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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 ERIC ALDAPE,

14 Plaintiff,

15 v.

16 International Longshore and
17 Warehouse Union; Local 13 and,
18 DOES 1 through 50, inclusive,

19 Defendants

CASE NO. 2:18-cv-00624 AB(SKx)

FIRST AMENDED COMPLAINT FOR DAMAGES FOR:

- 1. **BREACH OF THE DUTY OF FAIR REPRESENTATION;**
- 2. **BREACH OF CONTRACT; and,**
- 3. **VIOLATION OF FREE SPEECH RIGHTS**

REQUEST FOR JURY TRIAL

20 Plaintiff, Eric Aldape, hereby asserts the following allegations:

INTRODUCTION and PARTIES

21 1. Eric Aldape (hereinafter "Aldape" or "PLAINTIFF") joined the
22 International Longshore and Warehouse Union in July of 1999. He was,
23 and continues to be, a dues-paying member and his employment was
24 consistent with the average longshoremen until 2009. At various times
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1 throughout his tenure within Local 13, he has held various positions,
2 including that of an ILWU Caucus Delegate. At all times herein mentioned,
3 Mr. Aldape is a citizen of the United States and a resident of Long Beach,
4 County of Los Angeles, State of California.

5 2. During his tenure as a working ILWU member, he has exercised
6 his right to voice his concerns regarding the political environment and day-
7 to-day administration of the UNION. Mr. Aldape exercised his right to free
8 speech through the creation and publication of cartoons, writings and
9 statements, which tended to be critical of the Union and its leadership. In
10 an effort to quell Mr. Aldape's communications, the UNION leadership
11 began to target him in a campaign of harassment, endless, unfounded
12 grievances based on the wholly erroneous application of the CBA and
13 indiscriminate and capricious arbitrations, totaling fourteen (14). These
14 arbitrations occurred over a period of nine years and eventually ended the
15 career of Mr. Aldape by his permanent deregistration on July 31, 2017. As
16 described more fully below, this occurred at the conclusion of the twelfth
17 (12th) arbitration, which is the arbitration at issue here.

18 3. A Defendant in this action is the International Longshore and
19 Warehouse Union (hereinafter "ILWU"). The executive offices for ILWU are
20 located in San Francisco, California. The ILWU workforce on the West
21 Coast ports employs more than 14,000 workers who receive a
22 compensation package that is among the most lucrative among all blue-
23 collar workers in the United States. Full-time workers earn an average of
24 \$161,000 annually in wages, along with a non-wage benefits package
25 costing more than \$100,000 per active worker per year.¹

26
27 ¹ The next high paying blue collar job is that of elevator repair and
28 construction. On average they earn \$73,560 annually, or \$35.37 an hour.

1 4. Workers are also eligible for a pension that has seen major
2 upgrades in recent years, with a current maximum benefit of nearly
3 \$89,000 per year. Workers have access to a 401(k) savings plan with an
4 employer contribution, as well as thirteen (13) paid holidays each year and
5 up to six weeks of paid vacation.

6 5. Local 13 is also a Defendant in this action. Local 13 is located in
7 San Pedro, California. Local 13 is one of many local divisions of the ILWU
8 which governs the workers in the Long Beach/Los Angeles Harbor –
9 combined, it is the sixteenth (16th) largest port in the world with respect to
10 tonnage shipped and or received. (ILWU and Local 13 are hereinafter
11 jointly referred to as the "UNION" or "DEFENDANT UNION.")

12 6. Over the past eight years, Mr. Aldape has held certain positions
13 in the governance of DEFENDANT UNION. Mr. Aldape was deregistered as
14 a result of an arbitration in which the UNION failed to represent him. The
15 UNION's failure to represent Mr. Aldape is manifested in a number of ways
16 set forth below.

17 7. As a member of Local 13, Mr. Aldape was subject to a Collective
18 Bargaining Agreement (hereinafter, "CBA"), the Pacific Coast Longshore
19 Contract Document for clerks and related classifications ("PCLCD")
20 (hereinafter, variously referred to as the "CBA" or "PCLCD"). Section 13.1
21 of the PCLCD prohibits discrimination. In pertinent part:

22 There shall be no discrimination ... either in favor of or against
23 any person because of membership or nonmembership in the
24 Union, activity for or against the Union or absence thereof, race,
25 creed, color, sex (including gender, pregnancy, sexual
26 orientation), age (forty or over), national origin, religious or

27 The top 10% of them draw in six-figure salaries. There are few (if any),
28 health and retirement benefits to compare to those of the ILWU.

