

ENDORSED
FILED
ALAMEDA COUNTY

JAN 29 2015

CLERK OF THE SUPERIOR COURT
By Maria Carrera
Deputy

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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 SET ASIDE THE COURT'S OCTOBER 3,
2014 ORDER

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

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

16 PACIFICA FOUNDATION RADIO,

17 Cross-Complainant,

18 vs.

19
20 SUMMER REESE and ROES 1 TO 100,

21 Cross-Defendants.

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 October 3, 2014 Order.

27 On October 3, 2014, the Court entered its Order Denying Reese's Peremptory

1 Challenge under Code Civ. Proc. §170.6. Reese's Peremptory Challenge, filed four
2 months after her general appearance in this case and after the Court ruled on PFR's Motion
3 for Preliminary Injunction, was untimely and therefore appropriately denied. Reese's
4 Motion to Set Aside the Court's October 3, 2014 is untimely and has no merit.

5
6 **LEGAL ARGUMENT**

7 **A. Reese's Peremptory Challenge Was Untimely and Correctly Denied.**

8
9 The Notice of Assignment of Judge Ioana Petrou For All Purposes was issued in
10 this case before the Cross-Complaint against Reese was filed. Reese therefore had 15 days
11 following her first appearance to make a peremptory challenge. Code Civ. Proc., § 170.6.
12 A party makes a general appearance when he or she *takes* any part in the action or
13 proceeding, e.g., by pleading, or participating in a hearing or trial. Code Civ. Proc.
14 §1014; *O'Keefe v. Miller* (1965) 231 CalApp.2d 920, 921; 2 Witkin, Cal. Proc. 5th (2008)
15 Jurisd, § 192, pp. 799-800. Here, Reese made her first appearance by on May 28, 2014,
16 when she filed a demurred to the Cross-Complaint.

17 Following her first appearance, Reese made numerous other appearances. On May
18 5, 2014, Reese filed an Opposition to the Application for Temporary Restraining Order by
19 Cross-Complainant PFR. On May 6, 2014, Reese appeared and participated in the hearing
20 on PFR's Application for the Temporary Restraining Order. On May 20, 2014, Reese filed
21 an Opposition to PFR's Motion for a Preliminary Injunction.

22 A motion to disqualify a judge pursuant to Code Civ. Proc. § 170.6 is also untimely
23 if made after the judge has conducted a pretrial hearing involving a determination of
24 contested fact issues relating to the merits, such as a hearing on a preliminary
25 injunction. *In re Abdul Y.* (1982) 130 Cal.App.3d 847, 857-858; *Briggs v. Superior*
26 *Court* (2001) 87 Cal.App.4th 312, 317. Here, the hearing on the Application for a
27 Temporary Restraining Order was held on May 6, 2014. The Court issued its Order on the

1 Motion for Preliminary Injunction on June 3, 2014. Reese did not file her preemptory
2 challenge to Judge Ioana Petrou until months later on September 29, 2014. Her challenge
3 was untimely and therefore correctly denied.

4
5 **B. Reese's Motion To Set Aside the Court's Order is Untimely.**

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). Reese was provided
8 notice of the Court's Order on October 3, 2014. Any motion for reconsideration of the
9 October 3, 2014 order is now time barred.

10 **CONCLUSION**

11 For the foregoing reasons, the Motion of Summer Reese To Set Aside the October
12 3, 2014 Order must be denied.

13 DATED: January 29, 2015

SIEGEL & YEE

14 By: 
15 Alan S. Yee

16 Attorneys for Defendant/Cross-Complainant
17 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 October 3, 2014 Order.

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.

