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6 PACIFICA FOUNDATION RADIO

ENDORSED
FILED
ALAMEDA COUNTY

JAN 29 2015

CLERK OF THE SUPERIOR COURT
By Maria Carrera
Deputy

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA

10 PACIFICA DIRECTORS FOR GOOD
11 GOVERNANCE,
12 Plaintiff,
13 vs.
14 PACIFICA FOUNDATION RADIO, et
15 al.,
16 Defendants.

16 PACIFICA FOUNDATION RADIO,
17 Cross-Complainant,
18 vs.
19 SUMMER REESE and ROES 1 TO 100,
20 Cross-Defendants.
21

CASE NO. HG14720131

MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO CROSS-
DEFENDANT SUMMER REESE'S MOTION
TO DISQUALIFY COUNSEL

Assigned For All Purposes to Judge Ioana Petrou,
Dept. 15

Date: February 11, 2015
Time: 9:00 a.m.
Dept.: 15

22 **I. INTRODUCTION**

23 Cross-Complainant Pacifica Foundation Radio (hereinafter "PFR") submits the
24 following points and authorities in opposition to the Motion to Disqualify Counsel, filed by
25 Cross-Defendant Summer Reese ("Reese").

26 On September 18, 2014, the Court entered its Order Denying the Motion To
27

1 Disqualify Siegel & Yee. The motion was brought by the plaintiff, Pacifica Directors For
2 Good Governance (“PDGG”). Reese appeared at the September 18, 2014 hearing on the
3 Motion and accepted the tentative ruling. (See Minutes of the September 18, 2014
4 hearing, ¶1.) Reese now brings her own motion to disqualify Siegel & Yee as opposing
5 counsel. Her motion seeks the Court’s reconsideration of the same issues that were
6 decided on September 18, 2014. Reese’s Motion is untimely and raises no new facts that
7 would justify reconsideration by the Court.

8 Reese submits not new evidence in support of her motion. Siegel & Yee has never
9 represented Reese and has never entered into any confidential relationship with Reese.
10 Reese therefore cannot demonstrate any standing to bring her motion to disqualify the
11 opposition’s counsel. Since the Plaintiff has failed to amend its complaint following the
12 Court’s ruling on PFR’s Demurrer, the only claim remaining in this action is the Cross-
13 Complaint by PFR against Reese. Reese’s arguments regarding dual or simultaneous
14 representation are hypothetical, contrary to law, and have no merit.

15 Reese’s motion is frivolous and must be denied.

17 LEGAL ARGUMENT

18 A. Reese Has No Standing To Disqualify Siegel & Yee.

19
20 In rejecting PDGG’s motion to disqualify counsel on September 18, 2014, the
21 Court, citing *Great Lakes Construction Inc. v. Burman* (2010) 186 Cal.App.4th 1347, 1356-
22 1358, held that in order to have standing to bring a motion to disqualify opposing counsel,
23 a party must demonstrate either a prior attorney-client relationship with opposing counsel,
24 or some breach of a duty of confidentiality that opposing counsel owed to the complaining
25 party. Like the nine individuals that comprise plaintiff PDGG, it is undisputed that Reese
26 was never a client of Siegel & Yee. Similarly, Reese has not demonstrated that she had a
27 “legally protected interest which is (a) concrete and particularized, and (b) actual or

1 imminent, not conjecture or hypothetical,” that would be threatened by Siegel & Yee’s
2 continued representation of PFR and the other Defendants. (See *Great Lakes Construction*
3 *Inc. v. Burman* (2010) 186 Cal.App.4th at 1358.) Reese therefore cannot demonstrate
4 standing to bring a motion to disqualify opposing counsel.