1 political beliefs, disability, protected family care or medical leave
2 status, veteran status, political affiliation or marital status. Also
3 prohibited by this policy is retaliation of any kind for filing or
4 supporting a complaint of discrimination or harassment.

5 8. At issue here, Section 13.2 of the PCLCD provides, in pertinent
6 part: "All grievances and *complaints alleging incidents of discrimination or*
7 *harassment ... in connection with any action subject to the terms of this*
8 *Agreement based on race, creed, color, sex ...age, national origin, or*
9 *religious or political beliefs or alleging retaliation of any kind for filing or*
10 *supporting a complaint of such discrimination or harassment, shall be*
11 processed solely under the Special Grievance/Arbitration Procedures For
12 The Resolution of Complaints Re Discrimination and Harassment Under the
13 Pacific Coast Longshore & Clerk's Agreement." (Emphasis added.)

14 9. The PCLCD requires Union members to submit any grievances
15 related to their employment to binding arbitration.

16 10. The cause of Mr. Aldape's deregistration was the failure of
17 DEFENDANT UNION to fairly and adequately represent him by ratifying and
18 condoning the misinterpretation of the plain meaning of Section 13.2 and
19 its wholly erroneous application to the subject matter at issue in a multitude
20 of vexing arbitrations. These repeated efforts to quell Mr. Aldape's right to
21 free speech led to his loss of one year of work and eventual deregistration
22 – a permanent expulsion from working for any member companies of the
23 *Pacific Maritime Association* (hereinafter "PMA").

24 11. PMA is effectively the "employer" for all ILWU workers in the
25 Long Beach/Los Angeles Harbor. A handful of companies, who are not one
26 of the thirteen members of PMA, continue to utilize ILWU workers.
27 However, this has not been the case in the Long Beach/Los Angeles Harbor
28 for several years. When Mr. Aldape was deregistered, it was a prohibition

1 against working for any of the thirteen (13) member companies of PMA –
2 effectively, all of the available employers in the Long Beach/Los Angeles
3 Ports.

4 12. Mr. Aldape, like many ILWU members, comes from a family of
5 longshoremen. ILWU membership is not easily obtained, but once gained,
6 provides a prosperous and secure income for longshoremen and women
7 and their families.

8 13. Mr. Aldape's wife is disabled and the ability to replace the family
9 income cannot occur in the absence of his return to work as a
10 longshoreman.

11 14. In addition to the deregistration determination of the arbitration
12 at issue, Mr. Aldape contends that there has been a breach of the duty of
13 fair representation and breach of contract in connection with the way in
14 which the arbitration was investigated, prepared and handled and that he
15 was wrongfully terminated.

16 15. Mr. Aldape will establish a breach of DEFENDANT UNION's duty
17 of fair representation, by a showing that the conduct of the UNION was
18 "arbitrary" and in "bad faith." Arbitrary, as used in Section 12, has been
19 defined to include conduct, which is perfunctory, reckless or indifferent to
20 Mr. Aldape's interests. The UNION acted in bad faith by the exercise of ill
21 will, hostility and revenge toward Mr. Aldape in its efforts to quell his right
22 to free speech.

23 16. In the grievance context, this standard prohibits a union from
24 processing a grievance in a perfunctory way, or in this case, in a manner
25 deliberately intended to mislead and support an interpretation of the CBA,
26 *section* 13.2 that was undisputedly erroneous.

27 17. In this instance, and as set forth below, the act(s) of omission
28 by the DEFENDANT UNION were so egregious and unfair as to be arbitrary,

1 thus constituting a breach of the duty of fair representation. There was no
2 rational and proper basis for the UNION's conduct.

