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17 ERIC ALDAPE

18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 ERIC ALDAPE,) CASE NO. 2:18-cv-624 AB (SKx)
21) [Assigned to Hon. Andre Birotte, Jr.]
22 Plaintiff,)
23) **JOINT STIPULATION TO ALLOW**
24 v.) **PLAINTIFF TO FILE A FOURTH**
25) **AMENDED COMPLAINT FOR**
26 International Longshore and) **DAMAGES**
27 Warehouse Union; Local 13 and,)
28 DOES 1 through 50, inclusive,) **([PROPOSED] ORDER FILED**
) **CONCURRENTLY HEREWITH)**
)
)
)

29 Plaintiff ERIC ALDAPE (hereinafter "Plaintiff") and Defendants
30 International Longshore and Warehouse Union (sometimes referred

1 herein as "ILWU"), Local 13 and Pacific Maritime Association (collectively
2 "Defendants"), by and through their respective counsel, hereby submit
3 the following Joint Stipulation and request that this Court grant Plaintiff
4 leave to amend and file a Fourth Amended Complaint pursuant to Rule
5 15(a)(2) of the *Federal Rules of Civil Procedure*:

6 1. On January 24, 2018, Plaintiff filed his Complaint for Damages
7 against ILWU and Local 13 in the United States District Court, Central
8 District of California.

9 2. On February 20, 2018, Plaintiff filed his First Amended
10 Complaint for Damages against ILWU and Local 13 in the United States
11 District Court, Central District of California.

12 3. On March 28, 2018, pursuant to a stipulation by the parties
13 and agreement by the Court, Plaintiff filed his Second Amended Complaint
14 for Damages against ILWU and Local 13 in the United States District
15 Court, Central District of California.

16 4. After ILWU and Local 13's Motion for Joinder to add PMA as a
17 Defendant, the Court ordered Plaintiff to file a Third Amended Complaint
18 which was done on May 16, 2018.

19 5. Defendant Local 13 filed its Answer on May 30, 2018.
20 Defendant International Longshore and Warehouse Union filed its Answer
21 and a Counterclaim on May 30, 2018. Pacific Maritime Association filed its
22 Answer on July 2, 2018, pursuant to an extension of time.

23 6. Plaintiff filed an Answer to Defendant International Longshore
24 and Warehouse Union's Counterclaim on June 20, 2018.

25 7. On November 27, 2018, Plaintiff circulated, by email, a
26 proposed Fourth Amended Complaint to Defense counsel. A conference
27 call was held on December 7, 2018, during which a stipulation agreeing to
28 a Fourth Amended Complaint was discussed. Defense counsel took it

1 under advisement and informed Plaintiff’s counsel that it would agree to
2 stipulate to the Fourth Amended Complaint in exchange for Plaintiff’s
3 agreement not to contest a request by Defendants for a reasonable
4 additional amount of time (beyond the 7 allowable hours), for the
5 deposition of Plaintiff. A separate stipulation will be presented to the
6 Court regarding this agreement.

7 8. The parties agree that Defendants’ responsive pleadings will
8 be due 30 days from the date of the filing of the Fourth Amended
9 Complaint.

10 NOW THEREFORE, the parties hereby stipulate and request the
11 Court grant Plaintiff leave to amend and file a Fourth Amended Complaint
12 in this action with a responsive pleading due 30 days after the Fourth
13 Amended Complaint is filed. A true and correct copy of Plaintiff’s
14 proposed Fourth Amended Complaint is attached hereto as Exhibit “A.” A
15 redlined version of Plaintiff’s Third Amended Complaint is attached as
16 Exhibit “B.”

17
18 Dated: December 18, 2018

ANDREA COOK & ASSOCIATES

19
20 By: _____ /s/

Andrea L. Cook

Attorneys for Plaintiff

ERIC ALDAPE

21
22
23 Dated: December 18, 2018

SR HOLGUIN, PC

24
25 By: _____ /s/

Steven Holguin

Attorneys for Defendant

LOCAL 13

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Dated: December 18, 2018

LAW OFFICE OF ROBERT REMAR

By: _____ /s/

Rob Remar
Attorneys for Defendant
INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION

Dated: December 18, 2018

MORGAN, LEWIS & BOCKIUS LLP

By: _____ /s/

Samson Huang
Attorneys for Defendant
PACIFIC MARITIME ASSOCIATION

Exhibit "A"

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16 Attorneys for PLAINTIFF
17 ERIC ALDAPE

18 **UNITED STATES DISTRICT COURT**

19 **CENTRAL DISTRICT OF CALIFORNIA**

20 ERIC ALDAPE,
21
22 Plaintiff,

23 v.

24 INTERNATIONAL LONGSHORE
25 AND WAREHOUSE UNION,
26 et. al.

27 Defendants

CASE NO. 2:18-cv-00624 AB(SKx)
[Assigned to Hon. Andre Birotte, Jr.]

**FOURTH 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

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

2 **INTRODUCTION and PARTIES**

3 1. Eric Aldape (hereinafter "Aldape" or "PLAINTIFF") joined the
4 International Longshore and Warehouse Union (hereinafter "ILWU") in July
5 of 1999. He was, and continues to be, a dues-paying member and his
6 employment was consistent with the average longshoremen until 2009. At
7 all times herein mentioned, Mr. Aldape is a citizen of the United States and
8 a resident of the City of Long Beach, County of Los Angeles, State of
9 California.

10 2. During his tenure as a working ILWU member, Mr. Aldape
11 exercised his right to voice his concerns regarding the political environment
12 and day-to-day administration of ILWU and Local 13 (collectively the
13 "UNION"). Mr. Aldape exercised his right to free speech through the
14 creation and publication of cartoons, writings and statements, which were
15 critical of the UNION. Because of Mr. Aldape's criticism of the UNION, the
16 leadership began an avalanche of grievances to target PLAINTIFF with
17 endless and unfounded complaints based on the wholly erroneous
18 application of an unlawful grievance procedure, Section 13.2 of the *Pacific*
19 *Longshore Contract Document 2014-2019* (hereinafter "PCLCD") and a
20 more detailed recitation of the procedures set forth in a document entitled
21 *Pacific Coast Special Grievance Handbook 2014-2019* (hereinafter
22 "PCSGH").¹ There were a total of 14 indiscriminate and capricious
23 arbitrations, over a period of nine years that eventually ended the career of
24 Mr. Aldape by his deregistration on April 17, 2017. The matter was
25 appealed and affirmed by Coast Appeals Officer, Larry Schwerin on July 31,
26 2017. As described more fully below, this occurred at the conclusion of the

27 ¹ Similar, if not identical language relative to discrimination is to be
28 found in earlier versions of Collective Bargaining Agreement.

1 twelfth (12th) arbitration. Two more arbitrations followed his deregistration
2 arbitration. The last arbitration was concluded on May 11, 2017.

3 PLAINTIFF was found “not guilty” in the final two arbitrations.

4 3. A Defendant in this action is the International Longshore and
5 Warehouse Union (“ILWU”). The executive offices for ILWU are located in
6 San Francisco, California. The ILWU workforce on the West Coast ports is
7 14,000 members strong who receive a compensation package that is one
8 the most lucrative among all blue-collar workers in the United States. Full-
9 time workers earn an average of \$161,000 annually in wages, along with a
10 generous non-wage benefits package.²

11 4. ILWU Local 13 (hereinafter “Local 13”), also a Defendant in this
12 action, is located in San Pedro, California. Local 13 is one of many local
13 divisions of the ILWU which governs the workers in the Long Beach/Los
14 Angeles Harbor (Harbor). Combined, it is the sixteenth (16th) largest port
15 in the world with respect to tonnage shipped and/or received.

16 5. Pacific Maritime Association (hereinafter “PMA”) is also a
17 Defendant in this action. PMA has a local office in Long Beach, California.
18 As PLAINTIFF’s employer and a party to the PCLCD, PMA has an interest in
19 the outcome of this matter. Further, because PMA is a party to the
20 agreement, it is unlikely that the Court can afford complete relief in the
21 absence of PMA. All ILWU workers are covered by the *Pacific Coast*
22 *Longshore Contract Document 2014-2019* (“PCLCD”). As detailed below,
23 Section 13 is referred to in the PCLCD and detailed procedures are set forth
24 in the *Pacific Coast Special Grievance Handbook 2014-2019* (“PCSGH”).

25
26 ² The next high paying blue collar job is that of elevator repair and
27 construction. On average they earn \$73,560 annually, or \$35.37 an hour.
28 The top 10% of them draw in six-figure salaries. There are few (if any),
health and retirement benefits to compare to those of the ILWU.

1 6. As a member of Local 13, Mr. Aldape was subject to the PCLCD.
2 Section 13.1 of the PCLCD prohibits discrimination.

3 There shall be no discrimination ... either in favor of or against
4 any person because of membership or non-membership in the
5 Union, activity for or against the Union or absence thereof, race,
6 creed, color, sex (including gender, pregnancy, sexual
7 orientation), age (forty or over), national origin, religious or
8 political beliefs, disability, protected family care or medical leave
9 status, veteran status, political affiliation or marital status. Also
10 prohibited by this policy is retaliation of any kind for filing or
11 supporting a complaint of discrimination or harassment.

12 (PCLCD, pg. 76.)

13 7. At issue here, Section 13.2 of the PCLCD provides in pertinent
14 part: To correct any incidents of discrimination, "*all grievances and*
15 *complaints alleging incidents of harassment ... in connection with any action*
16 *subject to the terms of this Agreement based on race, creed, color, sex ...*
17 *age, national origin, or religious or political beliefs or alleging retaliation of*
18 *any kind for filing or supporting a complaint of such discrimination or*
19 *harassment, **shall be processed solely under the Special Grievance/***
20 ***Arbitration Procedures For The Resolution of Complaints Re***
21 ***Discrimination and Harassment Under the Pacific Coast Longshore & Clerk's***
22 ***Agreement.**" (Emphasis added.) (PCLCD, pg. 77.)*

23 8. A term and condition of union membership and employment by
24 PMA is that UNION members abide by the PCLCD and PCSGH which
25 requires UNION members to submit any discrimination complaints to
26 arbitration as provided by Section 13. These provisions of the
27 PCLCD/PCSGH are unlawful provisions of the collective bargaining
28 agreement on their face.

1 9. The provisions of Section 13.2 are a breach of duty of fair
2 representation in that they compel UNION members, either as potential
3 "grievants" or "accused," to be subject to an arbitration procedure which is
4 unconscionable and unlawfully waives significant statutory procedural and
5 substantive civil rights to which workers are entitled under the statutory
6 provisions which they mirror.

7 10. In addition, once these unlawful provisions were put into place,
8 they were used in a discriminatory and arbitrary manner, in and of
9 themselves by the UNION to prevent and chill Mr. Aldape's freedom of
10 speech in the workplace; and, ultimately, to cause him to lose his ability to
11 be employed by PMA. In addition to causing Mr. Aldape's deregistration,
12 the UNION failed to fairly and adequately represent him by ratifying and
13 condoning the misinterpretation and manipulation of the plain meaning of
14 Section 13.2 and its wholly erroneous application to the multitude of vexing
15 arbitrations brought by ILWU officers against PLAINTIFF.

16 11. These repeated efforts to quell Mr. Aldape's right to free speech
17 led to the loss of an extended period of work and eventual deregistration –
18 a permanent preclusion from working for any member companies of PMA.
19 The UNION breached the duty of fair representation by a showing that the
20 conduct of the UNION was "arbitrary" and in "bad faith." The grievances
21 misapplied Section 13.2 in opposition to the legal opinion of the employer,
22 PMA.

23 12. In the grievance context, this standard in a DFR claim prohibits
24 a union from processing a grievance in a perfunctory way, or as in this
25 case, in a manner deliberately intended to mislead and support an
26 interpretation of the PCLCD, Section 13.2 that was undisputedly erroneous.
27 For a Section 13.2 grievance to be applicable, the complaint must fall into

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1 one of the protected classes set forth in paragraph 7. This was rarely the
2 case in the instance of Mr. Aldape.

