## II.

## FACTUAL ALLEGATIONS

9. Miller is a sixty-four (64) year old male who was appointed by the Joint Coast Labor Relations Committee as the Southern California Area Arbitrator and has been serving in that position since 2002. The Coast Labor Relations Committee is comprised of two (2) entities -- - PMA and ILWU, which jointly employ Miller. (A true and correct copy of relevant sections of the July1, 2008 – July 1, 2014 Pacific Coast Longshore Contract between ILWU and PMA showing that Miller is jointly employed by ILWU and PMA is attached hereto, marked as Exhibit "A," and by this reference incorporated herein.[1]) As an Area Arbitrator, Miller arbitrates disputes between members of the ILWU and members of PMA, including, *inter alia*, whether a picket line is bona fide.

10. Miller is deeply dedicated to both his work as an arbitrator and service to the maritime industry. Miller's late father, C.J. Miller, was a loyal member of the ILWU and worked as a Marine Clerk from around 1953 through 1980. Miller's late half-brother, Donald Gregory ("Gregory"), was a loyal member of the ILWU and worked as a Longshoreman from around 1950 through 1973. While growing up, Miller reveled at the camaraderie and strong bonds of friendship forged between his family and other members of the ILWU. He was inspired by the hard work, grit, and integrity exemplified by the working class.

11. Upon graduating from high school in 1968, Miller joined ILWU Local 63 in San Pedro, California as a Marine Clerk.

12. From around 1981 to 1998, Miller climbed the ranks of ILWU Local 63. Miller cut

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[1] Section 17.11 provides, "The parties shall establish and maintain . . . a Joint Coast Labor Relations Committee ("JCLRC")." The JCLRC is "comprised of 3 or more representatives designated by the Union and 3 or more representatives designated by the Employers." The preface defines "parties" as ILWU and PMA, "Employers" as members of PMA, and "Union" as ILWU. Section 17.511 provides that the "Area Arbitrator shall be **appointed by the Joint Coast Labor Relations Committee and shall serve at its discretion.**" (emphasis added.) Pursuant to Section 17.56, the "expenses and salaries of the arbitrators shall be **borne equally by the parties** . . . ." (emphasis added.) As the Southern California Area Arbitrator, Miller was jointly appointed and paid by ILWU and PMA. ILWU and PMA exercised control over Miller's wages, hours, and working conditions, suffered and permitted him to work, and controlled the terms and conditions of his employment.

his teeth as an ILWU advocate in arbitration proceedings, serving numerous terms as Secretary/Business Agent, Dispatcher, and Vice President. Miller was elected President of ILWU Local 63 in 1983, and re-elected in 1984, 1992, and 1993. Miller also served as Coastwise Contract Negotiator in 1990 and 1993 and Coastwise Contract Alternate Negotiator in 1996. From around November 1998 to June 2002, Miller was jointly appointed and employed by ILWU and PMA as the Benefit Plans Southern California Director.

13. After years of representing ILWU Local 63 members in more than two hundred (200) arbitrations, and serving both ILWU and PMA as Benefit Plans Southern California Director, on March 27, 2002, Miller applied for the position of Southern California Area Arbitrator. (A true and correct copy of Miller's March 27, 2002 application for the Southern California Area Arbitrator position is attached hereto, marked as Exhibit "B," and by this reference incorporated herein.)

14. As a result of his outstanding work performance and undisputable honesty and integrity, on or about June 3, 2002, ILWU and PMA appointed Miller as the Southern California Area Arbitrator. (A true and correct copy of minutes from ILWU and PMA's June 3, 2002 meeting appointing Miller as the Southern California Area Arbitrator is attached hereto, marked as Exhibit "C," and by this reference incorporated herein.)

15. Since being appointed Southern California Area Arbitrator on June 3, 2002, Miller has presided over more than four hundred and fifty (450) arbitration hearings involving contract disputes between ILWU and PMA. Miller spent countless hours in arbitration hearings, carefully receiving, studying, and considering all of the evidence the parties offered in each contract dispute. It soon became apparent to both ILWU and PMA that Miller was an extraordinarily thoughtful, careful, hard-working arbitrator, who considered the positions of all of the parties, and followed the provisions of the collective bargaining agreement when rendering decisions following arbitration hearings. Notwithstanding his background as both a member and officer of the ILWU, Miller developed a reputation for "calling it as he saw it," in accordance with the requirements of the collective bargaining agreement. Miller worked extraordinarily hard, and earned a reputation as a fair-minded, careful, thoughtful, and diligent arbitrator whose honesty and

integrity was unquestionable.

