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18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 COUNTY OF LOS ANGELES

20 PACIFICA FOUNDATION INC., a California) Case No.: 21BBCV00642
21 Nonprofit Public Benefit Corporation,)
22) Judge: Hon. William D. Stewart
23 Plaintiff,) Dept. A
24) Date Filed: July 22, 2021
25 vs.) Trial Date: None Set
26)
27 NEW DAY PACIFICA, an Unincorporated) VERIFIED FIRST AMENDED CROSS
28 Association, et al,) COMPLAINT FOR:
29) (1) Relief under Corp Code 5610, 5615, 5617;
30 Defendants.) 5034
31)
32 NEW DAY PACIFICA, an Unincorporated) (2) Injunctive Relief
33 Association, JAN GOODMAN, SHEILA) (3) Declaratory Relief
34 McCOY, ELIZABETH JENSEN, MANSOOR) (4) Regarding 6338(a)(1)
35 SABBAGH, EVELIA JONES, NANCY) (5) Declaratory Relief re KPFK Local
36 PEARLMAN, ROBERT PAYNE and ADAM) Board election §§5033 & 5034
37 WOLMAN) (6) Breach of Fiduciary Duty
38 Cross-Complainants)
39 vs.)
40 PACIFICA FOUNDATION, a California Non)
41 Profit Corporation, AND ROES 1-200)
42 Cross-Defendants)

43 CROSS-COMPLAINANTS ALLEGE:

44 **I. SUMMARY**

45 1. By this action all Cross-Complainants seek

46 to validate results of a Referendum election written by and campaigned for by New

1 the Pacifica Foundation and elect new Officer/Directors which affirmative result
2 Pacifica Management improperly rejected;

3 b. to validate Cross-Complainants' fund raising efforts,

4 c. to provide Cross-Complainants access to Pacifica's membership list for fund raising
5 purposes,

6 2. By this action Cross-Complainants NEW DAY PACIFICA (hereafter, New Day or NDP),
7 JAN GOODMAN, SHEILA McCOY, MANSOOR SABBAGH, EVELIA JONES, NANCY
8 PEARLMAN, ROBERT PAYNE and ADAM WOLMAN seek an order that Pacifica recount the
9 ballots in the KPFK 2021 Delegate Election, also known as the KPFK Local Station Board election
10 (hereafter referred to as the KPFK-LSB election) including votes for Robert Payne, Nancy Pearlman
11 and Adam Wolman to determine the outcome of the KPFK Listener Station Board election and
12 additional relief as described below.

13 II. PARTIES

14 3. Cross-Complainant New Day Pacifica (hereafter "New Day") is an unincorporated non-
15 profit association, registered with the California Secretary of State, with its offices in Oakland
16 California.

17 4. Cross-Complainants Jan Goodman, Sheila McCoy, Dr. Elizabeth Jensen, Nancy Pearlman,
18 Robert Payne, Adam Wolman, Mansoor Sabbagh, and Evelia Jones are longtime, members of
19 Defendant Pacifica Foundation. All the above, except Elizabeth Jensen, are also associated with and
20 supporters of New Day Pacifica and are members of Pacifica station KPFK, which is located in Los
21 Angeles, California. Shortly following filing this First Amended Cross-Complaint, Sheila McCoy,
22 Elizabeth Jensen, Mansoor Sabbagh and Evelia Jones will file their motion for leave to intervene.

23 5. Pacifica Foundation is a California Non Profit Public Benefit Corporation, with its principal
24 offices in the City of Los Angeles, and is the licensee of five radio stations, KPFK in Los Angeles, CA;
25 KPFA, in Berkeley, CA; WBAI in New York, New York; WPFW in Washington, D.C., and KPFT in
26 Houston, Texas. The five radio stations are part of a network that includes about 250 Pacifica
27 independent, affiliate radio stations throughout the United States.

28 6. Pacifica Foundation was founded in 1949 as an alternative to commercially-driven media.
It promotes peace and justice through communication between all races, nationalities and cultures. It
seeks to contribute to the democratic process through public discourse and promotion of culture.

7. Members of Pacifica have the right to vote for Delegates and on any amendment to the
current Pacifica Bylaws (hereafter "Bylaws") as set forth in Section I(B) of Article 17 and Art. 3, §5.

8. Members of Pacifica elect the Board of Directors in an integrated two-step process set out
in the Bylaws, Art. 4 §1 which states that

a. The Members of each class for each Foundation radio station shall separately elect

Delegates who shall serve as representatives of the Members in the election of

1 9. New Day Pacifica has associational standing to maintain the causes of action in this First
2 Amended Complaint. An association has standing to bring suit on behalf of its members when: (a) its
3 associates, supporters or members (hereafter called members) would otherwise have standing to sue in
4 their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c)
5 neither the claim asserted nor the relief requested requires the participation of individual members in the
6 lawsuit. New Day Pacifica is made up largely or entirely of members of Pacifica. These are persons
7 with voting rights in the election. New Day created and carried out a campaign for an election to
8 approve a Referendum to revise Pacifica Foundation's Bylaws and elect Transition Officer/Directors to
9 the Pacifica National Board (hereafter "PNB"). Its members, as voters in the election, have standing to
10 sue in their own right. The interests New Day seeks to protect are germane to its purpose because New
11 Day promoted the election including the officer election on behalf of members, and New Day's
12 participation in this case is to vindicate the election it promoted. The requested relief does not require
13 participation of individual members because New Day can advocate for the relief sought.

14 10. In the election, all classes of members approved Amendment of the Bylaws pursuant to
15 Bylaws. Amending the Bylaws Article 17 §1B4, (Page 40) "To be approved, a proposed amendment
16 must receive the approval of the Members by a majority vote". Listeners and Staff together voted
17 6817 (55%) in favor with 5459 (45%) opposed, thereby approving the entire Referendum. When the
18 members approved the Referendum, they approved both the Amendment to the Bylaws and
19 election/naming of Transition Officer/Directors, Sharon Kyle, Jan Goodman, Akio Tanaka and Lynden
20 Foley as set forth in the New Day Pacifica Bylaws, P. 1 Preamble, Par. 3 "Pacifica Members will be
21 voting on this entire plan." The electronic ballots referred voters to the New Day Bylaws when
22 informing them of what a yes vote would mean (A copy of the Electronic Ballot is located on Pages 57-
23 62 of the National Election Supervisor's Final Report on the 2021 Referendum, (attached to Plaintiff's
24 First Amended Complaint (hereafter FAC) as Exhibit B.

25 11. At all relevant times, Cross-Complainant Jan Goodman was an individual who resides in the
26 City of Santa Monica, California, a fully paid Listener member in good standing of radio station KPFK
27 and Pacifica Foundation. She signed the New Day Petition and voted YES for the New Day Bylaws,
28 has donated to New Day and voted for the candidates endorsed by New Day in the KPFK Local Station
Board Election.

12. At all relevant times, Cross-Complainant Elizabeth Jensen was an individual who resides in
Texas and was a fully paid Listener member in good standing of radio station KPFT and Pacifica
Foundation. She voted YES for the New Day Bylaws. She did not participate in the referendum
process other than voting. She did not sign the New Day Pacifica Petition, nor donate to New Day
Pacifica, nor was she involved in Pacifica Governance, except for voting in membership votes. She was
not a party to any alleged agreement between Pacifica and New Day Pacifica about how votes in the
New Day Pacifica referendum would be counted, nor involved with negotiations about how or in what
manner votes would be counted or not and was not aware of how votes would be counted. She wants

1 13. At all relevant times, Cross-Complainant Sheila McCoy was an individual who resides in
2 the City of Los Angeles, California and was a fully paid Listener member in good standing of radio
3 station KPFK and Pacifica Foundation. Ms. McCoy signed the New Day Petition and voted YES for
4 the New Day Bylaws. She volunteered to help get out the vote for both the Referendum and the KPFK
5 Local Station Board Election. She wanted to vote for the candidates endorsed by New Day in the KPFK
6 Local Station Board Election but never received voting credentials so could not. She was not involved
7 in negotiations about how or in what manner votes would be counted or not.

8 14. At all relevant times, Cross-Complainant Evelia Jones was an individual who resides in the
9 City of Los Angeles, California and was a fully paid Listener member in good standing of radio station
10 KPFK and Pacifica Foundation. She is a member of the local KPFK station board. And thus part of the
11 governance structure of Pacifica. She is entitled to vote directly for Directors to the Pacifica National
12 Board. She signed the New Day Petition and voted YES for the New Day Bylaws. She voted for the
13 candidates endorsed by New Day in the KPFK Local Station Board Election and no one else.

14 15. At all relevant times, Cross-Complainant Mansoor Sabbagh was an individual who resides
15 in the City of Long Beach, County of Los Angeles, California and was a paid Staff member in good
16 standing of radio station KPFK and the Pacifica Foundation. He was a delegate to the KPFK LSB until
17 December of 2020, and served as a Director on the Pacifica National Board. He was an active
18 participant and leader in the 2001-2003 Bylaw revision groups which created the current Bylaws, was a
19 participant in the attempted Bylaw revision by the Pacifica Restructuring Project (PRP) which ended in
20 2020 and was an active supporter of the New Day Bylaws revision effort. Mr. Sabbagh signed the New
21 Day Petition and voted YES for the New Day Bylaws. He was a vocal supporter of the New Day
22 Bylaws. He was not involved with negotiations about how or in what manner votes would be counted
23 or not. He was not aware that Staff would be counted separately than Listeners. Since the election he
24 was abruptly laid off just before he was to begin the evening shift as a Board Operator, without a
25 replacement being obtained by management of KPFK. As a result, that evening KPFK went silent for
26 some period of time.

27 16. At all relevant times, Cross-Complainant Nancy Pearlman was a resident of the City of Los
28 Angeles, California and was a Listener member of Pacifica, a former member of the radio station KPFK
Local Station Board (LSB), and a retired member of the Board of Trustees of the Los Angeles
Community College District. She voted YES for the New Day Bylaws. She did not donate money to
New Day. She was not involved with negotiations about how or in what manner votes would be
counted or not. She was a candidate for the radio station KPFK LSB election which ended October 15,
2021. She allowed New Day to endorse her on a postcard. She voted to elect herself and Robert Payne,
Will Ryan, Adam Wolman, Christina Avalos, Oye Oyeyipo, and Carlos Zavala and no one else in the
local Station Board (LSB) election which ended October 15, 2021.

17. Lydia Brazon is Executive Director of Pacifica Foundation. Her residence is in the City of
Los Angeles, California

1 18. **Berthold Reimers** is General Manager of radio station WBAI, the Pacifica Station in New
2 York City. Cross-Complainants are informed and believe and based thereon allege that his residence is
3 in New York City, NY.

4 19. **Renee A. Penalosa** is National Election Supervisor appointed and hired by the Pacifica
5 Foundation. She purported to act as Election Inspector, as described in Corporations Code §5615 and
6 Bylaws, Art. 4§4.A. This allegation does not concede that she acted properly and Cross-Complainants
7 allege her actions were not proper. Cross-Complainants are informed and believe and allege her
8 residence is in Alameda County, California.

9 20. **Linda Perry Barr** is Program Director, and part of management, at radio station WBAI.
10 Cross-Complainants are informed and believe and allege she is a resident of New York City, New York.

11 21. **Grace Aaron** is a former Chair of the Pacifica National Board who publicly opposed the
12 New Day Referendum, represented the NO position in an air debate, ran in the 2021 KPFK
13 LSB/Delegate election, and organizes and promotes a slate of candidates running for the KPFK LSB,
14 called CandidateSlate.com.

15 **III. BYLAWS AND ELECTION OF TRANSITION OFFICER/DIRECTORS WON**

16 22. This Cross-Complaint is brought under Corporations Code §§ 5034, 5150, 5617, 6330-6338
17 and all other applicable laws, and the Bylaws on the grounds that the New Day Pacifica Referendum
18 election, which consists of both a Bylaw Amendment and Election of four transition officer/directors,
19 voting on which ended on July 7, 2021, was approved by the members, as defined by Corporations code
20 §5034, §5150 and Pacifica Bylaws Article 17 §1.B.2.iv. Unless further indicated, all statutory
21 references are to the California Corporations Code and all further references to Bylaws are to the current
22 Pacifica Bylaws.