3 13. The UNION acted in bad faith by the exercise of ill will, hostility
4 and revenge toward Mr. Aldape by its failure to process two grievances
5 which set forth a conflict of interest on the part of a mediator and Coast
6 Appeals arbitrator who were the eventual cause of the deregistration of Mr.
7 Aldape. Moreover, the ILWU used its best efforts to quell PLAINTIFF's right
8 to free speech and in retaliation for his criticisms of ILWU officers. The
9 very composition of Section 13.2 is unconscionable and unlawful on its face.
10 The act(s) or omissions by the UNION were so egregious and unfair as to
11 be arbitrary, thus, constituting a breach of the duty of fair representation.
12 There was no rational and proper basis for the UNION's conduct.

13 14. The UNION repeatedly, over a period of many years, utterly and
14 completely remained silent in the face of what was clearly and undisputedly
15 a twisted and specious interpretation and application of Section 13.2 in
16 such a way as to cause Mr. Aldape to be found "guilty" of unfounded
17 grievances. These findings resulted in fines, penalties and the loss of work,
18 culminating in deregistration.³ Not once did the UNION come to Mr.
19 Aldape's defense or clarify the plain meaning of the *Rule* used to persecute
20 and eventually deregister PLAINTIFF.

21 15. In addition to the manner and means by which provisions of the
22 arbitration agreement were applied to Mr. Aldape, the very provisions of
23 Section 13.2 constitute an unconscionable arbitration agreement. In fact,

24 ³ By way of example and not limitation, Mr. Aldape was found guilty of
25 a 13.2 "discrimination" grievance by a Union member who took umbrage to
26 a cartoon depicting multiple individuals of a medical scam by union
27 members and officers. When an employer complaint was published
28 accusing this same individual of medical fraud, this was considered
"retaliation" and the basis of Mr. Aldape's deregistration.

1 the provisions of Section 13.2 were both procedurally and substantively
2 unconscionable.

3 16. Moreover, in order for a union to waive employees' rights to a
4 federal judicial forum for statutory antidiscrimination claims, the agreement
5 to arbitrate statutory claims must contain a clear and unmistakable waiver.
6 The contract contains no explicit incorporation of statutory
7 antidiscrimination requirements as it relates to gender or any other
8 protected class, save the *Americans with Disabilities Act* ("ADA") and the
9 *Uniformed Services Employment and Reemployment Rights Act* ("USERRA").
10 ILWU and PMA are both signatories of the unconscionable PCLCD/PCSGH
11 agreement for 2014 to 2019.

12 17. Officers of Local 13 and ILWU who were the subject of Mr.
13 Aldape's criticism for fraud and unlawful conduct, utilized provisions of the
14 PCLCD/ PCSGH so as to penalize Mr. Aldape; and, to ultimately cause his
15 deregistration. He is and was an outspoken and active critic of union
16 members who engaged in conduct he alleges is unlawful, fraudulent or not
17 in the best interests of the UNION.

18 18. On several occasions, PMA (the employer) came to the defense
19 of Mr. Aldape, by letter and oral argument during arbitration. PMA
20 repeatedly opined that Section 13.2 was being misapplied to Mr. Aldape.
21 Despite these advisory opinions by PMA, the UNION failed to acknowledge
22 the employer's opinion or to support Mr. Aldape during 14 arbitrations. In
23 addition to the repeated misuse of an inherently unlawful grievance
24 procedure, Defendants, particularly ILWU, repeatedly engaged in other acts
25 which breached the duty of fair representation and violated PLAINTFF's
26 right to free speech.

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JURISDICTION & VENUE

19. This is an action for money damages in excess of \$75,000 brought pursuant to the *Labor Management Relations Act* (LMRA) § 301(29 U.S.C. § 185) and *Labor Management Reporting and Disclosure Act of 1959* (“LMRDA”) § 101(a)(2) (29 U.S.C. § 411(a)(2)). Jurisdiction of this Court is invoked under 28 *U.S.C. §§* 1931 & 1341, (2), (3) & (4), § 1343(a)(3)(4), and LMRDA § 102 (29 U.S.C. §412), (29 U.S.C. §1337).

20. PLAINTIFF also invokes the theory of continuing violations in that this case involves repeated violations over several years in which the PLAINTIFF was injured. The repeated nature of the alleged violations which injured PLAINTIFF are consistent with the UNION’s longtime practice and should not be time barred because there is no adequate business justification present to support such a clearly discriminatory practice. *The Labor/Management Reporting Disclosure Act* (“LMRDA”) 29 *U.S.C* § 411(a)(3)(A) recognizes a two-year statute of limitations and a theory of continuing violations. In arriving at his decision to deregister Mr. Aldape, the arbitrator specifically referred to all of Mr. Aldape’s prior arbitrations and accepted into evidence 67 cartoons and flyers spanning a period of more than eight years in consideration of his final decision.

21. The acts and omissions complained of herein arose within the County of Los Angeles at the office of the ILWU located in San Pedro, California, the executive offices of the ILWU located in San Francisco, California and at such location as the arbitrations which are the subject of this Complaint, at the Pacific Maritime Association, 1 World Trade Center, Suite 1700, Long Beach, California. Therefore, venue is proper before this Court.

22. The acts and omissions complained of herein began sometime in 2009 and have continued to the present. The complaint which caused

1 the deregistration of Mr. Aldape was filed on March 10, 2017, and decided
2 on April 17, 2017. The matter was taken on appeal. On July 31, 2017, the
3 arbitrator's award was affirmed. Following the "deregistration" arbitration,
4 there were two additional arbitrations which occurred in April 2017 and May
5 2017.

6 23. PLAINTIFF is informed and believes and thereon alleges that at
7 all times relevant herein, each DEFENDANT was and is the agent, servant,
8 employee, partner, joint venturer, assistant, supervisor, consultants of each
9 and every other DEFENDANT, and as such was at all times acting within the
10 course, purpose, scope, and authority of said agency, partnership, and
11 employment, and acting with the express or implied knowledge, permission,
12 authority, approval and consent of every other named and unnamed
13 DEFENDANT.

14 24. PLAINTIFF is informed and believes and thereon alleges that the
15 true names and official capacities of DEFENDANTS designated as DOES 1-
16 10, inclusive, are unknown to PLAINTIFF, who therefore sues these
17 DEFENDANTS by such fictitious names. PLAINTIFF will seek leave of Court
18 to amend his complaint to show the true names and capacities of these
19 DEFENDANTS when they have been ascertained.

20 25. PLAINTIFF is informed and believes and thereon alleges that
21 DEFENDANTS, including DOES 1-10, as employees and agents of ILWU,
22 Local 13 and PMA. In almost every instance of arbitration, pursuant to
23 Section 13.2, the complaint was brought by an officer or other elected
24 member of Local 13. In the case of the deregistration complaint, the
25 grievant was on the Executive Board and a former Secretary Treasurer.
26 These individuals were agents of and acting on behalf of ILWU and Local
27 13. All of the parties shared in the responsibility for making, implementing,
28 enforcing; and, the utter failure to defend Mr. Aldape, as required by law

1 and under the terms and conditions of the PCLCD, and to do so in a fair
2 and non-discriminatory manner.

3 26. PLAINTIFF is informed and believes and thereon alleges that
4 DEFENDANTS, including DOES 1-10, consciously, willfully, intentionally,
5 knowingly, recklessly, vicariously and/or otherwise tortuously caused the
6 damages proximately thereby to PLAINTIFF as hereinafter alleged, either
7 through DEFENDANTS' own conduct or through the conduct of PMA, ILWU
8 and Local 13's agents, servants, partners, joint venturers, and employees,
9 and each of them, or in some other manner. All actions of each
10 DEFENDANT were ratified and approved by every other DEFENDANT.
11 PLAINTIFF further alleges on information and belief that all of the actions
12 alleged herein were taken pursuant to the customs, policies, and practices
13 of the management and officers of PMA, ILWU and Local 13 during the
14 relevant time period.

15 **FACTS**

16 27. Mr. Aldape repeatedly published articles, cartoons and flyers
17 which contained caricatures, cartoons and exaggerations of union officials
18 and the political, ethical and financial issues facing the UNION. Many of
19 these publications placed the UNION and various union officials in an
20 unfavorable light. However, none were discriminatory nor harassing to
21 trigger application of Section 13.2 as it was intended.

22 28. The PCLCD/PCSGH mirrors the language of the *California*
23 *Department of Fair Employment and Housing Act*, ("DFEH") (§§ 12900-
24 12907) and Title VII of the *Civil Rights Act of 1964*, in particular, the
25 section(s) dealing with discrimination based on a protected class. As a
26 result of his active pursuit of fair political comment on union matters in the
27 form of writings, flyers, cartoons and outspoken language, Mr. Aldape was
28 the subject of fourteen (14) grievances filed erroneously under Section 13.2

1 from 2009 to 2017. These multiple grievances filed by officers or former
2 officers of ILWU, including the deregistration grievance, were retaliatory in
3 nature.

4 29. While it is permissible to have statutory claims such as Title VII
5 arbitrated pursuant to a collective bargaining agreement, at a minimum,
6 such a waiver requires a reference to the statutes that are being waived.
7 In the instant matter, the PCLCD/PCSGH references the ADA and USERRA
8 (only) but makes no reference to Title VII or FEHA, which specifically
9 address sexual discrimination, including discrimination and harassment
10 based on race or ethnicity. Failing to make reference to the statutes being
11 waived, in particular, those referencing discrimination and harassment
12 against all other protected classes, does not provide notice of the rights
13 being waived.

14 30. Moreover, the grievance procedure pursuant to Section 13.2 is
15 procedurally unconscionable in that the grievant has a statute of limitations
16 of 15 days in which to file a grievance "from the incident." Moreover, there
17 is no mechanism for any sort of investigative procedure. The hearing must
18 be conducted within 14 days of receipt of the complaint (as opposed to the
19 one year or 300 day statute of limitations pursuant to Title VII or FEHA).
20 This allows the "accused" less than 14 days in which to gather facts,
21 documents, witnesses (who appear at the discretion of the arbitrator) and a
22 knowledgeable representative to appear at an arbitration proceeding
23 conducted by an arbitrator who is not required to have any legal training.
24 Nor, are there any formal educational requirements. Any appeal must be
25 filed within 14 days of the arbitrator's written decision. Lawyers are not
26 permitted to represent either party to the grievance.

27 31. While the full panoply of discovery is not normally part of an
28 arbitration agreement, arbitration agreements are required to have the

1 minimum standard of fairness. Section 13.2 does not even provide a
2 statement regarding the availability of some minimum amount of discovery
3 (or, the time to conduct any discovery). During the arbitration, the
4 submission of evidence and the taking of testimony goes beyond the
5 expected and less formal procedures anticipated in an arbitration, the
6 transcripts of these proceedings evidence a chaotic and indecipherable
7 process.

8 32. The grievance procedure pursuant to Section 13.2 is
9 substantively unconscionable in that the only "remedy" provided on a
10 finding of guilty is a punishment for the accused, which takes the form of
11 fines, lost days of work and, in the case of Mr. Aldape, can provide the
12 ultimate punishment, deregistration - a loss of his livelihood. Mr. Aldape
13 does not have the benefit of an investigation or discovery and is only
14 allowed an unconscionable period of time in which to respond to a
15 grievance. Alternatively, there is no remedy for the grievant, no remedy of
16 monetary damages, including, emotional distress and punitive damages.
17 Section 13.2 remedies include mandatory training, distribution of notices to
18 employees and unilateral changes to the policies and constitutional
19 violations practices. These are vastly different rights and remedies than the
20 statutes which Section 13.2 is purported to mirror.

