looking at
2 again?

3 MS. ANDERSON: Article 6,
4 Section 3 -- I'm sorry. Section 4.

5 THE COURT: No. Section 3 is about
6 telephonic meetings.

7 MS. ANDERSON: Okay. Right. And
8 then also the notice requirements. So it wasn't
9 sufficient notice for the March meeting --

10 THE COURT: So we will hear from
11 Mr. Tiekert and you can question him as well.

12 Moving on. What else would you like
13 to say?

14 MS. ANDERSON: The 2014 board at the
15 February meetings made no challenge to Ms. Reese's
16 contract. So I have a hard time understanding why
17 they're now challenging the validity of it.

18 They attempted to fire her because
19 she doesn't have a Social Security number.

20 THE COURT: She doesn't have one or
21 she wouldn't give one?

22 MS. ANDERSON: She doesn't have one.

23 MS. REESE: That's correct. I do not
24 have one.

25 THE COURT: I will not hear from you

1 until you are sworn in.

2 MS. REESE: I'm sorry.

3 MS. ANDERSON: And her declaration
4 states that. She does not have one.

5 And that was the only challenge made
6 at the time. After that, in the March meetings,
7 they came up with a new reason to try to terminate
8 her.

9 I believe that is when they
10 attempted -- or initiated a challenge of her -- of
11 the validity of the contract, but there was no
12 discussion of that. This has been submitted in
13 declarations, that the meeting was held late at
14 night. They all agreed to end the meeting by
15 midnight. The motion was made with 15 minutes to
16 spare, and there was no time for discussion. It was
17 also not noticed, as we just established.

18 And there was no -- again, there was
19 no discussion. It was a very quick vote whereby all
20 12 directors were on board. It required no
21 discussion of whether it's proper to terminate
22 Ms. Reese. Again, now they're here saying she
23 wasn't even properly hired at that point, so I'm
24 not -- you know, I'm not sure --

25 THE COURT: It's not unusual to have

1 alternate arguments. This is not an unusual
2 scenario.

3 MS. ANDERSON: Sure, but anyway, they
4 have a history of what appears to be -- having
5 launched a witch hunt as soon as the new board was
6 seated in 2014.

7 THE COURT: All right. Anything you
8 wish to say before I actually hear from some people
9 we can take evidence from, Counsel?

10 MR. JACOBSON: Your Honor -- Your
11 Honor, I will withhold my comments until after.

12 THE COURT: All right. Go ahead.

13 MR. SIEGEL: Just, again, on the
14 February meeting, counsel is patently incorrect in
15 her characterization that there was no challenge to
16 the contract.

17 The February meeting, to refresh
18 everyone's recollection, was an in-person meeting,
19 extended over three days in Washington, D.C.

20 On the second day of the meeting,
21 there was a motion made to reject the
22 January 30th agreement. That motion was passed by a
23 vote of 12 to 7.

24 Again, Mr. Tiekert can testify on
25 that, but the motion was made. It was discussed.

1 It was passed by 12 to 7 to reject the January 30th
2 contract. There can be no issue but that that
3 matter was properly on the agenda, was discussed
4 long before midnight, and was passed, again, by a
5 vote of 12 to 7.

6 MR. JACOBSON: If I may comment, Your
7 Honor.

8 THE COURT: Go ahead.

9 MR. JACOBSON: The TRO does not
10 reference a word about the invalidity of the
11 employment agreement. It's entirely resting on the
12 3/13 action and its validity and that I think, given
13 the magnitude of what is being requested in the TRO,
14 should be done in a procedurally correct manner and
15 that is why I pointed out in the opposition that
16 it's demurrable because a definite statement was
17 required. So it's unfair, from my point of view and
18 a bit of a surprise, that the TRO could be, you
19 know -- you know, addressed based on something that
20 was not in the moving papers; that is, the
21 invalidity of the contract. From my perspective,
22 they should be forced to file what their actual
23 theories are in their underlying complaint, and the
24 TRO has no reference to the non-existence of her
25 current employment contract. It's all entirely that

1 there was a proper -- the subject of our first
2 colloquy eight days ago, if you recall.

3 THE COURT: Right. Do you wish to
4 respond to that before we call the witnesses?

5 MR. SIEGEL: Yes, Your Honor. On
6 April 8th, which is exactly four weeks ago today
7 Margy Wilkinson filed her declaration or signed her
8 declaration which is before the Court, which is in
9 possession of counsel, which is before the Court
10 when we were here on April 9th in which she
11 testified to exactly what I said about the rejection
12 of the contract. When we sought a TRO, we didn't
13 confine ourselves to the newly filed papers but
14 relied on all the papers that had been presented in
15 the case, including Wilkinson's declaration.

16 MS. ANDERSON: We weren't aware of
17 this declaration. We're not in possession of any
18 declaration.

19 THE COURT: It --

20 MS. ANDERSON: I thought it was
21 filed.

22 THE COURT: Hold on.

23 MS. ANDERSON: He said before the
24 April 9th hearing.

25 THE COURT: Let's be clear. Which

1 declaration are we referring to?

2 MR. SIEGEL: That's the declaration
3 we're referring to.

4 MS. ANDERSON: We're not --

5 THE COURT: First of all, we're not
6 all talking at the same time. I have a question.

7 You are holding the declaration of
8 Margy Wilkinson that was filed on April 25th;
9 correct?

10 MR. SIEGEL: Yes.

11 THE COURT: You don't have that?

12 MS. ANDERSON: That we have. He said
13 she made a declaration four weeks ago.

14 MR. SIEGEL: Signed on April 8th and
15 we discussed it at the TRO hearing, but it wasn't
16 filed.

17 MS. ANDERSON: Your Honor, I have a
18 procedural question. I wasn't aware that for -- at
19 least for the preliminary injunction and the Order
20 to Show Cause issues that counsel would -- opposing
21 counsel would be allowed to and we would be allowed
22 to presumably present oral testimony.

23 Are we dealing with these --

24 THE COURT: Did you read the order I
25 issued from the last hearing?

1 MS. ANDERSON: I -- from the
2 9th hearing or from the --

3 THE COURT: The last. Do you have it
4 in hand, the order that set today's hearing.

5 MS. ANDERSON: For which issue?
6 There's two.

7 THE COURT: I'm aware of that. So
8 let's start with the order to set today's hearing.

9 "With regard to the TRO, that's
10 the application for temporary
11 restraining order by the defendant and
12 cross-complaint, Pacifica Foundation
13 Radio is continued to May 6th to be
14 heard at the same time as the motion
15 for preliminary injunction by
16 plaintiff Pacifica Directors for Good
17 Governance. The Court will hear live
18 testimony at the hearing. The parties
19 are directed to have any witnesses
20 whose testimony they would like to
21 consider appear at the
22 May 6th hearing. In particular,
23 Pacifica Foundation may want to have
24 Margy Wilkinson, and cross-defendant
25 Reese may want to appear herself

1 and/or have Tamika Miller and Wei Ling
2 Thai. The parties are put on notice
3 that not every potential witness will
4 be allowed necessarily to testify
5 given the limited amount of time to
6 spend on this or any other case, and
7 the Court may select the witnesses
8 whose testimony will be heard."

9 So the order clearly says --

10 MS. ANDERSON: I didn't receive it.

11 I understand that now. I appreciate that. I'm not
12 in possession of that order.

13 THE COURT: Okay. I would recommend
14 to you, since we are on -- I don't know what
15 happened, but I will recommend to you since we have
16 the privilege of having an online system, whether
17 it's this case or any other case in Alameda County,
18 that you always go online and see what is happening
19 in your cases, okay?

20 I will also note that this was --
21 they may not have even gotten to it yet. It's April
22 28th. It was mailed out a week ago.

23 This was mailed to you on Monday of
24 last week. I'm looking at the proof of service,
25 okay, at the address that you have on file. The

1 order was mailed to you, to Mr. Siegel and Mr. Yee,
2 and Mr. Jacobson on April 28th. All right. So we
3 should all be on the same page.

4 I would like to hear from Mr.
5 Tiekert. Mr. Tiekert, come on and step up here by
6 this chair. When you get up here, please, sir,
7 remain standing and raise your right hand and face
8 madam clerk.

9 BRIAN EDWARDS-TIEKERT,
10 called as a witness by the plaintiffs, having been
11 duly sworn, testified as follows:

12 THE CLERK: Could you state and spell
13 your name for the record.

14 THE WITNESS: Brian, B-R-I-A-N,
15 Edwards, E-D-W-A-R-D-S, hyphen, Tiekert,
16 T-I-E-K-E-R-T.

17 THE COURT: Counsel, go ahead and ask
18 him what you wish, and I will give counsel on the
19 other side a chance to inquire, as well.

20 MR. SIEGEL: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 MR. SIEGEL: Q. Mr. Tiekert, are you
23 currently employed?

24 A. Yes.

25 Q. What is your employment?

1 A. I administer a program called "Upfront"
2 which is the morning drive time public affairs show
3 on KPFA.

4 Q. How long have you been employed by KPFA?

5 A. Ten and a half years.

6 Q. Are you a member of the Pacifica National
7 Board?

8 A. I am.

9 Q. How long have you been a member of the
10 Pacifica National Board?

11 A. Since January of 2013.

12 Q. And prior to that service, had you been
13 previously a member of the Board?

14 A. The Pacifica National Board, no.

15 Q. How about the local station board of KPFA?

16 A. Prior to that service I had served for six
17 years as a staff representative on KPFA's local
18 station board.

19 Q. Did you attend a meeting of the Pacifica
20 National Board in Washington, D.C. in February of
21 2014?

22 A. Yes, I did.

23 Q. And was that an in-person meeting?

24 A. Yes, it was.

25 Q. Was that meeting duly noticed?

1 A. As far as I know.

2 Q. Did the issue of the contract that was
3 signed by board members Uzzell and Grey as well as
4 Ms. Reese on January 30, 2014, come before the
5 Pacifica National Board during its meeting in
6 February 2014?

7 A. Yes, it did.

8 Q. How did that matter come up?

9 A. The agenda for the meeting had included
10 space to discuss the status of Summer Reese as
11 executive director on the first day of the meeting
12 which I believe was Friday, February 7th.

13 That afternoon, when we began discussing
14 the topic, without comment, Heather Grey distributed
15 printed copies of the employment contract that was
16 signed on January 30th.

17 It had never previously been shared with
18 the Board.

19 During the ensuing discussion in which we
20 were advised by Pacifica's then general counsel,
21 Terry Gross, one board member asked if he had
22 reviewed the language of that contract, and he said
23 no.

24 Q. You said "he said no." Who is "he"?

25 A. Terry Gross said no, he had not seen it.

1 Later in the meeting, I believe the next
2 day, Pacifica National Board member Tony Norman
3 brought a motion to reject the contract on the
4 grounds that it made material changes to the terms
5 and conditions of employment that were different
6 from those that the Board had approved when it
7 approved the language of the offer letter to Summer
8 Reese, and the Board approved that motion.

9 Q. Do you recall what the vote was?

10 A. I can look it up, if you like. I have
11 minutes from the meeting with me.

12 THE COURT: Sir, did you just say
13 that the terms were different from what the Board
14 had previously approved?

15 THE WITNESS: Yes.

16 THE COURT: Do you have any
17 recollection as to how they were different?

18 THE WITNESS: What was most striking
19 to me was that it redefined the probationary period
20 for Mrs. Reese in such a way as to make her
21 virtually unterminatable.

22 The employee handbook, in fact, at
23 the time of Pacifica specifies that any employee can
24 be discharged without cause during their first six
25 months of employment and that was the terms under

1 which --

2 THE COURT: So sir, I'm going to ask
3 you, please, to slow down.

4 THE WITNESS: Sure.

5 THE COURT: I'm sure this is not
6 something you do every day, but Madam Court
7 Reporter, who is sitting right here, has to
8 literally write down every word you are saying.
9 With that in mind, try to slow down, which I have a
10 problem with all the time so I empathize.

11 Go ahead.

12 THE WITNESS: So within Pacifica, our
13 employee manual in effect at the time says new hires
14 are subject to a six-month probationary period
15 during which they can be discharged without cause.

16 Our CFO, Raul Salvador, was hired under
17 the terms of an offer letter that specified he had a
18 probationary period during which he could be
19 terminated without causes in the first six months,
20 and, in fact, several of the plaintiffs brought to
21 the Board and voted in the motion to terminate him
22 without cause during his probationary period. Yet,
23 the contract signed January 30th said Summer Reese
24 would not be dischargeable during her probationary
25 period unless the Board did all of the following:

1 Demonstrated cause; went through progressive
2 discipline; conducted a systemwide evaluation of her
3 performance; and paid her up to \$50,000 in severance
4 even if it had found good cause to discharge her.

5 THE COURT: Go ahead, sir.

6 MR. SIEGEL: Q. Now, Mr. Edwards-Tiekart,
7 did the Pacifica National Board ever authorize
8 Heather Grey and/or Richard Uzzell to enter into a
9 new agreement with Ms. Reese following the first
10 agreement that was ratified in November of 2013?

11 A. Absolutely not.

12 Q. Have you ever heard a explanation from
13 either Mr. Uzzell, Ms. Grey or Ms. Reese as to how
14 it was they took it upon themselves to create this
15 new agreement?

16 A. Ms. Grey stated in an e-mail to the Board
17 both that she believed the terms of the contract
18 were consistent with the terms in the offer letter,
19 and that she believed she was protecting the
20 foundation by limiting the severance it might have
21 to pay to Mrs. Reese in the event -- Ms. Reese,
22 excuse me, in the event of a discharge, which seems
23 to me to be contradictory. Because if it's creating
24 severance terms that didn't exist before, it's a
25 material change.

1 Q. Let me ask you this, did she ever claim
2 that the Board had authorized her to enter into the
3 January 30th agreement?

4 A. No.

5 Q. Did Mr. Uzzell ever make that claim?

6 A. No.

7 Q. Now, let me go back to the November
8 agreement. At any time prior to December 1st, 2013,
9 was a background check for Ms. Reese presented to
10 the Pacifica National Board?

11 A. No.

12 Q. At any time at all, did the Pacifica
13 National Board approve a background check with
14 respect to Ms. Reese?

15 A. No.

16 Q. At any time at all, did the background
17 check that was actually created by the company that
18 conducted the background check present it to the
19 Pacifica National Board?

20 A. In our board binders for the in-person
21 meeting in Washington, D.C. there was what appeared
22 to be a summary of the results of the background
23 check. I say it appeared to be a summary because it
24 had several flags indicating there were issues that
25 had come up during the background check which were

1 not explained in the document that was presented to
2 us.

3 Q. Was the background check itself presented
4 to the Board?

5 A. No.

6 Q. Now, let me turn you to the meeting of
7 March 13th. Was there a meeting on March 13th?

8 A. Yes.

9 Q. Of this year, of course.

10 A. Of course.

11 Q. Yes. And was that an in-person or a
12 telephonic meeting?

13 A. It was a telephonic meeting.

14 Q. How did that meeting come about?

15 A. While the Board was meeting on March 6th,
16 at a meeting attended by all members --

17 Q. When you say "all members," how many?

18 A. Twenty-two members of the Pacifica
19 National Board.

20 Q. Okay.

21 A. And notice provisions of our bylaws say
22 that anyone who attends a meeting without protest
23 waives their right to challenge any notice.

24 Q. All right.

25 A. At that meeting, at the conclusion of --

1 towards the conclusion of the meeting, we voted to
2 hold a continuation meeting on March 13th.

3 Q. Okay. What is your understanding of the
4 practice of the Pacifica National Board with respect
5 to continuation meetings?

6 A. When you hold a continuation meeting, the
7 agenda that was approved for the meeting you are
8 continuing is binding upon the Board. It can only
9 be changed by a two-thirds vote.

10 Q. And at the March 13th meeting, did the
11 issue of Ms. Reese's employment come up?

12 A. Yes.

13 Q. And how did it come up?

14 A. It came up during a section of the agenda
15 during executive session that was designated as
16 chair's report in response to a written chairs
17 report prepared by Margy Wilkinson and distributed,
18 I believe, on March 5th that documented, at length,
19 Summer Reese's failure to comply with the Board's
20 directive to produce the contents of her personnel
21 file and background check and also raised several
22 other issues regarding her tenure as executive
23 director.

24 Q. You mentioned the Board directive to
25 produce her personnel file and background check.

1 Was that a directive that the Board had
2 made to Ms. Reese?

3 A. Yes.

4 Q. When did it do that?

5 A. During its in-person meeting in
6 Washington, D.C.

7 Q. Okay. Did she comply with that request?

8 A. No.

9 Q. So what action was taken on March 13th?

10 A. The Board voted to discharge Summer Reese.

11 MR. SIEGEL: Those are all the
12 questions I have at this time.

13 THE COURT: Go ahead. Either one of
14 you.

15 CROSS-EXAMINATION

16 MR. JACOBSON: Q. Mr. Edwards-Tiekert, are
17 you well versed in the bylaws of Pacifica
18 Foundation?

19 A. Reasonably.

20 Q. I don't blame you if you don't know this
21 particular article, but do you happen to know
22 Article 6, Section 3 regarding telephonic meetings?
23 Do you know the contents of that?

24 THE COURT: Do you have a copy -- I
25 don't do this. I don't ask witnesses to try to

1 remember off the top of their heads.

2 Do you have the actual bylaw for him
3 to look at while you ask him questions about it?

4 MR. JACOBSON: May I approach?

5 THE COURT: You may.

6 MR. JACOBSON: Q. Mr. Edwards-Tiekert, I'm
7 showing you the Pacifica bylaws -- Pacifica
8 Foundation bylaws dated 1/1/2013.

9 Could you review the sentence that is
10 checkmarked?

11 THE COURT: You are referring to
12 Article 6, Section 3 regarding telephonic meetings?

13 MR. JACOBSON: Correct. The first
14 sentence.

15 Q. Could you read the first sentence for the
16 Court?

17 THE COURT: I can read it. It says:

18 "The Board may hold special
19 meetings but not regular meetings by
20 telephone conference, video screen
21 communication, or other communications
22 equipment, provided, however, that
23 telephone appearance at meetings
24 scheduled as in-person meetings is not
25 permitted. Participation in a

1 telephonic meeting under this section
2 shall constitute presence at the
3 meeting if all the following apply."

4 And there are three provisions, if
5 they are met, participation in a telephonic meeting
6 equals presence at the meeting.

7 MR. JACOBSON: That's correct.

8 Q. Is that your -- also your understanding
9 of -- is that a current bylaw, to your knowledge?

10 A. You mean that sentence?

11 Q. Yes.

12 A. As far as I know it is.

13 Q. Okay. So is there any dispute, having
14 looked at that, that a telephonic meeting is, by
15 definition, a special meeting?

16 A. No.

17 Q. There's no dispute about that; correct?

18 A. No.

19 Q. Thank you.

20 Now, I would like to ask you some
21 questions about the content of the February 7th,
22 2014 meeting.

23 THE COURT: Can you hold on? You
24 just established a telephonic meeting equals a
25 special meeting.

1 So are you contending that either the
2 February 9th or March 13th meetings were telephonic
3 meetings?

4 MR. JACOBSON: The March 13th meeting
5 was a telephonic meeting.

6 Shall I establish it by testimony?

7 THE COURT: It would make sense since
8 that's what you were talking about.

9 MR. JACOBSON: Mr. Edwards-Tiekert,
10 the March 13th, 2014 meeting we have been discussing
11 was a telephonic meeting, was it not?

12 A. Correct.

13 Q. Thank you.

14 MR. JACOBSON: Was there any other
15 follow up Your Honor wishes?

16 THE COURT: It's up to you.

17 MR. JACOBSON: Q. Mr. Edwards-Tiekert
18 would like to turn to the February 7th, 2014
19 meeting.

20 A. There was no meeting on February 7th --
21 excuse me, you mean the in-person meeting?

22 Q. The in-person meeting. I'm referring to
23 that.

24 According to Ms. Reese, there was colloquy
25 between board member Jose Luis Fuentes who had been

1 seated on the board for a week at that time.

2 That was correct, Mr. Fuentes was a new
3 board member, to your knowledge?

4 A. Yes.

5 Q. He had not previously served on the
6 Pacifica National Board; correct?

7 A. No.

8 Q. Ms. Reese indicates that -- were you
9 present during the colloquy between Mr. Fuentes and
10 Ms. Reese on February 7th?

11 A. Depends on the colloquy you are referring
12 to.

13 Q. I will proceed.

14 That Mr. Fuentes asked Ms. Reese the
15 following question in the presence of both attorneys
16 who were present at the meeting, quote:

17 "Do you have a Social Security
18 number?"

19 To which Ms. Reese responded:

20 "No, and I do not intend to
21 obtain one as I have a religious
22 objection to it as a Christian,"
23 unquote.

24 And that Mr. Fuentes immediately responded
25 by moving that Ms. Reese be terminated for failing

1 to provide a Social Security number, quote, unquote,
2 as provided by law.

3 Do you have a personal recollection of
4 that colloquy?

5 A. Yes.

6 Q. Is that an accurate description?

7 A. No.

8 Q. Could you state your recollection to the
9 extent it differs.

10 THE COURT: Counsel, you can back up
11 now.

12 Go ahead.

13 THE WITNESS: Mr. Jose Luis Fuentes
14 asked the questions --

15 THE COURT: Ms. Reese, I can't hear,
16 you will need to keep it down.

17 MS. REESE: I'm sorry.

18 THE COURT: I cut you off. The
19 question was if you could state your recollection of
20 the colloquy.

21 Go ahead.

22 THE WITNESS: To the best of my
23 recollection, he asked the question, as you
24 described.

25 And Ms. Reese responded, as you

1 described.

2 And there was a lengthy discussion,
3 both in the presence of Summer Reese and then after
4 she absented herself from the meeting so the Board
5 could discuss further about the implications of
6 those facts.

7 And after lengthy discussion, Mr. Jose
8 Luis Fuentes brought a motion to terminate her. It
9 was after she had left the room. Or rather -- I
10 don't remember the exact language of her motion. I
11 believe it was to deny further employment on the
12 grounds that she did not provide a Social Security
13 number.

14 MR. JACOBSON: Q. You were privy to
15 those discussions that happened in Ms. Reese's
16 absence; is that correct?

17 A. Correct.

18 Q. Could you describe, to the best of your
19 recollection, the nature of those discussions?

20 A. I just did.

21 Q. The ones you had after Ms. Reese absented
22 herself. As I heard your testimony, you simply said
23 there was discussion.

24 Could you describe its contents?

25 A. If you are asking me to paraphrase the

1 colloquy of 22 board members, I'm afraid I'm not up
2 to the task.

3 Q. Not necessarily. Do you recall the -- do
4 you recall any of the colloquy?

5 A. Some.

6 Q. And part of that colloquy did include the
7 subject of the problematic nature of the religious
8 objection that Ms. Reese had articulated to
9 providing the Social Security number; is that
10 correct?

11 A. I'm not sure what you're asking.

12 MR. JACOBSON: Can you read back the
13 question? I think it's clear.

14 THE COURT: You can read it back.

15 (Whereupon, the record was read.)

