

**EXHIBIT 5**

The purpose of this application is to obtain Commission consent to a transfer of control of the broadcast licenses held by Pacifica Foundation, Inc. ("Pacifica").

The transfer of control has occurred both through routine election of members of the Pacifica Board of Directors, and through a Settlement Agreement, entered into by Pacifica to settle a series of lawsuits that contested changes in Pacifica by-laws. The Settlement Agreement has been approved by the Alameda County Superior Court, where the lawsuits were brought. A copy of the stipulated Judgment and Settlement Agreement are attached.

The Settlement Agreement settles four related lawsuits, People of the State of California ex rel. Carol Spooner v. Pacifica Foundation, Case No. 831252-3; Robinson v. Pacifica Foundation, Case No. 831286-0 (Alameda County Superior Ct.); Moran v. Pacifica Foundation, [Cross-Complaint in Robinson]; and Adelson v. Pacifica Foundation, Case No. 814461-0 (Alameda County Superior Ct.) Collectively, the various plaintiffs ("Plaintiffs") contested changes in Pacifica's By Laws concerning the power of a Local Advisory Board ("LAB") to elect members of the governing Board. The issue divided the Pacifica Board into Majority Members and Minority Members, as those terms are defined in the Settlement Agreement.

The Plaintiffs agreed to dismiss their respective actions, provided that the Foundation agree to appoint an "Interim Board" of up to fifteen directors who would be appointed in the following manner:

- i. The Majority Members of the current board as a group may select five (5) directors;
- ii. The Minority Members of the current board as a group may select five (5) directors;
- iii. The Chair of each of the five LABs each may select one director, for a total of five (5) directors selected by the LAB Chairs. Appointees cannot be the current LAB Chair as of September 30, 2001, and must be a member of the LAB as of September 30, 2001.
- iv. The Interim Board will serve for a term of 15 months during which time it will undertake to revise the Pacifica By Laws to provide for a permanent procedure for electing members of the governing Board.

The Interim Board and New Pacifica officers were elected on December 29, 2001. The Interim Board consists of the following officers and directors:

George Barnstone  
1937 West Gray, Ste. 200  
Houston, TX 77019

Marion Barry  
161 Raleigh Street, SE  
Washington, DC 20032

Pete Bramson  
1855 Gaeway Blvd., Ste 630  
Concord, CA 94520

Leslie Cagan, Chairperson  
550 Ft. Washington Avenue,  
Ste. # - E  
New York, NY 10033

James Ferguson  
2000 L Street, NW  
Washington, DC 20036

Dick Gregory  
PO Box 3270  
Plymouth, MA 02361

Bertram Lee  
2501 Porter Street, NW, #809  
Washington, DC 20008

Rob Robinson  
2750 Prosperity Ave. Ste. 450  
Fairfax, VA 22031-4312

Ray LaForest  
75 Varick Street, #1404  
New York, NY 10013

Carol Spooner  
1136 Wild Rose Drive  
Santa Rose, CA 95401

Jabari Zakiya  
6403 Flander Drive  
Hyattsville, MD 20783

Teresa Allen  
25530 Tuckahoe Lane  
Spring, TX 77373-3117

Janice Bryant

David Fertig  
2035 Lake Avenue  
Altadena, CA 91001

ENDORSED  
FILED  
ALAMEDA COUNTY

JAN 11 2002

CLERK OF THE SUPERIOR COURT  
By CHARLOTTE MARIN  
Deputy

1 Terry Gross (103878)  
2 Adam C. Belsky (147800)  
3 GROSS & BELSKY LLP  
4 One Maritime Plaza, Suite 1040  
5 San Francisco, California 94111  
6 Telephone: (415) 544-0200  
7 Facsimile: (415) 544-0201

8 Attorneys for Plaintiffs/Relators  
9 PEOPLE EX REL CAROL SPOONER, et al.

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF ALAMEDA**  
**UNLIMITED JURISDICTION**

DAVID ADELSON, et al.,  
Plaintiffs,

v.

PACIFICA FOUNDATION, et al.,  
Defendants.

PEOPLE OF THE STATE OF  
CALIFORNIA, ex rel. CAROL  
SPOONER, et al.,

Plaintiffs,

v.

PACIFICA FOUNDATION, et al.,  
Defendants.

ROBERT ROBINSON, et al.,  
Plaintiffs,

v.

PACIFICA FOUNDATION, et al.,  
Defendants.

TOMAS MORAN, et al.,  
Cross-Complainants,

v.

PACIFICA FOUNDATION, et al.,  
Cross-Defendants.