21 33. The stated objective of Section 13 is to punish misconduct,
22 educate and correct the misconduct consistent with principles of
23 *progressive discipline*. Alternatively, Title VII of the *Civil Rights Act of 1964*,
24 codified in 17 U.S.C. § 2000, was enacted to create rights for individuals to
25 be free from discrimination in employment and provides significant rights
26 and remedies to complainants and the accused.

27 34. The application of Section 13.2 turns the 1964 *Civil Rights Act*
28 on its head, creating claims against individuals in the employment context

1 where the employer plays little or no part in the allegations, there is no
2 investigation nor a sufficient opportunity to obtain sufficient evidence or
3 witnesses in which to defend or pursue a grievance.

4 35. This is a one-sided agreement designed to resolve important
5 and potentially egregious civil rights issues in a quick and relatively painless
6 manner for the UNION and PMA at no cost. The only "compensation" for
7 the aggrieved is the loss or discipline of employees deemed "guilty." *The*
8 *Civil Rights Act of 1964* is an area of the law intended to provide justice,
9 fairness and some form of compensation to the aggrieved and providing
10 some protections for the accused while advancing civil rights as opposed to
11 "progressive discipline."

12 36. Every instance in which Section 13.2 was used against Mr.
13 Aldape was a separate and discrete breach of the duty of fair
14 representation and a violation of his right to free speech.

15 37. Upon information and belief, the employer and UNION were or
16 should have been well aware that the negotiation of Section 13.2 was a
17 severe diminution of the individual and collective civil rights of ILWU
18 members.

19 38. In addition to the use and misuse of Section 13.2 as a weapon
20 against Mr. Aldape, he suffered other breaches of the duty of fair
21 representation and violations of his right to free speech.

22 a. Two separate grievances filed by Mr. Aldape were never
23 processed. On April 4, 2016, Mr. Aldape filed a grievance against
24 Mark Mascola. During an LRC meeting, Mr. Mascola, as an LRC
25 representative, reacted to advice Mr. Aldape was giving a Union
26 member during a meeting, by calling him a "fucking monkey." Two
27 weeks later, at a similar meeting, Mr. Mascola was so enraged by Mr.
28 Aldape that he attempted to physically assault PLAINTIFF while

1 shouting, "I am going to fucking kill you" while being restrained by
2 rank and file union members. Following the filing of the grievance
3 and the failure to act on it (after two letters of inquiry), Mr. Aldape
4 requested that the matter be advanced to the next grievance level –
5 which, upon information and belief, was never processed. Mr.
6 Mascola was the arbitrator who heard the arbitration responsible for
7 Mr. Aldape's deregistration.

8 b. Mr. Aldape filed a grievance against the Coast Labor
9 Relations Committee ("CLRC") and appeals officer, Larry Schwerin.
10 The grievance was received on April 4, 2016 and never processed by
11 the JCLRC. Mr. Schwerin was the appeals officer who, on July 31,
12 2017, affirmed Mr. Mascola's decision to deregister Mr. Aldape at the
13 arbitration on April 17, 2017.

14 c. Dismayed by the gross misuse of Section 13.2 regarding
15 grievances against Mr. Aldape, PMA, the employer of Mr. Aldape and
16 a signatory to the PCLCD, offered a legal opinion to the UNION on
17 multiple occasions, advising ILWU that the use of Section 13.2 was in
18 violation of both the letter and intention of the PCLCD. The UNION
19 ignored and rejected the advice of PMA at the expense of Mr. Aldape.

20 d. After Mr. Aldape's deregistration, Miller spoke to Mr.
21 Aldape and apologized to him for the mishandling of the various
22 grievances which were decided by Mr. Miller.

23 e. DEFENDANTS repeatedly breached the duty of fair
24 representation by failing to negotiate a collective bargaining
25 agreement that was fair and just and did not waive the civil rights of
26 Mr. Aldape and other UNION members nor subject PLAINTIFF and
27 others to an unlawful procedure.

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1 **SUMMARY OF GRIEVANCES AGAINST MR. ALDAPE,**
2 **THE ERRONEOUS APPLICATION OF SECTION 13.2,**
3 **BREACH OF THE DUTY OF FAIR REPRESENTATION**
4 **AND THE VIOLATION OF FREE SPEECH RIGHTS**

5 39. Evidence of the arbitrary and capricious misapplication of
6 Section 13.2 in order to quell Mr. Aldape's free speech rights is illustrated
7 by the following summary of grievances. PLAINTIFF does not seek to
8 vacate these decisions but to illustrate the extreme lengths union officers
9 took in an effort to chill PLAINTIFF's speech and violate the duty of fair
10 representation.

11 40. Grievance SP-0005-2009 was filed on September 9, 2009
12 charging a union officer with special treatment of the daughter of Mark
13 Jursiac in a satirical flyer. Mark Jurisic was on the Executive Board and
14 Registration Committee and his daughter was allegedly the recipient of
15 favoritism. There is no allegation of discrimination, harassment, or
16 retaliation which is a prerequisite to the inherently faulty Section 13.2
17 procedure. Mr. Aldape was found guilty. The guilty verdict was intended to
18 prevent his free speech.

19 41. Grievance SP-0010-2009 was filed on October 2, 2009, by
20 Steven M. Bebich. Mr. Bebich was elected to the Executive Board, was a
21 dispatcher, and Caucus Delegate. "*Mr. Aldape has distributed fliers about*
22 *me during the elections of this year. However this time he went too far, he*
23 *threatened to reveal what he alleges to be my criminal history to the*
24 *membership."* Mr. Aldape was found guilty of violating Section 13.2 and
25 sentenced to 60 days off all work.

26 42. Grievance SP-0002-2010 was filed on March 6, 2010 by Mark
27 Jurisic, who was on the Executive Board. Jurisic accused Mr. Aldape of
28 *///*

1 throwing a flyer at him (Jurisic) and telling him to take it to his "daddy."
2 The arbitrator found this matter did not meet the criteria for Section 13.2.

3 43. Grievance SP-0026-2011 was filed on July 28, 2011, by Mike
4 Bebich, a union officer who complained that Mr. Aldape distributed political
5 flyers "*... in retaliation of my political beliefs because I was scheduled to*
6 *testify against Mr. Aldape in an NLRB Court Hearing.*" He claimed Mr.
7 Aldape "*...is engaging in harassment and intimidation by inviting the*
8 *membership to attend an NLRB Court Hearing.*" In an August 8, 2011
9 letter, Arbitrator Miller writes, "[t]he grievance does not meet the criteria of
10 a 13.2 violation."

11 44. Grievance SP-0027-2011 was filed by Mark Jurisic, (on the
12 Executive Committee) on July 26, 2011 and accused Mr. Aldape of
13 distributing a flier that "*stated the union was spending its money to protect*
14 *"their buddies and their buddies casual kid."* In a letter dated August 8,
15 2011, Arbitrator Miller found the "grievance does not meet the criteria of a
16 13.2 violation."

17 45. Grievance SP-0032-2012 was filed on September 28, 2012, by
18 Christopher Viramontes, the Secretary/Treasurer of Local 13. Mr.
19 Viramontes was a powerful person in Local 13 and held positions on the
20 Executive Board and was running for the position of Caucus delegate. He
21 claims, "*Brother Aldape printed false statements to try and influence*
22 *members during longshore elections.* The "false statements" were a
23 satirical cartoon and flyer accusing Mr. Viramontes of playing football cards
24 and being involved in the fraudulent "Port Medical scandal." Mr. Aldape
25 was found guilty and assessed 180 days off work. Coast Appeals Officer,
26 Rudy Rubio assessed an *additional* 180 days off.

27 46. Grievance SP-0017-2013 was filed on July 3, 2013, by
28 Christopher Viramontes, President of Local 13, who complained that Eric

1 Aldape committed an act of retaliation by physically assaulting Viramontes
2 on July 3, 2013, in close proximity to the Local 13 business office located at
3 630 S. Centre Street, San Pedro, California because of a past Section 13.2
4 complaint (SCGM 0009-2012). Mr. Aldape was found guilty. The allegation
5 of "retaliation" occurred one year after the claimed violation.

6 47. Grievance SPSC-0005-2016 was filed on March 14, 2016, by
7 Lawrence Toledo, who complained that Eric Aldape violated the Section
8 13.2 policy in retaliation for Toledo's participation in a Section 13.2 hearing
9 that occurred on March 8, 2016, based on a flyer with drawings of rats and
10 an internet posting. Mr. Toledo was a member of the grievance committee.
11 Mr. Toledo did not show up at the March 24, 2016 hearing.

12 48. Grievance SPSC-0008-2016 was filed on March 18, 2016, by
13 John William Seixas, a member of the grievance committee who complained
14 that Aldape violated the Section 13.2 policy based on a flyer with drawings
15 of rats. There was a finding of not guilty.

16 49. Grievance SPSC-0032-2016 was filed on August 28, 2016, by
17 John Seixas. His complaint involves political cartoon flyers made by Mr.
18 Aldape that were posted, removed, and then reposted by Mr. Aldape. Mr.
19 Seixas claimed that Mr. Aldape physically assaulted him when Mr. Seixas
20 was trying to remove the flyers. PMA filed an appeal on behalf of Mr.
21 Aldape. Mr. Aldape was found guilty and given one year off work.

22 50. Grievance SPSC-0001-2017 was filed on February 6, 2017, by
23 John Seixas claiming retaliation under Section 13.2 in that Aldape
24 "continues to work in violation of the arbitrator's ruling and Aldape is
25 breaking confidentiality by allegedly posting about the proceedings on the
26 internet." Mr. Alape was found not guilty.

27 51. Grievance SPSC-0006-2017 was filed on March 10, 2017 by
28 Christopher Viramontes, a member of the Executive Committee. Mr.

1 Viramontes claimed that Mr. Aldape posted a complaint by PMA against
2 Viramontes which accused Mr. Viramontes of defrauding the ILWU Benefits
3 Plan through a business, Port Medical. Port Medical representatives were
4 paying ILWU members to bill for false claims and fabricating billing records.
5 Cohorts of Mr. Viramontes were similarly accused and subsequently
6 convicted of fraud. The Complaint against Mr. Viramontes was available to
7 UNION members and, thus, was not confidential.

8 52. Arbitrator Mark Mascola based the deregistration of Mr. Aldape
9 not only on Grievance SPSC-0006-2017, but on all prior 13.2 decisions.
10 *"Past 13.2 hearings involving Aldape provide unmistakable precedent that*
11 *Aldape has knowledge and awareness of the guidelines, penalties, and*
12 *wording within the Pacific Coast Special Grievance."* Also taken into
13 consideration and attached as exhibits to the record were approximately 67
14 satirical cartoons and flyers. The matter was on appeal to Larry Schwerin
15 who upheld the decision by Mascola. The grievance against Mr. Schwerin
16 was never resolved nor even acted upon.

17 53. Grievance SPSC-0011-2017 was filed on March 23, 2017, post
18 deregistration, by Lawrence Toledo, a member of the grievance committee
19 who claimed text messages from Mr. Aldape were based on his race and
20 religion and in retaliation for a complaint Mr. Toledo filed against Mr.
21 Aldape. Mr. Toledo also claims that Mr. Aldape posted articles on the
22 internet attacking him as another form of retaliation.⁴ Mr. Aldape was
23 found not guilty of retaliation as the Arbitrator indicates the correspondence
24 was mutual and outside of the workplace.

25 _____
26 ⁴ It should be noted that while Mr. Aldape was "deregistered" 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 54. Grievance SPSC-0013-2017 was filed on March 29, 2017, by
2 John Seixas who claimed Mr. Aldape was breaking the confidentiality clause
3 with his flyer, "Free Speech We Must Preach." Mr. Seixas alleged
4 harassment (talking over him) at a JPLRC meeting and distribution of a flyer
5 entitled "Two BA's for the price of one," which Mr. Seixas believed was
6 threatening. Mr. Aldape was found not guilty of prohibited conduct in
7 violation of Section 13.2.

