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8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA  
9 UNLIMITED JURISDICTION

10 DANIEL BORGSTROM;

11 Plaintiff,

12 vs.

13 MARGY WILKINSON; CONN  
HALLINAN; DANIEL SIEGEL;  
14 MALCOLM BURNSTEIN;  
PACIFICA FOUNDATION and  
15 DOES 1- 200, inclusive,

16 Defendants  
17 \_\_\_\_\_ /

CASE NUMBER:

SHAREHOLDER'S DERIVATIVE  
COMPLAINT FOR COMPENSATORY  
AND PUNITIVE DAMAGES FOR  
BREACH OF DUTY OF UNDIVIDED  
LOYALTY, AND INTENTIONAL  
INTERFERENCE WITH PROSPECTIVE  
ECONOMIC ADVANTAGE

18 PLAINTIFF ALLEGES:

19 1. Defendant MARGY WILKINSON, hereinafter referred to as "WILKINSON", is and at  
20 all times herein mentioned was, a resident of Alameda County, California, and is an elected  
21 member of the KPFA Local Station Board (hereinafter "LSB"). WILKINSON was elected Chair  
22 of the KPFA LSB on December 4, 2010.

23 2. Defendant CONN HALLINAN, hereinafter referred to as "HALLINAN", is and at  
24 all times herein mentioned was, a resident of Alameda County, California, and is an elected  
25 member of the KPFA LSB. HALLINAN was elected Vice-Chair of the KPFA LSB on December  
26 4, 2010.

27 3. Defendant DANIEL SIEGEL, hereinafter referred to as "SIEGEL", is and at  
28

1 all times herein mentioned was, a resident of Alameda County, California, and is an elected  
2 member of the KPFA LSB. SIEGEL had previously been Pacifica Foundation Counsel and  
3 interim Executive Director. In March of 2008 he did a training for the KPFA LSB on the LSB  
4 members' fiduciary duties.

5 4. Defendant MALCOLM BURNSTEIN, hereinafter referred to as "BURNSTEIN", is and at  
6 all times herein mentioned was, a resident of Alameda County, California, and is an elected  
7 member of the KPFA LSB.

8 5. Defendant PACIFICA FOUNDATION, hereinafter referred to as "FOUNDATION", is  
9 and at all times mentioned herein was, a non-profit corporation duly organized and existing under  
10 the laws of the State of California and has its principle place of business in Alameda County,  
11 California. The FOUNDATION owns five radio stations: KPFA in Berkeley, KPFA in Los  
12 Angeles, KPFT in Houston, WPFW in Washington D.C. and WBAI in New York. No damages  
13 are being sought from FOUNDATION.

14 6. Plaintiff is ignorant of the true names and capacities of defendants sued as DOES 1-200,  
15 inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend the  
16 complaint to allege their true names and capacities when ascertained.

17 7. At all times herein mentioned each of the DOE defendants was the agent and/or employee  
18 of each of the remaining defendants and was acting within the scope of such agency or  
19 employment when they participated in the wrongful acts or failures to act that caused the  
20 FOUNDATION to suffer damages.

21 8. At all times herein mentioned, and at the time of the wrongful conduct complained of  
22 herein, DANIEL BORGSTROM, was a voting members of the FOUNDATION as defined by the  
23 FOUNDATION Bylaws, Article Three, Section A:

24 *"Listener-Sponsor Members" shall be any natural persons who within the preceding 12-*  
25 *month period: (1) have contributed a minimum of \$25 to any Foundation radio station, or*  
26 *such minimum amount as the Board of Directors may from time to time decide; or (2)*  
*have volunteered a minimum of three (3) hours of service to any Foundation radio*  
*station...."*