16 THE COURT: That's not very clear.
17 Rephrase the question.

18 MR. JACOBSON: I will rephrase.

19 Q. The more the board -- let's just establish
20 that the private discussion by the Board in
21 Ms. Reese's absence related to the viability of --
22 the viability, from a legal perspective, of
23 terminating Ms. Reese on the basis of her
24 non-provision of a Social Security number; is that
25 correct.

1 A. Some of it, fair enough.

2 Q. So in the course of that discussion, her
3 religious objection specifically was part of the
4 dialogue?

5 A. You mean the fact that she said she
6 doesn't have a Social Security number because she's
7 a Christian?

8 Q. Correct.

9 A. I'm trying to remember if any Board
10 members specifically raised it as a religious issue.

11 One or two may have. It was not central
12 to the Board's discussion.

13 Q. Now, the outcome was interesting, from my
14 perspective. The Board did not, at that time, act
15 on Mr. Fuentes's motion to terminate Ms. Reese for
16 failure to provide a Social Security number.

17 That is true, is it not?

18 A. Correct.

19 Q. Do you recall the reason that they did not
20 proceed at that time to take the action Mr. Fuentes
21 was urging?

22 MR. SIEGEL: Objection, lack of
23 foundation, calls for speculation.

24 THE COURT: Are you able to answer
25 that question, sir?

1 THE WITNESS: Can you repeat the
2 question?

3 MR. JACOBSON: Can you read it back.

4 (Whereupon, the record was read.)

5 THE WITNESS: The approximate reason
6 is that we approved a motion to table.

7 MR. JACOBSON: Q. And the
8 substantive basis for tabling it was what?

9 A. You're asking me to read the minds of 22
10 board members voting on --

11 THE COURT: No. No. We will not
12 argue questions between ourselves.

13 You don't get to ask questions back
14 to him. Okay?

15 The objection that was previously
16 raised concerning foundation and speculation is
17 sustained. Move on to your next question.

18 MR. JACOBSON: Q. What was your
19 reason, Mr. Edwards-Tiekert, for -- let me retract.
20 Did you vote to table?

21 A. Yes.

22 Q. What was your reason for doing so?

23 MR. SIEGEL: Objection relevance.

24 THE COURT: I'll allow him to answer.

25 You can answer.

1 THE WITNESS: The Board was very
2 heated and divided on the issue, and I did not feel
3 it was in our best interests to rush into a
4 controversial discussion when longer discussion
5 might produce a calmer result and more harmony
6 amongst board members going forward.

7 MR. JACOBSON: Q. When you say it was
8 "heated," who were the most heated of your
9 colleagues?

10 A. On a scale of one to ten?

11 Q. Answer the question, please.

12 A. Probably Janet Coleman. Manijeh Saba -- I
13 really am uncomfortable ranking board members by
14 their heatedness.

15 MR. JACOBSON: Move to strike. It's
16 irrelevant.

17 THE COURT: What is your next
18 question?

19 MR. JACOBSON: Q. Which side of the
20 debate were the persons you've just named on?

21 A. They were arguing against the motion from
22 Jose Luis Fuentes-Roman.

23 Q. Isn't it true that Mr. Fuentes-Roman was
24 heated in favor?

25 A. No.

1 THE COURT: I'm sorry. I'm having a
2 relevance problem. How is this relevant?

3 MR. JACOBSON: Because --

4 THE COURT: We understand that there
5 was a dispute. We understand it was tabled at that
6 time.

7 MR. JACOBSON: Let me just follow up
8 on the meaning of a tabled motion. I think it will
9 be relevant, Your Honor.

10 THE COURT: Okay.

11 MR. JACOBSON: Q. What is meant when
12 a motion gets tabled in terms of how it is treated
13 in terms of its existence? It continues to -- since
14 I think I know the answer, I will ask you to confirm
15 it or correct me.

16 A tabled motion is a standing motion
17 for future consideration, is it not?

18 A. I don't know what you mean by "standing
19 motion."

20 Q. Please tell the Court and counsel what is
21 meant by the term tabling a motion.

22 A. Per Robert's rules, which are incorporated
23 into our bylaws, by reference, approving a motion to
24 table suspends consideration of an item in such a
25 way that that item can be brought back up for

1 consideration by a simple majority vote at any time
2 during the remainder of the session in which it is
3 under consideration.

4 Q. And just to be clear, then, I presume that
5 what occurred on March 13th was the same subject as
6 the tabled motion on the 7th now being done in the
7 telephonic March 13th meeting; is that correct?

8 A. No.

9 Q. How do they differ?

10 A. Well, if we were taking up the tabled
11 motion, we would have had to bring a vote to remove
12 it from the table. So March 13th was a separate
13 motion. It was different wording.

14 Q. Same subject matter?

15 A. In what sense?

16 Q. Mr. Fuentes wanted to terminate Ms. Reese
17 on the basis of her Social Security number and
18 March 13th was also to terminate Ms. Reese?

19 A. But made no mention of her Social Security
20 Number.

21 Q. So that's true, but it's a technicality;
22 correct?

23 THE COURT: No. That's not a
24 question for him to answer, okay. Next question.

25 MR. JACOBSON: Q. In your mind did

1 you see any material difference in the two?

2 A. Yes.

3 Q. In what way?

4 A. The language of the motion from the
5 in-person meeting was a motion to deny further
6 employment based on a failure to provide a Social
7 Security number.

8 The motion approved on March 13th was a
9 motion to discharge.

10 Q. On what basis?

11 A. The motion did not state a basis.

12 Q. Was there a basis?

13 MR. SIEGEL: Objection, foundation,
14 vague, relevance.

15 THE COURT: Rephrase your question,
16 Counsel.

17 MR. JACOBSON: Q. Executive director
18 of Pacifica is an important position; correct? By
19 definition; correct? The powers of the executive
20 director are listed in the bylaws. They state that
21 it's a -- there's a -- it's a position of great
22 responsibility within Pacifica; correct?

23 A. The powers of the executive director are
24 as outlined in our bylaws.

25 Q. And you disagree that they are substantial

1 in nature?

2 A. The powers are extant, I guess that makes
3 them substantial.

4 Q. You are familiar with what they are, true?

5 A. Reasonably.

6 Q. It's your -- did you vote in favor of this
7 March 13th motion to discharge?

8 A. Yes, I did.

9 Q. What were your reasons?

10 A. My reasons?

11 Q. (Attorney nods.)

12 A. I thought the foundation would be better
13 off if Summer Reese's employment as executive
14 director ended.

15 Q. Why?

16 A. I had several longstanding concerns about
17 her performance.

18 She ran large deficits in a divisional
19 unit directly under her control at the Pacifica
20 National Office.

21 She had sought expense reimbursements in
22 large amounts without providing receipts from staff
23 subject to her supervision.

24 She had sought payroll advances in
25 violation of foundation policy; in other words, the

1 size of the payroll advances was larger than
2 foundation policy.

3 But my most proximate concern was that
4 while serving as both chair of the board and
5 executive director -- in other words, as someone who
6 was highly aware of what the Board had and had not
7 authorized -- she entered into a fraudulent contract
8 and attempted to bind the foundation to a contract
9 that included a very large and generous golden
10 parachute provision for her.

11 Q. And you brought up all that in the debate
12 about the March 13th motion; correct?

13 A. No, I did not.

14 Q. You did not? That's what I thought.

15 So you voted on a motion having a set of
16 reasons personally, and I take it that because there
17 were seven votes against, those people had reasons
18 too. My point is this: There was no debate about
19 the content --

20 THE COURT: This is not argument. Do
21 you have a question for him?

22 MR. JACOBSON: Q. There was no
23 debate about the reasons for the March 13th action
24 among the board members on the call; correct?

25 THE COURT: When you say "debate," --

1 I want to understand the question -- are you asking
2 whether there was discussion during the call
3 concerning whether or not she should be fired? I'm
4 trying to understand your question.

5 MR. JACOBSON: Debate about whether
6 her performance merited her termination.

7 THE COURT: So, again, I'm trying to
8 understand your question, because when you use the
9 word "performance," are you encompassing everything
10 that he just testified to or what?

11 MR. JACOBSON: I'm making -- what I'm
12 getting at, Your Honor, is -- maybe I can rephrase
13 it slightly differently.

14 Q. Mr. Edwards-Tiekert, did you know in
15 advance of the March 13th telephonic meeting that
16 there would be a motion made at that meeting to
17 terminate Ms. Reese?

18 A. I expected there would be.

19 Q. How did you come into that expectation?

20 A. The chair's report presented a fairly
21 devastating chain of evidence showing that Summer
22 Reese had both been insubordinate to board
23 directives and had lied to the Board on at least one
24 matter.

25 Q. That chair's report, it was received when?

1 A. I believe it was March 5th.

2 Q. And had you had contact with your fellow
3 board members who formed the majority of that vote
4 in advance of the meeting on March 13th?

5 A. Oh, yes.

6 Q. In what form did that communication occur?

7 A. Telephone calls, e-mails. Board members
8 are in pretty regular communication with each other.

9 Q. By "board members," you're referring to
10 the faction of the Board to which you belong;
11 correct?

12 A. What do you mean by the faction to which I
13 belong?

14 Q. The vote -- the individuals that voted in
15 the majority on March 13th.

16 A. I was in contact with several but not all
17 of the members who voted in the majority on that
18 date.

19 Q. So there was, for lack of a better word, a
20 plan for a motion to terminate Ms. Reese to be made
21 on the March 13th meeting before the meeting;
22 correct?

23 A. Um. What do you mean by "there was a
24 plan"?

25 THE COURT: Let's try to focus this.

1 There was a meeting on March 6th; correct?

2 THE WITNESS: Correct.

3 THE COURT: Was that an in-person
4 meeting?

5 THE WITNESS: Telephonic.

6 THE COURT: So it was telephonic, but
7 it was a regular meeting? I'm trying to understand.

8 THE WITNESS: Yeah. So maybe I can
9 clarify.

10 THE COURT: Go ahead.

11 THE WITNESS: Okay. The bylaws are
12 as he cited. They state that no business that is
13 not noticed for a meeting may be taken up at the
14 meeting. The past practice of the Pacifica National
15 Board, including during the three years during which
16 Summer Reese presided over the board as chair, was
17 that when a telephonic meeting is called with no
18 particular business noticed, then anything is fair
19 game at the meeting.

20 So it's a special meeting, in a
21 technical sense; however, anything is on the agenda.

22 At the 6th meeting, we worked from an
23 agenda that had been proposed in advance by the
24 chair, Margy Wilkinson. We approved the agenda with
25 the minutes. We took no action on any of the items

1 on that agenda, and we set March 13th as our
2 continuation meeting.

3 THE COURT: Okay. And --

4 THE WITNESS: At which time we would
5 take up the items on the agenda.

6 THE COURT: You said something
7 earlier -- and it's fine if you don't know where
8 this is in the bylaws. You mentioned earlier in the
9 course of your testimony something about that if
10 someone attended a meeting, they would have the
11 right to contest it.

12 THE WITNESS: It's in the notice
13 section under special meetings. If you have the
14 section of the bylaws that you mentioned earlier, I
15 can quote it, the one you presented me with.

16 THE COURT: That would actually be
17 helpful. This is Article 6 where it commences
18 special meetings.

19 THE WITNESS: Sure.

20 MR. SIEGEL: Your Honor, if I may, I
21 can directed the Court's attention to the provision.

22 THE COURT: Where is it?

23 MR. SIEGEL: It's on the bottom of
24 the page that has Article 6 at the top, and it's the
25 last paragraph, four lines.

1 THE COURT: Is that correct, sir?

2 THE WITNESS: The top of what is in
3 your set of bylaws, Page 23 of 47.

4 THE COURT: So this indicates and it
5 is encompassed within Article 6, Section 4
6 concerning notice. It's the final paragraph of
7 that. It states:

8 "Notice of a meeting hereunder
9 will be deemed waived by a director
10 who affirmatively agrees to attend the
11 meeting or to waive this advanced
12 notice requirement, signs a waiver of
13 notice or a written consent, or who
14 attends the meeting without protesting
15 prior to the meeting, or upon
16 commencement of the meeting to the
17 lack of notice to that director."

18 Okay. Go ahead.

19 MR. JACOBSON: Q. Mr. Edwards-Tiekert
20 that refers to regular meetings, does it not?
21 There's no waiver of a telephonic, you don't appear
22 at a telephonic meeting and waive your objection to
23 the agenda by getting on the call, do you?

24 A. As I read it, it applies to telephonic
25 meetings.

1 THE COURT: We can debate that. It's
2 in Article 6 concerning notice. Move on.

3 MR. JACOBSON: The first sentence,
4 Your Honor --

5 THE COURT: I said we can debate
6 that. That is part of the argument you will make.

7 MR. JACOBSON: Very good.

8 THE COURT: Move on.

9 MR. JACOBSON: Q. You mentioned that
10 your view is there was a material change in the
11 contract as compared to the -- the 1/30, 2014
12 contract as compared to the offer letter. Is that
13 correct? Is that your testimony?

14 A. Correct. Well, that the motion that the
15 Board voted on stated that there was a material
16 change to the terms and conditions of employment.

17 Q. I'm sorry. I thought your testimony was
18 that there was a material discrepancy between the
19 offer letter of November, correct? It was in
20 November, correct, the offer letter?

21 A. Uh-huh.

22 Q. And that there was a material discrepancy
23 in the content of the 1/30, 2014 contract itself?

24 A. The motion that the Board voted on
25 rejected the contract on the basis of the fact that

1 there was a material change to the terms and
2 conditions of employment that the Board had approved
3 when it approved that offer letter.

4 Q. Okay. So a couple points on that. The
5 first being, is it the practice of Pacifica, to the
6 best of your knowledge, to always succeed an offer
7 letter with a written contract?

8 A. No.

9 Q. Elaborate, if you would, on the typical
10 situation with regard to an employee who has secured
11 an offer letter. What happens next?

12 A. I will give you an example of Pacifica's
13 CFO, Raul Salvador, who was hired earlier in 2013
14 with an offer letter. When one of the plaintiffs,
15 Richard Uzzell, brought an unnoticed motion to
16 terminate his employment, I requested a copy of his
17 employment contract, and what Summer Reese provided
18 us was his offer letter. She said that was the only
19 contracted in effect.

20 Q. And apart from that example, in general,
21 are there other employment situations within
22 Pacifica that you are aware of that offer letters,
23 in effect, suffice to commence a period of
24 employment?

25 A. I have not seen the contracts or offer

1 letters for any other employees of Pacifica, just
2 the two who are subject to the Board's supervision
3 in 2013.

4 Q. Are you aware, based on your experience at
5 Pacifica as a current board member and/or in your
6 past opportunities to become familiar, whether that
7 is a typical manner that Pacifica uses to employ
8 people?

9 A. Yes. I just thought of another example.
10 Andrew Phillips, who was an interim manager who
11 Summer Reese pushed out of his position in 2013, was
12 employed under the terms of an offer letter, which
13 was the sole contract in effect.

14 Q. So Ms. Reese, then, was a contracted
15 employee based on the offer letter; correct?

16 A. You're asking me to draw a legal
17 conclusion?

18 Q. A lay conclusion.

19 THE COURT: No. There's no such
20 thing.

21 MR. JACOBSON: Q. Do you have an
22 opinion?

23 THE COURT: No. He's not an expert.

24 MR. SIEGEL: Objection.

25 MR. JACOBSON: Q. Summer Reese had

1 been the interim executive director of Pacifica for
2 some period of time before the offer letter of
3 November 2013; correct?

4 A. Her title was chair of the Board. She
5 assumed the title of interim executive director.

6 The Board's past practice, including with
7 Summer Reese, was to interpret a provision of
8 California Corporations Code to mean that when there
9 is a vacancy in the executive director position, and
10 the Board has appointed no one else to fill it, that
11 the powers of that position default to the chair of
12 the Board.

13 The Board did, at some time during Summer
14 Reese's tenure, which was before I joined the Board,
15 approve a salary for her. I don't know whether it
16 approved a title for her.

17 Q. The salary was for the position of
18 executive director; correct?

19 A. No, that is my point. One could have the
20 title of chair and, in the absence of an executive
21 director, have executive authority without having
22 the title of executive director.

23 Q. But the Board members are unpaid
24 positions, apart from costs for attending board
25 meetings and the like. That is true, is it not?

1 A. That we're a volunteer board?

2 Q. Yes.

3 A. We are a volunteer board.

4 Q. By definition unpaid; correct?

5 A. Um, you mean does volunteer mean unpaid?

6 Q. Correct. Apart from costs.

7 A. Yes.

8 Q. That includes the chairman; correct?

9 A. The chair of the Board?

10 Q. The chair of the Board is also a board
11 member serving as a volunteer, essentially, apart
12 from reimbursement for costs?

13 A. Yes. But the chair is also an officer of
14 the foundation.

15 Q. An officer -- is it your testimony that
16 we're basically disputing whether the officer -- the
17 type of officer that Summer Reese became was or was
18 not an executive director, quote unquote?

19 A. I'm not sure what you are asking.

20 Q. Does -- the salary Ms. Reese was approved
21 to receive by the Board was for her work as an
22 officer, was it not?

23 A. Again, I was not a member of the board
24 when they approved the salary for Ms. Reese.

25 THE COURT: You better move on.

1 MR. JACOBSON: All right.

2 Q. What I was getting -- leading up to there,
3 one of the reasons why -- let me strike that.

4 Were you on the Board at the time the
5 offer letter was approved by the Board, Ms. Reese's
6 offer letter?

7 A. Yes.

8 Q. Who were the authors of that offer letter?

9 A. It was a three-person committee consisting
10 of John Cromshaw -- Cromshaw, Tony Norman and Dan
11 Siegel.

12 Q. And --

13 THE COURT: How is this relevant,
14 Counsel, again, focusing on the issues for today?

15 MR. JACOBSON: Testimony was that
16 the -- as I interpreted his testimony, and perhaps
17 it will be substantiated by others -- the offer
18 letter itself constituted --

19 THE COURT: Who cares who drafted it,
20 right now?

21 MR. JACOBSON: Well, I take your
22 point, Your Honor.

23 Q. It was -- was approved by a vote of the
24 Board in November -- this offer letter, that is, was
25 approved by a vote of the Board in November of 2013;

1 correct?

2 A. Correct.

3 Q. And the offer letter was -- if you could
4 just summarize in a nutshell the nature of the
5 offer --

6 THE COURT: No. No. Do you not have
7 an exhibit that is the offer letter?

8 MR. SIEGEL: Yes.

9 THE COURT: It's a waste of our time
10 to have him summarize, off the top of his head, a
11 document that is in evidence.

12 I will hear from anyone on where this
13 is.

14 MR. SIEGEL: Exhibit B to the
15 Wilkinson declaration.

16 THE COURT: Right. It's the
17 declaration of Margy Wilkinson, Exhibit B.

18 Do you want this gentleman to be able
19 to look at it for some reason?

20 Signed by Richard Uzzell and
21 Ms. Reese.

22 Counsel, I asked you a question. Do
23 you want him to be able to see this letter?

24 MR. JACOBSON: Yes.

25 THE COURT: Is there a question?

1 MR. JACOBSON: Q. Does part of the
2 offer letter content permit the secretary of
3 Pacifica to alter the contents of the offer letter
4 to modify it?

5 A. No.

6 MR. JACOBSON: I think there may be a
7 factual dispute.

8 THE COURT: You can point it out.
9 The letter says what it says.

10 MR. JACOBSON: I don't have it in
11 front of me, Your Honor.

12 THE COURT: I can't help it. You
13 were served with that.

14 MR. JACOBSON: I want to turn back
15 briefly in conclusion, Your Honor, to something the
16 witness discussed earlier.

17 Q. There is a separate obligation, is there
18 not, on the non-profit Pacifica Board to have notice
19 of meetings be put before the public as well as
20 internally within Pacifica, is that correct, to your
21 knowledge?

22 A. Do you want to point me to a particular
23 section of the bylaws?

24 Q. Within the bylaws or beyond the bylaws, is
25 it a custom to -- is it a requirement, to your

1 knowledge, that there be public notice of the agenda
2 items at the meetings of the Pacifica National
3 Board?

4 A. Not the agendas items, no.

5 Q. Of the subject matter of the meeting?

6 A. There's language similar to that in the
7 bylaws. Again, if you want to point me to a
8 particular section, we can have a more focused
9 conversation.

10 Q. One last thing for now, you had mentioned
11 earlier that there was communication with your
12 colleagues in the majority in advance of the 3/13
13 meeting that Ms. Reese's termination would be an
14 item to be taken up at the 3/13 meeting; is that
15 correct?

16 A. No, I believe I said I had communications
17 with several of the Board members.

18 Q. About?

19 A. And I had an expectation, based on the
20 content of the chair's report, that a motion to
21 terminate would be in play.

22 Q. Did you communicate to any member of the
23 Board who was not in favor of that course of action
24 that that subject would be brought up at the 3/13
25 special telephonic meeting?

1 A. You mean prior to the meeting did I have
2 communication with anyone who was on the losing side
3 of that vote?

4 Q. Correct.

5 A. How far apart?

6 Q. I'm asking you questions.

7 THE COURT: No, Counselor, he's
8 asking for a clarification.

9 MR. JACOBSON: I don't understand.

10 THE COURT: He's trying to
11 understand: Are you saying the day before, the week
12 before, or simply asking between March 6th and
13 March 13th?

14 MR. JACOBSON: I will rephrase.

15 Q. Were any members of the -- I will call it
16 the minority faction, who are now the PPGG
17 plaintiffs -- aware in advance of the 3/13 meeting
18 that, within a day, that topic of Ms. Reese's
19 termination would be brought up?

20 A. I can't tell you what other people were or
21 were not aware of.

22 THE COURT: Let me ask you a
23 question. You mentioned this report, right, that
24 having received the report --

25 THE WITNESS: Correct.

1 THE COURT: -- you were not surprised
2 this would be a topic, to summarize your testimony.

3 Were all of the Board members given
4 that report in advance or only some of you, if you
5 know?

6 THE WITNESS: It was sent to the
7 e-mail list that distributes e-mails to all Board
8 members, the official distribution list for the
9 national board. I assumed all Board members.

10 THE COURT: Right, but you can't
11 know. Go ahead.

12 MR. JACOBSON: Q. Isn't it true that
13 the discussion that was had on 3/13 was in
14 response -- retract -- that the topic of -- that
15 ultimately became the action for termination was put
16 on the agenda earlier because there had been this
17 controversy over Ms. Reese's job title as to
18 whether -- because --

19 Let me make a foundation, Your Honor.

20 Ms. Reese had been referred to by the
21 new Board, incoming Board as of February 1st, they
22 started referring to her as the interim executive
23 director; is that correct?

24 A. They --

25 Q. Your -- you and others on the Board would

1 not acknowledge the 1/30 contract that made her
2 executive director in a full fledged way, so you
3 continued to use the term "interim"; is that
4 correct?

5 A. I voted to reject the 1/30 contract when
6 it came up to a vote of the Board in February.

7 Q. Did not your colleague, Mr. Uzzell, put
8 forth a motion to discuss the topic of whether
9 Ms. Reese should properly be referred to as interim
10 anymore, in light of the 1/30 contract and that that
11 was the expectation of the PPGG plaintiffs about
12 what was going to be talked about at the 3/13
13 meeting?

