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Attorneys for Defendant
INTERNATIONAL LONGSHORE AND WAREHOUSE UNION

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ERIC ALDAPE

Plaintiff,

v.

INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, et al.

Defendants.

Case No. 2:18-cv-00624-AB(SKx)

DEFENDANT ILWU'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
[FRCP RULE 56]

Date: August 16, 2019
Time: 10:00 am
Rm: Courtroom 7B

[ASSIGNED FOR ALL PURPOSES TO THE HONORABLE ANDRÉ BIROTTE JR.]

Action filed: January 24, 2018

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NOTICE OF MOTION AND MOTION

TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 16, 2019, at 10:00 a.m., or as soon thereafter as this motion may be heard by the Honorable André Birotte, in the above-entitled Court located at 350 West First Street, Courtroom 7B, Los Angeles, California, 90012, Defendant International Longshore and Warehouse Union ("ILWU") will and hereby does move the Court for summary judgment, or in the alternative, summary adjudication, on all of Plaintiff's claims against ILWU.

Specifically, ILWU moves for summary judgment, or in the alternative, summary adjudication, on Plaintiff's breach of the duty of fair representation claim for the following reasons: (1) the claim is time barred; and (2) there is no evidence that ILWU acted arbitrarily, discriminatorily, or in bad faith. Likewise, ILWU moves for summary judgement, or in the alternative, summary adjudication, on Plaintiff's breach of contract claim for the following reasons: (1) the claim is time barred; and (2) there is no evidence of a violation of the collective bargaining agreement.[1] ILWU also moves for summary judgment, or in the alternative, summary adjudication, on Plaintiff's claim under Section 101(a)(2) of the Labor Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. §411(a)(2), for the following reasons: (1) the claim is time barred; and (2) there is no evidence that ILWU violated Plaintiff's free speech rights under the LMRDA.

[1] Plaintiff's first two causes of action for breach of the duty of fair representation and breach of contract are a "hybrid" claim pursuant to Section 301 of the Labor Management Relations Act, 29 U.S.C. §185.

This Motion is based on this Notice, the following Memorandum of Points & Authorities, the Declarations of Lindsay Nicholas, Kirsten Donovan, and Todd Amidon, and all exhibits thereto, all documents filed in this action, oral argument of counsel, any other matters presented to the Court at the time of the hearing, and any other matter the Court deems appropriate for consideration. A proposed order has been lodged herewith.

This Motion was made following the conference of counsel pursuant to Local Rule 7-3 that took place on June 20, 2019.

Respectfully submitted,

Dated: June 28, 2019

LEONARD CARDER, LLP

By: /s/
Lindsay R. Nicholas

Attorneys for Defendant
INTERNATIONAL LONGSHORE AND WAREHOUSE UNION

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I. INTRODUCTION

Plaintiff Eric Aldape filed this action against Defendants International Longshore and Warehouse Union ("ILWU"), International Longshore and Warehouse Union, Local 13 ("Local 13"), and Pacific Maritime Association ("PMA") (collectively, "Defendants") alleging breach of the duty of fair representation ("DFR") and breach of contract under Section 301 of the Labor Management Relations Act ("LMRA") and violation of free speech rights under Section 101(a)(2) of the Labor Management Reporting and Disclosure Act ("LMRDA"). Plaintiff claims he was wrongfully deregistered from the longshore industry as a result of an arbitration where he was found guilty of retaliating against another worker who had filed discrimination complaints against him under Section 13.2 of the collective bargaining agreement ("CBA"). He also alleges that 13 other discrimination and retaliation complaints filed against him were unfounded; that he was wrongfully required to submit to the 13.2 procedures; that Section 13.2 and its procedures were misapplied; and that he was wrongly found guilty on several occasions. Plaintiff also claims that Section 13.2 and its procedures unlawfully waive workers' statutory rights. In addition, Plaintiff alleges that two complaints he filed were not processed.

All of Plaintiff's claims against ILWU fail as a matter of law for the following separate, independently sufficient reasons: (1) ILWU is a separate and distinct entity from Local 13 and was not involved in, or responsible for, the alleged conduct underlying Plaintiff's claims; (2) they are barred by the applicable statutes of limitations; and (3) based on the undisputed facts, no reasonable jury could find that ILWU engaged in any conduct constituting a breach of the DFR, a breach of the CBA, or a violation of free speech rights under the LMRDA.[1]

[1] Since Plaintiff's FAC makes generalized allegations as to all defendants without differentiation, Defendant ILWU joins in Defendant Local 13's and Defendant PMA's Motions for Summary Judgment.

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II. STATEMENT OF FACTS

A. Plaintiff Was A Longshore Worker Working Under The PCLCD.

Plaintiff was a registered longshore worker. (UF 1) While Plaintiff was working as a longshoreman, he was represented by ILWU and Local 13 and worked for PMA and its member companies. (UF 2) Plaintiff was elected to serve on the Local 13 Executive Board and Grievance Committee and to serve as a Local 13 Caucus Delegate. (UF 3) Plaintiff also ran for other Local 13 union positions, but was not elected. (UF 4)

ILWU is the collective bargaining representative for all longshore workers and marine clerks employed by PMA and its member companies at ports on the West Coast. (UF 5) ILWU is an international labor organization composed of voluntarily affiliated, autonomous local unions. (UF 6) The powers and duties of ILWU's local affiliates are set out in Article V of the ILWU Constitution, which confers full authority on the locals to "adopt and enforce all necessary laws for local government which do not conflict with th[e] Constitution." (UF 7) ILWU plays no role in administering the day-to-day affairs of its local affiliates and does not participate in selecting local officers or representatives, nor does it retain any power to define their duties or otherwise oversee their conduct. (UF 8)

Local 13 is an affiliate local union of ILWU that represents longshore workers employed by PMA and its member companies in the ports of Los Angeles and Long Beach. (UF 9) ILWU and Local 13 are separate and distinct entities, each with its own constitution, bylaws, elected officers, facilities, and staff. (UF 10)

PMA is a multi-employer association comprised of shipping, stevedoring, marine terminal, and maintenance and repair companies that operate in ports on the West Coast. (UF 11) PMA is the collective bargaining agent for its member companies, negotiating and administering the CBA that covers longshore workers on the West Coast with ILWU and its affiliated locals, including Local 13. (UF 12)

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ILWU and PMA negotiate the terms of the coast-wide CBA – the Pacific Coast Longshore and Clerks' Agreement ("PCL&CA") – which governs the terms and conditions of employment for all longshore workers and marine clerks employed by PMA member companies on the West Coast. (UF 13) This agreement is comprised of two contract documents: the Pacific Coast Clerks' Contract Document, which covers marine clerks, and the Pacific Coast Longshore Contract Document ("PCLCD"), which covers longshore workers like Plaintiff. (UF 14) ILWU and PMA negotiated over the PCL&CA in 2014 and 2015. (UF 15) The current CBA for longshore workers is set forth in the 2014-2019 PCLCD, which was ratified by the coast-wide bargaining unit on May 22, 2015. (UF 16, 17)