5
6 **B. Reese’s Has Submitted No Evidence and Cannot Established That Any of the**
7 **Asserted Grounds for Disqualification Apply Here.**

8 Even if Reese has standing to bring this motion, which she does not, she cannot
9 establish any of the asserted grounds for disqualification apply here. Reese submits no
10 evidence to support any of her allegations. Reese argues that there is conflict arising from
11 Siegel & Yee’s joint representation of PFR and some of PFR’s board members. However,
12 joint representation alone simply does not trigger an ethical violation requiring automatic
13 disqualification. (See *Great Lakes Construction Inc. v. Burman* (2010) 186 Cal.App.4th at
14 1359, *People ex rel. Dept. of Corporations v. Speedee Oil Change Systems, Inc.* (1999)
15 20 Cal.4th 1135, 1144.) PFR is entitled to its counsel of choice, and should any joint
16 representation arise in the future, the parties may take the appropriate steps to ensure
17 Siegel & Yee’s undivided loyalty to each of them. *Great Lakes Construction Inc. v.*
18 *Burman* (2010) 186 Cal.App.4th at 1359.

19 Since PDGG has failed to amend its complaint following the Court’s ruling
20 sustaining PFR’s demurrer, the only remaining action in this litigation is the Cross-
21 Complaint of PFR against Cross-Defendant Reese. Joint representation is not even an
22 issue here.

23 The other issues raised by Reese were similarly raised by PDGG and rejected by the
24 Court:

25 . . . Plaintiff fails to demonstrate how S&Y’s representation of PFR in this
26 case would lead to any “appearance of impropriety”.

27 Finally, the evidence submitted by PFR demonstrates that a majority of the
28 non-interested members of the PFR board authorized board chair Margy Wilkinson
to hire S&Y to represent PFR, after excluding any board members with actual or
potential conflicts of interest (including Jose Luis Fuentes). Plaintiff fails to

1 demonstrate, with competent evidence, that the decision violated PFR bylaws or the
2 California Corporations Code or that it constituted "self-dealing" in violation of
3 Corporations Code § 5233. But even if the decision to hire S&Y did violate
§5233, Plaintiff does not demonstrate why that would give Plaintiff standing to
disqualify S&Y from representing PFR, or that the proper remedy for a violation of
§5233 would be disqualification of S&Y.

4 (September 18, 2014 Order of Judge Ioana Petrou, ¶ 8, 9.)

5 Reese has presented no new evidence that would justify the Court's reconsideration
6 of these issues. Reese's motion has no merit and must be overruled.

7
8 **C. Reese's Motion is Barred by Code Civ. Proc. §1008.**

9 Reese accepted and did not challenge the rulings by the Court on September 18,
10 2014. Any motion that asks the judge to decide the *same matter* previously ruled on must
11 comply with the requirements of a motion for reconsideration under Code Civ. Proc. §
12 1008. *R & B Auto Ctr., Inc. v. Farmers Group, Inc.* (2006) 140 CA4th 327, 373; *Powell*
13 *v. County of Orange* (2011) 197 CA4th 1573, 1577. The Court decided the standing
14 requirements and the substantive issues in the September 18, 2014, motion. Reese
15 accepted and did not challenge those rulings and did not timely move for reconsideration
16 under Code Civ. Proc. § 1008. Instead, she brings the instant motion months later asking
17 the Court to again decide these issues. Her motion has not merit and must be denied.

18 **CONCLUSION**

19 For the foregoing reasons, the Motion of Summer Reese to Disqualify Opposing
20 Counsel must be denied.

21
22 DATED: January 29, 2015

SIEGEL & YEE

23 By: 
24 Alan S. Yee

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

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PROOF OF SERVICE

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

On January 29, 2015, I served the following document:
Memorandum of Point and Authorities in Opposition to Cross-Defendant Summer Reese's Motion To Disqualify Counsel.

on the Parties in said action,

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

Summer Reese 449 43 rd Street Richmond, CA 94805 Tel: 510-680-5019 Email: Summerinthedesert@yahoo.com	Cross-Defendant IN PRO PER
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I declare under penalty of perjury that the foregoing is true and correct.
Executed on January 29, 2015, at Oakland, California.