14 MR. SIEGEL: Speculation as to the
15 intent of the plaintiffs.

16 THE COURT: Sustained.

17 Anything further?

18 MR. JACOBSON: No further questions,
19 Your Honor.

20 THE COURT: Ms. Anderson, do you have
21 anything else after that?

22 MS. ANDERSON: Yes.

23 THE COURT: It has to be a different
24 question from the one already asked.

25 MS. ANDERSON: Yes, I do.

1 THE COURT: Go ahead.

2 CROSS-EXAMINATION

3 MS. ANDERSON: Q. You mentioned that Tony
4 Norman made a motion, I believe on March 13th, to
5 terminate without cause Ms. Reese.

6 A. No.

7 Q. Can you remind me what motion Mr. Norman
8 made?

9 A. On March 13th? I'm not aware he made any
10 motions.

11 Q. Were you aware that Mr. Norman, at the
12 time that he was elected to the Board, that he
13 served as -- on the commission of the District of
14 Columbia Advisory Neighborhood Commission?

15 A. Yes.

16 Q. Are you aware that that is a public
17 office?

18 A. No.

19 Q. Are you aware that the Pacifica bylaws
20 prohibit any director from serving on a public
21 board?

22 A. I don't believe they do.

23 Q. Okay.

24 A. The specific language of the bylaws bars
25 people from serving if they, quote, are in elected

1 or appointed public office.

2 Q. Which is -- you don't believe that is the
3 position that Mr. Norman held?

4 A. As the Pacifica National Board has chosen
5 to apply that provision of its bylaws, it uses the
6 test established by California Supreme Court in
7 determining who is a public officer, which is a
8 two-prong test: One has to do with whether or not
9 the office exists independent of the person; and the
10 other has to do with whether any sovereign function
11 of the government is delegated to the holder of that
12 office; that is, whether or not they have any
13 legislative, judicial, or executive authority.

14 So on various occasions in the past,
15 Pacifica, the people who run its elections and
16 determine eligibility --

17 Q. I have to stop you right there.

18 THE COURT: No. He's not done with
19 his answer so you're not going to stop him.

20 You're going to finish your answer.

21 THE WITNESS: And the Pacifica
22 National Board, when it initially ruled on a
23 challenge to Mr. Norman's eligibility in February of
24 2013, had determined that purely advisory positions
25 do not -- are not covered by the provision of the

1 bylaws that I think you are making reference to.

2 MS. ANDERSON: Q. But you weren't a
3 director at that time.?

4 A. Yes, I was.

5 Q. So that means you were a director at the
6 time then that Ms. Reese's employment contract was
7 provided?

8 You stated earlier --

9 THE COURT: He stated earlier that he
10 had been a director since January of 2013; is that
11 correct?

12 THE WITNESS: Correct.

13 MS. ANDERSON: Q. I believe you also
14 stated that you were not part of any discussion, you
15 were not -- I believe you said part of the Board at
16 the time that Ms. Reese's employment was --

17 THE COURT: That's incorrect, that's
18 not what his testimony was.

19 MS. ANDERSON: Okay.

20 Q. So then was there -- you seem very well
21 prepared for this question.

22 Was there an actual discussion so you
23 could have an two-prong test -- did the Board
24 discuss this? Was there a -- any kind of official
25 approval made to exempt Mr. Norman?

1 A. Yes. When Mr. Norman was initially
2 elected to the Pacifica National Board for a term
3 beginning in January of 2013, at the Board's first
4 meeting, which was held in New York City, one of the
5 board members raised a procedural challenge to his
6 seating on the Board at the outset of the meeting.

7 The Board -- not on the grounds of his
8 membership on an Advisory Neighborhood Commission in
9 Washington, D.C. The Board had a lengthy discussion
10 in public and then in closed session with general
11 counsel present.

12 Mr. Norman made full disclosure about the
13 facts and circumstances of his services on that
14 commission, answered questions from Board members,
15 and then absented himself from the meeting for Board
16 deliberation in closed session. And when we finally
17 voted on the procedural challenge that was raised,
18 the procedural challenge to seating him, the Board
19 overwhelmingly voted to do so with the affirmative
20 votes of at least four of the plaintiffs in this
21 case, if I recall correctly.

22 Q. Are you aware that at least one of the
23 plaintiffs has a different recollection of this
24 challenge?

25 MR. SIEGEL: Lack of foundation.

1 THE COURT: Sustained. Next
2 question.

3 MS. ANDERSON: Okay.

4 Q. All right. Fast forward to the
5 March 13th meeting.

6 You admitted that you were prepared
7 for discussion of Ms. Reese's termination based on
8 prior discussions with one or more of the other
9 defendant directors?

10 A. That's not what I said.

11 Q. What did you say?

12 A. You have a verbatim transcript.

13 THE COURT: No. You cannot argue,
14 and she does not have it in front of her.

15 So what is your question, Counselor?

16 MS. ANDERSON: I believe it was asked
17 and answered.

18 Q. You were prepared -- you were prepared in
19 the meeting to --did you answer that you had met
20 with or had discussed the fact that the Board would
21 be -- or that Margy Wilkinson would be bringing up
22 the issue of terminating Ms. Reese in the meeting on
23 the evening of March 13th?

24 A. No, I did not.

25 Q. You had no discussion with any of the

1 other defendant directors prior to the
2 March 13th meeting?

3 A. I'm confused.

4 THE COURT: I am confused. I will
5 try to summarize your testimony, and you tell me if
6 it's wrong, okay.

7 You have your meeting on March 6th?

8 THE WITNESS: Correct.

9 THE COURT: You decide it's going to
10 be continued on March 13th; correct?

11 THE WITNESS: Correct.

12 THE COURT: Somewhere in there you
13 get a report concerning Ms. Reese's performance
14 which --

15 THE WITNESS: That was prior to the
16 6th.

17 THE COURT: So you have this report
18 which has, from your point of view, a number of very
19 serious concerns in it. And that is why you were
20 not surprised that the issue of her termination
21 would come up on March 13th; correct?

22 THE WITNESS: Correct.

23 THE COURT: You had a conversation
24 with some but not all of the other Board members
25 between March 6th and March 13th.

1 THE WITNESS: Multiple conversations.

2 THE COURT: In the course of some of
3 those conversations, it came up that there may be a
4 motion to terminate her employment.

5 THE WITNESS: Correct.

6 THE COURT: All right. What is your
7 question?

8 MS. ANDERSON: Q. Is it common for
9 motions to be taken up for voting without a
10 discussion of directors, all the directors present
11 at a meeting?

12 THE COURT: I'm confused, again.

13 MS. ANDERSON: Q. You discussed
14 these issues prior to the meeting with some of the
15 directors. You have testified that Ms. Wilkinson
16 raised the issue in her chair report of Ms. Reese's
17 termination and --

18 THE COURT: Hold on. That's not what
19 I heard.

20 Did the chair report talk about her
21 termination or simply list a number of serious
22 issues?

23 THE WITNESS: The latter.

24 THE COURT: Go ahead.

25 MS. ANDERSON: Q. My question is:

1 Is it common for an entire -- the directors of a
2 board meeting to not discuss any motion brought for
3 voting?

4 A. Is it common for them to not discuss any
5 motion?

6 Q. Correct.

7 THE COURT: No. Are you trying to
8 establish that there was not a discussion on March
9 13th prior to taking the vote?

10 MS. ANDERSON: Yes.

11 THE COURT: Was there discussion
12 prior to taking the vote at the meeting on
13 March 13th?

14 THE WITNESS: There was a lengthy
15 discussion about whether or not the motion was in
16 order. But the procedural discussion about whether
17 or not the motion was in order ran the clock down to
18 such an extent that before the mandatory adjournment
19 time of the meeting arrived there was no time
20 remaining for debate on the merits of the motion.

21 THE COURT: Okay. There's lengthy
22 debate about whether it's procedurally correct.
23 It's resolved, the clock is ticking, the motion is
24 brought, the people vote. Fair?

25 THE WITNESS: The motion is brought,

1 then challenged procedurally. The chair ruled on
2 it. A member of the body appealed the moving of the
3 chair. That puts it to a vote, but it's debatable
4 before it's put to a vote. And the bulk of the
5 Board's time was spent debating that procedural
6 issue.

7 When the mandatory adjournment time
8 arrived, it forced votes on all outstanding issues,
9 which means it forced a meeting vote on upholding
10 the chair and the underlying motion.

11 THE COURT: Let me ask you another
12 question: You mentioned that the chair's report was
13 provided via electronic distribution list to all the
14 Board members -- to your knowledge, prior to
15 March 6th; is that correct?

16 THE WITNESS: Correct.

17 THE COURT: Was there discussion at
18 the March 6th meeting concerning the substance of
19 the Board report?

20 THE WITNESS: No. Our discussion on
21 March 6th was limited to arranging the agenda,
22 although I will say the question of the executive
23 director's status came up as Mr. Jacobson --

24 MR. JACOBSON: Yes.

25 THE WITNESS: -- as Mr. Jacobson

1 brought up. And the Board agendaized that as a
2 separate agenda item for the same meeting going to
3 March 13th.

4 MS. ANDERSON: Q. When that issue
5 was raised, was that with respect to Ms. Reese's
6 performance with respect to the questions of her
7 termination, or was it with respect to her title?

8 A. It was with respect to whether she was the
9 executive director or the interim executive
10 director.

11 Q. So her title. So the question was -- the
12 issue was raised to discuss inconsistency in
13 reference to her title?

14 A. No. I mean, I think the substantive issue
15 underlying the question of title was her status.

16 Q. Fair enough. My understanding -- we're
17 saying the same thing here, so what you're not
18 saying -- correct me if I'm wrong -- is that you're
19 not saying that during the agenda setting meeting on
20 the 6th there was any discussion of setting up for
21 later discussion issues regarding Ms. Reese's
22 performance, any problems related to her performance
23 of her job or related to potential termination?

24 A. I got lost in the double negative. You
25 started by asking me what I'm not saying.

1 THE COURT: Just ask him the
2 question.

3 MS. ANDERSON: Q. Were there -- was
4 there any discussion at the March 6th meeting to set
5 an agenda item for the March 13th meeting to discuss
6 whether Ms. Reese should be terminated?

7 A. Specifically to terminate her?

8 Q. Yes.

9 A. No.

10 Q. Was there any discussion at that meeting
11 to set an agenda item to discuss what you claim were
12 performance issues or issues related to her
13 employment other than with respect to her title?

14 A. Yes. We approved an agenda with time
15 allocated for a chair's report. That chair's report
16 had been distributed to the Board before it voted on
17 agendizing it, so the contents of that report --

18 Q. That doesn't answer my question.

19 THE COURT: No. Counselor, stop.
20 You have done this now about four times. You cannot
21 keep interrupting the middle of a sentence. It
22 makes it impossible for me to follow and makes it
23 truly impossible for the court reporter to actually
24 transcribe what is going on.

25 You may not speak while the witness

1 is speaking, okay. So we will back up and you will
2 ask your last question and let him complete the
3 answer.

4 MS. ANDERSON: Q. At the
5 March 6th meeting was there any discussion set as an
6 agenda item for the March 13th meeting to discuss
7 issues related to -- by "issues," I mean any
8 performance-related issues with respect to
9 Ms. Reese's employment? Again, that's other than
10 issues related to her title.

11 A. So as I said, we approved an agenda with
12 the chair's report in it. The contents of that
13 chair's report had been distributed to the Board
14 prior to the Board taking that vote. The contents
15 of the chair's report almost all had to do with
16 Summer Reese's employment status, failure to comply
17 with board directives, and other issues relating to
18 her status as an employee.

19 Q. So your recollection is that the agenda
20 that was circulated had more than one line item or
21 more than just reference to -- to referring to
22 Ms. Reese as interim versus regular executive
23 director in the agenda?

24 You answered my question by saying there
25 was something that was sent out. I don't have it in

1 front of me.

2 THE COURT: He's saying the agenda
3 included going over the executive director's report.

4 THE WITNESS: Chair's report.

5 THE COURT: Chair's report, excuse
6 me.

7 MS. ANDERSON: Q. And substantially
8 you said, in the agenda.

9 A. Substantially.

10 Q. You said there were multiple items that
11 were presented in the agenda, that was --

12 A. No, in the Chair's report.

13 Q. Which was provided with the agenda?

14 A. It was distributed to the Board in a
15 separate e-mail from the agenda.

16 Q. So the clock is running down the evening
17 of March 13th. You said a lot of things. You, I
18 believe, answered my question that there was no
19 discussion as to whether there -- as to whether
20 Ms. Reese should be terminated.

21 A. Well, you know, let me clarify this.

22 Were the Board to adhere strictly to the
23 mandates of Robert's Rules, there would be no such
24 discussion when we're debating whether or not a
25 motion is in order. However, in the course of the

1 debate that the Board had on whether or not it was
2 in order to bring the motion at that time, many
3 board members, to my recollection, made arguments
4 about the merits of the underlying motion; that is,
5 whether it was or was not a good idea to discharge
6 Summer Reese.

7 Q. Was there any counsel at that meeting?

8 THE COURT: Meaning?

9 Q. Was there any -- was there an attorney
10 other than a member of the Board at that meeting?

11 A. No.

12 Q. Was there any outside expert or consultant
13 available at that meeting to discuss any questions
14 or to consult regarding issues that could arise by
15 terminating Ms. Reese? Was anybody available at
16 that meeting other than the directors?

17 A. You mean participating in the meeting?

18 Q. Yes.

19 A. No. Well, Summer Reese participated in a
20 portion of the meeting.

21 Q. Was there a motion -- so you said the
22 reason there was no substantive discussion as to
23 whether to terminate Ms. Reese after the motion was
24 finally made and right before it was taken for a
25 vote. You said that there was -- the clock had run

1 down and that's the reason there was no discussion.

2 Was there a motion to extend time? To
3 extend the meeting?

4 A. I believe so.

5 Q. Do you recall the result?

6 A. It failed.

7 Q. Okay. And so it could only have failed by
8 the majority of the votes, which means at least some
9 of the defendant directors voted against extending
10 time.

11 Correct? Mathematical --

12 THE COURT: A vote was taken.
13 Obviously, people voted to not do that. Go ahead.

14 MS. ANDERSON: Q. Okay. So there
15 was a motion requesting, you know, time to actually
16 discuss that was defeated, and there was -- there
17 were multiple challenges --

18 A. No, I'm sorry.

19 Q. Uh-huh.

20 A. There was a vote to extend time.

21 Q. There was a vote to extend time.

22 A. The effect of extending time would have
23 been to continue the procedural debate that was
24 happening when the clock ran.

25 Q. There were multiple challenges to the --

1 to bring the motion in the first place. Did that
2 surprise you based on the agenda and the chair's
3 report that was circulated? Did it surprise you
4 that some of the directors were surprised that this
5 issue was being raised?

6 A. It sounds like you're asking me to speak
7 on the state of mind of other directors.

8 Q. I'm asking you if that makes sense.

9 THE COURT: No. Please ask another
10 question.

11 MS. ANDERSON: Q. And so then just
12 to clarify, the vote to extent time, the effect of
13 which you already clarified, was denied. The vote
14 was finally made -- or I'm sorry. The motion was
15 made and the vote was taken without any -- without
16 then any discussion of the substance of the motion
17 to terminate Ms. Reese; is that correct?

18 THE COURT: I think you have your
19 sequence wrong as the order of when there was a
20 motion. He's already testified to this. Unless
21 there was a new question, we're going to move on.

22 MS. ANDERSON: Q. All right. He has
23 yet to directly answer the question.

24 THE COURT: What question?

25 MS. ANDERSON: All I want to know was

1 there any substantive --

2 THE COURT: He said there was no
3 substantive discussion.

4 MS. ANDERSON: There was no
5 substantive discussion. Okay.

6 THE COURT: Correct.

7 THE WITNESS: To clarify, there was
8 inappropriately substantive discussion during the
9 procedural debate. Procedurally, we did not reach
10 the place where it would have been appropriate to
11 have substantive discussion.

12 MS. ANDERSON: Q. During that
13 debate, any part of the meeting, did any of the
14 directors raise the issues -- did any of the
15 directors request that the decision not be made
16 until they had a chance to consult with counsel?

17 A. I don't remember the specifics of the
18 discussion. We were debating technically whether or
19 not the motion was in order, as brought. It's
20 certainly not -- it would not be out of bounds if a
21 member had said something to that effect.

22 THE COURT: You don't recall?

23 THE WITNESS: No.

24 THE COURT: All right.

25 MS. ANDERSON: Just a couple

1 follow-ups.

2 Q. Was Terry Gross counsel of Pacifica at
3 that time?

4 A. Yes.

5 Q. Was he included -- was he invited to the
6 meeting? Why did he not attend the March 13th
7 meeting?

8 A. I don't know. Pacifica did not make a
9 habit of having its general counsel attend meetings
10 during the entire year that I was on in 2013 when
11 Summer Reese was chair, and did not make it a habit
12 of doing that in 2014.

13 Q. And as to -- and to your recollection,
14 there was no discussion at the March 6th meeting or
15 in any meeting prior to the March 13th meeting as to
16 whether it would be wise to have counsel available
17 when discussing Ms. Reese's issues?

18 THE COURT: You can answer that and
19 then we're done.

20 THE WITNESS: You're asking me to
21 make a blanket statement about there not being a
22 discussion of something.

23 MS. ANDERSON: Q. I am. Were you
24 part of any discussion --

25 THE COURT: Counsel, he already

1 testified he does not recall. It would not have
2 been surprising if someone had said that, but he
3 does not recall.

4 MS. ANDERSON: That was a different
5 question regarding counsel.

6 Q. Whether there was discussion as to whether
7 counsel should be made available at that meeting.

8 A. Discussion in what form?

9 Q. Any. Any. Was there -- were you part of
10 any discussion prior to the March 13th meeting where
11 anybody said maybe there should be an attorney
12 present at a meeting where we discuss terminating
13 the executive director?

14 A. In my -- are you talking about within
15 meetings of the national board?

16 Q. I'm talking about were you part of any
17 discussion? Not with your wife or mother, but with
18 any of the directors, any of the defendants, any
19 official or unofficial meeting? Was there any
20 discussion as to whether there should be counsel
21 available at the meeting where the Board is going to
22 vote to terminate its executive director?

23 A. As far as I can recall, some Board members
24 expressed in e-mails or comments that they would
25 like counsel to be present for discussing personnel

1 issues.

2 MS. ANDERSON: We established counsel
3 was not present.

4 That's all. Thank you, Your Honor.

5 THE COURT: Very briefly.

6 MR. JACOBSON: Two quick follow-ups.

7 THE COURT: I thought you were done,
8 but briefly.

9 RE-CROSS-EXAMINATION

10 MR. JACOBSON: Q. You had testified
11 there was pre-communication with some of your Board
12 colleagues about -- and you created an expectation
13 that there would be a motion at the
14 March 13th meeting to terminate Ms. Reese.

15 A. I believe I testified that I had an
16 expectation.

17 Q. Correct. And is it not true,
18 Mr. Edwards-Tiekert, that you also had
19 communications about at what point in the meeting
20 this motion would be raised?

21 A. I believed that the motion was
22 appropriately brought --

23 Q. That's not my --

24 A. -- from the Chair's report.

25 Q. -- my question. That's not my question.

1 Can I have it read back? It's an
2 important question.

3 THE COURT: Just say it again. You
4 know what it is.

5 MR. JACOBSON: Q. In those
6 pre-communications you had with your colleagues, it
7 is true, is it not, sir, that the timing within the
8 3/13 meeting of the motion to terminate Ms. Reese
9 was part of those communications?

10 A. What do you mean by "timing"?

11 Q. That it would be reserved to the very last
12 minute?

13 A. No.

14 Q. Under oath you're saying you did not plan
15 to have the vote to terminate be raised in the very
16 last minutes of the meeting?

17 A. Absolutely not.

18 MR. JACOBSON: One last topic, Your
19 Honor.

20 Q. Article 9 of the Pacifica bylaws states --
21 I have it check marked. Can I show it to the
22 witness?

23 THE COURT: Just tell me where it is.
24 Article 9 where?

25 MR. JACOBSON: Section A. It's a

1 separate paragraph.

2 THE COURT: What do you mean?

3 MR. JACOBSON: Article 9's general
4 title is "Officers of the foundation" -- and I'm
5 sorry, Section 3A.

6 THE COURT: All right. Article 9,
7 articles of the foundation, Section 3, removal and
8 resignation of officers. There are two subsections.
9 Subsection A provides that:

10 "Subject to the rights, if any,
11 of an officer, under a contract of
12 employment, any officer may be removed
13 either with or without cause by the
14 Board at any regular or special
15 meeting thereof."

16 Go ahead.

17 MR. JACOBSON: That's correct.

18 Q. Mr. Edwards-Tiekert, were you aware of
19 that section?

20 A. Yes.

21 Q. Did you consider that Ms. Reese had rights
22 under any contract of employment at the time you
23 voted for her termination?

24 THE COURT: Hold on a second.

25 Sir, is it your view that Ms. Reese

1 was an officer of the foundation?

2 THE WITNESS: I was unclear as to her
3 status, and the Board was unclear as to her status.
4 That is why it scheduled an agenda item to discuss
5 it.

6 MR. JACOBSON: Q. But we just
7 established in my earlier examination, did we not,
8 that you considered Ms. Reese an officer.

9 A. During the time she was serving as chair
10 of the Board, she was certainly an officer of the
11 foundation.

12 Q. And the executive director is the
13 president of Pacifica Foundation. That is correct,
14 is it not?

15 A. My understanding is that "president"
16 connotes executive authority. So we have a
17 executive director specified as an officer in our
18 bylaws but not a president specified in our bylaws.

19 Her title is chair.

20 Q. At the time of the 3/13 vote, did you take
21 into account, in your evaluation of the merits of
22 the motion, the rights, if any, of Ms. Reese under
23 any contract of employment?

24 A. Can you be more specific?

25 Q. No.

1 A. So what I took into account was what I
2 thought was best for the foundation.

3 THE COURT: Let's move on.

4 MR. JACOBSON: Nonresponsive.

5 THE COURT: He's giving you the best
6 answer he has.

7 MR. JACOBSON: Q. The answer is no,
8 correct, to my question? You did not take into
9 account --

10 A. I asked you to be more specific in your
11 question and you declined.

12 Q. Did you consider that Ms. Reese had any
13 rights under a contract of employment at the time
14 you voted on 3/13?

15 A. I thought she might be employed under the
16 terms of her offer letter.

17 Q. And?

18 A. And my understanding of the terms of the
19 offer letter is that it made her subject to
20 discharge without cause during her probationary
21 period.

22 Q. And you discounted -- rephrase.

23 THE COURT: Let's not go through this
24 again.

25 MR. JACOBSON: Q. You did not take

1 into consideration her rights, if any, under her
2 1/30 contract?

3 THE COURT: Counsel, we're going to
4 stop. You are really re-treading the same ground.

5 He's testified at length as to that
6 January 30th agreement, his view that it was not
7 ratified and not an enforceable document. We don't
8 need to do this again.

9 Do you have anything new and
10 different?

11 MR. JACOBSON: No.

12 THE COURT: Do you have anything?

13 MR. SIEGEL: Very quickly.

14 REDIRECT EXAMINATION

15 MR. SIEGEL: Q. The February 10,
16 2014 meeting, in-person meeting, was there a motion
17 passed by the Board instructing Ms. Reese to provide
18 the Board with her personnel file and background
19 check?

