

To: IBT General President James P. Hoffa

From: Joseph E. diGenova, Independent Investigations Officer

Re: Proposed Charges Concerning Former Local 683 Secretary-Treasurer Todd Mendez

Date: March 6, 2019

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## **I. RECOMMENDATION**

Pursuant to Paragraphs 30 and 31 of the Final Agreement and Order, the Independent Investigations Officer (“IIO”) refers the below report to the IBT General President with the recommendation that a charge be filed against former Local 683 Secretary-Treasurer Todd Mendez (“Mendez”) for bringing reproach upon the IBT in violation of Article II, Section 2 (a) and Article XIX, Sections 7(b)(1) and (2) and Section (14)(a), through failing to reasonably cooperate with the IIO by intentionally testifying falsely during his IIO sworn examination on February 2, 2017. Mendez falsely claimed the Local’s lawyer drafted a confidentiality agreement that purportedly was part of a proposed settlement agreement of a lawsuit brought by a former employee against the Local and Mendez personally alleging sexual harassment and other causes of action. Mendez falsely instructed board members to sign this confidentiality agreement, claiming it was part of the settlement agreement with the former employee, which it was not. Its terms prohibited the Board members from discussing the terms of the settlement with anyone, including Local members. This purported agreement assisted Mendez in achieving his goal of hiding from the members the suit against him and the terms of the settlement until after they voted on his re-election. Mendez’ confidentiality agreement provided a fixed financial penalty of \$5,000, against any board member for each breach.

## **II. JURISDICTION**

Pursuant to Paragraph 32 of the Final Agreement and Order in United States v. International Brotherhood of Teamsters, 88 Civ. 4486 (S.D.N.Y.) this matter is designated within the original jurisdiction of the General President. The Order requires that within 90 days of the IIO's referral of this matter, written findings setting forth the specific action taken and the reasons for that action must be filed with the Independent Review Officer. Pursuant to Paragraph 32, copies of this report are being sent to each member of the General Executive Board and the United States Attorney's Office, Southern District of New York.

## **III. INVESTIGATIVE FINDINGS**

### **A. Local 683**

Local 683 is located in El Cajon, California. Until July 2015, it was in San Diego. Local 683 represents approximately 2,755 members in the San Diego area. (Exs. 1; 2; 4)

### **B. Todd Mendez**

Mendez was the Local's Secretary-Treasurer and principal officer until December 31, 2018. He became a member of the Local on September 6, 1999, when a local employer hired him. (Ex. 3 at 11) In 2004, the Board approved his appointment to fill a vacancy for President. (Ex. 3 at 17-18) He was hired as a Business Agent in 2005. In November 2009, Mendez was elected Secretary-Treasurer and principal officer, taking office on January 1, 2010. (Ex. 3 at 20) He was re-elected in 2012 (in an uncontested election) and in 2015 (in a contested election). In 2017, his salary was \$149,623. (Ex. 4) He lost a contested election in 2018. His term of office ended December 31, 2018.

In 2015, besides Mendez, the Board included President Steve Lyons ("Lyons"), Vice President Richard Hurd ("Hurd"), and Recording Secretary Lee Fletcher ("Fletcher"), who were

full time employees of the Local. The Trustees were Ricardo “Rick” Murguia (“Murguia”), Ron Hennessey (“Hennessey”) and Mike Nakanishi (“Nakanishi”). (Ex. 5)

The 2015 Local officer nomination meeting was held on November 12, 2015. (Ex. 6) In that election, Trustee Murguia opposed Mendez for Secretary-Treasurer. All the other incumbents were unopposed. Bill Doyle was an unopposed candidate for the Trustee position that Murguia was vacating. That Local ballots were counted on December 18, 2015. Mendez was re-elected. (Exs. 27; 29).

