

1 Summer Reese
2 449 – 43rd St.
3 Richmond, California 94805
4 (510) 680-5019
5 Cross-defendant in pro. per.
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9 **SUPERIOR COURT OF STATE OF CALIFORNIA, COUNTY OF ALAMEDA**
10 **RENE C. DAVIDSON COURTHOUSE, UNLIMITED CIVIL JURISDICTION**
11

12 PACIFICA DIRECTORS FOR GOOD GOVERNANCE, an
13 Unincorporated Association;

14 Plaintiff

15 v.

16 PACIFICA FOUNDATION RADIO, a California Nonprofit
17 Public Benefit Corporation;

18 RODRIGO ARGUETA, LYDIA BRAZON, JIM BROWN,
19 ADRIANA CASENAVE, BENITO DIAZ, BRIAN
20 EDWARDS-TIEKERT, JOSE LUIS FUENTES, LAWRENCE
21 REYES, CERENE ROBERTS, and MARGY WILKINSON ; in
22 their official capacities as members of the Board of Directors of
23 Pacifica Foundation Radio, a California Nonprofit Public
24 Benefit Corporation; and

25 HANK LAMB and TONY NORMAN, directors de facto of said
26 Corporation;

27 Defendants

28 PACIFICA FOUNDATION RADIO,

29 Cross-complainant

30 v.

31 Summer Reese, and “ROES” 1 to 100, inclusive;

32 Cross-defendants

Case No. HG14720131

**NOTICE OF MOTION
AND MOTION FOR
DISQUALIFICATION ;**

**POINTS AND AUTHOR-
ITIES IN SUPPORT**

Date: 02/11/2015
Time: 9:00 a.m.
Dept: 15
Judge: Hon. Ioana Petrou

Reservation #: R-1574630

To Alan Yee, Purported Attorney for the Cross-complainant in the Above Captioned Matter:

PLEASE TAKE NOTICE that on February 11, 2015 at 9:00 a.m. or as soon thereafter as
the matter can be heard, Summer Reese (“Reese”), the cross-defendant in said matter, will appear in
Department 15 of the above entitled Court, situated at 1221 Oak Street, Third Floor in Oakland,

1 California and will move for an order disqualifying Siegel and Yee as counsel herein.

2 Said motion is made on the grounds that because an attorney has a duty of undivided loyalty
3 to his client and because an attorney's dual or simultaneous representation of two or more clients
4 presently having conflicting interests with one another lessens effectiveness of his representation of
5 each client and "would prevent him from devoting his entire energies" to the interests of each
6 (*Gilbert v. Nat. Corp. for Hous. Partnerships* (App. 1 Dist. 1999) 71 Cal.App.4th 1240, 1259) and
7 because a positional conflict of interest may also arise where an attorney's own interest conflicts
8 with the claim or position of his client (*Tsakos Shipping & Trading, S.A. v. Juniper Garden Town*
9 *Homes, Ltd.* (App. 4 Dist. 1993) 12 Cal.App.4th 74, 96) and because attorney Yee's representation
10 of defendant-individuals herein simultaneously conflicts with his representation of PFR herein as
11 well as his interest in competency of S & Y's representation herein, therefore, disqualification of S
12 & Y is mandatory.

13 Said motion is made on the grounds that because the attorney for a corporation has a duty of
14 undivided loyalty thereto (*Venture Law Group v. Superior Court* (App. 6 Dist. 2004) 118
15 Cal.App.4th 96, 102) and of protecting its interests to the full extent (*Ames v. State Bar* (1973) 8
16 Cal.3d 910) and must treat it as his client (*Responsible Citizens v. Superior Court* (App. 5 Dist.
17 1993) 16 Cal.App.4th 1717, 1729) and because PFR has an interest in the lawfulness of business
18 transacted at its meetings including the April 14, 2014 meeting for which no minutes or records exist
19 to show any disclosure by attorney Fuentes with respect to self-dealing transaction then taking place
20 and because the record herein is devoid of any notice of related action showing any proceeding was
21 instituted under Corporations Code § 5233 as recommended or suggested by the Court's June 18th
22 order, therefore, it appears S & Y does not defer to the Court's said recommendation or suggestion,
23 does not pursue PFR's interest to the full extent and an actual conflict of interest exists between PFR
24 and S & Y whose attorneys fail to show undivided loyalty to PFR and therefore must be disqualified.

25 Said motion is made on the further grounds that because disqualification for dual or
26 simultaneous representation of conflicting interests is not only mandatory in cases where such
27 conflict is actual but may also be necessary where "there exists a *genuine likelihood that the status*
28 *or misconduct of the attorney in question will affect the outcome of the proceedings before the*
29 *court*" (*Oaks Management Corp. v. Superior Court* (App. 4 Dist. 2006) 145 Cal.App.4th 453, 467)
30 and because attorney Fuentes is an associate or partner of S & Y and allegedly did not attend said
31 April 14th meeting whereby S & Y was purportedly retained as counsel for defendants herein and
32 because said April 14th meeting was held telephonically and is a matter as to which it appears the

1 Court will be satisfied if Fuentes were to personally testify and because attorney Yee alleges there is
2 “no evidence” Fuentes attended that meeting as to which Fuentes committed said failure to disclose
3 self-dealing transaction, therefore, S & Y appears to show disloyalty to PFR’s interest in lawfully
4 conducting the meetings of its Board of Directors and there is a genuine likelihood that the status of
5 Yee and/or apparent misconduct of Fuentes for said failure will affect the outcome of the instant case
6 and S & Y should be disqualified.

7 Said motion is also made on the grounds that because attorney Fuentes can be held to
8 multiple standards of care and more fiduciary obligations than if he served in only one capacity (see
9 *Sassover v. Field* (S.D. N.Y. 1990) 752 F.Supp. 1190) and because he has a duty to protect PFR’s
10 nonparty interests (*GATX/Airlog Co. v. Evergreen Internat. Airlines, Inc.* (N.D.Cal. 1998) 8
11 F.Supp.2d 1182, 1185), including that of preparing an accounting and conveyance of PFR’s trust
12 property and because Reese is a trustee thereof and was hindered and impeded from carrying out her
13 duties as trustee to rendering an accounting of said property by Fuentes making a motion at an
14 unnoticed “Board of Directors” meeting held March 13, 2014 to terminate Reese’s employment,
15 therefore, Fuentes pursued his personal interest in protecting S & Y’s reputation in the field of civil
16 litigation leaving unprotected the interests of PFR regarding its said trust property with which S & Y
17 should be disqualified.

