

1 Summer Reese  
2 449 – 43rd St.  
3 Richmond, California 94805  
4 (510) 680-5019  
5 Cross-defendant in pro. per.  
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9 **SUPERIOR COURT OF STATE OF CALIFORNIA, COUNTY OF ALAMEDA**  
10 **RENE C. DAVIDSON COURTHOUSE, UNLIMITED CIVIL JURISDICTION**  
11

12 PACIFICA DIRECTORS FOR GOOD )  
13 GOVERNANCE, an Unincorporated Association; )

14 Plaintiff )

15 v. )

16 PACIFICA FOUNDATION RADIO, a California )  
17 Nonprofit Public Benefit Corporation; )

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

27 HANK LAMB and TONY NORMAN, as )  
28 individuals and Directors de facto of said )  
29 Corporation; )

30 Defendants )

31 PACIFICA FOUNDATION RADIO, )

32 Cross-complainant )

v. )

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

Cross-defendants )

Case No. HG14720131

**NOTICE OF MOTION  
AND MOTION TO SET  
ASIDE THE HONORABLE  
IOANA PETROU'S VOID  
JUNE 3, 2014 ORDER ;**

**DECLARATION OF  
SUMMER REESE ;**

**POINTS AND AUTHORITIES  
IN SUPPORT OF MOTION**

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

Reservation #: R-1574619

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

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

1 the matter can be heard, Summer Reese (“Reese”), the cross-defendant in said matter, will appear in  
2 Department 15 of the Court, situated at 1221 Oak Street, Third Floor in Oakland, California and will  
3 move for an order setting aside the void order made June 3, 2014 by the Honorable Ioana Petrou.

4 Said motion is made on the grounds that because the PFR Board for some 15 months hired  
5 Reese as Executive Director on an “acting” or “interim” basis and because there is no dispute she  
6 received a majority vote electing her as Executive Director on November 8, 2013 for a period of  
7 three years at an annual salary of \$105,000 and because “[a]n officer-elect takes possession of his  
8 office immediately upon his election’s becoming final, unless the bylaws or other rules specify a  
9 later time” (RONR § 46, p. 444) and no bylaw or rule specifies a later time at which Reese should  
10 permanently take office than completion of the background check specified in the November 11,  
11 2013 “offer letter” (hereinafter the Nov. 15, 2013 Contract or 2013 Contract) and because Gray and  
12 Uzzell by virtue of their agency relationship carried forward the ordinary business transactions in  
13 their duties under the 2013 Contract and Bylaws, therefore, the Board created in the two said agents  
14 the actual authority to enter into the said 2014 Contract.

15 Said motion is made on the further grounds that because ““corporate bylaws are to be  
16 construed according to the general rules governing the construction of statutes and contracts”” (*Singh*  
17 *v. Singh* (App. 1 Dist. 2004) 114 Cal.App.4th 1264, 1294) and because the Bylaws at §§ 5 and 8 of  
18 article 6 provide “the approval of a majority of the Board present and voting shall be required for  
19 any [action] of the Board” with the sole exception (*id.*, art. 6, § 8) of unanimous consent to take  
20 action without discussion or debate thereon and thus provide the usual basis of determining the vote  
21 by a majority of those “present and voting” with that exception as to unanimity and because the very  
22 use of the phrase “present and voting” (RONR § 44, p. 402) implies its technical significance  
23 (*American-Hawaiian Steamship Co. v. Home Sav. and Loan Assn.* (App. 2 Dist. 1974) 38  
24 Cal.App.3d 73, 82), therefore, that phrase is not to be construed literally but denotes the voting basis  
25 required for all but one of the modes whereby the PFR Board may take action whether in unnoticed  
26 adjourned meeting or noticed nonadjourned meeting.

27 Said motion is made on the further grounds that because the character and nature of a  
28 Director’s right to notice of meeting and vote on action proposed there embraces 30 days’ notice of  
29 regular meeting specifying purposes thereof and 7 days’ notice of special meeting specifying  
30 purpose thereof but no notice of adjourned meeting (RONR § 22, p. 244) which may as other  
31 meetings be held “at such other times as may be necessary in order to carry out the duties of the  
32 Board” (Bylaws art. 5, § E(7)) and because PFR is a nonprofit public benefit corporation and can

1 employ any mode whereby the majority of a corporate board may take official action provided such  
2 mode is not in conflict with the law or Bylaws or applicable provisions of RONR, therefore, Gray's  
3 carrying forward the ordinary business incidental to the Board's November 8, 2013 election of Reese  
4 in checking her background as approved by the Board and permanently hiring her is compatible in  
5 every way with Directors' rights even if performed at meeting without written notice to all Directors  
6 and Gray fully performed her fiduciary and contractual duties precluding the Court's June 3rd  
7 finding of constructive "fraud" therein so that the June 3rd order made with respect thereto is void  
8 and should be set aside.

9 Said motion is also made on the grounds that because 12 Directors de jure could either meet  
10 without written notice at adjourned meeting or with notice at nonadjourned meeting and because the  
11 Board did hold four or more meetings in January of 2014 at which those Directors presumptively  
12 gave their informal approval and consent to the execution of the 2014 Contract and because the 2014  
13 Contract is therefore valid and binding on PFR even assuming *arguendo* Gray and Uzzell lacked  
14 authority to execute it (*Countryman v. California Trona Co.* (App. 1 Dist. 1918) 35 Cal.App. 728,  
15 734) and the Directors were ignorant of the contents thereof (Civ. Code, § 2315; *Warshauer v. Bauer*  
16 *Constr. Co.* (App. 1 Dist. 1960) 179 Cal.App.2d 44, 49—50), therefore, said Contract could be and  
17 presumptively is duly ratified notwithstanding Cross-complainant's apparent allegations about  
18 "fraud" in the execution thereof.

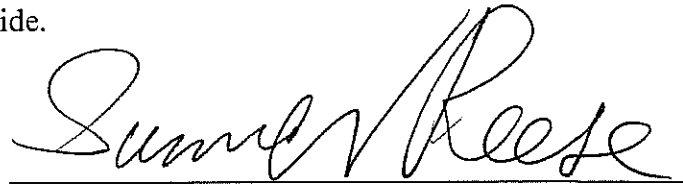
19 Said motion is made on the further grounds that because Cross-complainant's allegations of  
20 "fraud" appear to allege such occurred in the execution of said 2014 Contract and because attorneys  
21 Dan Siegel and Tony Norman sat in Director-seats on the Board of PFR and had a duty to determine  
22 the applicability of its Bylaws and RONR provisions (Bylaws, art. 16) to the foregoing undisputed  
23 facts and failed to utilize reasonable opportunities to do so at meetings held after Reese's said  
24 November 8, 2013 election and prior to execution of her said January 30, 2014 Contract to  
25 permanently employ her as Executive Director because said attorneys neither objected to her  
26 qualifications for the position (RONR § 46, p. 445) nor relied on general counsel Terry Gross'  
27 advice she is qualified therefor and because said attorneys did not rely on Gray's January 10, 2014  
28 report as to the special committee's completion of its check of Reese's background as was  
29 reasonable to do (1 ALI, Principles of Corporate Governance: Analysis and Recommendations  
30 (1994) § 4.02, com. i, p. 194) but insisted said report as to Gray's "account of work done" not be  
31 filed but multiple inquiries be made thereof notwithstanding PFR's parliamentary authority (RONR  
32 § 51, p. 525) requiring only that it be filed, therefore, said attorneys conducted themselves in an

1 objectively unreasonable manner and any failure which resulted therefrom to learn of the character  
2 and nature of the 2014 Contract does not overcome their manifestation of assent thereto but  
3 precludes a finding that “fraud” occurred in the execution thereof (*Rosenthal v. Great Western Fin.*  
4 *Securities Corp.* (1996) 14 Cal.4th 394, 423) so that the June 3rd finding should be reversed and the  
5 order set aside.

6 Said motion is also made on the grounds that in addition to Siegel and Norman, five  
7 Defendant-individuals who also sat on the Board then were aware they had only limited knowledge  
8 of the Bylaws and provisions of RONR adopted thereunder but treated their limited knowledge as  
9 sufficient and because their said treatment may have resulted in their mistaken assent (Rest.2d  
10 Contract, § 154, subd. (b), pp. 402-403) to delegate to Heather Gray the authority as (acting) chair to  
11 carry forward any ordinary business incident to Reese’s election as permanent Executive Director  
12 and because said five Directors had interacted with Reese while in that position on an “acting” or  
13 “interim” basis for between 9 and 15 months and thus did know the character of the 2014 Contract  
14 employing her in the position and because no formal motion was made with respect to drafting the  
15 terms thereof, therefore, any failure of those five Defendant-individuals to learn thereof is caused by  
16 their said objectively unreasonable conduct, which “precludes a finding the contract is void for fraud  
17 in the execution” (*Rosenthal v. Great Western Fin. Securities Corp.* (*supra*) 14 Cal.4th at 423) so  
18 that the June 3rd finding of such fraud should be reversed and order set aside.

