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FILED
ALAMEDA COUNTY

MAR 10 2010

CLERK OF THE SUPERIOR COURT
By *[Signature]* Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
UNLIMITED JURISDICTION

DANIEL BORGSTROM; CAROLYN
BIRDEN; ROBERT ENGLISH; LINDA
HEWITT

Plaintiffs,

vs.

DANIEL SIEGEL; SIEGEL & YEE;
PACIFICA FOUNDATION and DOES 1-
100

Defendants

Case No.: RG10502520

FIRST AMENDED COMPLAINT FOR
DAMAGES FOR FRAUD, CIVIL CODE
SECTIONS 1709 & 1710 AND REQUEST
FOR DAMAGES AND EQUITABLE
RELIEF FOR UNFAIR BUSINESS
PRACTICES, BUSINESS &
PROFESSIONS CODE SECTION 17200
ET SEQ

PLAINTIFFS ALLEGE:

1. Defendant DANIEL SIEGEL, hereinafter referred to as "SIEGEL" is, and at all times herein mentioned was, a resident of Alameda County, California, an attorney licensed to practice law in the State of California and a partner in the firm of SIEGEL & YEE.
2. Defendant SIEGEL & YEE is a law firm doing business in California with its office in Alameda County, California at all times mentioned herein.
3. Defendant PACIFICA FOUNDATION, hereinafter referred to as "FOUNDATION", is, and at all times mentioned herein was, a non-profit corporation duly organized and existing under the

1 laws of the State of California and has its principle place of business in Alameda County,
2 California. The FOUNDATION has five radio stations, KPFA in Berkeley, KPFK in Los Angeles,
3 KPFT in Houston, WBAI in New York and WPFW in Washington D.C.

4 4. Plaintiffs are ignorant of the true names and capacities of defendants sued as DOES 1-100,
5 inclusive, and therefore sues these defendants by such fictitious names. Plaintiffs will amend the
6 complaint to allege their true names and capacities when ascertained.

7 5. At all times herein mentioned each of the DOE defendants was the agent and or employee of
8 each of the remaining defendants and was acting within the scope of such agency or employment
9 when they participated in the wrongful acts or failures to act that caused the FOUNDATION to
10 suffer damages.

11 6. At all times herein mentioned, and at the time of the wrongful conduct complained of herein,
12 plaintiffs were voting members of the FOUNDATION as defined by the FOUNDATION Bylaws,
13 Article Three, Section A:

14 *"Listener-Sponsor Members" shall be any natural persons who within the preceding 12-*
15 *month period: (1) have contributed a minimum of \$25 to any Foundation radio station, or*
16 *such minimum amount as the Board of Directors may from time to time decide; or (2)*
have volunteered a minimum of three (3) hours of service to any Foundation radio
station...."

17 **FIRST CAUSE OF ACTION-FRAUD**

18 7. By this reference, Plaintiffs hereby reallege and incorporate into this Cause of Action each and
19 every allegation contained in paragraphs 1 through 6 of this Complaint as if fully set forth herein.

20 8. In 2006 defendant SIEGEL sought and obtained the position as counsel for FOUNDATION. At
21 that time he failed to disclose that his true intention was to represent and support a faction in
22 FOUNDATION 's internal politics at the expense of the FOUNDATION whenever they were in
23 conflict. SIEGEL withheld this information to induce the FOUNDATION to hire him and his
24 firm, SIEGEL & YEE, to maximize his ability to support his faction and their goals. SIEGEL
25 kept his true agenda secret until he resigned in January 2009. Shortly after he resigned he ran for
26 office on a slate with his faction and defamed the then leadership of the FOUNDATION, accusing
27 them of ethnic cleansing when he knew such allegations were untrue. His conduct as
28 demonstrated with examples herein was to support the goals of his faction and not the

1 FOUNDATION. The FOUNDATION's reliance on his direct or implied representations that he
2 was working for the best interest of the FOUNDATION, while withholding his true intentions,
3 cost the FOUNDATION countless hours of lost or wasted work and tens of thousands of dollars
4 in unnecessary and or unproductive attorneys fees, costs and expenses.

5 9. From his position as FOUNDATION counsel he convinced the board of directors to let him
6 also be Interim Executive Director (IED) for some periods of time when that position was vacant
7 and used his power as IED to put his faction's goals above the best interests of the
8 FOUNDATION. This also denied the FOUNDATION of an independent legal opinion.

9 10. The following are some of the actions SIEGEL took that demonstrate his loyalty to his faction
10 over the FOUNDATION:

11 a. Contrary to the past practice of FOUNDATION management, SIEGEL used his position as
12 IED to attack a slate running against his faction at KPFA by posting a condemnation of the
13 opposing slates' candidate statements on the FOUNDATION web site in October 2007, Exhibit 1.
14 SIEGEL's condemnation conflates the KPFA opposing slate's writings with some alleged race-
15 baiting at WBAI by an opponent of his factions allies at that station. He accused the opposing
16 KPFA slate of "...personal attacks on their opponents and station staff". SIEGEL's letter does not
17 give an example of a personal attack and when later asked to demonstrate one he has always
18 declined to do so. Compare his condemnation under color of authority to his own candidate
19 statement when he ran for FOUNDATION office at KPFA in 2009. Exhibit 2. The national
20 election supervisor refused to publish his dishonest charge of "ethnic cleansing" and then SIEGEL
21 produced a slightly changed candidate statement. Exhibit 3. The new statement maintains the
22 dishonest attack with milder language.