18 Said motion is made on the grounds that because an attorney must avoid conflicts of interest
19 with any person or entity with which he has a “legal relationship” (discussion section following Rule
20 Prof. Conduct, rule 3-310) and because defendants Lamb and Norman each makes a claim to a
21 Director-seat which claim conflicts with the Bylaws of PFR and impugns and imperils PFR’s
22 financial and legal statuses and because S & Y had a legal duty to treat PFR as its client by seeking
23 to protect its organizational integrity and to uniformly apply its Bylaws under which Norman
24 putatively resigned from his Director-seat (*id.*, art. 5, § 1, ¶ B) despite his claim thereto maintained
25 by S & Y over the February 22, 2013 objection made by a former Director de jure to protect PFR’s
26 organizational integrity and financial sustainability as to its fundraising activities and because Lamb
27 has a public record which imperils an important interest of PFR in maintaining its FCC license and
28 because S & Y takes no action to remove either director de facto but represents the March 13th vote
29 to terminate Reese as being cast by the “Board of Directors” of PFR which is properly constituted by
30 only Directors de jure and because S & Y pursues the personal interests of said Lamb and Norman
31 despite important interests of S & Y’s other client PFR whose interests the firm fails to protect from
32 those perils, therefore, S & Y is in two conflicts of interests and is and should be disqualified.

1 Said motion is made on the grounds that because Plaintiff PDGG's complaint questions the
2 purported management of PFR and the actions of individual directors thereof (cf. *La Jolla Cove*
3 *Motel & Hotel Apartments, Inc. v. Superior Court* (App. 4 Dist. 2004) 121 Cal.App.4th 773, 785—
4 786) and because S & Y herein purports to represent both PFR and 12 individual directors who
5 allegedly imperil PFR's insurability as an employer and wrongfully exposing it to other liabilities
6 and because PFR stands to benefit for recovery for defendant-individuals' said actions if the
7 allegations of said complaint are proved (*Elberta Oil Co. v. Superior Court* (App. 4 Dist. 1930) 108
8 Cal.App. 344, 348) so that PFR while nominally a defendant is actually a plaintiff herein (*Forrest v.*
9 *Baeza* (App. 1 Dist. 1997) 58 Cal.App.4th 65, 74) and because the interests of defendant-individuals
10 conflict with those of PFR which counsel must treat as a client (Rules Prof. Conduct, rule 3-600(A)),
11 therefore, no single attorney or firm may represent all defendants herein without creating
12 simultaneous conflicts of interest and S & Y must be disqualified.

13 Said motion is also made on the grounds that because an attorney has a "personal interest in
14 the competency of his prior representation" (*City & County of San Francisco v. Cobra Solutions,*
15 *Inc.* (App. 1 Dist. 2004) 119 Cal.App.4th 304, 317) and an "obligation not only to protect his client's
16 interests but also to respect legitimate interests of fellow members of the bar, the judiciary, and the
17 administration of justice" (*Kirsch v. Duryea* (1978) 21 Cal.3d 303, 309) and because S & Y has a
18 purported interest in maintaining competency of its representation herein and because S & Y was
19 purportedly retained to represent PFR by means of a secretive meeting held April 14, 2014 at which
20 time 11 directors de jure constituted a quorum of the PFR Board of Directors (Corp. Code §
21 5211(a)(7); *Blish v. Thompson Automatic Arms Corp.* (Del. 1948) 64 A.2d 581, 602; RONR, § 44, p.
22 400) and because said defendants Lamb and Norman are directors de facto without whom no more
23 than 9 Directors de jure might have attended said April 14th meeting, therefore, no lawful business
24 of the PFR Board of Directors could have been transacted at said meeting and S & Y was never
25 retained to herein represent PFR whose interest in the lawfulness of its Board meetings
26 simultaneously conflicts with S & Y's said interest in competency of representation herein so that S
27 & Y must be disqualified.

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31 Summer Reese, Cross-defendant
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T A B L E O F C O N T E N T S

OF MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR DISQUALIFICATION

1 Introduction 1

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7 1. The instant motion is grounded in S & Y’s dual representation of defendants having

8 actual, existent, and present conflicts of interest

9 2. This motion is also grounded in genuine likelihood of dual or simultaneous conflicts of

10 interest 2

11 3. Cross-defendant Reese, though never a client of S & Y, has standing to make the

12 instant motion 3

13 a. Nonclient of S & Y has standing to bring a motion to disqualify S & Y from the instant

14 case wherein public interests are greatly implicated

15 b. As trustee of PFR, Reese has standing to make the instant motion based on her direct

16 interest as to who is purportedly representing PFR

17 c. Cross-defendant Reese has standing where attorney Yee breached his duty of fidelity

18 or loyalty 5

19 4. A conflict of interest actually exists between Yee’s duties of loyalty to PFR and his

20 fiduciary duty to his vicarious client, Fuentes

21 5. There is a genuine likelihood of a positional conflict of interest, or issue conflict,

22 arising between S & Y and PFR, based on rule 3-310(C)(1) 7

23 6. An actual, positional conflict of interest, or issue conflict, exists between S & Y and

24 PFR, based on Fuentes’s multiple fiduciary duties toward PFR 9

25 7. Actual, positional conflicts of interest exist between PFR and two clients of S & Y

26 herein 10

27 8. Actual, positional conflicts of interest exist between PFR and all of S & Y’s other

28 clients herein 12

29 9. Yee’s personal interest in competency of the representation by S & Y herein conflicts

30 with his purported duties to herein represent PFR, which never authorized retention of

31 S & Y herein 14

32 Conclusion 15

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30	<i>Dimenco v. Serv. Emp. Internat. Union</i> (N.D.Cal. 2011) 190 L.R.R.M. (BNA) 2229, 2011	
31	WL 89999.....	4, 5
32	<i>Wymac Capital, Inc. v. Anderson</i> (Unpub. App. 1 Dist. 2007) 2007 WL 1653128.....	2

1 *Water Sunset, LLC v. Markowitz* (App. 2 Dist. 2011) 192 Cal.App.4th 477, 487; *Jessen v. Hartford*
2 *Casualty Ins. Co.* (App. 5 Dist. 2003) 111 Cal.App.4th 698, 706; *Lysick v. Walcom* (App. 1 Dist.
3 1968) 258 Cal.App.2d 136, 147, fn. 6 [citing cases of mandatory disqualification for issue conflict].)

4 Such conflicting “relation which would prevent him from devoting his entire energies to his
5 client’s interests” include, inter alia, responsibilities to another client or a third person, or by the
6 lawyer’s own interests (*In re Jasmine S.* (App. 2 Dist. 2007) 153 Cal.App.4th 835, 844—845. See,
7 e.g., *Gilbert v. Nat. Corp. for Housing Partnerships* (App. 1 Dist. 1999) 71 Cal.App.4th 1240, 1259
8 [lawyer’s attempt to reconcile conflicting interests involving a settlement agreement as would cause
9 breach thereof]; *Tsakos Shipping & Trading, S.A. v. Juniper Garden Town Homes, Ltd.* (App. 4 Dist.
10 1993) 12 Cal.App.4th 74, 96 [lawyer’s own interests prevented him from raising defense]).