19 Said motion is made on the further grounds that a “fraud in the execution” theory is not  
20 viable unless contractual terms which an ostensibly assenting party does not know are “essential” to  
21 such contract (Rest.2d Contracts, § 163, p. 443) and because “an employment contract need not  
22 detail every condition of employment” (*Travelers Ins. Co. v. WCAB* (1967) 68 Cal.2d 7, 17) but may  
23 leave employee duties unspecified without creating any uncertainty affecting its validity and because  
24 the 2013 Contract need not specify all terms of compensation (in addition to the stated \$105,000  
25 annual salary) where these terms are not uncertain (*Wilson v. Wilson* (App. 1 Dist. 1950) 96  
26 Cal.App.2d 589, 593) but are identical to those to which PFR’s other national staff are entitled and  
27 because the 2013 Contract was made in contemplation of the 2014 Contract and pursuant to Bylaws  
28 recognizing “the rights, if any, of an officer, under any contract of employment” (*id.*, art. 9, § 3) and  
29 Reese’s rights to termination for cause under article V of the 2014 Contract and because this and the  
30 other remaining terms of said Contract are unessential and reasonable and so can be forced on each  
31 party (*Boyd v. Bevilacqua* (App. 1 Dist. 1966) 247 Cal.App.2d 272, 286), therefore, the June 3rd  
32 finding about fraud occurring in the execution of said Contract should be reversed and the order

1 based on such finding is void and should be set aside.

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5 Summer Reese, Cross-defendant in pro. per.

6 **DECLARATION OF SUMMER REESE**

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8 I, Summer Reese, the undersigned, declare:

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

10 2. The purpose of this Declaration is to allege facts in support of my Motion to Set Aside  
11 the Honorable Ioana Petrou's Void June 3, 2014 Order.

12 3. On February 22—25, 2013, the Board of Directors of Pacifica Foundation Radio held a  
13 session of open and closed meetings. In its closed meeting during those dates, discussion was had  
14 regarding my nonapplication for a Social Security number. The sense of these closed meetings is  
15 that it does not affect Pacifica Foundation Radio. Andy Gold, who at that time was General Counsel  
16 for Pacifica Foundation Radio and in attendance, stated his agreement with that sense, advising the  
17 other attendees that the only thing employers are required to do is to ask for a number, and that this  
18 was done.

19 4. On November 8, 2013, the Board of Directors of Pacifica Foundation Radio held an  
20 election for Executive Director. Eleven Directors—Teresa Allen, Carolyn Birden, Janet Coleman,  
21 John Cromshaw, Janis Lane Ewart, Heather Gray, Luzette King, Tracy Rosenberg, Manijeh Saba,  
22 Katea Stitt, and Richard Uzzell—voted to elect me to the position. Accordingly, on November 15,  
23 2013 I signed a contract providing that I fill the position upon completing a background check as  
24 approved by the Board.

25 5. On January 10, 2014, Ms. Gray submitted to the Board her written report accounting  
26 for the work she did in completing the check. Her completion of that work is as approved by the  
27 Board.

28 6. At a meeting on January 20, 2014, the Board received Ms. Gray's report. However, the  
29 sense and apparent intent of nine then-directors—Lydia Brazon, Benito Diaz, Brian Edwards  
30 Tiekert, Nancy Hentschel, Cerene Roberts, Brenda Medina, Tony Norman (de facto), Dan Siegel,  
31 and Margy Wilkinson—was merely to balk at her January 10th report, question its veracity, and  
32 raise unfounded questions about every aspect of the background check. Nevertheless, the Board, by

1 the eleven Directors mentioned in paragraph 5 above, as well as myself who then held a Director-  
2 seat, approved of the Board's receipt of Gray's said report.

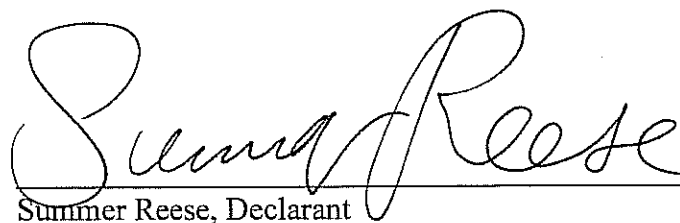
3 7. On an individual, informal basis, twelve directors—Teresa Allen, Jessica Apollinar,  
4 Carolyn Birden, Janet Coleman, John Cromshaw, Janis Lane Ewart, Luzette King, Tracy Rosenberg,  
5 Manijeh Saba, Katea Stitt, and Heather Gray —approved of the content of the January 30, 2014  
6 Contract to hire me as Executive Director for three years.

7 8. A copy of said contract is attached to the Plaintiff PDGG's complaint and marked  
8 Exhibit "A1".

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

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

14 Executed on January 20, 2015 at Richmond, California.

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19 Summer Reese, Declarant

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**T A B L E O F C O N T E N T S**  
**OF MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO**  
**SET ASIDE THE HONORABLE IOANA PETROU'S JUNE 3, 2014 VOID ORDER**

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5 1. Where judicial notice is requested of Cross-complainant's Articles of Incorporation, said

6 Articles, showing it is governed by Corporation Code § 5214, is a matter of record..... 1

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8 2. Gray and Uzzell had the implied actual authority to enter into the 2014 Contract

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10 3. Assuming *arguendo* Gray and Uzzell lacked actual authority to sign the 2014 Contract,

11 they still had apparent authority to do so..... 2

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13 4. Neither the Bylaws nor RONR prohibited ratification effected by a majority of Directors,

14 though made outside of noticed meeting..... 3

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16 a. Board can take action in or out of formal meeting, provided Directors are "present and

17 voting"

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19 b. Directors have right to be apprised of purposes of every call of meeting of the Board, but

20 not to be given notice of adjourned Board meeting held for previously noticed purpose..... 4

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22 c. Gray's expeditious conduct of Board action in permanently hiring Reese was compatible

23 in every way with Directors' rights, so that no constructive or other "fraud" should be

24 presumed therefrom..... 6

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26 5. Even assuming *arguendo* Gray and Uzzell lacked any authority to enter into the January

27 30, 2014 Contract, a majority of the then-serving Directors could and presumptively did

28 discuss and ratify said Contract later that day..... 7

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30 6. The Court is precluded from finding fraud occurred in the execution of the January 30,

31 2014 Contract or declaring it void where Defendant-individuals had reasonable

32 opportunity to learn of its nature and failed to do so..... 8

a. Cross-complainant's purported "fraud in the execution" theory..... 9

b. Defendant-individuals had reasonable opportunity to obtain knowledge of the Bylaws and  
RONR..... 10

c. Defendant-individuals had reasonable opportunity to learn of the nature of the 2014  
Contract and any failure to learn thereof was due to their objectively unreasonable conduct... 11

d. No fraud could have occurred in the execution of the 2014 Contract where no provision  
thereof which is different from the 2013 Contract is either "materially" different therefrom  
or essential to an employment contract..... 13

Conclusion..... 15

**T A B L E O F A U T H O R I T I E S**  
**OF MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO**  
**SET ASIDE THE HONORABLE IOANA PETROU’S VOID JUNE 3, 2014 ORDER**

U.S. Courts of Appeals

*Cohen v. Wedbush, Noble, Cooke, Inc.* (9th Cir. 1988) 841 F.2d 282, 287 ..... 11  
*McKinney v. Gannett Co., Inc.* (10th Cir. 1987) 817 F.2d 659 ..... 14  
*Southwest Administrators, Inc. v. Rozay’s Transfer* (9th Cir. 1986) 791 F.2d 769, 774 ..... 9  
*Thomas v. I.N.S.* (9th Cir. 1994) 35 F.3d 1332, 1339 ..... 1  
*Ticknor v. Choice Hotels Internat., Inc.* (9th Cir. 2001) 265 F.3d 931, 941 ..... 11