3 18. As set forth below – repeatedly, over a period of many years,
4 the UNION utterly and completely remained silent in the face of what was
5 clearly and undisputedly a twisted and specious interpretation and
6 application of a Section 13.2 in such a way as to cause Mr. Aldape to be
7 found “guilty” of unfounded grievances. These findings resulted in fines,
8 penalties and the loss of work, culminating in deregistration. Not once did
9 DEFENDANT UNION come to Mr. Aldape's defense or clarify the plain
10 meaning of the Rule used to persecute and eventually deregister
11 PLAINTIFF. Instead, officers of Local 13 and ILWU members who were the
12 subject of Mr. Aldape's criticism for fraud and unlawful conduct, utilized a
13 provision of the PCLCD inapplicable to their complaints, so as to penalize
14 Mr. Aldape and to cause his deregistration. The UNION failed to represent
15 Mr. Aldape in the full and complete knowledge that the PCLCD was being
16 misused and twisted in such a fashion as to cause him hundreds of
17 thousands of dollars of financial loss, the loss of substantial benefits and
18 eventually, the ability to support his family.

19 19. The shame and humiliation of losing a position in what was
20 effectively the “family business” and ultimately costing him a career that
21 was the lynchpin of the support of his family, including the education of his
22 children, the security of adequate medical, dental and eye care and a
23 secure retirement that he worked years to obtain, has been insufferable for
24 Mr. Aldape and for his family.

25 **JURISDICTION & VENUE**

26 20. This is an action for money damages in excess of \$75,000
27 brought pursuant to the *Labor Management Relations Act* (LMRA) § 301(29
28 U.S.C. § 185) and *Labor Management Reporting and Disclosure Act of 1959*

1 (LMRDA) Section 101(a)(2) (29 U.S.C. section 411(a)(2). Jurisdiction of this
2 Court is invoked under 28 *U.S.C.* §§ 1931 & 1341, (2), (3) & (4),
3 1343(a)(3)(4), LMRDA section 102 (29 U.S.C. section 412) and the
4 aforementioned statutes; PLAINTIFF further invokes the supplemental
5 jurisdiction of this Court to hear and decide claims arising under state law.

6 21. The acts and omissions complained of herein arose within the
7 County of Los Angeles at the office of the ILWU located in San Pedro,
8 California, the executive offices of the ILWU located in San Francisco,
9 California and at such location as the arbitration of Complaint SPSC-0006-
10 2017 (the subject of this lawsuit), at the Pacific Maritime Association, 1
11 World Trade Center, Suite 1700, Long Beach, California. Therefore, venue
12 is proper before this Court.

13 22. The acts/omissions complained of herein began sometime in
14 2009, and have continued to the present. The relevant arbitration and the
15 subject of this lawsuit was filed on March 10, 2017, and decided on July 10,
16 2017. The matter was taken up on appeal. On July 31, 2017, the
17 arbitrator's award was affirmed.

18 23. PLAINTIFF is informed and believes and thereon alleges that at
19 all times relevant herein, each DEFENDANT was and is the agent, servant,
20 employee, partner, joint venturer, assistant, supervisor, consultants of each
21 and every other DEFENDANT, and as such was at all times acting within the
22 course, purpose, scope, and authority of said agency, partnership, and
23 employment, and acting with the express or implied knowledge, permission,
24 authority, approval and consent of every other named and unnamed
25 DEFENDANT.

26 24. PLAINTIFF is informed and believes and thereon alleges that the
27 true names and official capacities of DEFENDANTS designated as DOES 1-
28 50, inclusive, are unknown to PLAINTIFF, who therefore sues these

1 DEFENDANTS by such fictitious names. PLAINTIFF will seek leave of Court
2 to amend his complaint to show the true names and capacities of these
3 DEFENDANTS when they have been ascertained.

4 25. All of the DEFENDANTS are sued in their individual and official
5 capacities.

6 26. PLAINTIFF is informed and believes and thereon alleges that
7 DEFENDANTS, including DOES 1-50, as employees and agents of ILWU and
8 Local 13, have a responsibility either for making policy or for implementing
9 and enforcing and defending Mr. Aldape, as required by law and under the
10 terms and conditions of the CBA and to do so in a fair and non-
11 discriminatory manner.