11 The attorney for a corporation has a duty of undivided loyalty thereto (*Venture Law Group v.*
12 *Superior Court* (App. 6 Dist. 2004) 118 Cal.App.4th 96, 102, citing Rules Prof. Conduct, rule 3-
13 600(A)) and of protecting its interests (*Ames v. State Bar* (1973) 8 Cal.3d 910; *Gilbert v. Nat. Corp.*
14 *for Housing Partnerships, supra*).

15 It is also an attorney’s duty to protect his client in every possible way, and it is a
16 violation of that duty for him to assume a position adverse or antagonistic to his client
17 . . . By virtue of this rule an attorney is precluded from assuming any relation which
18 would prevent him from devoting his entire energies to his client’s interests. Nor does
19 it matter that the intention and motives of the attorney are honest. The rule is
20 designed . . . to preclude the honest practitioner from putting himself in a position
21 where he may . . . be led to an attempt to reconcile conflicting interests, rather than to
22 enforce to their full extent the rights of the interest which he should alone represent.
23 *Anderson v. Eaton (supra)* 211 Cal. at 116.

22 ***2. This motion is also grounded in genuine likelihood of dual or simultaneous conflicts of interest***

23 Not only actual but also genuinely likely conflict of interest is recognized under California case law
24 as cause for disqualification for dual or simultaneous representation. Irrespective of the Rules of
25 Professional Conduct (*Gregori v. Bank of America* (App. 1 Dist. 1989) 207 Cal.App.3d 291, 308),
26 disqualification may be necessary where ““there exists a genuine likelihood that the status or
27 misconduct of the attorney in question will affect the outcome of the proceedings before the court. . .
28 . . .”” (*Oaks Management Corp. v. Superior Court* (App. 4 Dist. 2006) 145 Cal.App.4th 453, 467,
29 quoting *In re Complex Asbestos Litig.* (App. 1 Dist. 1991) 232 Cal.App.3d 572, 589).

30 Such showing of likely conflict of interest may be made regardless of whether any attorney
31 of S & Y knew of any fact alleged in the plaintiff’s complaint, but where the fact occurred during the
32 term of corporate office, or term of contract of an attorney of the firm. (See *Global Van Lines, Inc. v.*

1 *Superior Court* (App. 4 Dist. 1983) 144 Cal.App.3d 483.)

2 **3. Cross-defendant Reese, though never a client of S & Y, has standing to make the instant motion**

3 The general rule is that only a current or former client has standing to move for disqualification of
4 opposing counsel. (*Great Lakes Constr., Inc. v. Burman* (App. 2 Dist. 2010) 186 Cal.App.4th 1347,
5 1156.) Exceptions do exist. In an unpublished decision in *Wymac Capital, Inc. v. Anderson* (Unpub.
6 App. 1 Dist. 2007) 2007 WL 1653128, the California Court of Appeal, First Appellate District said
7 that “it may be overstatement” to say that a nonclient has no standing to make a motion to disqualify
8 the opposing lawyer. (See *DCH Health Services Corp. v. Waite* (App. 4 Dist. 2002) 95 Cal.App.4th
9 829, 832 [opining the holding in *Colyer v. Smith* (C.D.Cal. 1999) 50 F.Supp.2d 966, 971 that a
10 nonclient party has no standing to bring a motion to disqualify, “overstates the case”].)

11 **a. Nonclient of S & Y has standing to bring a motion to disqualify S & Y from the instant case**
12 **wherein public interests are greatly implicated**

13 Reese, though a nonclient, has standing to make the instant motion because Yee’s ethical breach of
14 Rule 3-310(C)(1), *infra*, is such that his representation herein does not appear fair to all who observe
15 it but is so “manifest and glaring” and “infects the litigation in which disqualification is sought
16 that it impacts the moving party’s interest in a just and lawful determination of [his or] her claims”
17 (*Kennedy v. Eldridge* (App. 3 Dist. 2011) 201 Cal.App.4th 1197, 1204).

18 Since its incorporation in 1949, PFR has made remarkable contributions to the exercise of
19 First Amendment rights throughout the country. Insofar as some 80,000 listeners’ First Amendment
20 rights (*CBS, Inc. v. F.C.C.* (1981) 453 U.S. 367, 390) are threatened by the financial and legal
21 jeopardy allegedly posed to the sustainability of defendant-corporation by defendant-individuals, the
22 Court could base a finding in favor of Reese having standing to bring the instant motion on that
23 public interest so greatly implicated. (See, e.g., *Black v. State of Mo.* (W.D.Mo. 1980) 492 F.Supp.
24 848, 861; *Beck v. Board of Regents of State of Kan.* (D.Kan. 1983) 568 F.Supp. 1107, 1110;
25 *Chapman Engineers v. Natural Gas Sales Co.* (D.Kan.1991) 766 F.Supp. 949, 955, fn. 1.)

26 **b. As trustee of PFR, Reese has standing to make the instant motion based on her direct interest**
27 **as to who is purportedly representing PFR**

28 Based on the following points and authorities, Reese was and now is a trustee of PFR and, therefore,
29 has a direct interest in who is purporting to serve as counsel representing PFR, and has standing.

30 A corporation whose purpose is educational is a “charitable corporation” (*Lynch v. Spilman*
31 (1967) 67 Cal.2d 251, 261). The Bylaws (*id.*, art. 1, § 2) and Articles (*id.*, art. II) of PFR state its
32 purposes are, inter alia, “To establish a Foundation organized and operated exclusively for

1 educational purposes,” to “promote and aid . . . creative activities which will serve the cultural
2 welfare of the community”; and in radio broadcasting, “to contribute to a lasting understanding
3 between nations and between the individuals of all nations, races, creeds, and colors; . . . ” (*ibid.*).

4 That PFR, though broadcasting controversial information, is a charitable corporation is
5 beyond dispute. (*Estate of Connolly* (App. 2 Dist. 1975) 48 Cal.App.3d 129, 132—133 [“The
6 dissemination of a rational, though perhaps unpopular, belief or doctrine . . . constitutes an
7 educational purpose.”]; *Estate of Breeden* (App. 4 Dist. 1989) 208 Cal.App.3d 981, 986 [“the
8 promotion of a particular cause remains charitable, regardless whether it is embraced as well by a
9 political party”].) And, because PFR is “organized and operated primarily operated as a[n] . . .
10 educational institution . . . ” (Gov. Code § 12583), PFR need not take those formal steps in hiring the
11 Executive Director which are required under the Supervision of Trustees and Fundraisers for
12 Charitable Purposes Act (Corp. Code § 5213(a); Gov. Code § 12586(g).)