At the ports of Los Angeles and Long Beach, the day-to-day administration of the PCLCD is handled by the Joint Port Labor Relations Committee ("JPLRC"), which is comprised of representatives from Local 13 and PMA. (UF 18) ILWU is neither represented at, nor participates in, the regular activities or affairs of the JPLRC. (UF 19) The JPLRC is responsible for, *inter alia*, maintaining and operating the joint dispatch hall and investigating and adjudicating contract grievances at the local level. (UF 20)

At the international level, the PCLCD is administered by the Coast Labor Relations Committee ("CLRC"), which is comprised of ILWU and PMA representatives. (UF 21) Matters handled by the JPLRC are addressed by the CLRC where the PCLCD provides for CLRC involvement and/or the JPLRC disagrees and refers the matter to the CLRC. (UF 22)

B. <u>The PCLCD Has Special Procedures To Address Discrimination, Harassment, And Retaliation.</u>

1. Section 13.2 governs complaints of discrimination, harassment, and retaliation by individuals.

Section 13.2 of the PCLCD provides that grievances or complaints[2] alleging

[2] The terms "complaint" and "grievance" are used interchangeably throughout.

discrimination or harassment based on race, creed, color, sex, age, disability, national origin, or religious or political beliefs, or alleging retaliation for filing or supporting a complaint of discrimination or harassment ("13.2 complaints") are processed exclusively under special Section 13.2 procedures.[3] (UF 23) Those procedures provide as follows.

A longshore worker initiates the Section 13.2 process by submitting a complaint to the Arbitrator hearing 13.2 complaints. (UF 25) There are two Arbitrators, selected from within the industry, who hear 13.2 complaints on a rotational basis in Southern California. (UF 26) Both the grievant and the accused have the right to select a registered longshore or clerk worker of their choice to assist them at the hearing. (UF 27) Alternatively, they may request in writing that their ILWU Local appoint a union representative, who is acceptable to them, to assist them. (UF 28) In addition to the grievant and accused and their advocates, representatives of ILWU Local(s), PMA, and the involved employer may attend the hearing. (UF 29) ILWU representatives do not attend the hearing. (UF 30)

Following the hearing, the Arbitrator issues a written decision. (UF 31) The Arbitrator may issue all appropriate remedies, including deregistration and considers all relevant factors in determining the appropriate remedy, including prior offenses within 5 years of the current offense. (UF 32, 33) The Arbitrator's decision is final and binding on all parties unless there is a timely appeal to the Coast Appeals Officer ("CAO"). (UF 34) The decision of the CAO is final and binding on all parties and no further appeal is available. (UF 35) The JPLRC is required to implement any remedies provided in the final decision. (UF 36)

Section 13.2 and its procedures provide the exclusive procedure *under the PCLCD* by which a longshore worker can pursue complaints of discrimination or

[3] The 13.2 procedures are incorporated by reference into the PCLCD and set out in letter of understanding ("LOU") "A"; LOU "B"; LOU "C"; and an LOU dated July 1, 2014, which provides some clarification on the 13.2 procedures. (UF 24)

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harassment against another longshore worker.[4] (UF 39) Longshore workers need not exhaust their remedies under Section 13.2 before or in lieu of filing complaints with government agencies or initiating lawsuits alleging violations of state and/or federal discrimination laws. (UF 40)

2. Section 13.3 governs discrimination complaints against institutional parties.

Section 13.3 of the PCLCD provides for, *inter alia*, grievances and complaints alleging that a contractual rule or provision, as written or applied, is discriminatory as to the categories set out in Section 13.1. (UF 41) Section 13.3 complaints are limited to complaints against institutional parties and cannot be brought against individuals. (UF 42)

An individual bringing a 13.3 complaint must file it with the JPLRC. (UF 43) The JPLRC reviews the complaint to determine whether it meets the criteria for a Section 13.3 complaint, and may dismiss the complaint without a JPLRC hearing if it does not. (UF 44) If the JPLRC dismisses it for failure to meet the 13.3 criteria, that decision may be appealed to the CLRC. (UF 45) If the JPLRC disagrees as to whether a complaint meets the Section 13.3 criteria, that dispute is referred to the CLRC. (UF 46) The CLRC's determination of whether a complaint is a proper 13.3 claim is final and binding with no further appeal. (UF 47)

C. Plaintiff Filed Two Complaints That Were Dismissed For Failure To Meet Section 13.3 Criteria.

On April 4, 2016, Plaintiff filed two Section 13.3 complaints. (UF 48, 52) He filed a complaint against the CLRC regarding CAO Larry Schwerin. (UF 48) The JPLRC disagreed as to whether Plaintiff's complaint met the 13.3 criteria. (UF 49). That disagreement went to the CLRC, and the CLRC dismissed the complaint in January 2017 because it did not meet the 13.3 criteria. (UF 50). The CLRC's decision was final and binding with no further appeal available. (UF 47, 51)

[4] The Section 13.2 procedures provide who may file a 13.2 complaint and against

Plaintiff also filed a complaint against Arbitrator Mark Mascola and another unnamed Arbitrator. (UF 52) Plaintiff's complaint alleged Mascola was biased against him and should be disqualified and replaced. (UF 53) Plaintiff based his bias allegation on two interactions he had with Mascola in 2012. (UF 54) The JPLRC reviewed Plaintiff's complaint and dismissed it in January 2017. (UF 55)

D. Numerous Different Individuals Filed Section 13.2 Complaints Against Plaintiff Between 2009 and 2017.

Plaintiff has a long history of various individuals filing 13.2 complaints against him dating back to 2009. The 13.2 complaints are as follows:

