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**ENDORSED
FILED**

APR 25 2008

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA**

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6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

7 **COUNTY OF SONOMA**

8 JOSUE LOPEZ, et al,

Case No.: SCV-239236

9 Plaintiffs,

RULING INVOLVING FURTHER
EQUITABLE PROCEEDINGS UNDER
CORPORATIONS CODE §5617

10 v.

11 BBFI, et al

12 Defendants.
13 _____ /

14 Since 1986 the law in California has promised non-profit corporations and the
15 general public that they have a right to expect the following: "Fair and
16 reasonable election procedures are fundamental to the proper governance of
17 not only 'for profit' corporations but 'nonprofit' corporations, including labor
18 unions. The members of such bodies should have a reasonable opportunity to
19 be nominated and elected to the board of such an entity. These rights are
20 important rights affecting the public interest. ... (A)ll of approximately 62,000
21 nonprofit corporations (are) required to have fair and reasonable procedures
22 for the election of directors." See, *Braude vs. Automobile Club of Southern*
23 *California* (1986) 178 Cal.App.3rd 994, 1012.

24
25 Plaintiffs Josue Lopez, Evelina Molina, Alfredo Sanchez, Eszter Freeman, David
26 Janda, Attila Nagy, Jose Gonzalez, and Omar Malfavon (collectively "Voces")
27 have sued Bilingual Broadcasting Foundation, Inc. (BBFI) and Jesus Lozano,
28 Interim General Manager of BBFI, for failing to obey the above legal

1 requirements regarding elections for the board of directors for this nonprofit
2 public radio station (KBBF) in 2006 and in 2007. A highly flawed board election
3 in 2006 led to a settlement agreement between the parties that envisioned a
4 successful, clean election in 2007. When the attempted election in 2007 failed,
5 the Voces group brought the current motion to get the court's further help in
6 organizing a proper election in 2008. Both sides agree that a new, completed
7 election is necessary. The real sticking point is whether defendant Jesus Lozano
8 should be removed from office and banned from the radio station in order to
9 achieve the mutual goal of a fair board election. The parties strongly disagree
10 on this issue.

11
12 Although plaintiffs have requested a statement of decision, that isn't required
13 in a law and motion matter such as the motion presently before the court. See,
14 *City of Los Altos vs. Barnes* (1992) 3 Cal.App.4th 1193, 1198. Nonetheless,
15 this court always strives to articulate the reasons for making a law and motion
16 ruling and will do so in the pending motion. Having read and considered all of
17 the submitted written declarations and contentions and having pondered the
18 hearing evidence and oral arguments, the court issues the following ruling
19 pursuant to Corporations Code section 5617:

20
21 The BBFI Board of Directors election of September 2006 was patently unfair.
22 The crux of the unfairness was the disenfranchisement of over one hundred
23 people who were asking to become members of this nonprofit corporation near
24 the time of the election. Most of the disenfranchised were members of the
25 Voces group. In 2006, Voces Cruzando Fronteras (Voices Crossing Borders)
26 was a group of concerned community members seeking to elect a slate of
27 candidates in opposition to the incumbent board. Although the brand new
28 members filed applications by the election record date, their votes were only

1 deemed provisional and were never actually counted.

2
3 This undemocratic end was the result of an unreasonable manipulation of a
4 corporation bylaw (BBFI Bylaws Article IV, section 7) by some of the incumbent
5 directors. While a labored, pretextual explanation has been given for this very
6 suspicious conduct, the only real, discernible purpose for the action was the
7 perpetuation of the sitting board when faced with a considerable election
8 challenge. This underhanded objective was clearly unlawful.

9
10 Not surprisingly, Voces filed a lawsuit to challenge the 2006 election.

11 Progressively, this legal dispute made its way to mediation. On February 12,
12 2007, the parties reached a full settlement that was reduced to writing. The
13 settlement agreement called for a fair and clean board election in June of 2007.
14 Many safeguards were put into the plan, including among other things, rules
15 for campaigning, an election referee, and three election inspectors. Optimism
16 was high.

17
18 Unfortunately, due to a mistake made by defendants, the June election was
19 inadequately noticed, and the election had to be continued to August of 2007.
20 Then tragically the August election was held, but not certified, due to unforeseen
21 problems with proxy voting and insufficient training of the election inspectors.
22 Needless to say, Voces was very frustrated by this blown do over.

23
24 While the court agrees with plaintiff that the radio station deserves 1) shorter,
25 professional board meetings, 2) timely, comprehensive board minutes, and 3)
26 consistent, realistic budgeting, those deficiencies didn't sabotage the 2007
27 elections. In addition to the above mentioned mistakes, the key problems
28 engendered by the incumbent directors in 2007 were a failure to make their

1 decision making fully transparent to all directors, corporation members, and
2 the general public and a failure to make the campaign playing field level for all
3 concerned, including their opposition.