) Consolidated Case No.: 814461-0  
[Consolidated with No. 831252-3  
and No. 831286-0]

STIPULATED JUDGMENT

## JUDGMENT

On July 16, 1999, plaintiff David Adelson and other named plaintiffs filed a Complaint entitled *David Adelson, et al. v. Pacifica Foundation, et al.*, Case No. 814461-0 (Alameda Co. Superior Ct.) (the "*Adelson Action*"). On September 15, 2000, the plaintiff the People of the State of California, through relators Carol Spooner et al., filed a Complaint entitled *People of the State of California ex. rel. Carol Spooner, et al. v. Pacifica Foundation, et al.*, Case No. 831252-3 (Alameda Co. Superior Ct.) (the "*People ex rel. Spooner Action*"). On September 19, 2000, plaintiffs Rob Robinson and Aaron Kriegel filed a complaint entitled *Robinson et al. v. Pacifica Foundation, et al.*, Case No. 831286-0 (Alameda Co. Superior Ct.) (the "*Robinson Action*"). On May 11, 2001, cross-complainants Tomas Moran, Peter Bramson and Leslie Cagan filed a cross-complaint in the *Robinson Action* entitled *Tomas Moran, et al. v. Pacifica Foundation, et al.* (Alameda Co. Superior Ct.) (the "*Moran Cross-Complaint*"). On June 15, 2001, cross-defendants to the *Moran Cross-Complaint* and Mary Frances Berry and Frank Millspaugh filed a cross-complaint against Tomas Moran, Peter Bramson, Leslie Cagan, Rob Robinson and Aaron Kriegel entitled *Pacifica Foundation, et al. v. Robert Robinson, et al.* (Alameda Co. Superior Ct.) ("*Defendants' Cross-Complaint*"). The defendants in the various actions who have been served included David Acosta, Mary Frances Berry, Robert Farrell, Ken Ford, June Makela, Frank Millspaugh, Micheal Palmer, Wendell Johns, John Murdock, Karolyn van Putten, Bertram Lee and Valrie Chambers (the "*Individual Defendants*"). In the *People ex rel. Spooner Action*, Marion Barry, James Ferguson, George Barnstone, Dick Gregory and Krishna Roy were named as defendants in the Second Amended Complaint but have not been served (the "*Non-Served Defendants*").

By order of the Court dated May 8, 2001, these three actions were declared complex, and consolidated for all purposes, including trial. A firm trial date was set for January 7, 2002.

The following judgment pertains to all claims and causes of action asserted in these consolidated cases and is the single, final judgment herein.

On December 12, 2001, parties to all three consolidated actions reached a settlement of the claims raised in those actions, and entered into a written settlement agreement (the "*Settlement Agreement*"). A copy of the Settlement Agreement is attached to this Stipulated Judgment as

1 Exhibit A. The written Settlement Agreement provided for the entry of a stipulated judgment, and  
2 it provided for the creation of an interim board of directors for Pacifica Foundation (the "Interim  
3 Board") to replace the current board of directors. At a court hearing on December 12, 2001, the  
4 parties stated on the record that the matter had been settled pursuant to the terms of the Settlement  
5 Agreement, and the Court ordered that the Settlement Agreement be filed with the Court, rather than  
6 read into the record.

7 At a court hearing on December 19, 2001, the Court determined that sufficient signatures for  
8 the Settlement Agreement had been submitted such that the Settlement Agreement was binding and  
9 in effect. As of the date of the settlement, the board of directors of Pacifica Foundation was  
10 composed of Robert Farrell, Wendell Johns, Bertram Lee, John Murdock, Valrie Chambers, Marion  
11 Barry, James Ferguson, George Barnstone, Dick Gregory and Krishna Roy (all of whom were  
12 defendants in one or more of the consolidated actions); and Tomas Moran, Peter Bramson, Leslie  
13 Cagan, Rob Robinson and Aaron Kriegel (all of whom were plaintiffs and/or cross-complainants in  
14 one or more of the consolidated actions). The Settlement Agreement was signed by all current  
15 members of the board of directors, except for one director who was out of the country and  
16 unavailable.

17 The Court, having heard the parties and considered the testimony and documentary evidence,  
18 and good cause appearing therefor, hereby ORDERS THAT JUDGMENT IS ENTERED on the  
19 following terms:

20 1. Settlement Agreement Is Binding. The signatures to the Settlement Agreement as of  
21 December 19, 2001 are sufficient so that the Settlement Agreement is binding and in effect. Any  
22 individual who was a director of Pacifica Foundation as of December 19, 2001 who is not a signatory  
23 to the Settlement Agreement may be removed by the Interim Board by the appropriate vote under  
24 Pacifica's Bylaws.

25 2. Compliance with Settlement Agreement. The parties to the Settlement Agreement  
26 must comply with the terms of the Settlement Agreement.

27 3. Dismissal of Lawsuits and Judicial Supervision.

28 a. The *Moran* Cross-Complaint in the *Robinson* Action is hereby dismissed with

1 prejudice against all defendants.