8 **FIRST CAUSE OF ACTION**

9 **BREACH OF THE DUTY OF FAIR REPRESENTATION**

10 [Against All Defendants]

11 55. PLAINTIFF realleges and incorporates by reference paragraphs
12 1 through 54 of this Complaint inclusive of this paragraph as though said
13 paragraphs were fully set forth herein.

14 56. Mr. Aldape was discharged from his employment as a result of
15 DEFENDANTS' unlawful conduct leading to Mr. Aldape's deregistration.
16 DEFENDANTS' conduct, compelling Mr. Aldape to submit to a Section 13.2
17 procedure, was unlawful. The terms and conditions of Section 13.2 are
18 arbitrary in light of the factual and legal landscape at the time of
19 DEFENDANTS' actions. Moreover, DEFENDANTS' actions were so far
20 outside a "wide range of reasonableness" as to be irrational. DEFENDANTS'
21 discriminatory conduct was "invidious," i.e., unfair, unjust, iniquitous and
22 unwarranted. The discharge was without just cause as a result of the
23 erroneous application of provisions of the PCLCD/PCSGH.

24 57. The UNION breached its duty to fairly represent the
25 PLAINTIFF's interests under the PCLCD/PCSGH. They engaged in conduct
26 deliberately intended to prevent Mr. Aldape from retaining a valuable and
27 irreplaceable job. Additionally, the UNION engaged in arbitration practices
28 which were not in accordance with lawful procedures, which were intended

1 to, and did, rob Mr. Aldape and; presumably, other union members of
2 procedural due process, due process which would have been provided
3 under the statutory provision(s) of Title VII and FEHA.

4 58. The arbitration procedures set forth in Section 13.2 are
5 unconscionable and unenforceable. Section 13.2 does not advise workers
6 of the significant rights they are waiving and then diminishes what rights it
7 does provide.

8 59. There was no just cause under the law for such an aberration.
9 The allegations against Mr. Aldape were falsified and he was wrongly
10 discharged. The cause articulated by DEFENDANTS, "violation of 13.2" is
11 an unlawful, arbitrary and capricious procedure which weaponized the
12 UNION leadership to chill Mr. Aldape's speech and to terminate his
13 employment. All of these actions were in bad faith, violated Mr. Aldape's
14 right to free speech and the duty of the union to fairly represent
15 Mr. Aldape.

16 60. The UNION exercised its considerable discretion to twist and
17 misuse the PCLCD/PCSGH so as to breach their duty of fair representation
18 and acted in bad faith and in an arbitrary and discriminatory manner. The
19 UNION failed to fairly process the grievances made against Mr. Aldape by
20 ignoring the repeated advisory opinions by PMA which sought to clarify and
21 to protect the rights of Mr. Aldape. The Arbitrator of the decision to
22 deregister Mr. Aldape was a known enemy of Mr. Aldape who had assaulted
23 him and threatened, in the presence of several individuals, to kill the
24 PLAINTIFF. Yet, this was the arbitrator assigned to and responsible for the
25 deregistration of Mr. Aldape.

26 61. DEFENDANTS acted in "bad faith." There is substantial
27 evidence of fraud, deceitful action, and dishonest conduct on the part of
28 DEFENDANT UNION.

SECOND CAUSE OF ACTION
BREACH OF CONTRACT

[Against All Defendants]

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2
3
4 62. PLAINTIFF realleges and incorporates by reference paragraphs
5 1 through 61 of this Complaint inclusive of this paragraph as though said
6 paragraphs were fully set forth herein.

7 63. From 2014 to 2017, the UNION used the PCLCD/PCSGH, and its
8 collective powers, to persecute Mr. Aldape for his right to free speech, and
9 to violate the agreements under the PCLCD/PCSGH such that Mr. Aldape
10 lost more than one year of paid time and eventually was deregistered. The
11 violation of the PCLCD/PCSGH constitutes a breach of contract between Mr.
12 Aldape, the UNION, and PMA.

13 64. The PCLCD/PCSGH seeks to waive substantive rights, rights
14 which cannot be waived in arbitration agreements. This tenet is
15 fundamental to arbitration jurisprudence. By agreeing to arbitrate a
16 statutory claim, a party does not forgo the substantive rights afforded by
17 the statute; it only submits to their resolution in an arbitral, rather than a
18 judicial, forum.

19 65. As a result of DEFENDANTS' breach of contract, PLAINTIFF has
20 lost income, promotion possibilities and other valuable job rights.

21 ///

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1 **THIRD CAUSE OF ACTION**
2 **VIOLATION OF FREE SPEECH RIGHTS**
3 **LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT**
4 **OF 1959 SECTION 101(a)(2)**
5 **(29 U.S.C. SECTION 411 (a) (2))**

6 [Against All Defendants]

7 66. PLAINTIFF realleges and incorporates by reference paragraphs
8 1 through 65 of this Complaint inclusive of this paragraph as though said
9 paragraphs were fully set forth herein.

10 67. LMRDA section 101(a)(2) provides: "Every member of any labor
11 organization shall have the right to meet and assemble freely with other
12 members; and to express any views, arguments, or opinions; and to
13 express at meetings of the labor organization his views, upon candidates in
14 an election of the labor organization or upon any business properly before
15 the meeting..."

16 68. Mr. Aldape was an outspoken and active critic of union officers
17 who engaged in conduct he alleged was unlawful, fraudulent or not in the
18 best interests of the UNION.

19 69. Mr. Aldape repeatedly published articles, cartoons and flyers
20 which contained caricatures, cartoons and exaggerations of union officials
21 and the political, ethical and financial issues facing the UNION.

22 70. The very purpose of these laws is to protect the rights of union
23 members to have critical discussion and criticism of the management of
24 their union affairs without the fear of being silenced by disciplinary powers
25 of union officials.

26 71. DEFENDANTS severely infringed on Mr. Aldape's freedom of
27 speech by attempting to confiscate Mr. Aldape's protected communications,
28 removing his communications from union halls, and by union officers filing

1 unfounded grievances based on the wholly erroneous application of the
2 PCLCD/PCSGH which was unlawful and unconscionable at the outset.

3 **PRAYER**

4 Wherefore, PLAINTIFF seeks judgment against DEFENDANTS:

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

15
16 Dated: November 27, 2018 ANDREA COOK & ASSOCIATES

17
18 By: _____ /s/
19 Andrea L. Cook
20 Attorneys for Plaintiff,
21 ERIC ALDAPE

22 **REQUEST FOR JURY TRIAL**

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

24 Dated: November 27, 2018 ANDREA COOK & ASSOCIATES

25
26 By: _____ /s/
27 Andrea L. Cook
28 Attorneys for Plaintiff,
 ERIC ALDAPE

Exhibit "B"

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2 Julie A. Langslet, SBN 125760
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15 E-mail: david@dpflegal.com

16 Attorneys for PLAINTIFF
17 ERIC ALDAPE

18 **-UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 ERIC ALDAPE,

21 Plaintiff,

22 v.

23 INTERNATIONAL LONGSHORE
24 AND WAREHOUSE UNION,
25 et. al.

26 Defendants

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

THIRD [Assigned to Hon. Andre Birotte, Jr.]

**FOURTH AMENDED COMPLAINT
FOR DAMAGES FOR:**

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

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REQUEST FOR JURY TRIAL

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Plaintiff, Eric Aldape, hereby asserts the following allegations:

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INTRODUCTION and PARTIES

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

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2. During his tenure as a working ILWU member, he has exercised his right to voice his concerns regarding the political environment and day-to-day administration of ILWU and Local 13 (collectively the "UNION"). Mr. Aldape exercised his right to free speech through the creation and publication of cartoons, writings and statements, which tended to be very critical of the UNION and its leadership. In an effort to quell, Because of Mr. Aldape's communications, criticism of the UNION, the leadership began an avalanche of grievances to target him in a campaign of

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1 ~~harassment, PLAINTIFF with endless, and unfounded grievances complaints~~
 2 based on the wholly erroneous application of ~~the CBA and an unlawful~~
 3 ~~grievance procedure, Section 13.2 of the Pacific Longshore Contract~~
 4 ~~Document 2014-2019 (hereinafter "PCLCD") and a more detailed recitation~~
 5 ~~of the procedures set forth in a document entitled Pacific Coast Special~~
 6 ~~Grievance Handbook 2014-2019 (hereinafter "PCSGH").~~ ¹ There were a
 7 ~~total of 14~~ indiscriminate and capricious arbitrations, ~~totaling fourteen (14).~~
 8 ~~These arbitrations occurred~~ over a period of nine years ~~and that~~ eventually
 9 ended the career of Mr. Aldape by his ~~permanent~~ deregistration ~~on April 17,~~
 10 ~~2017. The matter was appealed and affirmed by Coast Appeals Officer,~~
 11 ~~Larry Schwerin~~ on July 31, 2017. As described more fully below, this
 12 occurred at the conclusion of the twelfth (12th) arbitration, ~~which is the~~
 13 ~~arbitration at issue here. Two more arbitrations followed his deregistration~~
 14 ~~arbitration. The last arbitration was concluded on May 11, 2017.~~
 15 ~~PLAINTIFF was found "not guilty" in the final two arbitrations.~~

16 3. A Defendant in this action is the International Longshore and
 17 Warehouse Union (~~hereinafter~~ ("ILWU"). The executive offices for ILWU
 18 are located in San Francisco, California. The ILWU workforce on the West
 19 Coast ports ~~employs more than is~~ 14,000 ~~workersmembers strong~~ who
 20 receive a compensation package that is ~~amongone~~ the most lucrative
 21 among all blue-collar workers in the United States. Full-time workers earn
 22 an average of \$161,000 annually in wages, along with a ~~generous non-~~
 23 ~~wage benefits package costing more than \$100,000 per active worker per~~
 24 ~~year.~~ ^{2, 3}

25 ¹ ~~Similar, if not identical language relative to discrimination is to be~~
 26 ~~found in earlier versions of Collective Bargaining Agreement.~~

27 ² ~~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.~~

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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 ~~5.4. ILWU Local 13 is (hereinafter "Local 13"),~~ also a Defendant in
7 this action. ~~Local 13~~ is located in San Pedro, California. Local 13 is one of
8 many local divisions of the ILWU which governs the workers in the Long
9 Beach/Los Angeles Harbor ~~—combined (Harbor).~~ ~~Combined,~~ it is the
10 sixteenth (16th) largest port in the world with respect to tonnage shipped
11 and/or received. ~~(ILWU and Local 13 are hereinafter jointly referred to as~~
12 ~~the "UNION" or "DEFENDANT UNION.")~~

13 ~~6.5. Pacific Maritime Association (hereinafter "PMA") is also a~~
14 Defendant in this action. PMA has a local office in Long Beach, California.
15 As PLAINTIFF's employer and a party to the PCLCD, PMA has an interest in
16 the ~~interpretation outcome of the PCLCD this matter.~~ Further, because PMA
17 is a party to the agreement, ~~it is unlikely that the Court would likely be~~
18 ~~unable to can~~ afford complete relief in the absence of PMA. ~~All ILWU~~
19 ~~workers are covered by the Pacific Coast Longshore Contract Document~~
20 ~~2014-2019 ("PCLCD"). As detailed below, Section 13 is referred to in the~~
21 ~~PCLCD and detailed procedures are set forth in the Pacific Coast Special~~
22 ~~Grievance Handbook 2014-2019 ("PCSGH").~~

23
24 ~~The top 10% of them draw in six figure salaries. There are few (if any),~~
25 ~~health and retirement benefits to compare to those of the ILWU.~~

26 ³ ~~The next high paying blue collar job is that of elevator repair and~~
27 ~~construction. On average they earn \$73,560 annually, or \$35.37 an hour.~~
28 ~~The top 10% of them draw in six-figure salaries. There are few (if any),~~
~~health and retirement benefits to compare to those of the ILWU.~~

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1 7.— Over the past eight years, Mr. Aldape has held certain positions
2 in the governance of DEFENDANT UNION. Mr. Aldape was deregistered as
3 a result of an arbitration in which the UNION failed to represent him. The
4 UNION's failure to represent Mr. Aldape is manifested in a number of ways
5 set forth below.