4
5 What should be done at this juncture? The law requires fair board elections.
6 The parties agreed to create fair elections. Thrice the directors have failed to
7 deliver, at absolutely no fault of Voces.

8
9 KBBF is the oldest bilingual public radio station in the United States. It is a
10 major cultural asset of the Hispanic community. It is a treasure.

11
12 As such, the radio station is more important than any man or any group. The
13 court has retained jurisdiction, and the court must act to assure fair and clean
14 board elections in the near future. It is through the democratic involvement of
15 a broad range of community members that KBBF can remain strong and vital.

16
17 Undoubtably, the parties' reasonable settlement agreement has been partially
18 breached by defendants. While not insignificant, the court believes that there is
19 no basis to simply throw out the hard-earned settlement and completely start
20 over. The agreement is the product of much good will and contains the
21 framework for a successful organization of the next election. Any request to
22 vacate the settlement is respectfully denied at this time.

23
24 However, that agreement didn't produce a completed election in 2007. The
25 terms of the agreement must be tweaked and augmented under tight court
26 supervision. The fundamental target will be a clean, fair election in 2008.

27
28 Consequently, the court orders that a new board of directors election be held

1 as soon as reasonably possible this year. The election will be run by True Ballot
2 whose services will be paid for by BBFI. There will be a neutral election referee
3 who reports to this court. The election rules will need to be put in writing with
4 sufficient detail to cover any contingencies. The court will closely and
5 frequently monitor the process from beginning to end. The court will schedule a
6 meeting with the parties and a representative of True Ballot in the next 30
7 days. The court's judicial assistant, Alyce Frost, will help schedule this meeting.
8 At that conference, future meetings will be set.

9
10 Certainly, the court remains concerned about personality differences and
11 charges of intimidation. There are some petty personal disputes that have
12 popped up on both sides of this election wrangle. For the greater good, it would
13 be helpful if everyone can try to start over and to avoid this unproductive
14 drama. Part of the problem is the prolonged nature of the election failure. As a
15 gesture toward temporarily empowering the group of outsiders who have been
16 patiently waiting on the sidelines, the court will exercise appointment power
17 under section 5617, appointing former Voces' board candidates to fill three
18 current BBFI director vacancies: 1) Josue Lopez, 2) Evelina Molina, and 3)
19 David Janda. These appointments will be effective immediately.

20
21 What, if anything, should be done about Jesus Lozano? The court asked Mr.
22 Lozano to consider a voluntary resignation for the benefit of KBBF; he has so
23 far declined to resign. This interim general manager is a lightning rod with
24 historical justification. He is at the center of the personality clashes. He himself
25 has gotten far too personally involved in the affairs of the radio station. To a
26 large extent, instead of being the confident troubleshooter that he could be, he
27 appears to have become an overly sensitive troublemaker. The court does
28 believe that it would be much easier to heal the divisions at KBBF were Mr.

1 Lozano to leave.

2

3 Having said that, the court isn't prepared to order his ouster today. But the
4 court will plead with Mr. Lozano's better nature: hoping that he will voluntarily
5 choose to move on. This would be a good choice for Mr. Lozano, the radio
6 station, and the entire community.

7

8 While Mr. Lozano remains in his interim role, the court will order what the
9 defendant offered to do in court: that he be totally and completely uninvolved
10 in the upcoming election. He is therefore recused from making any decisions
11 affecting the election and from doing anything to influence its outcome. The
12 court will keep a watchful eye upon the general manager to ensure that he
13 doesn't-singly or in combination with others-thwart democracy again. The court
14 retains the right to take necessary action to prevent any further interference
15 by him with community rights to a fair election.

16

17 Threats and vandalism: that's ugly and unacceptable. Whoever is behind this,
18 in apparent service to the status quo, needs to be swiftly brought to justice.
19 Voces should promptly report any future crimes to law enforcement. The court
20 expects both sides of this case to strongly denounce the criminality and to put
21 an end to it. There should be no further deplorable vandalism and absolutely
22 no retaliation of any kind perpetrated against any person or any group.

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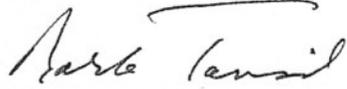
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1 A clean board election at KBBF matters to the community. It can happen this
2 year. The court needs genuine cooperation from both sides. With true
3 community spirit, this unfortunate situation can be turned around. And please
4 rest assured that the court will not tolerate further failure through either
5 incompetence or bad faith by corporate insiders.

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Dated:

4/25/08



MARK TANSIL
Judge of the Superior Court