2           b.     The Second Amended Complaint in the *People ex rel. Spooner* Action is  
3 dismissed against the Individual Defendants and the Non-Served Defendants with prejudice in its  
4 entirety; and all causes of action against Pacifica Foundation in the Second Amended Complaint (the  
5 Eighth, Ninth and Tenth Causes of Action for declaratory relief) are dismissed without prejudice,  
6 subject to the provisions of subparagraph (f), below.

7           c.     The Second Amended Complaint in the *Adelson* Action is dismissed against  
8 the Individual Defendants with prejudice in its entirety; and the causes of action against Pacifica are  
9 dismissed with prejudice, except insofar as the First and Second Causes of Action seek to invalidate  
10 the September 28, 1997 and September February 28, 1999 changes to Pacifica's bylaws, which  
11 claims are dismissed without prejudice, subject to the provisions of subparagraph (f) below.

12           d.     The Complaint in the *Robinson* Action is dismissed against all parties with  
13 prejudice.

14           e.     Defendants' Cross-Complaint in the *Robinson* Action is hereby dismissed  
15 with prejudice against all cross-defendants.

16           f.     The dismissals of the causes of action against the Pacifica Foundation in the  
17 *People ex rel. Spooner* Action and the *Adelson* Action that were dismissed without prejudice as set  
18 forth in subparagraphs (b) and (c) above must be vacated if any party or director brings a motion and  
19 shows that the Interim Board and three (3) of the five (5) LABs cannot agree on the number or  
20 manner of election of directors or LAB members within one year from the date of the first meeting  
21 of the Interim Board, or any extensions of that limit; and if these causes of action are vacated, any  
22 trial of those causes of actions must be expedited. In the event that a motion is made to vacate the  
23 dismissal of the *People ex rel. Spooner* Action, the current relators to that action will retain relator  
24 status and do not need to reapply to the Attorney General for such status, unless the Attorney General  
25 has withdrawn relator status in writing.

26           g.     The Court retains jurisdiction to enforce the terms of the Settlement  
27 Agreement for eighteen (18) months from the date of entry of this Judgment, or as further extended  
28 by the Court; and this period shall be automatically extended in the event the term of the Interim

1 Board is extended pursuant to Paragraph 2 of the Settlement Agreement or if an application for  
2 enforcement of the Settlement Agreement is brought. Any party or director has standing to apply  
3 to the Court for enforcement.

4 h. The Court will maintain ongoing supervision of the Settlement Agreement,  
5 including without limitation by the procedure described in Paragraph 3(i)(3) of the Settlement  
6 Agreement.

7 4. Costs and Attorneys Fees. Each party must bear its own costs and attorneys fees.  
8

9 ENTER.

10  
11 DATED: January 11, 2001

RONALD M. SABRAW

HON. RONALD M. SABRAW  
Judge of the Superior Court

12  
13 APPROVED AS TO FORM:

14 GROSS & BELSKY LLP

15  
16 By: Terry Gross

Terry Gross

On behalf of plaintiffs in the *People ex rel. Spooner* Action

17  
18 KERR & WAGSTAFFE, LLP

19  
20 By: Tim Fox

Tim Fox

On behalf of cross-complainants in the *Moran* Cross-Complaint

21  
22 SIEGEL & YEE

23  
24 By: Dan Siegel

Dan Siegel

On behalf of plaintiffs in *Adelson* Action

25  
26 LAW OFFICES OF KENNETH FRUCHT

27  
28 By: Kenneth Frucht

Kenneth Frucht

On behalf of plaintiffs in *Robinson* Action

1 Board is extended pursuant to Paragraph 2 of the Settlement Agreement or if an application for  
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8  
9 ENTER.

10  
11 DATED: January \_\_, 2001

12 HON. RONALD M. SABRAW  
Judge of the Superior Court

13 APPROVED AS TO FORM:

14 GROSS & BELSKY LLP

15  
16 By: Terry Gross  
17 On behalf of plaintiffs in the *People ex rel. Spooner* Action

18 KERR & WAGSTAFFE, LLP

19  
20 By: Tim Fox  
21 On behalf of cross-complainants in the *Moran* Cross-Complaint

22 SIEGEL & YBE

23  
24 By: Dan Siegel  
25 On behalf of plaintiffs in *Adelson* Action

26 LAW OFFICES OF KENNETH FRUCHT

27  
28 By: Kenneth Frucht  
On behalf of plaintiffs in *Robinson* Action



Board is extended pursuant to Paragraph 2 of the Settlement Agreement or if an application for enforcement of the Settlement Agreement is brought. Any party or director has standing to apply to the Court for enforcement.

h. The Court will maintain ongoing supervision of the Settlement Agreement, including without limitation by the procedure described in Paragraph 3(i)(3) of the Settlement Agreement.