13.2 Complaint Number	Date Filed	Arbitrator/CAO	Date of Final Decision	UF
SP-0005-2009	Sept. 9, 2009	Arbitrator Miller; CAO Rubio	Oct. 27, 2009	56, 57
SP-010-2009	Oct. 4, 2009	Arbitrator Miller; CAO Rubio	Dec. 29, 2009	58, 59
SP-0002-2010	Mar. 6, 2010	Arbitrator Miller; CAO Rubio	Mar. 8, 2010	60, 61
SP-0026-2011	July 28, 2011	Arbitrator Miller	Aug. 8, 2011	62, 63
SP-0027-2011	July 26, 2011	Arbitrator Miller	Aug. 8, 2011	64, 65
SP-0032-2012	Sept. 28, 2012	Arbitrator Miller; CAO Rubio	Nov. 27, 2012	66, 67
SP-0017-2013	July 10, 2013	Arbitrator Miller; CAO Rubio	Aug. 28, 2013	68, 69
SPSC-0005-2016	Mar. 14, 2016	Arbitrator Mascola; CAO Schwerin	July 25, 2016	70, 71
SPSC-0008-2016	Mar. 18, 2016	Arbitrator Mascola; CAO Schwerin	June 6, 2016	72, 73
SPSC-0032-2016	Aug. 28, 2016	Arbitrator Merical; CAO Schwerin	Nov. 28, 2016	74, 75
SPSC-0001-2017	Feb. 6, 2017	Arbitrator Merical	Apr. 17, 2017	76, 77
SPSC-0011-2017	Mar. 24, 2017	Arbitrator Mascola	June 5, 2017	78, 79
SPSC-0013-2017	Mar. 29, 2017	Arbitrator Mascola	June 16, 2017	80, 81
SPSC-0006-2017	Mar. 13, 2017	Arbitrator Mascola; CAO Schwerin	July 31, 2017	82, 83

whom a 13.2 complaint may be filed. (UF 37, 38)

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E. Plaintiff Was Found Guilty Of Retaliation In Violation Of Section 13.2 And Deregistered.

Plaintiff was deregistered following a Section 13.2 complaint filed by longshore worker Christopher Viramontes on March 10, 2017 (the last complaint identified in the chart above). Viramontes alleged that Plaintiff retaliated against him because Viramontes had filed 13.2 complaints against Plaintiff in the past. (UF 84) Plaintiff declined to have Local 13 assign him a representative and instead chose to select his own representative. (UF 85) The arbitration hearing occurred on April 17, 2017. (UF 86) Plaintiff did not attend the hearing, but his representative attended the hearing on his behalf. (UF 87)

On July 10, 2017, Arbitrator Mascola issued a decision finding Plaintiff violated Section 13.2 by retaliating against Viramontes and imposing the penalty of deregistration. (UF 88) Plaintiff appealed the decision to the CAO. (UF 89) On July 31, 2017, the CAO issued a decision rejecting Plaintiff's arguments, including his claim of Mascola's bias, and affirming Arbitrator Mascola's decision, including the penalty of deregistration. (UF 90)

Plaintiff initiated this action on January 24, 2018. (Dkt. 1) In the operative Fourth Amended Complaint ("FAC"), Plaintiff asserts causes of action for breach of the DFR and breach of contract under LMRA §301 and violation of his free speech rights under LMRDA §101(a)(2).

III. ARGUMENT

Summary Judgment must be granted when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A moving defendant need only demonstrate that there is an absence of evidence to support the nonmoving party's case. *Celotex*, 477 U.S. at 325. Once the moving defendant meets this burden, the nonmoving plaintiff must then "go beyond the pleadings" and provide "specific facts showing there is a genuine issue for trial."

Id. at 324. To meet this burden, the plaintiff must "do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushida Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). "The mere existence of a scintilla of evidence . . . will be insufficient; there must be evidence on which the jury could reasonably find for the [nonmoving] plaintiff." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). Conclusory, speculative testimony in affidavits and moving papers is insufficient to raise a genuine factual dispute. *Thornhill Publi'g Co., Inc. v. GTE Corp.*, 594 F.2d 730, 738 (9th Cir. 1979).

A. Plaintiff's DFR Claims Fail As A Matter Of Law.

Plaintiff's first two causes of action for breach of the DFR and breach of contract are a "hybrid" claim pursuant to Section 301 of the LMRA, 29 U.S.C. §185. A claim under Section 301 requires both a breach of the DFR and a breach of contract. *DelCostello v. Int'l Bhd. of Teamsters*, 462 U.S. 151, 164-65 (1983). The two claims are "inextricably interdependent," and a plaintiff can only prevail if he proves both elements. *Id.*; *Bliesner v. Commc'n Workers of Am.*, 464 F.3d 910, 913–14 (9th Cir. 2006).

Plaintiff claims Defendants breached the DFR by bringing unfounded 13.2 complaints against him, subjecting him to the 13.2 procedures, not adequately representing him, allowing the 13.2 process to be misapplied as to him, and, ultimately, deregistering him. (Dkt. 55, ¶¶10-12, 14, 17-18, 28, 36, 38-57, 59-61) Plaintiff also claims Defendants breached the DFR by not processing the two complaints he filed under Section 13.3 of the PCLCD. (Dkt. 55, ¶¶ 38(a-b), 52) Finally, Plaintiff claims Defendants breached the DFR by negotiating Section 13.2 and its procedures, which Plaintiff alleges waivers statutory and civil rights of individuals working under the PCLCD. (Dkt. 55, ¶¶ 8-9, 13-16, 29-37, 38(e), 56-59, 64) For the reasons below, all of Plaintiff's claims fail and should be dismissed.

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1. ILWU Is A Separate And Distinct Entity From Local 13, And Not Vicariously Liable For Its Conduct.

Many of Plaintiff's DFR allegations are based on the purported conduct of Local 13, not ILWU. ILWU is not vicariously liable for the actions of Local 13 unless there is an agency relationship between them. *See Laughon v. Int'l All. of Theatrical Stage Emps.*, 248 F.3d 931, 935 (9th Cir. 2001) (common law agency principals determine whether agency relationship exists between International and local); *Fristoe v. Reynolds Metal Co.*, 615 F.2d 1209, 1215 (9th Cir. 1980) (applying same standard to DFR claim). To create an agency relationship, there must be a "manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other to so act." *General Bldg. Contractors Ass'n v. Pennsylvania*, 458 U.S. 375, 392 (1982) (quoting Restatement (Second) of Agency, §1 (Am. Law Inst. 1958)). Mere affiliation is not sufficient. *Childs v. Local 18, IBEW*, 719 F.2d 1379, 1382-83 & n.2 (9th Cir. 1983), *abrogated in part on other grounds, Swift v. Realty Execs. Nevada's Choice*, 211 F. App'x 571 (9th Cir. 2006); *NLRB v. ILWU, Local 10*, 283 F.2d 558, 565-66 (9th Cir. 1960); *see also In re Teamsters Local 890*, 265 F.3d 869, 875 (9th Cir. 2001). Applying this standard, this Court has previously found that ILWU is not an agent of Local 13 because the local "exercise[d] considerable autonomy in conducting its affairs." *Allen v. Pacif. Mar. Ass'n*, No. CV 0-4-7331 Dt (Jwjx), 2006 WL 8441693, *15-16 (C.D. Cal. Feb. 6, 2006).

