

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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8

9 **SUPERIOR COURT OF STATE OF CALIFORNIA, COUNTY OF ALAMEDA**  
10 **RENE C. DAVIDSON COURTHOUSE, UNLIMITED CIVIL JURISDICTION**  
11

12 PACIFICA DIRECTORS FOR GOOD GOVERNANCE, )  
13 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 DIAZ, )  
20 BRIAN EDWARDS-TIEKERT, JOSE LUIS FUENTES, )  
21 LAWRENCE REYES, CERENE ROBERTS, and )  
22 MARGY WILKINSON ; as individuals and in their )  
23 official capacities as members of the Board of Directors )  
24 of Pacifica Foundation Radio, a California Nonprofit )  
25 Public Benefit Corporation; and )

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

28 Defendants )

29 \_\_\_\_\_ )  
30 PACIFICA FOUNDATION RADIO, )

31 Cross-complainant )

32 v. )

33 Summer Reese, and “ROES” 1 to 100, inclusive )

34 Cross-defendants )

Case No. HG14720131

**CROSS-DEFENDANT’S  
REPLY TO CROSS-  
COMPLAINANT’S  
OPPOSITION TO CROSS-  
DEFENDANT’S MOTION  
TO SET ASIDE THE  
HONORABLE IOANA  
PETROU’S JUNE 3, 2014  
VOID ORDER ;**

**REQUEST TO TAKE  
JUDICIAL NOTICE**

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

35 Summer Reese, the Cross-defendant in the above captioned matter (hereinafter, “Reese”), replies to  
36 Cross-complainant’s (hereinafter, “Counsel”) Opposition to Cross-defendant’s Motion to Set Aside  
37 the Honorable Ioana Petrou’s June 3, 2013 Void Order, as follows:  
38

1       **7. Counsel attempts to mislead the Court regarding the basis for bringing the underlying motion**  
2 Counsel cites “*R & B Auto Ctr., Inc. v. Farmers Group, Inc.* (2006) 140 Cal.App.4th 327, 373” (Jan.  
3 29th Opp., 2:25—26) for his contention Code Civ. Proc. § 1008 applies to “any motion that asks the  
4 judge to decide the *same matter* previously ruled on.” Counsel miscites page 373 of that opinion,  
5 which is to a concurring opinion of one Justice (viz., Rylaarsdam, Acting P. J.).

6       Counsel further mischaracterizes Reese’s underlying motion, which does not cite § 1008; and  
7 whose very name, as acknowledged even by counsel (Jan. 29th Opp., 2:14), is to set aside a void  
8 order. Said motion is made pursuant to Code Civ. Proc. § 473(d) providing in part: “The court . . .  
9 may, on motion of either party after notice to the other party, set aside any void judgment or order”  
10 (*id.*, underlines added); and the court’s power to do so independent of statute. Because § 1008 cites  
11 nothing about a “void” order or judgment, counsel’s citation to § 1008 is an attempt to mislead the  
12 Court regarding the basis for making the motion, and to avoid the issues it raises in the best interests  
13 of Defendant-corporation, which counsel fails to advance despite counsel’s fiduciary duties of good  
14 faith and loyalty to Defendant-corporation.

15       Counsel’s next citation, which is to *Powell v. County of Orange* (2011) 197 Cal.App.4th  
16 1573 (*Powell*), is unavailing. The *Powell* court considered the nature of a “Motion to Reconsider  
17 Denial of Motion to Set Aside Dismissal and Entry of Judgment; Alternatively to Set Aside the  
18 Dismissal of the Action and Judgment” made in the trial court therein. The motion so labeled was  
19 filed in June 2010—about two months after the same litigant caused to be filed a motion to set aside  
20 the same dismissal judgment of that trial court. The *Powell* court ruled the June 2010 motion “asked  
21 the trial court to decide again whether to set aside the dismissal judgment” and so was a motion to  
22 reconsider the judgment (*id.*, at p. 1577). Counsel’s citation of *Powell* is unavailing, inasmuch as no  
23 previous motion was made to set aside the June 3, 2014 order herein.