16. Miller's reputation for honesty and integrity, and for "calling it as he saw it" in accordance with the requirements of the collective bargaining agreement, meant that his decisions were at some times unpopular with PMA, and were at other times unpopular with ILWU. Miller developed a reputation for carefully and correctly deciding contract disputes in accordance with the requirements of the collective bargaining agreement, regardless of whether or not his decision would be unpopular with one party or the other.

17. In late 2011, knowing Miller's reputation for honesty and integrity, the ILWU realized that it needed to preemptively threaten Miller's job in order to compel him to "fix" an arbitration that it (correctly) anticipated would take place immediately after it put up illegal picket lines at four (4) employers involved in a contract dispute with the ILWU in Long Beach.

18. On or about November 30, 2011, John Fageaux, Jr. ("Fageaux") – President of the Office Clerical Unit ("OCU") of ILWU Local 63 – called Miller on his cell phone. Fageaux asked Miller, "Can you meet me and Big Bob [McEllrath] tomorrow morning, somewhere in Long Beach?" McEllrath was in Los Angeles negotiating a new contract between OCU-ILWU Local 63 and PMA. Miller was puzzled as to why Fageaux and McEllrath wanted to meet, but he knew Fageaux, and said, "Yeah. Tell me when and where." Miller agreed to meet Fageaux and "Big Bob" at the Long Beach Starbucks on Ocean Boulevard at 9:00 a.m. the next day.

19. On or about December 1, 2011, Miller sat down at a coffee table with Fageaux and McEllrath in a secluded area of the Long Beach Starbucks. Fageaux hardly spoke. McEllrath told Miller that he was having difficulty negotiating the new contract between OCU-ILWU and PMA. McEllrath said, "It's going to take a picket line to get the employers to move. I want to put picket lines at four terminals – Yusen Terminals, Inc. ("YTI"); Evergreen Shipping Agency, Corp. ("Evergreen"); West Basin Container Terminal, LLC ("WBCT"); and Hanjin Shipping Company, Ltd. ("Hanjin")." When Miller asked, "Why just those four (4) companies?" McEllrath replied curtly and callously, "If we hurt four (4) of them, the rest will fall in line. We're going to stick it up their ass until they give!"

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20. Miller then asked McEllrath, "Why don't you just picket all of them? That's the way proper picket lines are done." McEllrath scoffed, "That's not the way we want to do it." When Miller then told McEllrath, "I don't think that's right. If you're going to put up a picket line, it has to be bona fide. That's not going to be bona fide," McEllrath replied in a loud, defiant voice, "**I don't care if it's bona fide**!" (emphasis added.)

21. McEllrath then ordered Miller in a progressively louder voice, "When the companies file a grievance challenging the legality of the picketing, **I want you to rule that it's bona fide. I want this [negotiation] over with**!" (emphasis added.)

22. McEllrath was irate because he had been unsuccessfully trying to negotiate a new contract between OCU-ILWU and PMA since June 2010. McEllrath's impotence at the bargaining table had caused the members of OCU-ILWU to work without a contract for more than one and one-half (1 ½) years, which was extremely rare. McEllrath was desperate and viewed his failure to get a new contract as a professional embarrassment. The ILWU's members thought that McEllrath's failure to get a new contract cast serious doubt over his effectiveness as President of ILWU.

23. Miller immediately refused to "fix" the outcome of the anticipated arbitration challenging OCU-ILWU's illegal picketing, and told McEllrath, "No. I can't do that under the grievance procedure. I won't do that. It just won't work. I can't do it." Undeterred, McEllrath threatened Miller, a second time, "You better think about it because that's what I want you to do. **You'll be sorry later**." (emphasis added.)

24. Immediately after the second threat left McEllrath's mouth, Miller looked McEllrath straight in the eye and said, "You got to do what you got to do, and I got to do what I got to do." As the meeting ended, McEllrath glared at Miller and threatened him a third time: "**You're making a big mistake**!" (emphasis added.)