27  
28 **STATEMENT OF FACTS**

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2 9. FOUNDATION is having financial problems and its stations have had to lay off some  
3 staff. KPFA staff were laid off in November 2010. These layoffs should have been done much  
4 sooner. KPFA raises money for its expenses primarily from donations by listeners. In December  
5 2010 KPFA held a five day fund drive on the air and continues to ask for donations regularly on  
6 the air. Defendants started a campaign to raise money using the name "Save KPFA" around the  
7 same time as the December 2010 KPFA fund drive. Defendants' stated goal is to raise \$80,000.00  
8 to try to get KPFA to rehire some of their allies that were laid off. Exhibit 1. Defendants claim to  
9 have raised over \$50,000.00 and continue to encourage KPFA's listeners to donate to their fund to  
10 leverage the rehire of some laid off staff. Former KPFA management loyal to this group of  
11 defendants and their staff allies ran up the budget deficits that caused the need for layoffs. The  
12 FOUNDATION Bylaws list fund-raising as one of the duties of LSB members, Exhibit 2.  
13 Defendants' faction on the LSB has always maintained that fund-raising was the foremost duty of  
14 the LSB, more so than governance.

15 **FIRST CAUSE OF ACTION -BREACH OF DUTY OF UNDIVIDED LOYALTY**  
16 (Against all defendants, except FOUNDATION)

17 10. By this reference, Plaintiff hereby reallege and incorporate into this Cause of Action each  
18 and every allegation contained in paragraphs 1 through 9 of this Complaint as if fully set forth  
19 herein.

20 11. By virtue of their position as elected members of FOUNDATION governance defendants  
21 owe a duty of undivided loyalty to the FOUNDATION.

22 12. Defendants asking KPFA listeners to pledge/donate money to Defendants' plan to leverage  
23 the rehire of defendants' allies at the same time KPFA is fund-raising to overcome a deficit is a  
24 breach of defendants' duty of undivided loyalty to FOUNDATION.

25 13. FOUNDATION did not give consent to defendants' competing fund drive. Despite  
26 criticism of their competing fund drive by other elected officials and listeners, defendants have  
27 continued to compete with FOUNDATION fund-raising.

28 14. Defendants' competing fund drive caused economic harm to FOUNDATION in an amount

1 to be proved at trial that exceeds the jurisdictional minimum of this court.

2 15. Defendants' conduct described herein was despicable and done intentionally and willfully,  
3 and with a conscious disregard for the rights of the FOUNDATION and its members, and  
4 constitutes malice, thereby warranting an assessment of punitive damages in an amount  
5 appropriate to punish defendants and deter others from engaging in similar wrongful conduct.

6 **SECOND CAUSE OF ACTION**  
7 **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**  
(Against all defendants, except FOUNDATION)

8 16. By this reference, Plaintiffs hereby reallege and incorporate into this Cause of Action each  
9 and every allegation contained in paragraphs 1 through 15 of this Complaint as if fully set forth  
10 herein.

11 17. FOUNDATION has a long-standing economic relationship with its listeners that has  
12 consistently resulted in an economic benefit to FOUNDATION so that it can continue its mission.

13 18. Defendants knew of this relationship and knew or reasonably should have known that their  
14 competing fund drive under the name of "Save KPFA" would interfere with FOUNDATION'S  
15 fund drive at KPFA.

16 19. Defendants intentionally interfered with FOUNDATION's economic relationship with its  
17 listeners that would have resulted in an economic benefit to FOUNDATION but for defendants'  
18 interference.

19 20. Defendants were at all times mentioned herein elected members of FOUNDATION  
20 governance and violated their duty of undivided loyalty by running a competing fund drive under  
21 the name of "Save KPFA". Defendants knew of the FOUNDATION'S financial problems when  
22 they undertook their competing fund drive.

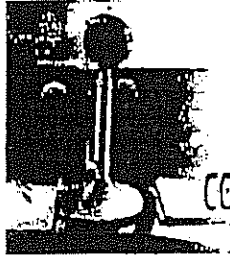
23 21. Defendants' intentional interference with the FOUNDATION fund drive caused economic  
24 harm to FOUNDATION in an amount to be proved at trial that exceeds the jurisdictional minimum  
25 of this court.