24       **8. Counsel misrepresents the facts regarding the vote on Fuentes’s motion to terminate Reese**  
25 *Dolbear v. Wilkinson* (1916) 172 Cal. 366 (cited on p. 13 of Reese’s Memorandum in support of the  
26 underlying motion) is also authority for Director Luzette King’s refusal to vote whether to terminate  
27 Reese by unnoticed motion at the March 13, 2014 meeting, and for King’s departure therefrom  
28 without voting on the motion to terminate Reese.

29       On that point, the Court of Appeal in *American Center for Education, Inc. v. Cavnar* (App. 2  
30 Dist. 1972) 26 Cal.App.3d 26—quoting 2 Fletcher, *Cyclopedia of the Law of Private Corporations*  
31 (perm.ed.) § 422, p. 277—said:

32     / / /

1 A director cannot be trapped into attendance at a directors' meeting, against his will,  
2 by the directors going to his office, which was the office of the company, where he  
3 left the office in order to break up a quorum as soon as he realized that corporate  
4 action was to be taken and a meeting held. [Footnote omitted.] So, to hold that certain  
5 directors could form a quorum by coming upon another in a room, or in the street,  
6 and, despite the protests of that other, could, by merely declaring the body of persons  
7 gathered together to be a meeting, actually give it that complexion, would be illegal.  
8 [Footnote omitted.] But this rule does not apply where the director not only attends  
9 but remains and participates in the proceedings during the entire meeting. [Footnote  
10 omitted.]

26 Cal.App.3d at p. 31.

9 Therefore, as alleged in Reese's declaration in support of the underlying motion—which is new  
10 evidence she now brings to the attention of the Court, despite Defendant-corporation PFR's  
11 allegations she "raises no new facts" (Jan. 29, 2015 Opp., 2:12) and presents "no new evidence" (*id.*,  
12 4:9) —no quorum existed at the time the vote was taken with respect to Defendant Fuentes's March  
13 13, 2014 motion to terminate Reese's employment. Therefore, termination of Reese's employment  
14 by means thereof is not an act of said PFR but, being thus exploited by Defendant-individuals, their  
15 usurpation of it.

16 Therefore, in reply to counsel's allegation Reese "presents no authority as to why the order is  
17 void" (Opp. 2:15), Reese alleges that as a general rule applicable to corporate boards, a board's  
18 action is a legal nullity if taken when no quorum is present. (*Santandrea v. Siltec Corp.* (App. 1 Dist.  
19 1976) 56 Cal.App.3d 525, 528 [informal approval by two corporate directors did not validate alleged  
20 corporate action]; *Gieselmann v. Stegeman* (Mo. 1969) 443 S.W.2d 127, 135—136 [so-called  
21 meeting of corporate directors, held without notice or quorum, was illegal].)

22 Further, where an act committed by Defendant-individuals is void under California law, any  
23 order of this or some other court sustaining such act is likewise void and must be set aside. *Brewster*  
24 *v. Hartley* (1869) 37 Cal. 15 stands for the proposition members of a corporation are granted voting  
25 power by statute and charter, which power the corporation cannot deprive them of. And by depriving  
26 the PFR members of representation by a lawfully elected majority, Defendant-individuals purport to  
27 deprive the members of their lawful voting power in violation of Corporations Code § 5211(a)(7)  
28 requiring quorum "for the transaction of business". (Re computation of quorum under PFR Bylaws,  
29 see Reese's Reply to Opp. to Motion to Strike, filed simultaneously herewith.)

30 (See also *Pigeon Point Ranch, Inc. v. Perot* (1963) 59 Cal.2d 227 [rights based in corporate  
31 bylaws, as any contract, are protected by law]; and *Caldwell v. Grand Lodge of United Workmen*  
32 (1905) 148 Cal. 195 [corporate bylaw, to the extent inconsistent with lawful authorities, is void].)

1 **9. The Court's said finding is a mere statement of conclusion lacking any citation to authority,**  
2 **and should be "disregarded"**

3 The Court's said June 3, 2014 finding of "fraud" with respect to Defendant-corporation PFR's said  
4 January 30, 2014 Employment Contract is supported only by the Court's statement no formal vote  
5 was cast to ratify said Contract. The "fraud" finding is a mere statement of conclusion, and cites no  
6 legal authority other than the Court's own statement.