23 23. Cross Complainants have given notice of this Action to the Attorney General of California.

24 24. In the referendum, the majority of members voted YES, therefore the referendum passed.

25 25. **Cross-Defendants claim Listener members and Staff members had to vote yes in separate
26 elections for the referendum to pass, and claim that because the majority of Staff members who voted at
27 all five radio stations owned by Pacifica did not vote yes, the referendum failed.**

28 26. **Alternatively, the Court should disregard the vote of the Staff at radio station WBAI on the
grounds that with regard to the Staff vote: a) a 99% vote NO is inherently and on its face evidence (or
proof) of a) intimidation, b) manipulation, voter tampering / rigging; or other illegal conduct; or c) the
volunteer Staff at WBAI was “packed” prior to the election to obtain a NO vote by both not taking off
people who were formerly eligible to vote, but were not currently eligible and by allowing or inviting
people who were not currently eligible to vote to be listed as volunteer staff; and/or d) Staff at WBAI
were intimidated and coerced to vote NO; and/or e) fraud; the Staff at WBAI were misled and lied to in
an egregious manner so that the vote should be disregarded, f) the vote for new Bylaws passed and to
elect four Transition Officer/Directors passed.**

1 27. Without the Staff vote at WBAI: a) the Listener members at all stations combined voted
2 YES; b) and the majority of Staff members at all stations combined voted YES; and c) the total of
3 Listeners and Staff members in total voted YES.

4 28. This action is under Corp Code §§ 5610 and 5617, and other applicable laws and the Bylaws
5 to order the votes for Robert Payne, Nancy Pearlman, Will Ryan and Adam Wolman to be counted.
6 (Will Ryan later died so votes for him should be passed to the next alternative candidate pursuant to the
7 single transferable voting method in affect for this election. Cross-Complainants maintain some
8 references to him in this Cross-Complaint for purposes of context and factual accuracy as it was a total
9 of four candidates for whom Pacifica wrongly denied election).

10 29. These candidates at the recent radio station KPFK Local Station Board (LSB) election were
11 removed from the results, with no mention on the tally sheet that they had been candidates and the votes
12 for these candidates were improperly disposed as if these individuals had not run for offices.

12 IV. BACKGROUND

13 30. Currently Pacifica Foundation has approximately 40,000 Listener members and
14 approximately 1000 Staff members.

15 31. In or about 2019 and 2020 there was a Pacifica Bylaw Amendment referendum, called the
16 Pacifica Restructuring Project (PRP). The proposed amendments in that Referendum were different
17 from the proposed amendments in the New Day Bylaws at issue in this Cross Complaint. One of the
18 differences was that Staff was eliminated from having representation on the Pacifica National Board
19 under the PRP Bylaws. It is now known by all parties that Corporations Code Sec 5150 was applicable
20 to that election for that proposed set of Bylaws since the staff class was treated materially and adversely
21 different from the Listener Class by that set of Bylaws.

22 32. Despite the loss of the PRP referendum, Pacifica members saw the need for major changes
23 in governance and management of Pacifica to allow it to survive and flourish. Throughout the second
24 half of 2020, and first half of 2021 a group of members of the Pacifica Foundation campaigned to revise
25 the Bylaws of Pacifica and elect Transition Officer/Directors. This campaign was organized and run
26 under the banner of New Day Pacifica, a Registered Unincorporated Non-Profit Association. The
27 campaign culminated in an election and further campaigning between June 7 and July 7, 2021.

28 33. The election concerned the election of four National Board Officer/Directors, and
restructuring governance of Pacifica, by Amending the Bylaws along lines that Pacifica's auditors
suggested, in a July 8, 2020 Draft Report by Rogers and Co (Auditors for Pacifica Foundation). The
restructuring was necessary, according to proponents, because the present Board Structure, which
includes 122 people, was too large and also dysfunctional, with crisscrossing lines of authority. The
present structure was a significant cause of the Foundation having 17 Executive Directors (Interim and
Permanent) in 20 years with a downward spiral of income in that time, while the Foundation faces a
\$3.1 Million dollar loan (due at the time of the beginning of the campaign in April, 2021) now due and
payable in October, 2022, with no source to pay it off

1 34. The election was contested. Ultimately, 12,420 (28%) of Pacifica's members voted in the
2 election. This was the largest turnout of any election Pacifica was ever involved in.

3 35. The vote on the New Day Pacifica Bylaws ended July 7, 2021. The numbers relayed by the
4 National Election Supervisor (NES) in a Final Election Report and on the Pacifica Website showed
5 solid "approval by the members" as defined by Corp. Code § 5034 and the Pacifica Bylaws, Article 17
6 section 1B4, second sentence which states, "To be approved, a proposed amendment must receive the
7 approval of the Members by a majority vote."

8 36. The posted election results show that: (i) 6818 (55%) of members (both Listener members
9 & Staff members) approved the Referendum which includes both Bylaw changes and election of 4
10 officers, and voted YES; but (ii) of the 434 Staff who voted nationally, a majority 255 (59%) of the
11 Staff members did not Approve the changes and election and voted NO.

12 37. According to Pacifica's Bylaws, only a majority of all members voting together is necessary
13 to amend the bylaws, except if, as Art. 17 §1.B.v states, the staff's voting rights were materially and
14 adversely affected as to voting in a manner different than the listener class. Pacifica claims that Art. 17
15 §1.B.v, which is mirrored in Corp. Code § 5150 controls. However approval by only the combined
16 membership of Staff and Listeners jointly was needed for the proposal to be adopted, under
17 Corporations Code § 5034 and § 5150, because the Staff class was not materially and adversely affected
18 as to voting, differently than the listener class.

19 V.

20 **THE STAFF CLASS WAS TREATED MATERIALLY THE SAME OR BETTER AND**
21 **NOT ADVERSELY IN COMPARISON TO THE LISTENERS AS**
22 **BOTH HAD GUARANTEED REPRESENTATION WHICH WERE BOTH REDUCED**
23 **PROPORTIONALLY TO EACH OTHER (§5034 & 5051)**

24 **These numbers discussed herein are illustrated by the charts attached hereto and**
25 **incorporated herein by reference as Exhibit 2 to this Cross Complaint.**

26 38. The major reason for reducing the size of the Board was so that it could function more
27 effectively and efficiently. Under the present structure, with 122 people involved in governance and 22
28 people on the Pacifica National Board (hereafter PNB or Board) there are crisscrossing lines of
29 authority and gridlock, contributing to major dysfunctionality and financial instability and losses both in
30 the financial and listenership arenas.

31 39. When comparing how the New Day Bylaws affect guaranteed Director Seats vs. guaranteed
32 Listener seats, both Staff seats and Listener seats are reduced proportionally by about 2/3s, for the same
33 reasons.

34 40. The listener directors were cut by two-thirds from 15 to 5 a 66% reduction. Cutting the 5
35 staff seats by two thirds would equal 1.6 directors which was rounded up to 2, which resulted in a
36 reduction from 5 to 2 seats, which is a 60% reduction. In other words while the listener seats were cut
37 by 66% the staff seats were cut by only 60%. Thus, the staff's voting rights were not materially and

1 the Bylaws Art. 17 §1.B.v, page 41 and §5150 of the Corporations Code. Put another way, under the
2 present Bylaws, Staff is presently guaranteed 5 of 22 seats --23% of the director seats, Under NDP Staff
3 is guaranteed 13%. However, Listeners presently are guaranteed 15 of 22 seats (equaling 68%). Under
4 NDP, Listeners are guaranteed only 33% of the seats, going from a supermajority to a minority position.
5 Percentage wise, guaranteed Staff seats are cut from 23% to 13% -- less than half. While guaranteed
6 Listener seats are cut from 68% to 33%, a cut of more than half. Thus, the staff's voting rights
7 improved in relationship to Listeners'. Thus, Staff were treated materially the same or better, and not
8 adversely or differently than the listener class.

9 41. Staff can be elected to as much as a 60% majority on the Board. Listeners can also be
10 elected to a majority position. They presently have (68%) under the present bylaws. However,
11 argument by Pacifica as to who will fill the officer/director seats and who will fill the at large seats is
12 self-servingly speculative by Pacifica. Listener seats are reduced numerically, proportionally and
13 substantively more than Staff seats.

14 42. Under the current Bylaws, Staff members do not actually elect their own representatives to
15 the National Board. Staff "Representative/Directors" for each station are elected by all 24 Delegates of
16 each station, of whom only 1/3 (6) are actually Staff Members, with the other 2/3 (18) of the people
17 voting for Staff Directors being Listener members.

18 a. Thus, in the current Bylaws, Staff Members have no right or ability to elect their own
19 representatives to the National Board because Listener Delegates have a super-majority
20 of votes. Staff has reduced influence on which Directors get elected to supposedly
21 represent them.

22 b. In the New Day Bylaws, Staff Directors on the National Board will be chosen exclusively
23 by Staff Members who they represent.

24 43. Following is a comparison of certain aspects under the current Bylaws compared to the New
25 Day Pacifica Bylaws.

26 **Board Composition Under the Current Bylaws**

27 Total # of Directors is 22. Of that total:

28 5 are Staff (23%)

15 are Listeners (68%); and

2 are Affiliate Directors (9%)

29 **Board Composition under New Day Bylaws**

30 Total # of Directors is 15

2 are Staff (13%)

5 are Listeners (33%)

1 is an Affiliate (7%)

4 are Officer/Directors (27%) (Who can be Staff or Listeners)

3 are At-Large (20%) (Who can be either Staff, Listeners, or (more likely) neither)

1 44. The New Day governance structure is a paradigm shift away from the present structure
2 because both the size of the board is reduced, and seats on the board are created specifically for the Four
3 Officer/Directors who are to be directly elected by the national membership, as well as 3 At-Large
4 Directors.

5 45. The following compares the current and new Bylaws with focus on the effect of Staff and
6 Listener representation:

- 7 a. The size of the Pacifica National Board is reduced from 22 to 15.
- 8 b. The New Day Bylaws provide for direct election of the four National Officer/Directors
9 (President, Vice-President, Secretary and Treasurer), who can be either Staff or Listeners,
10 and both classes elect them, together.
- 11 c. Under New Day: There are an additional three At-Large Members, who can be either
12 Staff, Listeners, or neither.
- 13 d. Under New Day: Listener Directors from each station are reduced from 3 to 1--for a total
14 reduction on the National Board from 15 to 5, and Listener directors are directly elected
15 by Listeners, instead of Listeners electing members to the Local Station Board, and then
16 the Local Station Board electing the Listener Directors to the National Board.
- 17 e. Under New Day: Two (2) Staff Directors are elected directly by Staff themselves. This
18 creates better representation for Staff. The present bylaws recognize that staff is divided
19 into Paid and Unpaid/Volunteer Staff. Paid and Unpaid staff can sometimes have
20 different perspectives on issues which come before the board, such as pay and benefits,
21 and how which programs will be broadcast and when.
- 22 f. Presently neither subgroup of Staff are guaranteed representation on the National Board.
23 Nor are Staff Directors to the National Board elected by Staff, but by 18 Listeners and 6
24 Staff -- a majority of Listener delegates from each of the Local Station Boards, for a total
25 of 5 Staff Directors. Staff representation and voting is improved under New Day,
26 because Staff elect their own Directors, and both groups get a guaranteed voice and vote
27 on the National Board.

28 VI. FACTS RELATING TO THE CAMPAIGN AND ELECTION

29 46. Starting around August 2020 New Day Pacifica began using the Pacifica List, along with
30 their previously donated and acquired lists, asking members of Pacifica Foundation to sign a petition
31 supporting the Bylaws changes and to elect four new Transition Officer/Directors and requesting that
32 the changes be put to a vote and to elect four new Transition Officer/Directors, hereafter "Referendum".

