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BY: _____
CLERK OF DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES
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9 UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION
12

13 HILDA L. SOLIS,
Secretary of Labor,
14 United States Department of Labor,
15 Plaintiff,
16 v.
17 LOCAL 501, INTERNATIONAL
UNION OF OPERATING
18 ENGINEERS,
19 Defendant.

No. CV
CV11-08397 PDP(VBVx)
COMPLAINT

[For violation of Title IV of the Labor
Management Reporting and Disclosure
Act of 1959, 29 U.S.C. § 481]

20
21 Plaintiff, Hilda L. Solis, Secretary of Labor, alleges as follows:

22 NATURE OF THE ACTION

23 1. This action is brought under Title IV of the Labor-Management
24 Reporting and Disclosure Act of 1959, 29 U.S.C. §§ 481-84 (the "Act"), for a
25 judgment declaring that the August 26, 2010 election of union officers conducted by
26 Local 501, International Union of Operating Engineers ("Defendant") for the offices
27 of Business Manager/Recording-Corresponding Secretary, President, Vice-President,
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1 Financial Secretary, Treasurer, Trustee, one Auditor position, and Executive Board
2 Member at Large 2, is void, and directing Defendant to conduct a new election for
3 these offices, under Plaintiff's supervision, and for other appropriate relief.

4 JURISDICTION AND VENUE

5 2. This Court has jurisdiction over this action pursuant to 29 U.S.C. §
6 482(b), 28 U.S.C. § 1331, and 28 U.S.C. § 1345.

7 3. Venue lies in this district pursuant to 29 U.S.C. § 482(b) and 28 U.S.C. §
8 1391(b). 29 U.S.C. § 482(b) provides that the Secretary of Labor shall bring an
9 action in the federal district court in which the labor organization maintains its
10 principal office. Local 501, International Union of Operating Engineers, maintains
11 its principal office in Los Angeles, California, Los Angeles County.

12 PARTIES

13 4. Plaintiff Hilda L. Solis is the duly appointed Secretary of Labor, United
14 States Department of Labor. Plaintiff is authorized to bring this action under section
15 402(b) of Title IV of the Act, 29 U.S.C. § 482(b).

16 5. Defendant is, and at all times relevant to this action has been, an
17 unincorporated association residing within Los Angeles, California, within the
18 jurisdiction of this district.

19 FACTUAL ALLEGATIONS

20 6. Defendant is, and at all times relevant to this action has been, a local
21 labor organization engaged in an industry affecting commerce within the meaning of
22 sections 3(i), 3(j) and 401(b) of the Act, 29 U.S.C. §§ 402(i), 402(j) and 481(b).

23 7. Defendant, purporting to act pursuant to its Bylaws and the International
24 Union of Operating Engineers ("International") Constitution, conducted an election
25 of officers on August 26, 2010, and this election was subject to the provisions of Title
26 IV of the Act. 29 U.S.C. §§ 481-484.

27 8. Complainants, Sal Tardibuono, by letter dated September 8, 2010; Finn
28

1 Pette, by letters dated September 9, 2010 and September 22, 2010; Patrick Adams, by
2 letter dated September 10, 2010; Jack Pena, by undated letter received on September
3 10, 2010; Daniel Himmelberg, by letter mailed on September 13, 2010; Pat Williams,
4 by letter dated September 14, 2010; Rick Alcala, by letter dated September 20, 2010;
5 Katy Lingo, by undated letter sent on or about September 20, 2010; Erik Smith, by
6 letter dated September 21, 2010; Henry Aguilar, Randy Pearson, and Glen Szalay, by
7 letters received on September 23, 2010; and Jay Brophy, by letter dated September
8 24, 2010, protested the election of officers held on
9 August 26, 2010. All complainants were members in good standing of Defendant.

10 9. The Defendant's Executive Board denied the complainants' protests by
11 letters dated November 11, 2010.

12 10. Complainants, Sal Tardibuono, by letter dated November 29, 2010; Finn
13 Pette, by letter dated November 15, 2010; Patrick Adams, by letter dated November
14 19, 2010; Jack Pena, by letter dated November 15, 2010; Daniel Himmelberg, by
15 letter dated November 16, 2010; Pat Williams, by letter dated November 20, 2010;
16 Rick Alcala, by letter dated November 24, 2010; Katy Lingo, by letter dated
17 December 6, 2010; Erik Smith, by letter dated November 16, 2010; Henry Aguilar,
18 by letter dated November 15, 2010; Randy Pearson by letter dated November 15,
19 2010; Glen Szalay, by letter dated November 19, 2010; and Jay Brophy, by letter
20 dated November 22, 2010, appealed the decision of the Defendant's Executive Board
21 to the International's General President and General Executive Board.

22 11. Having invoked the remedies available under Defendant's Bylaws and the
23 International's Constitution without having received a final decision within three
24 calendar months after their invocation, Complainants, Sal Tardibuono, by letter
25 received on January 5, 2011; Finn Pette, by letter received on December 13, 2010;
26 Patrick Adams, by letter received on December 13, 2010; Jack Pena, by letter
27 received on December 17, 2010; Daniel Himmelberg, by letter received on December

1 14, 2010; Pat Williams, by letter received on January 6, 2011, Rick Alcala, by email
2 received on January 7, 2011; Katy Lingo, by letter received on January 9, 2011; Erik
3 Smith, by letter received on December 29, 2010; Henry Aguilar, by letter received on
4 December 21, 2010; Randy Pearson, by letter received on December 29, 2010; Glen
5 Szalay, by letter received on January 6, 2011; and Jay Brophy, by letter received on
6 January 12, 2011, filed their timely complaints with the Secretary of Labor,
7 respectively, within the one calendar month as required under section 402(a)(2) of the
8 LMRDA, 29 U.S.C. § 482(a)(2).