The undisputed facts establish the same degree of autonomy here. ILWU does not play any role in filing 13.2 complaints, does not attend or participate in 13.2 hearings, and does not participate in the receipt or processing of 13.3 complaints at the local level. (UF 18-20, 25, 28-36, 43-44) Specific to Plaintiff's claims, ILWU did not play any role in the filing of any 13.2 complaints against Plaintiff, any resulting hearings, or the receipt or handling of Plaintiff's 13.3 complaints at the local level. (UF 90, 91; *see* UF 52-90) There is no evidence that

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ILWU consented to have Local 13 act on its behalf or subject to its control. To the contrary, the undisputed facts confirm that Local 13 is autonomous and distinct from ILWU and retains authority to conduct and govern its own affairs. (UF 6-10) *See Laughon*, 248 F.3d at 935 ("If the local exercises considerable autonomy in conducting its affairs, it cannot be regarded as an agent of the International."). In fact, the terms of the ILWU Constitution demonstrate a complete lack of "control" and "consent" as required under agency principles. (UF 6, 7) *See Berger v. Iron Workers, Local 201*, 843 F.2d 1395, 1430 (D.C. Cir. 1988), *clarified on reh'g*, 852 F.2d 619, *cert. denied*, 409 U.S. 1105 (1989) (terms of international's constitution are probative in determining existence of agency relationship). To the extent Plaintiff's DFR claims are based on Local 13's alleged conduct, they must be dismissed as to ILWU.

2. Plaintiff's DFR Claims Are Time Barred.

Plaintiff's hybrid Section 301 claims under the LMRA for breach of the DFR and breach of the CBA are governed by a six-month statute of limitations. *DelCostello*, 462 U.S. at 154-155. This period generally begins to run when an employee knew or reasonably should have known of the alleged DFR breach. *Galindo v. Stoody Co.*, 793 F.2d 1502, 1509 (9th Cir. 1986). There is no continuing violation theory for hybrid Section 301 claims. *Harper v. San Diego Transit Corp.*, 764 F.2d 663, 669 (9th Cir. 1985) ("continuing breach theory finds no support in the case law, and it contradicts one of the premises of the hybrid § 301 lawsuit"). Since Plaintiff filed this lawsuit on January 24, 2018 (Dkt. 1), any alleged breach that accrued before July 24, 2017, is time-barred.[5]

a. Plaintiff's DFR claims regarding 13.2 complaints against him.

In the grievance arbitration context, the six-month statute of limitations begins to run when the plaintiff learns of the arbitrator's decision. *Galindo*, 793

[5] Some of Plaintiff's DFR claims were not made until he filed the FAC on January 3, 2019. *See infra,* fns. 6 and 7.

F.2d at 1509. All of the 13.2 complaints and arbitrations about which Plaintiff complains, with the exception of the last complaint and arbitration resulting in his deregistration ("deregistration arbitration"), were fully adjudicated by final and binding decisions outside the statute of limitations. (UF 56-81) Therefore, Plaintiff's DFR claims based on the filing, processing, and adjudication of those complaints are time-barred.

Plaintiff's claim that ILWU breached the DFR by not agreeing with PMA to vacate the Arbitrator's decision regarding 13.2 complaint SP-0032-2012 is also time-barred. In November 2012, PMA sent two letters to ILWU proposing that the CLRC vacate the decision. (UF 93). However, the CAO affirmed the Arbitrator's decision, which was final and binding. (UF 35, 94) The decision was never vacated, and Plaintiff served the penalty assessed in the decision. (UF 95). Moreover, Plaintiff testified he knew about PMA's letters and complained to ILWU about its failure to agree with PMA at the latest in October 2015, if not earlier. (UF 96, 97) Therefore, any DFR claim based on ILWU's refusal to agree with PMA's letters accrued well outside the six-month statute of limitations.

Also time barred is Plaintiff's claim that Defendants breached the DFR by not stopping Arbitrator Mascola from hearing 13.2 complaints against Plaintiff. All the events Plaintiff relies on to show that Mascola was biased occurred in 2012. (UF 54) Plaintiff asserted that Arbitrator Mascola was biased and should recuse himself at an April 11, 2016 Section 13.2 hearing for complaint SPSC-0008-2016. (UF 98) In a May 10, 2016 decision, Arbitrator Mascola rejected Plaintiff's argument, determined he was not biased, and did not recuse himself. (UF 73, 99) CAO Schwerin affirmed the decision on June 6, 2016. (UF 73) Arbitrator Mascola proceeded to preside over and issued decisions regarding several 13.2 complaints against Plaintiff in 2017, all outside the statute of limitations. (UF 79, 81, 86, 88) These facts show that Plaintiff knew Defendants were not going to stop Mascola from adjudicating 13.2 complaints against Plaintiff before the limitations period.

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b. Plaintiff's DFR claims regarding his 13.3 complaints.

Plaintiff also asserts that his 13.3 complaints were not processed. The statute of limitations for these types of claims begins to run when the plaintiff receives notice the union will not pursue the grievance any further; however, when there is no explicit notice, the statute of limitations begins to run when the plaintiff knew or should have known that the union was not pursuing his grievance or helping him any further. *Meridan v. Int'l Ass'n of Machinists and Aerospace Workers*, 425 F. App'x 550, 551 (9th Cir. 2011) (citing *Lacina v. G-K Trucking*, 802 F.2d 1190, 1192 (9th Cir.1986), *vacated and remanded on other grounds, Lacina v. G–K Trucking,* 483 U.S. 1002 (1987) ("When a union does not process a grievance for an extended period, the limitations period may well commence, even if the union has not expressly stated that it will not process the grievance.")); *see also Pantoja v. Holland Motor Exp., Inc.*, 965 F.2d 323, 327 (7th Cir. 1992) ("Prolonged inaction is sufficient to give a diligent plaintiff notice that the union has breached its [DFR]."); *Vadino v. A. Valey Engineers*, 903 F.2d 253, 260 (3d Cir. 1990) (the statute of limitations begins to run when "the futility of further union appeals became apparent or should have become apparent") (internal citations omitted).

Here, the undisputed evidence shows Plaintiff knew or should have known his grievances were not being pursued (or resolved in his favor) well before the six-month statute of limitations. Plaintiff filed his 13.3 complaints on April 4, 2016. (UF 48, 52) They alleged Arbitrator Mascola and CAO Schwerin were unfit and unqualified, respectively, to adjudicate 13.2 complaints and should be replaced. (UF 48, 52-53) However, after Plaintiff filed his 13.3 complaints, Arbitrator Mascola and CAO Schwerin both continued to adjudicate 13.2 complaints filed against Plaintiff, issuing several arbitration decisions between April 4, 2016, and July 31, 2017. (UF 71, 73, 75, 79, 81, 83) The fact that they continued to adjudicate 13.2 complaints against Plaintiff for more than a year after Plaintiff filed his 13.3 complaints put Plaintiff on notice of the facts underlying this

DFR allegation long before the limitations period. His DFR claims relating to his 13.3 complaints are therefore time-barred. [6]

c. Plaintiff's DFR claims regarding negotiation of Section 13.2 and its procedures.