13 The 80,000 listeners’ monetary gifts to PFR defendant-corporation are charitable
14 contributions, and are governed like charitable trusts. “A charitable trust or a charity is a donation in
15 trust for promoting the welfare of mankind at large, or of a community, or of some class forming a
16 part of it, indefinite as to numbers and individuals.” (*In re Schloss’ Estate* (1961) 56 Cal.2d 248,
17 256, citing *People v. Cogswell* (1896) 113 Cal. 129, 138.) Gifts to charitable corporations are
18 deemed given in trust to carry out the objects of the corporation, and the assets thereof are deemed to
19 be impressed with a charitable trust by virtue of the declaration of corporate purposes. (*Brown v.*
20 *Memorial Nat. Home Found.* (App. 2 Dist. 1958) 162 Cal.App.2d 513, 521; *Lynch v. John M.*
21 *Redfield Found.* (App. 2 Dist. 1970) 9 Cal.App.3d 293, 298.) Accordingly, charitable corporations
22 are generally governed by the same rules as those applicable to charitable trusts. (*Holt v. College of*
23 *Osteopathic Physicians & Surgeons* (1964) 61 Cal.2d 750, 756—757.) An officer of such
24 corporation also has a fiduciary relationship thereto. (*Sims v. Petaluma Gas-Light Co.* (1901) 131
25 Cal. 656, 659; *Pacific Vinegar and Pickle Works v. Smith* (1904) 145 Cal. 352, 361 (*Smith*).)

26 Moreover, in an unpublished case (*Dimenco v. Serv. Emp. Internat. Union* (N.D.Cal. 2011)
27 190 L.R.R.M. (BNA) 2229, 2011 WL 89999 (*Dimenco*)), two defendants were sued as trustees of a
28 union (UHW). The *Dimenco* court found that as “Trustees of the UHW, they have a direct interest in
29 who is purporting to serve as legal counsel representing the interests of the UHW — the real party in
30 interest. . . ” As in *Dimenco*, Reese was entrusted with some 80,000 listener-sponsors’ donations and
31 had a duty to use these to carry out the objects of PFR as stated in the Bylaws. The concept of
32 corporate directors’ fiduciary duty is “particularly important when, as in this case, the directors

1 govern a corporate trustee” (*Cagnolatti v. Guinn* (App. 4 Dist. 1983) 140 Cal.App.3d 42, 48).

2 The April 25th cross-complaint, which names only Reese as a cross-defendant, alleges she
3 organized “blockaders” involved in alleged “theft” of PFR’s donated assets. These allegations are
4 tantamount to an alleged breach of charitable trust, in whose fair administration she was entrusted as
5 an undisputedly former PFR employee (i.e., Executive Director) prior to March 13, 2014. (See *Holt*
6 *v. College of Osteopathic Physicians & Surgeons* (1964) 61 Cal.2d 750 [when there are several
7 trustees, one of them may maintain an action against the others to enforce the trust or compel the
8 redress of a breach of trust], citing Rest. Trusts, § 391). Though her employment was terminated,
9 Reese’s trust relationship with PFR remains intact:

10 When the time for the termination of the trust has arrived, the duties and powers of
11 the trustee do not immediately cease; . . . The trust ordinarily does not automatically
12 terminate merely because the time for distribution has arrived; it is terminated **only**
13 **when the trustee has finally accounted and conveyed the trust property . . .**
Scott on Trusts (4th ed. 1989) § 344, pp. 543—544; boldface added.

14 Where Cross-complainant PFR alleges “theft” allegedly resulting in financial losses of “hundreds to
15 thousands of dollars” (Apr. 22, 2014 Decl. of Wilkinson, lines 16—17), it alleges neither final
16 accounting nor conveyance of the trust property has occurred. Therefore, it appears Reese, as trustee
17 of said property, has a “direct interest in who is purporting to serve as legal counsel representing the
18 interests of the [PFR] — the real party in interest” (*Dimenco*), and, therefore, standing herein.

19 ***c. Cross-defendant Reese has standing where attorney Yee breached his duty of fidelity or loyalty***

20 Because Yee breached his duty of loyalty to PFR, *infra*, Reese has standing to make the instant
21 motion where “the court has an independent interest in ensuring trials are conducted within ethical
22 standards of the profession and that legal proceedings appear fair to all that observe them” (*In re*
23 *A.C.* (App. 4 Dist. 2000) 80 Cal.App.4th 994, 1001).

24 *Concat LP v. Unilever, PLC* (N.D.Cal. 2004) 350 F.Supp.2d 796 recognizes standing to
25 disqualify opposing counsel for breach of duty of loyalty. In that case, the district court held that
26 under California law the plaintiff who brought a patent suit had standing to seek disqualification of
27 the attorney representing the defendant, even though that attorney had never represented the plaintiff
28 directly, because the attorney representing the managing partner of plaintiff in estate planning
29 matters was a partner in the firm which accepted representation of defendant, allegedly breaching
30 loyalty to its client. And where Yee breached his duty of loyalty to PFR, *infra*, Reese has standing.

31 ***4. A conflict of interest actually exists between Yee’s duties of loyalty to***
32 ***PFR and his fiduciary duty to his vicarious client, Fuentes***

1 Even assuming attorney Yee is an “honest practitioner” (*Anderson v. Eaton, supra*), he has put
2 himself in a position where he is required to choose between conflicting duties involving attorney
3 Fuentes. The Court’s June 18th ruling reads in part:

4 [T]he evidence submitted by PFR demonstrates that a majority of the non-interested
5 members of the PFR board authorized board chair Margy Wilkinson to hire S & Y to
6 represent [PFR], after excluding any board members with actual or potential conflicts
7 of interest (including Jose Luis Fuentes). Plaintiff fails to demonstrate, with
8 competent evidence, that the decision violated PFR bylaws or the California
9 Corporations Code or that it constituted “self-dealing” in violation of Corporations
10 Code § 5233. But even if the decision to hire S & Y did violate § 5233, Plaintiff does
not demonstrate why that would give Plaintiff standing to disqualify S & Y from
representing PFR, or that the proper remedy for a violation of § 5233 would be
disqualification of S & Y. . . .

11 Thus the Court suggests Corporations Code § 5233 as a possible remedy for failure of Fuentes to
12 disclose a self-dealing transaction as he was required to do by publication in the minutes of the April
13 14, 2014 meeting (or elsewhere, though such disclosure would not strictly comply with § 5233).

14 In the nine months that have elapsed since the April 14, 2014 meeting was held, whereby S
15 & Y was purportedly retained, no notice of related action has ever appeared on the record in the
16 instant case. Thus it appears Yee is instead pursuing his or S & Y’s interest in protecting personal
17 and professional reputation over his duty to enforce PFR’s right to bring an action under § 5233.