33 47. New Day solicited financial support to solicit votes and signatures via its own list, the
34 Pacifica list, social media, and outreach from supporters to other potential supporters and collected
35 additional names and added them to their list.

36 48. When New Day communicated with members via the Pacifica List, New Day gave

1 or volunteering -- or unsubscribing, if they wished. Members or non-members signing the petition had
2 an option to submit their contact information. Doing so was voluntary. Those who voluntarily gave
3 their contact information to New Day Pacifica were added to the list described above. This list was
4 used to solicit funds to get out the vote and to encourage a YES vote on the referendum including the
election of officer/directors.

5 49. Later when Cross-Defendants declared the Yes vote lost, funds were solicited to see that
6 members' majority approval of the vote was validated, including advancing their position in this Court.
7 New Day sent a postcard to KPFK members wherein the KPFK-Pacifica email list was used through a
8 third party. Corporations Code Section 6338 allows soliciting funds for purposes of soliciting a vote
9 and soliciting funds to be used to solicit votes.

10 **VII. FACTS RELATING TO THE 99% TO 1% STAFF VOTE AT WBAI**

11 50. Arthur Schwartz, general counsel, opposed the referendum publicly, including at the
12 Pacifica National Board meeting held on April 15, 2021 when he said that for a period of time there
13 would

14 "be four people running Pacifica, no Board. They could do whatever they want, whatever they
15 want, and it somehow hits me in the gut that WBAI would be back off the air, if these four
16 people just got to run it, without a Board, without representation from anybody else in the
17 United States from any of the stations. And that's the biggest part of this. That there is a period
18 of total dictatorship by a 4-person committee that could totally change Pacifica."

19 51. **It was improper for the organization's general counsel to take and advocate a position**
20 **on the referendum. By doing so, counsel was not advising the organization on legality, and was**
21 **not advising the organization itself but placed himself in a conflict-of-interest position, which he**
22 **continues to have, by representing an interest group within the organization against the views and**
23 **interests of one or more other interest groups within the organization.**

24 52. **Mr. Schwartz violated his professional obligations to the organization and his ethical**
25 **obligations as a lawyer and in continuing his advocacy continues to commit these violations.**
26 **Pacifica improperly used funds to pay its lawyer not for legal advice but for partisan advocacy to**
27 **members. Moreover, Mr. Schwartz's narrative and assertions to members were false and**
28 **incorrect and his actions were below the standard of care for a lawyer acting in such role.**
Pacifica has failed to investigate and act on the misconduct and defalcation of its lawyer and is
therefore complicit in such activity. Pacifica's management is violating its obligations to members
and the public by participating in, failing to investigate and act to obtain relief for such
misconduct.

53. **The false narrative and variations on this theme were repeated over and over,** and
broadcast on the air, and put on the Pacifica Web site by Pacifica and its agents, including the General
Counsel, the General Manager of WBAI, and even the supposedly neutral National Elections Supervisor

54. Berthold Reimers, the WBAI GM also publicly opposed the Referendum.

1 55. On information and belief, the Manager and management at radio station WBAI, and
2 General Counsel for the Network, including, Arthur Schwartz, Berthold Reimers, Linda Perry Barnes,
3 Alex Steinberg, and others, threatened and intentionally misinformed and coerced Staff at WBAI about
4 the contents and effect and result of the Referendum in order to obtain a large NO vote.

5 56. Cross-Complainants are informed and believe and therefore allege the Manager and
6 Program Director engaged in a wide range of manipulative and dishonest election practices including
7 “packing the vote” by packing the WBAI unpaid Staff and the staff list to enable people ineligible
8 according to the Bylaws to vote NO in the election (Pacifica Bylaws Art. 3 § 1.B) in some or all of the
9 following ways: People who had not worked 30 hours between January 7, 2021 and April 7, 2021 (the
10 record date) were added and listed as “unpaid Staff;” people who worked as unpaid Staff previously,
11 but had not so worked 30 hours in the above three months were not taken off the lists per the Bylaws;
12 People who formerly were paid staff, but had not been paid in the 3 months prior to the record date were
13 allowed to stay on the list and vote; ineligible persons were permitted to vote so they would be able to
14 vote NO in the election; people who were ineligible to vote were encouraged and authorized to vote. In
15 other words, there were various forms of ballot box stuffing, ballots voted “no” from ineligible voters.

16 57. Cross-Complainants are informed and believe and therefore allege this was a heavily
17 contested vote, with both sides spending substantial amounts on emails and other communications to
18 prospective voters. Each station held at least one or two debates. In this atmosphere it is not credible
19 that only 1% of the Staff would vote YES, even with intimidation from the station management.

20 58. On information and belief, the Manager and management at WBAI and of Pacifica misled
21 and lied and intimidated and coerced Staff at the station to obtain a large NO vote.

22 **VIII. FOUR CANDIDATES ENDORSED BY NEW DAY IN THE KPFK LOCAL STATION
23 BOARD ELECTION WERE ILLEGALLY DISQUALIFIED AND VOTES FOR THEM NOT
24 COUNTED**

25 59. The Local Station Board at each station elects 4 Directors to the National Board. Beginning
26 in July, and concluding on October 15, 2021 elections were conducted for Delegates to the Local Station
27 Boards (LSBs) in each station area. When electing these Delegates the members cast ballots as part of
28 the governance scheme by which members elect directors to the National Board.

60. In Los Angeles, the Local Station Board (LSB) election was infected with impropriety. Of
38 candidates running for 9 delegate positions at KPFK, Pacifica removed four candidates from the
published vote tally. Pacifica refused to print their names or acknowledge that they were candidates on
the official tally of results. Pacifica did not even mention that they had been candidates but had been
disqualified. Pacifica did not even acknowledge that votes had been cast for 4 candidates endorsed by
New Day Pacifica. It was as if the four candidates never existed. Pacifica did not state that they were
disqualified and their votes not counted until after the votes were tabulated and published.

PACIFICA FABRICATED INVALID GROUNDS TO REMOVE 4 CANDIDATES

61. In about July, 2021 New Day asked eight Local Station Board Candidates if they would like

1 62. In late August, 2021, New Day asked one of the candidates Robert Payne, to ask the
2 National Election Supervisor, Renee Penaloza for access to the KPFK membership list so New Day
3 could communicate by way of postcard to those on the list regarding the election. He asked and was
4 granted access to the list, via 2-Day Postcards, as was his right, for mailing a Postcard.

5 63. If someone or some group wanted to send a mailing, she was the individual, during the last
6 several elections (when she was National Election Supervisor) who had to be asked for access to the list
7 and who granted access to the list to third party vendors who emailed and/or sent hard copy mailers to
8 the Pacifica Membership list.

9 64. Cross-Complainants are informed and believe and therefore allege that Ms. Penaloza sent a
10 copy of Pacifica's Non-Disclosure Agreement to 2-Day Postcards, and it was signed by them. An
11 unsigned copy of the Non-Disclosure Agreement is attached hereto as Exhibit 3 and incorporated herein
12 by reference.

13 65. According to the Non-Disclosure agreement, mailers can be sent "on behalf of the member
14 who may also represent a group of members." Candidates or Groups of Members also have the right and
15 can and do, solicit funds to support their candidacy in their mailings.

16 66. Other than agreeing to be endorsed, and in some instances supplying a short bio and/or
17 picture, Wolman, Ryan and Pearlman had nothing to do with the planned mailer sent by New Day. They
18 did not see the mailer until after it arrived in the mail sent to all members. Other than asking for the list
19 on behalf of himself and other members of Pacifica and New Day, having it sent to 2-Day Postcards,
20 supplying a short bio and picture, and knowing the mailer would endorse him and other candidates,
21 Payne had nothing to do with the mailer and contents of the mailer.

22 67. Penaloza gave access to the mailing list to "Two Day Postcards" which had been contracted
23 by New Day to send a Postcard endorsing said candidates.

24 68. New Day created a postcard which endorsed the 8 candidates on one side and on the other
25 side asked people to donate to New Day for "expenses and legal costs to ensure the membership's Vote
26 Yes decision to save Pacifica is carried out," which New Day reasonably believed was within the scope
27 of §6338 as a permissible use of the mailing list.

28 69. 2 Day Postcards, which had experience with such mailers and with mailers relating to
Pacifica, did not make any objection or advise New Day that there was a problem with scope of the
mailer.

70. On or about September 1, 2021 the postcard was received by many KPFK listeners. Cross-
Complainants are informed and believe and therefore allege that Grace Aaron, another, competing
candidate for the LSB emailed Schwartz and Penaloza complaining about the postcard, and an email
exchange took place among the three of them. Cross-Complainants are informed and believe and
therefore allege that Exhibit 4 is an accurate copy of that interchange. Which includes the following:

"On Wed, Sep 1, 2021 at 4:19 PM Arthur Schwartz <<mailto:aschwartz@afjlaw.com>

> wrote:

1 Yes, totally illegal. We sued them for using our email addresses for their on-line
2 fundraising, now we have to add this and add 8 more defendants. Either that or
3 file a separate lawsuit. These candidates need to be told that what they did
4 violated the California Corporations Code Section 6338(a). They should also be
5 barred from ever doing a campaign mailing again. It's outrageous."

6 However he admits he knew the candidates were not at fault when he stated On Wed, Sep 1, 2021 at
7 4:43 PM

8 "PS. The mailing came from New Day and no[t] the candidates."

9 71. Following that exchange, the National Election Supervisor (NES) emailed Jan Goodman,
10 that the 8 candidates on the postcard would be disqualified unless they signed and sent, by postcard, a
11 statement admitting that they violated Corp. Code 6338 and apologizing for requesting donations for
12 legal costs. The NES claimed the right to disqualify them, based on the fact that she alleged that they
13 violated Corp. Code 6338. The cost of sending the smallest of postcards would be at least \$4,000.

14 Attorney Arthur Schwartz, who was not impartial, purporting to act on behalf of Pacifica became part of
15 that email conversation. A copy of those email exchanges is attached hereto and incorporated herein by
16 reference as Exhibit 5.

17 72. Goodman (who was acting as an individual member and leader of New Day) told the NES
18 and Schwartz that none of the candidates were involved in the creation or sending of the postcard and
19 urged Pacifica to withdraw its demands.

20 73. On September 7, Goodman wrote to Penaloza and Schwartz that

21 "With the exception of Robert Payne, the candidates were not involved in writing,
22 approving or sending out the postcard, so any "punishment" which you dole out would be
23 inappropriately given out, if it included punishing them in any way, with the exception of
24 Robert Payne. He asked for the list on behalf of himself and New Day with the knowledge
25 that it would be used for a postcard endorsing him and the other candidates that New Day
26 was endorsing."

27 74. On September 8, Schwartz emailed Goodman

28 "I have modified your modification. It has to be signed by the candidates, not New
Day". He also said:

"Jan, I can't respond to you because you have counsel"

75. Indicating that he knew that Goodman was acting as an individual, as part of New Day, and
not Counsel for either New Day or the individual Candidates being discussed--and simultaneously
informing Penaloza of that fact.

76. Goodman wrote that New Day would agree to send out a clarifying postcard, but that none
of the candidates was willing to admit wrongdoing. So no agreement was reached.

77. On Friday, September 10, Schwartz followed up the demand that a postcard be sent, saying

1 responded further about the postcard, because a stalemate had occurred with Pacifica demanding that
2 the candidates apologize and sign the postcard, and Goodman, on behalf of New Day telling Pacifica
3 that the Candidates would not sign such a postcard.

4 78. The candidates themselves were never contacted by Pacifica. Therefore, no agreement was
5 made. Thus, September 10th was the date of the last substantive email about the postcard, with a
6 deadline of about September 17th to create & send the *mea culpa* postcard.

7 79. On about September 16, 2021, Pacifica filed Doe Substitutions and made all 8 Listener
8 candidates defendants in the present lawsuit. One of the 8 Listener candidates immediately withdrew as
9 a candidate because of the intimidation and accusations of wrongdoing.