A DFR claim challenging negotiation of or the terms of a CBA accrues no later than the date the CBA was ratified. *See Addington v. U.S. Air Line Pilots Ass'n*, 606 F.3d 1174, 1182-83, n.6 (9th Cir. 2010) (citing *Gvozdenovic v. Utd. Air Lines*, 933 F.2d 1100, 1106 (2d. Cir. 1991); *see also Madison v. Motion Picture Set Painters & Sign Writers, Local 729*, 132 F.Supp.2d 1244, 1260 (C.D. Cal. 2000); *see also Allen v. UFCW*, 43 F.3d 424, 428 (9th Cir. 1994) (finding DFR claim accrued when plaintiffs learned of the agreement).

ILWU and PMA bargained over the PCLCD in 2014 and 2015, and the current PCLCD, including Section 13.2 and its procedures, was ratified on May 22, 2015. (UF 15-17) Plaintiff was aware of Section 13.2 and its procedures as far back as the date of the first 13.2 complaint filed against him in 2009. (UF 100) And at the latest, Plaintiff knew or should have known that Section 13.2 and its procedures were not going to be changed to his liking when the PCLCD was ratified in 2015. (UF 101) Plaintiff conceded as much during his deposition. (UF 101) Thus, Plaintiff's claims that Defendants breached the DFR by negotiating Section 13.2 and its procedures are barred by the six-month statute of limitations.[7]

3. There Is No Evidence Of Arbitrary, Discriminatory, Or Bad Faith Conduct.

A union has a duty to "represent fairly the interests of all bargaining unit members during negotiation, administration, and enforcement of collective bargaining agreements." *Vaca v. Sipes*, 386 U.S. 171, 182 (1967). "Unions have broad discretion to act in what they perceive to be their members' best interests." *Marino v. Writers Guild of America, East, Inc.*, 992 F.2d 1480, 1486 (9th Cir.

[6] Plaintiff first made these allegations in his FAC, filed January 3, 2019. (Dkt. 55)

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1993). Thus, the Ninth Circuit has "construed the unfair representation doctrine in a manner designed to protect that discretion." *Id.*

In determining whether a union breached its DFR, the court must first determine whether the union's actions involved judgment or was procedural or ministerial in nature. If the alleged misconduct was "procedural or ministerial," the plaintiff cannot prevail unless the conduct was "arbitrary, discriminatory, or in bad faith." *Id.* Mere negligence is not sufficient. *Peters v. Burlington Northern R.R.*, 931 F.2d 534, 538 (9th Cir. 1991). Rather, a union's conduct is arbitrary only if "it is 'without rational basis,' . . . or is 'egregious, unfair or unrelated to legitimate union interests,'" *Peterson v. Kennedy*, 771 F.2d 1244, 1254 (9th Cir. 1985), or is "so far outside a wide range of reasonableness as to be irrational." *Air Line Pilots v. O'Neill*, 499 U.S. 65, 67 (1991) (internal citation omitted). If the conduct in question involved the exercise of the union's judgment, "then the plaintiff may prevail only if the union's conduct was discriminatory or in bad faith." *Marino*, 992 F.2d at 1486. To establish the union acted in a discriminatory manner, a plaintiff must provide "substantial evidence of discrimination that is intentional, severe, and unrelated to legitimate union objectives." *Beck v. UFCW, Local 99*, 506 F.3d 874, 880 (9th Cir. 2007) (quoting *Amalgamated Ass'n of St. Elec. Ry. & Motor Coach Emps. v. Lockridge*, 403 U.S. 274, 301 (1971)). Similarly, proof of bad faith requires, "substantial evidence of fraud, deceitful action, or dishonest conduct." *Id*. Finally, a plaintiff must show "a nexus" between the alleged discriminatory or bad faith animus and the conduct directed toward the plaintiff. *Ayala v. Pacif. Mar. Ass'n*, No. C08-0119-TEH, 2011 WL 3044189, at *22 (N.D. Cal. July 25, 2011) (citing *Conkle v. Jeong*, 73 F.3d 909, 916 (9th Cir. 1995)). Since unions must balance many collective and individual interests, substantial deference is accorded to the union's judgment calls. *Dutrisac v. Caterpillar Tractor Co.*, 749 F.2d 1270, 1273 (9th Cir. 1983).

[7] Plaintiff first made these allegations in his FAC, filed January 3, 2019. (Dkt. 55)

a. Plaintiff's DFR claims based on the deregistration arbitration.

As explained above, all of Plaintiff's DFR claims based on the 13.2 complaints are time-barred with the exception of the complaint and arbitration that resulted in Plaintiff's deregistration. And there is no evidence ILWU engaged in any arbitrary, discriminatory, or bad faith conduct with respect to that arbitration. In fact, during his deposition, Plaintiff admitted that there was no specific conduct related to the deregistration arbitration that he believed breached the DFR. (UF 102). Moreover, none of the conduct alleged in the FAC establish a DFR violation for the reasons below.

First, filing the 13.2 complaint was not a breach of the DFR. The complaint was not filed by, or on behalf of, ILWU but was filed by another longshoreman, Viramontes, based on his own personal dispute with Plaintiff. (UF 91, 103) That Viramontes may have been serving in a Local 13 elected position at the time he filed the complaint does not render it an action on behalf of Local 13, let alone ILWU. *See Aguirre v. Automotive Teamsters*, 633 F.2d 168, 172 (9th Cir. 1980); *Fristoe*, 615 F.2d at 1215; *ILWU, Local 10*, 283 F.2d at 565-66.

Second, subjecting Plaintiff to the 13.2 procedures was not a breach of the DFR. Defendants had a legitimate obligation to follow collectively bargained processes with regard to Viramontes' complaint and had no authority to interfere with those processes. (UF 23, 111) Indeed, deviating from the collectively bargained Section 13.2 procedures or refusing to implement the binding arbitration decision itself would have exposed the union to DFR liability. *See Diaz v. Schwerman Trucking Co.*, 709 F.2d 1371, 1375 (11th Cir. 1983). In short, Plaintiff cannot establish arbitrary, discriminatory, or bad faith conduct by ILWU based on the handling of the complaint and resultant decision pursuant to Section 13.2. *See Peterson*, 771 F.2d at 1254; *Beck*, 506 F.3d at 880.