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*Black v. Harrison Home Co.* (1909) 155 Cal. 121, 123 ..... 2  
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*Crowley v. Genesee Min. Co.* (1880) 55 Cal. 273, 275—276 ..... 8, 9  
*Dyna-Med v. Fair Hous. Com.* (1987) 43 Cal.3d 1379, 1393—1394 ..... 3  
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*McFadden v. Board of Supervisors of L.A. County* (1888) 74 Cal. 571, 574 ..... 10  
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2	<i>Seal of Gold Mining Co. v. Slater</i> (1911) 161 Cal. 621.....	5
3	<i>Seymour v. Oelrichs</i> (1910) 156 Cal. 782, 793—800.....	7
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5	<i>Snukal v. Flightways Mfg., Inc.</i> (2000) 23 Cal.4th 754, 784, fn. 11.....	2, 3
6	<i>Travelers Ins. Co. v. WCAB</i> (1967) 68 Cal.2d 7, 17.....	13, 14
7	<u>California Court of Appeal</u>	
8	<i>American-Hawaiian Steamship Co. v. Home Sav. and Loan Assn.</i> (App. 2 Dist. 1974) 38	
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10	<i>Boyd v. Bevilacqua</i> (App. 1 Dist. 1966) 247 Cal.App.2d 272, 286.....	15
11	<i>Briano v. Rubio</i> (App. 6 Dist. 1996) 46 Cal.App.4th 1167, 1179.....	12
12	<i>Butler v. Solano Land Co.</i> (App. 1 Dist. 1920) 46 Cal.App. 171, 173.....	2
13	<i>Conservatorship of O'Connor</i> (App. 1 Dist. 1996) 48 Cal.App.4th 1076, 1098.....	11
14	<i>Countryman v. California Trona Co.</i> (App. 1 Dist. 1918) 35 Cal.App. 728, 734.....	8, 9
15	<i>Floyd v. Tierra Grande Dev. Co.</i> (App. 1 Dist. 1921) 51 Cal.App. 654, 663.....	8
16	<i>Gajanich v. Gregory</i> (App. 1 Dist. 1931) 116 Cal.App. 622, 633.....	10
17	<i>Gardiner v. Gaither</i> (App. 1 Dist. 1958) 162 Cal.App.2d 607, 622—623.....	4
18	<i>Gold v. L.A. Democratic League</i> (App. 2 Dist. 1966) 49 Cal.App.2d 365, 373.....	6
19	<i>Gordon v. Wasserman</i> (1957) 153 Cal.App.2d 328.....	14
20	<i>Greve v. Taft Realty Co.</i> (App. 3 Dist. 1929) 101 Cal.App. 343, 352.....	8
21	<i>Inglewood Teachers Assn. v. PERB</i> (App. 2 Dist. 1991) 227 Cal.App.3d 767, 776.....	8
22	<i>Johanson v. Riverside County Select Groves</i> (App. 4 Dist. 1935) 4 Cal.App.2d 114.....	4, 9
23	<i>Lingsch v. Savage</i> (App. 1 Dist. 1963) 213 Cal.App.2d 729, 738.....	10
24	<i>Lunden v. County of L.A.</i> (App. 2 Dist. 1965) 233 Cal.App.2d 811, 816.....	3
25	<i>Orthopedic Sys., Inc. v. Schlein</i> (App. 1 Dist. 2011) 202 Cal.App.4th 529, 545.....	12
26	<i>Price v. Hibbs</i> (App. 5 Dist. 1964) 225 Cal.App.2d 209, 221—222.....	15
27	<i>Rosencrans v. Dover Images, Ltd.</i> (App. 4 Dist. 2011) 192 Cal.App.4th 1072, 1080.....	10
28	<i>Singh v. Singh</i> (App. 1 Dist. 2004) 114 Cal.App.4th 1264, 1294.....	3
29	<i>Taff v. Atlas Assurance Co.</i> (App. 2 Dist. 1943) 58 Cal.App.2d 696, 702.....	10
30	<i>Warren v. Merrill</i> (App. 2 Dist. 2006) 143 Cal.App.4th 96, 109.....	6
31	<i>Warshauer v. Bauer Constr. Co. (supra)</i> 179 Cal.App.2d at 49—50.....	1, 8
32	<i>Whittaker v. Otto (supra)</i> 188 Cal.App.2d 619, 623.....	2, 11, 13

1	<i>Wilson v. Wilson</i> (App. 1 Dist. 1950) 96 Cal.App.2d 589, 593.....	14
2	<i>P a c i f i c a F o u n d a t i o n R a d i o</i>	
3	<u>Articles of Incorporation</u>	
4	<i>Id.</i> .....	1, 6, 7, 10
5	<u>Bylaws</u>	
6	<i>Id.</i> .....	5, 7, 10
7	Art. 1, § 2.....	6
8	Art. 5, § E(7).....	5
9	Art. 6, § 4.....	5
10	Art. 6, § 5.....	4, 5, 9
11	<i>Id.</i> , first sentence.....	4
12	<i>Id.</i> , second sentence.....	4, 6
13	Art. 6, § 6.....	4
14	Art. 6, § 8.....	3, 4, 5, 7
15	Art. 9, § 3.....	15
16	<u>Contract Signed November 15, 2013</u>	
17	<i>Id.</i> .....	6, 11, 12, 15
18	<i>Id.</i> (i.e., Nov. 11, 2013 “offer letter”).....	14
19	<u>Contract Signed January 30, 2014</u>	
20	<i>Id.</i> .....	1, 2, 6, 7, 10, 11, 15
21	<i>Id.</i> , art. V.....	15
22	<i>Id.</i> , art. VII.....	15
23	<i>Id.</i> , VIII.....	15
24	Heather Gray’s and Richard Uzzell’s signatures thereon.....	1
25	<u>Board of Directors (“Board”)</u>	
26	Minutes, Feb. 22—25, 2013 (closed) meeting, p. 4.....	13
27	Nov. 8, 2013 vote.....	15
28	Majority of 11 Directors de jure.....	2, 13
29	<u>Robert’s Rules of Order Newly Revised (11th ed., 2011) (“RONR”)</u>	
30	<i>Id.</i> .....	5, 10
31	Any provision of RONR (but those in § 49 thereof which are superseded by the Bylaws).....	7
32	§ 9, p. 94.....	5

1	§ 22.....	11
2	<i>Id.</i> , at p. 244.....	5
3	§ 23, p. 251.....	12
4	§ 44, p. 402.....	4, 9
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6	<i>Id.</i> , at p. 445.....	12
7	§ 47, p. 450.....	2, 4, 6
8	§ 49.....	5
9	<i>Id.</i> , at pp. 486—487.....	3
10	<i>Id.</i> , at p. 487.....	4
11	§ 51, p. 525.....	6, 12

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15	1 ALI, Principles of Corporate Governance: Analysis and Recommendations (1994) §	
16	4.01(b), com. b, p. 170.....	12
17	<i>Id.</i> , § 4.02(a), p. 188.....	12
18	<i>Id.</i> , § 4.02, com. i, p. 194.....	12

Cook, William

20	3 Treatise on the Law of Corporations (7th ed. 1913; Cook, William) § 713a, pp. 2458—	
21	2459, and non-California authorities cited therein.....	8

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23	<i>CDB Software, Inc. v. Kroll</i> (Tex.App.—Hous. 1998) 992 S.W.2d 31, 40.....	8
24	<i>United Growers' Co. v. Eisner</i> (1897) 22 N. Y. App. Div. 1.....	5

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26	§ 5329.10, p. 601.....	12
27	§ 5329.15, p. 603.....	12
28	§ 5336, pp. 617—618.....	12
29	§ 5344, p. 628.....	12

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31	85 Ops.Cal.Atty.Gen. 162, 169 (2002) and authorities cited therein.....	1
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1	§ 35.....	1
2	§ 50.....	1
3	<u>Restatement of the Law of Agency, Third Edition</u>	
4	§ 3.03, p. 176.....	1
5	§ 3.03, p. 177.....	3
6	<u>Restatement of the Law of Contracts, Second Edition</u>	
7	§ 154, subd. (b), pp. 402—403.....	11
8	§ 163, p. 443.....	9, 11, 13
9	///	
10	///	
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12	///	
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1 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO  
2 SET ASIDE THE HONORABLE IOANA PETROU'S JUNE 3, 2014 VOID ORDER

3 *1. Where judicial notice is requested of Cross-complainant's Articles of Incorporation, said*  
4 *Articles, showing it is governed by Corporation Code § 5214, is a matter of record*

5 Cross-complainant alleges it is a "California Not-for-Profit Corporation", and the Articles of  
6 Incorporation, judicial notice of which was requested on May 28, 2014, show Cross-complainant to  
7 be a California nonprofit public benefit corporation governed by Corporations Code § 5214 (June 16,  
8 2014 Memo., p. 8, lines 7—13). Under § 5214, Reese may treat the signatures of Heather Gray and  
9 Richard Uzzell on the January 30, 2014 Contract ("the 2014 Contract") as dispositive where she did  
10 not know of any alleged lack of authority to enter thereinto.

11 Apparent authority is an essential adjunct to actual authority in enabling third parties  
12 to deal effectively with organizations [who] . . . treat the agent's act or statement as  
13 dispositive, without further inquiry directed elsewhere within the organization, in the  
14 absence of circumstances suggestive of self-dealing or other irregularity.  
Rest.3d Agency § 3.03, p. 176.