18 Because of an attorney’s failure to show the nature of a transaction between himself and his
19 client was fair and just after full hearing wherein he had every opportunity to make such showing,
20 the transaction is “against good morals, if not absolutely dishonest . . . ; and the rule that fraud is
21 never presumed, . . . has no application” (*Lantz v. State Bar of California* (1931) 212 Cal. 213, 218,
22 underline added.) There being no disclosure in the minutes of the April 14th (as required by Corp.
23 Code § 5233) or other meeting of the PFR Board of Directors whereby it might have retained S & Y,
24 any benefit of the resulting retention is improper as to Fuentes, who is liable to PFR for such benefit,
25 notwithstanding any ratification by directors (*id.*, § 204(a)(10)).

26 A trust resulting from said failure to disclose arises in favor of PFR as against anything S &
27 Y might receive under the April 14th purported retention (*Burke v. Mission Bay Yacht Sales* (App. 4
28 Dist. 1963) 214 Cal.App.2d 723, 733; *Lezinsky v. Mason Malt W. D. Co.* (1921) 185 Cal. 240, 249),
29 which is voidable (*Dean v. Shingle* (1926) 198 Cal. 652, 658; *Phillips v. Sanger Lumber Co.* (1900)
30 130 Cal. 431, 433), if not void as fraudulent under Civ. Code § 2234 (*see id.*; *Price v. Hibbs* (App. 5
31 Dist. 1964) 225 Cal.App.2d 209, 221—222 [fraudulent violation of fiduciary duties by corporate
32 officers is actionable tort]).)

1 notice of the general custom], citing *Raskin v. Superior Court* (App. 2 Dist. 1934) 138 Cal.App. 668,
2 670). Yee and Fuentes's said common knowledge results in prejudice to defendants' party and non-
3 party interests. Fuentes's loyalty is divided between his firm's advocacy of the cross-complaint
4 alleging "theft" of trust property on the part of Reese and other cross-defendants; and his fiduciary
5 duty to act in accordance with PFR's interest in accounting and conveyance of said property.

6 Fuentes's entry into the legal profession in 1997 precedes his taking office on the PFR Board.
7 And in view of the PFR Bylaws providing for a one-year term of directorship with a maximum of
8 five terms (*id.*, art. 5, § 2), it appears likely his legal career will continue thereafter. Thus, as in
9 *Tsakos Shipping & Trading, S.A. v. Juniper Garden Town Homes, Ltd, supra*, 12 Cal.App.4th at 96,
10 it appears Fuentes is less likely to pursue PFR's interests than his own interests as a partner of S &
11 Y. That firm, in whose reputation Fuentes has a personal stake as a partner, has been purportedly
12 retained to defend 12 directors on the PFR Board against plaintiff PDGG's complaint alleging
13 conduct on said defendants' part detrimental to PFR's financial and legal interests.

14 As a member of the firm purportedly representing 12 members of the Board of PFR (i.e., the
15 defendant-individuals), Fuentes has a personal interest in protecting competency of that
16 representation (*City & County of San Francisco v. Cobra Solutions, Inc.* (App. 1 Dist. 2004) 119
17 Cal.App.4th 304, 317). Therefore, Fuentes likely will testify as to such matters as his alleged
18 absence from the April 14, 2014 meeting whereby S & Y was purportedly retained.

19 Taking guidance from rule 1.7 of the Model Rules of Professional Conduct (*State Comp. Ins.*
20 *Fund v. WPS, Inc.* (App. 2 Dist. 1999) 70 Cal.App.4th 644, 655—656 [where there is no conflict
21 with the public policy of California, the model rules serve as a collateral source for guidance on
22 proper professional conduct in California]), one partner of a law firm may act as an advocate at trial
23 where a fellow partner is likely to be a witness, provided the examining attorney is not precluded by,
24 inter alia, his responsibilities to another client, or to a third person, or by the lawyer's own interests:

25 [S]imultaneous representation of parties whose interests in litigation may conflict,
26 such as coplaintiffs or codefendants, is governed by paragraph (a)(2) of model rule
27 1.7, generally prohibiting "concurrent conflict of interest" where "there is a
28 significant risk that the representation of one or more clients will be materially
29 limited by the lawyer's responsibilities to another client, a former client or a third
30 person or by a personal interest of the lawyer. . .

31 ABA, Model Rules Prof. Conduct, rule 1.7, com. 23.

32 Because said April 14th meeting was held telephonically, it appears the Court might be satisfied
only if Fuentes were to personally testify as to his alleged absence. But his said apparent failure to
disclose self-dealing transaction then taking place shows disloyalty to PFR's interest in its meetings.

1 **6. An actual, positional conflict of interest, or issue conflict, exists between**
2 **S & Y and PFR, based on Fuentes's multiple fiduciary duties toward PFR**

3 An attorney who, like Jose Luis Fuentes, occupies a seat on a corporate board, can be held to
4 multiple standards of care and more fiduciary obligations than if he served in only one capacity. (See
5 *Sassover v. Field* (S.D. N.Y. 1990) 752 F.Supp. 1190.) Assuming *arguendo* Fuentes, as a director on
6 the PFR Board, performs no role as attorney, a conflict of interest may still exist involving his
7 position. He, as other directors and officers of PFR, has a fiduciary relationship thereto (*Smith,*
8 *supra*, 145 Cal. at 361) and to its listener-sponsors (*Brown v. Memorial Nat. Home Found. (supra)*
9 162 Cal.App.2d at 521; *Lynch v. John M. Redfield Found. (supra)* 9 Cal.App.3d at 298). And as a
10 member of S & Y purportedly representing PFR herein, he must treat PFR as a client (rule 3-600(A)).

11 He therefore has a further duty to protect PFR's nonparty interests (*GATX/Airlog Co. v.*
12 *Evergreen Internat. Airlines, Inc.* (N.D.Cal. 1998) 8 F.Supp.2d 1182, 1185 [opining that under Cal.
13 law, an attorney's duty of loyalty applies to a client's interests other than as a "party"]. Vacated as
14 moot, 192 F.3d 1304 (9th Cir. 1999)), e.g., to prepare an accounting and conveyance of PFR's trust
15 property, of which Reese is also a trustee (Scott on Trusts (*supra*) § 344, pp. 543—544); and, until
16 such time as those tasks are completed, to keep clear and accurate accounts (see *Estate of McCabe*
17 (App. 4 Dist. 1950) 98 Cal.App.2d 503, 505; *In re L.A. County Pioneer Society* (1953) 40 Cal.2d
18 852, 861 [trustee of charitable trust removable for same reasons as for removal from private trust]).