12 27. PLAINTIFF is informed and believes and thereon alleges that
13 DEFENDANTS, including DOES 1-50, consciously, willfully, intentionally,
14 knowingly, recklessly, vicariously and/or otherwise tortuously caused the
15 damages proximately thereby to PLAINTIFF as hereinafter alleged, either
16 through DEFENDANTS' own conduct or through the conduct of ILWU and
17 Local 13's agents, servants, partners, joint venturers, and employees, and
18 each of them, or in some other manner. All actions of each DEFENDANT
19 were ratified and approved by every other DEFENDANT. PLAINTIFF further
20 alleges on information and belief that all of the actions alleged herein were
21 taken pursuant to the customs, policies, and practices of the management
22 and officers of ILWU and Local 13 during the relevant time period.

23 **FACTS**

24 28. Mr. Aldape was active in union activities and was elected to
25 various positions, including the Grievance Committee, Executive Board and
26 was a Caucus Delegate. He is and was an outspoken and active critic of
27 union members who engage in conduct he alleges is unlawful, fraudulent or
28 not in the best interests of the UNION.

1 29. Mr. Aldape repeatedly published articles, cartoons and flyers
2 which contained caricatures, cartoons and exaggerations of union officials
3 and the political, ethical and financial issues facing the UNION. Many of
4 these publications placed the UNION and various union members in an
5 unfavorable light. However, NONE were discriminatory or harassing to
6 trigger application of Section 13.2.

7 30. The CBA mirrors the *California Fair Employment and Housing*
8 *Act*, (§§ 12900-12907) and *Title VII of the Civil Rights Act* of 1964, in
9 particular, the section(s) dealing with discrimination based on protected
10 class. As a result of his active pursuit of fair political comment on union
11 matters in the form of writings, flyers, cartoons and outspoken language,
12 Mr. Aldape was the subject of fourteen (14) grievances filed erroneously
13 under Section 13.2.

14 31. Dismayed by the gross misuse of Section 13.2 in regards to
15 grievances against Mr. Aldape, PMA, the employer of Mr. Aldape and a
16 signatory to the CBA, offered a legal opinion to DEFENDANT UNION that
17 their use of 13.2 clearly was in violation of both the letter of the CBA and
18 the intentions of the signers/drafters - PMA and ILWU.

19 32. The November 21, 2012 letter from Richard Marzano, Coast
20 Director, Contract Administration and Arbitration, PMA, in reference to
21 Grievance SP-0032-2012 (as discussed more fully below), reads, in
22 pertinent part:

23 Recall the CLRC's February 19, 2002 letter to the Coast Appeals
24 Officer clarifying Section 13.2's procedures. In it, the
25 Committee clearly stated, by quoting from Section 13.2, that
26 Section 13.2 is **limited** to claims "alleging discrimination or
27 harassment (including hostile work environment) in connection
28 with any actions subject to this Agreement based on [1] race,

1 [2] creed, [3] color, [4] sex (including gender, pregnancy,
2 sexual orientation), [5] age (forty or over), [6] national origin,
3 or [7] religious or political beliefs, or [8] or alleging retaliation of
4 any kind for filing or supporting a complaint of such
5 discrimination or harassment." (Emphasis added.)

6 If Section 13.2 is limited to claims alleging discrimination or
7 harassment on at least one of the eight listed bases, then findings of
8 violations of Section 13.2, and discipline imposed under Section 13.2,
9 must require findings of discrimination or harassment on a least one
10 of the 8 listed bases. The Area Arbitrator's decision fails to mention
11 discrimination or harassment on any of those bases.

12 **SUMMARY OF GRIEVANCES AGAINST MR. ALDAPE, THE**
13 **ERRONEOUS APPLICATION OF SECTION 13.2, AND THE**
14 **VIOLATION OF FREE SPEECH RIGHTS**

15 33. Evidence of the arbitrary and capricious misapplication of
16 Section 13.2 in order to quell Mr. Aldape's free speech rights is illustrated
17 by the following summary of grievances.

18 34. Grievance SP-0005-2009 was filed on September 9, 2009 by
19 Marguarite Droege (Jurisic), daughter of Mark Jurisic, an ILWU member,
20 elected to the position on the Executive Board and Business Agent. It
21 included allegations that Mr. Aldape was circulating a flyer accusing her of a
22 failed drug test, which was then "covered up" by her father. She claimed,
23 "Now my reputation has been smeared and I am humiliated." Ms. Droege
24 goes on to say that she is being "harassed" by virtue of a drug test which
25 was failed and disclosed. Importantly, there is no allegation of
26 discrimination, harassment, or retaliation, triggering application of 13.2.