### **A Former Employee’s Lawsuit against Mendez and the Local**

On April 26, 2010, Mendez hired Krista Ayers Alvarez (“Alvarez”) as Office Manager<sup>1</sup>. Alvarez became an IBT member on September 3, 2010. (Exs. 8; 9) She began maternity leave on June 3, 2011. Alvarez was entitled to the leave under California law.<sup>2</sup> She returned from leave on October 17, 2011. (Ex. 8 at 4) That day, Alvarez received on Local letterhead a letter of termination which Mendez had signed, dated October 4, 2011. (Ex. 7)<sup>3</sup> It asserted she was fired because the local had not received a written explanation for her continued leave. Subsequently, Mendez rescinded her termination. (Exs. 3 at 90-92; 8; 9 at 4)

Alvarez took a second withdrawal from Local 683 for maternity leave on November 3, 2014. On February 10, 2015, the day Alvarez returned to work, Mendez terminated her employment orally. (Ex. 3 at 96-98; Ex. 9 at 3) At that time, Mendez accused Alvarez, who had

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<sup>1</sup> At the time of her hire, she was Krista Ayers. (Ex. 3 at 90)

<sup>2</sup> The California Fair Employment and Housing Act §12945(a)(1) made it unlawful for:

“... an employer to refuse to allow an employee disabled by pregnancy, childbirth, or a related medical condition to take a leave for a reasonable period of time not to exceed four months and thereafter return to work, as set forth in the commission’s regulations. The employee shall be entitled to utilize any accrued vacation leave during this period of time. Reasonable period of time means that period during which the employee disabled on account of pregnancy, childbirth, or a related condition.”

<sup>3</sup> Her dues records indicate she was on withdrawal from June 3, 2011 to October 17, 2011. (Ex. 8)

been an inactive Local employee for over three months, of stealing local documents and giving them to a former local employee, who was a political opponent of Mendez. (Ex. 3 at 96-98)

On May 28, 2015, Alvarez filed a civil action in the Superior Court of California, San Diego County, against both Mendez and Local 683. (Ex. 9) She sought monetary damages against both. The complaint alleged causes of action for Pregnancy/Gender Discrimination in violation of the California Fair Employment and Housing Act (FEHA, Cal. Gov. Code, §1290, et. seq.), Sexual Harassment, Harassment, Failure To Take All Steps Necessary to Stop Discrimination and Harassment From Occurring, Retaliation, Wrongful Termination, and Intentional Infliction of Emotional Distress. (Ex. 9) Mendez alone was named in the Sexual Harassment and Harassment causes of action. Only the Local was named in the causes of action for Failure to Take All Steps Necessary to Stop Discrimination and Harassment from Occurring, Retaliation and Wrongful Termination. (Ex. 9) Both Mendez and the Local were named in the Pregnancy/Gender Discrimination and Intentional Infliction of Emotional Distress causes of action. (Ex. 9)

Alvarez' complaint alleged that Mendez had made repeated statements at the Local that he had only hired Alvarez because she was a "single, blonde female with big boobs." (Ex. 9 at 4)<sup>4</sup> She asserted Mendez deliberately addressed to her comments about his sexual activities with other women. She claimed that Mendez' harassment of her was constant, occurring on a daily basis. (Ex. 9 at 4, 9) Alvarez alleged that during her employment Mendez had grabbed her breasts on several occasions. In addition, she alleged, while in Las Vegas for a "delegates' meeting", Mendez grabbed her breast and slid his hand across her inner thigh. (Ex. 9 at 5) She also alleged in the complaint that at the Teamsters Women's Conference in New Orleans, in September 2013, Mendez attempted to enter her hotel room without her permission. (Ex. 9 at 4) Alvarez also

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<sup>4</sup> Alvarez was single when hired and married after she was employed at the Local. (Ex. 3 at 150-151)

alleged that when she informed Mendez that she was pregnant with her second child, he advised her she would be required to sign an agreement to “have her tubes tied”. (Ex. 9 at 5)

There was evidence from other local officers that Mendez harassed Alvarez and that his misconduct was known to other Local Board members. President Hurd testified he witnessed Mendez’ “nonstop” verbal harassment of Alvarez. (Ex. 11 at 36-37) Hurd reported:

[Mendez] used to make comments about her breasts, not in that terminology. When she got pregnant he would comment how big they were getting and that they were full of milk. She used to come in sometimes late. You know, she was -- when she got back to work after her pregnancy, you know, she was sometimes late, not all dolled up. And he says: Oh, she comes in like she's all come drunk. He made comments about her husband, because her husband's Hispanic. You know, called him a border brother.