Third, Plaintiff claims that the DFR was breached because his interests were not "fairly" represented. However, the undisputed evidence shows that: (1)

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Plaintiff declined to have Local 13 assign him a representative and instead chose to select his own representative; and (2) Plaintiff was satisfied with the representation he received from the individual he selected to be his advocate.[8] (UF 85, 104) Moreover, the individual present at the hearing on behalf of Local 13 was there to represent the union, not to advocate on behalf of either the grievant or the accused. Indeed, the 13.2 matter involved two Local 13 members – Viramontes and Plaintiff. (UF 84) The Local 13 representative's decision to refrain from advocating for one of its members and against another, when each member had representation, was well within Local 13's broad discretion in exercising its DFR, including balancing many collective and individual interests. *See Dutrisac*, 749 F.2d at 1273. Local 13's exercise of judgement here was neither discriminatory nor in bad faith and does not show a DFR breach by ILWU. *See Beck*, 506 F.3d at 880.

Fourth, the arbitration decision finding Plaintiff violated Section 13.2 and deregistering him was not a breach of the DFR. This claim clearly fails because ILWU did not issue the arbitration decision or assess the penalty of deregistration. Rather, the Arbitrator determined Plaintiff was guilty of engaging in conduct prohibited by Section 13.2 and assessed the penalty of deregistration, which Plaintiff appealed and the CAO affirmed. (UF 83, 88-90) That decision was final and binding on all parties. (UF 35, 36)

Finally, Plaintiff claims Union Defendants breached the DFR by not making Arbitrator Mascola, who Plaintiff claims was biased against him, recuse himself from handling 13.2 complaints against Plaintiff. As discussed above, this claim is time-barred. Moreover, the Arbitrator and the CAO rejected Plaintiff's arguments for recusal of Mascola based on bias in both a 13.2 arbitration in 2016 and again in the deregistration arbitration. (UF 73, 90, 98-99) Acceptance of the Arbitrator's and CAO's determinations does not constitute arbitrary, discriminatory, or bad

[8] In fact, Plaintiff declined to have Local 13 assign him a representative in every 13.2 proceeding against him, instead opting to select his own advocate. (UF 105)

faith conduct by the Union Defendants.

b. Plaintiff's DFR claims based on the 13.3 complaints.

Plaintiff's claim that Defendants breached the DFR by not processing his 13.3 complaints is time-barred as discussed above in Section A.2.b. Moreover, the undisputed facts show the complaints were processed and Defendants did not breach the DFR in the handling of these complaints. The CLRC dismissed Plaintiff's 13.3 complaint regarding CAO Schwerin as invalid because it did not allege action that tangibly affected terms and conditions of employment or discriminatory application of a contractual provision based on one of the categories in PCLCD Section 13.1. (UF 41, 50) That determination was final and binding with no further appeal right. (UF 51) Likewise, the JPLRC dismissed the 13.3 complaint against Arbitrator Mascola as invalid because it also did not allege action that tangibly affected terms and conditions of employment or discriminatory application of a contractual provision based on one of the categories in PCLCD Section 13.1.[9] (UF 41, 55) The complaint also was invalid on its face because 13.3 complaints cannot be filed against individuals. (UF 42, 52) The JPLRC and CLRC acted appropriately and legitimately – following the PCLCD and dismissing complaints found invalid thereunder. In any event, a claim that a grievance was mishandled alone does is not a breach of the DFR – the conduct must be arbitrary, discriminatory, or in bad faith. *United Steelworkers of Am. v. Rawson*, 495 U.S. 362, 372-73 (1990); *Echelberger v. NLRB*, 765 F.2d 851, 854-55 (9th Cir. 1985). There is no evidence, let alone substantial evidence, of arbitrary, discriminatory, or bad faith conduct regarding Plaintiff's 13.3 complaints. *See Beck*, 506 F.3d at 880. Moreover, committees such as the JPLRC and CLRC do not owe a duty of fair representation. *See Early v. E. Transfer*, 699 F.2d 552, 559-60 (1st Cir. 1983);

[9] ILWU played no role in adjudicating the 13.3 complaint against Mascola; rather, the complaint was handled exclusively by the JPLRC, comprised of PMA and Local 13 representatives. (UF 106)

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Teamsters Local Union No. 30 v. Helms Exp., Inc., 591 F.2d 211, 216-17 (3d Cir. 1979); *Tongay v. Kroger Co.*, 860 F.2d 298, 300 (8th Cir. 1988).

c. Plaintiff's DFR claims regarding negotiation of Section 13.2 and its procedures.

Plaintiff claims that Defendants breached the DFR by negotiating the terms of Section 13.2 and its procedures, which Plaintiff contends are unlawful and unconscionable because they waive individuals' statutory, civil, and due process rights. As explained above, these claims are time-barred. In addition, the undisputed facts confirm that there is no such waiver.[10] Section 13.2 provides the exclusive *contractual* mechanism to address certain discrimination, harassment, and retaliation complaints. (UF 39) As both ILWU's and PMA's persons most knowledgeable testified, a longshore worker is not required to exhaust the Section 13.2 procedure either in lieu of, or prior to, pursuing claims with government agencies or filing a lawsuit. (UF 40) Moreover, the 13.2 procedures do not violate Plaintiff's due process rights, as they clearly lay out the process and timeline for adjudicating complaints, and these provisions may be flexibly applied depending on the circumstances of each case. (UF 24, 107)

In any event, when reviewing a union's bargaining performance to determine whether there has been a breach of the DFR, courts are "highly deferential, recognizing the wide latitude that negotiators need for the effective performance of their bargaining responsibilities." *O'Neill*, 499 U.S. at 78. "The final product of the bargaining process may constitute evidence of a breach of duty

[10] Indeed, Plaintiff's claims of unlawful waiver are not ripe for adjudication. *See Addington*, 606 F.3d at 1179 (a case is ripe if (1) the issue can be decided without considering "contingent future events that may or may not occur" and (2) there would be "direct and immediate" hardship to the plaintiff) (internal quotations omitted). Neither factor exists here. Plaintiff has not alleged or presented evidence that Defendants have attempted to prevent him from filing a lawsuit based on alleged violations of his statutory rights; thus, the claim of unlawful waiver is wholly speculative and Plaintiff faces no immediate hardship. *Id.* at 1181.

only if it can be fairly characterized as so far outside a 'wide range of reasonableness.'" *Id.* Here, there is no evidence to support such a finding based on Section 13.2 and its procedures. The purpose of these provisions is to provide an efficient process for addressing allegations of discrimination, harassment, and retaliation (UF 108), which is well within the wide range of reasonableness.

B. Plaintiff's Breach Of Contract Claims Fail As A Matter Of Law.

1. Plaintiff's Breach Of Contract Claims Are Time Barred.

A hybrid DFR/breach of contract claim under Section 301 of the LMRA is subject to a six-month statute of limitations. *DelCostello,* 462 U.S. at 154-55. Plaintiff's claims for breach of the CBA are based on the same allegations as his DFR claims and, therefore, are time-barred for the same reasons discussed above.