27 The decision was tendered on October 5, 2009. Stunningly, the
28 arbitrator found each of Aldape's flyers to be in violation of 13.2 policy: "It

1 *is a violation to print and distribute printed material that depicts a person's*
2 *personal being in a derogatory manner...* Mr. Eric Aldape is found guilty [by
3 Arbitrator David Miller] of violating Section 13.2 policy." Mr. Aldape was
4 assessed thirty (30) days off without pay and ordered to attend "diversity
5 training." Clearly, 13.2 was inapplicable. A "derogatory depiction," without
6 being tied to a *protected* class, is a gross misapplication of the Rule. The
7 matter was appealed and upheld.

8 35. Grievance SP-0010-2009 was filed on October 2, 2009, by
9 Steven M. Bebich. Mr. Bebich was elected to the Executive Board, was a
10 dispatcher, and Caucus Delegate. "*Mr. Aldape has distributed fliers about*
11 *me during the elections of this year. However this time he went too far, he*
12 *threatened to reveal what he alleges to be my criminal history to the*
13 *membership.*" "Mr. Eric Aldape is found guilty of violating Section 13.2
14 Policy...and sentenced to 60 days off all work." This was a finding by
15 Arbitrator David Miller, who erroneously applied 13.2 to the facts.

16 36. Grievance SP-0002-2010 was filed on March 6, 2010 by Mark
17 Jurisic who accused Mr. Aldape of *throwing a flyer at him (Jurisic) and*
18 *telling him to take it to his "daddy."* In this instance, the arbitrator found
19 that the "...grievance does not meet the criteria of a 13.2 violation." This
20 was a finding by Arbitrator David Miller.

21 37. Grievance SP-0026-2011 was filed on July 28, 2011, by Mike
22 Bebich who complained that Mr. Aldape distributed political flyers "*... in*
23 *retaliation of my political beliefs because I was scheduled to testify against*
24 *Mr. Aldape in an NLRB Court Hearing.*" He claims Mr. Aldape "*...is engaging*
25 *in harassment and intimidation by inviting the membership to attend an*
26 *NLRB Court Hearing.*" In an August 8, 2011 letter, Arbitrator Miller writes,
27 "[t]he grievance does not meet the criteria of a 13.2 violation."

28 / / /

1 38. Grievance SP-0027-2011 was filed by Mark Jurisic on July 26,
2 2011, and *accused Mr. Aldape of distributing a flier that "stated the union*
3 *was spending its money to protect "their buddies and their buddies casual*
4 *kid."* In a letter dated August 8, 2011, Arbitrator Miller found the
5 "grievance does not meet the criteria of a 13.2 violation."

6 39. Grievance SP-0032-2012 was filed on September 28, 2012, by
7 Christopher Viramontes, the Secretary/Treasurer of Local 13. Mr.
8 Viramontes was a powerful person in Local 13 and held positions on the
9 Executive Board and was a Caucus Delegate. He claims, "*Brother Aldape*
10 *printed false statements to try and influence members during longshore*
11 *elections which took place from September 25-27, 2012. What is even*
12 *more offensive is the cartoon he drew on the back of his flyer. He drew a*
13 *picture of me in a nurse's uniform wearing a nurse's cap with the initials P*
14 *+ M on the hat."* (P and M refers to Port Medical.) Mr. Viramontes was
15 under investigation for medical fraud. There was a letter from PMA asking
16 that the grievance against Mr. Aldape be dismissed and stating the
17 inapplicability of Section 13.2 to such allegations. Mr. Aldape was found
18 guilty of violating Section 13.2 policy and assessed 180 days off work by
19 Arbitrator Miller. After appeal, Coast Appeals Officer, Rudy Rubio assessed
20 an *additional* 180 days off, suspended. Again, there were no allegations
21 that Mr. Viramontes was being harassed or discriminated against under the
22 aegis of a protected class, a clear misapplication of Section 13.2.

23 40. Grievance SP-0017-2013 was filed on July 3, 2013, by
24 Christopher Viramontes, who complained that Eric Aldape *committed an act*
25 *of retaliation by physically assaulting Viramontes on July 3, 2013, in close*
26 *proximity to the Local 13 business office located at 630 S. Centre Street,*
27 *San Pedro, California because of a past Section 13.2 complaint (SCGM*
28 *0009-2012).* Mr. Aldape was found guilty of retaliation by assaulting Mr.