15 Moreover, based on points and authorities, *infra*, Cross-complainant's allegations about  
16 circumstances wherein the Board took no formal vote to approve or ratify the 2014 Contract, alleged  
17 to be "fraudulent" in consequence thereof, are without merit.

18 *2. Gray and Uzzell had the implied actual authority to enter into the 2014 Contract*

19 The Board had the power to delegate on Gray and Uzzell actual authority to enter into the 2014  
20 Contract, whether by intentionally conferring it on them, or allowing them to believe themselves to  
21 possess it. (Civ. Code, § 2315; *Warshauer v. Bauer Constr. Co.* (App. 1 Dist. 1960) 179 Cal.App.2d  
22 44, 49—50, citing *Smith v. Schuttpelz* (1934) 1 Cal.2d 158; see 85 Ops.Cal.Atty.Gen. 162, 169 (2002)  
23 and authorities cited therein.)

24 That is because an agent has actual authority to make contracts incidental to the agency:

25 Unless otherwise agreed, authority to make a contract is inferred from authority to conduct  
26 a transaction, if the making of such a contract is incidental to the transaction, usually  
27 accompanies such a transaction, or is reasonably necessary to accomplish it.

28 *Restatement (Second) of Agency* § 50 (1958); *see also id.* § 35 (authority to conduct  
29 transaction includes authority for incidental acts). The implied authority of an agent to do the  
30 things normally incident to the authorized transaction is actual, not apparent authority.  
(Citations omitted.) . . .

*Thomas v. I.N.S.* (9th Cir. 1994) 35 F.3d 1332, 1339.

31 There is no dispute that for 531 days—from August 17, 2012 through January 29, 2014—the Board  
32 hired Reese as Executive Director on an "acting" or "interim" basis. After this extraordinary length of

1 time, it was Gray’s manifest duty “[t]o expedite the business in every way compatible with the rights  
2 of members,” and “[t]o authenticate by his or her signature, when necessary, all acts, orders, and  
3 proceedings of the assembly” (RONR, § 47, p. 450; see *Butler v. Solano Land Co.* (App. 1 Dist.  
4 1920) 46 Cal.App. 171, 173 [implied authority of president of corporation must arise out of duties  
5 and responsibilities it actually entrusted to him or duties acquiesced in by it].)

6 There is no dispute Reese was nominated for Executive Director and on November 8, 2013  
7 received 11 votes (she having then held a Director-seat but abstained from voting for herself), thereby  
8 electing her to the position. And during the 76-day period from November 15, 2013 to January 30,  
9 2014, the Directors, by so allowing Gray and Uzzell to believe themselves to possess authority to  
10 enter into the January 30, 2014 Contract, created in them the actual authority to do so.

11 An election to an office becomes final immediately if the candidate is present and  
12 does not decline . . . An officer-elect takes possession of his office immediately upon  
13 his election’s becoming final, unless the bylaws or other rules specify a later time. . .  
RONR § 46, p. 444.

14 Carrying forward the decision of the majority of 11 Directors de jure (excluding Reese who abstained  
15 from the Nov. 8, 2013 vote on her own election), Gray and Uzzell had the implied actual authority to  
16 enter into the 2014 Contract with Reese. (See *Whittaker v. Otto* (App. 4 Dist. 1961) 188 Cal.App.2d  
17 619, 623 [agent may, by oral or written authorization of principal, carry forward any ordinary  
18 business transaction, and agent’s act becomes act of principal]. Cf. *Black v. Harrison Home Co.*  
19 (1909) 155 Cal. 121, 123 [under corporate bylaws making it “the duty of the president to sign all  
20 contracts which had first been approved by the directors” they could deny validity of agreement  
21 having his unapproved signature].)

22 Based on points and authorities alleged *supra*, Gray; and on those alleged in Reese’s June  
23 16th Memorandum (p. 4, line 23—p. 5, line 27), Uzzell; had the implied actual authority to enter into  
24 the 2014 Contract. Cross-complainant’s allegation about Reese not qualifying under Corporations  
25 Code § 313’s (or, correctly, § 5214’s) term “other person” is utterly frivolous.

26 **3. Assuming arguendo Gray and Uzzell lacked actual authority to sign**

27 ***The 2014 Contract, they still had apparent authority to do so***

28 There is no dispute that at the time they signed the 2014 Contract, said Heather Gray and Richard  
29 Uzzell were the (acting) chair and secretary, respectively, of the PFR Board. Under Corporations  
30 Code § 5214, the signatures of two such officers—one of the “operational” and the other of  
31 “financial” category—appearing on a contract creates conclusive evidence it is not invalid for lack of  
32 authority. (See *Snukal v. Flightways Mfg., Inc.* (2000) 23 Cal.4th 754, 784, fn. 11 (“*Snukal*”).)

1            “[M]ost organizational activity takes place less formally” (Rest.3d Agency § 3.03, p. 177)  
2 than Cross-complainant’s allegations insisting a formal vote must have been taken in order to  
3 permanently hire Reese as Executive Director. Corporations Code § 5214—whose language is  
4 “nearly identical” to that of § 313, § 7214 and § 12354 of that code, and which is to be construed  
5 (nearly) identically as in *Snukal* (see *Dyna-Med v. Fair Hous. Com.* (1987) 43 Cal.3d 1379, 1393—  
6 1394 [parallel development of statutes])—provides that the appearance of Gray’s and Uzzell’s said  
7 signatures constitutes conclusive evidence. (See *Lunden v. County of L.A.* (App. 2 Dist. 1965) 233  
8 Cal.App.2d 811, 816 [governmental agents actions’ under poorly drafted agreement had apparent  
9 authority of government based on performance under agreement and all parties’ belief therein and in  
10 agents’ authority].)

11            ***4. Neither the Bylaws nor RONR prohibited ratification effected by a***  
12            ***Majority of Directors, though made outside of noticed meeting***

13            “ ‘It is generally accepted that corporate bylaws are to be construed according to the  
14 general rules governing the construction of statutes and contracts.’ [Citation.] Bylaws  
15 must ‘ ‘be given a reasonable construction and, when reasonably susceptible thereof,  
16 they should be given a construction which will sustain their validity ... .’ ’ [Citation.]”  
17 (Citation.) . . .  
*Singh v. Singh* (App. 1 Dist. 2004) 114 Cal.App.4th 1264, 1294.

18            *a. Board can take action in or out of formal meeting, provided Directors are “present and voting”*  
19 Bylaws, article 6, § 8 provides that action by unanimous consent, though taken outside of meeting,  
20 “shall have the same force and effect as any other validly approved action of the Board. . . .” (“§ 8”). §  
21 8 permits official PFR action taken outside of meeting to be taken without debate or discussion, but  
22 with the unanimous approval of the Directors “present and voting.” The concern underlying § 8  
23 appears to that of protecting each Director’s right to participate in debate on proposed action. (See  
24 *Barham v. Barham* (1949) 33 Cal.2d 416, 423 [where “any doubt exists as to the purpose of the  
25 parties’ dealings as expressed in the wording of their contract, the court may look to the  
26 circumstances surrounding its execution—including the object, nature and subject matter of the  
27 agreement . . .”].)

28            § 8 supersedes the following:

29            In any case, a board can transact business only in a regular and properly called meeting  
30 of which every board member has been notified—or at an adjournment of one of these  
31 meetings (citation)—and at which a quorum . . . is present. . . The personal approval of  
32 a proposed action obtained separately by telephone, by individual interviews, or in  
writing, even from every member of the board, is not the approval of the board, . . .

1 RONR § 49, pp. 486—487.

2 Except as to § 8's requirement of unanimous consent to take action *without any discussion or debate*,  
3 "the approval of a majority of the Board *present and voting* shall be required for any [action] of the  
4 Board." (Bylaws, art. 6, § 5; italics added.) The requirement of unanimity is an exception to the usual  
5 basis of determining the voting result, i.e., a majority of those "present and voting." On that basis, the  
6 required proportion is a majority of the set, i.e., the then-serving Directors who *may* participate  
7 ("present") and *may* vote ("voting"). (See RONR § 44, p. 402 [defining "present and voting"];  
8 *American-Hawaiian Steamship Co. v. Home Sav. and Loan Assn.* (App. 2 Dist. 1974) 38 Cal.App.3d  
9 73, 82 [the words of a contract must be understood in their ordinary and popular sense unless they are  
10 words "whose very use" implies they are terms of technical significance], citing *Johanson v.*  
11 *Riverside County Select Groves* (App. 4 Dist. 1935) 4 Cal.App.2d 114). Like the next section (§ 6), §  
12 5 reflects a concern the drafters had with respect voting result of "the then serving Directors" (*id.*).

