

PROPOSED MOTION TO REMOVE BENITO DIAZ AS PACIFICA DELEGATE

For consideration at a WPFW Local Station Board Special Meeting May 22, 2019

Pursuant to Article Four, Section 9(D) of the Pacifica By-Laws, Benito Diaz is hereby removed as a Delegate as a result of his gross misconduct as host of the February 22, 2019 LSB Show, which conduct was adverse to the best interests of the Pacifica Foundation and WPFW.

Comment

In accordance with Article Four, Section 9 of the Pacifica By-Laws [see Attachment A], approval of this motion to remove Mr. Diaz as a Delegate will simultaneously remove him as a Foundation Director and from the WPFW LSB and any other committee positions that he may hold by reason of his role as a Delegate or Director.

Rationale

Mr. Diaz took advantage of his privilege as a delegate and one of the regular hosts of the WPFW LSB Show to organize the entire February 22, 2019 LSB Show around the issue of an “Amended Letter of Complaint to the California Attorney General’s Office” of which he is a signatory **[see Attachment B]**.

For almost an hour during the WPFW winter membership campaign, our airwaves were devoted to the topic of this complaint, which included allegations of misconduct by the PNB, financial mismanagement, a flawed and unfair elections process, and other legal matters.

Regardless of the legitimacy of these complaints, if any, Diaz’s actions were self-serving and highly irresponsible. Diaz planned and executed this show without consulting other members of the Programming Committee or the LSB, or informing them of his plans. His only invited guests were other signatories to the complaint. No representatives of management who may have had knowledge of facts of the complaint were invited as guests, nor were any of the persons who are named as targets of this complaint.

Mr. Diaz’s choice to discuss these matters on our airwaves, which could foreseeably harm the station and/or the individuals named in this complaint, reflects gross negligence of the fiduciary duty he is expected to uphold as a Foundation Director.

Because he was serving as an unpaid staff member during his time as Host of this broadcast, his actions were also in conflict with Pacifica Foundation rules regarding “Criticizing the Foundation and/or Members of its Management or Staff on Our Own Airwaves.” **[see Attachment C]**.

Furthermore, his choice to broadcast this show during the middle of our winter membership campaign was a direct violation of station policy, which requires that every show help with fundraising during membership drives. Rather than developing programming that would encourage listeners to support our station in this critical time of need, Mr. Diaz chose to shine a spotlight on issues that would discourage most listeners from doing so.

His conduct was unethical and adverse to the best interests of the Foundation and WPFW, and constitutes clear grounds for dismissal.

Pacifica By-Laws: Article Four, Delegates, Section 9: Removal of Delegates

Any delegate shall be removed from the position of Delegate, and cease to be a Delegate, upon the occurrence of any of the following: (A) said Delegate's death or resignation; (B) upon the occurrence of a disqualifying act, e.g. the appointment to an elected political office; (C) failure of a Delegate to attend three consecutive Local Station Board meetings, which absences have not been excused by a majority vote of the LSB members present at the meetings in question; **(D) upon the fair and reasonable determination, by a 2/3 vote of all the Directors of the Foundation, or a 2/3 vote of all the Delegates for the same radio station as the Delegate in question, at a meeting on said issue, after a review of the facts, that, in its sole discretion, said Delegate has exhibited conduct that is adverse to the best interests of the Foundation or the radio station;** or (E) upon the majority vote of the class of Members associated with the radio station who originally elected the Delegate voting by written ballot in an election to remove said Delegate, provided that a quorum is established by written ballot, and further provided that before any such election may be held the Secretary of the appropriate Local Station Board shall first have received a petition signed by at least two percent (2%) of the appropriate class of Members affiliated with that radio station seeking said Delegate's removal due to conduct by the Delegate that is specifically alleged in the petition to be adverse to the best interest of the Foundation or the local radio station.

In the event of a removal proceeding pursuant to this Section 9(D) or 9(E), the Delegate must be afforded reasonable and appropriate due process according to the circumstances, including notice and an opportunity to be heard at the meeting or in writing if a written ballot is submitted to the Members.

Any Delegate who is removed who was simultaneously serving as a Foundation Director or an officer of the Foundation or an LSB shall also be deemed removed from any and all of these positions and from any positions on a committee that s/he held by reason of his/her role as a Delegate or Director.

Notice of a meeting to remove a Delegate must be given in writing at least thirty (30) days in advance.

A Delegate removed pursuant to this Section 9(D) or 9(E) shall not be eligible for reelection as a Delegate for a period of three (3) years.