10 80. The company that printed and mailed the postcard – 2 Day Postcards -- which Pacifica
11 members in Houston had used for years– was informed that they violated the Non-Disclosure
12 Agreement (NDA) and told that Pacifica banned them from future work using the Pacifica List, even
13 though in fact nothing that 2-Day was accused of was mentioned or prohibited in the NDA.

14 81. On September 24, 2021 the next email relating to the *mea culpa* postcard was sent by
15 Penalzoza, who emailed Goodman asking “Could you provide me with an update?” Goodman never
16 replied. The September 24th email was the last communication relating to the postcard among
17 Goodman, Penalzoza and/or Schwartz until after the election was over on October 15, 2021.

18 82. At no time between September 10th and October 15, 2021 did Goodman or anyone
19 associated with New Day or any of the candidates request access to the Pacifica mailing list to send out
20 a *mea culpa* postcard. Despite the fact that she never heard from Goodman or anyone at New Day after
21 Sept. 10th about the postcard, Penalzoza later claimed in her final report that she thought that New Day
22 sent a postcard.

23 83. Neither Penalzoza nor Schwartz nor anyone on behalf of Pacifica ever communicated
24 directly with Payne, Pearlman or Wolman about the “disqualification” until after the vote tally was
25 published; a tally which omitted names of the targeted candidates and number of votes they received.

26 84. When the seven remaining candidates were made aware that they were defendants and were
27 alleged to be personally liable for damage to Pacifica, it caused them great concern and emotional upset
28 and harm, and upset within their families. They had done nothing wrong and no admission/apology
post card was sent. Voting proceeded. Pacifica refused to allow the candidates to use the Pacifica list to
send any additional emails or additional postcards to Pacifica members, despite requests. New Day (and
the candidates) was hindered in supporting the endorsed candidates, sending emails to their own lists,
and making calls.

85. Despite threats communicated to Jan Goodman, the names of the candidates remained on
the electronic ballot and candidates and New Day encouraged whoever they could reach to vote for the
seven remaining Listener candidates. To Cross-Complainants’ knowledge Payne, Pearlman, Ryan nor
Wolman had been disqualified, and they and New Day inferred the threats were not carried out.

1 their contact information. At all times Pacifica and its agents had access to the email addresses and
2 telephone numbers of these candidates. That information was in the LSB Candidate package submitted
3 by the candidates.

4 87. On September 28, 2021 Arthur Schwartz, Pacifica counsel, acting without Penalzoza,
5 Schwartz or anyone from Pacifica communicating with Avalos or Zavala (two of the New Day endorsed
6 candidates) on the subject of the postcard, or anything else, emailed the following to Christina Avalos
7 and Oye Oyeyipo:

8 “Grace Aaron has made it clear that none of you, or Carlos Zavalos, had any idea
9 that the postcard mailing was being done. I am asking our local counsel to dismiss
10 any claims against you and asking the National Election Supervisor to not hold you
11 responsible for the violation of California Non-Profit Corporation Law which
12 occurred.”

13 88. Schwartz later revised the facts and “explained” the dismissals of the above candidates to
14 the court in his Supplemental Declaration to the opposition of New Day’s 5617 motion, filed 12/23/21
15 by saying, on P. 3 LL 14-17

16 “Four candidates indicated to me that they had no knowledge of the postcard,
17 knew nothing about its production or even how it came to be sent out. Id. These
18 four candidates were not disqualified, and the litigation against them was
19 dismissed.”

20 Thus the votes of Avalos, Oyeyipo and Zavala (all New Day endorsed candidate) were counted in the
21 election, based on Grace Aaron’s recommendation. They came in first, second and third in the public
22 tally.

23 89. Avalos and Zavala have declared that they never communicated with Schwartz on any
24 subject, other than Avalos receiving the above email.

25 90. In late October 2021 Pacifica posted a document to its website and sent emails purportedly
26 announcing election results. Neither the names of the four remaining New Day endorsed candidates,
27 nor their vote counts appeared on the published results, even though the names of the candidates had
28 appeared on the ballots, including electronic ballots that most people used to vote up to the last day of
the election. Following that email, those four candidates were dismissed as Defendants in this lawsuit,
and the votes of Avalos, Oyeyipo and Zavala (also a New Day endorsed candidate) were counted in the
election. They came in first, second and third in the public tally.

91. In late October 2021 Pacifica posted a document to its website and sent emails purportedly
announcing election results. Neither the names of the four remaining New Day endorsed candidates,
nor their vote counts appeared on the published results, even though the names of the candidates
appeared on the ballots, including electronic ballots that most people used to vote up to the last day of
the election.

1 92. Voters were not told if they voted for these people their votes would be ignored, or that
2 they, as voters, would be disenfranchised. Neither the Candidates nor the members were notified of any
3 disqualification until after voting had been concluded on October 15, 2021. Many Pacifica members
4 voted for the subsequently removed candidates. But when the election tally was issued, neither the
5 names of the four above candidates, nor numbers of votes received were indicated on the tally.

6 93. The Pacifica Bylaws set out how votes are to be counted. The Bylaws direct that in cases
7 where the Bylaws do not cover a situation, the latest Edition of Roberts Rules of Order is to be
8 followed. Neither of those sources, nor the Corporations Code suggests that removing people off the
9 tally and ignoring voters' votes is a permitted way to conduct an election.

10 94. Removal of these candidates was improper, done with the purpose and/or effect and/or both,
11 by entrenched management, to improperly maintain control of the Pacifica National Board.

12 **THE NATIONAL ELECTION SUPERVISOR EXCEEDED HER AUTHORITY IN**
13 **DISQUALIFYING THE LOCAL STATION BOARD CANDIDATES**

14 95. The Pacifica Bylaws lay out the authority an Election Supervisor has to disqualify LSB
15 candidates in Article Four, Delegates, Section 6: Fair Campaign Provisions. The provision restricts use
16 of broadcast air time, prohibits using air time for endorsing or campaigning, regulates use of air time,
17 prohibits on air endorsements by management, and prohibits certain actions by the board of directors.
18 The provision does not regulate print communication or fundraising by members or an organization of
19 members such as New Day and, given that it does not regulate that activity, it does not provide for or
20 permit disqualification of candidates based on print communication or fundraising. Here is the
21 provision:

22 No Foundation or radio station management or staff (paid or unpaid) may use or permit the use
23 of radio station air time to endorse, campaign or recommend in favor of or against any
24 candidate(s) for election as a Listener-Sponsor Delegate, nor may air time be made available to
25 some Listener-Sponsor Delegate candidate(s) but not to others. All candidates for election as a
26 Listener-Sponsor Delegate shall be given equal opportunity for equal air time, which air time
27 shall include time for a statement by the candidate and a question and answer period with call-in
28 listeners. No Foundation or radio station management or staff (paid or unpaid) may give any on-
air endorsements to any candidate(s) for Listener-Sponsor Delegate. The Board of Directors may
not, nor may any LSB nor any committee of the Board or of an LSB, as a body, endorse any
candidate(s) for election as a Delegate. However, an individual Director or Delegate who is a
Member in good standing may endorse or nominate candidate(s) in his/her individual capacity.
In the event of any violation of these provisions for fair campaigning, the local elections
supervisor and the national elections supervisor shall determine, in good faith and at their sole
discretion, an appropriate remedy, up to and including disqualification of the candidate(s) and/or
suspension from the air of the offending staff person(s) (paid or unpaid) for the remainder of the
elections period. All candidates and staff members (paid and unpaid) shall sign a statement
certifying that they have read and understood these fair campaign provisions.

96. The Election Supervisor's ability to disqualify candidates, thus begins and ends with
candidates violating the fair campaign provisions enumerated above. Moreover, disqualification is the

1 incumbent on the Election Supervisor to consider and apply lesser available remedies suitable to the
2 claimed violation. Here, there was no violation of the above provisions; there was no action by these
3 candidates that touched on these provisions.

4 97. The National Election Supervisor made additional recommendations regarding Fair Election
5 Campaign practices, as indicated in her Final Election Report. But They too are irrelevant.

6 98. The National Election Supervisor's qualifications and duties are further laid out in the
7 Pacifica Bylaws, Article Four, Delegates, Section 4: Election Supervisors.

8 99. The candidates were not accused of violating any of the Fair Campaign Provisions listed
9 above, or any variation of these provisions. They were accused of inappropriate fundraising, violating
10 Corp. Code 6338.

11 100. Other remedies in the Bylaws might be available for violating §6338. They involve giving
12 the accused a chance to reply and require a 2/3 vote of the Board. The NES does not have the authority
13 to disqualify candidates for inappropriate fundraising under 6338. That is beyond her purview.

14 101. In the Final Election Report, relating to the 2021 Delegate Election, on page 17, Penaloza
15 stated she believed a mea culpa postcard was sent out – up until the votes were being tabulated, at which
16 point the NES suddenly “discovered” the postcard had not been sent. Even though she would have had
17 to provide access to the mailing list to a third-party mailing house if a postcard was to have been sent.
18 Only then--after the tabulations had begun, but supposedly before the vote tabulation had been
19 completed —did she purport to discover that the postcard was not sent. She professed that at that point
20 she had “no other choice than to “disqualify” the candidates”.

21 102. Cross-complainants are informed and believe and therefore allege that this explanation was
22 false and pretextual. It is not credible. It is not believable. Some reasons are:

- 23 a. Schwartz and Penaloza both indicated to Goodman that the postcard had to be sent
24 within a week of September 10th, and the last email on the subject of the postcard,
25 asking for an update was sent on September 24, 2021. And no agreement was
26 reached prior to that time or at any time.
- 27 b. Penaloza would have known that no agreement had been reached regarding sending
28 out the postcard, weeks prior to October 15, 2021
- 29 c. Penaloza and Schwartz would have known immediately if a post card had been sent
30 by New Day or any of the Candidates, because thousands of KPFFK members would
31 have received it. So if neither she nor Schwartz nor anyone at Pacifica received a post
32 card prior to October 10th, she would have known it by then.
- 33 d. Therefore it could not have come as a surprise that no postcard had been sent, after
34 October 15th. It was not even news to her. She had to have known she hadn't granted
35 access to the Pacifica membership list required to mail the mea culpa postcard.

36 103. In the Berkeley/KPFA and Houston/KPFT elections, New Day endorsed candidates swept
37 the elections, winning 8 of 12 seats in Berkeley and 9 of 12 in Houston. The three New Day endorsed

1 and vote count of the other four New Day candidates not being reflected in the reports, the round by
2 round numbers issued by Pacifica regarding the election give strong indications of the results

3 104. Cross-Complainants are informed and believe and therefore allege the New Day endorsed
4 candidates would have won at least 6 of 9 Listener seats. Exhibit 7A to The Final 2021 Delegate
5 Election Report by Penaloza, was an examination of the KPFK-LSB Election by former National
6 Elections Supervisor Terry Goodman (no relationship to Jan Goodman). The report is Supplemental
7 Exhibit 1 to the Declaration of Arthur Schwartz, Supplemental to Pacifica's Opposition to the 5617
8 Motion of Cross-Complainants, in anticipation of the December 29, 2021 Hearing, filed December 23,
9 2021. After scrutinizing the campaign material related to the election and the round by round
10 distribution of surplus votes Mr. Goodman stated:

11 **“Considering the ranking sequence recommended to voters in New Day campaign
12 literature, if all the candidates had remained eligible, my opinion is that the final ranking
13 of elected delegates would have been:**

14 **1. Robert Payne**

15 **2. Christina Avalos**

16 **3. Will Ryan**

17 **4. Adam Wolfman (sic)**

18 **5. Carlos Zavala**

19 **6. Oye Oyeipo (sic)**

20 **7. Grace Aaron**

21 **8. Ziri Rideaux**

22 **9. Michael Novick”**

23 105. The New Day endorsed Staff candidate was the highest vote getter in the Staff election.

24 106. Without improper conduct by Pacifica, the New Day candidates would have won at least 7
25 or 8 of 12 seats in contention.

26 107. When Pacifica management posted results of the LSB election, it removed the names of
27 four New Day endorsed candidates from the results, without authorization and without a proper process
28 or announcement. This violated the rights of the candidates and violated the rights of voters by
disenfranchising voters who voted for them. This also violated the rights of Pacifica by denying
Pacifica the benefit of the true election results.