6 8.6. As a member of Local 13, Mr. Aldape was subject to a Collective
7 Bargaining Agreement (hereinafter, "CBA"), the Pacific Coast Longshore
8 Contract Document for clerks and related classifications ("the PCLCD")
9 (hereinafter, variously referred to as the "CBA" or "PCLCD"). Section 13.1
10 of the PCLCD prohibits discrimination. In pertinent part:

11 There shall be no discrimination ... either in favor of or against
12 any person because of membership or ~~nonmembership~~
13 membership in the Union, activity for or against the Union or
14 absence thereof, race, creed, color, sex (including gender,
15 pregnancy, sexual orientation), age (forty or over), national
16 origin, religious or political beliefs, disability, protected family
17 care or medical leave status, veteran status, political affiliation
18 or marital status. Also prohibited by this policy is retaliation of
19 any kind for filing or supporting a complaint of discrimination or
20 harassment. (PCLCD, pg. 76.)

21 9.7. At issue here, Section 13.2 of the PCLCD provides, in pertinent
22 part: *"~~All~~ To correct any incidents of discrimination, "all grievances and
23 complaints alleging incidents of ~~discrimination or~~ harassment ... in
24 connection with any action subject to the terms of this Agreement based on
25 race, creed, color, sex ... age, national origin, or religious or political beliefs
26 or alleging retaliation of any kind for filing or supporting a complaint of such
27 discrimination or harassment, **shall be processed solely under the**
28 **Special Grievance/ Arbitration Procedures** For The Resolution of*

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1 *Complaints Re Discrimination and Harassment Under the Pacific Coast*
2 *Longshore & Clerk's Clerk's Agreement: " " (Emphasis added.) (PCLCD, pg.*
3 *77.)*

4 ~~10.8.~~ The PCLCD A term and condition of union membership and
5 employment by PMA is that UNION members abide by the PCLCD and
6 PCSGH which requires UNION members to submit any grievances
7 related discrimination complaints to their employment to binding arbitration.
8 as provided by Section 13. These provisions of the PCLCD/PCSGH are
9 unlawful provisions of the collective bargaining agreement on their face.

10 ~~9.~~ The cause of Mr. Aldape's deregistration was the failure of
11 DEFENDANT UNION The provisions of Section 13.2 are a breach of duty of
12 fair representation in that they compel UNION members, either as potential
13 "grievants" or "accused," to be subject to an arbitration procedure which is
14 unconscionable and unlawfully waives significant statutory procedural and
15 substantive civil rights to which workers are entitled under the statutory
16 provisions which they mirror.

17 ~~10.~~ In addition, once these unlawful provisions were put into place,
18 they were used in a discriminatory and arbitrary manner, in and of
19 themselves by the UNION to prevent and chill Mr. Aldape's freedom of
20 speech in the workplace; and, ultimately, to cause him to lose his ability to
21 be employed by PMA. In addition to causing Mr. Aldape's deregistration,
22 the UNION failed to fairly and adequately represent him by ratifying and
23 condoning the misinterpretation and manipulation of the plain meaning of
24 Section 13.2 and its wholly erroneous application to the subject matter at
25 issue in a multitude of vexing arbitrations— brought by ILWU officers
26 against PLAINTIFF.

27 ~~11.~~ These repeated efforts to quell Mr. Aldape's right to free
28 speech led to his the loss of one year an extended period of work and

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1 eventual deregistration — a permanent ~~expulsion~~preclusion from working
2 for any member companies of ~~the Pacific Maritime Association~~ (hereinafter
3 “PMA”).

4 12.— PMA is effectively the “employer” for all ILWU workers in the
5 Long Beach/Los Angeles Harbor. A handful of companies, who are not one
6 of the thirteen members of PMA, continue to utilize ILWU workers.
7 However, this has not been the case in the Long Beach/Los Angeles Harbor
8 for several years. When Mr. Aldape was deregistered, it was a prohibition
9 against working for any of the thirteen (13) member companies of PMA —
10 effectively, all of the available employers in the Long Beach/Los Angeles
11 Ports.

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

16 14.— Mr. Aldape’s wife is disabled and the ability to replace the family
17 income cannot occur in the absence of his return to work as a
18 longshoreman.

19 15.— In addition to the deregistration determination of the arbitration
20 at issue, Mr. Aldape contends that there has been a breach of the duty of
21 fair representation and breach of contract in connection with the way in
22 which the arbitration was investigated, prepared and handled and that he
23 was wrongfully terminated.

24 ~~16.11.~~ Mr. Aldape will establish a breach of DEFENDANT UNION’s
25 . The UNION breached the duty of fair representation, by a showing that
26 the conduct of the UNION was “arbitrary” and in “bad faith.” Arbitrary, as
27 used in Section 12, has been defined to include conduct, which is
28 perfunctory, reckless or indifferent to Mr. Aldape’s interests. The UNION

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1 ~~acted in bad faith by the exercise of ill-~~ The grievances misapplied Section
2 13.2 in opposition to the legal opinion of the employer, PMA.

3 ~~///~~

4 ~~will, hostility and revenge toward Mr. Aldape in its efforts to quell his right~~
5 ~~to free speech.~~

6 ~~17.12.~~ In the grievance context, this standard in a DFR claim
7 prohibits a union from processing a grievance in a perfunctory way, or as in
8 this case, in a manner deliberately intended to mislead and support an
9 interpretation of the ~~CBA, section~~ PCLCD, Section 13.2 that was
10 undisputedly erroneous. For a Section 13.2 grievance to be applicable, the
11 complaint must fall into

12 ~~In this instance, and as/ / /~~

13 one of the protected classes set forth below, ~~in~~ paragraph 7. This was
14 rarely the case in the instance of Mr. Aldape.

15 ~~18.—~~ The UNION acted in bad faith by the exercise of ill will, hostility
16 and revenge toward Mr. Aldape by its failure to process two grievances
17 which set forth a conflict of interest on the part of a mediator and Coast
18 Appeals arbitrator who were the eventual cause of the deregistration of Mr.
19 Aldape. Moreover, the ILWU used its best efforts to quell PLAINTIFF's right
20 to free speech and in retaliation for his criticisms of ILWU officers. The
21 very composition of Section 13.2 is unconscionable and unlawful on its face.

22 The act(s) of omission or omissions by the ~~DEFENDANT~~ UNION were so
23 egregious and unfair as to be arbitrary,

24 13. thus, constituting a breach of the duty of fair representation.

25 There was no rational and proper basis for the UNION's conduct.

26 ~~19.14.~~ As set forth below—The UNION repeatedly, over a period
27 of many years, ~~the UNION~~ utterly and completely remained silent in the
28 face of what was clearly and undisputedly a twisted and specious

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1 interpretation and application of a Section 13.2 in such a way as to cause
 2 Mr. Aldape to be found "guilty" of unfounded grievances. These findings
 3 resulted in fines, penalties and the loss of work, culminating in
 4 deregistration.⁴ Not once did DEFENDANT the UNION come to Mr. Aldape's
 5 defense or clarify the plain meaning of the *Rule* used to persecute and
 6 eventually deregister PLAINTIFF. ~~Instead, officers of Local 13 and ILWU~~
 7 ~~members who were the subject of Mr. Aldape's criticism for fraud and~~
 8 ~~unlawful conduct, utilized a provision of the PCLCD inapplicable to their~~
 9 ~~complaints, so as to penalize Mr. Aldape and to cause his deregistration.~~
 10 ~~The UNION failed to represent Mr. Aldape in the full and complete~~
 11 ~~knowledge that the PCLCD was being misused and twisted in such a fashion~~
 12 ~~as to cause him hundreds of thousands of dollars of financial loss, the loss~~
 13 ~~of substantial benefits and eventually, the ability to support his family.~~

14 20.—The shame and humiliation of losing a position in what was
 15 effectively the "family business" and ultimately costing him a career that
 16 was the lynchpin of the support of his family, including the education of his
 17 children, the security of adequate medical, dental and eye care and a
 18 secure retirement that he worked years to obtain, has been insufferable for
 19 Mr. Aldape and for his family.

20 15. In addition to the manner and means by which provisions of the
 21 arbitration agreement were applied to Mr. Aldape, the very provisions of
 22 Section 13.2 constitute an unconscionable arbitration agreement. In fact,

23 _____
 24 ⁴ By way of example and not limitation, Mr. Aldape was found guilty of
 25 a 13.2 "discrimination" grievance by a Union member who took umbrage to
 26 a cartoon depicting multiple individuals of a medical scam by union
 27 members and officers. When an employer complaint was published
 28 accusing this same individual of medical fraud, this was considered
"retaliation" and the basis of Mr. Aldape's deregistration.

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1 the provisions of Section 13.2 were both procedurally and substantively
2 unconscionable.

3 16. Moreover, in order for a union to waive employees' rights to a
4 federal judicial forum for statutory antidiscrimination claims, the agreement
5 to arbitrate statutory claims must contain a clear and unmistakable waiver.
6 The contract contains no explicit incorporation of statutory
7 antidiscrimination requirements as it relates to gender or any other
8 protected class, save the *Americans with Disabilities Act* ("ADA") and the
9 *Uniformed Services Employment and Reemployment Rights Act* ("USERRA").
10 ILWU and PMA are both signatories of the unconscionable PCLCD/PCSGH
11 agreement for 2014 to 2019.

12 17. Officers of Local 13 and ILWU who were the subject of Mr.
13 Aldape's criticism for fraud and unlawful conduct, utilized provisions of the
14 PCLCD/ PCSGH so as to penalize Mr. Aldape; and, to ultimately cause his
15 deregistration. He is and was an outspoken and active critic of union
16 members who engaged in conduct he alleges is unlawful, fraudulent or not
17 in the best interests of the UNION.

18 18. On several occasions, PMA (the employer) came to the defense
19 of Mr. Aldape, by letter and oral argument during arbitration. PMA
20 repeatedly opined that Section 13.2 was being misapplied to Mr. Aldape.
21 Despite these advisory opinions by PMA, the UNION failed to acknowledge
22 the employer's opinion or to support Mr. Aldape during 14 arbitrations. In
23 addition to the repeated misuse of an inherently unlawful grievance
24 procedure, Defendants, particularly ILWU, repeatedly engaged in other acts
25 which breached the duty of fair representation and violated PLAINTFF's
26 right to free speech.

27 ///

28 ///

JURISDICTION & VENUE

~~21.19.~~ This is an action for money damages in excess of \$75,000 brought pursuant to the *Labor Management Relations Act* (LMRA) § 301(29 U.S.C. § 185) and *Labor Management Reporting and Disclosure Act of 1959* ("LMRDA") § 101(a)(2) (29 U.S.C. § 411(a)(2)). Jurisdiction of this Court is invoked under 28 U.S.C. §§ 1931 & 1341, (2), (3) & (4), § 1343(a)(3)(4), and LMRDA § 102 (29 U.S.C. §412), (29 U.S.C. §1337). ~~(LMRDA) Section 101(a)(2) (29 U.S.C. section 411(a)(2). Jurisdiction of this Court is invoked under 28 U.S.C. §§ 1931 & 1341, (2), (3) & (4), § 1343(a)(3)(4), LMRDA section 102 (29 U.S.C. section 412) and the aforementioned statutes; PLAINTIFF further invokes the supplemental jurisdiction of this Court to hear and decide claims arising under state law.~~

20. PLAINTIFF also invokes the theory of continuing violations in that this case involves repeated violations over several years in which the PLAINTIFF was injured. The repeated nature of the alleged violations which injured PLAINTIFF are consistent with the UNION's longtime practice and should not be time barred because there is no adequate business justification present to support such a clearly discriminatory practice. *The Labor/Management Reporting Disclosure Act* ("LMRDA") 29 U.S.C § 411(a)(3)(A) recognizes a two-year statute of limitations and a theory of continuing violations. In arriving at his decision to deregister Mr. Aldape, the arbitrator specifically referred to all of Mr. Aldape's prior arbitrations and accepted into evidence 67 cartoons and flyers spanning a period of more than eight years in consideration of his final decision.