23 b. In February 2008 SIEGEL directed station management to deny a FOUNDATION director her
24 right to inspect FOUNDATION property and documents; the director was an opponent of
25 SIEGEL'S faction. Director's Inspections are a tool available for a director in fulfilling her/his
26 fiduciary responsibility. Director's Inspection rights are specifically allowed in the
27 FOUNDATION Bylaws at Article 12, Section 3:

28 *Every Director, or his or her designated agent, shall have the absolute right at any*

1 *reasonable time to inspect and copy all of the Foundation's books, records and documents*
2 *of every kind and to inspect the physical properties of the Foundation.*

3 c. When a station manager, who was an ally of SIEGEL'S faction, was sued for sexual harassment
4 and retaliation he took the following actions that are contrary to "established best practices" in
5 employment law to protect his ally, despite putting the FOUNDATION in jeopardy:

6 i. He did the investigation and interviews of the witnesses himself instead of hiring an
7 independent investigator.

8 ii. He interviewed the witnesses regarding allegations of sexual harassment and *retaliation*
9 against the station manager in the station where the accused station manager could see who was
10 being interviewed and the witnesses knew she could see who they were.

11 iii. Despite the allegations of intentional torts against a FOUNDATION employee SIEGEL
12 answered the law suit and represented both the accused station manager and the FOUNDATION
13 despite the obvious potential conflict of interest regarding punitive damages.

14 iv. SIEGEL did not attempt to stop the FOUNDATION board of directors from issuing a
15 public statement praising the station manager during the law suit against her for sexual harassment
16 and retaliation. Exhibit 4. SIEGEL had to know that the statement could be construed as
17 ratification of the station manager's alleged intentional torts.

18 11. In the Fall of 2007 SIEGEL interfered with the election at WBAI to advance the chances of his
19 faction's allies to get elected.

20 **SECOND CAUSE OF ACTION-UNFAIR BUSINESS PRACTICES**

21 12. By this reference, Plaintiffs hereby reallege and incorporate into this Cause of Action each and
22 every allegation contained in paragraphs 1 through 11 of this Complaint as if fully set forth herein.

23 13. By engaging in the business practices described above, fraud, deceit and taking fees under the
24 guise of working for the FOUNDATION when in fact they were working for the goals of their
25 faction, Defendants SIEGEL and SIEGEL and YEE have engaged in unlawful, immoral , and
26 unfair business practices with respect to the FOUNDATION and other members of the public in
27 violation of Business & Professions Code 17200 et seq.

28 14. SIEGEL and SIEGEL & YEE continue to seek payment for time fraudulently spent on their

1 own goals and not for the FOUNDATION and they continue to work in California.

2 15. The FOUNDATION suffered actual harm by virtue of Defendants' unfair business practices in
3 that FOUNDATION money and staff time were directed away from work to benefit the
4 FOUNDATION toward work designed to benefit Defendants' faction based on Defendants'
5 deceptive, dishonest and self-serving advice.

6 16. SIEGEL'S conduct, as described above, was despicable and was intentional and or done
7 with a conscious disregard for the rights and security of the FOUNDATION, such that punitive
8 damages are appropriate.

9 17. Plaintiffs did not make any effort to secure action from the board of directors in prosecuting
10 this action since any such effort would have been futile in that the cause of action is for fraud,
11 a request for action to the Executive Director in 2009 was not responded to, the new
12 Executive Director has not returned phone calls from Plaintiffs' attorney, and the current
13 FOUNDATION counsel has told plaintiffs' attorney that he is against the FOUNDATION taking
14 such action. Additionally, the FOUNDATION is having financial problems and is in the middle of
15 some reorganization. A copy of this complaint has been mailed to FOUNDATION.

16 18. If plaintiffs are successful in this action, a substantial benefit will result to defendant
17 FOUNDATION on whose behalf this action is prosecuted and if successful plaintiffs are entitled
18 to their attorneys fees based on the common fund doctrine.

19 WHEREFORE, plaintiffs pray judgment against SIEGEL, SIEGEL & YEE and DOES 1-
20 100 as follows:

- 21 1. Damages according to proof for monies paid by the FOUNDATION to SIEGEL and or
22 SIEGEL & YEE for work done for the benefit of SIEGEL'S faction and for all damages
23 proximately caused by his fraudulent conduct;
 - 24 2. Punitive damages in an amount appropriate to discourage such fraudulent conduct;
 - 25 3. For equitable relief as deemed appropriate by the court;
 - 26 4. For costs of suit; and
 - 27 5. For such other and further relief as the court may deem proper.
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Date: 3-9-2010

LAW OFFICE OF RICHARD PHELPS

By Richard Phelps
RICHARD PHELPS
Attorney for All Plaintiffs