108. Pacifica management then hid their actions, acting as if these candidates and the people who
voted for them did not exist, by not printing their names on the vote tally, and not publishing the
votes in favor of these candidates thus disenfranchising the voters, despite having allowed members to
vote for these candidates.

109. Both the Election Supervisor and General Counsel are supposed to be neutral in elections
among members. They violated fiduciary duties and obligations to the Foundation and to members in

1 acting as proponents of a NO position. This caused damages and injury to Cross-Complainants and to
2 the Pacifica Foundation.

3 **IX. MEMBERS MAY SOLICIT FUNDS FOR ELECTIONS**

4 **110.** Corp. Code Sec. 6330 (b) (1) Permits members of a public benefit corporation to use the
5 corporate mailing list “for a purpose reasonably related to the person’s interest as a member.” Section
6 6338 approves use of the mailing list to raise money if it will be used to solicit the vote of the members
7 in an election to be held by the corporation.

8 **111.** Logical application of these sections allows Cross-Complainants to raise funds to retain
9 counsel to represent interests of voters who approved the referendum election. A vote must be cast and
10 counted and accounted for according to the by-laws and California law. Otherwise, statutes approving
11 fundraising to elect an officer or pass an amendment would be hollow. All that a corporation would
12 need to do to eviscerate an election would be to announce it had not passed and not allow fundraising
13 from its members to pay for representation. This makes no logical sense because the Legislature made
14 clear the mailing lists can be used to solicit funds to solicit votes.

15 112. Cross-defendants did not follow the bylaws or the law when Pacifica announced that the
16 Referendum failed. Logical recourse for cross-complainants is to have the issue adjudicated. This
17 requires funds.

18 113. Pacifica claims cross-complainants cannot raise funds to challenge improper conduct by
19 Pacifica and the improper standard applied by Pacifica. Soliciting funds to ascertain that votes were
20 evaluated according to the bylaws is part of soliciting votes. New Day and its associates acted within
21 the scope of Sections 6330 and 6338 and did not violate sections 6330 and 6338.

22 114. The right to have votes properly assessed will result in enforcement of an important right
23 affecting the public interest because a proper process is important in and of itself, accurately
24 determining the election outcome is important in and of itself, and enacting the New Day Bylaws will
25 result in a significant benefit to Pacifica and 6800 people who voted for it and to the Listenership and
26 millions of potential listeners in Los Angeles and neighboring counties, and throughout the five
27 metropolitan areas Pacifica’s broadcasts reach.

28 115. The election result was not counted and evaluated according to the bylaws or California
law. Pacifica sued New Day, et al to have the court adjudicate which side won the election. New Day’s
only option was to have the issue adjudicated. This requires funds. Corporations Code Section 6338
allows soliciting funds for purpose of soliciting a vote. Cross-defendant is asserting that cross-
complainant cannot raise funds to address the results. Soliciting funds to ascertain that votes are
counted according to the bylaws is soliciting the vote. New Day and other defendants acted consistently
with and did not violate Corporations Code sections 6330 and 6338(a) (1).

116. Cross-Complainants requested continued access to the membership list of Pacifica
Foundation for legitimate purposes under Corporations Code §6330 and §6338. Pacifica refused to give
access. Therefore, Cross-Complainants request this court to order Cross-Defendants to allow them

1 117. New Day accumulated lists of supporters and others over the last two years or so from many
2 sources. Pacifica claims because some New Day supporters were contacted via the Pacifica list, that
3 New Day is barred from contacting anyone on its lists to raise money. That claims is incorrect and
4 should be rejected. New Day received many of the names from other sources.

5
6 **X. CAUSES OF ACTION ARE PLED IN THE ALTERNATIVE**

7 118. The causes of action in this Cross-Complaint are alleged both additionally and in the
8 alternative exercising the right to plead in the alternative and not as an election of causes of action or of
9 remedies or relief at the time of filing this Cross-Complaint.

10 **XI. CAUSES OF ACTION**

11
12 **FIRST CAUSE OF ACTION**
13 **FOR HEARING AND ORDERINGS PURSUANT TO**
14 **CORP CODE 5610, 5617 & 5034 & 5150, AND OTHER**
15 **APPLICABLE STATUTES BY ALL CROSS-COMPLAINANTS**
16 **AGAINST ALL CROSS-DEFENDANTS**

17 119. Cross-Complainants incorporates by reference all above Paragraphs.

18 120. In the 2021 election, the Staff was treated the same or better, and not materially and
19 adversely different than the Listener Class as to voting therefore the Bylaws Amendments did not
20 require the separate approval of both Staff and Listeners pursuant to either Pacifica Bylaws Art. 17
21 §1.B.v. or Corp. Code §5150..

22 121. This reduction did not meet the test of 5150, because the Staff seat reduction was not
23 reduced differently than the Listener seats reduction.

24 122. Paid Staff, Unpaid Staff and Listener classes are all treated materially the same and better
25 under the New Day Bylaws because each class now gets to directly elect their own representatives
26 instead of voting for intermediary delegates who then decide who to vote for. In addition, their votes for
27 their representative directors are not watered down by members of other classes.

28 123. Under the NDP Bylaws Staff are not treated differently as to voting and transfer than the
Listener class. Both classes are treated similarly. Both have the guaranteed number of seats diminished
under NDP, but the reduction is proportional to each other. Any difference in the diminishment is not
material.

124. The referendum for new Bylaws and to elect 4 officer/directors passed and should be
implemented immediately, and the Court should issue all appropriate orders.

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SECOND CAUSE OF ACTION

THE STAFF VOTE AT WBAI SHOULD BE DISREGARDED

APPLICABLE STATUTES BY ALL CROSS-COMPLAINANTS

AGAINST ALL CROSS-DEFENDANTS

125. Cross-Complainants incorporate by reference all above Paragraphs.

126. The Staff Vote at WBAI should be disregarded because: a) a 99% vote is not credible; or b) Staff was coerced and intimidated in such an egregious manner that the vote should be disregarded; or c) the volunteer Staff list at WBAI was packed, and the entire Staff vote should be disregarded; or d) Staff was misled and lied to in such an egregious manner that the vote should be thrown out. For all of these reasons the Court may and should determine validity of the issuance of the unpaid Staff memberships and the right of persons to vote, pursuant to Corp Code 5617(d).

127. Under the rule of decision in cases under the predecessor statute to §5617, this court has jurisdiction to rule on the entire dispute, including this cause of action, by way of example, *Columbia Engineering Co. v. Joiner*, (1965) 231 Cal.App.2d 837 (noting, under predecessor statutes Corps. Code §2238 and before that Civil Code Sec. 315, the court will decide the whole case, not handle the case piecemeal, and will provide complete relief; “although summary in nature, the actions provided for by it were not intended to be . . . merely to determine technical and procedural questions involved in a corporation election.”) 231 Cal.App.2d at 844. Where a court of equity obtains jurisdiction, it will decide the whole case. It will not permit litigation by piecemeal, but will determine the whole controversy, to prevent further litigation. 231 Cal. App. 2d at 845.

THIRD CAUSE OF ACTION

FOR DECLARATORY RELIEF THAT THE

REFERENDUM FOR NEW BYLAWS

AND TO ELECT 4 OFFICER/DIRECTORS PASSED,

BY ALL CROSS-COMPLAINANTS

AGAINST ALL CROSS-DEFENDANTS

128. Cross-Complainants incorporate by reference all above Paragraphs.

129. A present dispute exists between Cross-Complainants and Cross-Defendants. The dispute concerns election process and results and involves governance of the Pacifica Foundation by persons lacking authority and places in jeopardy the validity of governance and decisions at the Pacifica Foundation.

130. Cross-Complainants contend the New Day Pacifica Referendum passed, the Transition Officer/Directors were elected and New Bylaws are in effect and the four new Transition Officer/Directors should take office immediately. Cross-Defendants dispute this and contend to the contrary.

1 132. Cross-Complainants request that the court issue orders and a judgment declaring that the
2 Referendum needed only a majority vote of all of the members under the Pacifica Bylaws, Art. 17,
3 §1.B.4. wherein it states that for proposed bylaw amendments to be approved, they “must receive the
4 approval of the members by majority vote;” and therefore the New Day Pacifica Referendum passed,
5 the Transition Officer/Directors were elected and the New Bylaws are to go into effect and the four new
6 Transition Officer/Directors should take office according to the terms of the Referendum proposal, with
7 the date of the court order substituted for the date of the announcement of the results of the election, and
8 the court should issue all other appropriate orders.

9 133. Relief should also include injunctive relief, prohibitory and mandatory, prohibiting Pacifica
10 Foundation management from interfering with the outcome of the election, and mandating compliance
11 with the election results, including but not limited to complying with the adopted Bylaws, and seating in
12 the offices, the persons who were elected, and the election of the transition Board members by each
13 Local Station Board’s Delegates.

14 **FOURTH CAUSE OF ACTION**
15 **FOR DECLARATORY RELIEF THAT THE**
16 **REFERENDUM FOR NEW BYLAWS**
17 **AND TO ELECT 4 OFFICER/DIRECTORS PASSED**
18 **BY ALL CROSS-COMPLAINANTS**
19 **AGAINST ALL CROSS-DEFENDANTS**

20 134. All Cross-Complainants incorporate by reference all above Paragraphs.

21 135. A present dispute exists between Cross-Complainants and Cross-Defendants. The dispute
22 concerns election process and results and governance of the Pacifica Foundation by persons lacking
23 authority and places in jeopardy the validity of governance and decisions at the Pacifica Foundation.

24 136. Cross-Complainants allege that the Referendum to amend the Bylaws and to elect four
25 Transition Officer/Directors was approved by a majority vote of Yes.

26 137. Cross-Defendants contend the Referendum did not pass because the majority Staff vote was
27 No.

28 138. Cross-Complainants request a judicial declaration that the referendum to establish new
Bylaws and elect 4 Transition Officer/Directors passed.

139. Cross-Complainants request a judicial declaration that the Referendum was approved by a
majority of the required members, and the Bylaws as amended shall take effect immediately, according
to the timeline in the new by-laws, substituting the date of the court order in lieu of the date of approval
of the Bylaws where applicable, and that the newly elected Local Station Boards Shall elect their
director representative within 9 days of the Court order and the first meeting of the reconstituted
Pacifica National Board, including the 5 directors and 4 Transitional Officer/Directors shall take place
within 15 days of the court’s order.

140. Relief should include injunctive relief, prohibitory and mandatory, prohibiting Pacifica

1 with the election results, including but not limited to complying with the adopted bylaws, and seating in
2 the offices, the persons who were elected.

3 **FIFTH CAUSE OF ACTION**
4 **FOR DECLARATORY RELIEF UNDER CORP CODE**
5 **6338 & OTHER APPLICABLE LAW BY CROSS-COMPLAINANTS NEW DAY PACIFICA, an**
6 **Unincorporated Association, JAN GOODMAN, SHEILA McCOY, ELIZABETH JENSEN,**
7 **MANSOOR SABBAGH, EVELIA JONES, NANCY PEARLMAN, ROBERT PAYNE and ADAM**
8 **WOLMAN AGAINST ALL CROSS-DEFENDANTS**

9 141. Cross-Complainants incorporate all above paragraphs by this reference.

10 142. Cross-Complainants are informed and believe and therefore allege that a vote is not
11 complete as a vote until it is cast and counted and secured according to the Corp. Code and Bylaws.
12 The cross-defendants did not evaluate the votes according to Corp. Code 5034 and Bylaws Article 17
13 §1B4, (Page 40) "To be approved, a proposed amendment must receive the approval of the Members by
14 a majority vote" The only recourse cross-complainants have is to have the issue adjudicated, which
15 requires funds. Cross-defendant asserts cross-complainant cannot raise funds using Pacifica's or Cross-
16 Complainants mailing list to assure the votes are counted. Soliciting funds to secure the vote according
17 to the Corp. Code and Bylaws is part of soliciting the vote.