25. The very next day, on or about December 2, 2011, OCU-ILWU set up illegal picket lines at YTI, Evergreen, WBCT, and Hanjin's terminals. Within hours of the picket lines going up, Miller was summoned to arbitrate the dispute. Miller arrived at PMA's office in Long Beach, California at or about 2:30 p.m., held a hearing, and issued an Interim Award ruling against OCU-

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ILWU later that evening:

"OPINION:

The Employer [PMA] has met its burden of proof that the OCU has not established itself as acting independently of the ILWU longshore locals. Therefore, **it is my finding that the OCU is attempting to exert economic pressure upon [YTI, Evergreen, WBCT, and Hanjin] by utilizing the longshore workforce to honor a non-bonafide picket line.**

In conclusion, the following decision given the parties verbally is hereby confirmed in writing.

**DECISION:**

1) **The picket lines at YTI, Evergreen, WBCT, and Hanjin Terminals are found to be non-bona fide under the terms of the Master Agreement."**

(emphasis added.) (A true and correct copy of Miller's December 2, 2011 Interim Award In the Matter of a Controversy Between PMA and ILWU Locals 13, 63, and 94 Re: Picket Lines Established by OCU at YTI, Evergreen, WBCT, and Hanjin Terminals is attached hereto, marked as Exhibit "D," and by this reference incorporated herein.)

26. After the hearing, on or about December 2, 2011, Miller called Walter Romanowski ("Romanowski") – President of West Coast Container at Ports America, Inc., and Sean Marron ("Marron") – Terminal Manager of YTI, because their companies were affected by Miller's Interim Award. Romanowski was responsible for the Evergreen, WBCT, and Hanjin terminals. Marron was involved in the operation of the YTI terminal.

27. In Miller's telephone conversation with Romanowski, Miller told Romanowski that he had ruled that OCU-ILWU's picket line was non-bona fide and that he had ordered the laborers to immediately return to work. Miller recounted in detail to Romanowski McEllrath's threats of retaliation if Miller didn't "fix" the arbitration and find that OCU-ILWU's picketing was lawful.

28. Within a few hours, Miller called Marron and told him about his Interim Award. Miller told Marron, "Let me tell you about the threats I got from Big Bob [McEllrath] a few days ago." Miller then told Marron in great detail that McEllrath had ordered him to "fix" the arbitration and rule that OCU-ILWU's illegal picket line was bona fide, regardless of the merits of the case.

29. Within a few days after December 2, 2011, Miller called Darrin DelConte ("DelConte") – Vice President of Pacific Crane Maintenance Company, LP. In their telephone conversation, Miller told DelConte, "The picket lines are off. You can put your guys back to work." Miller also told DelConte about McEllrath's threats of retaliation if Miller did not "fix" the arbitration and rule that the illegal OCU-ILWU picket line was bona fide.

30. Because Miller feared that McEllrath would carry out his threats to retaliate against him for ruling against OCU-ILWU, Miller told people he trusted that McEllrath ordered him to fix the arbitration and had threatened to retaliate against him if he didn't.

31. OCU-ILWU appealed Miller's December 2, 2011 Interim Award, and on or about December 15, 2011, Miller held a formal hearing at 300 Oceangate, 12th Floor, Long Beach, California 90802.

32. On January 19, 2012, Miller issued an eight (8) page Opinion and Decision sustaining his Interim Award:

> **"This Arbitrator finds the evidence supports a conclusion that the OCU by their actions conducted a premeditated plan to utilize Longshore strength and force to systematically create an economic hardship upon any Employer they choose** . . . .
>
> . . .
>
> In conclusion, the Union has failed to present any evidence which proves that the OCU by way of their (OCU) actions are acting independently of the Longshore locals thereby failing to meet the standard set forth in the Kagel award."

(emphasis added.) (A true and correct copy of Miller's January 19, 2012 Opinion and Decision In the Matter of a Controversy Between PMA and ILWU Locals 13, 63, and 94 Re: Picket Lines Established by OCU at YTI, Evergreen, WBCT, and Hanjin Terminals is attached hereto, marked as Exhibit "E," and by this reference incorporated herein.)

33. Miller could not shake the feeling that "Big Bob" McEllrath would follow through on his threats to retaliate against him for refusing to "fix" the arbitration.