4. Costs and Attorneys Fees. Each party must bear its own costs and attorneys fees.

ENTER.

DATED: January \_\_, 2001

HON. RONALD M. SABRAW  
Judge of the Superior Court

APPROVED AS TO FORM:

GROSS & BELSKY LLP

By: Terry Gross  
On behalf of plaintiffs in the *People ex rel. Spooner* Action

KERR & WAGSTAFFE, LLP

By: Tim Fox  
On behalf of cross-complainants in the *Moran* Cross-Complaint

SIEGEL & YEE

By: Dan Siegel  
On behalf of plaintiffs in *Adelson* Action

LAW OFFICES OF KENNETH FRUCHT

By: Kenneth Frucht  
On behalf of plaintiffs in *Robinson* Action

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7 4. Costs and Attorneys Fees. Each party must bear its own costs and attorneys fees.

8  
9 ENTER

10  
11 DATED: January \_\_, 2001

HON. RONALD M. SABRAW  
Judge of the Superior Court

13 APPROVED AS TO FORM:

14 GROSS & BELSKY LLP

15  
16 By: \_\_\_\_\_

Terry Gross

17 On behalf of plaintiffs in the *People ex rel. Spooner* Action

18 KERR & WAGSTAFFE, LLP

19  
20 By: \_\_\_\_\_

Tim Fox

21 On behalf of cross-complainants in the *Moran* Cross-Complaint

22 SIEGEL & YEE

23  
24 By: \_\_\_\_\_

Dan Siegel

25 On behalf of plaintiffs in *Adelson* Action

26 LAW OFFICES OF KENNETH FRUCHT

27  
28 By: \_\_\_\_\_

Kenneth Frucht

On behalf of plaintiffs in *Robinson* Action

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FULBRIGHT & JAWORSKI LLP

By: 

Robert Darby  
On behalf of defendants Pacifica Foundation and  
the Individual Defendants

## SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT ("Agreement") is entered into by and between the Attorney-General of the State of California and plaintiff/relator Carol Spooner ("Spooner"), plaintiffs in the *People ex rel. Spooner* action; Rob Robinson ("Robinson") and Aaron Kriegel ("Kriegel"), plaintiffs in the *Robinson* action; cross-complainants Tomas Moran ("Moran"), Pete Bramson ("Bramson") and Leslie Cagan ("Cagan"), plaintiffs in the *Moran* action; and Dave Adelson ("Adelson"), Sherry Gendleman ("Gendleman") and Miguel Maldonado ("Maldonado"), plaintiffs in the *Adelson* action (the lawsuits are referred to collectively as the "Actions," and the plaintiffs and cross-complainants are referred to collectively as "Plaintiffs"); and Robert Farrell ("Farrell"), Wendell Johns ("Johns"), Bertram Lee ("Lee"), John Murdock ("Murdock"), Valrie Chambers ("Chambers"), Marion Barry ("Barry"), James Ferguson ("Ferguson"), George Barnstone ("Barnstone"), Dick Gregory ("Gregory"), and Krishna Roy ("Roy"), defendants or potential defendants in the Actions, and nominal defendant Pacifica Foundation (collectively, "Defendants"), concerning the settlement of all pending actions between the parties.

WHEREAS, Spooner is the lead plaintiff/relator in the lawsuit entitled *People of the State of California ex rel. Carol Spooner v. Pacifica Foundation*, Case No. 831252-3 (Alameda Co. Superior Ct.) (the "People ex rel. Spooner Action");

WHEREAS, Robinson and Kriegel are plaintiffs in the lawsuit entitled *Robinson v. Pacifica Foundation*, Case No. 831286-0 (Alameda Co. Superior Ct.) (the "Robinson Action"), and Moran, Bramson and Cagan are cross-complainants in a lawsuit entitled *Moran v. Pacifica Foundation* (Alameda Co. Superior Ct.) (the "Moran Action"), and Robinson, Kriegel, Moran, Bramson and Cagan are all members of the current board of directors of Pacifica (collectively, the "Minority Members");

WHEREAS, Adelson, Gendleman and Maldonado are plaintiffs in the lawsuit entitled *Adelson v. Pacifica Foundation*, Case No.: 814461-0 (Alameda Co. Superior Ct.) (the "Adelson Action");

WHEREAS, Farrell, Johns, Lee, Murdock, and Chambers are named as defendants in some or all of the Actions, and Barry, Ferguson, Barnstone, Gregory and Roy are potential defendants in the Actions and are named as defendants in the proposed Second Amended Complaint in the People ex rel. Spooner Action, and all these ten individuals are current members of Pacifica's board of directors (collectively, the "Majority Members"), and Pacifica Foundation is a nominal defendant in all of the Actions;