19 Therefore, said Jose Luis Fuentes has a duty to refrain from doing anything that would hinder
20 or impede Reese from carrying out her said duties as trustee. As alleged in Reese's May 6, 2014
21 opposition (*id.*, p. 10, lines 12—18) to Cross-complainant's applications, Reese's continued presence
22 in the PFR National Office was necessary for her to continue performing said duties as trustee.

23 But in procuring Reese's removal from that Office, Fuentes violated his said duty. Again, as
24 in *Tsakos Shipping & Trading, S.A. v. Juniper Garden Town Homes, Ltd. (supra)* 12 Cal.App.4th at
25 96, a partner of S & Y (now Fuentes) pursued his personal interest in protecting S & Y's reputation
26 in the field of civil litigation leaving unprotected the interests of PFR, a charitable corporation whose
27 former executive director (i.e., Reese) could best serve its interests regarding its trust property, let
28 alone perform her duties as trustee thereof, if she had not been removed from that position by means
29 of Fuentes's said March 13, 2014 motion and allegations herein. Therefore, Fuentes violated his duty
30 of loyalty to PFR and S & Y should be disqualified from representing PFR.

31 Collaterally, the Court's June 18th finding that the effect of the personal views of Fuentes, an
32 active California attorney—whose said office has been publicly proclaimed in his application for

1 candidacy, in announcements of his past appearances on KPFA radio, and elsewhere—was “at most
2 tangential” on directors who attended said March 13th meeting is startling. Those 11 Board members
3 who allegedly voted in favor of Fuentes’s March 13th motion to terminate Reese—ten of whom are
4 laypersons (Tony Norman being a Penn. attorney)—were justified in relying on Fuentes’s views
5 with respect to the legal consequences of her nonapplication for a Social Security number. (*Hobart*
6 *v. Hobart Estate Co.* (1945) 26 Cal.2d 412, 433; *George v. Simpson* (App. 2 Dist. 1936) 14
7 Cal.App.2d 571, 576; *Martin v. Martin* (App. 2 Dist. 1952) 110 Cal.App.2d 228, 233; Rest.2d Torts
8 § 545(1) [recipient of an opinion misrepresenting the legal consequences of facts is justified in
9 relying thereon to the same extent as though it were a representation of any other opinion].)

10 Notwithstanding and without waiving the foregoing issues with respect to the Court’s said
11 June 18th finding, Fuentes’s membership on the Board of Directors of PFR—though allegedly
12 neither its attorney nor ever suggesting it retain S & Y—is sufficient to create a conflict of interest
13 when the Board is empowered to settle the instant case wherein S & Y purportedly represents it. (See
14 *Filippi v. Elmont Union Free School Dist.* (E.D.N.Y. 2010) 722 F.Supp.2d 295, 305 [attorney’s
15 membership on school board, though not its attorney, had sufficient aspects of attorney-client
16 relationship to warrant district court’s finding conflict existed with attorney’s law firm representing
17 former school employee in employment case in which attorney never participated].) The mere fact of
18 Fuentes’s membership on the PFR Board created a genuine likelihood of a conflict of interest.

19 That genuine likelihood arises irrespective of the effect Fuentes’s views might have had on
20 other directors thereof. (See Rules Prof. Conduct, rule 3-310(C)(3); *Fremont Indem. Co. v. Fremont*
21 *General Corp.* (App. 2 Dist. 2006) 143 Cal.App.4th 50, 64 [“A conflict of interest also arises when
22 an attorney represents a client in a matter in which the client’s interests are adverse to those of
23 another party and concurrently represents the other party in another matter . . . even if the two
24 matters are completely unrelated and there is no risk that confidences obtained in one matter could
25 be used in the other], citing *SpeeDee, supra*, 20 Cal.4th at 1147; *Flatt v. Superior Court* (1994) 9
26 Cal.4th 275, 284—285 (*Flatt*).)

27 ***7. Actual, positional conflicts of interest exist between PFR and two clients of S & Y herein***

28 Inasmuch as the PFR Board of Directors forms the basis of a “legal relationship” (see discussion
29 section which follows Rule 3-310, *supra*), Yee violated Rule 3-310(C)(1) by his acceptance of
30 representation of the 12 defendant-individuals as well as defendant-corporation in this matter
31 wherein said defendants’ interests actually conflict. As a general rule, S & Y is prohibited under 3-
32 310(C)(1) from simultaneously accepting such representation, unless having the informed written

1 consent of each client. Under California case law, exceptions to this rule—making simultaneous
2 representation unconsentable—exist in those cases wherein not mere divergence, but an actual
3 conflict of interest exists. (See *Spindle v. Chubb/Pacific Indemnity Group* (*supra*) 89 Cal.App.3d at
4 713 [discussing contrast between divergence and conflict].)

5 An “ ‘attorney has a constant and perpetual rendezvous with ethics’ and should not represent
6 conflicting claims of two clients. (*McClure v. Donovan* (1947) 82 Cal.App.2d 664, 666) . . . ”
7 (*Estate of Lacy* (App. 2 Dist. 1975) 54 Cal.App.3d 172, 185, fn. 9.) Thus in *Hammett v. McIntyre*
8 (App. 2 Dist. 1952) 114 Cal.App.2d 148, the claims made by a litigant created a conflict of interest
9 between two parties, one who drove a vehicle allegedly with the permission of the insurer, but the
10 insured contended no permission was given (*id.* at 157). Similarly, in *Pennix v. Winton* (App. 1 Dist.
11 1943) 61 Cal.App.2d 761, a conflict arose between interests of insurer and those of insured, the latter
12 being counsel’s client accused of negligently driving while intoxicated, whom he sought to impeach
13 as a witness (*id.* at 773; see *Hernandez v. Paicius* (App. 4 Dist. 2003) 109 Cal.App.4th 452 [defense
14 counsel breached loyalty where counsel’s firm simultaneously represented plaintiff’s expert witness
15 and counsel rigorously sought to impeach the expert’s reputation and credibility].)

16 Where defendants Lamb and Norman make claims conflicting with the PFR Bylaws,
17 positional conflicts of interest, also known as issue conflicts, arise between them and PFR. Lamb and
18 Norman each maintains a claim to a seat on the Board of Directors of PFR, despite requirements
19 barring or proscribing him therefrom: By reason of his substance-related felony conviction, Lamb is
20 proscribed from the office of Director (see 21 U.S.C. § 862; 47 C.F.R. § 1.2002(b)(2)), and his
21 maintenance claim of a Director-seat imperils the radio-broadcasting licenses issued to PFR by the
22 FCC. And, as has been argued in Reese’s Memorandum in support of her motion to strike (*id.*, pp.
23 1—5), Norman’s commissionership is “public office” because of which he putatively resigned from
24 his Director-seat on the Board of Directors of PFR, to whose interests his said claim is detrimental.