18 143. Cross-Complainants request a judicial declaration that New Day did not violate California
19 Corporations Code sections 6330 and 6338(a)(1) and that going forward New Day may solicit funds for
20 adjudication to assure the votes are counted.

21 144. Corp. Code 6338, if construed to restrict solicitation of money for the purpose of securing
22 the votes by adjudication, is an unconstitutional infringement upon Cross-Complainants rights under the
23 First Amendment of the United States Constitution and/or under the right of free speech under the
24 California Constitution. These questions were raised and reserved in KQED, Inc. v. Hall (1982) 135
25 Cal.App.3d 951, 958.

26 145. Cross-Complainants request a judicial declaration that Corp. Code 6338, if construed to
27 restrict solicitation of money for the purpose of securing the votes by adjudication, is an unconstitutional
28 infringement upon Cross-Complainants rights under the First Amendment of the United States
29 Constitution and/or under the right of free speech under the California Constitution and may not be
30 applied to Cross-Complainants solicitation of funds to secure votes by adjudication.

31 **SIXTH CAUSE OF ACTION**
32 **THAT THE VOTES IN THE KPFK LOCAL**
33 **STATION BOARD ELECTION MUST BE RECOUNTED**
34 **CORP. CODE §§5033 & 5034 BY CROSS-COMPLAINANTS NEW DAY PACIFICA, an**
35 **Unincorporated Association, JAN GOODMAN, SHEILA McCOY, MANSOOR SABBAGH,**
36 **EVELIA JONES, NANCY PEARLMAN, ROBERT PAYNE and ADAM WOLMAN**

1 146. Above Cross-Complainants incorporate by reference all above Paragraphs.

2 147. Above Cross-Complainants have a right under the Corporations Code section 5033 and
3 5034 to have their votes counted,

4 148. The Court should find that the disqualification of Robert Payne, Nancy Pearlman, and
5 Adam Wolman was improper.

6 **149. The Court should order Cross-Defendants to recount the votes in the KPFK LSB election**
7 **and count all votes for Robert Payne, Nancy Pearlman, and Adam Wolman.** Inasmuch as Mr. Ryan is
8 now deceased, votes for him should be transferred according to the voters' preferences as expressed on
9 their ballots, according the Single Transferable Vote normal procedures. Pacifica should then announce
10 the rightful Delegates to the KPFK Local Station Board and those delegates should be seated forthwith,
11 and any candidates seated according to the earlier tabulation who did not receive sufficient votes to be
12 among the top 9 listener candidates under the above recount should be excused as Delegates and Local
13 Station Board members.

14 150. Cross-Complainants are informed and believe and therefore allege that by analysis of the
15 round by round vote tally that was published, that the candidates who will have won include Robert
16 Payne, Nancy Pearlman, and Adam Wolman. The court should retain jurisdiction to see they are
17 properly installed, if the vote count shows that they won.

18 151. Wherefore Cross-Complainants request that the court confirm the seating of these
19 candidates on the Local Station Board if appropriate.

20 **SEVENTH CAUSE OF ACTION**

21 **THAT THE PACIFICA MAILING LIST**

22 **MAY BE USED TO RAISE FUNDS**

23 **CORP. CODE 6330 ET SEQ. BY ALL CROSS-COMPLAINANTS**

24 **AGAINST ALL CROSS-DEFENDANTS**

25 152. Cross-Complainants incorporates by reference all above Paragraphs.

26 153. Cross-Complainants have a right under the Corporations Code section 6330, et seq. to make
27 use of the mailing list as alleged.

28 154. Cross-Complainants have a right under the Pacifica Bylaws and under Corporations Code
Sections 6330 to 6338 to raise funds using the Pacifica Membership list, to fund legal representation to
secure the results of the referendum for which a majority of the voting members voted.

155. Cross-Complainants request a judicial declaration that they have such right and may
properly use the mailing list for such purposes.

EIGHTH CAUSE OF ACTION

THAT THE NEW DAY MAILING LIST

MAY BE USED TO RAISE FUNDS

AGAINST ALL CROSS-DEFENDANTS

156. Cross-Complainants incorporates by reference all above Paragraphs.

157. Cross-Complainants have a right under the Corporations Code section 6330, et seq. and under the First Amendment of the U.S. Constitution to make use of the New Day Pacifica mailing list as alleged.

158. Cross-Complainants have a right to use the New Day Pacifica mailing list to raise funds even though some people on that list were initially contacted via the use of the Pacifica Membership list, to fund legal representation to secure the results of the referendum for which a majority of the members voted.

159. Only Members from Pacifica Mailing list who volunteered to sign the Referendum Enabling Petition or donated money to New Day or in some other way volunteered their contact information to New Day Pacifica are on the New Day Mailing list. If anyone were to request that their name be removed from the list, the name would be removed. The people on the list have a right to receive communications, including fundraising solicitations from New Day Pacifica.

160. Cross-Complainants request a judicial declaration that New Day Pacifica and the people on the mailing list have such rights and New Day may properly use the mailing list for such purposes.

NINTH CAUSE OF ACTION

FOR DECLARATORY RELIEF

BY ALL CROSS-COMPLAINANTS

AGAINST ALL CROSS-DEFENDANTS

161. Cross-Complainants incorporates by reference all above Paragraphs.

162. Cross-Complaints request a declaration and order that the Newly reconstituted Local Station Board (including newly Local Station Board delegates from each station forthwith elect their representative Director to the newly reconstituted Pacifica National Board) in order to implement the New Day Pacifica Bylaws.

TENTH CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY

RE: MISINFORMING MEMBERS ABOUT THE CONTENTS AND

EFFECT OF THE REFERENDUM

BY ALL CROSS-COMPLAINANTS

AGAINST ALL CROSS-DEFENDANTS

163. Cross-Complainants incorporates by reference all above Paragraphs.

164. The Pacifica Foundation and its agents, Arthur Schwartz, Alex Steimberg, and Lydia Brazon, Berthold Reimers, Linda Perry Barr and Renee Penaloza, acting for and on behalf of the Pacifica Foundation, had a fiduciary duty to the members of Pacifica. An entity acts through its agents.

1 165. The fiduciary duty of the Pacifica Foundation arises from the Foundation's status as a
2 nonprofit organization, its possession of assets to be used for its nonprofit purpose, the nonprofit
3 purpose itself, its important public service function, and the critical importance of its elections in its
4 governance, including but not limited to electing its Directors, its role as agent for the members in
5 conducting the elections including for Amending Bylaws and including for positions such as directors.
6 The members invest trust and confidence in the Foundation, acting as agent for the members. The
7 members depend and rely on the Foundation, acting as agent, to conduct the election in all respects
8 honestly, impartially, with integrity, transparently, without bias and without an agenda for the
9 management to entrench itself. The Foundation accepts the obligation to merit the trust and confidence
10 invested by the members. In conducting an election, the Foundation's relationship to members is not a
11 commercial relationship wherein the Foundation may advance some perceived self-interest against its
12 members. In conducting the election the Foundation undertakes and must perform according to the
13 standard of Judge Cardozo's famous words, not even honesty alone is sufficient, "but the punctilio of an
14 honor, the most sensitive," is the standard of behavior.

14 166. Cross-Defendants breached the duty by misinforming Pacifica members about important
15 details of the New Day Bylaws, such as stating that the four Officer/Directors would serve without a
16 Board for a period of time, and could shut down WBAI without representation from anybody else from
17 any other station, leading the staff at WBAI in particular to vote no on the Bylaws Referendum.

17 167. Defendants breached the duty by engaging in a wide range of manipulative and dishonest
18 election practices, including but not limited to making misleading representations to voters, suppression
19 of voters, encouraging and allowing people to vote who did not fulfill the Bylaw authorized
20 requirements to legitimately vote, allowing various forms of ballot box stuffing, coercing staff to vote
21 against the Referendum, misinforming voters, including staff about the contents and results of the
22 Referendum.

22 168. Cross-Defendants breached the duty. Cross-Defendants caused injury and damage to Cross-
23 Complainants by breaching such fiduciary duties, according to proof.

24 169. The result of this breach of fiduciary duty was, among other things influencing the outcome
25 of the election

26 TENTH CAUSE OF ACTION

27 BREACH OF FIDUCIARY DUTY RE: KPFK DELEGATE ELECTION

28 BY ALL CROSS-COMPLAINANTS AGAINST ALL CROSS-DEFENDANTS

170. Cross-Complainants incorporates by reference all above Paragraphs.

171. Pacifica Foundation by its agents, The Executive Director, Lydia Brazon, its General Counsel, Arthur Schwartz, and its National Election Supervisor, Renee Penaloza, had a fiduciary duty to

1 172. Cross-Defendants breached the fiduciary duty by not having the votes counted properly in
2 the KPFK-LSB Election and excluding the votes for Payne, Pearlman, Ryan and Wolman.

3 173. Cross-Defendants caused injury and damage to Cross-Complainants by breaching such
4 fiduciary duties, according to proof.

5 **XII. PRAYER FOR RELIEF**

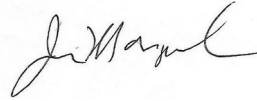
6 **CROSS-COMPLAINANTS PRAY FOR ORDERS AND JUDGMENT AS FOLLOWS:**

- 7 1. For an order and judgment that the referendum for new By-Laws and to elect four
8 officer/directors of Pacifica Foundation passed by the necessary majority of votes of all
9 members of the Foundation. The new by-laws are in effect immediately and for elected
10 officer/directors and to be seated immediately.
- 11 2. For an order, judgment and injunction ordering and directing the defendants, Cross-
12 Defendants and current management, the current board, the current officers and directors
13 and general counsel (specifically including Arthur Schwartz, Alex Steimberg, and Lydia
14 Brazon and/or any other Executive Director or Station Manager) to comply with the
15 orders of this court;
- 16 3. For further orders, judgment and injunction that all of said cross-defendants,
17 management, officers, directors, and general counsel give access to the newly elected
18 Pacifica National Board members, including the new officer/directors all books, records,
19 files, bank accounts, other accounts and vendors immediately;
- 20 4. Further order and directing that this Court shall maintain jurisdiction over all of these
21 parties to insure that the Court's orders are carried out;
- 22 5. For an order and finding the fund raising by Cross-Defendants was appropriate and legal;
- 23 6. For an order that New Day Pacifica or its supporters shall have use of the membership list
24 to inform the membership of matters of interest to them, including relating to the Bylaws,
25 the local station boards and other matters;
- 26 7. For an order to recount the votes in the KFPK Local Station Board election which
27 concluded on October 15, 2021, including counting votes for Robert Payne, Nancy
28 Pearlman, and Adam Wolman.
8. For the Court to declare the top 9 winners of listener seats on the KPFK Local Station
Board.
9. For an order that the newly elected Local Station Board delegates for all 5 Local Station
Boards be installed forthwith.
10. For an order that said newly constituted Local Station Board's each elect a Director to the
newly constituted Pacifica National Board, within 9 days.
11. For damages according to proof.
12. For reasonable costs and attorney's fees to the Defendants and Cross-Complainants.
13. For such other and further relief as the Court determines

1 14. That the Court retain continuing jurisdiction to enforce its order and supervise the
2 transfer of authority over Pacifica Foundation, and to supervise any further elections or
3 conduct of the parties.

4 Dated: January __7__, 2022

RESPECTFULLY SUBMITTED:
MANDEL & MANPEARL

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9 BY

10 Gerald Manpearl
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**EXHIBIT 1
VOTE TALLY
OF BYLAWS AND ELECTION OF TRANSITION OFFICER/DIRECTORS**

These numbers are abstracted from Pacifica Website:
<https://elections.pacifica.org/wordpress/bylaws-proposal-petition/>

Overall I	# of eligible members	Total voting (% turnout)	Yes – No Analysis*	Ab- sent - ions *	Results
	45,053	12,420 (28%)	6818 (55%) – 5471 (45%)	131	WON 55%

Listeners	# of eligible Listeners	Total voting (% turnout)	Yes – No Analysis*	Ab- sent- ions*	Results
KPFA	14,936	4388 (29%)	~2808 (64%) – ~1536 (35%)	1%	Won 64%
KPFK	11,451	3573 (31%)	~2715 (76%) – ~822 (23%)	1%	Won 76%
KPFT	3,647	1102 (30%)	~804 (73%) – ~276 (25%)	2%	Won 73%
WBAI	6,766	1784 (26%)	~107 (6%) – ~1659 (93%)	1%	Lost 6%
WPFW	7,218	1139 (16%)	~205 (18%) – ~911 (80%)	2%	Lost 18%
TOTAL	44,018	11,986 (27%)	6640 (56%) – 5216 (43%)	1%	WON 56%

*Pacifica's National Election Supervisor released station % data, not vote totals, so these voter numbers are extrapolations from the numbers & percentages found in the NES's 2021 Final Report, P. 29.