1 Viramontes and was sentenced to 540 days off by Arbitrator David Miller.
2 Mr. Aldape appealed the decision and his appeal was denied. Presumably,
3 this retaliation was for the unfounded decision in September 2012, nearly
4 one year after the purported finding that a cartoon implicating Viramontes
5 in medical fraud that was a misapplication of 13.2. Nexus in time is a
6 critical consideration in a determination of claims of retaliation. The
7 allegation of "retaliation" occurred one year after the claimed violation.
8 Moreover, the purported retaliation was NOT subject to 13.2.

9 41. Grievance SPSC-0005-2016 was filed on March 14, 2016, by
10 Lawrence Toledo who complained that *Eric Aldape violated the 13.2 policy*
11 *in retaliation for Toledo's participation in a 13.2 hearing that occurred in*
12 *March 8, 2016, based on a flyer with drawings of rats and an internet*
13 *posting.* Mr. Toledo was a member of the grievance committee. Mr.
14 Toledo did not show up at the March 24, 2016 hearing and the arbitrator
15 dismissed the case. Mr. Toledo then filed an appeal of the dismissal, the
16 dismissal was reversed and a hearing was scheduled for May 13, 2016. Mr.
17 Aldape was found not guilty by Arbitrator Mark Mascola.

18 42. Grievance SPSC-0008-2016 was filed on March 18, 2016, by
19 *John William Seixas who complained that Aldape violated the Section 13.2*
20 *policy based on a flyer with drawings of rats.* Seixas claims the image is
21 anti-Semitic and is in relation to his Jewish ancestry. Mr. Seixas was a
22 member of the grievance committee. The flyer was released the same day
23 another grievance was posted on the internet. Seixas indicates he does not
24 feel safe either coming or going from the dispatch hall, worksite or his own
25 home. Mr. Aldape was found not guilty by Arbitrator Mark Mascola.

26 43. Grievance SPSC-0032-2016 was filed on August 28, 2016, by
27 John Seixas. *His complaint involves political cartoon flyers made by Mr.*
28 *Aldape that were posted, removed, and then reposted by Mr. Aldape.* Mr.

1 *Seixas claims that Mr. Aldape physically assaulted him when Mr. Seixas was*
2 *trying to remove the flyers again.* The arbitrator, on October 5, 2016,
3 initially denied a hearing, but Mr. Seixas appealed that decision and the
4 matter was set for a hearing on October 14, 2016. Mr. Aldape was found
5 guilty of prohibited conducted in violation of Section 13.2 and disciplined
6 one year off work. He also was required to attend unpaid diversity training,
7 review a training video without pay and agree by signature to abide by the
8 policy by Arbitrator Ron Merial. After several appeals, Mr. Aldape was
9 allowed to delay his unpaid time off to begin on January 1, 2017.

10 44. Grievance SPSC-0001-2017 was filed on February 6, 2017, by
11 John Seixas claiming retaliation under Section 13.2 in that Aldape
12 "continues to work in violation of the arbitrator's ruling and Aldape is
13 breaking confidentiality by allegedly posting about the proceedings on the
14 internet." A hearing under Section 13.2 was denied by Arbitrator Merial,
15 but appealed by Mr. Seixas. The decision was reversed only as to the
16 internet postings. At the April 3, 2017 arbitration, Mr. Aldape was found
17 not guilty by Arbitrator Ron Merial.

18 45. Grievance SPSC-0006-2017, at particular issue in the instant
19 matter, and resulting in the deregistration of Mr. Aldape, was filed on March
20 10, 2017 by Christopher Viramontes. *Mr. Viramontes claims Mr. Aldape*
21 *posted a complaint by PMA against Mr. Viramontes on the internet in*
22 *retaliation for complaints filed by Mr. Viramontes against Mr. Aldape, which*
23 *has caused a hostile work environment.* (Emphasis added.) The Complaint
24 by PMA accused Mr. Viramontes of defrauding the ILWU Benefits Plan
25 through a business, Port Medical. Port Medical representatives were paying
26 ILWU members to bill for false claims and fabricating billing records.
27 Cohorts of Mr. Viramontes were similarly accused and subsequently
28 convicted of fraud. The Complaint against Mr. Viramontes was a matter of

1 public record available to anyone in the UNION and, thus, was not
2 confidential.