2. There Is No Evidence Defendants Violated The CBA.

Interpretation of a CBA is a question of law and a court will follow traditional rules of contract interpretation and examine the plain language of the contract when determining whether the CBA was breached. *Allen*, 2006 WL 8441693, at *7. Summary judgment is appropriate when the contract is clear and unambiguous and when the plaintiff presents no evidence to support a contradictory interpretation. *Id.* (citing *U.S. v. Sacramento Mun. Util. Dist.*, 652 F.2d 1341, 1344 (9th Cir. 1981)).

As established above, any claims based on the 13.2 complaints and arbitrations brought against Plaintiff are time-barred except for the deregistration arbitration. And Plaintiff has pled no facts, let alone proffered any evidence, showing that Defendants breached the CBA with regard to that arbitration. To the contrary, the undisputed facts confirm that it went through the 13.2 process and was resolved by final and binding arbitration pursuant to those procedures. (UF 82-91) To the extent Plaintiff is attacking the Arbitrator's and CAO's decision finding him guilty of violating Section 13.2 and assessing the penalty of deregistration,

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that is not a breach of the CBA, and not perpetrated by Defendants.[11]

Finally, Plaintiff's claim that there was a breach of contract because Section 13.2 and its procedures waive statutory rights also fails because: (1) as discussed above, the undisputed evidence shows that Section 13.2 and its procedures do not waive any statutory rights, *see supra*, Section A.3.c.; and (2) in any event, any purported waiver would not constitute a breach of the CBA.

C. Plaintiff's LMRDA Claims Fail As A Matter of Law.

Plaintiff alleges Union Defendants violated his free speech rights under Section 101(a)(2) of the LMRD, 29 U.S.C. ¶411(a)(2), "by attempting to confiscate . . . protected communications, removing his communications from union halls, and by union officers filing unfounded grievances." (Dkt. 55, ¶71). In his verified discovery responses, Plaintiff clarified that his free speech claims are based exclusively on the 13.2 complaints filed against him by various individuals between September 2009 and March 2017.[12] (UF 109). All of Plaintiff's LMRDA claims fail as a matter of law because: (1) they are barred by the applicable two-year statute of limitations; and/or (2) there is no evidence that Union Defendants were responsible for the alleged conduct.

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[11] Such a claim is more like a claim for vacatur of the arbitration decision, *see Truesdell v. S. Cal. Permanente Med. Group*, 151 F.Supp.2d 1161, 1172-73 (C.D. Cal. 2001); but, here, Plaintiff has pled that he does not seek to vacate any arbitration decision (Dkt. 55, ¶39). Regardless, an arbitrator's award is entitled to extraordinary deference and "as long as the award draws its essence from the contract, meaning that on its face it is a plausible interpretation of the contract, then the courts must enforce it." *Sheet Metal Workers Int'l Ass'n Local Union No. 359 v. Madison Indus., Inc.*, 84 F.3d 1186, 1190 (9th Cir. 1996); *see also S.W. Reg. Council of Carpenters v. Drywall Dynamics, Inc.*, 823 F.3d 524, 531 (9th Cir. 2016). The decision in Plaintiff's deregistration arbitration was a plausible interpretation of the contract and not a breach of the CBA.

[12] Plaintiff has not identified any instances of Union Defendants "attempting to confiscate" or "removing his communications" as a factual basis for his LMRDA claim. (UF 109) Moreover, there are no facts or evidence to suggest that ILWU played any role in connection with any of his communications.

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1. Plaintiff's LMRDA Claims Are Time Barred.

Claims brought pursuant to Section 101(a)(2) are subject to state general or residual personal injury statutes of limitations. *Reed v. Utd. Transp. Union*, 488 U.S. 319, 323 (1989). In California, the statute of limitations for Section 101(a)(2) claims is two years under the state's personal injury law. *Masters v. Screen Actors Guild*, No. 04-2102 SVW (VBKX), 2004 WL 3203950, at *8 (C.D. Cal. Dec. 8, 2004); Cal. Civ. Proc. Code § 335.1. A cause of action accrues "when a plaintiff knows or has reason to know of the injury which is the basis of his action." *Id.* Here, Plaintiff's claims are based on the filing of 14 complaints by various individuals between September 2009 and March 2017. Plaintiff knew or had reason to know of the alleged misconduct once each of the complaints was filed. Therefore, claims based on the seven complaints filed prior to February 20, 2016, are time-barred because they accrued outside the two-year statute of limitations.[13]

Moreover, Plaintiff's attempt to invoke the continuing violations doctrine does not save his claims because he cannot meet his burden of "demonstrating that equitable principles should apply to toll the statute of limitations." *Masters*, 2004 WL 3203950, at *10 (citing *Vaughn v. Teledyne, Inc.*, 628 F.2d 1214, 1218 (9th Cir. 1980)). In particular, where a complaint alleges a series of supposedly related acts, the plaintiff must provide evidence the "acts are related closely enough to constitute a continuing violation." *Green v. L.A. Cty. Super. of Schools*, 883 F.2d 1472, 1480 (9th Cir. 1989). A plaintiff cannot satisfy the requirements of the continuing violations doctrine where "he has set forth no evidence that there was an ongoing violation of his rights." *Masters*, 2004 WL 3203950, at *11; *see also National R.R. Pass. Corp. v. Morgan*, 536 U.S. 101, 113 (2002) (noting in Title VII cases, "discrete acts that fall within the statutory time period do not make timely acts that fall outside the time period.") Lastly, "a continuing violation

[13] Plaintiff first alleged his LMRDA cause of action in his First Amended Complaint, filed February 20, 2018. (Dkt. 14)

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theory does not relieve a plaintiff of the obligation to file a lawsuit once he knows (or should know) of the…nature of the conduct about which he complains." *See Madison v. IATSE, Local 729*, 132 F.Supp.2d 1244, 1260 (C.D. Cal. 2000).

Plaintiff's own FAC defeats application of the continuing violations doctrine because he alleges each 13.2 complaint filed against him was a "separate and discrete" violation. (Dkt. 55, ¶36). *See Chung v. Vistana Vacation Ownership, Inc.*, No. CV 18-00469 LEK-RT, 2019 WL 1441596, at *4 (D. Haw. Mar. 29, 2019) (requiring that "the conduct complained of constitutes a continuing pattern and course of conduct as opposed to unrelated discrete acts"). And there is no evidence that all the complaints were "part of the same course of conduct" to toll the statute of limitations. *O'Loghlin v. Cty. of Orange*, 229 F.3d 871, 875 (9th Cir. 2000). Rather, the 13.2 complaints were filed by different individuals based on distinct factual allegations arising from separate events at the time they were filed (FAC, Dkt. 55, ¶¶40-54; UF 109), and Plaintiff has not proffered any facts, let alone evidence, to show they were nonetheless part of a continuing course of conduct.[14] Moreover, Plaintiff knew or should have known of the conduct that formed the basis of his LMRDA claims as of the date each complaint was filed or, at the very latest, as of the date each complaint was resolved. He therefore had an obligation to file suit at that time, and the continuing violations doctrine cannot cure his failure to do so. *See Madison*, 132 F.Supp.2d at 1260.