1300 I Street
P.O. Box 903447
Sacramento, CA 94203-4470
(916) 210-6400
Fax: (916) 444-3651
Complaints@doj.ca.gov

AMENDED COMPLAINT TO THE CALIFORNIA ATTORNEY GENERAL REGARDING A CHARITY OR CHARITABLE SOLICITATION

(amendment of Complaint filed at the LA office on January 8, 2019)



Name of Organization: Pacifica Foundation

List any other names the organization uses: dba KPFA, KPFK, KPFT, WBAI, WPFW, Pacifica Radio Archives

Address of organization: 1925 Martin Luther King Jr. Way

City, State, ZIP: Berkeley, CA 94704-1037

Organization Telephone Number: 510-849-2590

Organization Web address: <https://pacificafoundation.org>

Other identifying information for the corporation, if known:

Corporate # C0209140

State Charity Registration # 011303

FEIN: 941347046

Briefly summarize the main point of your complaint here (Attach additional pages for the details of your complaint, if necessary):

Acting contrary to the advice of its CFO, its General Counsel, and its Auditor, the Pacifica National Board (PNB) majority took out a \$3.2 million loan and refuses to reveal to Foundation Members the loan details or to produce a repayment plan or provide assurances to Members that timely reporting and notification requirements to the lender have been met. Acting contrary to Pacifica bylaws, the PNB majority passed a motion that would possibly illegally extend their own terms as Directors. (see page 3 below and attached letter and documentation for more details)

Have charitable funds or other assets been lost, wasted or diverted from proper charitable purposes? Or, is there a danger that such loss will soon occur? Please explain, giving your best estimate of the amount lost or at risk, if you know:

Structures housing three of the foundations stations have been encumbered as collateral for a \$3.2 million loan for which no repayment plan has been developed, and which may already be in default.

What action has already been taken, either within the organization or with other law enforcement agencies, to try to resolve this problem:

There are lawsuits, appeals and arbitration pending as to illegal dismissals and removals of people from management and governance, but the local and national boards have rejected motions to reverse improper actions or refused entirely to meet.

List the names, addresses and telephone numbers, if known, of all persons you believe may be responsible for this problem:

Grace Aaron, 1459 Rexford Drive, #2, Los Angeles, CA 90035, 310-286-1011; Ken Aaron, 1459 Rexford Drive, #2, Los Angeles, CA 90035, 310-286-1011; Mansoor Sabbagh, 946 Daisy Avenue, Studio 8, Long Beach, CA 90813, 310-283-0885; Jan Goodman, 120 Larkin Place, Santa Monica, CA 90402, 310-458-7213; William G. Crosier, 7445 Santa Fe Drive, Houston, TX 77061, 713-305-5346; Carole Travis, 272 Croyden Drive, Pleasant Hill, CA 94523, 312-925-5913; Nancy Sorden, 4127 Plyers Mill Road, Kensington, MD 20895, 301-949-7495; Alex Steinberg, 304 Caton Avenue, Brooklyn, NY 11218, 646-247-2939; Sabrina Jacobs, 1715 High Street, Oakland, CA 94601, 415-730-7128; Jonathan Alexander, 4611 West MLK Jr Blvd, #290, Los Angeles, CA 90016, 818-674-1518, et al.

List the names, address and telephone number of any other persons who may have additional information concerning the complaint:

Your name, address and telephone number: Janet Kobren

Date: January 17, 2019

Check here if you request that your identity be kept confidential.

Mail the completed form and any attachment to: Registry of Charitable Trusts, Office of Attorney General, P.O. Box 903447, Sacramento, CA 94203-4470.

SUMMARY OF COMPLAINT

Acting contrary to the decision of an impartial National Election Supervisor (NES) hired to oversee the Delegate elections, the Pacifica National Board (PNB) majority has segued from saying that their involvement is a conflict of interest to overriding the original professional NES' decision to terminate the election (in October 2018) and subsequently removing both him and a second NES until they chose a third one to carry out their factional agenda.

Acting contrary to the Foundation Bylaws, the majority voted down a July 2018 motion to postpone the elections to 2019. The motion cited the cost (with Pacifica in the middle of a financial crisis), and bylaws that had already been violated with respect to the elections. Instead self-serving factional timelines were imposed which have been repeatedly changed, disenfranchising both candidates and members.

Acting contrary to law and Pacifica bylaws, the PNB majority passed a motion to extend their own terms.