13 As a parliamentary work under pre-established Bylaws, RONR's requirement of "approval of  
14 the board" is not controlling. RONR § 49 strives to always preserve members' right to an  
15 "opportunity to mutually debate and decide the matter as a deliberative body" (*id.*, p. 487); but § 8  
16 expressly permits a mode of official action without such opportunity.

17 *b. Directors have right to be apprised of purposes of every call of meeting of the Board, but not to be*  
18 *given notice of adjourned Board meeting held for previously noticed purpose*

19 To determine whether Gray performed her duties as chair "in every way compatible with"  
20 Directors' rights to, inter alia, notice of meeting and participation in PFR, it's necessary to evaluate  
21 the character and extent of those rights (RONR, § 47, p. 450. Cf. *Gardiner v. Gaither* (App. 1 Dist.  
22 1958) 162 Cal.App.2d 607, 622—623 ["It seems clear that a person who has rights flowing from a  
23 contract has an "interest" in that contract, and should . . . be able to maintain an action to secure a  
24 declaration of the character and extent of those rights when an actual controversy exists."]); *Maguire*  
25 *v. Hibernia Sav. & Loan Soc.* (1944) 23 Cal.2d 719, 736 (en banc) ["The fact that determination of  
26 the controversy involves an investigation of rights originating many years past does not render the  
27 claim stale."]).

28 There are two exceptions referenced in the first clause of the last sentence of Bylaws, art. 6, §  
29 5, *supra* (i.e., "*Except as otherwise expressly provided herein*, the approval of a majority of the Board  
30 present and voting shall be required for any [action] of the Board"; italics added). § 8, *supra*, is one of  
31 those two; the other, which modifies the definition of quorum in § 5's first sentence, appears in § 5's  
32 second sentence, which provides for quorum after other Directors left the meeting consisting of no



1 less than seven Directors all of whom must concur in any official action of PFR taken at such stage of  
2 a meeting. And the only circumstance in which the Board can take action in the name of PFR without  
3 using the “present and voting” basis for determining the result of any vote, is the “unanimous  
4 consent” basis of action taken outside of meeting without debate or discussion pursuant to § 8.

5 Bylaws article 6, § 4 contains provisions for 30 days’ notice of regular meeting specifying  
6 purposes thereof, and 7 days’ notice of special meeting specifying purpose thereof and prohibiting  
7 any business taken outside of the scope of the notice. The thrust of the meaning of these Bylaw  
8 provisions is to apprise, by taking certain steps well in advance, each Director of opportunities to  
9 participate in debating and discussing decisions of the Board which are of interest or possible concern  
10 to her or his Directorship. There is no requirement a Director actually participate in voting or  
11 assenting to every decision; indeed, Directors holding less than one third the total seats (art. 6, § 5)  
12 may take official action for PFR under non-emergency, even commonplace circumstances.

13 Under the Bylaws and RONR, just as few (i.e., 7) Directors may conclude a meeting in a  
14 particular manner: “Adjournment to meet” or adjournment to reconvene. An adjourned meeting,  
15 though not mentioned in the Bylaws, is provided in order to “take[] up its work at the point where it  
16 was interrupted in the order of business or in the consideration of the question that was postponed to  
17 the adjourned meeting, . . . “ (RONR, § 9, p. 94; see Bylaws art. 5, § E(7) [“meeting at such other  
18 times as may be necessary in order to carry out the duties of the Board”].) As in regular meetings,  
19 Directors who are “voting and present” at an adjourned meeting form the basis to determine whether  
20 valid PFR action is taken. And, where the Bylaws do not expressly require PFR action be taken by the  
21 Board at a noticed meeting, valid PFR action may be taken at an unnoticed adjourned meeting, so  
22 long as notice of the proposed action was given at a previous meeting which was noticed. (RONR §  
23 22, p. 244 [“Unlike a special meeting, an adjourned meeting does not require notice, although it is  
24 desirable to give notice if feasible.”]; *Seal of Gold Min. Co. v. Slater* (1911) 161 Cal. 621.)

25 The Bylaws are silent on adjourned meeting, and do not exhaust the subject of modes in which  
26 valid PFR action may be taken. Except where in conflict with the Articles or Bylaws, RONR governs.  
27 (See *United Growers’ Co. v. Eisner* (1897) 22 N. Y. App. Div. 1 [special meetings of corporate  
28 directors may be held, although the bylaws do not provide for such].) Accordingly, RONR § 49’s  
29 requirements that “a board can transact business only in a regular and properly called meeting of  
30 which every board member has been notified—or at an adjournment of one of these meetings  
31 (citation)—and at which a quorum . . . is present” are superseded by four requirements:

32 (i) Article 6, § 8, *supra*, providing for action taken by unanimous consent, and outside of meeting;

1 (ii) The second sentence of article 6, § 5, permitting as few as 7 concurring Directors, who remain  
2 meeting after others left, to act in the name of PFR;  
3 (iii) The Articles of Incorporation, and  
4 (iv) Bylaws, article 1, § 2. That Bylaw section and the Articles define the organization as  
5 “Foundation” and a nonprofit public benefit corporation, respectively. Adopting these definitions, the  
6 PFR Board could employ any mode whereby the majority of a corporate board may take official  
7 action, provided such mode is not in conflict with the California Corporations Code, Articles, Bylaws  
8 or applicable provisions of RONR (excluding, e.g., RONR § 49’s said superseded requirements).

9 No notice of adjourned meeting is required under the Bylaws, whose other meeting-notice  
10 requirements appear designed to ensure each of the 22 (or 23) Directors is apprised of opportunities to  
11 participate in developing and taking Board action. Hence a Director does not have an *absolute* right to  
12 notice of *every* meeting. Advance or recent notice of the “purpose” of proposed action satisfies the  
13 Bylaws’ notice requirements apprising Directors of ongoing and upcoming business of the Board.  
14 Such is the character and nature of the Directors’ right to notice of Board business.

15 *c. Gray’s expeditious conduct of Board action in permanently hiring Reese was compatible in every*  
16 *way with Directors’ rights, so that no constructive or other “fraud” should be presumed therefrom*

17 At the time the January 30, 2014 Contract was signed, the Board’s express authorization of  
18 the said 2013 Contract gave all Directors notice the background check was underway and would be  
19 completed on or before January 10, 2014. The said special committee, composed of Gray and Reese  
20 and tasked with investigating Reese’s background, did not expire. Its report, made in writing on or  
21 about January 4, 2014 and consisting of an “account of work done”, was or was to be filed with the  
22 Board (RONR § 51, p. 525). “Apart from filing such a report, . . . no action on it is necessary and  
23 usually none should be taken” (*ibid.*).

24 Gray acted compatibly with Directors’ rights pursuant to both the 2013 and 2014 Contracts.  
25 Even assuming *arguendo* Gray did not notify all Directors as to her completion of the background  
26 check and as to her intention to sign the said 2014 Contract, such performance of her duty to expedite  
27 Board business was “in every way compatible with the rights of [Directors]” (RONR, § 47, p. 450).  
28 The Court should not indulge Cross-complainant’s allegation about her said expeditious conduct of  
29 Board business being “fraudulent”, where her performance of official duties involved no breach  
30 thereof. (*Gold v. L.A. Democratic League* (App. 2 Dist. 1966) 49 Cal.App.2d 365, 373 [“constructive  
31 fraud” arises from a breach of duty by one in a confidential or fiduciary relationship to another which  
32 induces a justifiable reliance by the latter to his prejudice.]. Accord, *Warren v. Merrill* (App. 2 Dist.

1 2006) 143 Cal.App.4th 96, 109.)

2 **5. Even assuming arguendo Gray and Uzzell lacked any authority to enter into**  
3 **The January 30, 2014 Contract, a majority of the then-serving Directors**  
4 **Could and presumptively did discuss and ratify said Contract later that day**

5 Civil Code § 2019 provides: “An agent must not exceed the limits of his actual authority, as defined  
6 by the Title on Agency.” Where Gray and Uzzell signed the 2014 Contract having a three-year term,  
7 their authority to do so must have been in writing. (See *Seymour v. Oelrichs* (1910) 156 Cal. 782,  
8 793—800 [an agent having no written authority could not bind his principal to an oral agreement  
9 having a term exceeding one year, as would violate statute of frauds].) And to such extent as the  
10 Court could ultimately find creation of the two said officers’ authority to enter into the 2014 Contract  
11 lacked adequate written support, said Contract is valid where a quorum of Directors could and  
12 presumptively did ratify it later that day. The Directors’ capacity to do so is in accordance with any  
13 mode whereby the majority of a corporate board may take official action, and not in conflict with the  
14 Nonprofit Public Benefit Corporation Law, Articles, Bylaws or any provision of RONR (but those in  
15 § 49 thereof which are superseded by the Bylaws; p. 5, line 24—p. 6, line 13, *supra*).

