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6 PACIFICA FOUNDATION RADIO

ENDORSED  
FILED  
ALAMEDA COUNTY

JAN 29 2015

CLERK OF THE SUPERIOR COURT  
By Maria Valera  
Deputy

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA

10 PACIFICA DIRECTORS FOR GOOD  
11 GOVERNANCE,  
12 Plaintiff,  
13 vs.  
14 PACIFICA FOUNDATION RADIO, et  
al.,  
15 Defendants.

CASE NO. HG14720131

MEMORANDUM OF POINTS AND  
AUTHORITIES IN OPPOSITION TO CROSS-  
DEFENDANT SUMMER REESE'S MOTION  
TO SET ASIDE THE COURT'S JUNE 3, 2014  
ORDER

Assigned For All Purposes to Judge Ioana Petrou,  
Dept. 15

16 PACIFICA FOUNDATION RADIO,  
17 Cross-Complainant,  
18 vs.  
19 SUMMER REESE and ROES 1 TO 100,  
20 Cross-Defendants.  
21

Date: February 11, 2015  
Time: 9:00 a.m.  
Dept.: 15

22  
23 **I. INTRODUCTION**

24 Cross-Complainant Pacifica Foundation Radio (hereinafter "PFR") submits the  
25 following points and authorities in opposition to Cross-Defendant Summer Reese's  
26 ("Reese") Motion to Set Aside the Court's June 3, 2014 Order.

27 On June 3, 2014, the Court entered its Order Granting PFR's Motion For

1 Preliminary Injunction against Reese. This Order followed the Court's May 12, 2014  
2 Order granting a temporary restraining order against Reese. Now, more than 6 months  
3 later, Reese moves to set aside the June 3, 2014 order. Though Reese claims that she is  
4 seeking to "set aside the void order made June 3, 2014 by the Honorable Ioana  
5 Petrou", Reese presents no argument as to why the June 3, 2014 is void. Instead, Reese  
6 simply reargues her opposition to the Preliminary Injunction and asks the Court to "reverse  
7 the findings" made in support of the June 3, 2014 order. A motion for reconsideration is  
8 now untimely. Reese raises no new facts that would justify reconsideration by the Court.

9 Reese's motion has no merit and must be denied.

#### 10 11 LEGAL ARGUMENT

##### 12 **A. The Court's June 3, 2014 Order Granting PFR's Motion for Preliminary** 13 **Injunction Against Reese Is Not Void.**

14 Reese names her motion as a Motion to Set Aside the Court's Void June 3, 2014  
15 Order. Reese however presents no authority as to why the order is void. Code Civ. Proc. §  
16 527(a) authorizes the Court to issue an injunction before trial if "sufficient grounds exist  
17 therefor." Reese was properly notice, was represented by counsel, testified at the hearing,  
18 presented evidence, cross-examined witnesses, and was allowed to argue in opposition to  
19 the motion. The fact that Reese is unsatisfied with the Court's Order does not make it  
20 void.

##### 21 22 **B. Reese's Motion Is Untimely And Fails to Comply with the Requirements of** 23 **Code Civ. Proc. § 1008 for Motions For Consideration.**

24 It is well settled that the name of the motion is not controlling. The requirements of  
25 Code Civ. Proc. § 1008 apply to any motion that asks the judge to decide the *same*  
26 *matter* previously ruled on. *R & B Auto Ctr., Inc. v. Farmers Group, Inc.* (2006) 140  
27 CalApp.4th 327, 373; *Powell v. County of Orange* (2011) 197 CalApp.4th 1573, 1577.  
28 Reese's motion challenges the Court's determinations in the June 3, 2014 order. The June

1 3, 2014 order rejected Reese's many arguments, including her claim that "her purported  
2 January 30, 2014 employment agreement is legally binding on PFR." (June 3, 2014 Order  
3 of Judge Ioana Petrou, ¶¶4, 5, and 6) Reese rambling motion challenges the Court's  
4 determinations on these issues. She concludes by asking the Court to reverse the findings  
5 made in support of the June 3, 2014 order.