Acting contrary to the advice of its CFO, its General Counsel, and its Auditor, the PNB majority took out a \$3.2 million loan collateralized by the Foundation's real property and other assets, and refuses to reveal loan details to Pacifica's membership or produce a repayment plan.

Acting contrary to the Pacifica mission, the PNB majority supports and encourages management in program changes that gentrify the airwaves, endangering the Spanish-language and other community-based programming and censoring challenging voices.

PAGE 3 of 3

Additional Signers (in development) continued:

Amended Complaint Regarding a Charity or Charitable Solicitation
(amendment of Complaint filed at the LA AG office on January 8, 2019)

January 17, 2019

HAND-DELIVERED

The Honorable Xavier Becerra
Attorney General, State of California
Attorney General's Office
California Department of Justice
1300 "I" Street
Sacramento, CA 95814



Dear Mr. Attorney General:

Pacifica Foundation Inc. is a Nonprofit Public Benefit Corporation under your purview in the state of California, licensed to operate and do business as KPFA-FM, KPFK-FM, KPFT-FM, WBAI-FM, WPFW-FM and the Pacifica Radio Archives. We, the undersigned, are writing to you to request your immediate intervention and seek injunctive relief needed to prevent irreparable harm caused by serious improprieties at Pacifica.

Pacifica fills a unique role as a radio network featuring progressive views and purports to be free of corporate influence. The current Pacifica National Board (PNB) partisan majority has undertaken or authorized actions that violate the Foundation's Bylaws and California Corporations Code; actions that threaten the existence of the Foundation and the operations of its educational projects. Pacifica governance has directed program changes to be made that gentrify the airwaves, counter to the Pacifica Foundation's purposes (https://pacificafoundation.org/indexed_bylaws/art1.html), endangering the Spanish-language and other community-based programs, and engaging in censorship.

There are several major areas of concern: financial mismanagement, irresponsibility and possible self-dealing by Directors; a flawed, unfair elections process that violates the Bylaws; possibly illegal extension of their terms by current Directors; breaches by some Directors of their duty of loyalty, care, and obedience; conflicts of interest in decision-making by some Directors and senior management without proper PNB oversight; improper dismissals and hiring of management personnel and board members resulting in lawsuits; unfair treatment of unpaid/volunteer staff; premiums which listeners paid for during fund drives in some cases not being delivered; improper removal of or refusal to seat Directors and Delegates, also in violation of the Foundation Bylaws; numerous other Bylaws violations.

Additional Signers (in development) continued:

Financial Mismanagement

The PNB majority took out several loans against the advice of its Auditor, Counsel and CFO, whose details and terms it has refused to reveal to the Pacifica members preventing them from holding the Foundation accountable. The current \$3.2 million loan, an amount significantly exceeding what was due ESRT and which is very possibly in a state of default, is collateralized by and encumbers all properties and equipment owned by the Foundation, including the structures housing three of the five radio stations it operates. No known earmarked fundraising has taken place to repay this major loan and the PNB has failed to produce any repayment plan for it. Additionally, a Trust Account was set up without the consent of the PNB, by the then Interim Executive Director, designating funds to be sent to an account managed by a Director's husband. The PNB has not received an accounting of or information regarding the management or allocation of funds in this account. (See Exhibits 1.a – 1.f)

Voter Suppression and Vast Election Irregularities and Improprieties

Elections are currently underway for station Delegates even though the National Election Supervisor (NES), an impartial elections professional, hired in August 2018 to oversee the elections; determined that inadequate membership records and other irregularities and improprieties made it impossible to hold fair elections, and therefore terminated the election process. He was then let go by the PNB which directed the Executive Director to hire a new NES, who was also unjustifiably and summarily dismissed and replaced by a third NES. Multiple revised timelines for the elections have been issued by the numerous NESes, changing dates retroactively and without notice. As well, the PNB majority issued its own timeline revisions, further confusing candidates and voters. In addition, hyper-partisan PNB intervention in the election process is not only a conflict of interest but also in violation of the Bylaws. The PNB majority has also voted to extend their own terms in office in possible violation of California Corporations Code. Additionally, it appears that the Social Uplift Foundation, a California non-profit organization, has used its non-profit postal permit (in both the 2016 and current election) to mail slate flyers (campaigning for and promoting various candidates) to voters in California, Texas, and New York. (See Exhibits 2.a – 2.k)

Violation of Foundation Bylaws and California Corporations Code

The PNB majority bylaws violation are too numerous to list in this complaint – we will send an addendum listing them. However, one of the most serious breaches was the PNB's passage of a motion to extend their own Director term. In addition there were several self-dealing/appearance of impropriety situations including --

Additional Signers (in development) continued:

without the approval of the PNB, on ^{one} ~~two~~ occasions, ^{an} ~~Interim~~ ^{Executive} Directors signed a contracts for services to a currently sitting Director; and the interim GM at KPFK was using her own personal products to pitch and sell at several of the stations for which she invoiced the Foundation for payment; and a Supporters Loan provided by currently sitting Directors, their relatives and friends for which many fees were paid.