16 There is no dispute early on the day of January 30, 2014, Heather Gray, Richard Uzzell, and  
17 Summer Reese each signed the said 2014 Contract to employ her for three years thereafter. In  
18 addition to Gray and Uzzell, ten others who were then Directors—viz., Teresa Allen, Jessica  
19 Apollinar, Carolyn Birden, Janet Coleman, John Cromshaw, Janis Lane Ewart, Luzette King, Tracy  
20 Rosenberg, Manijeh Saba, and Katea Stitt—knew of said Contract, and approved and assented to  
21 such signing. They did so at the Board meetings held on January 20 and 23, 2014. (Declaration  
22 attached hereto.)

23 Further, after the signing and before the election held on the evening of January 30th, the 12  
24 said Directors (who then comprised what is now the Plaintiff- assn.) could and presumptively did give  
25 their approval and consent to the 2014 Contract. Bylaws Article 6, § 8, providing for action taken by  
26 unanimous consent outside of meeting and without debate or discussion, provides one mode of taking  
27 action outside of meeting; nowhere in the Bylaws is this provided as the exclusive mode of taking  
28 such action. All 12 of those Directors were duly elected at the time they took the opportunity to  
29 informally discuss said Contract, and the result of the said January 30th informal action was neither  
30 padded nor diluted but taken by Directors “present and voting.” Therefore, under the Bylaws and  
31 RONR, the Board approved and ratified the said January 30, 2014 Contract.  
32

1 It is well settled as a matter of law that the agreement of a corporation entered into by  
2 its manager without authority sufficiently ample to enable him to execute the same  
3 may be approved and ratified so as to become binding upon such corporation through  
4 the knowledge, approval, and consent of a majority of the membership of the board of  
5 directors acting individually and informally, . . .

*Countryman v. California Trona Co.* (App. 1 Dist. 1918) 35 Cal.App. 728, 734.

6 In *Countryman*, *supra*, knowledge and discussion of agreement by a “majority if not all of the  
7 directors” who permitted performance of services under an agreement, effected the corporation’s  
8 ratification thereof. (See *Brown v. Crown Gold Min. Co.* (1907) 150 Cal. 376, 387 [where majority of  
9 board knew the facts regarding employment agreement and were individually advised with respect  
10 thereto, and “took no measures to disaffirm as directors that employment,” they ratified it]; *Scott v.*  
11 *Superior Sunset Oil Co.* (1904) 144 Cal. 140, 143 [separate assent of board majority effected  
12 ratification of employment contract]; *Crowley v. Genesee Min. Co.* (1880) 55 Cal. 273, 275—276  
13 [recognizing “a necessity of giving effect to the acts of such corporations, according to the mode in  
14 which they choose to be transacted,” citing *Bank of Middlebury v. Rutland R. R. Co.*, 30 Vt. 159]. Cf.  
15 3 Treatise on the Law of Corporations (7th ed. 1913; Cook, William) § 713a, pp. 2458—2459, and  
16 non-California authorities cited therein.)

17 Assuming *arguendo* all signatories of the said 2014 Contract were ignorant thereof and  
18 assuming no authority existed where neither Gray nor Uzzell believed themselves to possess it (Civ.  
19 Code, § 2315; *Warshauer v. Bauer Constr. Co.* (*supra*) 179 Cal.App.2d at 49—50), ratification of  
20 said Contract cannot be avoided on such grounds. (See *Greve v. Taft Realty Co.* (App. 3 Dist. 1929)  
21 101 Cal.App. 343, 352; *Floyd v. Tierra Grande Dev. Co.* (App. 1 Dist. 1921) 51 Cal.App. 654, 663.)

22 ***6. The Court is precluded from finding fraud occurred in the execution of the***  
23 ***January 30, 2014 Contract or declaring it void where Defendant-individuals***  
24 ***Had reasonable opportunity to learn of its nature and failed to do so***

25 On the evening of January 30, 2014, PFR held an election whereby Defendant-individuals  
26 purported to gain a majority of seats on the Board of Directors. In this moment of opportunism,  
27 Cross-complainant’s lay witness purportedly alleges the 2014 Contract is “fraudulent” for lack of  
28 formal vote thereon.

29 Unless a formal vote of the Board is specifically required under applicable provision of  
30 RONR, no such vote is required for the Board to take action on behalf of PFR (*Brown v. Crown Gold*  
31 *Min. Co.* (*supra*) 150 Cal. at 387; *Scott v. Superior Sunset Oil Co.* (*supra*) 144 Cal. at 143; *Crowley v.*  
32 *Genesee Min. Co.* (*supra*) 55 Cal. at 275—276; *Pixley v. W. P. R. R. Co.* (*supra*) 33 Cal. 183.) The

1 dispensing of such formality is a longstanding practice accepted in both the public (*Inglewood*  
2 *Teachers Assn. v. PERB* (App. 2 Dist. 1991) 227 Cal.App.3d 767, 776) and private-for-profit sectors  
3 (*CDB Software, Inc. v. Kroll* (Tex.App.—Hous. 1998) 992 S.W.2d 31, 40).

4 Notwithstanding Cross-complainant's incorrect interpretation of the Bylaws' and RONR's  
5 technical phrase "present and voting" (see p. 3, line 18—p. 4, line 15, *supra*), the 2014 Contract was  
6 ratified by a majority of the Board, as recognized by the courts (*Countryman v. California Trona Co.*  
7 (*supra*) 35 Cal.App. at 734; *Brown v. Crown Gold Min. Co.* (*supra*) 150 Cal. at 387; *Scott v. Superior*  
8 *Sunset Oil Co.* (*supra*) 144 Cal. at 143; *Crowley v. Genesee Min. Co.* (*supra*) 55 Cal. at 275—276;  
9 *Pixley v. W. P. R. R. Co.* (*supra*) 33 Cal. 183), and permitted under the Bylaws (*id.*, art. 6, § 5; RONR  
10 § 44, p. 402; *American-Hawaiian Steamship Co. v. Home Sav. and Loan Assn.* (*supra*) 38 Cal.App.3d  
11 at 82; *Johanson v. Riverside County Select Groves* (*supra*) 4 Cal.App.2d 114).

12 *a. Cross-complainant's purported "fraud in the execution" theory*

13 Cross-complainant's lay witness, Margy Wilkinson—as to whom there appears no  
14 qualification to offer legal opinion—alleges the 2014 Contract is "fraudulent", though signed by Gray  
15 and Uzzell creating both apparent (Reese's June 16, 2014 Memo.) and implied actual (p. 1, line 18, et  
16 seq.) authority. Said allegation, as best as one might surmise, appears based on a theory of "[f]raud  
17 in the execution" [which] arises when a party executes an agreement "with neither knowledge nor  
18 reasonable opportunity to obtain knowledge of its essential terms." (Citations.) . . ." (*Southwest*  
19 *Administrators, Inc. v. Rozay's Transfer* (9th Cir. 1986) 791 F.2d 769, 774.)

20 [W]hen the plaintiff seeks a judicial determination the contract is void for fraud in the  
21 execution . . . California law, like the Restatement, requires that the plaintiff, in failing  
22 to acquaint himself or herself with the contents of a written agreement before signing  
23 it, not have acted in an objectively unreasonable manner. One party's  
24 misrepresentations as to the nature or character of the writing do not negate the other  
25 party's apparent manifestation of assent, if the second party had "reasonable  
26 opportunity to know of the character or essential terms of the proposed contract."  
27 (Rest.2d Contracts, § 163, p. 443.) If a party, with such reasonable opportunity, fails to  
learn the nature of the document he or she signs, such "negligence" precludes a finding  
the contract is void for fraud in the execution.

28 *Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 423;  
underline added.

29 Cross-complainant's allegations with respect to "fraud" are also close to the facts in *Pixley v. W. P. R.*  
30 *R. Co.* (*supra*) 33 Cal. 183. There, the California Supreme Court held an oral agreement to hire  
31 employees of a corporation, which it made despite an 1861 enactment requiring railroad companies'  
32 contracts be in writing, was ratified through frequent interviews the employees subsequently had with

1 the president and directors of said corporation. In addition to their knowledge and assent through such  
2 communication, creation of a presumption the board ratified the employment contracts was based on  
3 partial execution thereof. These acts gave rise to that presumption, which overcame any inference  
4 from board minutes being devoid of any record of corporate action with respect to their employment  
5 or services for said corporation. No fraud can be presumed from the absence of any record of formal  
6 vote approving of Gray's January 10, 2014 report as to the completed background check of Reese, or  
7 the Board's execution of the January 30, 2014 Contract employing Reese.