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34. Within a few days after Miller's January 19, 2012 Opinion and Decision, he again told Marron and Romanowski that McEllrath ordered him to "fix" the arbitration and had threatened to retaliate against him if he did not issue a ruling that the illegal pickets were "bona fide." Marron, who had been at the bargaining table during the contract negotiations between OCU-ILWU and PMA over the last one and one-half (1 ½) years, knew that McEllrath was desperate and replied, "Ok. That figures."

35. Miller also recounted "Big Bob" McEllrath's threat in a conversation with John Ochs ("Ochs"), Managing Director of APM Terminals Pacific, Ltd. After detailing both "Big Bob's" directive to Miller to "fix" the arbitration and his threats to retaliate if Miller refused, Miller then told Ochs, "I'll probably end up paying a price."

36. After Miller refused McEllrath's order to "fix" the arbitration and ruled instead that ILWU's illegal picket lines were not "bona fide," "Big Bob" seethed as he bided his time waiting for the right opportunity to retaliate against Miller.

37. McEllrath knew that the Area Arbitrator job duties Miller performed as a joint employee of ILWU and PMA involved hearing grievances arising under the Pacific Coast Longshore Contract ("Contract"). That Contract was set to expire on July 1, 2014. "Big Bob" McEllrath viewed the Contract's July 1, 2014 expiration as the perfect opportunity to punish Miller for refusing to obey his order to "fix" the OCU-ILWU picketing arbitration.

38. Almost immediately after the Contract expired on July 1, 2014, Miller began receiving reports that his continued employment as the Southern California Area Arbitrator was one of the major deal points raised by ILWU in the contract negotiations. On numerous separate occasions, DelConte, Ochs, Romanowski, DeNike, Jim McKenna ("McKenna") – President and CEO of PMA, and Jon Rosselle ("Rosselle") – Vice President of SSA Terminals, all told Miller that "Big Bob" and ILWU had made Miller's future employment as the Southern California Area Arbitrator a major issue at the bargaining table.

39. After July 2014, Miller had at least twenty (20) conversations with DeNike in which Miller recounted "Big Bob's" order to "fix" the OCU-ILWU picketing arbitration and McEllrath's threats to retaliate against Miller if he refused to do so.

40. By mid-August 2014, ILWU and PMA had not yet reached an agreement on a new contract.

41. On August 15, 2014, Richard Marzano ("Marzano"), PMA's Coast Director of Contract Administration and Arbitration, sent a letter to the Area Arbitrators, including Miller, reassuring them that they were still employed by ILWU and PMA. (A true and correct copy of Marzano's letter to the Coast, Area, and Relief Arbitrators dated August 15, 2014 is attached hereto, marked as Exhibit "F," and by this reference incorporated herein.)

42. On August 19, 2014, despite PMA's August 15, 2014 letter, McEllrath and ILWU retaliated against Miller for refusing to fix the OCU-ILWU arbitration by "ceas[ing] all payment" to Miller. (A true and correct copy of McEllrath's letter to McKenna dated August 19, 2014 informing McKenna that the ILWU stopped paying Miller is attached hereto, marked as Exhibit "G," and by this reference incorporated herein.)

43. Miller contacted McKenna multiple times requesting that PMA pay his salary, but PMA refused. PMA stood by and watched as Miller began a slide into financial ruin.

44. The last paycheck Miller received was on August 13, 2014. (A true and correct copy of Miller's wage statement and paycheck with an August 13, 2014 check date is attached hereto, marked as Exhibit "H," and by this reference incorporated herein.)

45. Because Miller is the primary breadwinner in his household and still needed to make payments on his mortgage, Miller became increasingly worried about his family's finances.

46. When the retaliatory conduct (refusing to issue paychecks to Miller) by McEllrath, ILWU, and PMA,c ontinued for two pay periods after August 13, 2014, Miller was forced to take retirement funds out of his Individual Retirement Account ("IRA") in order to survive economically.

47. Desperate, and without his principal source of income, on September 21, 2014, Miller sent McKenna a letter requesting clarification regarding his employment status. (A true and correct copy of Miller's letter to McKenna dated September 21, 2014 is attached hereto, marked as Exhibit "I," and by this reference incorporated herein.)

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48. On September 29, 2014, McKenna – President and CEO of PMA, sent McEllrath a letter via email and fax confirming that ILWU and PMA would "continue to employ the Area Arbitrators that served under the expired" agreement, including Miller. (A true and correct copy of McKenna's letter to McEllrath dated September 29, 2014 with the subject line "Re: Area Arbitrator Employment" is attached hereto, marked as Exhibit "J," and by this reference incorporated herein.)