And furthermore, the Foundation is seriously delinquent in its registration as a charity (see chart below copied from <http://rct.doj.ca.gov>):

<u>PACIFICA FOUNDATION INC.</u>	Charity Registration	Delinque nt	0113 03	101601 1	9413470 46	BERKELE Y	C A
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Its listing with the Secretary of State's office is also out of date. The most current Statement of Information was filed on June 22, 2017 and shows the name of a former Interim Executive Director, a former Secretary and the former CFO.

As well, it appears that the tax-exempt status for the Foundation may be revoked and/or out of compliance. (See Exhibits 3.a – 3.g)

Gentrification of Stations/Airwaves

Programming at Pacifica is to be based on the geographics and demographics of the community it serves. However, acting contrary to the Pacifica mission, the PNB majority supports and encourages management in program changes that gentrify the airwaves, endangering the Spanish-language and other community-based programming and censoring challenging voices. (See Exhibits 4.4 – 4.d)

We are seeking immediate remedies from the Attorney General, including that the Attorney General's Office:

1. Provide injunctive relief to restrain Pacifica from proceeding with the Delegate election, and appoint an independent outside election expert to supervise the national process for electing Delegates;
 - a. Mandate the creation, validation, and release to Members -- as required by state law -- of the official membership lists for Staff and Listener Members, as well as the implementation of a streamlined and accountable system to maintain Membership lists at Pacifica stations;
2. Provide injunctive relief to restrain Pacifica from extending the terms of its Directors beyond the legal one year term for which they were elected in January 2018;

Additional Signers (in development) continued:

- a. Direct an immediate **provisional** election of Interim 2019 PNB Directors until fair elections can be held for 2019 PNB Directors;
3. Request release to Members, by the PNB, of all signed and executed ESRT settlement agreements, and loan documents currently being withheld from Members by the PNB since there is no justification for confidentiality after the conclusion of negotiations;
4. Require the PNB to produce a viable repayment plan and assurances to Members that timely reporting and notification requirements to the lender have been met for the \$3.2 million loan it has taken out, in order to ensure Pacifica's ongoing viability;
5. Investigate questionable Pacifica Foundation practices of financial malfeasance, theft of public donations, self-dealing, conflicts of interest, breaches of Director's duties of care/loyalty/obedience and violations of the Foundation Bylaws and California Corporations Code (whether perpetrated by Directors, Board Committees, Management or Staff members);
6. Require the PNB to activate the bylaws-required Committees of Inclusion at each of the five stations which monitor inclusion and representation of under-represented communities in programming, staff, management and governance at Pacifica;
 - a. End preemption of and discrimination against Spanish-language programming during fund drives;
 - b. Ensure equity in staffing and programming for indigenous, African American, Asian-Pacific Islander, Middle Eastern and other underrepresented communities.
7. Ensure there are no reprisals or retaliation by Pacifica against any of the candidates, programmers, staff, or members who speak out or are whistleblowers on these issues as has transpired in the recent past;
8. Assist in formulating new bylaws which can better serve the Foundation and if necessary appoint a relator.

Thank you for your attention and immediate injunctive action regarding these matters in order to prevent irreparable harm to the Pacifica Foundation. Should you have questions, please feel free to contact the two primary signatories below.