8 *b. Defendant-individuals had reasonable opportunity to obtain knowledge of the Bylaws and RONR*

9 In the instant case, a Director of PFR is bound by the Articles of Incorporation and Bylaws  
10 thereof and RONR provisions adopted thereunder, "whether he has signed them or not." (*McFadden*  
11 *v. Board of Supervisors of L.A. County* (1888) 74 Cal. 571, 574.) There is no dispute that as members  
12 of PFR, Defendant-individuals were parties or quasi-parties to the Bylaws thereof (*id.*). "It is the  
13 general rule that a person who executes a contract is charged with knowledge of all its provisions  
14 where he had the means of such knowledge and of which he negligently deprived himself (citations).  
15 . . ." (*Gajanich v. Gregory* (App. 1 Dist. 1931) 116 Cal.App. 622, 633.) This rule is premised on the  
16 legal prerequisite of reasonable diligence of a contracting party:

17 "Generally, it is not reasonable to fail to read a contract; this is true even if the plaintiff  
18 relied on the defendant's assertion that it was not necessary to read the contract.

19 [Citation.] Reasonable diligence requires a party to read a contract before signing it.

20 [Citation.]" (Citation.) . . .

*Rosencrans v. Dover Images, Ltd.* (App. 4 Dist. 2011) 192 Cal.App.4th 1072, 1080.

21 Even assuming *arguendo* the PFR Bylaws and RONR were bodies of special knowledge, there is no  
22 allegation either set of rules were withheld from any director, who therefore could have consulted it at  
23 any time. (See *Lingsch v. Savage* (App. 1 Dist. 1963) 213 Cal.App.2d 729, 738 [rejecting claim of  
24 fraud, as between parties having no confidential relationship, where alleged misrepresentations went  
25 to facts that were not "beyond the reach of the plaintiff".])

26 The Defendant-individuals and one of their attorneys, include Norman, an active Pennsylvania  
27 attorney at law; and Siegel, an active California attorney at law, each of whom had at his disposal the  
28 laws of the State of California. (See *Taff v. Atlas Assurance Co.* (App. 2 Dist. 1943) 58 Cal.App.2d  
29 696, 702 [the "experience and intelligence of plaintiff [are] factors to prove his neglect" of a legal  
30 duty]). Irrespective of said attorneys' apparent failure to inquire into the Bylaws, the RONR adopted  
31 thereunder, and/or California law applicable thereto, the said authorities provide the terms of the  
32 parties' agreement (i.e., Bylaws), under which a presumption exists that the January 30, 2014

1 Contract is lawfully executed. And for failure to determine the applicability of said authorities to the  
2 facts in this case, Cross-complainant is precluded from seeking a determination by the Court that the  
3 2014 Contract is “fraudulent.” (See *Cohen v. Wedbush, Noble, Cooke, Inc.* (9th Cir. 1988) 841 F.2d  
4 282, 287 [distinguishing federal doctrine of unconscionability from California’s, and holding  
5 plaintiffs’ failure to inquire about the ramifications of arbitration clause precluded fraud claim as  
6 between parties at arm’s length], overruled on another ground in *Ticknor v. Choice Hotels Internat.,*  
7 *Inc.* (9th Cir. 2001) 265 F.3d 931, 941.)

8 Apart from the aforesaid apparent neglect of duty of inquiry by attorneys Siegel and Norman,  
9 the Court could find the other Defendant-individuals who sat on the PFR Board prior to the January  
10 30, 2014 election—Lydia Brazon, Benito Diaz, Brian Edwards-Tiekert, Cerene Roberts, and Margy  
11 Wilkinson—were, as laypersons, aware they had only limited knowledge of the Bylaws and  
12 provisions of RONR adopted thereunder, but treated their limited knowledge as sufficient resulting in  
13 their mistaken assent to delegate to Heather Gray the authority as chair to “carry forward any ordinary  
14 business” incident to Reese’s said November 8, 2013 election as permanent Executive Director  
15 (*Whittaker v. Otto (supra)* 188 Cal.App.2d at 623).

16 “A party [to a contract] bears the risk of a mistake when [¶] . . . he is aware, at the time  
17 the contract is made, that he has only limited knowledge with respect to the facts to  
18 which the mistake relates but treats his limited knowledge as sufficient.”  
19 *Conservatorship of O’Connor* (App. 1 Dist. 1996) 48 Cal.App.4th 1076, 1098, citing  
Rest.2d Contract, § 154, subd. (b), pp. 402-403.

20 Those five lay Defendant-individuals did not constitute a majority; their mistake is moot in any event.  
21 *c. Defendant-individuals had reasonable opportunity to learn of the nature of the 2014 Contract and*  
22 *any failure to learn thereof was due to their objectively unreasonable conduct*

23 The character and nature of a Director’s right to notice of Board business are such that she or  
24 he be apprised in *advance* of the purposes of *proposed* Board action and, in addition thereto, *recent*  
25 notice of the purpose of *ongoing* business, by reason of the fact RONR § 22 is not in conflict with any  
26 Bylaw provision (p. 6, lines 12—26, *supra*) and expressly provides no notice of adjourned meeting is  
27 required. All Directors were apprised of the November 15, 2013 Contract; all of them did receive  
28 recent notice of Reese’s November 8, 2013 election and business subsequent to said election.  
29 Through the January 20 and 23, 2014 meetings, this notice remained recent and consistent with their  
30 rights to notice of proposed action (p. 4, line 24—p. 6, line 22, *supra*).

31 Moreover, no fraud could have occurred in the execution of the 2014 Contract where any  
32 alleged misrepresentation as to the terms thereof “do[es] not negate the other party’s apparent

1 manifestation of assent, if the second party had “reasonable opportunity to know of the character or  
2 essential terms of the proposed contract.” (Rest.2d Contracts, § 163, p. 443.) Said Defendant-  
3 individuals had 531 days—August 17, 2012 through January 29, 2014—in which to learn the  
4 character of the proposed contract to permanently employ Reese in substantially the same position in  
5 which she had been acting in an “acting” or “interim” basis during those 531 days.

6 There is no comma in the operative phrase in the 2013 Contract and no requirement  
7 thereunder the Board formally vote whether to approve Gray’s said background check of Reese.  
8 (*Orthopedic Sys., Inc. v. Schlein* (App. 1 Dist. 2011) 202 Cal.App.4th 529, 545; RONR § 51, p. 525).  
9 And if a Director believed anything pertaining to Gray’s check invalidated Reese’s election, PFR’s  
10 parliamentary authority provides the recourse of raising a point of order about her not “meet[ing] the  
11 qualifications for the post established in the bylaws” (RONR § 46, p. 445). Based on such belief, the  
12 Director could raise the point of order “at any time” (RONR § 23, p. 251). The audio (i.e.,  
13 [www.kpftx.org](http://www.kpftx.org)) and written (i.e., minutes) records disclose no such point of order was raised with  
14 respect to Reese’s November 8, 2013 election as permanent Executive Director.

15 Alternatively, Defendant-individuals, as other directors, could simply have received Gray’s  
16 said report upon which to base their assent to the procedure subsequent to Reese’s election.

17 Delegation and reliance by directors . . . may take place in numerous and varying  
18 factual contexts. [I]n carrying out their oversight obligations directors will almost  
19 certainly have to rely on information, reports, and statements from other persons and  
20 from committees of the board. . . . In making business judgments, directors will  
21 often have to delegate responsibility with respect to the evaluation of various matters  
22 and will almost invariably have to rely on memoranda, documents, and oral  
23 statements prepared and presented by other persons.

24 *Briano v. Rubio* (App. 6 Dist. 1996) 46 Cal.App.4th 1167, 1179, quoting 1 ALI,  
25 Principles of Corporate Governance: Analysis and Recommendations (1994) §  
26 4.01(b), com. b, p. 170; underline added.

27 “Other persons” includes directors, officers, and employees (*id.*, § 4.02(a), p. 188), e.g., Heather Gray  
28 as both a Director and as the (acting) chair of the PFR Board of Directors.

29 In the usual case, directors and officers will be reasonable in believing that they can  
30 rely on [the] information, opinions, reports, statements, decisions, judgments, and  
31 performance [of others] without the need for independent verification or further  
32 inquiry.

1 ALI, Principles of Corporate Governance: Analysis and Recommendations, *supra*,  
§ 4.02, com. i, p. 194, underline added. (Accord, 11 Fletcher Cyclopedia of the Law  
of Private Corporations (2003 rev.vol.) §§ 5329.10, 5329.15, 5336, 5344, pp. 601,  
603, 617—618, 628.)