20 A. Yes.

21 Q. And did that motion require her to do so
22 within a period of time?

23 A. Yes.

24 Q. What was that?

25 A. Ten days.

1 Q. And did she?

2 A. No.

3 MR. SIEGEL: Thank you. That's all I
4 have.

5 THE COURT: Anything?

6 MS. ANDERSON: Nothing.

7 THE COURT: You can step down.

8 (Witness excused.)

9 THE COURT: Okay. Let's talk about
10 what happens. We have to break, obviously. I have
11 Ms. Wilkinson's April 25th declaration and
12 attachments. I did not know, given that I now have
13 this, whether you intend to call her for any
14 additional purpose.

15 MR. SIEGEL: No, I don't. Certainly
16 not today.

17 THE COURT: I'm not talking about
18 forever more.

19 MR. SIEGEL: She's out of town.
20 That's why we called Mr. Tiekert.

21 THE COURT: We're not having
22 Ms. Wilkinson today. I presume you don't have any
23 additional witnesses that you wish me to hear from
24 this afternoon?

25 MR. SIEGEL: That's correct.

1 THE COURT: What about on the other
2 side?

3 MR. JACOBSON: Mr. Uzzell is here.

4 THE COURT: Well, I'm asking who do
5 you intend to call as a witness, not who is here.

6 MR. JACOBSON: Mr. Uzzell.

7 Joyce Black, an employee.

8 THE COURT: Keep in mind it has to be
9 as to matters that are relevant for today's hearing,
10 not anything and everything. And it may well be
11 that as soon as we resume after the lunch break, I
12 will ask for a offer of proof as to what these
13 various witnesses are going to testify about so I
14 can determine whether their proffered testimony is
15 relevant or not.

16 MR. JACOBSON: Ms. Reese.

17 Janet Coleman, Tamika Miller, Wei
18 Ling Thai, LaSchelle Mosely --

19 THE COURT: We're not hearing from
20 this many people, I can tell you right now. My
21 definition is going to be incredibly specific.

22 MR. JACOBSON: I wanted to preserve
23 the option, assuming I don't name the names now.

24 THE COURT: Anyone else for
25 preservation purposes?

1 MR. JACOBSON: Maria Gate. They're
2 all present here today, and Tracy Rosenberg.

3 THE COURT: I can guarantee you we
4 will not hear from this many people. What I will
5 ask you to do over the lunch break is to think about
6 who you actually wish to put forward, be prepared to
7 have an offer of proof as to what they're going to
8 say. Okay. And I don't need duplicative testimony
9 and I don't need testimony that goes to the many,
10 many issues that exist in this case that are outside
11 the scope of today's hearing. We will not be here
12 all afternoon on this. Okay?

13 So figure you have maybe 90 minutes
14 or so once we get back this afternoon. Think about
15 how you want to use that time. Let's resume at
16 1:20. And you can let us know at that time who is
17 dropped from the list and what you wish to do.

18 MR. JACOBSON: Thank you, Your Honor.

19 MS. REESE: Thank you.

20 (Luncheon recess was taken at 12:00 P.M.)

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1 AFTERNOON SESSION

2 THE COURT: I will note for the
3 record that everybody is back, counsel who was here
4 before, including Ms. Reese.

5 And I will note we really cannot
6 spend a lot of time this afternoon. The person who
7 testified this morning who was, you know, called by
8 one side, the vast majority of questions really took
9 place from the other side. There's been ample time
10 to question.

11 Before I ask you who you actually
12 would request to call this afternoon, there has been
13 so much conversation before today and this morning
14 concerning this March 13th meeting and what was the
15 notice and was the notice appropriate, and a
16 declaration saying it was appropriately noticed, has
17 anyone actually given me the notice, and does anyone
18 intend to do so --

19 MR. JACOBSON: I do have --

20 THE COURT: -- because I don't have
21 it. Despite hundreds of pages, I don't have it.

22 MS. ANDERSON: We have the agenda
23 that was circulated on the 6th.

24 THE COURT: Is that the notice?

25 MS. ANDERSON: It was -- the

1 meeting -- the 13th meeting was continued from the
2 6th.

3 THE COURT: Right.

4 MS. ANDERSON: And that was noted and
5 I suppose noticed in the agenda that was created on
6 the 6th for the continued meeting on the 13th.

7 THE COURT: So before I actually
8 accept this, can we have this shown to Mr. Siegel
9 and Mr. Yee?

10 I will note, for the record, this is
11 not any kind of notice or agenda; this is a draft,
12 draft executive session minutes of the meeting on
13 March 13th.

14 I would like to know, was there a
15 notice for agenda? I know I read in someone's
16 papers that notices of meetings were supposed to go
17 up on the KPFA website, I know I read that
18 somewhere. So presumably somebody wrote something
19 that was posted on the website. And what the heck
20 was it, and why don't I have it?

21 MR. JACOBSON: Do we have WiFi?

22 THE COURT: We do, but we knew this
23 was coming. This is not a great way to conduct
24 ourselves. We all know this is a central question.
25 I don't understand why I don't have it.

1 Anybody?

2 MR. JACOBSON: We will absolutely get
3 it over as a filed supplemental exhibit.

4 THE COURT: I need everyone to be
5 quiet in the courtroom who is not actually speaking
6 on the record.

7 MR. SIEGEL: Your Honor, we have a --
8 I guess you call it a screenshot of the website
9 where these things were posted. I can show it to
10 counsel and present it to the Court.

11 MS. ANDERSON: This was printed on --

12 THE COURT: Do you have anything
13 better? I have to say I'm a little shocked, on both
14 sides, that I don't have it, given the centrality of
15 the issue.

16 MS. ANDERSON: We're not saying the
17 issues weren't noticed. The issues raised were not
18 in the agenda.

19 THE COURT: So where is it?

20 MS. ANDERSON: Can I forward it to
21 you?

22 THE COURT: No. This has been
23 noticed. This has been on calendar. Everybody had
24 time to brief this. What I have actually in the
25 record -- you really have to stop speaking,

1 Ms. Reese.

2 MS. REESE: Sorry.

3 MR. JACOBSON: I think I know what
4 Mr. Siegel is referring to, if he can confirm.

5 Mr. Siegel, you are referring to
6 discussions of matters relating to individual
7 employees? Is that the sum and substance, or is
8 there more to it?

9 MR. SIEGEL: Your Honor, what I have
10 shown counsel is, again, a screenshot of the KPFT
11 website where notices of meetings are scheduled. So
12 we ran the whole thing for several months.

13 MR. JACOBSON: I see now. There's a
14 sublink --

15 THE COURT: I certainly can't see
16 that from here.

17 MR. JACOBSON: There's a sublink to
18 the minutes that I believe you might have in front
19 of you.

20 THE COURT: I have nothing in front
21 of me right now.

22 Okay. So this is a screenshot of the
23 KPFTX.org archive website. It says there's a
24 meeting on Thursday, March 13th, executive session.
25 Reason given is discussion of matters relating to

1 individual employees.

2 I'm going to take this as an exhibit.

3 Can I have a copy of this, please? And we will give
4 this back to them.

5 Really, all I have in the record is a
6 declaration of Cerene Roberts. I do not have
7 anything contrary to what she says in there about
8 the notice isn't correct.

9 Counsel, Mr. Jacobson, Ms. Anderson,
10 keeping in mind the timings and relevance, who is it
11 that you would like to have testify other than
12 Ms. Reese?

13 MS. ANDERSON: Mr. Uzzell.

14 THE COURT: Who else? Because I'm
15 telling you right now, we will not have eight people
16 come up here.

17 MS. ANDERSON: Mr. Uzzell.

18 MR. JACOBSON: Joyce Black and
19 Ms. Rosenberg, past board member.

20 THE COURT: Past board member?

21 MR. JACOBSON: Last year.

22 THE COURT: It will have to be very
23 brief testimony from these folks.

24 Who are you starting with?

25 MS. ANDERSON: Mr. Uzzell.

1 THE COURT: Mr. Uzzell, come on up.

2 RICHARD UZZELL,

3 called as a witness for the defense, having been
4 duly sworn, testified as follows:

5 THE CLERK: State and spell your name
6 for the record.

7 THE WITNESS: Richard, R-I-C-H-A-R-D,
8 Uzzell, U-Z-Z-E-L-L.

9 THE CLERK: Thank you.

10 DIRECT EXAMINATION

11 MS. ANDERSON: Q. Mr. Uzzell, at the
12 March 6th meeting, was there an agenda set for the
13 March 13th meeting?

14 A. We set some items that were forwarded over
15 to the 13th, one of which there was a disagreement.
16 The executive director was offended by something --

17 MR. SIEGEL: Your Honor, I'm going to
18 object. The question was answered and now --

19 THE COURT: Right. So just as a
20 matter of propriety on how we do things and keeping
21 in mind time, whether it is for this gentleman,
22 Mr. Uzzell, or anyone else who testifies this
23 afternoon, you simply answer the question, period,
24 move on.

25 Next question.

1 MS. ANDERSON: Q. To your knowledge, were
2 the minutes from the March 6th meeting approved by
3 the Board?

4 A. No.

5 I don't think so.

6 Q. To your knowledge, was there an agenda
7 circulated following the March 6th meeting with
8 the -- for the March 13th meeting?

9 A. Yes.

10 Q. Were there any items on there, on that
11 agenda, regarding Ms. Reese's ongoing employment?

12 A. I asked that it be added that we clarify
13 the status of her position because she was offended
14 that some people were referring to her as the ID
15 when she was actually the ED.

16 Q. So on the agenda, to your recollection --

17 THE COURT: Can you stop this talk
18 about this nonexistent agenda.

19 You said there was an agenda for
20 March 13th; is that correct, sir?

21 THE WITNESS: As far as I remember.

22 THE COURT: How did you get it?

23 THE WITNESS: Electronic, I guess.

24 We all get it electronically because we're all over
25 the country.

1 THE COURT: When was the last time
2 you saw it? Have you seen it in the last couple of
3 months?

4 THE WITNESS: I saw it around that
5 meeting time, but I haven't looked at it since.

6 THE COURT: You don't have it with
7 you today?

8 THE WITNESS: No.

9 THE COURT: Go ahead.

10 MS. ANDERSON: Q. So you clarified
11 the status of Summer Reese as an action item was
12 your -- at your insistence because of issues raised
13 regarding Ms. Reese being referred to as interim
14 executive director or regarding her actual
15 employment?

16 A. No, just in reference to her. She was
17 offended that she wasn't referred to as executive
18 director.

19 Q. Were you confused by that as well?

20 A. I thought it was kind of snarky.

21 Q. You considered her executive director?

22 A. Oh, she is.

23 Q. Were you secretary of the board at the
24 time -- during November 2013 when Ms. Reese's offer
25 letter was provided -- was signed?

1 A. Correct. I was the board secretary and
2 corporate secretary.

3 Q. Did you sign Ms. Reese's offer letter?

4 A. I did.

5 Q. Did the offer letter contain any terms
6 that the board had not approved?

7 A. The --

8 Q. Had the board approved all of the terms --

9 A. Oh, yes.

10 THE COURT: You're speaking over the
11 witness again.

12 MS. ANDERSON: Q. So the Board had
13 approved all of the terms in the offer letter?

14 A. Yes.

15 THE COURT: I want to be quite clear.
16 We're talking now about the November 15th, 2013,
17 offer letter?

18 MS. ANDERSON: Correct.

19 THE COURT: Go ahead.

20 MS. ANDERSON: Q. Did you also sign the
21 January 30th executive employment contract?

22 A. I did.

23 Q. In the November offer letter were there
24 any material -- from the offer letter in November to
25 the actual employment contract in January, were

1 there any material changes made?

2 MR. SIEGEL: Your Honor, it's not the
3 best evidence. The Court will have both agreements
4 before it.

5 THE COURT: It's a waste of time. We
6 can't have him saying whether there were changes or
7 not.

8 You can put in front of us the two
9 documents, and we can compare and contrast, and you
10 can ask him. But we're not going to waste time by
11 having him guess.

12 MS. ANDERSON: Okay.

13 Q. Do you recall that there are -- that there
14 were no provisions regarding termination procedures
15 in the offer letter and that there are such in the
16 contract?

17 THE COURT: Hold on.

18 MR. SIEGEL: Your Honor, I think that
19 was the objection you just sustained.

20 MS. ANDERSON: Both documents are in
21 front of him. I'm just trying to get to the point.

22 THE COURT: Are both documents in
23 front of this gentleman?

24 MS. ANDERSON: He has -- he signed
25 both documents. I'm asking if he recalls that if

1 this is the case. Both documents are in front of
2 opposing counsel and in front of Your Honor.

3 THE COURT: So what is your question
4 regarding the November 15th document?

5 MS. ANDERSON: The question is --
6 getting at -- that there are no terms for --
7 procedures for termination in the March 15th
8 document that are in the January 30th document.

9 Q. And my question is: Why were those added?

10 A. Well --

11 THE COURT: No. You need to stop.
12 We need a lot more clarity than this.

13 I need you to point to exactly what
14 provision in the January 30th document you are
15 asking him about. Presumably you have it as well.
16 Tell me and tell the record so we have a clear
17 record what it is.

18 MS. ANDERSON: The January 30th
19 employment contract provides that Ms. Reese -- as
20 Mr. Tiekert stated this morning, Ms. Reese cannot be
21 fired. There are three conditions, one of which is
22 progressive discipline.

23 THE COURT: You're asking him why
24 that is?

25 MS. ANDERSON: I'm asking why was

1 that added? That wasn't a term in the original
2 agreement. Why was that added to the contract?

3 MR. SIEGEL: Lack of foundation, Your
4 Honor. We haven't established if he knows about
5 these things.

6 MS. ANDERSON: I was asking him that
7 and I was prevented from doing so.

8 THE COURT: No. You are arguing
9 again. Stop.

10 MS. ANDERSON: Okay.

11 THE COURT: He can testify about
12 this. I will allow him to testify about it.

13 The question on the table is: Why
14 was this provision concerning the various factors
15 that had to be met prior to termination added to the
16 January 30 meeting?

17 THE WITNESS: They were not -- those
18 procedures were not in the offer letter.

19 The person who became the acting
20 chair, Heather Grey that wrote the document, the
21 contract document, was advised by human resources
22 from Holman HR, that that was necessary in the
23 agreement.

24 MR. SIEGEL: Your Honor, I will
25 object and ask that testimony been stricken. He's

1 testified to hearsay as to what someone else was
2 advised by someone else, yet --

3 THE COURT: Sustained. That is
4 stricken.

5 Go ahead.

6 MS. ANDERSON: It's not provided --
7 it's not provided for the truth of the matter, it's
8 provided to establish his basis for signing a
9 document that was not approved by the board.

10 THE COURT: That wasn't the way you
11 phrased the question or answer.

12 So you can ask him another question.

13 MS. ANDERSON: Q. The reasoning that you
14 just provided, was that your opinion as to why those
15 changes were made?

16 A. Yes.

17 Q. Okay. And was -- did you approve those --
18 sign the contract including those changes on that
19 basis?

20 A. Right, I thought that sounded reasonable.

21 Q. Okay. Are you -- are you familiar with
22 the -- with the employment handbook provisions that
23 apply to -- generally to all employees of Pacifica
24 regarding termination?

25 A. I'm somewhat versed. I understand the

1 employment thing somewhat. We had an older one,
2 we've got a new one.

3 THE COURT: I have this one. You're
4 talking about an employment agreement.

5 Do you have that?

6 MS. ANDERSON: No, we don't have
7 that.

8 Q. The question is -- specifically, was one
9 of the issues -- so, so in addition to counsel by
10 the HR company, was -- is the fact that all
11 employees are subject to -- or have a right to
12 progressive termination -- I'm sorry, progressive
13 discipline prior to termination, and that being one
14 of the conditions in Ms. Reese's contract -- which
15 we've all seen and which you've seen -- to your mind
16 a material change, but was that consideration for
17 you in signing a document that had changes from the
18 original offer?

19 THE COURT: I have completely lost
20 the trail of your question. What are you asking
21 him? Was what a consideration?

22 MS. ANDERSON: The fact that every
23 employee is subject to some of the term -- has
24 there -- has the right to certain discipline prior
25 to termination, which is one of the terms that is in

1 Ms. Reese's contract.

2 MR. SIEGEL: Lack of foundation.

3 THE COURT: Sustained. Next
4 question.

5 MS. ANDERSON: Q. At this point you
6 believe Ms. Reese is executive director?

7 A. Yes. That procedure you're talking about
8 is in the handbook. Yes, she deserves -- everybody
9 deserves what's in our handbook.

10 Q. And following her signing the offer
11 letter, was there a background check conducted?

12 A. Yes.

13 Q. Okay.

14 THE COURT: How do you know that,
15 sir?

16 THE WITNESS: Well, I --

17 THE COURT: I'm asking, how do you
18 yourself know a background check was conducted?

19 THE WITNESS: Right. The board --
20 the entire board was sent the result of it.

21 The actual background check itself,
22 the document -- I don't know how many pages it
23 was -- was not sent. But the -- the motion that
24 asked for a background check merely said -- it
25 didn't say anything about the board approving it.

1 And this is in the minutes from that meeting back in
2 November the 9th, I believe it was, 2013. The
3 motion was from -- Brian Edwards-Tiekert, who spoke
4 this morning, who said the hire is dependent upon a
5 successful background check.

6 THE COURT: So let me ask you, the
7 motions said the hire was dependent upon a
8 successful background check. Those are the words
9 you just used.

10 I believe you testified you never saw
11 the actual background check; is that correct?

12 THE WITNESS: Right. Because -- and
13 I was told that background checks -- the actual
14 document is not given to everybody, because it has
15 confidential information like phone numbers and
16 Social Security numbers and stuff in it.

17 THE COURT: Sure. So what did you
18 actually see?

19 THE WITNESS: I saw a report from the
20 background check company.

21 THE COURT: Okay. And now, my usual
22 question: Do I have this report?

23 MR. SIEGEL: Yes.

24 THE COURT: Where?

25 MR. SIEGEL: It's an attachment to

1 Wilkinson's declaration.

2 THE COURT: To whose?

3 MR. SIEGEL: Wilkinson's.

4 THE COURT: Let's make sure I'm on
5 the right page, literally.

6 MR. SIEGEL: Exhibit C, I believe.

7 THE COURT: The one dated
8 February 2nd, 2014? No.

9 MR. SIEGEL: It's dated. It's not a
10 background check, that's what the board got. It's
11 dated February 2nd.

12 THE COURT: I'm going to show you a
13 document, sir, and ask you, when you were telling me
14 you received kind of a summary document, if this is
15 what you were referring to.

16 And I'm handing the gentleman
17 Exhibit C to Ms. Wilkinson's declaration.

18 THE WITNESS: Yes. Yes. This is
19 what I got.

20 THE COURT: Thank you, sir.

21 Go ahead.

22 MS. ANDERSON: Q. And based on this
23 document, you were satisfied that the background
24 check had been conducted and that it was approved?

25 A. Yes.

1 MS. ANDERSON: And that's all I
2 personally have for this witness.

3 THE COURT: Well, I have a question.

4 At the beginning of this says:

5 "Dear Pacifica Directors,
6 given there appears to be concern
7 regarding the background check, I want
8 to supplement what was submitted to
9 the previous board members."

10 Do we have what was submitted to previous
11 board members?

12 MR. SIEGEL: Your Honor, according to
13 Margy Wilkinson's declaration, what was submitted
14 was the third page of Exhibit C.

15 THE COURT: Okay. The profile
16 information.

17 MR. SIEGEL: Yes.

18 THE COURT: Okay. So do you --

19 THE WITNESS: May I ask a question,
20 Your Honor?

21 THE COURT: Sure.

22 THE WITNESS: The document that we
23 got there was from Heather Grey, it wasn't from
24 Ms. Wilkinson.

25 THE COURT: No, we understand. It's

1 attached to her declaration.

2 THE WITNESS: It may have been longer
3 because she went to great length to explain things
4 that came up.

5 THE COURT: I don't have anything
6 different from anyone else.

7 Do you have any questions for this
8 gentleman?

9 MR. SIEGEL: Yes.

10 CROSS-EXAMINATION

11 MR. SIEGEL: Q. Mr. Uzzell, you were
12 the secretary in November 2013?

13 A. Right.

14 Q. And you were present at the Pacifica
15 National Board meeting that month; correct?

16 A. What month?

17 Q. November 2013.

18 A. Yes.

19 Q. That was in Houston?

20 A. Yes.

21 Q. An in-person meeting?

22 A. Right.

23 Q. At that meeting it's true, is it not, that
24 the board agreed to hire Ms. Reese as executive
25 director?

1 A. Contingent upon a successful background
2 check.

3 Q. But they agreed to hire her; correct?

4 A. Correct.

5 Q. And the board authorized, by vote, three
6 members of the board who were attorneys to create
7 the offer letter; is that right?

8 A. Not quite correct. You were on it, and I
9 assume you're an attorney. Tony Norman was on it,
10 and I assume he was an attorney. John Cromshow
11 hadn't passed the bar yet.

12 Q. He's a law school graduate, to the best of
13 your knowledge?

14 A. I have no knowledge.

15 Q. And you were present when the board, by
16 vote, asked Cromshow, Norman and Siegel to prepare
17 the offer letter; correct?

18 A. Right.

19 Q. Isn't it true after that offer letter was
20 prepared, it was submitted back to the board;
21 correct?

22 A. Correct.

23 Q. And the board approved it?

24 A. Right.

25 Q. And the letter says what it says, right?

1 A. I guess it does.

2 Q. It's says it's an employment agreement;
3 correct?

4 A. I don't have it in front of me. I don't
5 know exactly what it says.

6 MR. SIEGEL: May I approach, Your
7 Honor?

8 THE COURT: You may. Make it clear
9 for the record what you are showing him.

10 MR. SIEGEL: Q. I am showing you what has
11 previously been marked as Exhibit B to the
12 declaration of Margy Wilkinson, filed on April 25th
13 of this year.

14 I want to ask you, was that the offer
15 letter approved by the board?

16 A. It may be the first page of it. If I
17 remember correctly, it was about six or seven pages
18 long.

19 Q. Why don't you look at the whole thing.

20 THE COURT: There's more pages on
21 that exhibit, it's not one page.

22 THE WITNESS: It does appear to be
23 the offer letter.

24 MR. SIEGEL: Q. Now, is that offer letter
25 signed?

1 A. It is.

2 Q. Who signed it?

3 A. I signed it and then the executive
4 director signed it.

5 Q. If you would go back to Page 1, please.
6 And would you read the first paragraph of the offer
7 letter.

8 THE COURT: I can read this. Do you
9 really need him to read it into the record?

10 MR. SIEGEL: Okay, I don't. We will
11 save time.

12 Q. Now, January 30, 2014, you signed another
13 document; correct?

14 A. January 30th?

15 Q. Yes, January 30.

16 A. I did.

17 Q. What is that document?

18 A. It's a contract with Ms. Reese.

19 Q. Okay. Now, isn't it true that the board,
20 Pacifica National Board never authorized your
21 signature on that document; is that correct?