7 "[A] finding of fraud, or lack of it, will be tested by the same rule as a pleading of  
8 fraud. (Citations.) Both state a conclusion. (Citations.) An allegation or finding of  
9 fraud "adds nothing." (Citation); it concerns no "issuable fact" (citations); and it is to  
10 be "disregarded" (*Wells v. Comstock* (1956) 46 Cal.2d 528, 532 [297 P.2d 961];  
11 (citations) . . ."  
12 *Fort v. Board of Medical Quality Assurance* (App. 1 Dist. 1982) 136 Cal.App.3d 12,  
13 20 (*Fort*).

14 As alleged in Reese's memorandum in support of the underlying motion, counsel's allegations about  
15 circumstances wherein the PFR Board of Directors took no formal vote to approve or ratify Reese's  
16 January 30, 2014 Contract, alleged to be "fraudulent" in consequence thereof, are without merit. That  
17 legal conclusion, stated in support of the Honorable Ioana Petrou's said June 3, 2014 order, is "not  
18 supported by the facts found" by the Court, and so "must be disregarded" (*Wells v. Comstock (supra)*  
19 46 Cal.2d 528, 532 (en banc)).

20 Counsel alleges no authority in support of the Honorable Ioana Petrou's mere conclusion  
21 about a formal vote of the PFR Board of Directors being somehow necessary to ratify said Contract.

22 **10. Even assuming arguendo the 2013 Contract was induced by fraud or deceit, PFR entered into**  
23 **the 2014 Contract and so waived any purported claim of damages arising from said 2013 Contract**

24 Irrespective of counsel's allegations about the 2013 Contract being a mere "offer letter," the  
25 requisite signatures of the officers appear on the face thereof, so that it is presumed to be a binding  
26 contract of PFR under Corporations Code § 5214.

27 California law has, for more than a century, recognized that a plaintiff claiming to  
28 have been induced into signing a contract by fraud or deceit is deemed to have  
29 waived a claim of damages arising therefrom if, after discovery of the alleged fraud,  
30 he enters into a new contract with the defendant regarding the same subject matter  
31 that supersedes the former agreement and confers upon him significant benefits.  
(Citations.)

32 *Oakland Raiders v. Oakland-Alameda County Coliseum, Inc.* (App. 3 Dist. 2006) 144  
Cal.App.4th 1175, 1185 (*Oakland Raiders*).

On the one hand, where the seven Defendant-individuals mentioned in paragraph 7 of Reese's

1 Declaration in support of the underlying motion—Lydia Brazon, Benito Diaz, Brian Edwards  
2 Tiekert, Cerene Roberts, Tony Norman (de facto), Dan Siegel, and Margy Wilkinson—merely  
3 balked at the 2013 Contract and the January 10, 2014 report made by Heather Gray on Cross-  
4 defendant’s background pursuant to said Contract, said Defendant-individual could not have  
5 possibly discovered any fraud with respect thereto.

6 On the other hand, assuming *arguendo* the said seven Defendant-individuals did not merely  
7 balk at said 2013 contract and report but, during the period of January 10—30, 2014, did learn of  
8 some evidence one or more of them believes supports an allegation of fraud, such discovery is made  
9 moot by the signatures of Heather Gray and Richard Uzzell on the 2014 Contract, which supersedes  
10 the 2013 Contract (*Oakland Raiders, supra*).

11 Therefore, Defendant-corporation waived whatever “damages” might arise from its  
12 employment relationship with Cross-defendant, whose First Amendment exercise by her silence and  
13 nonapplication for a Social Security number (“SSN”) is to be accorded the fullest protection of the  
14 First Amendment (*Tinker v. Des Moines Independent Community School Dist.* (1969) 393 U.S. 503,  
15 506 (*Tinker*)). Therefore, any reprisal for her alleged failure to apply for such number under 26  
16 C.F.R. § 301.6109-1(d)(1) is “abridgment by government” (*Tinker*) as well as intrusion and violation  
17 of PFR’s agreement to employ her as it did during the 539-day period commencing August 17, 2012  
18 and at least until February 7, 2014 (at which time Defendant Fuentes purportedly objected to her  
19 nonapplication for SSN).

