

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
PACIFICA FOUNDATION, and DOES 1-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

DOROTHY L. LEE
ALAMEDA COUNTY

2007 DEC 19 PM 2:12

CLERK OF THE SUPERIOR COURT

By _____
DEPUTY

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
SHERRY GENDELMAN, MATTHEW HALLINAN, WARREN MAR,
SUSAN McDONOUGH, and and JOHN VAN EYCK

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
1225 Fallon Street
Oakland, CA 94612

CASE NUMBER:
(Número del Caso):

07 - 362157

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Hunter Pyle (Bar # 191125)
Sundeen Salinas & Pyle
1330 Broadway, Suite 1830, Oakland, CA 94612

Phone No. (510) 663-9240
Fax No. (510) 663-9241

DOROTHY L. LEE

DATE: **DEC 19 2007**
(Fecha)

Clerk, by _____ Deputy
(Secretario) **PAT S. SWEETEN** *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of *(specify)*:

3. on behalf of *(specify)*:

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
- other *(specify)*:

4. by personal delivery on *(date)*:



1 HUNTER PYLE, SBN 191125
2 PAMELA KONG, SBN 220912
3 SUNDEEN SALINAS & PYLE
4 1330 Broadway, Suite 1830
Oakland, California 94612
Telephone: 510.663.9240
Telefax: 510.663.9241

5 Attorneys for Plaintiffs
6 SHERRY GENDELMAN, et al.

DOROTHY L. LEE
ALAMEDA COUNTY
2007 DEC 19 PM 2:13
CLERK OF THE SUPERIOR COURT
BY _____ DEPUTY

7 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 IN AND FOR THE COUNTY OF ALAMEDA

9 SHERRY GENDELMAN, MATTHEW
10 HALLINAN, WARREN MAR, SUSAN
McDONOUGH, and JOHN VAN EYCK,

11 Plaintiffs,

12 vs.

13 PACIFICA FOUNDATION, and DOES 1-100,

14 Defendants.
15

Case No. RG 07 - 362157

COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF

16
17 Plaintiffs SHERRY GENDELMAN, MATTHEW HALLINAN, WARREN MAR, SUSAN
18 McDONOUGH, and JOHN VAN EYCK ("Plaintiffs") complain and allege as follows:

19 INTRODUCTION

20 1. Casey Peters is defendant PACIFICA FOUNDATION's National Elections Supervisor.
21 The Amended and Restated Bylaws of defendant PACIFICA FOUNDATION ("Bylaws") required Mr.
22 Peters to certify the results of the 2007 election for the KPFA Local Station Board by December 1, 2007.

23 2. Despite this clear mandate, to date Mr. Peters has refused to certify the election results.
24 Furthermore, despite having been put on notice of the illegality of Mr. Peters' actions, defendant
25 PACIFICA FOUNDATION has refused to take action to compel Mr. Peters to comply with the Bylaws

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1 and certify the election results. Unless rectified immediately, this situation will cause serious and
2 irreparable harm to the individuals who won the election and deserve to be seated on KPFA's Local
3 Station Board.

4 **PARTIES AND JURISDICTION**

5 3. Plaintiff SHERRY GENDELMAN is a member of defendant PACIFICA
6 FOUNDATION within the meaning of California Corporations Code §5056, a donor to the Foundation,
7 and a member of the Local Station Board for Pacifica Radio Station KPFA in Berkeley, California.

8 4. Plaintiff MATTHEW HALLINAN is a member of defendant PACIFICA
9 FOUNDATION within the meaning of California Corporations Code §5056.

10 5. Plaintiff WARREN MAR is a member of defendant PACIFICA FOUNDATION within
11 the meaning of California Corporations Code §5056.

12 6. Plaintiff SUSAN McDONOUGH is a member of defendant PACIFICA FOUNDATION
13 within the meaning of California Corporations Code §5056.

14 7. Plaintiff JOHN VAN EYCK is a member of defendant PACIFICA FOUNDATION
15 within the meaning of California Corporations Code §5056.

16 8. Plaintiffs bring this action on his or her own behalf and as a derivative action pursuant to
17 Corporations Code §5710 on behalf of the Pacifica Foundation.

18 9. Defendant PACIFICA FOUNDATION is a California Nonprofit Corporation which
19 maintained, as of the date this lawsuit was filed, its headquarters and principal place of business in the
20 City of Berkeley, County of Alameda.

21 10. The true names and capacities of the defendants named herein as Does 1 through 100,
22 inclusive, whether individual, corporate, associate, or otherwise, are unknown to Plaintiffs, who
23 therefore sue such defendants by fictitious names pursuant to Code of Civil Procedure section 474.
24 Plaintiffs are informed and believe, and thereon allege, that each of the fictitiously named defendants is
25 responsible in the manner set forth herein, or some other manner, for the occurrences alleged herein, and

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1 that the damages as alleged herein were proximately caused by their conduct. Plaintiffs are informed
2 and believe, and thereon allege, that each of the fictitiously named defendants is a California resident.
3 Plaintiffs will amend this complaint to show the true names and capacities of each of the fictitiously
4 named defendants when such names and capacities have been determined.

5 11. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned in this
6 complaint, defendants were the agents, servants and employees of their co-defendants, and in doing the
7 things alleged in the complaint, were acting in the course and scope of such agency or employment.

8 12. Plaintiffs intend to seek both a permanent injunction and declaratory relief. Accordingly,
9 this action is properly classified as unlimited.