9 12. In a series of letters, the Defendant agreed that the time within which the
10 Plaintiff may bring suit with respect to the Defendant's aforesaid election be extended
11 to October 11, 2011.

12 13. Pursuant to section 601 of the Act, 29 U.S.C. § 521, and in accordance
13 with section 402(b) of the Act, 29 U.S.C. § 482(b), Plaintiff investigated the
14 complaints and, as a result of the facts shown by her investigation, found probable
15 cause to believe that: (1) violations of Title IV of the Act, 29 U.S.C. §§ 481-484, had
16 occurred in the conduct of the Defendant's August 26, 2010 election and (2) that such
17 violations had not been remedied at the time of the institution of this action.

18 FIRST CAUSE OF ACTION

19 14. On July 6, 2010, Defendant disqualified complainants Finn Pette and
20 Daniel Himmelberg from running for the offices of Business Manager/Recording-
21 Corresponding Secretary and Financial Secretary, respectively, on the ground that
22 they had been found guilty of misappropriating and converting assets of Local 501 to
23 their personal use.

24 15. The finding relied on by the Defendant to disqualify Pette and
25 Himmelberg was imposed by the International union on April 15, 2010.

26 16. Section 101(a)(5) of the Act, 29 U.S.C. § 411(a)(5), requires that union
27 members subject to discipline be served with specific charges and afforded a full and
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1 fair hearing.

2 17. The International union failed to comply with section 101(a)(5) of the Act,
3 29 U.S.C. § 411(a)(5), because the notice informed both Pette and Himmelberg that if
4 Local 501 has not received payment in full by April 13, 2010, the trial on the charges
5 against them would proceed. The money was repaid, but the International imposed
6 conditions not specified in the notice to reject the validity of the payments and
7 proceeded to trial without any further notice that the trial would take place,
8 effectively denying Pette and Himmelberg of notice of the trial.

9 18. Defendant violated section 401(e) of the Act, 29 U.S.C. § 481(e), by
10 disqualifying Pette and Himmelberg from running for union office based on
11 discipline that did not comport with the requirements of Section 101(a)(5) of the Act,
12 29 U.S.C. § 411(a)(5).

13 SECOND CAUSE OF ACTION

14 19. Defendant adopted a ballot for the August 26, 2010 election that listed
15 separately the slates of candidates running together and offered voters the option of
16 checking one box to vote for the entire slate.

17 20. Defendant adopted a rule that a slate of candidates must be comprised of at
18 least 10 candidates in order to be listed as a slate on the ballot.

19 21. There were 19 candidates who sought nomination to run as the Resistance
20 Slate and the Defendant disqualified 11 of these candidates, including Pette and
21 Himmelberg.

22 22. Defendant did not permit the Resistance Slate candidates to be listed on the
23 ballot as a slate and instead listed them as independent candidates.

24 23. Defendant's adoption of the 10 candidate minimum and refusal to permit
25 the Resistance Slate to run on the ballot as a slate violated section 401(c) of the Act,
26 29 U.S.C. § 481(c), which requires a union to provide adequate safeguards to insure a
27 fair election.

THIRD CAUSE OF ACTION

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24. The ballot adopted by the Defendant contained an error in the instruction for voting for the three Auditor positions, which stated “vote for four (3)” candidates, which caused certain members to vote for four candidates when they were only permitted to vote for three.

25. Defendant’s error violated section 401(c) of the Act, 29 U.S.C. § 481(c), by failing to provide adequate safeguards to insure a fair election.

26. The above described violations of sections 401(c) and 401(e) of the Act, 29 U.S.C. §§ 481(c) and 481(e), may have affected the outcome of the Defendant’s election for the offices of Business Manager/Recording-Corresponding Secretary, President, Vice-President, Financial Secretary, Treasurer, Trustee, one Auditor position, and Executive Board Member at Large 2.

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1 PRAYER FOR RELIEF

2 WHEREFORE, Plaintiff prays for judgment:

3 (a) declaring the Defendant's election for the offices of Business
4 Manager/Recording-Corresponding Secretary, President, Vice-President, Financial
5 Secretary, Treasurer, Trustee, one Auditor position, and Executive Board Member at
6 Large 2 to be void;

7 (b) directing the Defendant to conduct a new election for those offices under
8 the supervision of the Plaintiff;

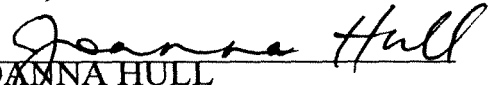
9 (c) for the costs of this action; and

10 (d) for such other relief as may be appropriate.

11 DATED: October 11, 2011

Respectfully submitted,

12 ANDRÉ BIROTTE JR.
13 United States Attorney
14 LEON W. WEIDMAN
15 Assistant United States Attorney
16 Chief, Civil Division

17 
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