25 (There is also a genuine likelihood of conflict arising from evidence of S & Y having
26 shepherded the 2002 draft of the PFR Bylaws, whose integrity has thus come into question, as will
27 leave Yee in the untenable position of impeaching the integrity of that written work in whose
28 production S & Y played a key role. See *Dabrymple v. Nat. Bank & Trust Co.* (W.D.Mich. 1985) 615
29 F.Supp. 979 [motion to disqualify was denied *without prejudice* because shareholders, who had been
30 “targets” of attorneys, had no attorney-client relationship with them and because shareholders would
31 attack counsel, thus placing him in untenable position of impeaching integrity of partner’s work].)

32 Yee must either maintain Norman’s claim his commissionership on the D.C. Advisory

1 Neighborhood Commission 1B is not “public office” over the February 22, 2013 objection of former
2 Director Luzette King. Or Yee should have performed his legal duty to treat PFR as his client by
3 seeking to protect its organizational integrity, and to uniformly apply its Bylaws under which
4 Norman putatively resigned from his Director-seat (*id.*, art. 5, § 1, ¶ B).

5 Lamb’s claim to a Director-seat is a present conflict to which Yee has succumbed against
6 PFR’s important interest in maintaining its FCC licenses. And, the genuinely likely outcome of
7 Yee’s advocacy of Norman’s claim is widespread perception among listener-sponsors of PFR that
8 such flexible or practically meaningless interpretation of said Bylaw seriously compromises PFR’s
9 trustworthiness as a news medium whose content was intended by PFR’s founding members,
10 exercising their First Amendment rights, as independent of “public office” and political power
11 generally, and further foreseeable harms under other Bylaws of PFR and its organizational integrity
12 and sustainability, compromising listener-sponsors’ trust and future financial sponsorship of PFR.

13 No single firm or attorney representing PFR can represent Lamb or Norman without creating
14 an issue conflict. Those two individuals’ ineligibility for a Director-seat also casts suspicion on the
15 validity of the votes they purportedly cast in favor of Fuentes’s March 13th motion to terminate
16 Reese, leaving no more than ten valid votes in favor of said motion—a number which is less than the
17 quorum, i.e., 11 Directors de jure (Corp. Code § 5211(a)(7); *Blish v. Thompson Automatic Arms*
18 *Corp.* (Del. 1948) 64 A.2d 581, 602; RONR, § 44, p. 400).

19 All ten of the remaining Directors de jure then in office supported Reese and either did or, if
20 given due notice would, cast votes in opposition to Fuentes’s said motion. (Reese Decl. in support of
21 her motion to set aside June 3rd order.) In sum, with regard to S & Y’s involvement in said issue
22 conflict casting suspicion on the legality of PFR’s purported decision to terminate Reese, S & Y
23 shows loyalty to Lamb and Norman, despite two important interests of S & Y’s other client, PFR:
24 Maintenance of PFR’s FCC licenses, and of lawful transactions of business by its Board of Directors
25 **8. Actual, positional conflicts of interest exist between PFR and all of S & Y’s other clients herein**
26 Irrespective of whether the 12 defendant-individuals constitute a majority or minority on the
27 PFR Board of Directors, and irrespective of Lamb’s or Norman’s purported claim to a seat thereon,
28 those 12 and PFR should not be represented by the same counsel. At first blush, no cause for
29 disqualification might appear on the face of the complaint naming both Fuentes and PFR as
30 defendants, or from S & Y’s representation of them and the other defendants apparently aligned in
31 defense against Plaintiff PDGG’s complaint. (See, e.g., *Havasu Lakeshore Investments, LLC v.*
32 *Fleming* (App. 4 Dist. 2013) 217 Cal.App.4th 770, 782; *Glenmark Incorporated v. Carity* (1963) 239

1 N.Y.S.2d 440; *Selama-Dindings Plantations, Ltd. v. Durham* (D.C. Ohio 1963) 216 F.Supp. 104.)

2 But “where a shareholder has filed an action questioning its management or the actions of
3 individual officers or directors, . . . corporate counsel cannot represent both the corporation and the
4 officers, directors or shareholders with which the corporation has a conflict of interest (citations).”
5 (*La Jolla Cove Motel & Hotel Apartments, Inc. v. Superior Court* (App. 4 Dist. 2004) 121
6 Cal.App.4th 773, 785—786.) “Conflicts of interest such as these cannot be tolerated” (*A.I. Credit*
7 *Corp., Inc. v. Aguilar & Sebastinelli* (App. 1 Dist. 2003) 113 Cal.App.4th 1072, 1080).

8 Likewise, in the instant proceeding for injunctive and other relief, S & Y’s purported
9 representation of both PFR and the defendant-individuals with which PFR has conflicts of interest
10 “cannot be tolerated” (*id.*). The plaintiff PDGG’s complaint alleges conduct of those individuals
11 imperiling PFR’s insurability as an employer and wrongfully exposing it to other liabilities. If the
12 allegations of the complaint are proved, PFR stands to benefit for recovery for defendant-
13 individuals’ actions (*Elberta Oil Co. v. Superior Court* (App. 4 Dist. 1930) 108 Cal.App. 344, 348).

14 “In such a suit, the corporation, while nominally a defendant, is actually a plaintiff. . . .”
15 (*Forrest v. Baeza (supra)* 58 Cal.App.4th 65, 74, citing *Cannon v. U.S. Acoustics Corp.* (N.D.Ill.
16 1975) 398 F.Supp. 209, 213—214.) Because PFR has adverse, conflicting interests with the 12
17 defendant-individuals, S & Y may not represent both PFR and them. (Rules Prof. Conduct, rule 3-
18 600(E); *Gong v. RFG Oil, Inc.* (App. 4 Dist. 2008) 166 Cal.App.4th 209, 214.)

19 The facts in the instant case are close to *Milone v. English* (D.C.Cir. 1962) 306 F.2d 814.
20 There, officers of a labor organization were charged with “rig[ging]” the election of delegates to a
21 convention that would be held in 1957 by misusing union funds and dominating and
22 disenfranchising union members, raiding the union treasury, refusing financial accounting, keeping
23 inadequate financial records, and engaging by officers in private business with union funds:

24 [C]ounsel who are chosen by and represent officers charged with the misconduct, and
25 who also represent the union, are not able to guide the litigation in the best interest of
26 the union because of the conflict in counsel’s loyalties. **In such a situation it would**
27 **be incumbent upon counsel not to represent both the union and the officers. . .**
306 F.2d at 817; boldface added.