Staff	# of eligible Staff**	Total voting (% turnout)	Yes – No Analysis*	Ab- sent- ions*	Results
KPFA	245	97 (40%)	~70 (71%) – ~27 (28%)	1%	Won 71%
KPFK	278	93 (33%)	~64 (69%) – ~29 (32%)	0%	Won 69%
KPFT	127	63 (50%)	~40 (62%) – ~24 (38%)	0%	Won 62%
WBAI	262	132 (50%)	~1 (1%) – ~131 (99%)	0%	Lost 1%
WPFW	120	49 (41%)	~5 (10%) – ~44 (90%)	0%	Lost 10%
TOTAL	1032	434 (42%)	180 (41%) – 255 (59%)	0%	LOST 41%

EXHIBIT 1 TO CROSS COMPLAINT

EXHIBIT 2 TO CROSS-COMPLAINT

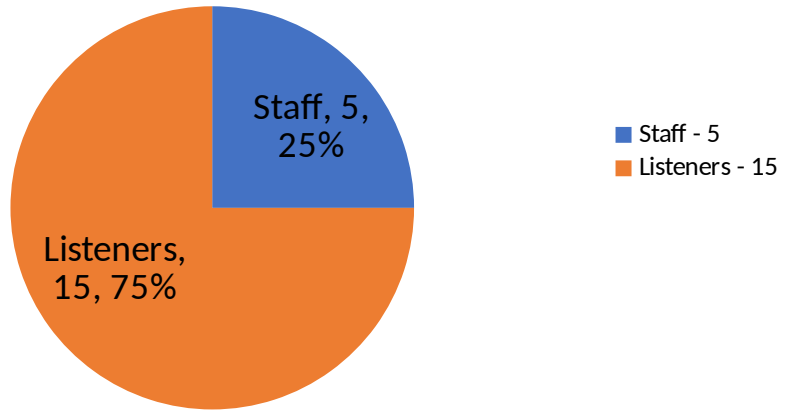
PIE CHARTS SHOWING LISTENER VS. STAFF SEATS UNDER CURRENT AND NEW DAY BYLAWS¹

- 1) The First set of pie charts shows that when you compare the number of listener guaranteed seats to the number of staff guaranteed seats, on the board-- only in relationship to each other, you see **that even though staff loses seats, in relationship to the listeners, the staff gains a few percentage points** of representation under New day, relative to Listeners
- 2) If you look at the second set of pie charts, you see that under New Day both listeners and staff lose guaranteed seats in relationship to the entire board. But you see that listeners fare much worse under new day than staff. Listeners go from 68% of the seats on the board (a super majority position to 33% of the board seats) (15 seats down to 5 seats) (a loss of more than 50% of their seats. On the other hand, although the staff also loses a lot – they go from 23% to 13% -- it is less of a loss than listeners – it is a loss of less than half of their seats (from 5 to 2 seats on the board).
- 3) The last pie chart shows the entire board if the staff are elected to all possible positions (showing that the staff can end up with more seats on the board than the listeners, since the listeners are only guaranteed 5 of 15 seats.
- 4)

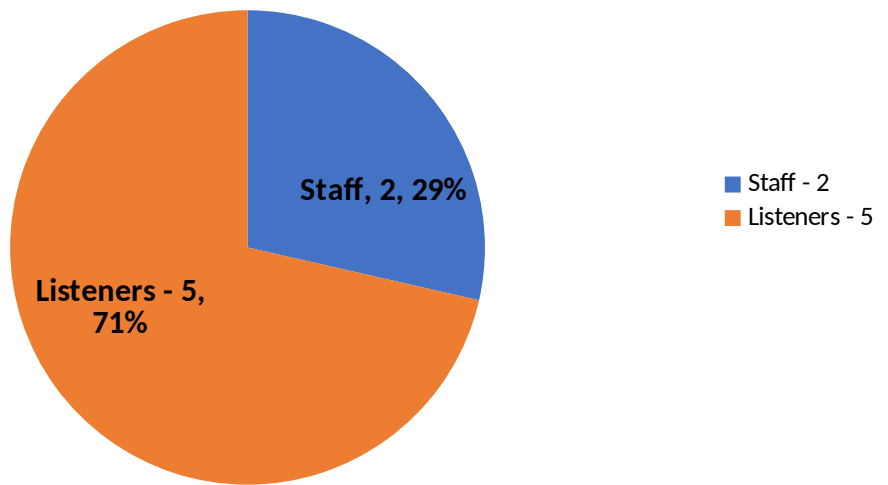
1 **Exhibit 2**

2 **Page 1**

3 **Guaranteed Listener vs Staff Seats**
4 **Guaranteed Seats--**



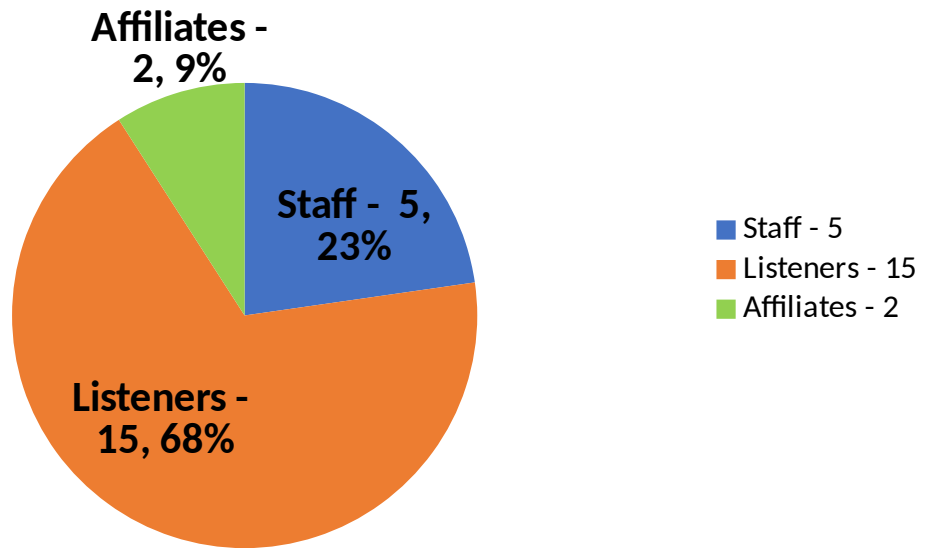
13
14 **Guaranteed Seats Under New Day Bylaws**



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1 **Exhibit 2**
2 **Page 2**

3 **Entire Board Under Current Bylaws**
4 **Guaranteed Seats (no more or less)-- Total = 22**



14

15 **At-Large -3 (Can**
16 **Be Staff,**
17 **Listeners or**
18 **Neither), 3, 20%**

15 **Entire Board Under New Day Bylaws**
16 **Guaranteed Minimum Seats -- Total = 15**

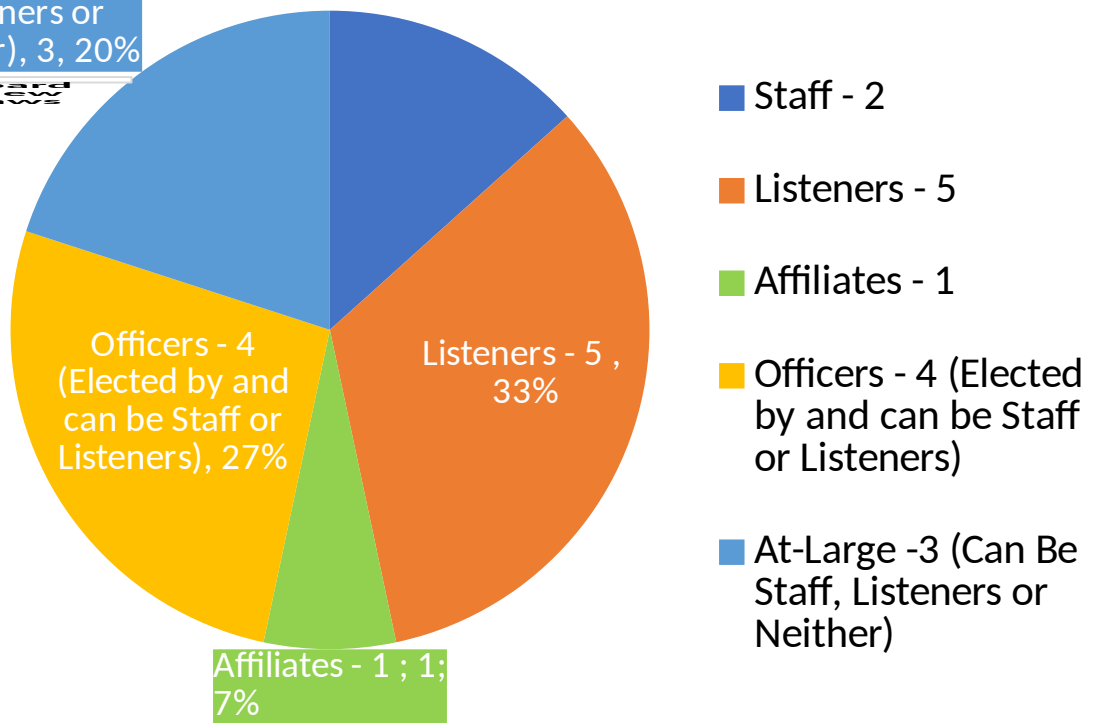


Exhibit 2

Page 3

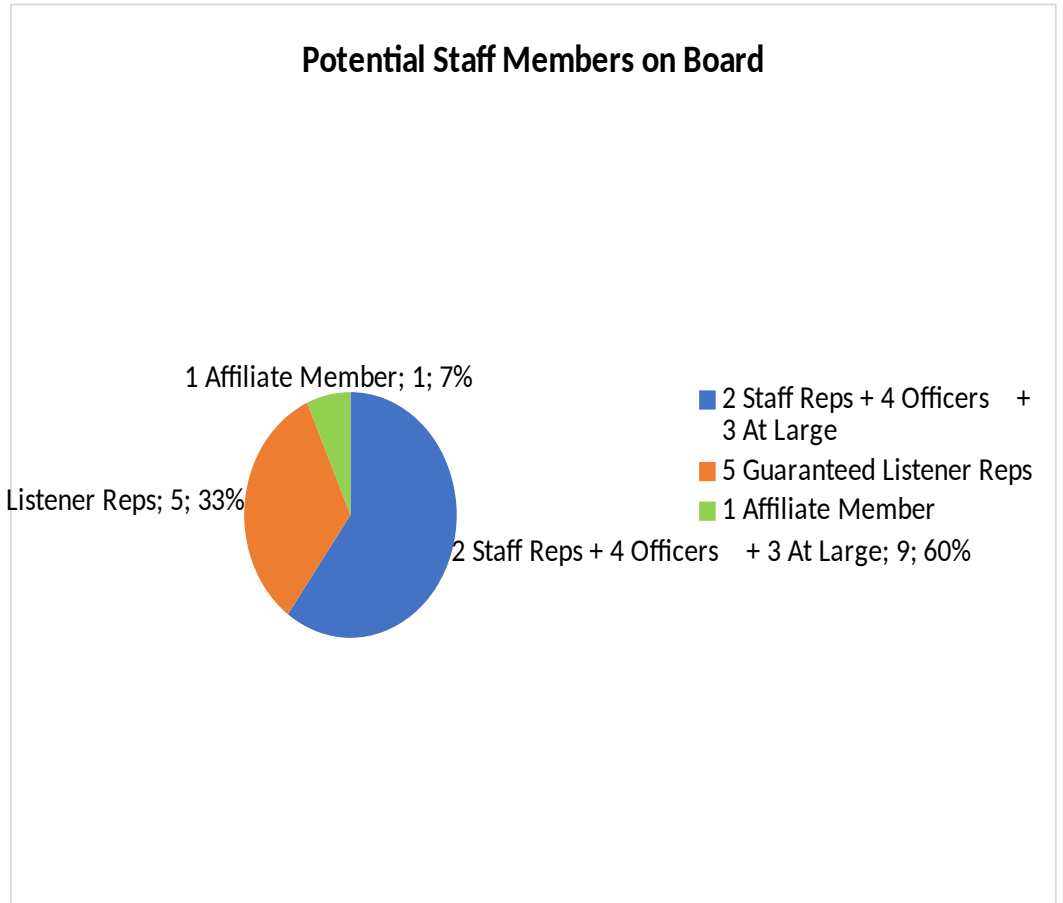


Exhibit 2

Page 4

	PNB		Listener			At-
	now	Staff #	#	Affiliate	Officers	Large
PNB Members	22	5	15	2	na	na
Percent by category	100%	22.70%	68.20%	9%	na	na