Sincerely,

/s/

Adriana Casenave
PNB Director (2014-2018)
2016 PNB Vice Chair
adrianacasenave@hotmail.com
(281) 851-0300



Janet Kobren
Pacifica Foundation Secretary (2015,
2016, 2018), PNB Director (2014-2016)
janetkobren@gmail.com
(510) 435-8169

Additional Signers (in development) continued:Current Directors

Benito Diaz - PNB Director (2017-2018, 2013-2015)

DeWayne Lark - PNB Director (2018)

Current Local Station Board (LSB) Members

Reza Pour - KPFK Listener Delegate; Listener Candidate under protest

Fernando Velazquez - KPFK Staff Delegate; Staff Candidate Under Protest

Polina Vasiliev - KPFK Staff Delegate

Lawrence Reyes - KPFK Listener Delegate; PNB Director (2014, 2015)

John Riley - WBAI

Dacio Quintana - WBAI

Nancy Saibara-Naritomi - KPFT

Susie Moreno - KPFT

Robert Gartner - KPFT

Rita Washington- KPFT

PK McCary - KPFT LSB Treasurer

Former National Officers, Directors, and LSB Members/Officers

Michael Novick - PNB Director (2016-2017), KPFK LSB Listener Delegate (2010-2016); Candidate Under Protest

Cerene Roberts - Pacifica Foundation Secretary (2014), PNB Director (2013-2017)

Bob Lederer - PNB Director (2005-2008), WBAI LSB Staff Delegate (2004-2009, 2010-2016,)

Rodrigo Argueta - PNB Director (2011, 2014, 2015)

Sherna Berger Gluck - CSULB Emerita Faculty, Former KPFK LSB Listener Delegate, Former KPFK Unpaid Staff member

Mimi Rosenberg - Former Unpaid Staff Rep, WBAI Local Advisory Board

Errol Maitland - Former Unpaid Staff Rep, WBAI Local Advisory Board

Sharonne Salaam - WBAI LSB member (2012-2018)

KPFK Listener/Staff Members

Tyan Schesser - Listener Candidate Under Protest

Oscar Ulloa - Staff Candidate Under Protest

Bernie Eisenberg - GCRC Member & Webmaster

Alise Sochazewski - Listener Member; GCRC

WBAI Listener/Staff Members

Beverly Abisogun - Listener Member

Organizations

Grassroots Community Radio Coalition (GCRC)

Additional Signers (in development) continued:

National Coalition for Accountability at Pacifica (NCAP)
KPFK Spanish Language Programmers Association (APPE)
Harriet Tubman Center for Social Justice
International Action Center West Coast

CC:

Elizabeth S Kim, Supervising Deputy Attorney General
(Sent via email to elizabeth.kim@doj.ca.gov)
Julianne Mossler, Deputy Attorney General
(Sent via email to julianne.mossler@doj.ca.gov)

Pacifica Policy on Criticizing the Foundation and/or Members of Its Management or Staff on Our Own Airwaves

As amended and approved by the Pacifica National Board - July 17, 2010

Pacifica Policy Statement on Criticizing the Foundation and/or Members of Its Management or Staff on Our Own Airwaves Pacifica recognizes that there will always be differences of opinion as to how our foundation should be run, as well as clashes between individual Staff members or between members of staff and management. We firmly believe that such differences of opinion and/or staff clashes should not be ignored or censored, and that Pacifica management should commit itself to hearing and evaluating all such criticism, no matter how unfavorable.

If a staff member has a personal grievance, or is aware of a danger to a station or to Pacifica itself that he or she feels is not being addressed properly, that staff member is encouraged to discuss the matter with management first through the normal channels provided for addressing such matters. Management has an open-door policy in this respect.

On the other hand, if after exhausting the normal grievance channels, a Staff member still feels that he or she is not receiving justice, or that a perceived problem at the foundation is still not being properly addressed, then that staff member may, regrettably, have no other choice but to "go public" with the issue on Pacifica's own airwaves. In such an eventuality, that staff member will have been transformed from a "critic" into a "whistleblower," and will be entitled to all the respect (and protection) such a designation requires.

However, we believe whistle blowing carries with it the responsibility of fairness. Therefore, if a staff member has finally reached the point at which he or she feels there is no other option than to use his or her program as a platform from which to criticize Pacifica, or its management, or its personnel, or to air internal Pacifica matters in a way that might negatively impact the reputation or public image of the Foundation or its personnel, IT IS SUGGESTED THAT both the station manager and the foundation's Executive Director be notified of that planned broadcast at least 24 hours in advance. This is A SUGGESTION not for the purpose of censorship BUT TO PROTECT THE STAFF MEMBER FROM MISTAKENLY AIRING THE FOLLOWING:

- (1) Potentially libelous statements, which could put the foundation at risk.
- (2) Confidential employee information, which Pacifica is forbidden by law to broadcast.
- (3) Privileged or proprietary information -- including but not limited to details about vendor contracts, financial matters, legal issues, pending or ongoing lawsuits, or future programs and/or events whose premature disclosure might put the foundation at a competitive disadvantage.