6 A motion for reconsideration must be made within 10 days after service upon the  
7 party of notice of entry of the order. Code Civ. Proc. § 1008(a). The Notice of Entry of  
8 the June 3, 2014 Order was served on Reese on June 3, 2014. (See Notice of Entry of  
9 Judgment or Order, was filed with the Court on June 17, 2014) Any motion for  
10 reconsideration of the June 3, 2014 order is now time barred.

11 Motions for reconsideration under Code Civ. Proc. § 1008 are *restricted* to  
12 circumstances where a party offers the court some fact or circumstance not previously  
13 considered, and *some valid reason* for not offering it earlier. *Gilberd v. AC Transit* (1995)  
14 32 CalApp.4th 1494, 1500; *Mink v. Sup.Ct. (Arnel Develop. Co., Inc.)* (1992) 2  
15 CalApp.4th 1338, 1342; *Baldwin v. Home Sav. of America* (1997) 59 CalApp.4th 1192,  
16 1198. The burden under § 1008 "is *comparable to that of a party seeking a new trial* on  
17 the ground of newly discovered evidence: the information must be such that the moving  
18 party *could not*, with reasonable diligence, have discovered or produced it at the trial."  
19 *New York Times Co. v. Sup.Ct. (Wall St. Network, Ltd.)* (2005) 135 CalApp.4th 206, 212–  
20 213 (emphasis added).

21 Reasonable diligence is required. A party seeking reconsideration of a prior order  
22 based on "new or different facts, circumstances or law" must provide a satisfactory  
23 explanation for failing to present the information at the first hearing. *Garcia v.*  
24 *Hejmadi* (1997) 58 CalApp.4th 674, 690; *California Correctional Peace Officers Ass'n v.*  
25 *Virga* (2010) 181 CalApp.4th 30, 47, fn. 15. A motion for reconsideration is properly  
26 denied when based on evidence that *could have been* presented in connection with the  
27 original motion. *Morris v. AGFA Corp.* (2006) 144 CalApp.4th 1452, 1460; *Hennigan v.*

1 *White* (2011) 199 CalApp.4th 395, 406.

2 Here, Reese's motion is untimely and fails to make any showing of new discovered  
3 evidence or reasonable diligence.

4  
5 **CONCLUSION**

6 For the foregoing reasons, the Motion of Summer Reese to Set Aside the June 3,  
7 2014 Order must be denied.

8 DATED: January 29, 2015

SIEGEL & YEE

9 By: 

Alan S. Yee

10 Attorneys for Defendant/Cross-Complainant  
11 PACIFICA FOUNDATION RADIO  
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PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action; my business address is 499 14th Street, Suite 300, Oakland, California 94612.

On January 29, 2015, I served the following document:  
 Memorandum of Point and Authorities in Opposition to Cross-Defendant Summer Reese's Motion To Set Aside the Court's June 3, 2014 Order.

on the Parties in said action,

6	X	Via U.S. Mail	by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Siegel & Yee, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of Oakland, California.
7		Via Overnight Delivery	by depositing a true copy thereof in a collection box or by having the sealed packet picked up by United Parcel Service, with charges thereon fully prepaid, at Oakland, California, and addressed as set forth below.
8		Via Hand Delivery	By having a messenger service who is a non-interested party employed by the law firm of Siegel & Yee deliver a true copy thereof to the firm/person listed below.
9		Via Facsimile	By transmitting said document(s) from our office facsimile machine (510) 444-6698, to a facsimile machine number(s) shown below. Following transmission, I received a "Transmission Report" from our fax machine indicating that the transmission has been transmitted without error. After faxing, a copy was forwarded via U.S. Mail.
10		Via Email	By transmitting said document(s) from our office email to the email address(es) shown below.

11	12	13	14	15	16	17	18	19	20	21
Summer Reese 449 43 <sup>rd</sup> Street Richmond, CA 94805 Tel: 510-680-5019 Email: <a href="mailto:Summerinthedesert@yahoo.com">Summerinthedesert@yahoo.com</a>						Cross-Defendant IN PRO PER				

I declare under penalty of perjury that the foregoing is true and correct.  
 Executed on January 29, 2015, at Oakland, California.