49. ILWU, PMA, and McEllrath's retaliatory act of refusing to pay Miller caused him to lose approximately sixty-five (65%) percent of his gross monthly income. This 65% loss of monthly income meant, in turn, that Miller was unable to afford the interest rate on his home loan.

50. In a desperate effort to save his house, in or about October 2014, Miller attempted to refinance his home loan for at a lower interest rate. However, because ILWU and PMA had refused to pay Miller for the last six (6) weeks, Miller was unable to provide recent paystubs to the mortgage lender verifying his employment and income. In addition, when the bank processing Miller's home loan refinance application contacted ILWU and PMA, representatives from both entities falsely told the bank that Miller was no longer employed by either entity. (A true and correct copy of an email from Miller to McKenna dated October 2, 2014 and sent at 11:18 a.m. with the subject line, "employment status," is attached hereto, marked as Exhibit "K," and by this reference incorporated herein.)

51. On October 8, 2014, McKenna sent Miller a letter unambiguously confirming his uninterrupted and continued joint employment by ILWU and PMA.

"To Whom It May Concern:

> David L. Miller is employed by the ILWU-PMA Coast Labor Relations Committee (the CLRC) as the arbitrator for the Southern California Area. He has been serving in that position since 2002.
>
> The parties to the CLRC are the Pacific Maritime Association (PMA) of which I am the President and Chief Executive Officer and the International Longshore and Warehouse Union (ILWU). The CLRC is a body created by the PMA and ILWU under our Coast Wide Collective Bargaining Agreement. Among other things, it employs the area arbitrators who are employed full-time to arbitrate disputes that arise under the Collective Bargaining Agreement."

(A true and correct copy of McKenna's October 8, 2014 letter regarding "David L. Miller" is

attached hereto, marked as Exhibit "L," and by this reference incorporated herein.)

52. But it was too late. The retaliation by "Big Bob" McEllrath, ILWU, and PMA in refusing to pay his wages and then falsely telling the bank that he was no longer employed in retaliation for his refusal to "fix" the OCU-ILWU picketing arbitration had its intended consequences.

53. On or about October 29, 2014, as Miller's house drifted closer and closer toward foreclosure, the bank denied Miller's refinance application because he was unable to provide the bank with recent paystubs. (A true and correct copy of an email sent from Miller to McKenna on October 29, 2014 informing McKenna that the bank denied Miller's loan request is attached hereto, marked as Exhibit "M," and by this reference incorporated herein.)

54. Negotiations between ILWU and PMA continued and by January 2015, there was only one major unresolved issue --- firing Miller as the Southern California Area Arbitrator.

55. In or about January 2015, McEllrath launched into a loud profanity-laced "forty (40) minute" defamatory "tirade" in front of representatives of Miller's employers from ILWU and PMA, accusing Miller of being corrupt, taking bribes, and fixing arbitrations. In the course of his tirade, McEllrath shouted, "**Miller's got to go. He's on the take, and I'm not going to have guys taking bribes**." (emphasis added.) The false and unprivileged malicious representations of fact intentionally, recklessly or negligently published by "Big Bob" McEllrath during his **forty (40) minute** loud and profanity-laced "tirade" against Miller included, but were not limited to: "Miller's got to go. He's on the take, and I'm not going to have guys taking bribes. It's an M&M agreement. Money for Miller. I got myself in too far right now. There's no way out now. Miller has got to go!" (emphasis added.)

56. McEllrath's defamatory statements were published to high-level officers of ILWU and PMA, Miller's joint employer. The individuals to whom McEllrath's defamatory statements were published included, but were not limited to, PMA's Coast Steering Committee whose members included Larry Bennett ("Bennett") of Total Terminals International, LLC; DelConte, VP Pacific Crane Maintenance Company, LP; Phil Feldhus ("Feldhus") of International Transportation Service, Inc.; Marron,P resident of Yusen Terminals, Inc.; Chris Parvin ("Parvin")



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of Mediterranean Shipping Company, Inc.; Rosselle, VP of SSA Terminals; Dan Bergman ("Bergman") of Horizon Lines, LLC; Bal Dreyfus ("Dreyfus") of Matson Navigation Co.; Sean Lindsay ("Lindsay") of Ports America; Ochs of APM Terminals Pacific, Ltd.; Michael Porte ("Porte") of TraPac, LLC; and Bob Stephens ("Stephens") of APL Ltd. McEllrath's defamatory statements were also published to ILWU's Coast Committee members, including Ray Familate ("Familate"), Vice President of ILWU; Willie Adams ("Adams"), Secretary and Treasurer of ILWU; Ray Ortiz ("Ortiz"), ILWU Coast Committeeman; and Leal Sundet ("Sundet"), ILWU Coast Committeeman.