Q. A border brother?

A. Uh-huh.

Q. What does that mean?

A. Because the border is right there. It's a slang to say, you know, people come across the border is a border brother. It's not a very good -- it's not something nice to say about somebody that comes from Mexico.

(Ex. 11 at 37-38)

In addition, Recording Secretary Fletcher testified that Mendez had told him that at the New Orleans Conference Mendez had “finger-banged” Alvarez on the dance floor. (Ex. 10 at 17)<sup>5</sup>

These allegations against the Principal Officer were serious. See, In Re: Mixon, IBT Panel Report and Recommendation, adopted by the IBT General President, November 4, 2015. (A supervisor’s harassing behavior violated the IBT’s Constitution and Code of Conduct by creating an “intimidating, hostile [and] offensive work environment”.) (Ex. 12 at 7, 20) Teamsters Local 683 Policies and Procedures recognize that the Local had an obligation to provide a harassment-

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<sup>5</sup> That Mendez made that statement to Fletcher was also one of the allegations in the complaint. (Ex. 9 at 4)

free workplace. Violations of this obligation would subject the member to “discipline . . . including termination.”<sup>6</sup>

After the filing of Alvarez’ complaint, the allegations of Mendez’ sexual harassment of a Local member and employee were known to the majority of the Board. For example, Lyons stated that he was aware of the nature of the lawsuit through discussions with Board members Fletcher and Hurd. (Ex. 24 at 48) The Board, both before and after the filing of the lawsuit, failed to reasonably investigate these allegations against the Principal Officer of his mistreatment of a Local employee and member. See, e.g., United States v. IBT [Sansone], 792 F. Supp. 1346, 1354 (S.D.N.Y. 1992), *aff’d*, 981 F.2d 1362 (2d Cir.1992); United States v. IBT [Carey], 247 F.3d 370, 381 (2d Cir. 2001); United States v. IBT [Coli], 803 F. Supp. 748, at 755-756. (S.D.N.Y. 1992).

Mendez retained the Local’s counsel, Florice Hoffman, to represent the Local and himself in the lawsuit. (Exs. 3 at 77; 14 at 8) On October 6, 2015, Alvarez’ attorney sent to the defendants a proposed “Confidential Settlement Agreement and General Release”. (Ex. 14 at 17; 23-24) By its terms, the proposed agreement provided for several connected procedural steps to settle the matter. As part of the agreement, Alvarez would dismiss all causes of action against Mendez, initially without prejudice<sup>7</sup>. (Ex. 17 at 1) It also provided for the dismissal without prejudice of all claims for sexual harassment and retaliation against the Local, “prior to the full execution of th[e] agreement.” (Ex. 17 at 1) As a result, only Alvarez’ claim against the Local for wrongful

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<sup>6</sup> **Workplace Harassment:** Teamsters Local 683 is committed to a workplace free from illegal harassment. It is illegal to discriminate based on race, color, religion, sex (pregnancy or gender), sexual orientation, marital status, national origin, ancestry, disability, medical condition, age. Any perceived discrimination should be reported in writing immediately to the Secretary Treasurer or by letter to the executive board. All complaints will be investigated promptly. Any violation of this policy could result in discipline up to including termination. (Ex. 13 at ¶ 5)

<sup>7</sup> “Without prejudice” meant Alvarez could have re-filed the causes of action if the settlement agreement fell through. See California Code of Civil Procedure, Chapter 1, Sections 581 (b) (1); (e)

termination remained. Payments totaling \$100,000 to Alvarez from the Local general fund would settle that claim. (Ex. 17 at 1) A Cross-Complaint the Local had filed against Alvarez for an alleged breach of an employee's duty of confidentiality would be dismissed with prejudice as part of the proposed agreement. Under the terms of the proposed agreement, Alvarez could not disclose the terms of the settlement without being subject to a monetary penalty. (Ex. 17 at 3) In her proposal, no monetary penalty for any breach of confidentiality was reciprocally applicable to the Local or its board members. (Ex. 17)