WHEREAS, David Acosta ("Acosta"), Mary Frances Berry ("Berry"), Ken Ford ("Ford"), June Makela ("Makela"), Frank Millspaugh ("Millspaugh"), Michael Palmer ("Palmer") and Karolyn Van Putten ("Van Putten") are named as defendants in some or all of the actions, and were former members of Pacifica's board of directors (collectively, with the Majority Members, the "Individual Director Defendants");

WHEREAS, all parties to this Agreement desire to settle and finally resolve the Actions, and wish to enter into a settlement agreement which provides for the dismissal of all of the Actions and the appointment of an interim board of directors with a mandate to amend Pacifica's bylaws providing for changes in the corporate governance of Pacifica Foundation;

NOW, THEREFORE, in consideration of the following covenants and agreements, the Parties agree as follows:

1. Appointment of Interim Board of Directors.

a. An interim board of directors of Pacifica Foundation (the "Interim Board") with a total of fifteen (15) directors shall be appointed in the following manner:

- i. The Majority Members of the current board as a group shall select five (5) directors;
- ii. The Minority Members of the current board as a group shall select five (5) directors; and
- iii. The Chair of each of the five LABs each shall select one director, for a total of five (5) directors selected by the LAB Chairs. Appointees cannot be the current LAB Chair as of September 30, 2001, and must be a member of the LAB as of September 30, 2001.

b. The group or person that selected any director has the right to appoint a successor in the event of resignation, death or disability of the director, and any such action by the selecting group or person shall be effective immediately upon notice to the chair of the Interim Board. Any such notice may be given by personal delivery, overnight courier or facsimile.

c. All current members of Pacifica's board of directors who will not be serving on the Interim Board will resign as directors, effective upon the convening of the first meeting of the Interim Board. Within forty-eight hours of the execution of this agreement, each appointing group or individual shall give notice of the names of their appointees to the Interim Board. The signatures to this Agreement of the current members of the board who will not be serving on the Interim Board shall constitute their notice of resignation.

2. Term of Interim Board. The Interim Board will serve for a term of fifteen (15) months from the date of the first meeting of the Interim Board, at the end of which time all directors will resign in favor of directors to be elected pursuant to new bylaws, as described in Paragraphs 3(b), 3(c), 4. LAB elections pursuant to new bylaws will be held one year from the date of the first meeting of the Interim Board, and within three months after the LAB elections the election of a new national board will take place. An application may be made to the Court to extend the term of the Interim Board, by two-thirds of the Interim Board, a "balanced majority" of the Interim Board (i.e., with at least one person from each of the three groups that designated Interim Board members (Majority Members, Minority Members and LAB Chairs)), or a majority of three (3) of the five (5) LABs, on the ground that there is a reasonable probability that an extension is necessary to complete the revision and adoption of bylaws and the holding of elections.

3. Work of the Interim Board.

a. Oversee the ongoing operations of Pacifica Foundation.

b. Amendment of Bylaws. The Interim Board will fully review and revise the Pacifica Foundation bylaws to conform with legal requirements. This review will be done in consultation with the LABs and the listening community in all five station areas. Any bylaws concerning the number or manner of election of directors and/or LAB

members must be approved by majority vote of three (3) of the five (5) LABs. In the event that the Interim Board and three (3) of the five (5) LABs cannot agree on the number or manner of election of directors or LAB members within the 1-year time limit, or any extensions of that limit, then the dismissals of the *Adelson* and/or *People ex rel. Spooner* actions may be vacated against the Foundation for the purposes of obtaining a judicial determination of the issues raised in those actions concerning the membership of the Foundation and the validity of the bylaws and Articles relating to the number and election of directors and/or LAB members, as described in Paragraph 5.

c. Develop a comprehensive plan for, and oversee, elections of members of the LABs, pursuant to new bylaws, which elections will be held at the end of one year following the first meeting at which the Interim Board is seated and conducts business. The KPFA model will be the starting point for the new bylaws concerning election of LAB members, and will be modified as needed. Guidelines will be issued to ensure access to air and to avoid any abuses that would prevent fair elections.

d. Address what has been identified as Hot Issues:

- (1) Democracy Now!
- (2) The PNN stringers strike
- (3) Audit and Accounting process
- (4) New Executive Director
- (5) National Program Director
- (6) Hire a comptroller
- (7) Issues related to the Outgoing Executive Director and other outgoing staff
- (8) Establish a committee to address the WBAI issues
- (9) End the gag rule
- (10) Help drop any non-assault charges against people in NYC and Houston (related to protests during this struggle)

e. Address all governance issues, and review and revise policies of the Foundation.

f. The Administrative Council (station managers, national program director and executive director) will give input to the Interim Board. The LABs through the Council of Chairs will give input to the Interim Board.

g. The Interim Board shall exercise its powers with the following caveats:

- (1) use restraint in terminating other employees
- (2) use restraint on major contracts or other financial commitments
- (3) there will be no executive committee, only a chair, a treasurer and a secretary
- (4) there can be no sale or lease of any of the five stations or licenses.

h. The following suggestions are made for the Interim Board:

- (1) broadcast Interim Board meetings
- (2) members of the Interim Board will report back to listeners in their areas
- (3) there will be public comment at the meetings of the Interim Board (including the possibility for call-ins)
- (4) Interim Board meetings will be rotate amongst the five listening areas
- (5) the Interim Board will issue a public report at least every 2 months (on air, in print)

- (6) use the web for communication and information sharing
- (7) rebuild relationships with the affiliates
- (8) affirm that station managers are responsible for the physical space and the air at the five stations, subject to Board policy and FCC requirements that Pacifica's board of directors has ultimate responsibility for the air.

i. (1) Amendments to bylaws, to be adopted, must receive the vote of two-thirds of all the members of the Interim Board present and voting, subject to the provisions of Paragraph 3(b).

(2) Resolutions concerning election of officers must receive the vote of a majority of all the members of the Interim Board present and voting.

(3) Resolutions concerning all other issues may be adopted and made immediately effective by the vote of a majority of all the members of the Interim Board present and voting that includes the "aye" vote of at least one person from each of the three groups that designated Interim Board members (majority, minority and LAB appointees), or the vote of two-thirds of all the members of the Interim Board present and voting. Any such resolution that receives the vote of a majority of all the members of the Interim Board present and voting, but without securing either the "aye" vote of at least one person from each of the three groups that designated Interim Board members or the vote of two-thirds of all the members of the Interim Board present and voting shall automatically be referred to Judge Sabraw. Within two (2) days of the vote on such resolution, letter briefs of no more than three (3) pages on behalf of the majority who voted to pass the resolution and of the group for which no members voted to pass the resolution shall be filed with Judge Sabraw and exchanged among the parties. Within two (2) days thereafter, or as soon thereafter as the matter may be heard and decided, Judge Sabraw shall either affirm the resolution as ~~proposed~~ <sup>submitted</sup>, or reject the resolution and remand the issue to the Interim Board. In support of their letter briefs, the parties may submit and exchange documentary evidence, but no other evidence will be presented or considered by the Judge. Oral argument will be heard if requested by either side.

4. Dissolution of Interim Board. Subject to the provisions of Paragraphs 2, 3(b) and 6, based on revisions in the bylaws and completion of the LAB elections, as described in Paragraphs 2 and 3(b)-(c), a new board of directors will be elected within fifteen months of the first meeting of the Interim Board, and the Interim Board will be dissolved.

5. Settlement of Lawsuits and Judicial Supervision. Within five days of the execution of this Agreement, the Plaintiffs and Defendants shall take all necessary actions to resolve the pending lawsuits in the form of a stipulated judgment, that dismisses all complaints and cross-complaints against the Individual Director Defendants with prejudice, the causes of action against Pacifica Foundation in the complaints that seek declaratory relief or similar relief from the Foundation (such as the Seventh, Eighth and Ninth Causes of Action in the Second Amended Complaint in *People ex rel. Spooner* action and similar causes of action in the other complaints) without prejudice, and all other causes of action against Pacifica Foundation in the complaints with prejudice, and that provides that the dismissals shall be vacated upon motion by any party or director upon a showing that the Interim Board and three (3) of the five (5) LABs cannot agree on the number or manner of election of directors or LAB members within one year from the date of the first meeting of the Interim Board, or any extensions of that limit, with a request to the Court that any trial of those actions shall be expedited. The stipulated judgment shall also provide that the Court maintains jurisdiction to enforce the terms of this settlement agreement, with any party or director having standing to apply to the Court for enforcement. In the event that a motion is made to vacate the dismissal of the *People ex rel. Spooner* Action, the current relators to that action will retain relator status and do not need to reapply to the Attorney

General for such status, unless the Attorney General has withdrawn relator status in writing.

6. Term of this Agreement. This Agreement shall expire upon the election of a new board of directors after enactment of revised bylaws, as described in Paragraph 4, or as ordered by the Court.

7. Operative Bylaws. During the term of this Agreement, its provisions regarding the establishment of and voting by the Interim Board shall prevail over all bylaws that address the number and manner of election of directors and voting by the board, which bylaw provisions shall not be operative, and to this extent this Agreement shall serve as the board's Action by Unanimous Written Consent pursuant to Bylaw Section 4.6 and Corp. Code § 5211(b).

8. Payment. The insurance company for the Individual Director Defendants shall pay to Pacifica Foundation on behalf of the Individual Director Defendants the sum of \$400,000.