	PNB ND	Staff ND	ListenND	Affiliate	Officers	Large
PNB Members	15	2	5	1	4	3
Percent by category	100%	13.33%	33.33%	6.66%	26.66%	20%

	PNB ND	Staff ND	ListenND	Affiliate	Officers	Large
PNB Members	-7	-3	-10	-1	4	3
Percent by category	-31.80%	-20%	-66.70%	-50%	100%	100%

Negative numbers indicate a decrease from current PNB to New Day proposal.

Shrinking the size of the Board shrinks the absolute number of representatives.

But the Listener Reps are diminished proportionally far more than the Staff Reps--

that is, more adversely than the staff

Staff reps are diminished by 3 from 5= 20%

Listener reps are diminished by 10 from 15 to 5=66.7%

But see Pie Charts to see other comparisons

EXHIBIT 3

To

Cross-Complainants First Amended Cross Complaint

1

NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

Between the Pacifica Foundation and

2DayPostcards (“Company”),

with Corporate Address at 621 Richmond Ave., Houston, TX, 77006

The Pacifica Foundation has granted Company a **non-exclusive and limited use** license of the KPFK (pick KPFA, KPFK, KPFT, WBAI or WPFW) Listener-Sponsored and Staff Membership Lists (heretofore “Membership Lists”), only for the purpose of fulfilling the mailing of promotional materials (printed) and/or electronic communications (email) to members via postal service and/or via email that Company has been contracted to complete on behalf of (insert member name, address, email and phone number)
ROBERT PAYNE, ETC

In consideration of the covenants and terms contained herein, the parties hereby agree as follows: Company and Company owner(s) acknowledge and agree to the following:

Company is sending material on behalf of the member who may also represent a group of members.

If another member seeks to send a mailing or e-campaign, Company must first get approval from Pacifica in a separate NDA agreement under that member’s name.

Company is an independent and registered mailing house company in good standing with the local and state governments.

The Membership Lists are confidential and they are the sole and exclusive property of the Pacifica Foundation, and as such, these Membership Lists are protected by United States Copyright, Trade Secrets and other laws.

Company agrees not to sell, use, re-use, reproduce by any means, make available to others directly or indirectly, distribute, disclose, or otherwise utilize the Membership Lists and/or information contained therein, except as authorized under this Agreement.

This agreement does not authorize the Company to sell, use, re-use, distribute, disclose or otherwise utilize, reproduce by any means, make available to any person(s) directly or indirectly, distribute, disclose, or otherwise utilize the Membership Lists for any other purpose. “Any person(s)” herein also applies to and includes any person, persons and/or entity associated directly or indirectly with the mail-out (physical and/or electronic).

1 2

2 Company will make sure and guarantee that any mail-out (physical and/or
3 electronic) sent to the membership shall include the following disclaimer displayed. It
4 should be legible, in the **same font color and size** as the content of the campaign:
5 **“DISCLAIMER: “This is not an official communication from KPFA, KPFK, KPFT,
6 WBAI or WPFW radio station (PICK RADIO STATION), their respective local
7 station board, or, the Pacifica Foundation. Please note that you have received this
8 because you are a member of KPFA/KPFK/KPFT/WBAI or WPFW (PICK RADIO
9 STATION). The communication was paid for and authored by (INSERT MEMBER
10 NAME / GROUP NAME) (a member or member group) and should not be
11 presumed to represent the official stance of the Pacifica Foundation or KPFA,
12 KPFK, KPFT, WBAI or WPFW radio station (PICK RADIO STATION).**

13 Upon completion of the printing of mail-out and/or the sending of the electronic
14 email to members, Company will make sure and will guarantee that all Membership
15 Lists received from the Pacifica Foundation (by any means) will be immediately and
16 completely deleted, destroyed and discarded in such a way that no one can access,
17 use, re-use, copy, distribute any data (in whole or in part) by any means (physical
18 and/or electronic) for any purpose. This must be done by October 15th, the end of the
19 balloting period.

20 A membership list update will be sent to vendors mid-way through the balloting
21 period (Sept 15th) to capture updates made to the lists. Company agrees to use the
22 most recent update for mailings.

23 No more than **2 mailings** may be sent per member. This includes reminder
24 emails. In other words, reminder emails count as 1 email. The delegate election has a 2
25 month balloting period and hence the member may send out a total of 4 e-campaigns
26 over the course of the 2 months.

27 E-campaigns must not go out on the days that e-ballots and e-ballot reminders
28 go out. The **following dates are blacked out** for the 2021 delegate election cycle: Aug
16, Aug 23, Aug 30, Sept 6, Sept 13, Sept 20, Sept 27, Oct 4, Oct 11, Oct 14, Oct 15.

Company must notify the Pacifica Foundation in writing when the campaign is
scheduled to go out and send proof of the Disclaimer language (above).

In the event that Company violates any term of this Agreement, Company
agrees that Pacifica Foundation shall be entitled to recover costs, damages, and
attorney’s fees occasioned by actions to enjoin violation of this Agreement and in
pursuing damages and any other relief. It is the specific intent of the parties that the
court has jurisdiction and authority under this License Agreement to award all available
relief including each element of the foregoing.

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Signature below indicates complete acceptance of the above conditions and constitutes a contract between the Pacifica Foundation and the Company.

This Agreement is made on the day of signature indicated below between the Pacifica Foundation and Company.

Company Name:

2DAYPOSTCARDS

Owner's Printed Name: _____

Owner's Signature: _____

Date: _____

Email: _____

Phone: _____

1 **EXHIBIT 4 to First Amended Cross Complaint**
2 **Emails among Grace Aaron, Arthur Schwartz and Renee Penaloza**

3 *On Wed, Sep 1, 2021 at 2:39 PM Grace Aaron <graceaaron@gmail.com> wrote:*

4 *I received a full color postcard in the mail yesterday promoting a slate of candidates endorsed by New Day*
5 *Pacifica. The back side of this postcard asks for donations to pay for legal actions against the Pacifica Foundation.*
6 *It also promulgates the falsehood that the New Day effort actually won the Referendum. I believe this is an*
7 *improper use of Pacifica's mailing list to raise money for legal actions, and not solely to support the KPFK LSB*
8 *election. I am attaching photos of the postcard.*

9 *Peace,*

10 *Grace Aaron*

11 On Wed, Sep 1, 2021 at 4:19 PM Arthur Schwartz <aschwartz@afjlaw.com> wrote:

12 Yes, totally illegal. We sued them for using our email addresses for their on-line fundraising,
13 now we have to add this and add 8 more defendants. Either that or file a separate lawsuit.
14 These candidates need to be told that what they did violated the California Corporations Code
15 Section 6338(a). They should also be barred from ever doing a campaign mailing again. It's
16 outrageous.

17 **Arthur Z. Schwartz**

18 ----- Forwarded message -----

19 From: **Renee A Penaloza** <nes@pacificafoundation.org>

20 Date: Wed, Sep 1, 2021 at 4:20 PM

21 Subject: Re: KPFK LSB Election Fair Campaign Violation

22 To: Arthur Schwartz <[REDACTED]>

23 CC: Alex Steinberg <[REDACTED]>, Grace Aaron <[REDACTED]>, Local Election

24 Supervisor KPFK 2021 <[REDACTED]>, Lydia Brazon <[REDACTED]>, Matthew Learned

25 <[REDACTED]>, PNB <[REDACTED]> PNB

26 Hello,

27 So their mailing campaign should be disqualified?

28 Renée A Peñaloza

2021 National Election Supervisor

Pacifica Foundation

nes@pacificafoundation.org

On Wed, Sep 1, 2021 at 4:43 PM Arthur Schwartz <aschwartz@afjlaw.com> wrote:

PS. **The mailing came from New Day and no[t] the candidates.** New Day stole our list through the Houston vendor, posing as candidates. Renee authorized Robert Payne to do a mailing and he substituted a New Day post card, asking for money from every KPFA member to sue Pacifica!

From: Renee A Penaloza <nes@pacificafoundation.org>

Sent: Wednesday, September 1, 2021 4:46 PM

To: Arthur Schwartz <aschwartz@afjlaw.com>

Cc: Alex Steinberg <unbalex@gmail.com>; Grace Aaron <graceaaron@gmail.com>; Local Election

Supervisor KPFK 2021 <es-kpfk2021@pacificafoundation.org>; Lydia Brazon <lp@igc.org>; Matthew Learned

<mlearned@forpurposelaw.com>; PNB <unb@pacificafoundation.org>

Subject: Re: KPFK LSB Election Fair Campaign Violation

1 This is the message I sent

2 Here you will find the postcard that you sent to the KPFK mailing list. The NDA specified that you have
3 to send me a copy prior to sending this out - but you did not so now we have a significant problem.

4 This mailing is illegal for 2 reasons. One - it comes from New Day Pacifica, not Robert Payne. New Day
5 Pacifica is currently being sued by Pacifica Foundation for misuse of membership lists. Two, if you read
6 the content they are using the membership list to illegally raise funds to sue Pacifica back. This is a
7 violation of California Corporations code.

8 As a remedy, a correction postcard to the same lists has to be developed and paid for by your company
9 as this is a breach of contract. I have ccd the lawyer for Pacifica. Please respond to both of us so we can
figure out how to resolve this asap.

10 Renée A Peñaloza
11 2021 National Election Supervisor
12 Pacifica Foundation

13 On Wed, Sep 1, 2021 at 6:06 PM Renee A Penaloza <nes@pacifica.org> wrote:
14 Dear Arthur,

15 What do you think of this?

16 Renée A Peñaloza
17 2021 National Election Supervisor
18 Pacifica Foundation
nes@pacifica.org

19 On Wed, Sep 1, 2021 at 7:18 PM Arthur Schwartz <aschwartz@afilaw.com> wrote:
20 Yes, totally illegal. We sued them for using our email addresses for their on-line fundraising,
21 now we have to add this and add 8 more defendants. Either that or file a separate lawsuit.
22 These candidates need to be told that what they did violated the California Corporations Code
Section 6338(a). They should also be barred from ever doing a campaign mailing again. It's
outrageous.

23
24 **VERIFICATION OF JAN GOODMAN**

25
26 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

27 I read the foregoing FIRST AMENDED CROSS COMPLAINT and know its contents.

28 The matters stated in the foregoing document are true of my own knowledge except as to those
matters which are on information and belief, and as to those matters I believe them to be true.

I am signing this verification on my own behalf and in my capacity as an representative of New
Day Pacifica, an unincorporated association.

Executed on January _7_, 2022 at Los Angeles County, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is

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A handwritten signature in cursive script that reads "Jan Goodman". The signature is written in black ink and is positioned in the upper left quadrant of the page.

Jan Goodman,