3 46. The Complaint by Viramontes, against Mr. Aldape, importantly
4 made no mention of discrimination or harassment or retaliation involving
5 any protected class. Mr. Viramontes wrote, "As a result of this complaint
6 being posted on the website, a very hostile work environment has taken
7 place for me on the job. I've had members say volatile things to me on the
8 job, phone calls and even other family members who work as
9 longshoreman or Clerks have been questioned." It is understandable that
10 Mr. Viramontes, accused of defrauding his fellow union members by his
11 employer, would experience the ire of union members. Moreover, the last
12 "act" of Mr. Aldape for which he was (unfairly) disciplined under 13.2, was
13 in September 2012, in regards to Mr. Viramontes. Four years is a distant
14 nexus from posting the PMA fraud allegations in 2017, so as to substantiate
15 a claim of retaliation (improperly filed) under 13.2.

16 47. Arbitrator Mark Mascola based the deregistration of Mr. Aldape
17 not only on Grievance SPSC-0006-2017, but on prior and equally misguided
18 decisions. "*Past 13.2 hearings involving Aldape provide unmistakable*
19 *precedent that Aldape has knowledge and awareness of the guidelines,*
20 *penalties, and wording within the Pacific Coast Special Grievance*
21 *Handbook.*" Clearly, the arbitrator had no such knowledge or
22 understanding.

23 48. There were no allegations based on race, creed, color, sex
24 (including gender, pregnancy, sexual orientation), age (forty or over),
25 national origin, or religious or political beliefs, or alleging retaliation
26 supporting a complaint of discrimination or harassment. Nonetheless, Mr.
27 Aldape was found guilty of Section 13.2, and deregistered. Mr. Aldape
28 ///

1 appealed the decision. The decision was affirmed on July 31, 2017, by
2 Coast Appeals Officer, Larry Schwerin.

3 49. In addition to the incorrect application of Section 13.2 and
4 resulting decisions, the arbitration proceedings were rife with procedural
5 errors. Evidence was not admitted and critical testimony was not taken.
6 The Arbitrator, a dues-paying union member, Mark Mascola, was a known
7 enemy of Mr. Aldape who had assaulted him and threatened, in the
8 presence of several individuals to kill Mr. Aldape. The issue of the
9 Arbitrator's bias was considered on appeal and rejected.

10 50. Grievance SPSC-0011-2017 was filed on March 23, 2017, post-
11 deregistration, by Lawrence Toledo, who claimed text messages from Eric
12 Aldape were based on his race and religion and in retaliation for a
13 complaint Mr. Toledo filed against Mr. Aldape. Mr. Toledo also claims that
14 Mr. Aldape posted articles on the internet attacking him as another form of
15 retaliation.² Mr. Aldape was found not guilty of retaliation as the Arbitrator
16 indicates the correspondence was mutual and outside of the workplace.

17 51. Grievance SPSC-0013-2017 was filed on March 29, 2017, by
18 John Seixas who claimed Mr. Aldape was breaking the confidentiality clause
19 with his flyer, "Free Speech We Must Preach," alleging harassment (talking
20 over him) at a JPLRC meeting and distribution of a flyer entitled "Two BA's
21 for the price of one," which Mr. Seixas believes is threatening. Mr. Aldape
22 was found not guilty of prohibited conduct in violation of Section 13.2.

23 ///

24 ///

25 _____
26 ² It should be noted that while Mr. Aldape was "de-registered" and
27 therefore had no ability to work for any of the PMA companies (the
28 employer to the CBA), he nonetheless has remained a dues paying member
of the ILWU.

1 **FIRST CAUSE OF ACTION**
2 **BREACH OF THE DUTY OF FAIR REPRESENTATION**
3 **LABOR MANAGEMENT RELATIONS ACT (LMRA) § 301**
4 **(29 U.S.C. § 185)**

5 [Against All Defendants]

6 52. PLAINTIFF realleges and incorporates by reference paragraphs
7 1 through 51 of this Complaint inclusive of this paragraph as though said
8 paragraphs were fully set forth herein.