~~22.21.~~ The acts and omissions complained of herein arose within the County of Los Angeles at the office of the ILWU located in San Pedro, California, the executive offices of the ILWU located in San Francisco, California and at such location as the ~~arbitration of Complaint SPSC 0006-~~

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1 ~~2017 (arbitrations which are~~ the subject of this ~~lawsuit), Complaint,~~ at the
2 Pacific Maritime Association, 1 World Trade Center, Suite 1700, Long Beach,
3 California. Therefore, venue is proper before this Court.

4 ~~23.22.~~ The acts ~~and~~ omissions complained of herein began
5 sometime in 2009, and have continued to the present. The ~~relevant~~
6 ~~arbitration and complaint which caused~~ the ~~subject deregistration~~ of this
7 ~~lawsuit~~ Mr. Aldape was filed on March 10, 2017, and decided on ~~July 10~~ April
8 ~~17,~~ 2017. The matter was taken ~~up~~ on appeal. On July 31, 2017, the
9 arbitrator's award was affirmed. ~~Following the "deregistration" arbitration,~~
10 ~~there were two additional arbitrations which occurred in April 2017 and May~~
11 ~~2017.~~

12 ~~24.23.~~ PLAINTIFF is informed and believes and thereon alleges
13 that at all times relevant herein, each DEFENDANT was and is the agent,
14 servant, employee, partner, joint venturer, assistant, supervisor,
15 consultants of each and every other DEFENDANT, and as such was at all
16 times acting within the course, purpose, scope, and authority of said
17 agency, partnership, and employment, and acting with the express or
18 implied knowledge, permission, authority, approval and consent of every
19 other named and unnamed DEFENDANT.

20 ~~25.24.~~ PLAINTIFF is informed and believes and thereon alleges
21 that the true names and official capacities of DEFENDANTS designated as
22 DOES 1-10, inclusive, are unknown to PLAINTIFF, who therefore sues these
23 DEFENDANTS by such fictitious names. PLAINTIFF will seek leave of Court
24 to amend his complaint to show the true names and capacities of these
25 DEFENDANTS when they have been ascertained.

26 ~~26.—All of the DEFENDANTS are sued in their individual and official~~
27 ~~capacities.~~

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1 ~~27.25.~~ PLAINTIFF is informed and believes and thereon alleges
 2 that DEFENDANTS, including DOES 1-10, as employees and agents of
 3 ILWU, Local 13 and PMA, ~~have~~. In almost every instance of arbitration,
 4 pursuant to Section 13.2, the complaint was brought by an officer or other
 5 elected member of Local 13. In the case of the deregistration complaint,
 6 the grievant was on the Executive Board and a former Secretary Treasurer.
 7 These individuals were agents of and acting on behalf of ILWU and Local
 8 13. All of the parties shared in the responsibility either for making policy or
 9 for implementing and enforcing and defending, the utter failure to defend
 10 Mr. Aldape, as required by law and under the terms and conditions of the
 11 CBAPCLCD, and to do so in a fair and non-discriminatory manner.

12 ~~28.26.~~ PLAINTIFF is informed and believes and thereon alleges
 13 that DEFENDANTS, including DOES 1-10, 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 PMA, ILWU
 17 and Local 13's agents, servants, partners, joint venturers, and employees,
 18 and each of them, or in some other manner. All actions of each
 19 DEFENDANT were ratified and approved by every other DEFENDANT.
 20 PLAINTIFF further alleges on information and belief that all of the actions
 21 alleged herein were taken pursuant to the customs, policies, and practices
 22 of the management and officers of PMA, ILWU and Local 13 during the
 23 relevant time period.

FACTS

24
 25 ~~29.—Mr. Aldape was active in union activities and was elected to~~
 26 ~~various positions, including the Grievance Committee, Executive Board and~~
 27 ~~was a Caucus Delegate. He is and was an outspoken and active critic of~~
 28

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1 ~~union members who engage in conduct he alleges is unlawful, fraudulent or~~
2 ~~not in the best interests of the UNION.~~

3 30.27. Mr. Aldape repeatedly published articles, cartoons and
4 flyers which contained caricatures, cartoons and exaggerations of union
5 officials and the political, ethical and financial issues facing the UNION.
6 Many of these publications placed the UNION and various union
7 ~~members~~officials in an unfavorable light. However, ~~NONE~~none were
8 discriminatory ~~or~~harassing to trigger application of Section 13.2 as it
9 was intended.

10 31.28. The ~~CBAP~~PCLCD/PCSGH mirrors the language of the
11 California Department of Fair Employment and Housing Act, ("DFEH") (§§
12 12900-12907) and Title VII of the Civil Rights Act of 1964, in particular, the
13 section(s) dealing with discrimination based on a protected class. As a
14 result of his active pursuit of fair political comment on union matters in the
15 form of writings, flyers, cartoons and outspoken language, Mr. Aldape was
16 the subject of fourteen (14) grievances filed erroneously under Section 13.2
17 from 2009 to 2017. These multiple grievances filed by officers or former
18 officers of ILWU, including the deregistration grievance, were retaliatory in
19 nature.

20 29. While it is permissible to have statutory claims such as Title VII
21 arbitrated pursuant to a collective bargaining agreement, at a minimum,
22 such a waiver requires a reference to the statutes that are being waived.
23 In the instant matter, the PCLCD/PCSGH references the ADA and USERRA
24 (only) but makes no reference to Title VII or FEHA, which specifically
25 address sexual discrimination, including discrimination and harassment
26 based on race or ethnicity. Failing to make reference to the statutes being
27 waived, in particular, those referencing discrimination and harassment
28

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1 against all other protected classes, does not provide notice of the rights
2 being waived.

3 30. Moreover, the grievance procedure pursuant to Section 13.2 is
4 procedurally unconscionable in that the grievant has a statute of limitations
5 of 15 days in which to file a grievance "from the incident." Moreover, there
6 is no mechanism for any sort of investigative procedure. The hearing must
7 be conducted within 14 days of receipt of the complaint (as opposed to the
8 one year or 300 day statute of limitations pursuant to Title VII or FEHA).
9 This allows the "accused" less than 14 days in which to gather facts,
10 documents, witnesses (who appear at the discretion of the arbitrator) and a
11 knowledgeable representative to appear at an arbitration proceeding
12 conducted by an arbitrator who is not required to have any legal training.
13 Nor, are there any formal educational requirements. Any appeal must be
14 filed within 14 days of the arbitrator's written decision. Lawyers are not
15 permitted to represent either party to the grievance.

16 31. While the full panoply of discovery is not normally part of an
17 arbitration agreement, arbitration agreements are required to have the
18 minimum standard of fairness. Section 13.2 does not even provide a
19 statement regarding the availability of some minimum amount of discovery
20 (or, the time to conduct any discovery). During the arbitration, the
21 submission of evidence and the taking of testimony goes beyond the
22 expected and less formal procedures anticipated in an arbitration, the
23 transcripts of these proceedings evidence a chaotic and indecipherable
24 process.

25 32. The grievance procedure pursuant to Section 13.2 is
26 substantively unconscionable in that the only "remedy" provided on a
27 finding of guilty is a punishment for the accused, which takes the form of
28 fines, lost days of work and, in the case of Mr. Aldape, can provide the

1 ultimate punishment, deregistration - a loss of his livelihood. [Mr. Aldape](#)
2 does not have the benefit of an investigation or discovery and is only
3 allowed an unconscionable period of time in which to respond to a
4 grievance. Alternatively, there is no remedy for the grievant, no remedy of
5 monetary damages, including, emotional distress and punitive damages.
6 Section 13.2 remedies include mandatory training, distribution of notices to
7 employees and unilateral changes to the policies and constitutional
8 violations practices. These are vastly different rights and remedies than the
9 statutes which Section 13.2 is purported to mirror.

10 33. The stated objective of Section 13 is to punish misconduct,
11 educate and correct the misconduct consistent with principles of
12 progressive discipline. Alternatively, Title VII of the *Civil Rights Act of 1964*,
13 codified in 17 U.S.C. § 2000, was enacted to create rights for individuals to
14 be free from discrimination in employment and provides significant rights
15 and remedies to complainants and the accused.

16 34. The application of Section 13.2 turns the 1964 *Civil Rights Act*
17 on its head, creating claims against individuals in the employment context
18 where the employer plays little or no part in the allegations, there is no
19 investigation nor a sufficient opportunity to obtain sufficient evidence or
20 witnesses in which to defend or pursue a grievance.

21 35. This is a one-sided agreement designed to resolve important
22 and potentially egregious civil rights issues in a quick and relatively painless
23 manner for the UNION and PMA at no cost. The only "compensation" for
24 the aggrieved is the loss or discipline of employees deemed "guilty." *The*
25 *Civil Rights Act of 1964* is an area of the law intended to provide justice,
26 fairness and some form of compensation to the aggrieved and providing
27 some protections for the accused while advancing civil rights as opposed to
28 "progressive discipline."

1 36. Every instance in which Section 13.2 was used against Mr.
2 Aldape was a separate and discrete breach of the duty of fair
3 representation and a violation of his right to free speech.

4 37. Upon information and belief, the employer and UNION were or
5 should have been well aware that the negotiation of Section 13.2 was a
6 severe diminution of the individual and collective civil rights of ILWU
7 members.

8 38. In addition to the use and misuse of Section 13.2 as a weapon
9 against Mr. Aldape, he suffered other breaches of the duty of fair
10 representation and violations of his right to free speech.

11 a. Two separate grievances filed by Mr. Aldape were never
12 processed. On April 4, 2016, Mr. Aldape filed a grievance against
13 Mark Mascola. During an LRC meeting, Mr. Mascola, as an LRC
14 representative, reacted to advice Mr. Aldape was giving a Union
15 member during a meeting, by calling him a "fucking monkey." Two
16 weeks later, at a similar meeting, Mr. Mascola was so enraged by Mr.
17 Aldape that he attempted to physically assault PLAINTIFF while
18 shouting, "I am going to fucking kill you" while being restrained by
19 rank and file union members. Following the filing of the grievance
20 and the failure to act on it (after two letters of inquiry), Mr. Aldape
21 requested that the matter be advanced to the next grievance level –
22 which, upon information and belief, was never processed. Mr.
23 Mascola was the arbitrator who heard the arbitration responsible for
24 Mr. Aldape's deregistration.

25 b. Mr. Aldape filed a grievance against the Coast Labor
26 Relations Committee ("CLRC") and appeals officer, Larry Schwerin.
27 The grievance was received on April 4, 2016 and never processed by
28 the JCLRC. Mr. Schwerin was the appeals officer who, on July 31,

1 2017, affirmed Mr. Mascola’s decision to deregister Mr. Aldape at the
2 arbitration on April 17, 2017.

3 ~~32.—~~Dismayed by the gross misuse of Section 13.2 ~~in regards~~
4 ~~to~~regarding grievances against Mr. Aldape, PMA, the employer of Mr.
5 Aldape and a signatory to the CBAPCLCD, offered a legal opinion to
6 ~~DEFENDANT~~the UNION on multiple occasions, advising ILWU that theirthe
7 use of Section 13.2 ~~clearly~~ was in violation of both the letter and intention
8 of the CBAPCLCD. The UNION ignored and rejected the intentionsadvice of
9 the signers/drafters—PMA and ILWU.