22 A. I don't know that that's correct. As the
23 corporate secretary, I was asked to sign corporate
24 papers.

25 THE COURT: Next question.

1 MR. SIEGEL: Q. Who asked you to sign this
2 document?

3 A. Heather Grey.

4 Q. Okay. And do you know whether the board
5 ever approved a resolution asking Heather Grey to
6 prepare this document, the January 30 agreement?

7 A. In the day that -- the day that all the
8 effort was put into hiring Ms. Reese, the only thing
9 that was mentioned was the offer letter. Not one
10 word was mentioned about a contract.

11 Q. Okay. Now, the offer letter says that it
12 is an employment agreement, does it not?

13 A. I think it does; I don't know.

14 Q. Okay. And nothing in the offer letter
15 says that there is going to be a follow-up agreement
16 that would replace the offer letter, does it?

17 A. I don't know all the --

18 THE COURT: I can read it.

19 MR. SIEGEL: Okay.

20 Q. So my question is, to your knowledge,
21 whose idea was it to prepare the January 30th
22 document?

23 A. To my knowledge, it was Holman HR.

24 And I think our acting chair at the time.

25 Q. That would be Heather Grey?

1 A. Heather Grey.

2 Q. Who was it who asked Holman HR as to
3 whether there should be another employment letter?

4 A. I don't know. I wasn't present.

5 Q. When was the first time that you saw the
6 employment agreement, the January 30th, 2014,
7 agreement?

8 A. January 30th.

9 Q. Do you know when it was prepared?

10 A. I guess between --

11 THE COURT: Let's not have him guess.

12 MR. SIEGEL: I asked whether he knew.

13 THE COURT: Right. Move on.

14 MR. SIEGEL: Q. Do you know when
15 Summer Reese signed the January 30th employment
16 agreement?

17 A. I guess January 30th.

18 Q. Do you know what time?

19 A. I wasn't there.

20 Q. Do you know what time of day it was?

21 A. No.

22 THE COURT: Counsel, he just said he
23 wasn't there.

24 MR. SIEGEL: Okay.

25 Q. Who was the chair of the Pacifica National

1 Board on January 30, 2014?

2 A. As I recall, Heather Grey.

3 Q. Was she -- when was she elected as chair?

4 A. She was the acting chair. She filled in
5 for the chair that wasn't there.

6 Q. And who was that?

7 A. Summer Reese was the chair up to
8 November 15th, I guess.

9 Q. When did Summer Reese's term on the
10 Pacifica National Board end?

11 A. Well, I'm not an expert on the bylaws. I
12 would say that it ended when it ended.

13 Q. Okay.

14 THE COURT: In other words, he will
15 leave it up to us to decide. Move on.

16 MR. SIEGEL: Q. So you don't know?

17 A. No.

18 Q. Okay. Let me ask you this: There were
19 occasions, were there not, while you were serving as
20 the secretary of the Pacifica National Board, where
21 motions to fire staff were brought up without prior
22 notice at board meetings?

23 A. I don't know.

24 Q. Well, isn't it true that you brought up
25 the motion to terminate the employment of the CFO,

1 Raul Salvador?

2 THE COURT: We will stop this right
3 now.

4 Ma'am, who are you? State your name
5 for the record.

6 MS. REESE: Me?

7 THE COURT: No. The one sitting
8 behind you.

9 Who are you?

10 MS. ROSENBERG: Tracy Rosenberg.

11 THE COURT: You are mouthing answers.
12 You are clearly trying to say things. That happens
13 one more time, you will be ejected from the
14 courtroom.

15 Do you understand me?

16 MS. ROSENBERG: Uh-huh.

17 THE COURT: Go ahead.

18 MR. SIEGEL: Okay. Sorry for the
19 interruption, Your Honor.

20 Q. Mr. Uzzell, isn't it in fact true that at
21 a Pacifica National Board meeting in October 2013,
22 you made a motion to fire the CFO?

23 A. I think I made a motion to accept the
24 recommendation of an evaluation committee that --
25 the personnel committee evaluation study that

1 recommended that he not be rehired.

2 Q. Well, he was hired, so wasn't it a motion
3 to terminate him?

4 A. No, I think the wording -- you know, I'm
5 guessing the wording. I think the wording was
6 that -- it was a recommendation of the committee.

7 Q. Correct.

8 A. My motion was to accept the recommendation
9 of the committee.

10 Q. To terminate Mr. Salvador's employment?

11 A. I don't think it was terminated. I think
12 it was some other word, like "not extend his
13 contract further" or something like that; I don't
14 really know.

15 Q. It was-- shall we use a neutral word?
16 End? Conclude?

17 THE COURT: Shall we move on? Let's
18 move on.

19 MR. SIEGEL: Q. Isn't it true, Mr. Uzzell,
20 that this matter was not on the previous agenda for
21 the meeting when you moved it?

22 A. I can't testify as to what was on a
23 previous agenda, there's been so many agendas.

24 Q. You were secretary of the board at the
25 time?

1 A. Exactly.

2 Q. You were responsible for preparing the
3 agendas for meetings?

4 A. Hundreds of agendas.

5 Q. And you do not recall whether the motion
6 to conclude Mr. Salvador's employment was on the
7 agenda prior to the meeting?

8 A. I do not recall that.

9 Q. Do you agree that the letter from Heather
10 Grey to the foundation board, which is included as
11 Exhibit C to the declaration of Margy Wilkinson, was
12 not the actual background check?

13 THE COURT: He already said it's not.
14 We don't need to retread it. He said multiple times
15 he did not see the actual background check.

16 MR. SIEGEL: Q. Isn't it also true the
17 background check was never approved by the Pacifica
18 National Board?

19 A. I wasn't required --

20 MR. JACOBSON: Objection, misleading.

21 THE COURT: Overruled. I can read
22 what the contract says for itself.

23 You just need to answer the question
24 of whether it was approved by the board or not.

25 THE WITNESS: Whether the background

1 check was approved?

2 THE COURT: Correct.

3 THE WITNESS: Well, you get into
4 dicing definitions of things.

5 I think that it was approved because
6 the motion was a successful background check would
7 be accomplished, and that is approval if the
8 background check is successful.

9 THE COURT: Okay. We can quibble
10 about what the actual agreement says, okay, what the
11 letter says.

12 MR. SIEGEL: Let me be clear on the
13 date.

14 Q. The motion that you're referring to was
15 the motion to approve the offer letter of
16 November 2013?

17 A. No. It was a separate motion for
18 Mr. Brian Tiekert that added that the hiring be
19 contingent upon a successful background check.

20 Q. Was that also in November 2013?

21 A. November -- yeah.

22 Q. Was there ever a motion to accept the
23 background check after the background check was
24 completed?

25 A. There was no need --

1 Q. It's a "yes" or "no," Mr. Uzzell.

2 THE COURT: You really need to answer
3 "yes" or "no."

4 They can argue about whether one was
5 needed or not.

6 THE WITNESS: Not that I know of.

7 MR. SIEGEL: No further questions.

8 THE COURT: Anything?

9 MR. JACOBSON: Yes.

10 THE COURT: Very quickly.

11 MR. JACOBSON: Very quickly.

12 CROSS-EXAMINATION

13 MR. JACOBSON: Q. Mr. Uzzell, could you
14 state how you first -- you're from Texas; right?

15 A. Right. Houston.

16 Q. And your affiliation -- could you just
17 state briefly your affiliation with the Texas
18 Pacifica station.

19 A. I'm on the local station board, and I'm
20 one of their directors on the national Pacifica
21 board.

22 Q. When did you first have this association,
23 this connection with Pacifica?

24 A. I'm on this year's board. I was on last
25 year's board. I was on the 2010 board. I was on

1 the Pacifica local board for -- I don't know --
2 seven or eight years, something like that. I'm
3 currently on it now.

4 Q. And you're aware of Ms. Reese's employment
5 history with Pacifica; is that correct?

6 A. I suppose so.

7 Q. And do you recall the date of Ms. Reese's
8 initial employment?

9 THE COURT: Unless you plan on not
10 asking Ms. Reese these questions, you better not ask
11 him. Because I'm not going to hear it twice. It's
12 already all in the papers, so I have all that
13 information.

14 MR. JACOBSON: I'm leading up to an
15 important point that relates to his previous
16 testimony, which is Ms. Reese was interim executive
17 director beginning in August of 2012.

18 Q. Do you recall that being correct?

19 A. I wasn't on the board then. That's about
20 what I recall hearing about her being hired.

21 Q. And in your capacity as a director, are
22 you aware of certain provisions of California labor
23 law that -- whereby after a certain period of time,
24 an employee of a California employer, by operation
25 of law, accumulates certain rights --

1 THE COURT: Objection sustained on
2 the basis of calling for a legal conclusion.

3 Move on or be done.

4 MR. JACOBSON: Q. As part of your
5 motivation for -- is -- did the offer letter contain
6 a probationary period?

7 MR. SIEGEL: Your Honor, document
8 speaks for itself.

9 THE WITNESS: Yes.

10 MR. JACOBSON: Q. And did you regard
11 that probationary period as a fair term in relation
12 to her previous service since August of 2012?

13 MR. SIEGEL: Not relevant.

14 THE COURT: Not relevant, that's
15 correct. Absolutely not relevant.

16 MR. JACOBSON: Q. Were you trying, by
17 including progressive discipline and just-cause
18 termination in the employment contract at 1/30/2014,
19 were you trying to ensure conformity with your own
20 conception of fairness to Ms. Reese?

21 THE COURT: Don't answer that
22 question. Is there an objection?

23 MR. SIEGEL: Not relevant.

24 THE COURT: Sustained.

25 THE WITNESS: It wasn't my

1 perception.

2 THE COURT: Sir, I asked you to not
3 answer that line of questioning. This entire line
4 is not relevant. So if you don't have anything
5 else, sit down, and I will see if anybody has
6 anything else.

7 MR. JACOBSON: I do have a question
8 pertaining to Mr. Edward-Tiekert's testimony.

9 Q. Did you, prior to the March 13, 2013,
10 meeting, have any communication from other board
11 members that there would be consideration of
12 Ms. Reese's termination on the telephonic March 13th
13 meeting?

14 A. No.

15 MR. JACOBSON: Thank you. No further
16 questions.

17 THE COURT: Anything?

18 MS. ANDERSON: Just one quick
19 question.

20 REDIRECT EXAMINATION

21 MS. ANDERSON: Q. Was there any discussion
22 or did you have any understanding that if
23 Ms. Reese's background check did not clear, and she
24 did not -- and her new contract of being director
25 was not finalized or entered into upon completion of

1 a background check, was there any discussion that
2 her position as interim executive director would be
3 terminated?

4 A. No.

5 Q. So your understanding, to be clear, is
6 that there -- nobody has any reason to believe that
7 Ms. Reese would not continue to be at least, at the
8 very least, interim executive director if she did
9 not -- if she was not advanced to executive
10 director?

11 A. That didn't come up.

12 Q. If Ms. Reese did not become executive
13 director by terms of the offer letter --

14 THE COURT: He just said it didn't
15 come up. Counselor, he just said that discussion
16 didn't come up.

17 MS. ANDERSON: Okay.

18 Q. Has there been any discussion in any board
19 meeting whether Ms. Reese is -- in any discussion
20 regarding the validity of Ms. Reese's contract, if
21 there were any, was there any discussion as to
22 whether Ms. Reese was still or is still an interim
23 executive director?

24 A. I think it depends on the person you talk
25 to.

1 Q. At any board meetings?

2 A. In my opinion she's still the executive
3 director.

4 THE COURT: We're done. You can step
5 down.

6 Next witness.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: Thank you, sir.

9 (Witness excused.)

10 THE COURT: We're not taking pauses
11 like this. Who are you calling?

12 MR. JACOBSON: Tracy Rosenberg.

13 THE COURT: Please step up.

14 TRACY ROSENBERG,
15 called as a witness for the defense, having been
16 duly sworn, testified as follows:

17 THE CLERK: State and spell your name
18 for the record.

19 THE WITNESS: My name is Tracy,
20 T-R-A-C-Y, last name is Rosenberg,
21 R-O-S-E-N-B-E-R-G.

22 DIRECT EXAMINATION

23 MR. JACOBSON: Q. Can you describe your --
24 briefly describe your background in relation to the
25 Pacifica organization.

1 A. Certainly. I was elected to the KPFA
2 local station board in 2007. I had been a long-time
3 volunteer before then.

4 I was elected to the Pacifica National
5 Board in January of 2010 and served for four years,
6 which expired at the end of January 2014.

7 THE COURT: So up until January 31st
8 of this year?

9 THE WITNESS: January 30 at 7:00 p.m.
10 exactly.

11 THE COURT: Okay.

12 THE WITNESS: But, yes.

13 MR. JACOBSON: Q. You were present, then,
14 during the -- Summer Reese's tenure?

15 A. Yes.

16 Q. When did Summer Reese first become a
17 national board member, Pacifica National Board
18 member, to the best of your recollection?

19 A. As I recall, she became a Pacifica
20 National Board member about the same time that I
21 did, which was in January of 2010. We were elected
22 earlier that month and seated at an in-person board
23 meeting at the end of January in Washington, D.C.

24 Q. And you were colleagues during the
25 subsequent period continuously?

1 A. Yes, we were continuous colleagues on the
2 Pacifica National Board from, again, the end of
3 January 2010 until the end of January 2014, when
4 both of our terms expired.

5 Q. Are you familiar with the sequence of
6 events at issue generally here in this --

7 A. Up until the end of January 2014, yes, I
8 am familiar.

9 Q. Can you describe, beginning with the
10 period of time in which Ms. Reese was elevated to
11 the chairmanship of the Pacifica National Board, to
12 the best of your recollection.

13 THE COURT: We're not asking for a
14 narrative.

15 MR. JACOBSON: It's not a
16 narrative --

17 THE COURT: Well, you just asked her.

18 MR. JACOBSON: I retract that
19 question, Your Honor.

20 Q. Ms. Rosenberg, what month and year, to the
21 best of your recollection, did Ms. Reese become the
22 chairman of the Pacifica National Board?

23 A. February 2011. She had been on the board
24 for a year, as had I. The previous chair was no
25 longer on --

1 THE COURT: So the answer is
2 February 2011. Next question.

3 THE WITNESS: Uh-huh.

4 MR. JACOBSON: Q. At a later date, was
5 Ms. Reese, I want to say promoted, or just elevated
6 in some respects, or given additional
7 responsibilities, to be the interim executive
8 director of Pacifica Foundation?

9 A. Yes. That was on August -- I believe the
10 date was August 10, 2012. And we do it formally by
11 a vote of the board.

12 Q. And was that as a job competition at that
13 time? Was there other applicants?

14 A. At that moment in time the board had
15 discretion in who they would choose to select. But,
16 no, there were not other candidates at that time
17 presented to the board.

18 Normally any of the board members or
19 corporate counsel, for example, could have been
20 placed in a position. We chose Ms. Reese.

21 Q. Was that a competitive vote with anyone
22 else?

23 A. It was not a competitive vote.

24 Q. And at that point in time the
25 foundation -- that was a paid position; correct?

1 The interim executive director position was a paid
2 position, and Ms. Reese began drawing a paycheck at
3 that time?

4 THE COURT: I'm trying to understand
5 the relevance for today's hearing.

6 I don't think this is contested. I
7 don't think it's contested when she became interim
8 director or when she joined the board or what
9 happened in 2010, '11, '12. For purposes of today's
10 hearing, really, it's a board meeting in 2014, and
11 there's some issues around the employment agreement
12 that went out in late 2013.

13 MR. JACOBSON: I'm going to
14 fast-forward to that.

15 THE WITNESS: Uh-huh.

16 MR. JACOBSON: Q. What happened in
17 November of 2013 in relation to Ms. Reese's tenure
18 at that time as an interim executive director, in
19 relation to the subject, the matter of the offer
20 letter?

21 A. The three final -- the three semifinalists
22 identified by the Board's personnel committee which
23 I participated in, after narrowing it down from 63
24 resumes, were interviewed at the board in that
25 meeting.

1 Ms. Reese was one of them. She was the
2 final candidate selected for the permanent ED job
3 and we discussed terms of employment, as previously
4 mentioned, and issued an offer letter.

5 We passed a motion saying that the hire
6 was contingent on the results of a successful
7 background check. And we also passed a motion
8 stating that a contract would be issued, and that
9 that contract would be issued based on a template of
10 the previous executive director contract.

11 I made that motion myself, and the board
12 passed it in November of 2013.

13 The background check was consigned to the
14 officers to carry out. The contract was not stated,
15 but the officer in question, Heather Grey, who was
16 the vice chair, understood it to be her
17 responsibility --

18 MR. SIEGEL: Objection.

19 THE WITNESS: -- to carry out the
20 background check.

21 THE COURT: We will stop.

22 MR. JACOBSON: Q. Just speak --

23 A. We verbally discussed it.

24 Q. Speak to your understanding. You can
25 re-articulate that same point as to your

1 understanding.

2 A. The board specifically stated that the
3 background check was to be completed or undergone by
4 Ms. Grey, and then passed a motion that a contract
5 would be issued using the template of the previous
6 executive director contract.

7 Q. And the only condition precedent to that
8 contract being prepared was a successful background
9 check, quote/unquote?

10 A. The results of a successful background
11 check would be provided.

12 Q. And it was -- was it not further
13 understood that there would -- it was not
14 contemplated that there would be a board vote on
15 what the definition of "successful" meant in that
16 context?

17 A. That is correct. It is my understanding
18 that adverse results from background checks is a
19 legal standard.

20 Q. And the board was contemplating deference
21 to the --

22 MR. SIEGEL: Objection, leading.

23 THE COURT: Sustained. Next
24 question.

25 MR. JACOBSON: Q. Do you have a

1 recollection of the board's mindset in relation to
2 how success would be defined --

3 MR. SIEGEL: Objection, lack of
4 foundation --

5 MR. JACOBSON: -- or determined?

6 MR. SIEGEL: -- calls for
7 speculation.

8 THE COURT: It does call for
9 speculation. If there is specific conversation that
10 took place at the board meeting she can testify
11 about, she may do that. She may not speculate about
12 what other people thought or wondered.

13 THE WITNESS: I can state what I
14 thought, that there is a legal standard for the
15 result of a background check being so adverse that
16 an employment offer can be reversed. And it was my
17 understanding that that is the standard that would
18 be applied.

19 And at the time, we still had a
20 corporate counsel, and I believed that the corporate
21 counsel would provide guidance as to whether the
22 results of a background check was so adverse as to
23 merit the rescission of the offer of employment.

24 MR. JACOBSON: Q. Were you still
25 inside -- at the time of the receipt of the feedback

1 on the background, were you still -- I will rephrase
2 it.

3 Did you have an occasion to ascertain the results of
4 the check?

5 A. I received --

6 MR. SIEGEL: Objection, lack of
7 foundation.

8 THE COURT: You can answer it. Go
9 ahead.

10 THE WITNESS: I received the initial
11 report of the results by the acting chair, Heather
12 Grey, in January when it was presented to the rest
13 of the board.

14 There were, to my review of that
15 document, no significantly adverse results; and I
16 heard no conversation or dialogue on the board to
17 the effect that anyone thought so, or that the
18 January board in any way did not consider Ms. Reese
19 to have been hired.

20 I can't speak to the -- to what
21 happened after I was off the board.

22 MR. JACOBSON: Q. You were fully
23 satisfied that the condition precedent to a contract
24 being executed had been met by virtue of the --

25 A. Yes.

1 Q. -- success of the background check?

2 A. Yes.

3 Q. And --

4 THE COURT: Did you have any sense,
5 ma'am, for when that background check had to be done
6 by?

7 THE WITNESS: The offer letter had
8 provided a date in December. We received ongoing,
9 as a board, shall we say, progress reports from
10 Ms. Grey, and she stated that one of Ms. Reese's
11 employers were nonresponsive.

12 The board, as a group, agreed we
13 would rather wait to get those responses so we would
14 have a complete background check.

15 It turned out later that particular
16 employer was hospitalized with pneumonia for three
17 and a half weeks, and that was the stated reason for
18 the delay for the background check. And the board
19 in no way indicated that this was problematic at the
20 time.

21 MR. SIEGEL: Objection. Her
22 testimony regarding the previous employer is
23 hearsay, also lack of foundation.

24 THE COURT: I'm not admitting it for
25 the truth but what her understanding was at the time

1 to explain the course of events. That's fine.

2 Overruled. Go on.

3 MR. JACOBSON: Q. With regard to the
4 contemplation at the time of the offer letter that a
5 contract would be prepared on the condition
6 precedent that a successful background check be
7 done, what is your -- what do you recall was the
8 purpose of the contract, as opposed to the offer
9 letter?

10 A. The Pacifica Foundation, for a number of
11 years, experienced an extremely high level of
12 employment litigation. One of the reasons
13 identified for that, both by the insurance carrier
14 and by many members of the board, was failure to
15 issue a complete and comprehensive employment
16 contract.

17 So it had been the policy of the previous
18 boards that I was on, and this one, that we would
19 attempt to do so in the case of ongoing hires.

20 That is the reason I put forward a motion
21 in November of 2013 that there should be a contract
22 issued and that it should follow the template of the
23 previous executive director contracts.

24 Q. Was there any further -- did the details
25 of the responsible people within the organization

1 who were preparing that contract arise?

2 A. What I can state is that no one took any
3 initiative to prepare the contract except for the
4 officers of the board.

5 At the time, because the organization was
6 without a chief financial officer, I was the
7 treasurer of the board; and while that is not
8 normally an officer position, when the CFO position
9 is not filled, the bylaws in California Corporations
10 Code states that the treasurer is therefore an
11 officer of the board. So I was acting as one for
12 the period of January 2013 because we did not -- I'm
13 sorry, January 2014, because we did not have a CFO.

14 Q. Did you take initiative in regard to this
15 contract or participate in any further activity in
16 relation to --

17 A. Yes, I participated in two conference
18 calls with Holman Human Resources. They are HR
19 consultants referred to us by our employer's D&O
20 policy with the cause of helping us to not get
21 involved in so many lawsuits.

22 I participated in two conference calls
23 with Ms. Grey in January of 2014.

24 Mr. Uzzell was invited to those calls but
25 did not choose to participate. He said that he felt

1 that the two of us were competent to do so and had
2 significant human resources experience and he would
3 wait to be briefed for those phone calls.

4 Q. You can take a drink of water before I ask
5 my next question.

6 A. Sure.

7 Q. Looks like you need one.

8 A. Thank you.

9 Q. Then what happened next in relation to
10 this contract preparation?

11 A. Dawn Alexander, who was our appointed
12 liaison in Human Resources, brought up two specific
13 problems with the offer letter. The first that she
14 brought up was that as an employment contract, it
15 allowed no way to terminate the agreement on the
16 part of the employer, and that was necessary. The
17 contracts were not, in fact, functional contracts
18 unless it provided terms for the termination of the
19 contract prior to its completion.

20 And the second item that she mentioned was
21 she did not feel that probationary period was
22 appropriate for an employee who had been on the job
23 for 15 months.

24 Ms. Grey and I reported to her that
25 regardless of how we felt about it, that the board

1 had requested a six-month probationary period and we
2 were, in fact, tied to that agreement.