28 Counsel’s duty of loyalty to PFR, which is a Nonprofit Public Benefit Corporation, is to be protected
29 by this Court no less than counsel’s loyalty to a labor organization. (Cf. *MacKay v. Pierce* (1982)
30 446 N.Y.S.2d 403 [in shareholders’ derivative suit, corporation was better served by having advice
31 of independent counsel in view of its active role in seeking to dismiss action brought for its benefit].)

32 *Forrest v. Baeza (supra)* 58 Cal.App.4th 65 was a derivative suit wherein a lawyer purported to

1 simultaneously represent majority shareholders and corporations they were accused of embezzling
2 from and subjecting to penalties for tax fraud. Rejecting the argument that if those accusations were
3 proven the corporate officers would be personally liable to the same extent of as the corporation, the
4 Court of Appeal held a conflict of interest was thereby created (*id.* at 75—76).

5 As counsel, S & Y (by Yee) must treat PFR as a client (Rules Prof. Conduct, rule 3-600(A);
6 *Responsible Citizens v. Superior Court* (App. 5 Dist. 1993) 16 Cal.App.4th 1717, 1729). But, Yee's
7 loyalty is divided. There being substance to the allegations made in the complaint about defendant-
8 individuals' wrongdoing, S & Y should not represent said defendants, even if they are ultimately
9 found personally liable for their alleged wrongdoing (*Forrest v. Baeza, supra*, 58 Cal.App.4th at
10 75—76). By purporting to represent them, S & Y violates counsel's duty of loyalty to its purported
11 corporate client (PFR) whom the defendant-individuals have allegedly wronged.

12 **9. Yee's personal interest in competency of the representation by S & Y herein conflicts with his**

13 **Purported duties to herein represent PFR, which never authorized retention of S & Y herein**

14 "An attorney has an obligation not only to protect his client's interests but also to respect legitimate
15 interests of fellow members of the bar, the judiciary, and the administration of justice." (*Kirsch v.*
16 *Duryea* (1978) 21 Cal.3d 303, 309 [when an apparent conflict exists between an attorney's duty to
17 his client and his public obligation, he will not be held liable in damages for latter choice unless
18 shown to have been so manifestly erroneous that no prudent attorney would have made it].)

19 Also a partner of S & Y, Yee also has an interest in protecting its reputation against the
20 possible effects of any revelation that might be borne by this litigation. Yee has a personal interest
21 in, inter alia, protecting S & Y's reputation as purported attorney(s) of record herein. (See, e.g., *City*
22 *& County of San Francisco v. Cobra Solutions, Inc. (supra)* 119 Cal.App.4th at 317 [attorney has
23 "personal interest in the competency of his prior representation"]; *Gertz v. Robert Welch, Inc.* (1974)
24 418 U.S. 323, 341 ["individual's right to the protection of his own good name"].)

25 Yee has a duty to protect PFR's nonparty interest in advancing its said nonprofit purposes.
26 (*GATX/Airlog Co. v. Evergreen Internat. Airlines, Inc. (supra)* 8 F.Supp.2d at 118). If enforcement
27 of PFR's rights to the full extent under its Bylaws and the Corporations Code impinges on the
28 reputation of S & Y, Yee is placed in the untenable position of protecting that reputation despite his
29 duty to institute such enforcement. "In such a situation, " ... one's loss translates ... into another's
30 gain [and] the fiduciary will almost certainly be unable to avoid a breach of his duty to promote the
31 interests of each with loyal vigor." . . ." (*Flatt, supra*, 9 Cal.4th at 289.)

32 Without the presence of either Lamb or Norman, both being directors de facto, no more than

1 ten Directors de jure might have attended the secretive meeting, held April 14, 2014, purportedly to
2 delegate to defendant Wilkinson authority of said board to retain a law firm to represent PFR,
3 whereby she purportedly authorized retention of S & Y as PFR's attorney herein.

4 At the time of said April 14th meeting, 11 directors de jure constituted a quorum of the PFR
5 Board of Directors. (Corp. Code § 5211(a)(7), *supra*; *Blish v. Thompson Automatic Arms Corp.*
6 (*supra*) 64 A.2d 581, 602; RONR, § 44, p. 400.) But only as many as ten of them might have
7 attended it. Therefore, S & Y is embroiled in a conflict of interest involving the personal interests of
8 Yee and other partners of S & Y to protect competency of its representation herein, despite PFR's
9 interests to lawfully conduct PFR's business under its Bylaws and the Corporations Code.

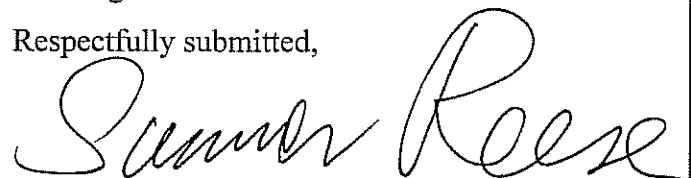
10 *Conclusion*

11 Reese's request that the Court take judicial notice of the general custom that information is
12 shared between and among partners of the same firm is not determinative. When one attorney is
13 disqualified for a conflict of interest, the entire firm is generally disqualified as well. (*In re Tevis*
14 (9th Cir.BAP 2006) 347 B.R. 679, 692; *SpeeDee, supra*, 20 Cal.4th at 1139.) Irrespective of that
15 general custom (*Anderson v. City Ry. Co., supra*), a positional conflict of interest or issue conflict is
16 mandatory cause for disqualification (*Lysick v. Walcom (supra)* 258 Cal.App.2d at 147, fn. 6).
17 Mandatory disqualification of S & Y will serve the purpose of protecting the fiduciary value of
18 fidelity or loyalty. (*State Farm Automobile Mutual Ins. Co. v. Federal Ins. Co.* (App. 5 Dist. 1999)
19 72 Cal.App.4th 1422, 1430—1433, citing *Flatt, supra*, 9 Cal.4th at 286. But see *In re Marriage of*
20 *Zimmerman* (App. 1 Dist. 1993) 16 Cal.App.4th 556, 562 [balance competing interests].) And
21 because S & Y's conflict is current, the Chinese wall to disqualification is inadequate (*Klein v.*
22 *Superior Court (Thomas)* (App. 6 Dist. 1988) 198 Cal.App.3d 894, 909—910).

23 Although "potential conflict . . . does not warrant automatic disqualification of joint counsel"
24 (*Gong v. RFG Oil, Inc. (supra)* 166 Cal.App.4th at 215), actual conflict, as here, does warrant it
25 (*Flatt, supra*, 9 Cal.4th at 286). And in those instances of genuine likelihood of conflict, *supra*, and
26 of dual or simultaneous representations having nothing in common and involving no risk of breach
27 of confidences, disqualification may be required none the less (*Flatt, supra*, 9 Cal.4th at 284).

28 Accordingly, Cross-defendant's motion should be granted.

29 Respectfully submitted,

30 

31 Summer Reese, Cross-defendant
32