9. Mutual Releases.

a. The parties, for themselves and on behalf of their respective heirs, successors and assigns, fully and forever release and discharge the other and their respective successors, agents, employees, affiliates, attorneys, accountants, insurers, partners and joint ventures, and each of them, of and from any and all liability, claims, demands, damages, punitive damages, choses in action, disputes, suits, actions, claims for relief and causes of action, whether known or unknown, arising out of or relating to facts and circumstances arising out of the issues alleged in the complaints and cross-complaints in the Actions, whether based in tort, contract, statute, equity, or other legal theory.

b. The parties hereto certify that they have read the provisions of California Civil Code § 1542. The Parties hereto waive any and all rights under California Civil Code § 1542, which states:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

10. Further Assurances. The parties agree to perform in good faith such acts and to prepare and execute such documents and stipulations as are reasonably required to perform the covenants and satisfy the provisions of this Agreement.

11. No Admission of Liability. This Agreement constitutes a settlement and compromise of various disputed claims and is made solely to avoid expensive and time-consuming litigation. Neither the offer nor acceptance of the terms and conditions of the Agreement represent an admission of liability or fault on the part of any party, but instead represents a resolution of the parties claims deemed by the parties to be mutually favorable and made by mutual agreement.

12. Governing Law and Integration. This is a fully integrated Agreement, made and entered into in the State of California and shall in all respects be interpreted, enforced and governed under the laws of California, except that parole evidence shall not be admissible to interpret, vary or modify any of the terms of this Agreement. The language of all parts of this



Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties. This Agreement sets forth the entire agreement between the parties with regard to the subject matter hereof. All agreements, covenants, representations and warranties, express or implied, oral or written, of the parties with regard to the subject matter hereof are contained herein, and the documents referred to herein or implementing the provisions hereof. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by either party to the other with respect to the subject matter of the Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter hereof are waived, merged herein and superseded hereby.

13. Severability. Should any covenant, condition or other provision contained herein be held invalid, void or illegal by any court of competent jurisdiction, it shall be deemed severable from the remainder of the Agreement and shall in no way affect, impair or invalidate any other covenant, condition or other provision herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, it shall be deemed valid to the extent of the scope or breadth permitted by law.

14. Notices. All notices, requests, demands and other communications under the Agreement shall be in writing and by personal delivery or overnight courier, and shall be deemed having been duly given on the date of receipt (receipt shall also include communications that are delivered to the designated address and left at the premises if no one is at the premises). Notices shall be addressed as follows, or as the parties may subsequently designate by written notice:

To plaintiffs in the *People ex rel. Spooner* action:

Carol Spooner  
1136 Wild Rose Drive  
Santa Rosa, California 95401

With a copy to:

Bill Lockyer, State Attorney General  
Taylor S. Carey, Special Assistant Attorney General  
P.O. Box 944255  
1300 I Street, 11<sup>th</sup> Floor  
Sacramento, California 94244-2550

Terry Gross, Esq.  
Gross & Belsky LLP  
One Maritime Plaza, Suite 1040  
San Francisco, California 94111

To the cross-complainants in the *Moran* action:

Leslie Cagan  
550 Fort Washington Avenue #3E  
New York, New York 10033

With a copy to:  
James Wagstaffe  
Timothy Fox  
KERR & WAGSTAFFE, LLP  
100 Spear Street, Suite 1800  
San Francisco, CA 94105

Eugene Majeski  
C. Alexander Teu  
ROPERS, MAJESKI, KOHN & BENTLEY, P.C.  
1001 Marshall Street  
Redwood City, CA 94603

To the plaintiffs in the *Adelson* action:

Sherry Gendelman  
338 Vallejo Street  
San Francisco, California 94133

With a copy to:  
Dan Siegel  
Hunter Pyle  
SIEGEL & YEE  
499 14<sup>th</sup> Street, Suite 220  
Oakland, CA 94612

To the plaintiffs in the *Robinson* action:

Rob Robinson  
522 14<sup>th</sup> Street, S.E.  
Washington, D.C. 20003

With a copy to:  
Kenneth Frucht  
Law Offices of Kenneth Frucht  
660 Market Street, Suite 300  
San Francisco, CA 94104

To defendants:

Robert E. Darby  
Fulbright & Jaworski LLP  
865 South Figueroa Street, 29<sup>th</sup> Floor  
Los Angeles, California 90017-2576

Gregory B. Craig  
Williams & Connolly LLP  
725 Twelfth Street, NW  
Washington, DC 20005-5901

15. Miscellaneous.

a. This Agreement cannot be amended, altered, modified, waived or superseded, in the whole or in part, except by a written agreement so stating which is signed by all parties to this Agreement. No delay or omissions on the part of any party to this Agreement shall operate as a waiver of any such right or any other right. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other

breach of the same or any other provision hereof.

b. This Agreement shall inure to the benefit of and be binding on each party, as well as its or her respective successors or assigns.

c. Each of the parties to this Agreement warrants that it or she has not assigned or transferred any cause of action, claim for relief, or other matter released under the Agreement.

d. Section headings are for convenience only and are not part of the Agreement.


e. The parties hereby agree that faxed signatures of the parties to this Agreement shall be as binding and enforceable as original signatures; and that this Agreement may be executed in multiple counterparts with the counterparts together being deemed to constitute the complete agreement of the parties.

f. Each person who executes this Agreement on behalf of any party to the Agreement represents and warrants that he or she has been duly authorized by such party to execute the Agreement.