57. McEllrath's defamatory statements about Miller were republished (1) each time any person who heard the statements at the January 2015 meeting later repeated McEllrath's defamation about Miller to any other person not present at the January 2015 meeting; and (2) each time any person who was told about McEllrath's defamatory statements about Miller after the January 2015 meeting later repeated McEllrath's defamatory statements to any other third party.

58. McEllrath's forty (40) minute "tirade" was calculated to, and did, expose Miller to hatred, contempt, and ridicule, falsely accused him of having committed the crime of bribery, and had a tendency to injure him in his occupation of impartial arbitrator.

59. McEllrath knew that his accusations that Miller was "on the take," was "taking bribes," and had "fixed" arbitrations were false. McEllrath's statements about Miller, including, but not limited to, that Miller was "on the take," was "taking bribes," and had "fixed" arbitrations were made by McEllrath with actual malice toward Miller, were not privileged communications within the meaning of California *Civil Code* § 47(c), were motivated by McEllrath's malice toward Miller because he refused to "fix" the OCU-ILWU picketing arbitration, and were made in retaliation for Miller's refusal to illegally "fix" that arbitration.

60. McEllrath despised Miller because Miller refused McEllrath's order to "fix" the OCU-ILWU picketing arbitration and because Miller refused to commit an illegal act of ruling that the illegal picketing was "bona fide."

61. Beginning on or about January 25, 2015, Miller received reports from members of PMA's Board of Directors and the Coast Steering Committee that McEllrath had accused him of



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being "on the take," "taking bribes," and fixing arbitrations.

62. On or about January 25, 2015, DeNike – who is on PMA's Board of Directors – called Miller and told him, "Jim [McKenna] had a conversation with Big Bob [McEllrath]. Jim [McKenna] came to our Board Meeting and said, 'Big Bob [McEllrath] is claiming Miller is on the take and taking bribes. Does anyone know anything about this? I don't want to walk into a trap.'" Miller was stunned because the truth was exactly the opposite of what McEllrath told the representatives of his joint employer, PMA and ILWU. What really happened, as Miller had reported to representatives of PMA in 2011 and 2012 when he issued the Interim Award and Final Opinion and Decision holding that the illegal OCU-ILWU picket lines were non-bona fide, was that: McEllrath had ordered Miller to fix the arbitration, threatened to retaliate against him if he refused, and had falsely accused Miller of being "on the take," "taking bribes," and fixing arbitrations.

63. When Miller was finally able to recover his voice, Miller asked DeNike, "Has it really come to that? Is that where they're going with this? That I'm taking bribes? That's absolutely ludicrous!" Miller paused to catch his breath, and said, "Eddie [DeNike], you can attack me any way you want as far as my brains or personality, but you can't attack my integrity."

64. Within minutes of finishing his telephone call with DeNike, Miller then phoned Ochs, the Managing Director of APM Terminals Pacific, Ltd. Miller wanted to speak with Ochs because Ochs was physically present at the meeting where McEllrath defamed Miller. Miller asked Ochs, "Did Big Bob [McEllrath] really accuse me of being on the take and taking bribes?" Ochs replied, "Yeah, that's true." Miller then asked, "Is that what this has all come down to in negotiations?" Ochs said, "Yeah, that's it. You're it." Ochs also confirmed that McEllrath had launched into a loud and profanity-laced forty (40) minute rant against Miller during which McEllrath accused Miller of taking bribes, being on the take, and fixing arbitrations.

65. Rosselle, who was also physically present when McEllrath defamed Miller, subsequently confirmed to Miller that McEllrath accused Miller of taking bribes.

66. On Thursday, January 29, 2015, at 10:50 a.m., Ortiz, an ILWU California Coast Committeeman, telephoned Miller. In a conversation lasting approximately five (5) minutes, Ortiz



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told Miller at least five (5) times, "You're holding up the entire contract. You have to resign." Each time Ortiz told Miller "you have to resign," Miller responded, "No. I'm not resigning. I love my job. I haven't done anything wrong."