20 Counsel does not deny that Heather Gray and Richard Uzzell signed said 2014 Contract  
21 conferring significant benefits on Reese, or that the PFR Board of Directors assumed performance  
22 under Defendant-corporation PFR’s contract employing Reese without an SSN during those 539  
23 days. (See *Bohman v. Berg* (1960) 54 Cal.2d 787, 794—795 [assumed performance of contract].)  
24 (Notwithstanding *Oakland Raiders, supra*, and counsel’s said failures to deny, counsel, by his  
25 purported April 25, 2014 cross-complaint, seeks money “DAMAGES” from Reese.)

26 ***11. Because counsel unlawfully procured the June 3, 2014 order finding “fraud” in execution of***  
27 ***Reese’s employment Contract, counsel can secure no “defensive relief”***

28 It further appears counsel relies on said June 3, 2014 “fraud” finding to set up and adopt a position  
29 of relief against the April 15, 2014 complaint which Plaintiff-association brought to enforce  
30 Defendant-individuals’ fiduciary duties. (See *Nevada Land & Inv. Corp. v. Sistrunk* (1934) 220 Cal.  
31 174 (*Nevada Land*); and *U.S. Mach. Co. v. Internat. Metals Dev., Inc.* (App. 3 Dist. 1946) 74  
32 Cal.App.2d 5.) “This remedy has been styled ‘defensive relief,’ whereby the fraud is set up by way

1 of defense to defeat an action brought to enforce an apparent obligation or liability.” (*Nevada Land*,  
2 *supra*, 220 Cal. at p. 177.) Where counsel’s procurement of the June 3, 2014 order is unlawful, the  
3 Court must afford no “defensive relief.”

4 ***12. Request to take judicial notice***

5 The Court is requested to take judicial notice of Deputy Attorney General Mossler’s December 17,  
6 2014 letter to Alan Yee, apprising said counsel of the Office of Attorney General’s (“OAG”) full-  
7 scale investigation of Defendant-corporation. A copy of said letter is attached hereto.

8 ***13. Clean hands rule***


9 Counsel’s procurement of the Court’s finding that the unprecedented claim of Defendant Tony  
10 Norman to a Director-seat of the Defendant-corporation violates morality since, as alleged in  
11 Reese’s Declaration in support of the underlying motion, like claims were made by other candidates  
12 for a seat on the Board of Directors (“Board”) of said corporation pursuant to the same Bylaws  
13 thereof without ever being accepted, and since there is no evidence of such acceptance (prior to  
14 Norman’s claim).

15 Moreover, counsel’s procurement of the Court’s June 3, 2014 finding of “fraud” in the  
16 execution of Reese’s January 30, 2014 agreement to employ Reese as Executive Director for three  
17 years, based on testimony that counsel procured from Defendant Brian Edwards-Tiekert to the effect  
18 that said agreement is not entered into without a formal vote of the Board to ratify it after the  
19 Board’s November 8, 2014 election by which Reese was elected and after the two Board officers’  
20 signed agreements to hire her to fill that position, violates conscience where it denies the existence  
21 of said agreement.

22 Considering the OAG’s pending investigation is on a scale fuller than the pretrial  
23 proceedings herein, the Court should not allow any conflict to arise between that investigation and  
24 these proceedings, but exercise its equitable powers to protect its integrity from counsel’s unclean  
25 hands in the procurement of said order. Wherefore, Reese prays the Court set the order aside.

26 Accordingly, the underlying motion should be granted.

27 Respectfully submitted,

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

*KAMALA D. HARRIS*  
*Attorney General*

*State of California*  
**DEPARTMENT OF JUSTICE**



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December 17, 2014

Alan Yee, Attorney at Law  
Siegel & Yee  
499 14th Street, Suite 300  
Oakland, CA 94612

RE: Pacifica Foundation Radio (CT011303)

Dear Mr. Yee:

The Office of the Attorney General has the duty to supervise charitable organizations under California Corporations Code section 5250, and Government Code sections 12580 through 12599.8. One of the ways the Office performs this duty is by conducting audits of charitable organizations. We have selected Pacifica Foundation Radio (PFR) for a correspondence audit. Please send the requested documentation and information to me within thirty days of the date of this letter (**January 16, 2015.**)

Unless otherwise stated, documents and information produced in response to these requests are to cover the period from **January 1, 2010**, to the date of your response. Please send copies, and not original documents.