26 22. Defendants' conduct described herein was despicable and done intentionally and  
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# Exhibit 1



UNITED TO PROTECT  
OUR VALUABLE  
COMMUNITY RESOURCE

# SAVE KPFA

[www.SaveKPFA.org](http://www.SaveKPFA.org) • [votesavekpfa@gmail.com](mailto:votesavekpfa@gmail.com)

## Send in your pledge to "Bring Back the Morning Show"

You have expressed your support for the *KPFA Morning Show* and asked how you might help getting that important program back on the air. We have no magic bullet, but believe you can make a difference in the following way.

Pacifica Foundation has cited falling revenues as its grounds for eliminating the *Morning Show*, laying off its hosts and accepting voluntary layoffs for 7 other positions at KPFA. That stated reason seems like a sham, for many reasons, including the fact that the *Morning Show* raises the most money of any program on KPFA, and even though the program's staff is being paid through December 8, they are barred from the air. Nevertheless, we must call Pacifica's bluff.

We are asking you to write back with a pledge: tell us how much you'd be willing to contribute over the next year to return the *Morning Show* to the air. We would like to assemble a pledge total greater than what Pacifica is ostensibly "saving" by laying off the hosts of the *Morning Show* — our goal is \$80,000. One of the signers of this letter, Dan Siegel, has pledged \$2000.00. Please join us.

Please fill out and return to us the form at the bottom of this letter or go to [www.SaveKPFA.org/pledge/](http://www.SaveKPFA.org/pledge/) to make an online pledge. We'll total the amount and present it to Pacifica management to show both your unhappiness with their latest moves and your commitment to support KPFA if they change course.

If Pacifica does the right thing, we will bundle your pledges and submit them to KPFA as part of a special fund. Unlike pledges made during fund drives of which Pacifica gets a portion, this pledge will go in its entirety to KPFA.\*

Sincerely,

Mal Burnstein, Conn Hallinan, Dan Siegal & Margy Wilkinson for SaveKPFA

\*Pacifica takes a "levy" of all donations made during fund drives, but unsolicited donations made outside of fund drives or through events such as meetings for authors or the Crafts Fair are not subject to the levy.

**PLEASE MAIL THIS PLEDGE TO: SaveKPFA, PO Box 3263, Berkeley CA 94703**

name \_\_\_\_\_ email \_\_\_\_\_

address/city/state/zip \_\_\_\_\_

Yes, I'll pledge \$\_\_\_\_\_ if KPFA's *Morning Show* is restored to the air as it was in Oct 2010.

Yes, I want to be added to *SaveKPFA's Action Alerts email list* (important news only, 1-2 times a week, and you may easily unsubscribe at any time).



# Exhibit 2

any other validly approved action of the Board. All such consents shall be filed with minutes of the proceedings of the Board.

## **SECTION 9. ACCESSIBILITY**

All public Board meetings shall be held in spaces fully accessible as defined in the Americans with Disabilities Act and any other applicable state and federal laws. Properly closed sessions may be held otherwise unless this would preclude access for any individual entitled to attend.

## **ARTICLE SEVEN**

### **LOCAL STATION BOARDS**

#### **SECTION 1. LOCAL STATION BOARDS**

There shall be a standing committee of the Board of Directors for each Foundation radio station which shall be known as the Local Station Board ("LSB"). The powers, duties and responsibilities of the LSBs shall be those set forth in these Bylaws and such other powers, duties and responsibilities as the Board of Directors may from time to time delegate to them.

#### **SECTION 2. COMPOSITION OF THE LOCAL STATION BOARDS**

Each LSB shall consist of the 24 Delegates elected by the Members for that radio station - 18 Listener-Sponsor Delegates and 6 Staff Delegates. (Four of the Delegates for each radio station shall also concurrently serve as Directors of the Foundation, as set provided in Section 3 of Article 5 of the Bylaws.)