67. On Wednesday, February 4, 2015, Ortiz called Miller from PMA's San Francisco headquarters on a PMA landline. When Miller did not answer his cellphone, Ortiz's call rolled over to Miller's voicemail. Ortiz left a voice message saying that it was Ortiz calling and, "Call me back." Although Ortiz thought he had hung up the phone after leaving the voicemail message, "Call me back," he did not. Instead, Miller's cellphone continued to record Ortiz's voicemail message for more than three (3) minutes after Ortiz said, "Call me back." In the three (3) minutes of voicemail after Ortiz said, "Call me back," the voicemail on Miller's cellphone recorded a conversation between Ortiz and other ILWU Coast Negotiating members, including Bobby Olvera ("Olvera"), President of ILWU Local 13, Dan Miranda ("Miranda"), President of ILWU Local 94, and Joe Gasperov ("Gasperov"),P resident of ILWU Local 63. The three (3) minute conversation recorded on Miller's voicemail eliminates any doubt whatsoever that ILWU and PMA conspired to retaliate against Miller for refusing to fix the arbitration. Indeed, unaware that he had failed to hang up the PMA landline after saying, "Call me back," during the ensuing conversation recorded on Miller's voicemail, Ortiz used his personal cell phone to call Miller and leave him another voice message: "This is Ray, call me. I'm at PMA." Ortiz's second voicemail message for Miller was recorded on the three (3) minutes of voicemail that was still recording when Ortiz called Miller on his cellphone. (A true and correct copy of a screen shot of Miller's cell phone showing PMA's office phone number and Ortiz leaving Miller a voice message on February 4, 2015 is attached hereto, marked as Exhibit "N," and by this reference incorporated herein.)

68. Miller did not return either of Ortiz's phone calls, but has retained both voicemails that Ortiz left on Miller's cellphone on February 4, 2015.

69. Ortiz continued to badger Miller. The very next day, on February 5, 2015 at 11:58 a.m., Ortiz sent Miller an old picture of Miller walking a picket line and a text message, "I guess you forgot where you came from!" (A true and correct copy of a screen shot of Ortiz's text



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message to Miller on February 5, 2015 at 11:58 a.m. is attached hereto, marked as Exhibit "O," and by this reference incorporated herein.)

70. On February 11, 2015, McEllrath sent a letter to the "Long Shore Division Locals and Pensioners," cc'ing the "Coast Committee, ILWU Coast Longshore Division," on the subject, "Update" on the PMA-ILWU negotiations. Referring to Miller, McEllrath's letter stated, "One of the remaining issues is the question of retaining arbitrators who have **openly engaged in conduct that clearly compromises their impartiality**, including the development of close and personal relationships that affect decision-making and the failure to disclose these particular relationships **and conflicts of interest**." (A true and correct copy of McEllrath's February 11, 2015 letter to "Longshore Division Locals and Pensioners" is attached hereto, marked as Exhibit "P," and by this reference incorporated herein.) (emphasis added.)

71. In a letter dated February 22, 2015, both the ILWU and PMA admitted that they had continuously employed Miller and the other Area Arbitrators even after the ILWU/PMA collective bargaining agreement expired on July 1, 2014. (A true and correct copy of the Joint Coast Labor Relations Committee letter dated February 22, 2015 to the Area Arbitrators and Relief Arbitrators informing them that "until further notice, a temporarily modified grievance and arbitration procedure shall be in effect. . ." is attached hereto, marked as Exhibit "Q," and by this reference incorporated herein.)

72. On or about Friday, February 27, 2015, ILWU paid Herald Ugles ("Ugles"), the Washington Area Arbitrator, his full wages for all pay periods from August 15, 2014 through the last pay period of February 2015.

73. Notwithstanding ILWU and PMA's knowledge that they had continuously employed Miller and the other Area Arbitrators even after the expiration of the collective bargaining agreement on July 1, 2014, and after their February 22, 2015 letter to Miller and other Area Arbitrators confirming that "until further notice, a temporarily modified grievance and arbitration procedure shall be in effect," ILWU and PMA have continued to refuse to pay Miller for any pay period after August 15, 2014. PMA and ILWU even refused to pay Miller for the last pay period in February 2015, notwithstanding the fact that ILWU and PMA have paid Ugles, the



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Washington Area Arbitrator, his full wages for all pay periods after August 15, 2014.