1. Articles of Incorporation of PFR, and any amendments.
2. Bylaws of PFR, and any amendments.
3. Names, addresses, email addresses, and telephone numbers of all past and current members of the board of directors and officers of PFR, identifying each person by their position and term.
4. PFR's IRS Form 1023 and related correspondence, including confirmation of PFR's current tax-exempt status through the IRS and California Franchise Tax Board.
5. Complete minutes, including any attachments or reports, of the proceedings of corporate members, board of directors, board committees, and any board resolutions of PFR.
6. PFR's IRS Forms 990, 990EZ, or 990PF, and Questionnaires.
7. PFR's Registry of Charitable Trusts Form RRF-1.

December 17, 2014

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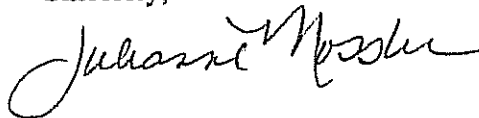
8. PFR's Financial statements (audited or unaudited); Income Statements, and Balance Sheets.
9. PFR's General Ledgers (if maintained electronically, please provide in electronic form).
10. PFR's Bank statements for all checking, savings, money market and investment accounts.
11. PFR's canceled checks for all checking, savings, money market and investment accounts.
12. Records of all donations and grants received by PFR including but not limited to donations received through Twitter, Facebook, and PFR's website.
13. PFR's receipts and itemized expenditure journals documenting expenses.
14. Produce all written policies, procedures, internal training materials and documents related to solicitations, including solicitation scripts, question and answer sheets, brochures and/or promotional materials used in soliciting donations, and audio recordings of fundraising solicitations.
15. Correspondence and documents related to donations received from the public, including any restrictions on the use of the contributions by the donor(s).
16. Identify and produce all complaints and donation cancellation requests along with the name, telephone number, email address, and address of the complaining or requesting party.
17. A list of any loans made by PFR and all documents related to each loan. For any loan, please provide the following information:
  - a. The name of the person or entity receiving the loan;
  - b. The date the loan was made;
  - c. The amount of the loan;
  - d. The purpose of the loan;
  - e. Copy of the note;
  - f. The terms of the loan;
  - g. Board minutes reflecting board discussion of transaction;
  - h. A description of all steps taken to comply with the requirements of California Corporations Code section 5233; and
  - i. A schedule reflecting the history of payments. The schedule should reflect the loan amount, all repayments and the outstanding balance.
18. A list of any loans made to PFR and all documents related to any each loan. For any loan, please provide the following information:
  - a. The name of the person or entity making the loan;



- b. The date the loan was made;
  - c. The amount of the loan;
  - d. The purpose of the loan;
  - e. Copy of the note;
  - f. The terms of the loan;
  - g. Board minutes reflecting board discussion of transaction;
  - h. A description of all steps taken to comply with the requirements of California Corporations Code section 5233; and
  - i. A schedule reflecting the history of payments. The schedule should reflect the loan amount, all repayments and the outstanding balance.
19. A list of any self-dealing transactions, from the time of inception through the present. A self-dealing transaction is a transaction to which the corporation is a party and in which one of more of its directors has a material financial interest. (California Corporations Code section 5233.) For each transaction, please provide all documents related to the transaction and the following information:
- a. The date of the transaction;
  - b. All parties involved in the transaction;
  - c. The amount of the transaction;
  - d. The purpose of the transaction;
  - e. A description of all steps taken to comply with the requirements of California Corporations Code section 5233; and
  - f. Board minutes reflecting board discussion of transaction.
20. W2 of all employees, including officers and board members.
21. A list of employees, officers, board members, and consultants, and the amount of salary or wages paid to each during the years covered by this request.
22. PFR's policies and procedures related to fiscal controls.
23. PFR's policies and procedures related to governance.

If you have any questions, I can be reached at the above telephone number.

Sincerely,



JULIANNE MOSSLER  
Deputy Attorney General

For KAMALA D. HARRIS  
Attorney General