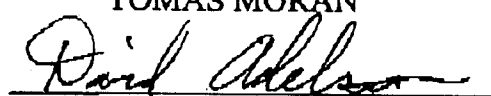
IN WITNESS WHEREOF, the parties have executed this Agreement in counterparts, to be effective on the last date executed below.

Dated: December 12, 2001

PLAINTIFFS:

  
CAROL SPOONER

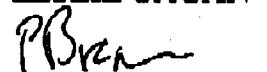
\_\_\_\_\_  
ROB ROBINSON

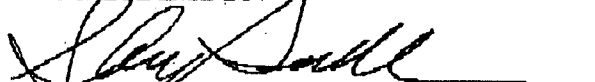
\_\_\_\_\_  
TOMAS MORAN  
  
DAVE ADELSON

\_\_\_\_\_  
MIGUEL MALDONADO

AARON KRIEDEL

  
LESLIE CAGAN

  
PETE BRAMSON

  
SHERRY GENDLEMAN

ATTORNEY-GENERAL OF THE STATE OF CALIFORNIA

By: \_\_\_\_\_  
Taylor Carey, Special Assistant Attorney General

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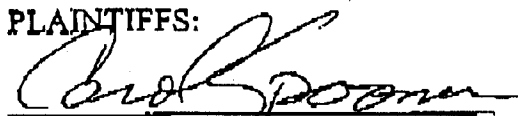
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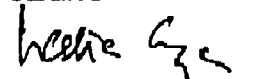
  
CAROL SPOONER

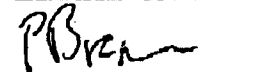
\_\_\_\_\_  
ROB ROBINSON

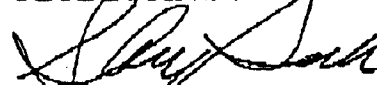
TOMAS MORAN  
  
DAVE ADELSON

\_\_\_\_\_  
MIGUEL MALDONADO

AARON KRIEGL

  
LESLIE CAGAN

  
PETE BRAMSON

  
SHERRY GENDLEMAN

ATTORNEY GENERAL OF THE STATE OF CALIFORNIA

By:   
Taylor Carey, Special Assistant Attorney General

DEFENDANTS:

*Robert Farrell*

ROBERT FARRELL

*Bertram Lee*

BERTRAM LEE

*John Murdock*

JOHN MURDOCK

VALRIE CHAMBERS

*Wendell Johns*

WENDELL JOHNS

JAMES FERGUSON

*George Barnstone*

GEORGE BARNSTONE

DICK GREGORY

*Krishna Roy*

KRISHNA ROY

*Marion Barry*

MARION BARRY

PACIFICA FOUNDATION

By: \_\_\_\_\_

DEFENDANTS:

ROBERT FARRELL

BERTRAM LEE

JOHN MURDOCK

VALRIE CHAMBERS

*Wendell John*  
WENDELL JOHN

JAMES FERGUSON

GEORGE BARNSTONE

DICK GREGORY

KRISHNA ROY

MARION BARRY

PACIFICA FOUNDATION

By: \_\_\_\_\_  
\_\_\_\_\_

Dec. 13 2001 05:52PM P2

By \_\_\_\_\_

DEFENDANTS:

ROBERT FARRELL

JOHN MURDOCK

WENDELL JOHNS

GEORGE BARNSTONE

KRISHNA ROY

BERTRAM LEE

VALRIE CHAMBERS

JAMES FERGUSON 

DICK GREGORY

MARION BARRY

PACIFICA FOUNDATION

By:



DEFENDANTS:

\_\_\_\_\_  
ROBERT FARRELL

\_\_\_\_\_  
JOHN MURDOCK

\_\_\_\_\_  
WENDELL JOHNS

\_\_\_\_\_  
GEORGE BARNSTONE

\_\_\_\_\_  
KRISHNA ROY

PACIFICA FOUNDATION

By: \_\_\_\_\_  
\_\_\_\_\_

BERTRAM LEE

VALRIE CHAMBERS

JAMES FERGUSON

*Dick Gregory*  
DICK GREGORY

\_\_\_\_\_  
MARION BARRY