74. Not only was Ugles was paid his full wages through February 27, 2015, but Terry Lane ("Lane"), the Northern California Area Arbitrator, and Jan Holmes ("Holmes"), the Oregon Area Arbitrator, continued to receive bi-monthly paychecks from August 2014 to the present.

75. ILWU and PMA have refused to pay Miller his wages earned from August 15, 2014 to the present, while paying all other similarly situated Area Arbitrators, in retaliation for Miller's refusal to "fix" the OCU-ILWU illegal picketing arbitration and to carry out "Big Bob" McEllrath's threat to Miller that if he did not "fix" that arbitration "**you'll be sorry later**" and "**you're making a big mistake**." (emphasis added.)

76. In an attempt to conceal the illegal retaliation against Miller, on or about February 27, 2015, ILWU Coast Committeeman Sundet told Ugles not to tell Miller that he was paid his full wages from August 15, 2014 to the present.

77. On Saturday, February 28, 2015, DeNike called Miller. In a stunning admission that Miller had been the victim of illegal retaliation, DeNike told Miller, "I hope you're going through with a legal case against us. You need to subpoena all of the correspondence between the Board of Directors within the last two (2) weeks. All we did was discuss the damages to you."

78. The publication and republication of "Big Bob" McEllrath's defamatory statements that Miller "was on the take," was "taking bribes," and had "fixed arbitrations" has effectively forever ended Miller's ability to earn a living as an arbitrator. No party to a collective bargaining agreement would ever hire Miller after McEllrath's defamatory statements to at least sixteen (16) high-ranking officials of his joint employer that Miller was "on the take," "taking bribes," and had "fixed arbitrations." McEllrath's false statements about Miller not only directly injured him in respect to his profession as an arbitrator by imputing to him general disqualification in the respects which the occupation of arbitrator requires, including, but not limited to, not "being on the take," not "taking bribes," and not "fixing arbitrations," but also charged Miller with having engaged in the crimes of racketeering, bribery, and accepting bribes.

79. Before McEllrath's defamation, Miller had expected to continue his career as an arbitrator until he had saved enough money to pay for the college educations of his two (2)



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grandchildren and ensure a financially secure retirement for him and his wife. Miller had planned to work as an arbitrator well into his late seventies (70s), which is typical not only for Area Arbitrators jointly employed by ILWU and PMA, but for most arbitrators hearing grievances in Southern California under collective bargaining agreements.

80. As a result of ILWU, PMA, and McEllrath's retaliatory refusal to pay Miller after August 15, 2014, Miller has been forced to drain his IRA retirement account in order to pay for his living expenses. Miller has been unable to refinance his home and is left paying a high interest rate, not to mention the emotional and mental pain and suffering it has inflicted on Miller and his wife, Shawn Nolls ("Nolls").

## III.

## FIRST CAUSE OF ACTION

**DEFAMATION IN VIOLATION OF COMMON LAW AND *CIVIL CODE* §§ 45 AND 46**

**(Against Defendants Pacific Maritime Association, International Longshore and Warehouse Union, Robert McEllrath, and/or Does 1-50, inclusive)**

81. Plaintiff realleges and incorporates by reference all preceding paragraphs of this Verified Complaint as though fully alleged herein.

82. Plaintiff is informed and believes that Defendants PMA, ILWU, McEllrath, and/or Does 1-50, and each of them, by the herein-described acts, conspired to, and in fact, did negligently, recklessly, and intentionally cause excessive and unsolicited internal and external publications of defamation, of and concerning Plaintiff, to third persons and to the community. These false and defamatory statements included express accusations that Miller was "on the take," "taking bribes," and fixing arbitrations.

83. While the precise dates of these publications are not known to Plaintiff, these express defamatory publications were published and republished by Defendants McEllrath, PMA, ILWU, and their agents and employees, including, but not limited to, McEllrath, DeNike, Ochs, Rosselle, and Marron. Moreover, McEllrath, PMA, ILWU, and their agents and employees have republished McEllrath's defamatory statements about Miller to other third parties known and unknown to Miller including, but not limited to, McKenna, the President of PMA.



03/11/2015