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6 PACIFICA FOUNDATION RADIO

ENDORSED
FILED
ALAMEDA COUNTY

JAN 29 2015

CLERK OF THE SUPERIOR COURT
By Maria Carrera
Deputy

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 RADION, et
al.,
15 Defendants.

CASE NO. HG14720131

MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO CROSS-
DEFENDANT SUMMER REESE'S MOTION
TO STRIKE OR, IN THE ALTERNATIVE, TO
DISMISS

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 the Motion to Strike Or, In The
26 Alternative, To Dismiss, filed by Cross-Defendant Summer Reese ("Reese").

27 Reese, having loss on her demurrer to the cross-complaint and having answered as

1 directed by the Court, now attempts to challenge the Cross-Complaint by filing a motion to
2 strike. Code Civ. Proc. § 435 and Cal. Rules of Court, rule 3.1322 require that a motion to
3 strike be filed together with the demurrer and noticed for hearing at the same time as the
4 demurrer. A motion to strike must also be filed before answering the complaint. Reese's
5 Motion to Strike is therefore untimely.

6 Alternatively, Reese seeks the dismissal of the Cross-Complaint. However, a
7 motion to dismiss is treated as a motion for summary judgment. Reese's motion fails to
8 comply with any of the requirements of Code Civ. Proc. § 437c applicable to a summary
9 judgment motion. It therefore must be denied.

10 Reese's Motion to Strike seeks to challenge of the Court's determinations in its
11 June 3, 2014 order granting PFR's motion for a Preliminary Injunction. A motion for
12 reconsideration is now untimely. Reese raises no new facts that would justify
13 reconsideration by the Court.

14 Reese's Motion has no merit and must be denied.

15
16 **LEGAL ARGUMENT**

17 **A. A Motion To Strike Is Untimely If It Is Not Filed Together The Demurrer and**
18 **Noticed To Be Heard At the Same Time.**

19 In this case, Reese demurred to the Cross-Complaint on May 28, 2014. Special
20 procedures apply for filing a motion to strike when the moving party also demurs. Where
21 the moving party demurs, the motion to strike must be made concurrently with the
22 demurrer and the two must be heard at the same time. Cal. Rules of Court, rule 3.1322.
23 Here, Reese failed to file the Motion to Strike concurrently with her Demurrer on May 28,
24 2014. Her Motion to Strike, noticed seven months later, is therefore untimely.

25
26 **B. A Motion To Strike Is Untimely When Made After Answering the Complaint**

27 A motion to strike a complaint is also untimely when made after an answer has

1 already been filed. *Adohr Milk Farms, Inc. v. Love* (1967) 255 Cal. App. 2d 366.
2 Following the Court's Order overruling Reese's Demurrer on September 18, 2014, Reese
3 filed her Answer to the Cross-Complaint on September 29, 2014. Her Motion to Strike
4 was filed almost four months later.

5
6 **C. Cross-Defendant's Alternative Request For Dismissal Wholly Fails To Meet
the Requirements of C.C.P. 437c.**

7 Reese alternatively argues that the Cross-Complaint should be dismissed. A motion
8 to dismiss is treated as motion for summary judgment in order to preserve the safeguards
9 provided by the statute governing summary judgment motions. *Planka v. State of*
10 *California* (1956) 46 Cal.2d 208, 212; *Vallejo v. Montebello Sewer Co.* (1962) 721, 730.
11 Here, Reese's Motion failed to meet any of the requirements of C.C.P. § 437c applicable to
12 a summary judgment motion. Reese's alternative motion for dismissal must therefore be
13 denied.

14
15 **D. Reese's Challenge Of the Court's Determinations In The Court's June 3, 2014
Order Granting PFR' Motion For A Preliminary Injunction Is Untimely.**

16
17 Reese's Motion to Strike seeks to challenge the Court's determinations in its June 3,
18 2014 order granting PFR's motion for a Preliminary Injunction. In the June 3, 2014 order,
19 the Court rejected Reese's argument that "Tony Norman was ineligible to serve on the
20 PFR board and that his presence on the board made any decision to discharge Reese a
21 'nullity'." (June 3, 2014 Order of Judge Ioana Petrou, ¶ 4.) The Court also rejected
22 Reese's argument that "her purported January 30, 2014 employment agreement is legally
23 binding on PFR." (June 3, 2014 Order of Judge Ioana Petrou, ¶ 5) Reese bases her
24 Motion on challenging the Court's determinations on these issues. Any motion that asks
25 the Court to decide the same matter previously ruled on is considered to be a motion for
26 reconsideration and must comply with requirements Code Civ. Proc. §1108. *R & B Auto*
27 *Ctr., Inc. v. Farmers Group, Inc.* (2006) 140 CA4th 327, 373, 44 CR3d 426, 463; *Powell v.*

1 *County of Orange* (2011) 197 CA4th 1573, 1577, 129 CR3d 380, 383.

2 A motion for reconsideration must be made within 10 days after service upon the
3 party of notice of entry of the order. Code Civ. Proc. § 1008(a). A motion for
4 reconsideration is also restricted to circumstances where a party offers the court some facto
5 or circumstance not previously considered and some valid reason for not offering it earlier.
6 *Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, 1500. Here, Notice of Entry the June 3,
7 2014 Order was served on Reese on June 3, 2014. (See Notice of Entry of Order was filed
8 with the Court on June 17, 2014.) Reese's request for reconsideration of the findings in
9 the June 3, 2014 order is therefore time barred. Reese has presented no new evidence that
10 would justify reconsideration of those issues.

11 **CONCLUSION**

12 For the foregoing reasons, the motion of Summer Reese to strike or, in the
13 alternative, to dismiss the cross-complaint must be denied.

14
15 DATED: January 29, 2015

SIEGEL & YEE

16
17 By: 
Alan S. Yee

18 Attorneys for Defendant/Cross-Complainant
19 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 Strike, Or In The Alternative, To Dismiss.

on the Parties in said action,

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.
	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.
	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.
	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.
	Via Email	By transmitting said document(s) from our office email to the email address(es) shown below.

Summer Reese 449 43 rd Street Richmond, CA 94805 Tel: 510-680-5019 Email: Summerinthedesert@yahoo.com	Cross-Defendant IN PRO PER
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I declare under penalty of perjury that the foregoing is true and correct.
Executed on January 29, 2015, at Oakland, California.