3 She expressed she felt it was of
4 questionable legality, and we said there was nothing
5 we could do about it.

6 Q. Nothing except a contract that would be
7 covering a subject matter that would be curative of
8 the legal defects?

9 A. Ms. Alexander stated once an employee had
10 been in a position for 15 months, that they had in
11 fact completed any possible probationary period; and
12 that since we were employing the employee for the
13 period of three years, we were specifically stating
14 the employee was no longer at will in so doing; and
15 that by the issuance of the offer letter and the
16 contract, that at-will provisions were no longer
17 appropriate for an employee of such seniority.

18 She is a professional HR consultant. And
19 I'm -- neither one of us felt competent to
20 contradict her statement to us.

21 Q. So the contract incorporated language that
22 addressed this issue and --

23 A. The contract incorporated the November --
24 I guess it's officially November 10th or 15th,
25 depending when it was signed, offer letter,

1 100 percent. Every single word was carried over.
2 And it added specific terms for the termination of
3 the contract, which included performance evaluation,
4 which is stated in our personnel policy as being
5 required for each and every employees.

6 It stated causes for termination, which
7 again were taken from the previous ED contract,
8 which also provided what cause was for termination.

9 And because we had been advised that it
10 was not legal, it did not provide yet another
11 probationary at-will period after Ms. Reese had
12 already served for 15 months as an at-will employee
13 in the position of interim executive director.

14 She was not being promoted. Her job
15 duties had not changed, and she had served a
16 fifteen-month period in her position.

17 Q. Now, as to the legal efficacy of this
18 contract, it was -- was it contemplated by the board
19 that passed your motion that a contract would be
20 entered into, condition precedent on passing a
21 background check, that such a contract would further
22 require board ratification, so to speak?

23 A. The board made no indication of that at
24 its November meeting, did not pass a motion to that
25 effect.

1 The motion that I made regarding the
2 issuance of a contract was not amended or changed to
3 add that requirement, and it had not been the case
4 with employment contracts for previous executive
5 directors that had been issued, including one done
6 in 2009 and one done in -- the previous one before
7 that would have been with Ms. Solia (phonetic), so
8 that would have been 2007.

9 Q. And if I understood your testimony just
10 now, it was -- as to those contracts, they were --
11 the procedure by which they were entered into did
12 not include post-signature ratification by those
13 boards?

14 A. No. The board interviewed, made their
15 final choice, and then a contract was privately
16 signed between the officers of the board and the
17 candidate. That had been the ongoing process.

18 Q. And was there anything amiss in that
19 regard as to the way in which Ms. Reese's
20 January 30th contract was entered into and executed?

21 A. No, there was nothing amiss.

22 Q. And it was Mr. Uzzell's duty as the
23 secretary to be a signatory to that contract?

24 A. That is correct, he did need to sign it as
25 the official board secretary who was serving at the

1 time that the contract was issued. It was in late
2 January.

3 Q. And Ms. Grey was duly authorized to enter
4 into it on behalf of the Pacifica Foundation?

5 A. Ms. Grey was the elected vice chair. And
6 as soon as Ms. Reese signed the contract, she would
7 no longer be the chair of the board. So at that
8 moment in time, Ms. Grey would de facto become the
9 chair of the board on the signing of the contract.

10 Q. The contract was signed. Did Pacifica
11 Foundation have any type of seal or anything like
12 that, to your knowledge?

13 A. We do have a corporate seal. Whether or
14 not the corporate seal was applied to that document,
15 I can't speak to.

16 Q. It wouldn't be necessary at any rate?

17 A. No.

18 Q. Your --

19 MR. SIEGEL: Objection, leading, move
20 to strike.

21 THE COURT: Sustained.

22 MR. JACOBSON: Your testimony is -- I
23 will ask it in the form of a nonleading question.

24 Q. This was asked of Mr. Uzzell.

25 As a result of Ms. Reese entering into

1 that contract on January 30th, she became, did she
2 not, the duly hired executive director of the
3 Pacifica Foundation?

4 A. Yes, Pacifica --

5 MR. SIEGEL: Objection, calls for a
6 legal conclusion.

7 THE COURT: It does call for a legal
8 conclusion. Sustained.

9 Do you have any more questions that
10 are different?

11 MR. JACOBSON: In the interests of
12 time --

13 THE COURT: Anything?

14 MR. SIEGEL: Yes.

15 THE COURT: Quickly.

16 MR. SIEGEL: Thank you.

17 RECROSS-EXAMINATION

18 MR. SIEGEL: Q. Ms. Rosenberg, isn't it in
19 fact true that during your tenure on the Pacifica
20 National Board, the only executive director hired by
21 the foundation was Ms. Reese?

22 A. Yes, that is correct. Ms. Englehardt was
23 hired in December of --

24 THE COURT: So the answer is yes.

25 THE WITNESS: Uh-huh.

1 THE COURT: Anything else?

2 MR. SIEGEL: Q. And you were not
3 involved in the negotiation or preparation of the
4 contract with Ms. Englehardt, were you?

5 A. No. But as a board member, I received
6 those papers after the fact.

7 MR. SIEGEL: I would request -- it
8 would be a lot faster if she would simply answer the
9 question.

10 THE COURT: How much more do you
11 have?

12 MR. SIEGEL: A few minutes.

13 THE COURT: But, really, if it's a
14 "yes" or "no" question, it's a "yes" or "no" answer.

15 MR. SIEGEL: Q. And you have never
16 laid side by side an offer letter to Ms. Englehardt
17 with the contract with Ms. Englehardt, have you?

18 A. What do you mean by "laid side to side"?

19 THE COURT: Okay.

20 MR. SIEGEL: Q. Compared the two
21 documents to see whether they were the same or
22 different.

23 A. I don't believe Ms. Englehardt was given
24 an offer letter.

25 THE COURT: Okay. Anything?

1 It's not helpful to me. I don't have
2 Ms. Englehardt's agreement. She hasn't done a
3 line-by-line comparison. I don't have it. What
4 else?

5 MR. SIEGEL: Q. Isn't it true that
6 your motion to have an agreement negotiated with
7 Ms. Reese was made prior to the board's approval of
8 the offer letter?

9 A. I am not sure of the order of events, so I
10 have to say I don't know, without an examination of
11 the minutes of the meetings, I don't know which
12 happened first.

13 Q. Would you agree at no time did the board
14 explicitly authorize Ms. Grey to enter into a
15 contract agreement with Ms. Reese?

16 A. No, it explicitly authorized the board to
17 do so.

18 Q. The board authorized the board to do so?

19 A. The board authorized such a contract
20 should be written.

21 Q. And the board -- to your knowledge, the
22 board never ratified the January 30th agreement
23 signed by Ms. Reese and Mr. Uzzell?

24 A. No. To my knowledge, the board never
25 ratified that contract or the contract of the

1 previous executive director.

2 Q. But you weren't on the board at the time
3 of Ms. Englehardt's contract, you just told us that;
4 is that correct?

5 A. I believe she was hired in December 2009.
6 I believe the contract was signed in January 2010.
7 I could be wrong.

8 I came on the board a month or two
9 afterwards.

10 Q. You don't know, one way or the other,
11 whether the board ratified Ms. Englehardt's
12 contract?

13 A. I know the board did not ratify
14 Ms. Englehardt's contract.

15 Q. How do you know that?

16 A. The chair at the time, George Crier
17 (phonetic), informed me so directly.

18 Q. Have you reviewed the minutes of that
19 time?

20 A. Yes, I have.

21 Q. And those minutes do not indicate there
22 was ratification of the contract?

23 A. Correct.

24 Q. Do you have those minutes with you?

25 A. I do not.

1 Q. It's your understanding the authority to
2 approve contracts involving the Pacifica Foundation
3 is exercised by the Board; is that correct?

4 A. It depends on the nature of the contract.

5 Q. Isn't it your understanding that all
6 employment contracts between the board and the
7 executive officers are to be approved by the board?

8 A. No, it's not my understanding.

9 Q. So it's your understanding that individual
10 members of the board have the authority to enter
11 into binding contracts with employees on behalf of
12 the foundation?

13 A. The offer letter for the CFO hire in 2013
14 is not a document that I ratified as a member of the
15 board.

16 Q. So you're saying it's your understanding
17 that individual officers of the board have the
18 authority to enter into contracts with officials of
19 the foundation?

20 A. I simply voted that the -- I simply
21 participated in a review and in a vote regarding the
22 hire of that individual. And then an offer letter
23 was issued by the Pacifica national office, and I
24 did not see, witness, nor ratify that document.

25 So it is my understanding that based on

1 votes of the board to hire, that contracts are being
2 signed.

3 THE COURT: You used over an hour of
4 your time.

5 MR. JACOBSON: One follow-up?

6 THE COURT: It's up to you. It's
7 your time.

8 RECROSS-EXAMINATION

9 MR. JACOBSON: Q. Ms. Rosenberg, the
10 motion you made was -- was, as you -- the words --
11 by the words of the motion, upon the execution of
12 that contract that the board approved, conditioned
13 precedent on passing the background check, that
14 would bind the organization, once executed; correct?

15 A. Yes, that is my understanding of the
16 motion, and I made the motion in the interests of
17 good process.

18 Q. And it would be irrelevant if a subsequent
19 politically differently composed board of directors
20 didn't like it, because it would have been entered
21 into by a board that approved the preparation of the
22 contract, and it was also signed during the term of
23 that board's existence?

24 A. The contract provided clear instructions
25 for the termination of the contract should a future

1 board wish to engage in the termination of the
2 contract; that's what a well-written contract does.
3 And any future board could have followed those
4 procedures and chosen -- it's not what the 2014
5 board did.

6 MR. SIEGEL: Move to strike.

7 THE COURT: I didn't hear the last
8 answer. Can I have it read back, please?

9 The following was read by the court reporter:

10 "The contract provided clear
11 instructions for the termination of
12 the contract should a future board
13 wish to engage in the termination of
14 the contract. That's what a
15 well-written contract does..."

16 THE COURT: That's stricken. Next
17 question, if any.

18 MR. JACOBSON: No further questions.

19 THE COURT: All right. You may step
20 down.

21 Thank you, Ms. Rosenberg.

22 (Witness excused.)

23 MR. JACOBSON: Joyce Black.

24 THE COURT: Please state and spell
25 your name for the record.

1 THE WITNESS: My name is Joyce,
2 J-O-Y-C-E, Black, B-L-A-C-K.

3 THE COURT: Thank you, Ms. Black.
4 Go ahead, Counsel.

5 DIRECT EXAMINATION

6 MR. JACOBSON: Q. Ms. Black, what is
7 your current position within Pacifica Foundation?

8 A. I'm a senior accountant at Pacifica
9 Foundation Radio's national office.

10 Q. And how long have you been employed there?

11 A. More than a year.

12 Q. And you had occasion to come to work on
13 March 17th, 2014, did you not?

14 A. Which day of the week was that?

15 Q. That was the --

16 THE COURT: Monday.

17 THE WITNESS: That was the Monday,
18 yes. Yes.

19 MR. JACOBSON: Q. What happened on
20 that occasion?

21 A. The door was padlocked shut and we could
22 not get in.

23 Q. Had you been provided a key to that
24 padlock?

25 A. No.

1 Q. What happened next?

2 A. Summer Reese came with the bolt cutters
3 and cut the bolt open so the padlock would open so
4 we could enter.

5 Q. You did so?

6 A. Yes.

7 Q. Had you received any communications with
8 regard to any personnel changes with regard to
9 the -- Ms. Reese's tenure?

10 A. I had received a text message, a phone
11 call saying -- from Tamika saying it had happened,
12 but that we needed certified board minutes for us to
13 see in the office to be able to make that change.

14 Q. So you entered. And you had tasks to
15 perform, I presume.

16 A. Yes.

17 Q. Those included, briefly --

18 A. I'm working on an audit.

19 Q. And the audit was a high-priority item in
20 the national office at that time?

21 A. Very.

22 Q. And if you could just briefly describe the
23 commotion that occurred.

24 A. For the first week, there were people
25 outside the door who were preventing us from getting

1 in and out. There were days I didn't go to lunch
2 because they were out there. They would claw at us
3 and poke at us when we were trying to come in and
4 out.

5 Q. Did you have occasion to ask your husband
6 to assist you at a certain point?

7 A. Yes. He drove to me to work one day, and
8 he assisted me and he protected me from the people
9 standing out there.

10 Q. And who were those people, if you know?

11 A. Well, I don't know if there were more
12 people concerned, and a group of Margy Wilkinson's
13 people, whoever they were.

14 Q. There has been considerable reference made
15 in the papers as to a shredder situation. Do you
16 know about that?

17 A. We had a lot of documents that are
18 trashed, many of them left over from the previous
19 audit. Our shredder is broken in the office. We
20 just can't take hours and feed it one paper at a
21 time to shred it.

22 So in order to prepare space for the paper
23 coming for the next audit, without Summer Reese's
24 knowledge, the staff had just ordered a shredding
25 truck to come out and get the paper.

1 The shredding truck came, it was starting
2 to be shredded. I stayed inside. I heard screaming
3 going on outside. And the next thing I knew the
4 trash came back into place, and we were not -- we
5 didn't get it shredded.

6 Q. And that -- that's was a -- at least an
7 unhelpful development because of the nature of this
8 unnecessary paperwork?

9 A. Yes.

10 Q. And as a matter of fact, the financial
11 records of Pacifica are all electronically stored,
12 are they not?

13 A. Yes, they are all electronically stored.
14 There were papers from the last audit in paper
15 binders, which we have that.

16 Q. They are backed up regularly?

17 A. Yes.

18 MR. SIEGEL: Objection, leading.

19 THE COURT: Let's get through this.

20 What is her answer?

21 THE WITNESS: Yes, they're backed up.

22 MR. JACOBSON: Q. Now, after that
23 week or so, were you able to continue work somewhat
24 as usual?

25 A. We continued work as best we can with some

1 interruptions.

2 Q. And, for example, there's also been
3 mention made of the idea that Pacifica Foundation
4 has been negatively impacted in their ability to
5 process donations. Is there any impediment to the
6 fundamental tasks of the foundation during this
7 period since March 17th?

8 A. No. Donations either come into the
9 lockbox at the bank, which doesn't come to our
10 office, or they come in through the mail and are
11 deposited electronically.

12 Q. The moving party in the part of the
13 lawsuit that I'm representing Ms. Reese on stated
14 that the normal workings of the organization are
15 being disrupted by Ms. Reese's presence. Is that
16 your understanding?

17 A. No. She's helpful.

18 Q. In what way is she helpful?

19 A. First of all, she makes us feel safer. We
20 do not feel safe at this point, otherwise.

21 We've had incidents with water turned off,
22 and people outside the door kind of thing.
23 Threatening e-mails.

24 Q. Do you also have concerns about, in the
25 event of Ms. Reese's temporary exclusion from the

1 national office, about what shoes might drop, so to
2 speak?

3 A. We feel that there will be retaliation
4 against us.

5 Q. What are you basing that on?

6 A. There have been threatening e-mails,
7 threatening to fire all of us.

8 THE COURT: Do you have those,
9 Counselor?

10 MS. REESE: They have been provided.

11 THE COURT: Whether I have them --

12 MS. REESE: There are some in here.
13 I will look.

14 THE WITNESS: We, the staff, filed a
15 grievance against Mr. Salvador, and we expect -- he
16 has threatened to fire all of us, to our faces or
17 before he left, or he's made an action against each
18 one of us that would cause us to walk. If he comes
19 back in the door, we are afraid of retaliation, and
20 some of the staff will quit.

21 MR. JACOBSON: Q. Would you briefly
22 describe the nature of your grievance.

23 A. He created a hostile workplace. He did
24 not make good accounting decisions at all. And
25 there was sexual harassment charged.

1 Q. Did any board members of Pacifica National
2 Board specifically email you, that you recall?

3 A. Margy Wilkinson did.

4 Q. Was that in the category you previously
5 described?

6 MR. SIEGEL: Objection, question is
7 vague.

8 THE COURT: It is.

9 MR. JACOBSON: What was -- I will
10 retract.

11 Q. What was the nature of that e-mail?

12 A. It wasn't very threatening from her, she
13 wanted a meeting. We had a meeting.

14 Q. Did you have a meeting?

15 A. Yes.

16 Q. And in that meeting, did business as usual
17 eventually occur?

18 A. We told her what we needed, what support
19 we needed to go forward with the work in the office,
20 and we raised our concerns about Mr. Salvador coming
21 back.

22 Q. And as to what you needed, if you will
23 just speak to that briefly further, it was in the
24 nature of what?

25 A. We needed more staff. We needed

1 cooperation from KPFA. They were not providing the
2 documents we needed so we could proceed with the
3 audit.

4 Q. Did those eventually get provided?

5 A. Partially.

6 Q. Partially. And the status of the audit?

7 A. We're continuing to work toward it. The
8 auditors are supposed to come in June.

9 Q. If the Court were to deny the relief
10 requested, then would you describe -- do you feel --
11 rephrase.

12 Do you feel that, while imperfect, the
13 status quo is manageable?

14 A. If -- the work for the audit would not be
15 complete by June, I can tell you that. The other
16 work, I don't know whether we would be able to
17 continue payroll or pay the help, because I don't
18 know how many of the staff would quit.

19 Q. If Ms. Reese continues to be present, even
20 in the absence of a court order that it was okay for
21 her to be present, simply a status quo of some form
22 of ambiguity pending further judicial
23 determinations, you would be able to muddle through?

24 A. The staff would stay. We would work our
25 hardest to get everything done.

1 THE COURT: You understand you are
2 running out of time?

3 MR. JACOBSON: Q. As to yourself, my
4 last question would be, in a contrary situation
5 where Ms. Reese was excluded, personally excluded,
6 what would be the outcome?

7 A. For me?

8 Q. For you and the organization.

9 A. We would probably all leave, and the
10 organization would not be able to function.

11 Q. Could you just say a brief further
12 sentence or two about that.

13 A. Payroll would not be made. Health
14 insurance benefits would not be paid. The audit
15 documents would not be ready for the auditors.

16 Q. A very, very serious, calamitous
17 situation; correct?

18 A. Yes.

19 THE COURT: All right. Anything?

20 MR. SIEGEL: Yes.

21 REXCROSS-EXAMINATION

22 MR. SIEGEL: Q. Ms. Black, what was the
23 first date of your employment?

24 A. The first time I came, I think, was
25 February 15th.

1 THE COURT: What year?

2 THE WITNESS: This is --

3 THE COURT: This is 2014.

4 THE WITNESS: 2013.

5 MR. SIEGEL: Q. 2013; is that
6 correct?

7 A. Yes.

8 Q. Who hired you?

9 A. I came as a temporary employee at that
10 point, from Accounting Principals.

11 Q. And to whom did you report?

12 A. I reported to various people there, most
13 of the time to Tamika.

14 Q. What is her job?

15 A. Her title there -- I have difficulty, I
16 don't know if she's general manager right now or
17 acting general manager.

18 Q. Is your position to report to the chief
19 financial officer?

20 A. It did at some point, and at other points,
21 it didn't.

22 Q. Okay. And currently is it supposed to
23 report to the chief financial officer?

24 A. I don't have a chief financial officer.

25 Q. Well, do you know Raul Salvador was

1 reinstated as chief financial officer by the board?

2 A. By a board that has not presented me with
3 certified minutes telling me that they are a board
4 that can do this.

5 Q. So is it your position that under the
6 current circumstances prevailing at Pacifica, that
7 the board must prove to you that it is the board and
8 it has the authority to take the actions it has
9 taken?

10 A. I am responsible --

11 Q. Could you answer my question, please.

12 A. Yes.

13 THE COURT: Next question, if any.

14 MR. SIEGEL: Q. So at this point you
15 refuse to take direction from Mr. Salvador; is that
16 right?

17 A. Yes.

18 Q. Okay. Now, you indicate that he harassed
19 you?

20 A. Yes.

21 Q. Did he sexually harass you?

22 A. Not me.

23 Q. What did he do to you?

24 A. He tried to -- I -- he -- he tried to get
25 me fired. He got angry with me one day. I made a

1 joke. He got angry. He went storming up to Summer
2 and demanded that I be fired, just like that.

3 Q. What else did he do to you?

4 A. After that, he ignored me. He took work
5 that should have come directly to me and took it to
6 junior accountants who did not know how to do it and
7 messed it up, and caused me more work later because
8 I had to fix it.

9 Q. So would it be fair to say that you are
10 unhappy with the idea that Mr. Salvador is your
11 boss?

12 A. Yes.

13 Q. And you don't believe that Pacifica
14 National Board has the authority to make him your
15 boss?

16 A. That is a question I can't really answer.

17 THE COURT: Let's move on or be done,
18 please.

19 MR. SIEGEL: I'm done.

20 THE COURT: You may step down.

21 Thank you very much.

22 (Witness excused.)

23 THE COURT: Note for the record, the
24 exhibit I admitted during the course of the
25 proceedings, the Pacifica Radio calendar and archive

1 printout, is admitted as Court Exhibit 1.

2 (Court's Exhibit 1 marked for
3 identification.)

4 (Court's Exhibit 1 received in evidence.)

5 THE COURT: I am giving it to you so
6 it can get into Domain, and the relevant page is
7 Page 7.

8 THE CLERK: Thank you.

9 THE COURT: You have eight, nine
10 minutes left of your 90. What do you wish to do
11 with them?

12 MR. JACOBSON: Ms. Reese.

13 THE WITNESS: May I affirm?

14 THE COURT: We don't swear.

15 SUMMER REESE,
16 called as a witness in her own behalf, having been
17 duly affirmed, testified as follows:

18 THE CLERK: State and spell your name
19 for the record.

20 THE WITNESS: Summer, S-U-M-M-E-R,
21 Reese, R-E-E-S-E.

22 DIRECT EXAMINATION

23

24 MR. JACOBSON: Q. Ms. Reese, can you
25 describe briefly your connection with Pacifica from

1 the beginning of your tenure in the Los Angeles
2 station.

3 MR. SIEGEL: Calls for a narrative.

4 THE COURT: I don't care so much it
5 calls for a narrative. But is this not all in the
6 record already?

7 MR. JACOBSON: It is, Your Honor.

8 Q. Calling your attention, Ms. Reese, to your
9 first becoming the interim executive director of
10 Pacifica, at that time you were also chairman of the
11 Pacifica National Board; is that correct?

12 A. Yes.

13 Q. And what was the difference in your duties
14 from being the chairman of the board and being
15 the -- on the board and being the interim executive
16 director?

17 A. Certainly. Being chair of the board is a
18 volunteer board position which requires a
19 commensurate amount of time, a bit more in the
20 organization than most. But the chair's
21 responsibilities are to do things like help get the
22 agenda together, conduct effective meetings, and
23 carry out various directives.

24 The executive or interim executive
25 director's duties are to run the entire organization

1 and be responsible for the employment of almost 200
2 people; the management of nearly 2,000 volunteers;
3 compliance with state, federal, and local
4 regulations of the CPD, the SEC, the IRS, the FTC,
5 the FTB.

6 It's a fully responsible executive
7 position in which I have negotiated two SAGA
8 (phonetic) contracts in the last two years. So
9 several litigations, hundreds of thousands of
10 dollars. Settled other debts before they reached
11 litigation, in the hundreds of thousands of dollars.