9 53. Mr. Aldape effectively was discharged from employment by
10 DEFENDANTS' unlawful conduct leading to Mr. Aldape's deregistration
11 from working for PMA.

12 54. The discharge was without just cause as a result of the
13 erroneous application of provisions of the CBA.

14 55. The UNION breached its duty to fairly represent the
15 PLAINTIFF's interests under the collective bargaining agreement. They
16 engaged in conduct deliberately intended to prevent Mr. Aldape from
17 retaining a valuable and irreplaceable job. Additionally, the UNION
18 engaged in arbitration practices which were not in accordance with
19 designated procedures, which were intended to, and did rob, Mr. Aldape of
20 procedural due process.

21 56. There was no just cause under the law. The allegations against
22 Mr. Aldape were falsified and he was wrongly charged. The Cause
23 articulated by DEFENDANTS, "violation of 13.2" is an arbitrary and
24 capricious justification, and just plain wrong. DEFENDANTS acted in bad
25 faith and in a manner that no reasonable union would behave.

26 57. In the instant matter, the UNION exercised its considerable
27 discretion to twist and misuse the CBA so as to breach their duty of fair
28 representation and acted in bad faith and in an arbitrary and discriminatory

1 manner. The UNION then failed to process the grievance in a manner
2 intended to protect the rights of Mr. Aldape. The Arbitrator of the decision
3 to deregister Mr. Aldape was a known enemy of Mr. Aldape who had
4 assaulted him and threatened, in the presence of several individuals, to kill
5 the PLAINTIFF. Yet, this was the arbitrator assigned to and responsible for
6 the deregistration of Mr. Aldape.

7 58. DEFENDANTS acted in "bad faith." There is substantial
8 evidence of fraud, deceitful action, and dishonest conduct on the part of
9 DEFENDANT UNION.

10 **SECOND CAUSE OF ACTION**

11 **BREACH OF CONTRACT**

12 [Against All Defendants]

13 59. PLAINTIFF realleges and incorporates by reference paragraphs
14 1 through 58 of this Complaint inclusive of this paragraph as though said
15 paragraphs were fully set forth herein.

16 60. During the course of PLAINTIFF's membership, PLAINTIFF's
17 bargaining representative, LOCAL 13, was party to a Collective Bargaining
18 Agreement with PMA which provided certain terms and conditions of
19 employment governing certain ILWU employees. As a member of LOCAL
20 13 and an employee of PMA, PLAINTIFF's employment was covered by the
21 CBA.

22 61. From 2009 to 2017, the UNION used the CBA, and its collective
23 powers, to persecute Mr. Aldape for his right to free speech, and to violate
24 the agreements under the CBA such that Mr. Aldape lost more than one
25 year of paid time and eventually was deregistered.

26 62. The violation of the CBA constitutes a breach of the collective
27 bargaining agreement between Mr. Aldape, a member of DEFENDANT
28 UNION, and PMA.

1 69. DEFENDANTS severely infringed on Mr. Aldape's freedom of
2 speech by attempting to confiscate Mr. Aldape's protected communications,
3 removing his communications from the internet and Union halls, and filing
4 unfounded grievances based on the wholly erroneous application of the
5 CBA, and conducting multiple, groundless arbitrations, fourteen (14) total.

6 **PRAYER**

7 Wherefore, PLAINTIFF seeks judgment against DEFENDANTS:

- 8 1. For injunctive and declaratory relief as permitted, according to
- 9 statutes set forth above;
- 10 2. For general damages in accordance to proof;
- 11 3. For special damages according to proof;
- 12 4. For punitive and exemplary damages according to proof;
- 13 5. For attorney's fees and costs;
- 14 6. For costs of suit; and,
- 15 7. For such other and further relief as the court may deem proper.

16 Dated: February 20, 2018

ANDREA COOK & ASSOCIATES

17 By: _____ /s/

18 Andrea L. Cook

19 Attorneys for Plaintiff,

20 ERIC ALDAPE

21 **REQUEST FOR JURY TRIAL**

22 Plaintiff ERIC ALDAPE hereby requests a jury trial in this matter.

23 Dated: February 20, 2018

ANDREA COOK & ASSOCIATES

24 By: _____ /s/

25 Andrea L. Cook

26 Attorneys for Plaintiff,

27 ERIC ALDAPE

28