10 STATEMENT OF THE CASE

11 13. Plaintiffs and Diane Enriquez are listener members of the Pacifica Foundation who
12 fulfilled all requirements to run as candidates in KPFA's 2007 Local Station Board election.

13 14. Since at least July 2003 the Bylaws have established the following deadlines for
14 certifying the results of Local Station Board elections:

15 The national and local elections supervisors shall have up to 15 days after the Election Close
16 Date to count the ballots and to certify the results to the LSBs, the Board, and the Members,
17 which results must be reported by December 1st or, if the Election Close Date was extended, by
18 December 15th, and shall be posted on the Foundation's and the radio stations' websites.

18 15. Balloting for the listener member portion of the KPFA Local Station Board election
19 closed on November 15, 2007. Ballot-counting began on November 16, 2007, and ended on November
20 17, 2007. According to the final tally, Plaintiffs and Diane Enriquez received sufficient votes to be
21 elected to the KPFA Local Station Board.

22 16. Mr. Peters, defendant PACIFICA FOUNDATION's National Elections Supervisor, then
23 announced "tentative" elections results recognizing that Plaintiffs and Diane Enriquez had received
24 sufficient votes to be elected to the KPFA Local Station Board, and made the following commitment:
25 "The National Elections Supervisor will certify election results no later than December 1, as specified in

1 the Pacifica Bylaws.”

2 17. To date, Mr. Peters has failed to certify the results of the listener member election.
3 Neither the Bylaws nor Mr. Peters’ contract with defendant PACIFICA FOUNDATION afford him the
4 authority to delay certification of these results.

5 18. Unless immediate steps are taken to rectify this situation, Mr. Peters’ failure to certify the
6 results of the listener member portion of the KPFA Local Station Board election will cause imminent
7 harm to the listener members listed above. The Bylaws specify that the Delegates from each radio
8 station, including KPFA, shall meet in January to elect four Directors to represent KPFA on the Pacifica
9 National Board:

10 Article 5 Section 3. NOMINATION AND ELECTION OF STATION REPRESENTATIVE
11 DIRECTORS

12 B. ELECTION

13 **The Delegates for each radio station shall meet annually in early January to elect four**
14 **Directors to represent that radio station on the Board.** The Delegates of both classes of
15 Members, voting together, shall elect three Listener-Sponsor Directors using the Single
16 Transferable Voting method, and shall elect one Staff Director using the Instant Runoff Voting
17 method, to represent that radio station on the Board. The Staff Director must be a Staff Delegate.
18 The Listener-Sponsor Directors must be Listener-Sponsor Delegates. (emphasis added)

19 19. Accordingly, unless the 2007 election results are certified prior to the January meeting,
20 the Plaintiffs and Diane Enriquez will be unable to participate in the January meeting, unable to vote on
21 the four Directors who will represent KPFA on the Pacifica National Board, and unable to run in the
22 election to serve as one of the four Directors.

23 **DEMAND ON BOARD OF DIRECTORS**

24 20. On December 6, 2007, plaintiff SHERRY GENDELMAN complained in writing to the
25 Board of Directors of defendant PACIFICA FOUNDATION regarding the ultimate facts and
contentions set forth in this complaint, and requested that the Board take action to remedy and rectify the
concerns set forth herein. This request was ignored.

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1 21. On December 11, 2007, plaintiff SHERRY GENDELMAN, through counsel, informed
2 the Board of Directors of defendant PACIFICA FOUNDATION, in writing, of the ultimate facts and
3 contentions set forth in this complaint, and requested that the Board take action to remedy and rectify the
4 concerns set forth herein.

5 22. On December 16, 2007, the Board of Directors of defendant PACIFICA FOUNDATION
6 met. Despite having been informed of the ultimate facts and contentions set forth above, the Board of
7 Directors failed to take any action to address these issues.

8 **FIRST CAUSE OF ACTION**

9 **(Breach of the Bylaws)**

10 23. The allegations of each of the preceding paragraphs are realleged and incorporated herein
11 by reference.

12 24. Mr. Peters breached the Bylaws by failing to certify the results of the listener member
13 portion of the KPFA Local Station Board on December 1, 2007, and by refusing to certify the results to
14 date.

15 25. Defendant PACIFICA FOUNDATION ratified and adopted Mr. Peters' conduct by
16 failing to take action to stop Mr. Peters from breaching the Bylaws, despite having been informed that
17 Mr. Peters' actions were in direct violation of the Bylaws. In this manner, defendant PACIFICA
18 FOUNDATION has breached and continues to breach the Bylaws.

19 26. As a proximate result of the acts of defendant PACIFICA FOUNDATION, Plaintiffs
20 have suffered damages in an amount according to proof.

21 WHEREFORE, Plaintiffs pray for judgment against Defendant as set forth below.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs request that this Court order relief as follows:

24 1. Order injunctive relief compelling defendant PACIFICA FOUNDATION to certify the
25 listener member results of the 2007 election for the KPFA Local Station Board;

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2. Order declaratory relief to address the issues set forth above;
3. Award Plaintiffs their costs of suit, including reasonable attorney's fees; and
4. Award such other relief as the Court deems just and proper.

Dated: December 19, 2007

SUNDEEN SALINAS & PYLE

By: 

Hunter Pyle

Attorneys for Plaintiffs
SHERRY GENDELMAN, et al.