But, Defendant-individuals neither raised a point of order nor conducted themselves in such manner



1 as appeared reliant on Gray's said January 10, 2014 report. Their conduct during that entire month  
2 was not objectively reasonable. Again and again, they demanded independent verification of that  
3 report and inquired as to each and every aspect thereof. Without having raised a point of order with  
4 respect to Reese's suitability for Executive Director or debating any pending motion, they repeatedly  
5 spoke out of order, clamoring for detailed information on Reese's background although it was  
6 reasonable to believe "they can rely" on that report, and although entitled to rely on counsel's advice  
7 that Reese's nonapplication for a Social Security number "does not affect Pacifica. General Counsel  
8 Andy Gold agreed, saying that the only thing employers are require to do is to 'ask for a number,' and  
9 that this was done." (PFR, minutes of Feb. 22—25, 2013 (closed) meeting, p. 4.)

10 While the five said Defendant-individuals preoccupied themselves with their suspicions  
11 during the meetings held January 20 and 23, 2014, none of them made any motion with respect to the  
12 scope and nature of duties of the Executive Director, what benefits should accrue to the position, what  
13 probationary period ought to exist, whether dispute should be arbitrable, etc. Any failure of said  
14 Defendant-individuals to learn of the nature or character of the 2014 Contract, which might have  
15 occurred despite the many opportunities available at those meetings in late November and December  
16 2013 as well as January 2014, was caused by their said objectively unreasonable conduct and  
17 "precludes a finding the contract is void for fraud in the execution" (*Rosenthal v. Great Western Fin.*  
18 *Securities Corp.* (*supra*) 14 Cal.4th at 423).

19 *d. No fraud could have occurred in the execution of the 2014 Contract where no provision thereof*  
20 *which is different from the 2013 Contract is either "materially" different therefrom or essential to an*  
21 *employment contract*

22 A "fraud in the execution" theory is not viable unless contractual terms which an ostensibly  
23 assenting party does not know—through the party's failure to learn thereof, though having had  
24 reasonable opportunity to do so and not having acted in an objectively unreasonable manner—are  
25 "essential" to such contract (*Rosenthal v. Great Western Fin. Securities Corp.* (*supra*) 14 Cal.4th at  
26 423, citing Rest.2d Contracts, § 163, p. 443. Cf. *In re Mediscan Research, Ltd.* (9th Cir. BAP 1989)  
27 109 B.R. 392, 396 ["numerous agreements and notes" whereby party repeatedly rearranged  
28 contracting party's liability in complete disregard of representation made to investors, evidenced  
29 common law fraud].)

30 Eleven Directors de jure voted for Reese as permanent Executive Director, whereas nine  
31 Directors de jure voted for another nominee. "[C]arry[ing] forward any ordinary business" (*Whittaker*  
32 *v. Otto* (*supra*) 188 Cal.App.2d at 623) in accordance with the will of that majority of 11, Gray

1 proceeded to consult a California-based human resources firm with respect to the contents of the 2014  
2 Contract, by which no rescission of the 2013 Contract was made because “the parties’ performance  
3 indicates they intend to be bound by the [2013 Contract]” (*Travelers Ins. Co. v. WCAB* (1967) 68  
4 Cal.2d 7, 17 (*Travelers*); disapproved on another point in *LeVesque v. WCAB* (1970) 1 Cal.3d 627).

5 On June 3rd, the Court found the November 15, 2013 Contract (i.e., Nov. 11, 2013 “offer  
6 letter”) to be “materially different” from the 2014 Contract. In *Travelers, supra*, the California  
7 Supreme Court said “an employment contract need not detail every condition of employment” (68  
8 Cal.2d at 17, citing *Gordon v. Wasserman* (1957) 153 Cal.App.2d 328).

9 In *Travelers*, a California resident was hired by telephone in California to work in Utah.  
10 Although the oral contract of hire included the terms of the parties, time and place of employment,  
11 salary, and the general category of employment (geologist), the California resident’s specific duties  
12 were not designated until he arrived on the job. In upholding an administrative finding his contract  
13 had been formed in California, the court stated:

14 That particular terms remain undesignated does not render the original contract  
15 invalid for uncertainty. Later agreement on the unspecified terms does not rescind  
16 the original contract (citation), especially if the parties’ performance indicates they  
17 intend to be bound by the prime agreement (citation) . . .  
*Travelers, supra*, 68 Cal.2d at 17.

18 Even assuming *arguendo* Defendant-individuals’ conduct with respect to their opportunities to learn  
19 of the contents of the 2014 Contract was not objectively unreasonable as would preclude a finding of  
20 fraud in the execution thereof (*Rosenthal v. Great Western Fin. Securities Corp. (supra)* 14 Cal.4th at  
21 423), said 2014 Contract could no more be an instrument of “fraud” than the 2013 Contract. And  
22 because Defendant-individuals acknowledge said 2013 Contract, albeit an “offer letter”, the terms of  
23 the 2014 Contract, though different from the 2013 Contract, evidence no fraud:

- 24 • That the particular duties of Executive Director are not set forth in the 2013 Contract does not  
25 render it invalid for uncertainty. Nor is the theory viable that Defendant-individuals, who as  
26 directors of PFR knew or should have known the duties of “Executive Director” cover a broad  
27 scope of affairs within PFR, and of policies set mutually by that officer and the Board, did not  
28 know of the character or essential terms of the 2014 Contract providing for such duties, when the  
29 2014 Contract does not make their 2013 Contract uncertain (*Travelers, supra*, 68 Cal.2d at 17).
- 30 • Directors, by assenting to the 2013 Contract, cannot state a viable “fraud” claim because the  
31 compensation provided thereunder, in addition to an annual salary \$105,000, differs in respect of  
32 benefits, insurance, and paid sick leave when those benefits, insurance, and paid sick leave are on

1 terms identical to those to which PFR's other "national staff" are entitled. (See *Wilson v. Wilson*  
2 (App. 1 Dist. 1950) 96 Cal.App.2d 589, 593 [terms of salary and/or drawing account of partner,  
3 expressly left to future agreement, were not uncertain; Civ. Code, §§ 1643, 3541].)

- 4 • Directors, by assenting to the 2013 Contract, also knew or should have known that removal of  
5 officers is "[s]ubject to the rights, if any, of an officer, under any contract of employment, . . . ,  
6 either with or without cause, by the Board at any regular or special meeting thereof" (Bylaws, art.  
7 9, § 3); and that agreement to be made pursuant to the November 8, 2013 vote electing Reese, i.e.,  
8 the 2014 Contract employing her for three years, would provide for progressive discipline (see *id.*,  
9 art. V, headed TERMINATION FOR CAUSE).

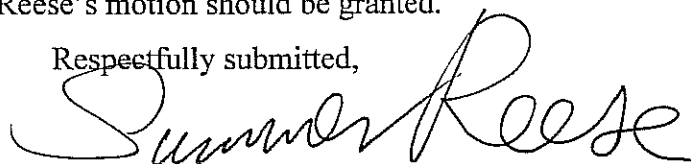
10 As for other terms of the 2014 Contract, Defendant-individuals allegedly made themselves  
11 unaware of those terms because of their objectively unreasonable conduct, clamoring in meetings  
12 subsequent to Gray's said January 10, 2014 report as to the completed background check, demanding  
13 independent verification thereof. Notwithstanding such conduct, those terms are unessential and can  
14 be forced on each party. (*Boyd v. Bevilacqua* (App. 1 Dist. 1966) 247 Cal.App.2d 272, 286.)

15 It's reasonable to determine the 2014 Contract should provide for a probationary period (*id.*,  
16 art. VII), and for arbitration of any dispute arising from said Contract (*id.*, VIII). As to a fulltime  
17 executive managerial position in the local economy, an annual salary of \$105,000 with the benefits  
18 set forth in article III and severance in VI is also fair and reasonable. (See *Coleman Engineering Co.*  
19 *v. North Am. Aviation, Inc.* (1966) 65 Cal.2d 396, 405—406 [settling prices of change orders under  
20 construction contract].) (Even in a for-profit setting, fairness of a top executive's salary leaves no  
21 requirement that directors ratify it. 1 ALI, Principles of Corporate Governance (1992) § 5.03, p. 236.)

### 22 *Conclusion*

23 Inasmuch as analysis of the foregoing relevant contract (Bylaw and RONR) provisions and of  
24 California law applicable thereto discloses Reese is more likely than not to prevail on the merits in  
25 the instant case (see *Price v. Hibbs* (App. 5 Dist. 1964) 225 Cal.App.2d 209, 221—222 [fraudulent  
26 violation of fiduciary duties and bylaws of corporation by officers thereof is actionable tort]), the  
27 Honorable Ioana Petrou is respectfully requested to reverse the findings made in support of her June  
28 3, 2014 order and to set it aside. Accordingly, Reese's motion should be granted.

29 Respectfully submitted,

30 

31 Summer Reese, Cross-defendant in pro. per.  
32