

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 Non-Profit
17 Public Benefit Corporation;

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

25 HANK LAMB and TONY NORMAN, as individuals and
26 Directors de facto of said 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 TO
SET ASIDE THE
HONORABLE IOANA
PETROU’S OCTOBER
3, 2014 VOID ORDER ;**

**MEMORANDUM
OF POINTS AND
AUTHORITIES IN
SUPPORT OF
MOTION**

Date: 02/11/2015

Time: 9:00 a.m.

Dept: 15

Judge: Hon. Ioana Petrou

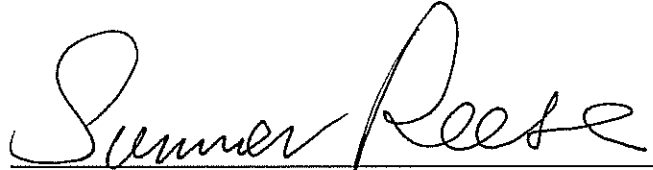
Reservation #:

R-1574646

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, the cross-defendant (“Cross-defendant”) in said matter, will
appear in Department 15 of the Court, situated at 1221 Oak Street, Third Floor in Oakland,

1 California and will move for an order setting aside the void order, made October 3, 2014 by the
2 Honorable Ioana Petrou, denying Cross-defendant's September 29, 2014 Peremptory Challenge. Said
3 motion is made on the grounds that because Cross-defendant has a right under Code of Civil
4 Procedure § 170.6 to make a peremptory challenge herein and because she exercised that right within
5 15 days after her first general appearance herein at the September 18, 2014 hearing on her Demurrer,
6 therefore, said September 29, 2014 Peremptory Challenge is timely notwithstanding Judge Petrou's
7 said order purporting otherwise.

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10 Summer Reese, Cross-defendant

11 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION**

12 To determine whether a peremptory challenge of a judge has been timely filed, the trial court must
13 decide whether the general rule or any of the three exceptions applies. (*Grant v. Superior Court*
14 (App. 6 Dist. 2001) 90 Cal.App.4th 518, 524 (*Grant*), citing *People v. Superior Court (Lavi)* (1993)
15 4 Cal.4th 1164, 1172—1173.) On April 4, 2014, the above entitled Court issued notice as to the
16 Honorable Ioana Petrou's assignment for all purposes herein. Cross-defendant's challenge is directed
17 at the said judicial officer. Code Civ. Proc., § 170.6 provides in pertinent part:

18 If directed to the trial of a civil cause that has been assigned to a judge for all
19 purposes, the motion shall be made to the assigned judge or to the presiding judge by
20 a party within 15 days after notice of the all purpose assignment, or if the party has
21 not yet appeared in the action, then within 15 days after the appearance. . . .
22 *Id.*, ¶ (a)(2).

23 Then on April 25th, a purported cross-complaint was filed naming Reese as a cross-defendant. Prior
24 to that date, she could not have brought a challenge, since she "ha[d] not been joined as a party to
25 this action." (See *Astourian v. Superior Court (Kouyoumdjian)* (1990) 226 Cal.App.3d 720, 723
26 [apparently approving this ground of trial court's ruling peremptory challenge as untimely where
27 made by non-party]; *Oksner v. Superior Court In and For L.A. County* (App. 2 Dist. 1964) 229
28 Cal.App.2d 672, 690 [disqualified judge lacked jurisdiction to make any order with respect to
29 nonparty whose motion was not a continuation of or supplement to anything previous in action].)

30 Then on September 18th, hearing was had on Cross-defendant's demurrer, whereby she made
31 her first general appearance herein.

32 The term 'appearance' has a well-established procedural meaning. A plaintiff appears
in an action when the complaint is filed. (Citation.) On the other side, '[a] defendant

1 appears in an action when the defendant . . . demurs, . . . (Citation.) The parties do not
2 'appear' when an all-purpose judge is assigned or replaced; . . .
3 Stubblefield Constr. Co. v. Superior Court (City of San Bernardino) (App. 4 Dist.
4 2000) 81 Cal.App.4th 762, 768; underline added.

5 (See *La Seigneurie U.S. Holdings, Inc. v. Superior Court* (App. 2 Dist. 1994) 29 Cal.App.4th 1500,
6 1504 [“appearance” in § 170.6 means general appearance]; *Brown v. Swickard* (App. 3 Dist. 1985)
7 163 Cal.App.3d 820, 827, fn. 10 [same].)

8 Cross-defendant had until 15 days after her said September 18th first general appearance, or
9 until October 3, 2014 to peremptorily challenge the judge assigned for all purposes herein. Cross-
10 defendant’s challenge—having been four days prior to that date or September 29, 2014—is timely.
11 Notwithstanding the foregoing authorities, Judge Petrou on October 3, 2014 made an order denying
12 Cross-defendant’s peremptory challenge as “untimely”.

13 Cross-defendant’s time to exercise her said right under Code Civ. Proc., § 170.6 is
14 independent of other parties’ right under that statute. (See *School Dist. of Okaloosa County v.*
15 *Superior Court* (App. 2 Dist. 1997) 58 Cal.App.4th 1126, 1131 [late-named defendant’s peremptory
16 challenge, filed within 10 days after first appearance in case, was timely, although other defendants’
17 time to challenge had expired]; see § 170.6, *supra*, as amended by Stats.2010, ch. 131 (A.B. 1894), §
18 1 [providing time for party to challenge within 15 days after party’s first general appearance].)

19 “[A] party who is joined with others cannot be in a worse position than a single party,
20 since he has an equal opportunity to disqualify the judge assigned to hear the case.
21 Such a party cannot possibly be placed at a disadvantage unless one of his coparties
22 has already disqualified a judge in the same action, and then only if his interests are
23 substantially the same as the interests of the one who exercised the challenge. . . .”
24 *Johnson v. Superior Court In and For L.A. County* (1958) 50 Cal.2d 693, 700.

25 ““As a remedial statute, section 170.6 is to be liberally construed in favor of allowing a peremptory
26 challenge, and a challenge should be denied only if the statute absolutely forbids it.” (Citations.)”
27 (*Stephens v. Superior Court* (App. 4 Dist. 2002) 96 Cal.App.4th 54, 61—62.) Where the challenge is
28 not forbidden by § 170.6, it should be granted “without further inquiry” (*Grant*, at 524).

29 Accordingly, Cross-defendant’s motion should be granted.

30 Respectfully submitted,

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32 Summer Reese, Cross-defendant