10 ~~33.—~~The November 21, 2012 letter from Richard Marzano, Coast
11 c. ___ Director, Contract Administration and Arbitration, PMA, in
12 reference to at the expense of Mr. Aldape.
13 Grievance SP-0032-2012 (as discussed more fully below), reads, in
14 pertinent part:

15 Recall the CLRC’s February 19, 2002 letter to the Coast Appeals
16 Officer clarifying Section 13.2’s procedures. In it, the
17 Committee clearly stated, by quoting from Section 13.2, that
18 Section 13.2 is **limited** to claims “alleging discrimination or
19 harassment (including hostile work environment) in connection
20 with any actions subject to this Agreement based on [1] race,
21 [2] creed, [3] color, [4] sex (including gender, pregnancy,
22 sexual orientation), [5] age (forty or over), [6] national origin,
23 or [7] religious or political beliefs, or [8] or alleging retaliation of
24 any kind for filing or supporting a complaint of such
25 discrimination or harassment.” (Emphasis added.)

26 ~~If Section 13.2 is limited to claims alleging discrimination or~~
27 ~~harassment on at least one of the eight listed bases, then findings of~~
28 ~~violations of Section 13.2, and discipline imposed under Section 13.2,~~

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1 ~~must require findings of discrimination or harassment on a least one~~
2 ~~of the 8 listed bases. The Area Arbitrator's decision fails to mention~~
3 ~~discrimination or harassment on any of those bases.~~

4 d. After Mr. Aldape's deregistration, Miller spoke to Mr.
5 Aldape and apologized to him for the mishandling of the various
6 grievances which were decided by Mr. Miller.

7 e. DEFENDANTS repeatedly breached the duty of fair
8 representation by failing to negotiate a collective bargaining
9 agreement that was fair and just and did not waive the civil rights of
10 Mr. Aldape and other UNION members nor subject PLAINTIFF and
11 others to an unlawful procedure.

12 ///

13 **SUMMARY OF GRIEVANCES AGAINST MR. ALDAPE,**
14 **THE ERRONEOUS APPLICATION OF SECTION 13.2,**
15 **BREACH OF THE DUTY OF FAIR REPRESENTATION**
16 **AND THE VIOLATION OF FREE SPEECH RIGHTS**

17 34.39. Evidence of the arbitrary and capricious misapplication of
18 Section 13.2 in order to quell Mr. Aldape's free speech rights is illustrated
19 by the following summary of grievances. PLAINTIFF does not seek to
20 vacate these decisions but to illustrate the extreme lengths union officers
21 took in an effort to chill PLAINTIFF's speech and violate the duty of fair
22 representation.

23 35.—Grievance SP-0005-2009 was filed on September 9, 2009 ~~by~~
24 ~~Margarite Droege (Jurisic), charging a union officer with special treatment~~
25 ~~of the daughter of Mark Jursiac in a satirical flyer. Mark Jurisic, an ILWU~~
26 ~~member, elected to the position was~~ on the Executive Board and ~~Business~~
27 ~~Agent. It~~

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1 included allegations that Registration Committee ~~Mr. Aldape~~ was circulating
 2 a flyer accusing her of a
 3 failed drug test, which was then "covered up" by her father. She claimed,
 4 "Now my reputation has been smeared and I am humiliated." Ms. Droege
 5 goes on to say that she is being "harassed" by virtue his daughter was
 6 allegedly the recipient of a drug test which was failed and disclosed.
 7 Importantly, there favoritism. There is no allegation of discrimination,
 8 harassment, or retaliation, triggering application of which is a prerequisite
 9 to the inherently faulty Section 13.2:

10 — The decision was tendered on October 5, 2009. ~~Stunningly, the~~
 11 ~~arbitrator found each of Aldape's flyers to be in violation of 13.2 policy: "It~~
 12 ~~is a violation to print and distribute printed material that depicts a person's~~
 13 40. personal being in a derogatory manner... procedure. Mr. Eric
 14 Aldape iswas found guilty ~~[by Arbitrator David Miller]~~ of violating Section
 15 ~~13.2 policy."~~ Mr. Aldape was assessed thirty (30) days off without pay and
 16 ordered to attend "diversity training." Clearly, 13.2 was inapplicable. A
 17 "derogatory depiction," without being tied to a *protected class*, is a gross
 18 misapplication of the Rule. ~~The matter was appealed and upheld..~~ The
 19 guilty verdict was intended to prevent his free speech.

20 36.41. Grievance SP-0010-2009 was filed on October 2, 2009, by
 21 Steven M. Bebich. Mr. Bebich was elected to the Executive Board, was a
 22 dispatcher, and Caucus Delegate. *"Mr. Aldape has distributed fliers about*
 23 *me during the elections of this year. However this time he went too far, he*
 24 *threatened to reveal what he alleges to be my criminal history to the*
 25 *membership."* ~~Mr. Eric Aldape~~ iswas found guilty of violating Section 13.2
 26 Policy...and sentenced to 60 days off all work." ~~This was a finding by~~
 27 ~~Arbitrator David Miller, who erroneously applied 13.2 to the facts.~~

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1 42. Grievance SP-0002-2010 was filed on March 6, 2010 by Mark
2 Jurisic, who was on the Executive Board. Jurisic accused Mr. Aldape of

3 ///

4 37. throwing a flyer at him (Jurisic) and telling him to take it to his
5 "daddy." In this instance, the The arbitrator found that the "...grievance
6 doesthis matter did not meet the criteria of afor Section 13.2 violation."
7 This was a finding by Arbitrator David Miller.

8 38.—Grievance SP-0026-2011 was filed on July 28, 2011, by Mike
9 Bebich, a union officer who complained that Mr. Aldape distributed political
10 flyers "*... in retaliation of my political beliefs because I was scheduled to*
11 *testify against Mr. Aldape in an NLRB Court Hearing.*" He claimsclaimed Mr.
12 Aldape "*...is engaging in harassment and intimidation by inviting the*
13 *membership to attend an*

14 43. NLRB Court Hearing." In an August 8, 2011 letter, Arbitrator
15 Miller writes, "[t]he grievance does not meet the criteria of a 13.2
16 violation."

17 39.—Grievance SP-0027-2011 was filed by Mark Jurisic, (on the
18 Executive Committee) on July 26,

19 44. 2011, and accused Mr. Aldape of distributing a flier that "*stated*"
20 *the union was spending its money to protect "their buddies and their*
21 *buddies casual kid."* In a letter dated August 8, 2011, Arbitrator Miller
22 found the "grievance does not meet the criteria of a 13.2 violation."

23 40.45. Grievance SP-0032-2012 was filed on September 28,
24 2012, by Christopher Viramontes, the Secretary/Treasurer of Local 13. Mr.
25 Viramontes was a powerful person in Local 13 and held positions on the
26 Executive Board and was a-running for the position of Caucus
27 Delegateddelegate. He claims, "*Brother Aldape printed false statements to*
28 *try and influence members during longshore elections* which took place

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1 ~~from September 25-27, 2012. What is even more offensive is the . The~~
 2 ~~"false statements" were a satirical cartoon he drew on the back of his and~~
 3 ~~flyer. He drew a picture accusing Mr. Viramontes of meplaying football~~
 4 ~~cards and being involved in a nurse's uniform wearing a nurse's cap with~~
 5 ~~the initials P + M on the hat." (P and M refers to the fraudulent "Port~~
 6 ~~Medical.) Mr. Viramontes was under investigation for medical fraud. There~~
 7 ~~was a letter from PMA asking that the grievance against scandal." Mr.~~
 8 ~~Aldape be dismissed and stating the inapplicability of Section 13.2 to such~~
 9 ~~allegations. Mr. Aldape was found guilty of violating Section 13.2 policy and~~
 10 ~~assessed 180 days off work by Arbitrator Miller. After appeal, Coast~~
 11 ~~Appeals Officer, Rudy Rubio assessed an additional 180 days off,~~
 12 ~~suspended. Again, there were no allegations.~~

13 ~~+++~~
 14 ~~that Mr. Viramontes was being harassed or discriminated against under the~~
 15 ~~aegis of a protected class, a clear misapplication of Section 13.2.~~

16 41.46. Grievance SP-0017-2013 was filed on July 3, 2013, by
 17 Christopher Viramontes, President of Local 13, who complained that Eric
 18 Aldape committed an act of retaliation by physically assaulting Viramontes
 19 on July 3, 2013, in close proximity to the Local 13 business office located at
 20 630 S. Centre Street, San Pedro, California because of a past Section 13.2
 21 complaint (SCGM 0009-2012). Mr. Aldape was found guilty. The allegation
 22 of "retaliation by assaulting Mr" occurred one year after the claimed
 23 violation.

24 ~~Viramontes and was sentenced to 540 days off by Arbitrator David Miller.~~
 25 ~~Mr. Aldape appealed the decision and his appeal was denied. Presumably,~~
 26 ~~this retaliation was for the unfounded decision in September 2012, nearly~~
 27 ~~one year after the purported finding that a cartoon implicating Viramontes~~
 28 ~~in medical fraud that was a misapplication of 13.2. Nexus in time is a~~

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~~critical consideration in a determination of claims of retaliation. The allegation of "retaliation" occurred one year after the claimed violation. Moreover, the purported retaliation was NOT subject to 13.2.~~

~~42.47. _____ Grievance SPSC-0005-2016 was filed on March 14, 2016, by Lawrence Toledo, who complained that Eric Aldape violated the Section 13.2 policy in retaliation for Toledo's participation in a Section 13.2 hearing that occurred ~~on~~ March 8, 2016, based on a flyer with drawings of rats and an internet posting. Mr. Toledo was a member of the grievance committee. Mr. Toledo did not show up at the March 24, 2016 hearing and the arbitrator dismissed the case. Mr. Toledo then filed an appeal of the dismissal, the dismissal was reversed and a hearing was scheduled for May 13, 2016. Mr. Aldape was found not guilty by Arbitrator Mark Mascola.~~

~~43.48. _____ Grievance SPSC-0008-2016 was filed on March 18, 2016, by John William Seixas, a member of the grievance committee who complained that Aldape violated the Section 13.2 policy based on a flyer with drawings of rats. Seixas claims the image is There was a finding of not guilty. anti-Semitic and is in relation to his Jewish ancestry. Mr. Seixas was a member of the grievance committee. The flyer was released the same day another grievance was posted on the internet. Seixas indicates he does not feel safe either coming or going from the dispatch hall, worksite or his own home. Mr. Aldape was found not guilty by Arbitrator Mark Mascola.~~

~~44. _____ Grievance SPSC-0032-2016 was filed on August 28, 2016, by~~
~~49. _____ John Seixas. His complaint involves political cartoon flyers made by Mr. Aldape that were posted, removed, and then reposted by Mr. Aldape. Mr. Seixas claimed that Mr. Aldape physically assaulted him when Mr. Seixas was trying to remove the flyers. PMA filed an appeal on behalf of Mr. Aldape. Mr. Aldape was found guilty and given one year off work.~~

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

~~45-50. Grievance SPSC-0001-2017 was filed on February 6, 2017, by John Seixas claiming retaliation under Section 13.2 in that Aldape "continues to work in violation of the arbitrator's ruling and Aldape is breaking confidentiality by allegedly posting about the proceedings on the internet." A hearing under Section 13.2 was denied by Arbitrator Merial, but appealed by Mr. Seixas. The decision was reversed only as to the internet postings. At the April 3, 2017 arbitration, Mr. Aldape was found not guilty by Arbitrator Ron Merial. Mr. Alape was found not guilty.~~

~~46.—Grievance SPSC-0006-2017, at particular issue in the instant matter, and resulting in the deregistration of Mr. Aldape, was filed on March 10, 2017 by Christopher Viramontes, a member of the Executive Committee. Mr. Viramontes ~~claims~~ claimed that Mr. Aldape posted a complaint by PMA against Mr. Viramontes on the internet in retaliation for complaints filed by Mr. Viramontes against Mr. Aldape, which has caused a hostile work environment. (Emphasis added.) The Complaint by PMA accused Mr. Viramontes of defrauding the ILWU Benefits Plan through a business, Port Medical. Port Medical representatives were paying ILWU members to bill for false claims and fabricating billing records.~~

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1 51. Cohorts of Mr. Viramontes were similarly accused and
 2 subsequently convicted of fraud. The Complaint against Mr. Viramontes
 3 was ~~a matter of~~ available to UNION members and, thus, was not
 4 confidential.