12 It's a 24/7, seven-days-a-week job, where
13 I have been known to work a full day at my office in
14 Berkeley, and jump on a red-eye plane and fly to New
15 York and Washington, D.C., and either appear in
16 court the next day or meet with unions.

17 It's a complete full-time commitment in a
18 way in which being a chair has nothing resembling
19 it.

20 Q. And it's a paid position for many of those
21 same reasons?

22 A. Yes, of course.

23 Q. And let's see, be open about it. Your pay
24 in the IED position was, annually?

25 A. It was 80 percent of my predecessor's,

1 what the board agreed upon, which was \$72,000 a
2 year, or the same as three out of the five general
3 managers at work.

4 THE COURT: With all that, it's
5 72,000 a year?

6 THE WITNESS: It was 72, yes, ma'am.

7 MR. JACOBSON: Q. And at a certain
8 point, the commute back and forth became onerous,
9 and there was a relocation of yourself and your
10 immediate family members?

11 A. I think that was the thing to which Brian
12 alluded earlier when he tried to claim I had
13 inappropriately --

14 THE COURT: You really just need to
15 answer the question.

16 THE WITNESS: Yes. I flew back and
17 forth between Los Angeles, which is where I'm from,
18 and Berkeley on a weekly basis for almost a year,
19 sometimes going weeks at a time without seeing my
20 one-year-old son, yes.

21 It was beyond onerous. It was almost
22 untenable. I spent almost an entire year commuting
23 by plane and staying in motels.

24 MR. JACOBSON: Q. Did you require an
25 advance in connection with the relocation?

1 A. I did.

2 THE COURT: Sir, I'm sorry, what does
3 this have to do with the question in front of me
4 today? This is not disputing -- is anybody
5 disputing how much she was paid or the fact she
6 relocated or any of this?

7 MR. JACOBSON: With all respect, she
8 was maligned by the previous witness,
9 Mr. Edwards-Tiekert.

10 THE COURT: I started out by saying I
11 will not be assessing in any way, shape, or form how
12 she performed her duties.

13 I have no reason to believe -- I want
14 to make it very clear to you, ma'am, I'm not sitting
15 here today in any way judging your work in this
16 position, okay.

17 THE WITNESS: I understand. Thank
18 you.

19 MR. JACOBSON: Q. For purposes of
20 zeroing in on it, I believe Your Honor's main
21 concern, in your position as IED and subsequently,
22 you became familiar with the Pacifica Foundation's
23 policies with regard to the personnel policies of
24 Pacifica?

25 A. Yes.

1 Q. They included the concept of progressive
2 discipline for all employees except short-term;
3 would that be correct?

4 MR. SIEGEL: Objection. This is not
5 the best evidence, and it calls for a legal
6 conclusion. There's no foundation.

7 THE COURT: I don't have the employee
8 handbook, which I believe you are referencing as far
9 as this progressive discipline. We have already
10 heard testimony, I don't need to hear this again.
11 It's of very limited utility.

12 MR. JACOBSON: Q. So moving on to
13 perhaps more of the nitty-gritty at issue for today,
14 you served in the interim executive director
15 position between what dates?

16 A. August 17th, 2012, to the -- depending on
17 where the moving target is. November 15th is when I
18 signed the offer letter. And I was told that after
19 a background check was completed that I would be
20 permanent. It was announced as permanent in
21 November at the Houston meeting. I was told -- my
22 salary was not increased until I signed the
23 contract.

24 Q. You were aware that Ms. Rosenberg
25 testified to a motion she had made about the

1 execution of a contract that came to your attention
2 in real time?

3 A. I was excluded from most of the Houston
4 board meeting which they voted to make me permanent.
5 It was rather an inquisition, once they took the
6 vote.

7 I can't say I recall, one way or the
8 other, because it took the entirety of the remaining
9 three days to draft the offer letter.

10 I can't say because I was not allowed in
11 the board room during almost that entire meeting,
12 and I was subsequently questioned --

13 THE COURT: Okay. Go ahead.

14 MR. JACOBSON: Q. You signed the
15 offer letter in November, and what happened next?

16 You were continuing your previous duties
17 at a higher salary, same salary?

18 A. Everything continued the same. My duties
19 were the same as they normally were.

20 To my knowledge, the only person in our
21 company that had a background check performed after
22 signing an offer letter --

23 THE COURT: No, we're volunteering.

24 THE WITNESS: I'm sorry --

25 THE COURT: Stop, Ms. Reese. I'm

1 sorry, what is your question? Not what happened
2 next. What is your actual question?

3 MR. JACOBSON: Q. Just pick up from
4 the first part of your response. Your duties
5 continued; at a certain point, you cooperated with
6 the background check?

7 A. Yes, I was over the next, whatever it was,
8 month and a half -- at various points repeatedly in
9 contact, to try and track down -- they weren't
10 checking recent employers, they checked employers 20
11 years ago. So it was somewhat difficult to try and
12 find people. One of them had passed away.

13 So over the next several weeks, I would be
14 contacted from time to time by Heather Grey asking
15 if I had additional information. Some jobs they
16 didn't need additional information; a couple they
17 were looking for additional information --

18 THE COURT: First of all, someone's
19 phone has to be off.

20 Ms. Reese, were you contacted for
21 information related to your background check that
22 you refused to give?

23 THE WITNESS: No, I went to the
24 trouble of asking the County Recorder to pull a
25 d/b/a from 20 years ago.

1 THE COURT: No --

2 THE WITNESS: No. I went to
3 extensive lengths to cooperate.

4 MR. JACOBSON: Q. You were informed
5 at a certain point you passed the background check?

6 A. I was told I had passed it with flying
7 colors. I have never actually seen it myself.

8 THE COURT: Who told you that?

9 THE WITNESS: Heather.

10 THE COURT: Heather Grey?

11 THE WITNESS: She said she thought it
12 was like a, really, from what she --

13 THE COURT: No. Really, focus on the
14 question. The question was who.

15 THE WITNESS: Heather Grey.

16 She said --

17 THE COURT: Stop. Stop. That's the
18 answer. Okay?

19 THE WITNESS: Yes.

20 THE COURT: When did she tell this to
21 you?

22 THE WITNESS: Oh, gosh, I don't
23 remember.

24 THE COURT: Do you know the month?

25 THE WITNESS: December or January.

1 January, I would think, because it really did go on
2 for several weeks of, you know --

3 THE COURT: Now, were you and
4 Ms. Grey speaking face to face or on the phone when
5 she told you this?

6 THE WITNESS: She was in Atlanta,
7 Georgia, so she would have been on the phone.

8 THE COURT: Okay. And she called
9 you? You called her? Do you remember?

10 THE WITNESS: It would have been her
11 calling me. I took an extremely passive role in all
12 this.

13 THE COURT: Stop.

14 Okay. When she called you and she
15 told you that you passed the background check, did
16 she actually use the words "with flying colors"?

17 "Yes" or "no."

18 THE WITNESS: It was something like
19 that it was really stellar. She said it more than
20 once, like it was a really good background check.

21 THE COURT: After you received this
22 phone call, we don't know when it is, we think it's
23 probably January sometime --

24 THE WITNESS: Sometime in January.

25 THE COURT: Let me ask you this: Was

1 it before that subsequent agreement on January 30th?

2 THE WITNESS: It was before that.

3 Yeah, that was the last -- it might have been as
4 long as a couple of weeks. It could have been two
5 to three weeks before that, because they did a lot
6 of back and forth over the contract.

7 THE COURT: So after Ms. Grey spoke
8 with you on the phone from Atlanta and said you
9 passed the background check, were you asked for
10 additional information relating to a background
11 check?

12 THE WITNESS: No.

13 THE COURT: Did you receive at any
14 point -- I notice she called you -- any written
15 confirmation along the same lines of saying, "You're
16 done, you passed"?

17 THE WITNESS: She might have sent me
18 a text. I don't remember anything specific like a
19 letter, nothing like really official.

20 The contact after that was that she
21 was dealing with all the other contracts and --

22 THE COURT: Anything else, sir?

23 MR. JACOBSON: Q. You heard the
24 testimony about the entry into -- your entering into
25 the contract itself.

1 Is there any particulars that have
2 not been stated that you wish to indicate in
3 relation to your signing the contract?

4 A. I mean, all I have to say experientially,
5 from my end, I have been entirely treated
6 differently than the way they treated everyone else.
7 There wasn't a lot of discussion on my predecessor's
8 contracts.

9 She was probationary when I was seated on
10 the board, as was Ms. Rosenberg. That contract was
11 never even signed by the board chair or any other
12 officer.

13 And yet when I took that up with legal
14 counsel in the following two years, when I was
15 chair, I was told it didn't matter that no one had
16 signed her contract; she was operating under the
17 presumption that she had a valid legal contract, and
18 there was nothing we could do about it. And if I
19 might --

20 MR. SIEGEL: Lack of foundation,
21 hearsay.

22 THE WITNESS: I can speak directly to
23 the CFO, off the --

24 THE COURT: No. No. We're going to
25 stop.

1 THE WITNESS: Okay.

2 MR. JACOBSON: Q. Going to
3 post-contract, Ms. Reese, there was a February 7th,
4 2014, in-person board meeting?

5 A. Yes.

6 Q. Were you in attendance?

7 A. Yes.

8 Q. What happened there?

9 A. The first meeting Friday, February 7th, we
10 had our general counsel. They had scheduled
11 something on the agenda to discuss my employment,
12 and general counsel Terry Gross was -- attended via
13 telephone. And Kathy Harris is --

14 THE COURT: I really need you to ask
15 her a specific question. I will not allow you to
16 ask what happened at a meeting. Okay?

17 MR. JACOBSON: Q. Was there talk of
18 a problem with your nonprovision of a Social
19 Security number?

20 A. Sure. That's what I was saying about who
21 was there.

22 So there was an employment lawyer from
23 Washington, D.C., also in attendance that day. We
24 discussed other matters not related to me.

25 And then we were in closed session. And

1 Jose Luis Fuentes directly asked me if I had a
2 Social Security number, and I said no. And I had to
3 obtain one, because I heard some people say
4 something contrary to that --

5 THE COURT: Ma'am --

6 THE WITNESS: -- because I have a
7 religious objection, and he immediately moved to
8 terminate me.

9 THE COURT: No one before this
10 meeting asked you if you had a Social Security
11 number in regards to having a background check done?

12 THE WITNESS: A year earlier, at the
13 in-person meeting in New York City, it took almost
14 an entire half day as to whether or not I had a
15 number.

16 And our general counsel at that time,
17 Andy Gold -- the reason it became a controversy,
18 three board members had solicited a national office
19 employee for payroll records, and he had distributed
20 54 Social Security numbers to --

21 THE COURT: Again --

22 THE WITNESS: It became an entire
23 day's discussion as to whether it was legal, and I
24 didn't have a number.

25 THE COURT: So the answer is yes, it

1 came up in New York?

2 THE WITNESS: And that --

3 THE COURT: Stop. Answer my
4 question.

5 THE WITNESS: Yes, it came up
6 extensively.

7 MR. JACOBSON: Q. Then did the
8 subject matter -- were you allowed to amplify on --
9 strike that.

10 Fast-forward, in the interests of time, to
11 March 13th. There was a conference, telephonic
12 meeting of the PNB; correct?

13 A. Yes.

14 Q. You were on that call for some, most of
15 it?

16 A. All of the open session. Part of it was
17 closed.

18 Q. During the part you did -- you were privy
19 to, were you asked by anybody to respond to any
20 criticisms, or in any way -- were you in any way
21 alerted there was consideration being given to your
22 tenure?

23 A. No, the office that -- I was told I was
24 being asked to leave the executive session on call
25 because the matters being discussed were not germane

1 to me. To which another board member responded,
2 "Well, they're about her." Because there was
3 discussion as to whether I was being asked to recuse
4 by myself by the chair alone or entire body. And I
5 was told it didn't concern me, that's why I was
6 being asked to leave.

7 And other board members responded it was
8 directly about that. So there was that dynamic
9 tension, whether it was about me or not about me.

10 I was given no opportunity to respond. I
11 was not told what any of the allegations were.

12 And I understand there was a chair's
13 report. I was never shown that chair's report or
14 given an opportunity to respond to it. Things like
15 the board directing me to release background checks,
16 I was never in possession of my own background
17 check, so I could not release it.

18 I was actually never in possession of Raul
19 Salvador's check because the human resources firm
20 handled that. And from what they told me, the
21 protocol is that it's kept very restricted in terms
22 of distribution.

23 So when Mr. Salvador -- the board not only
24 did not take any position on whether they drafted an
25 offer letter and conducted a background check, I

1 took care of those things because they were supposed
2 to happen. But I did not even, myself, come in
3 possession of that background check, even though
4 I --

5 THE COURT: Okay.

6 MR. JACOBSON: Q. To this day you have not
7 seen that chair's report that apparently has
8 criticism of you?

9 A. No. No.

10 Q. Have you received the criticisms that were
11 testified to this morning before hearing them this
12 morning?

13 A. No, except for Margy Wilkinson writing to
14 me in e-mail, during that month between February
15 when they tried to fire me the first time and March,
16 she had come to my office a couple of times.

17 And I had asked her just to provide in
18 writing what -- what it is they were asking these
19 records for, what was the purpose; part of that is
20 legal, like, for instance, if you're asking me to
21 release the CFO's records -- he is not myself. I
22 have to have some reason why you are requesting
23 these, and it should be legitimate, there should be
24 something in writing. And she didn't provide
25 anything.

1 THE COURT: All right.

2 MR. JACOBSON: Q. You were never
3 provided that request?

4 A. And I was not written up or anything like
5 that for not providing those documents.

6 Q. So you would have participated -- if you
7 would have been asked to respond in fairness to the
8 criticism that might result in your termination, I
9 presume you would have done so?

10 A. Of course.

11 Q. And in the interim time, since the events
12 that we're here about, have you been asked to
13 provide any account -- I know you provided your own
14 extensive declaration; but apart, has there been
15 any -- any opportunity that you feel you have had to
16 speak to these criticisms?

17 A. I have never been presented with these
18 criticisms myself. My Social Security number is the
19 only reason ever presented for firing me. I haven't
20 been presented with anything regarding a critique.

21 Q. If you were critiqued, you would --

22 A. Of course.

23 Q. -- given a free --

24 THE COURT: I'm sorry, you're going
25 past your time, and you are asking the same question

1 repeatedly.

2 MR. JACOBSON: No further questions.

3 THE COURT: Do you have anything?

4 MR. SIEGEL: Yes, Your Honor.

5 THE COURT: Go ahead. Try to keep it
6 brief.

7 MR. SIEGEL: Okay.

8 CROSS-EXAMINATION

9 MR. SIEGEL: Q. Ms. Reese, you became the
10 interim executive director on August 1st, 2002,
11 correct? 2012?

12 A. Yes.

13 Q. And you did so by virtue of the fact that
14 you were chair of the national board; correct?

15 A. Well, they separately had to take a board
16 and decide whether or not -- it's not automatic.
17 They took a vote and decided --

18 I mean, I believe you were the IED before
19 also, right? It's not simply automatic.

20 But yes, they voted and decided to appoint
21 me as the interim executive director.

22 Q. And they did so without pay.

23 A. It took them three months to come around
24 to deciding upon a salary.

25 Q. So you acted as the IED from August 17th

1 to November 15th, 2012, without pay; correct?

2 A. They did retro pay, because otherwise it
3 would have been a labor issue.

4 Yes, they made no provision for my
5 survival whatsoever and argued repeatedly whether
6 they were going to pay me or not --

7 THE COURT: Let's really focus on the
8 question.

9 Those three months you weren't paid
10 at the time, however, you were paid retroactive pay?

11 THE WITNESS: Yes, ma'am.

12 MR. SIEGEL: Q. That was by virtue
13 of a decision made by the board in November 2012?

14 A. I presume so.

15 Q. In fact, the board has never made
16 provision to reimburse you for your moving expenses
17 until November 2013 when it agreed to hire you with
18 the offer letter that's been discussed in this
19 proceeding?

20 A. The deadline for the permanent position
21 was repeatedly moved down, first in November of
22 2012, then to January. Then to sometime in the
23 spring.

24 And at no point during this entire year
25 that I was being forced, at considerable expense to

1 the foundation, to fly back and forth weekly and
2 stay in motels, the board made some provision to the
3 fact that it continuously moved down the deadline
4 for application for my permanent position. I
5 applied in the fall or whatever it was of 2012,
6 somewhere at one of those beginning deadlines.

7 In June of 2013, after my son was
8 beginning to have problems because I was gone from
9 home for weeks at a time, I approached the CFO, in
10 writing, and asked to have an advance on my salary,
11 and have it booked as relocation but to be taken out
12 of my salary every pay period, on the proviso at
13 some point the board might actually vote to
14 reimburse me. Because I simply could not go longer
15 than an entire year with my family hanging somewhere
16 in limbo while the board did not make a decision as
17 to whether or not it was going to make a final
18 conclusion. I documented it and put it in writing.

19 And the CFO saw clearly that there was no
20 board directive for reimbursement, which is why I
21 asked it be deducted from my salary, which it was,
22 starting with the very next paycheck. And I think
23 that's all pretty thoroughly documented at the board
24 level.

25 And then the board did subsequently vote

1 to reimburse me. I got back some of the money
2 deducted from my paycheck.

3 Q. Except it was in the November 2013 offer
4 letter that the board agreed to reimburse you for
5 your living expenses; correct?

6 A. Yes.

7 Q. So between the time you began working as
8 interim executive director in August of 2012, and
9 November 15, 2013, you had no written agreement with
10 the board regarding your service as executive
11 director; correct?

12 A. Just the original motion finally agreeing,
13 yes.

14 No, there was no contract, no offer
15 letter.

16 Q. And you had experience working in the
17 legal field; correct?

18 A. Yes.

19 Q. You worked as a paralegal?

20 A. Uh-huh.

21 Q. Is that "yes"?

22 A. Yes.

23 Q. And you feel -- you have felt you had the
24 experience and skills necessary to represent
25 yourself and the foundation in court proceedings in

1 Washington?

2 A. Um, no, I'm not an attorney. That was a
3 situation which the general manager did not provide
4 sufficient notice to even obtain an attorney. It
5 was a landlord/tenant --

6 THE COURT: Stop right there.

7 What is your point, Counselor? She's
8 not an unsophisticated member to this agreement?

9 MR. SIEGEL: Right.

10 THE COURT: I get the point.

11 Move on.

12 MR. SIEGEL: Q. So with respect to
13 the offer letter you signed on November 15th, 2013,
14 were you confused about any of the terms of that
15 agreement?

16 A. I don't think confusion is the relevant
17 argument here.

18 Q. That's my question. I'm not arguing.

19 THE COURT: No. No. He gets to ask
20 you the question.

21 THE WITNESS: I'm sorry.

22 THE COURT: You get to answer it.

23 Were you confused about what you were
24 signing?

25 THE WITNESS: I was not confused.

1 MR. SIEGEL: Okay.

2 Q. Now, with respect to the background check
3 that was undertaken, did you ever see the full
4 document?

5 A. No. I have been very clear about that. I
6 have never seen it.

7 Q. Never seen it?

8 A. At all.

9 Q. Did Heather Grey indicate to you that she
10 had seen it?

11 A. Yes.

12 Q. Did Heather Grey indicate to you that it
13 was her decision not to give it to the entire board?

14 A. Heather Grey indicated she had spoken
15 extensively with the background check company, and
16 the laws are very specific about how a background
17 check may be released. They can send it to the
18 person who had the background check conducted and to
19 whom it is released to it. And it conformed with my
20 experience of conducting a background check earlier
21 in the year, which was in fact the HR people looked
22 at them and gave me results. They did not give me
23 the background check. They said this person checks
24 out, the references check out.

25 THE COURT: What was Heather Grey's

1 position at this time?

2 THE WITNESS: She was the vice chair,
3 because I was still the chair. That meant she acted
4 as chair at most meetings --

5 THE COURT: Was she -- when you said
6 the HR people, was she one of the HR?

7 THE WITNESS: No. No. I'm sorry.

8 We contracted with a company called
9 Holman Human Resources, through our insurance
10 broker, Manuel Insurance, because of what they call
11 our high loss ratio in employment litigation.

12 THE COURT: So --

13 THE WITNESS: She consulted with
14 them, I believe.

15 THE COURT: If I understand your
16 testimony, it's your understanding that Heather
17 Grey, not a HR person, saw your actual background
18 check; correct?

19 THE WITNESS: That's correct.

20 THE COURT: It's also your testimony
21 that she told you that it was very limited under the
22 law who could see it, and you have to get approvals
23 for other board members to see it; correct?

24 THE WITNESS: And that it wasn't
25 appropriate that it be widely disseminated.

1 THE COURT: Did you ever sign
2 something saying that Heather Grey could see it?

3 THE WITNESS: I signed the initial
4 paper that you sign with the background check
5 company that says whomever it is that is conducting
6 the background check has the right to do so.

7 So, yes, I signed it.

8 THE COURT: Did that paperwork say it
9 was the board conducting the background check,
10 Heather Grey conducting the background check?

11 THE WITNESS: It's, I believe,
12 limited to the specified individuals conducting it,
13 but I'm not sure.

14 THE COURT: And we don't have those
15 papers?

16 THE WITNESS: Yeah.

17 THE COURT: What else?

18 Q. You understood, did you not, when you
19 signed the November 15th offer letter, that the
20 background had to be approved by the PNB?

21 A. No, because based on the correspondence
22 that went back and forth for the list for several
23 weeks following the meeting, the entire discussion
24 of "approved" was regarding whether it was an
25 approved background check company, as, i.e., a

1 professional background check conducted by an
2 approved company. That's what the e-mail said.

3 Nobody ever talked about looking at the
4 results. They talked about, is this an approved
5 background check, as in are we doing this normally?

6 THE COURT: Stop. Stop. I
7 understand what the legal argument is going to be
8 here. We don't need Ms. Reese to testify as to --
9 she already said she used the term "vague" within
10 the context of the November agreement. That's
11 really something for argument.

12 MR. SIEGEL: Okay.

13 Q. Now, next question. How did you learn
14 that there was a new, quote, new contract being
15 written? By "new" I mean the contract that you
16 signed on January 30th, 2014.

17 A. Because I had been told for weeks when
18 they got done with this incredibly extensive
19 background check, that a contract would be produced.

20 Q. Who told you that?

21 A. Heather was the only person I talked to,
22 and I only talked to her a few times. But I was
23 told that when they got done with the background
24 check, the next step was the contract in concert
25 with the HR company, that's who we worked with at

1 the national office when we brought up employment
2 agreements.

3 So Heather was dealing with the company
4 that we deal with to do such things. So I had no
5 reason to question it. That's what was going on,
6 they were drawing up a contract.

7 Q. And the sources of the information that
8 the background check or the HR company was going to
9 be working on a new contract was Heather Grey and no
10 one else; is that correct?

11 A. I had to authorize the Human Resources
12 firm, way at the beginning, to talk with Heather as
13 their primary person, because they couldn't involve
14 me, because it was about me.