2. ILWU Was Not Responsible For The 13.2 Complaints.

Even setting aside that most of Plaintiff's LMRDA claims are time-barred,

[14] Indeed, Plaintiff's only allegation in the FAC to arguably support tolling his claims is that in deregistering Plaintiff, "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." (Dkt. 55, ¶20) This does not save his time-barred LMRDA claims because: (1) it only relates to the grievance leading to his deregistration, which is not one of the time-barred claims; and (2) the fact that prior arbitrations were accepted into

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Plaintiff cannot establish an LMRDA claim as a matter of law because none of the alleged misconduct was perpetrated by the Union Defendants. To state a claim under Section 101(a)(2) of the LMRDA, a Plaintiff must prove that "(1) he or she exercised the right to oppose union policies; (2) he or she was subjected to retaliatory action; and (3) the retaliatory action was 'a direct result of his [or her] decision to express disagreement' with the union's leadership." *Casumpang v. ILWU, Local 142*, 269 F.3d 1042, 1058 (9th Cir. 2001) (quoting *Sheet Metal Workers' Int'l Ass'n v. Lynn*, 488 U.S. 347, 354 (1989). Importantly, the LMRDA "only governs labor organizations and their officers and agents *when acting in their representative capacities*." *Link v. Rhodes*, No. C 06-0386 MHP, 2006 WL 1348424, at *6 (N.D. Cal. May 17, 2006) (collecting cases) (emphasis added).

Based on common law principles of agency, a union "may only be held responsible for the authorized or ratified actions of its officers and agents." *Hillman v. Am. Fed'n of Gov't Emps.*, No. 18-CV-999, 2019 WL 340841, at *5 (D.D.C. Jan. 28, 2019) (citing *Berger*, 843 F.2d at 1427); *Aguirre*, 633 F.2d at 172 ("Since a union, like a corporation, normally acts only through agents, imposition of liability implicitly requires application of ordinary rules of agency."). "An act is not imputed to the principal if the agent has no intention to further the principal's interests." *Dogherra v. Safeway Stores, Inc.*, 679 F.2d 1293, 1295-96 (9th Cir. 1982) (citing *ILWU, Local 10*, 283 F.2d at 565). Similarly, if a purported union officer's actions "fall outside the scope of their authority, 'they must bear the consequences alone.'" *Imsande-Sexton v. Local 9509, CWA*, No. 05CV272 J (LSP), 2007 WL 9718966, at *23 (S.D. Cal. April 9, 2007) (quoting *Urichuck v. Clark*, 689 F.2d 40, 43 (3d Cir. 1982)).

a. LMRDA claims based on filing of 13.2 complaints.

First and foremost, none of the 13.2 complaints were filed by or at the direction of ILWU, which is a separate and distinct entity from Local 13. Local 13

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evidence does not render all of them part of the same course of conduct.

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did not act as an agent of ILWU for the reasons set forth in Section A.1. above. ILWU officers and agents were not involved in the filing of the 13.2 complaints (UF 91), and there is no evidence that ILWU authorized or ratified the filing of any of the complaints. In short, there is no legal or factual basis for holding ILWU liable for individual complaints filed by members of Local 13. *See Moore v. Local Union 569 of Int'l Bhd. of Elec. Workers*, 989 F.2d 1534, 1543 (9th Cir. 1993), *as amended* (June 28, 1993) (International union cannot be liable unless "it affirmed the Local's actions 'with full knowledge that it was part of an overall scheme to suppress dissent in violation of the LMRDA'").

Even assuming *arguendo* that Local 13's conduct could somehow be imputed to ILWU—which it cannot—Plaintiff's LMRDA claims would still fail because Local 13 was not responsible for the 13.2 complaints filed by its members. While these individuals may have been elected to a Local 13 committee or position at the time, there are no factual allegations or evidence showing that any of them were "acting in their representative capacities" or somehow trying to further the interests of Local 13 by filing their individual complaints against Plaintiff.[15] *Link*, 2006 WL 1348424, at *6; *Urichuck*, 689 F.2d at 43; *Tomko v. Hilbert*, 288 F.2d 625, 628-29 (3d Cir. 1961).

To the contrary, the undisputed evidence shows that each 13.2 complaint was filed by an individual based on personal disputes with Plaintiff. Each complaint, as alleged by Plaintiff, is based on highly individualized facts and circumstances. (*See* Dkt. 55, ¶¶40-54) By way of example, the complaints alleged that Plaintiff: (1) threatened to reveal a grievant's alleged criminal history; (2) retaliated against a grievant for his political beliefs; (3) physically assaulted a grievant; and (4) made derogatory remarks to a grievant. (UF Dkt. 55, ¶¶41, 43, 46,

[15] Indeed, Plaintiff was elected to Local 13 positions and himself filed Section 13.2 complaints against others; and he agreed that his 13.2 complaints were not therefore complaints by or on behalf of the Union. (UF 110)

53) Irrespective of the merits of these allegations, no reasonable jury could find that the various grievants were "acting in their representative capacities" when they filed these individual complaints against Plaintiff.

Furthermore, there is no evidence that Local 13 ever authorized or ratified the filing of any of these individual complaints. To be sure, 13.2 complaints must be filed with the Arbitrator. (UF 25) And ILWU and Local 13 (and PMA for that matter) *possess no authority* to prevent individual longshore workers from filing 13.2 complaints. (UF 111). The mere fact that a complaint was filed by a Local 13 member who held a union position or sat on a committee does not render it Union conduct, let alone "evidence that the local union had engaged in a purposeful and deliberate attempt to suppress dissent within the union," as required for an LMRDA claim. *Moore*, 989 F.2d at 1543.

b. LMRDA claims based on outcomes of 13.2 complaints.

To the extent Plaintiff's LMRDA claims are based on the outcome of any of the 13.2 complaints filed against him, including his ultimate deregistration, those claims likewise fail because those decisions were made by the Arbitrator and/or CAO, not by Union Defendants. (UF 31-35) And as discussed above, those decisions are final and binding on Defendants pursuant to the CBA. (UF 34, 35) There also is no evidence that Defendants authorized or ratified these decisions, which they were contractually obligated to implement. (UF 36)

IV. CONCLUSION

For the foregoing reasons, Defendant ILWU respectfully requests that the Court grant its motion for summary judgment and dismiss Plaintiff's Fourth Amended Complaint as against ILWU with prejudice.

Dated: June 28, 2019

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