5 ~~public record available to anyone in the UNION and, thus, was not~~
 6 ~~confidential.~~

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

20 ~~48.52.~~ Arbitrator Mark Mascola based the deregistration of Mr.
 21 Aldape not only on Grievance SPSC-0006-2017, but on all prior and equally
 22 misguided 13.2 decisions. "*Past 13.2 hearings involving Aldape provide*
 23 *unmistakable precedent that Aldape has knowledge and awareness of the*
 24 *guidelines, penalties, and wording within the Pacific Coast Special*
 25 *Grievance."* Also taken into consideration and attached as exhibits to the
 26 record were approximately 67 satirical cartoons and flyers. The matter was
 27 on appeal to Larry Schwerin who upheld the decision by Mascola. The
 28 grievance against Mr. Schwerin was never resolved nor even acted upon.

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1 ~~Handbook.~~ Clearly, the arbitrator had no such knowledge or
2 understanding.

3 49.—There were no allegations based on race, creed, color, sex
4 (including gender, pregnancy, sexual orientation), age (forty or over),
5 national origin, or religious or political beliefs, or alleging retaliation
6 supporting a complaint of discrimination or harassment. Nonetheless, Mr.
7 Aldape was found guilty of Section 13.2, and deregistered. Mr. Aldape
8 appealed the decision. The decision was affirmed on July 31, 2017, by
9 Coast Appeals Officer, Larry Schwerin.

10 50.—In addition to the incorrect application of Section 13.2 and
11 resulting decisions, the arbitration proceedings were rife with procedural
12 errors. Evidence was not admitted and critical testimony was not taken.
13 The Arbitrator, a dues paying union member, Mark Mascola, was a known
14 enemy of Mr. Aldape who had assaulted him and threatened, in the
15 presence of several individuals to kill Mr. Aldape. The issue of the
16 Arbitrator's bias was considered on appeal and rejected.

17 51.53. Grievance SPSC-0011-2017 was filed on March 23, 2017,
18 post- deregistration, by Lawrence Toledo, a member of the grievance
19 committee who claimed text messages from ~~Erie~~Mr. Aldape were based on
20 his race and religion and in retaliation for a complaint Mr. Toledo filed
21 against Mr. Aldape. Mr. Toledo also claims that Mr. Aldape posted articles
22 on the internet attacking him as another form of retaliation.⁵ Mr. Aldape
23 was found not guilty of retaliation as the Arbitrator indicates the
24 correspondence was mutual and outside of the workplace.

25 ⁵ It should be noted that while Mr. Aldape was "~~de-~~
26 ~~registeredderegistered~~" and therefore had no ability to work for any of the
27 PMA companies (the employer to the CBA), he nonetheless has remained a
28 dues paying member of the ILWU.

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1 //

2 52.—Grievance SPSC-0013-2017 was filed on March 29, 2017, by
3 54. John Seixas who claimed Mr. Aldape was breaking the
4 confidentiality clause with his flyer, "Free Speech We Must Preach,"
5 alleging. Mr. Seixas alleged harassment (talking over him) at a JPLRC
6 meeting and distribution of a flyer entitled "Two BA's for the price of one,"
7 which Mr. Seixas believes isbelieved was threatening. Mr. Aldape was
8 found not guilty of prohibited conduct in violation of Section 13.2.

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9 **FIRST CAUSE OF ACTION**
10 **BREACH OF THE DUTY OF FAIR REPRESENTATION**
11 **LABOR-MANAGEMENT RELATIONS ACT (LMRA) § 301**
12 **(29 U.S.C. § 185)**

13 [Against All Defendants]

14 53:55. PLAINTIFF realleges and incorporates by reference
15 paragraphs 1 through 5254 of this Complaint inclusive of this paragraph as
16 though said paragraphs were fully set forth herein.

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17 54.—Mr. Aldape effectively was discharged from his employment by
18 as a result of DEFENDANTS' unlawful conduct leading to Mr. Aldape's
19 deregistration from working for PMA.

20 55:56. DEFENDANTS' conduct, compelling Mr. Aldape to submit
21 to a Section 13.2 procedure, was unlawful. The terms and conditions of
22 Section 13.2 are arbitrary in light of the factual and legal landscape at the
23 time of DEFENDANTS' actions. Moreover, DEFENDANTS' actions were so
24 far outside a "wide range of reasonableness" as to be irrational.
25 DEFENDANTS' discriminatory conduct was "invidious," i.e., unfair, unjust,
26 iniquitous and unwarranted. The discharge was without just cause as a
27 result of the erroneous application of provisions of the CBAPCLCD/PCSGH.
28

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1 ~~56.57.~~ The UNION breached its duty to fairly represent the
 2 PLAINTIFF's interests under the ~~collective bargaining~~
 3 ~~agreement PCLCD/PCSGH~~. They engaged in conduct deliberately intended
 4 to prevent Mr. Aldape from retaining a valuable and irreplaceable job.
 5 Additionally, the UNION engaged in arbitration practices which were not in
 6 accordance with ~~designated lawful~~ procedures, which were intended to, and
 7 did, rob Mr. Aldape ~~and; presumably, other union members~~ of procedural
 8 due process, ~~due process which would have been provided under the~~
 9 ~~statutory provision(s) of Title VII and FEHA.~~

10 ~~58.~~ The arbitration procedures set forth in Section 13.2 are
 11 ~~unconscionable and unenforceable. Section 13.2 does not advise workers~~
 12 ~~of the significant rights they are waiving and then diminishes what rights it~~
 13 ~~does provide.~~

14 ~~57.—~~There was no just cause under the law: ~~for such an aberration.~~
 15 The allegations against Mr. Aldape were falsified and he was wrongly
 16 ~~charged discharged.~~ The Cause
 17 ~~cause~~ articulated by DEFENDANTS, "violation of 13.2" is an ~~unlawful,~~
 18 arbitrary and

19 ~~59.~~ capricious ~~justification, and just plain wrong.~~ DEFENDANTS
 20 ~~acted procedure which weaponized the UNION leadership to chill Mr.~~
 21 ~~Aldape's speech and to terminate his employment. All of these actions~~
 22 ~~were in bad faith and in a manner that no reasonable union would behave,~~
 23 ~~violated Mr. Aldape's right to free speech and the duty of the union to fairly~~
 24 ~~represent.~~

25 ~~In the instant matter, the~~ Mr. Aldape.

26 ~~58.—~~The UNION exercised its considerable discretion to twist and
 27 misuse the ~~CBAPCLCD/PCSGH~~ so as to breach their duty of fair
 28 representation and acted in bad faith and in an arbitrary and discriminatory

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1 manner. The UNION ~~then~~ failed to fairly process the grievance in a manner
2 60. intended grievances made against Mr. Aldape by ignoring the
3 repeated advisory opinions by PMA which sought to clarify and to protect
4 the rights of Mr. Aldape. The Arbitrator of the decision to deregister Mr.
5 Aldape was a known enemy of Mr. Aldape who had assaulted him and
6 threatened, in the presence of several individuals, to kill the PLAINTIFF.
7 Yet, this was the arbitrator assigned to and responsible for the
8 deregistration of Mr. Aldape.

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9 59-61. DEFENDANTS acted in "bad faith." There is substantial
10 evidence of fraud, deceitful action, and dishonest conduct on the part of
11 DEFENDANT UNION.

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12 **SECOND CAUSE OF ACTION**

13 **BREACH OF CONTRACT**

14 [Against All Defendants]

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15 60-62. PLAINTIFF realleges and incorporates by reference
16 paragraphs 1 through 5961 of this Complaint inclusive of this paragraph as
17 though said paragraphs were fully set forth herein.

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18 ~~61.—During the course of PLAINTIFF's membership, PLAINTIFF's~~
19 ~~bargaining representative, LOCAL 13, was party to a Collective Bargaining~~
20 ~~Agreement with PMA which provided certain terms and conditions of~~
21 ~~employment governing certain ILWU employees. As a member of LOCAL~~
22 ~~13 and an employee of PMA, PLAINTIFF's employment was covered by the~~
23 ~~CBA.~~

24 ~~++~~

25 ~~62.—From 20092014 to 2017, the UNION used the~~
26 ~~CBAPCLCD/PCSGH, and its collective~~

1 powers, to persecute Mr. Aldape for his right to free speech, and to violate
2 the agreements under the CBAPCLCD/PCSGH such that Mr. Aldape lost
3 more than one year of paid time and eventually was deregistered.

4 63. The violation of the CBAPCLCD/PCSGH constitutes a breach of
5 ~~the collective bargaining agreement~~contract between Mr. Aldape, ~~a member~~
6 ~~of DEFENDANT the~~ UNION, and PMA.

7 64. The PCLCD/PCSGH seeks to waive substantive rights, rights
8 which cannot be waived in arbitration agreements. This tenet is
9 fundamental to arbitration jurisprudence. By agreeing to arbitrate a
10 statutory claim, a party does not forgo the substantive rights afforded by
11 the statute; it only submits to their resolution in an arbitral, rather than a
12 judicial, forum.

13 ~~64.65.~~ As a result of ~~DEFENDANT's~~DEFENDANTS' breach of
14 contract, PLAINTIFF has lost income, promotion possibilities and other
15 valuable job rights.

16 ///
17 ///
18 ///
19 ///
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23 ///

24 **THIRD CAUSE OF ACTION**
25 **VIOLATION OF FREE SPEECH RIGHTS**
26 **LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT**
27 **OF 1959 SECTION 101(a)(2)**
28

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(29 U.S.C. SECTION 411 (a) (2))

[Against All Defendants]

65.66. PLAINTIFF realleges and incorporates by reference paragraphs 1 through 6465 of this Complaint inclusive of this paragraph as though said paragraphs were fully set forth herein.

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66.67. LMRDA section 101(a)(2) provides: "Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting..."

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67.68. Mr. Aldape was an outspoken and active critic of union membersofficers who engaged in conduct he alleged was unlawful, fraudulent or not in the best interests of the UNION.

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68. Mr. Aldape repeatedly published articles, cartoons and flyers 69. which contained caricatures, cartoons and exaggerations of union officials and the political, ethical and financial issues facing the UNION.

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69.70. The very purpose of these laws is to protect the rights of union members to unbridledhave critical discussion and criticism of the management of their union affairs without the fear of being silenced by disciplinary powers of union officials.

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70.71. DEFENDANTS severely infringed on Mr. Aldape's freedom of speech by attempting to confiscate Mr. Aldape's protected communications, removing his communications from the internet and Unionunion halls, and by union officers filing unfounded grievances based on the wholly erroneous application of the CBA, and conducting multiple,

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1 ~~groundless arbitrations, fourteen (14) total PCLCD/PCSGH which was~~
2 ~~unlawful and unconscionable at the outset.~~

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3 **PRAYER**

4 Wherefore, PLAINTIFF seeks judgment against DEFENDANTS:

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5 1. For injunctive and declaratory relief as permitted, according to
6 statutes set forth above;

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7 2. For reinstatement as a registered Longshoreman;

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8 3. For general damages in accordance to proof;

9 4. For special damages according to proof;

10 5. For punitive and exemplary damages according to proof;

11 6. For attorney's fees and costs;

12 7. For costs of suit; ~~and,~~

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13 8. For declaratory relief and,

14 8.9. For such other and further relief as the court may deem proper.

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16 Dated: ~~May 16~~November 27, 2018 ANDREA COOK & ASSOCIATES

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17 By: _____ /s/
18 Andrea L. Cook
19 Attorneys for Plaintiff,
20 ERIC ALDAPE

22 **REQUEST FOR JURY TRIAL**

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

24 Dated: ~~May 16~~November 27, 2018 ANDREA COOK & ASSOCIATES

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26 By: _____ /s/
27 Andrea L. Cook
28 Attorneys for Plaintiff,
ERIC ALDAPE

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