15 So other than that, like, initial
16 conversation months earlier, no, I can't say that I
17 talked to anybody else. Because Heather was the
18 point person. She was the person conducting the
19 background check --

20 THE COURT: I got it.

21 THE WITNESS: I can't recall speaking
22 to anyone else.

23 MR. SIEGEL: Q. To your knowledge,
24 did the Pacifica National Board authorize Heather
25 Grey, with or without the assistance of the HR

1 company, to create a new contract?

2 A. My understanding from the offer letter,
3 that when I completed my background check, that I
4 would be engaged for three years employment. The
5 presumption was a contract, since that is what my
6 predecessor had, the CFO before me, and the ED had.
7 So I had no reason to think otherwise. And if --

8 THE COURT: You answered the
9 question.

10 Is there really any additional
11 questions? I think we're rereading. Go ahead.

12 MR. SIEGEL: I'm just trying to find
13 out whether she has knowledge that the Pacifica
14 National Board authorized Heather Grey to write a
15 new contract.

16 THE WITNESS: I had no knowledge that
17 anything had to go back to the boards.

18 THE COURT: That's not the question.

19 THE WITNESS: I don't have any
20 knowledge. I wouldn't have expected that.

21 MR. SIEGEL: Q. You were on the
22 Pacifica National Board through January 30; correct?

23 A. Yes. And based on all of our prior
24 experience, these things are delegated to officers.

25 THE COURT: We're going to cut to the

1 chase.

2 You were on the board to
3 January 30th. You were not aware of them
4 authorizing the January 30th agreement; right?

5 THE WITNESS: And I wasn't aware they
6 had to, either.

7 THE COURT: You said that.

8 THE WITNESS: No. There's nothing,
9 on either count, that I was aware of.

10 MR. SIEGEL: Q. And on January 30th
11 when you signed the agreement, where were you
12 physically located?

13 A. Los Angeles. It could have been in
14 Berkeley. I have to look.

15 I was in California, though.

16 Q. How did the agreement come to you for your
17 signature?

18 A. I'm sure she sent it to me electronically.

19 Q. At what time of day did you sign?

20 A. I have to go back and look. It was in the
21 daytime. We were aware --

22 Q. You signed the agreement while you were a
23 member of the board; is that correct?

24 A. I signed it as the person accepting the
25 employment position and not --

1 Q. Ms. Reese, at the time you signed the
2 agreement, you were, were you not, a member of the
3 Pacifica National Board?

4 A. Yes. Of course.

5 Q. Yes, you were. Correct?

6 A. Yes.

7 Q. Okay. And you were aware that in February
8 of 2014, when the agreement that you signed on
9 January 30 went to the board, the board rejected it;
10 is that right?

11 A. I know they took a motion to say they were
12 not going to recognize it, and that lawyers were
13 storming out of the meeting as a result of --

14 Q. Whether the lawyers were storming out of
15 the building or jumping out of the window, my
16 question is simply that you were aware that at the
17 PNB meeting in February of 2014, the board rejected
18 the agreement you signed --

19 A. I was informed sometime later that week,
20 that on Monday, February 10th, without advice of
21 counsel, that the board voted to not recognize my
22 contract and restrict my authority to do my job,
23 beyond even what my job capacities were as interim,
24 to suddenly restrict all of my job capacities.

25 Q. Were you also aware at that very same

1 board meeting, the board ordered you, as the acting
2 interim permanent whatever, executive director, to
3 turn over to the board both the background check and
4 your personnel file; correct?

5 A. I was informed of this. And I did not
6 have possession of either background check.

7 And all I asked Margy for was some --
8 there are legal responsibilities beyond just what
9 the board directs me to do. I have gone through
10 this tangle with directors regarding requests for
11 employee files, and you're required to show
12 legitimate business interest, which could have been
13 done with probably as little as a couple of
14 sentences.

15 Q. What steps --

16 THE COURT: You have one minute here,
17 okay? So decide what you want to do.

18 MR. SIEGEL: Well, if my time is not
19 deducted from the answers, I could finish in a
20 minute.

21 THE COURT: Go ahead.

22 MR. SIEGEL: Q. Isn't it true that
23 you took no action to comply with the board's demand
24 for a background check?

25 A. I met with Margy on several occasions, and

1 I asked her to provide me something in writing as to
2 what the personnel files would be used for,
3 especially since this is an organization well known
4 to put confidential information on the Internet.
5 And I informed her I did not have the background
6 checks, and I could not supply them.

7 Q. Did you ask Heather Grey to supply them?

8 A. I believe Heather had been independently
9 asked by the board to supply them.

10 Q. Did you ask Heather Grey to supply them?

11 A. I do not recall having such a
12 conversation.

13 Q. Finally, with respect to your testimony
14 earlier that you had not heard until today the
15 concerns about your job performance that were
16 outlined by Brian Edwards-Tiekert this morning,
17 isn't it true that at the November 2013 meeting of
18 the Pacifica National Board, you and Raul Salvador
19 sat at adjacent tables in closed session in front of
20 the board and each shared your criticisms of the
21 other's job performance?

22 A. The manner in which Brian phrased that
23 earlier sounded as if there should be something I
24 should aware of in some official capacity.

25 THE COURT: Ms. Reese, you have to

1 answer his question.

2 THE WITNESS: I did not take that to
3 be the inquisition that occurred at the November
4 meeting following my permanent hire. There was
5 three days of --

6 THE COURT: Okay --

7 THE WITNESS: -- of -- I don't even
8 know how to describe the November board meeting.

9 I was harassed following that board
10 meeting, after I placed the CFO on leave for a
11 sexual harassment complaint, literally hundreds of
12 times by board members.

13 I have been harassed from October
14 through January. Literally had to put the printer
15 when I printed out the number of e-mails, all for
16 following the --

17 THE COURT: We are done. Stop.

18 Do you have, like, two minutes brief
19 redirect?

20 REDIRECT EXAMINATION

21 MR. JACOBSON: Q. On this point you just
22 made, do you have any -- what do you anticipate
23 would occur in the worst-case scenario for you in
24 this matter with regard to that subject you just
25 brought up in terms of your staff, what the

1 consequence would be of your nonpresence?

2 A. Well, I --

3 MR. SIEGEL: Objection, calls for
4 speculation.

5 THE COURT: And it's already in the
6 various declarations. I understand the various
7 scenarios that everyone brought. We already had the
8 conversation. It's actually really relevant in some
9 ways and not relevant in others, okay.

10 There's still certain proof that has
11 to be brought. Unless she has something to say
12 that's different than the declaration, it's not
13 helpful.

14 MR. JACOBSON: I'm just trying to
15 economize by saying:

16 Q. You heard the testimony of Ms. Black. Any
17 significant omissions that you would address on
18 those same subjects of the quasi-normal functioning
19 of the office?

20 A. I think a key underlying issue is that we
21 have a very small staff. Almost all have complaints
22 against the CFO. That workplace investigation is
23 still being suppressed as of today. That was an
24 element in the motion that was passed to rehire him
25 after the February board meeting, that he would

1 remain on the leave pending the outcome of the
2 workplace investigation this year with the board.

3 Nobody has ever seen it. The staff is
4 operating after making complaints, again, someone --
5 they're trying to impose on him that -- who was
6 fired after an evaluation, performance evaluation,
7 then rehired by this board who has kidnapped and
8 suppressed the workplace investigation.

9 So this staff is completely exposed,
10 legally, and so is the foundation, for completely
11 failing to adhere to normal workplace practices.

12 So I don't know what to say except I feel
13 my staff -- there will be an combination of
14 potential retaliation, and some people may quit, I
15 don't know.

16 I can tell in a staff where you have five
17 staff members working with a complaint against a
18 supervisor and the organization suppresses the
19 investigation of those complaints, then the person
20 that they feel stands between them and that
21 situation is removed, then obviously --

22 THE COURT: I understand your
23 position very well, the same as it has been for
24 weeks.

25 THE WITNESS: Yes.

1 All that potentiality --

2 MR. JACOBSON: Q. The situation that
3 currently exists, while imperfect, if the Court were
4 to decline the invitation to issue a TRO excluding
5 you, and business as usual could continue, albeit
6 imperfect, in the best interests of the foundation?

7 A. Well, everything is highly imperfect right
8 now. The staff at the rank and file are unable to
9 continue performing their day-to-day functions in
10 terms of accounting, payroll processing, all those
11 issues to do with whether money can be processed.

12 And at a more fundamental level, with what
13 is going on literally in the last few weeks, we have
14 two lawsuits and a complaint to -- one of the things
15 I pride myself on is preventing employment-based
16 problems in the last couple of years.

17 I feel the day-to-day staff would continue
18 with the status quo and feel safe to continue their
19 daily operations. The larger functions of the
20 organization is rather severely compromised by what
21 is going on.

22 Q. I was asking because there are competing
23 motions --

24 A. And I think you understand --

25 THE COURT: Yes.

1 MR. JACOBSON: No further questions.

2 THE COURT: Okay. I don't really
3 feel the need to hear any argument. I heard
4 argument for today. I heard it this morning. I
5 have the papers. I need to go back through your
6 papers, having heard the testimony from today.

7 If there is something that counsel
8 wishes to say specific to evidence that came in
9 during the course of the day, you're welcome to do
10 so.

11 I really need to take time and go
12 back through all of it, having heard the testimony
13 today.

14 MR. JACOBSON: Who wants to go first?

15 MR. SIEGEL: I will go first, I don't
16 mind.

17 The issue I think before you is a
18 pretty straightforward one: Should the Court issue
19 some type of equitable relief with respect to
20 Ms. Reese's employment or not?

21 Obviously the Court is not going to
22 decide at this stage whether the termination of
23 Ms. Reese's employment was lawful or not. She
24 should have her remedy. The foundation has no
25 desire to prevent her from having her remedy.

1 If she feels her contract was
2 violated, her rights as a Christian were violated,
3 she has remedies that can totally provide herself
4 with the relief she needs.

5 The real issue here is whether this
6 organization is going to be allowed to function
7 according to its bylaws and processes.

8 The board majority, by a strong
9 majority, has decided to terminate Ms. Reese's
10 employment and to move on.

11 It's a point of replacement for her,
12 who is attempting to work. It's a point to a CFO
13 who is not interested in harassing or retaliating
14 against its office staff, and I think there's no
15 evidence that that will occur.

16 Ms. Reese, she and her supporters
17 have come in and asked the Court for equitable
18 relief. Well, is there a standard rule? We all
19 learned in law school, a person who seeks equity
20 must do equity, and she's not done equity. Rather
21 than come in and challenge her termination and ask
22 for a TRO, she engaged in self-help. She barricaded
23 herself in the office. She nailed the door shut.
24 She decides who comes in and who leaves. And that's
25 been going on now for well over a month, almost

1 seven weeks. And that is not a rational way to run
2 an organization, and it's not something that the
3 Court can countenance.

4 The organization inherently suffers
5 harm when its board of directors, run by its
6 majority, is not allowed to carry out its lawful
7 functions which it wishes to do.

8 With respect to prevailing on the
9 merits, I think it's clear. We have shown you that
10 there was an agreement made in November. The Court
11 can read the agreement. The agreement says nothing
12 about a subsequent agreement. The agreement says in
13 fact that it isn't an agreement, and that it
14 encompasses all material terms and conditions of her
15 employment.

16 It is what I would describe to the
17 Court as an integrated employment agreement.

18 There is no need for any further
19 agreement except to alter the terms of the agreement
20 that was approved by the board. And that is
21 important.

22 This isn't a simple offer letter that
23 says: We offer you the job; if you accept, we will
24 negotiate an agreement later.

25 It lays out all material terms and

1 conditions, even the much-wanted arbitration clause
2 that has been at issue here. So there was nothing
3 left to be done.

4 The agreement, the only reasonable
5 construction of the agreement is that it includes a
6 provision indicating that there must be a background
7 approved by the PNB, not approved by some company
8 somewhere, not approved by Heather Grey who was
9 never delegated that responsibility. It says
10 approved by the PNB.

11 It's clear that the agreement was
12 never approved by the PNB, and it's clear that the
13 PNB with different members, no doubt, has
14 consistently insisted on its right to have the
15 background check.

16 And you have heard, there's no
17 disagreement that even in February the PNB directed
18 Ms. Reese, Ms. Grey to provide the background check.
19 That still has not happened. So she has not met the
20 requirements of the offer letter to become a
21 permanent employee of Pacifica.

22 With respect to the January
23 agreement, again, you have heard without any --

24 THE COURT: I don't need to hear more
25 from you on that.

1 MR. SIEGEL: Okay. And it was never
2 approved.

3 The last thing I want to say, then,
4 is that with respect to the claims regarding the
5 rights of this executive director, Article 9,
6 Section 3 of the bylaws, and this has not been
7 emphasized, indicates clearly the executive director
8 may be removed with or without cause.

9 So if the Court concludes, as I
10 believe it will, that the January 30 agreement was
11 not valid when made, or even if it was valid when
12 made, was rejected by the board in the February.
13 And the bylaws make it clear the Board has authority
14 over such agreements.

15 The only conclusion is that in March,
16 when the board decided to terminate Ms. Reese's
17 employment, she was not functioning --

18 THE COURT: Is there anything --

19 MR. SIEGEL: -- with a valid
20 contract.

21 THE COURT: -- as to whether that
22 meeting was properly called and noticed?

23 MR. SIEGEL: The evidence before you
24 is that it was, it was a continuation meeting of the
25 validly called March 6th -- the opposition has not

1 shown it wasn't validly called.

2 THE COURT: All right.

3 MS. ANDERSON: So with respect to
4 Pacifica Directors for Good Governance, I haven't
5 heard a whole lot here today, until recently,
6 regarding the intent of the directors who brought
7 this action.

8 This was not an action brought by
9 Ms. Reese. This is not with respect to her
10 employment. She has not testified to personal
11 grievances. Whether we're talking about two sides
12 here or three, it is very clear that at least
13 Ms. Reese and the Directors for Good Governance, the
14 plaintiffs, are here in the best interests of -- to
15 represent the best interests of Pacifica.

16 Again, I can't emphasize strongly
17 enough, this is not an action about Ms. Reese's
18 termination or whether she was in a position to even
19 be terminated.

20 The underlying issues are that the
21 board has -- the seated board has a demonstrated
22 history of ignoring the bylaws, of ignoring Robert's
23 Rules of Order.

24 THE COURT: I invited you last time
25 you were here to think about filing an Amended

1 Complaint, because as I noted at the time, a lot of
2 the relief sought can't be granted the way it's
3 currently --

4 MS. ANDERSON: We have -- have you
5 not -- that was filed on the 15th of April.

6 THE COURT: That's the amended --
7 first amendment?

8 MS. ANDERSON: Yes.

9 THE COURT: Go ahead.

10 MS. ANDERSON: And so continuing, the
11 fact that Ms. Reese's termination -- the issues with
12 the CFO, those are all products of the underlying
13 issues that we're here to address. They're products
14 of the misconduct of the defendant directors, each
15 and all of them. And that -- that is something I
16 just wanted to remind the Court. That is why we're
17 here.

18 There hasn't been much focus on that
19 here today, but I want to make it clear this is not
20 an employment issue. We're not here to force
21 Ms. Reese to continue her employment, or to, you
22 know, force, as counsel admitted in their
23 opposition, to rehire her.

24 It's about undoing any actions that
25 were wrongly taken, and setting -- setting a --

1 correcting the tack that the board is on, and
2 removing, you know, ultimately, directors who have
3 acted against the organization's interests and who
4 have conflicts of interest, et cetera, as presented
5 in the First Amended Complaint.

6 THE COURT: All right, sir.

7 MR. JACOBSON: Your Honor, Mr. Siegel
8 alluded to the choice Ms. Reese made, he calls it
9 self-help.

10 The context is significant. A
11 lawsuit was prepared by nine directors which framed
12 for this Court, expeditiously, the issues related
13 to, in part, to Ms. Reese's status as the executive
14 director. One of those nine testified today.

15 So it was not from her perspective
16 urgent to bring her own motion for specific
17 performance and to be permitted for declaratory or
18 injunctive relief in her own right. And in that
19 sense, she has personally, as they say, not yet
20 begun to fight.

21 However, it's highly significant that
22 what has happened here on eight days' notice is we
23 had almost a mini version of a preview trial because
24 the other side has insisted that the status quo be
25 altered.

1 It is, as you heard today, a
2 reasonably functional status quo, certainly not
3 ideal. But it isn't essential that -- from
4 Ms. Reese's perspective, that you grant the
5 directors' motion; or preliminarily, it's sufficient
6 if you were to deny the TRO. And what does that do
7 for us? It gives Ms. Reese a fair opportunity --
8 you talked about the length of the opposition.

9 It's because, candidly, it felt so
10 important to educate you on the bigger picture and
11 all of her legal arguments, which are not
12 coterminous with those of PDGG.

13 So my minimum request is that
14 Ms. Reese be given a fair opportunity, in properly
15 paginated at length documents, to bring her own
16 injunctive relief motion to regularize her status.
17 Because you have heard a preview of testimony that
18 is very troubling to me.

19 Ms. Rosenberg said that the board
20 passed her motion that a contract would be in the
21 offing, and that contract was signed. And we've
22 also heard testimony about the section of the bylaws
23 that says a termination has to be subject to the
24 contract rights of the terminated employee.

25 They did this termination

1 irrespective of the contract rights.

2 THE COURT: It's obviously on the
3 table whether that January 30th agreement was
4 actually valid.

5 MR. JACOBSON: Yes.

6 THE COURT: There's a dispute on the
7 table whether the November one is in place either.

8 MR. JACOBSON: This, I think, adds to
9 the importance of not rushing to judgment, in the
10 sense that it will be irreversible --

11 THE COURT: So here is the deal. You
12 need to make a decision. One doesn't want to rush
13 to judgment, but both sides have chosen to put in
14 front of me matters that have to be decided. And
15 part of that is the likelihood of prevailing on the
16 merits. A decision has to be made.

17 MR. JACOBSON: And in connection with
18 that, I offered you some language about how to
19 conduct that balancing test. And to me, what is so
20 intelligent, if I might say, about Judge Cane's
21 (phonetic) formulation, and the way I applied it,
22 not that my application is so -- but it makes a lot
23 of sense.

24 We can do this eviction of Ms. Reese
25 in a matter of weeks if you find, after a proper

1 vetting of this -- which candidly cannot be done in
2 a big -- we've had a big, you know, dustup here.
3 It's been eight days in length.

4 The situation has been going on
5 longer, but our legal dustup has all happened -- I'm
6 talking now about my part of it -- eight days.

7 In fairness, that would be so
8 catastrophic to my client if you were to grant this
9 without having her, in her own rights, have an
10 opportunity to entreat you to show in more detail
11 the illegality of the termination, the propriety of
12 her contract, and the illegality of the way in which
13 they failed to give her what they call the common
14 law of right to fair procedure. All these things
15 were violated.

16 And so that you can have every
17 opportunity, a few weeks from now, in which there is
18 a functioning situation. No one is saying it's
19 ideal, but it's a modus vivendi. You heard
20 testimony about Ms. Wilkinson talking to the
21 accountant, and if you would -- had a longer time,
22 you would have heard from Tamika.

23 People are relating to each other.
24 It's not like there's a friction situation and
25 Pacifica is, in any way, is grinding to some type of

1 halt. No.

2 So what I beg of you is, further, not
3 necessarily a long opportunity for Ms. Reese to --
4 who is the protagonist here, in many respects, not
5 to slight the PDGG directors, but you see there is
6 alignment in general but not in all particulars.
7 And you can certainly see how Ms. Reese's reputation
8 would be trashed. Once an order goes out, she will
9 never get her reputation back; it's impossible.

10 On the other hand, what is the harm
11 to them for three or four more weeks while you can
12 really vet this properly and make a decision that is
13 an honest decision on the probability of success on
14 the merits?

15 For them to do all this in eight days
16 would be a coup on, from their perspective, on top
17 of the original coup. You know, it's not fair.

18 She deserves a chance because she
19 would never get her reputation back.

20 What if you find later she was right
21 and she merits reinstatement? And I have shown you
22 case law that she arguably fits within, she can
23 never be reinstated as a practical matter.

24 And if you look at the Coleman case,
25 you see what happened to him. He got an arbitration

1 award that said he would be reinstated, and he
2 basically gave up and sued for damages in court
3 because they refused to follow the arbitrator's
4 order for reinstatement. And you can just see what
5 would happen. Once there's a break, she will never
6 be reinstated, and that's unfair.

7 THE COURT: Mr. Siegel and Mr. Yee,
8 briefly, on the issue of harm in allowing the
9 current circumstances to stay as they are.

10 MR. SIEGEL: We brought, today, the
11 acting executive director and the CFO. The offer of
12 proof is that people don't listen to them. They
13 contact the people in the national office, one whom
14 you heard today, and they may or may not get a
15 response. They make decisions about who is to get a
16 paycheck. Those decisions are countermanded by
17 people reporting to Ms. Reese.

18 It's chaotic -- look, people get
19 fired all the time, I mean justly, and unjustly.
20 The courts have figured out a way to deal with it.
21 The person who is fired brings a lawsuit. If they
22 prove the termination was wrongful, they obtain
23 damages.

24 This situation is untenable. I don't
25 care whether you have a hearing that lasts for eight

1 hours or eight days. You have a situation where the
2 executive director, who is the highest employee of
3 the organization and reports to the board of
4 directors and the executive director, and the board
5 of directors are at loggerheads.

6 THE COURT: That's quite clear. It's
7 quite clear that everybody feels strongly and
8 passionately, and I'm sure rightly so. This is an
9 important organization. I appreciate very much that
10 people are throwing themselves behind it, on
11 whatever side they are on.

12 But all right, Ms. Anderson, anything
13 further you are offering?

14 MS. ANDERSON: To follow up on that,
15 I didn't hear any statement of harm to the
16 organization. All I heard is that Ms. Wilkinson
17 doesn't like that people are not listening to her.
18 And as they've already presented, they do that
19 because they don't know that they should.

20 And they follow Ms. Reese because, as
21 far as they know, she's the rightful executive
22 director, or interim executive director as she was.
23 And in order to keep the operations going and to
24 continue doing their jobs and not feel at risk of
25 sexual harassment or termination or whatnot, as

1 testified, they follow Ms. Reese.

2 And again, I haven't seen any
3 evidence presented today there would be any harm in
4 leaving things as they are.

5 THE COURT: I need to review
6 Ms. Reese's papers that were late filed in the
7 course of the day yesterday. And I will take this
8 under consideration and issue orders as soon as I
9 possibly can.

10 Thank you very much.

11 MS. ANDERSON: Thank you, Your Honor.

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1 State of California)
2 County of Alameda)

3 I, Patty Lee Hubble, Reporter for the
4 Superior Court of the State of California, City and
5 County of San Francisco, do hereby certify:

6 That I was present at the time of the above
7 proceedings;

8 That I took down in machine shorthand notes all
9 proceedings had and testimony given;

10 That I thereafter transcribed said shorthand
11 notes with the aid of a computer;

12 That the above and foregoing is a full, true,
13 and correct transcription of said shorthand notes,
14 and a full, true, and correct transcript of all
15 proceedings had and testimony taken;

16 That I am not a party to the action or related
17 to a party or counsel;

18 That I have no financial or other interest in
19 the outcome of the action.

20

21 Dated: May 18, 2014

22

23

24 _____

25 Patty Lee Hubble, CSR No. 3058