In addition, an "associate station," if any, as that term is defined in Section 8 of this Article, may appoint one representative to the LSB of the radio station with which it is associated. Associate station representatives shall be voting members of the LSB; provided, however, that no associate station representative shall have the right to vote for the election or removal of any Foundation Director or Delegate nor may s/he be eligible for election by the Delegates to the office of Director. No LSB shall have more than a total of three (3) associate station representatives (and no more than one (1) from any one associate station) at any given time. The term of office of an associate station representative shall be three years, with a maximum of two consecutive three-year terms of service on an LSB.

The station's General Manager shall serve as a non-voting member of the station's LSB.

#### **SECTION 3. SPECIFIC POWERS & DUTIES**

Each LSB, acting as a standing committee of the Foundation's Board of Directors, shall have the following powers, duties and responsibilities related to its specific radio station, under the direction and supervision of the Foundation's Board of Directors:

- A. To review and approve that station's budget and make quarterly reports to the Foundation's Board of Directors regarding the station's budget, actual income and expenditures.
- B. To screen and select a pool of candidates for the position of General Manager of its respective radio station, from which pool of approved candidates the Executive Director shall hire the station's General Manager. The LSB may appoint a special sub-committee for this purpose.
- C. To prepare an annual written evaluation of the station's General Manager.
- D. Both the Executive Director and/or an LSB may initiate the process to fire a station General Manager.

However, to effectuate it, both the Executive Director and the LSB must agree to fire said General Manager. If the Executive Director and the LSB cannot agree, the decision to terminate or retain said General Manager shall be made by the Board of Directors.

E. To screen and select a pool of candidates for the position of station Program Director, from which pool of approved candidates the station's General Manager shall hire the station's Program Director. The LSB may appoint a special sub-committee for this purpose.

F. To prepare an annual written evaluation of the station's Program Director.

G. To work with station management to ensure that station programming fulfills the purposes of the Foundation and is responsive to the diverse needs of the listeners (demographic) and communities (geographic) served by the station, and that station policies and procedures for making programming decisions and for program evaluation are working in a fair, collaborative and respectful manner to provide quality programming.

H. To conduct "Town Hall" style meetings at least twice a year, devoted to hearing listeners views, needs and concerns.

I. To assist in station fundraising activities.

J. To actively reach out to under represented communities to help the station serve a diversity of all races, creeds, colors and nations, classes, genders and sexual orientations, and ages and to help build collaborative relations with organizations working for similar purposes.

K. To perform community needs assessments, or see to it that separate "Community Advisory Committees" are formed to do so.

L. To ensure that the station works diligently towards the goal of diversity in staffing at all levels and maintenance of a discrimination-free atmosphere in the workplace.

M. To exercise all of its powers and duties with care, loyalty, diligence and sound business judgment consistent with the manner in which those terms are generally defined under applicable California law.

**SECTION 4. OTHER LOCAL STATION BOARD POWERS AND AUTHORITY**

By resolution, the Foundation's Board of Directors may delegate any other corporate powers it deems appropriate to an LSB with regard to that specific radio station. Any such power delegated to an LSB is subject to revocation at any time by the Board of Directors. Any and all actions, resolutions and policies taken or adopted by an LSB may be overridden by a majority vote of the Directors if said action, resolution or policy is found by the Board of Directors to be adverse to the mission and/or charitable or business purposes of the Foundation, to exceed the power or authority granted to said LSB or to be inconsistent with these Bylaws, the Articles or applicable laws and regulations.

**SECTION 5. ELECTION OF OFFICERS**

Each Local Station Board shall elect a Chair, a Vice-Chair, a Recording Secretary, and a Treasurer, who shall be elected annually at the December meeting of the LSB for a term of one year using the Instant Runoff Voting method. Each of these officers shall serve at the pleasure of the LSB and shall have those powers and shall perform those duties as may be prescribed by its LSB. With the exception of the Chair and the Vice Chair, an officer of an LSB is not required to be a Delegate. Local Station Board officers may not serve concurrently as Foundation Directors, and must resign their position as an LSB officer if elected to the Board of Directors.

**SECTION 6. MEETINGS**