No Board minutes reflected any discussion of the lawsuit's allegations or its merits at any Board meeting. (Exs. 28-29) Mendez was involved in a contested Local election during the period the lawsuit was pending. (Exs. 6; 20) Attorney Hoffman later testified that she discussed with Mendez the proposed settlement agreement during the year of the Local election. (Ex. 14 at 20)<sup>8</sup> She never spoke to any other board member about the lawsuit or the settlement agreement. (Ex. 14 at 9-12) Mendez expressed to the attorney several personal reasons for wanting both the suit and its settlement kept confidential. Mendez informed Hoffman he did not want the allegations against him to be known to the Local members before the election. (Ex. 14 at 20-21, 28-29) Mendez also told her he did not want Trustee Murguia, his opponent, to be able to use the lawsuit or a civil deposition of Mendez in that lawsuit in his campaign against Mendez. (Ex. 14 at 20-21) Hoffman testified Mendez also expressed concern that if the allegations in the Alvarez complaint were known publically his marriage would be harmed. (Ex. 14 at 28-29)

Mendez unilaterally signed the settlement agreement on behalf of the Local on October 13, 2005. (Ex. 17) The Settlement Agreement as executed required the Local to pay \$100,000 to Alvarez. (Ex. 17) Under its terms, \$35,000 was due within seven (7) days of Secretary-Treasurer

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<sup>8</sup> Hoffman testified pursuant to a court ordered subpoena. (Ex. 18; Ex. 14 at 4)

Mendez' signing the settlement agreement. The remaining \$65,000 was due on March 10, 2016. (Ex. 17 at 2). On October 20, 2015, Mendez and Hurd signed a check on the Local general fund account for \$35,000 to the Client Trust Fund of the Joseph Farzam Law Firm for the first settlement payment. (Ex. 19) That firm represented Alvarez. (Exs. 9, 17 at 2, 6) Subsequently, Mendez and Hurd signed a Local check, dated March 1, 2016, to the same Client Trust Fund for the remaining \$65,000, owed to Alvarez. (Ex. 20) No document at the Local indicated the Executive Board had approved the settlement, as the Bylaws required. (Ex. 28; Ex. 15 at Art. XIII, Sec. 1 (d))

### **The October Board Meeting**

On October 8, 2015, the Local's Executive Board held its monthly meeting. According to the minutes, the meeting began at 4:22 P.M. and lasted four minutes, ending at 4:26 P.M. (Ex. 21) During that time, the minutes of the previous Board meeting were read and approved. In addition, the Local's Trustees reported that they had examined the books and records of the Local for the preceding month and found them recorded correctly. The Trustees also reported they had verified the bank balances. In addition, the Executive Board voted on a motion to reaffirm two prior telephone polls for the purchase of two vehicles. Moreover, there were also four items of new business raised at that meeting. Three were requests to the Local for donations to various charities. One of these the Board approved; two were tabled. (Ex. 21) The remaining item of new business noted in the minutes was the proposed settlement of the Alvarez lawsuit. The minutes reported: "Krista A Settlement has been settled. Motion was made by Ron H. [Hennessey] to table. Seconded by Richard Hurd. Motion carried unanimously." (Ex. 21) Thus, the minutes reflected a Board vote on the settlement agreement had been tabled. There was thus no Board vote on the terms of the settlement (as the Bylaws required) before Mendez signed it on October 13, and



caused the Local funds to be transferred to his accuser on October 20, 2015. (Exs. 15 at Art. XIII, Sec. 1(d); 19; 20)

Not recorded in the October 8 Board minutes was that Mendez gave each board member present a separate document entitled, “Confidentiality Agreement” (“Mendez Agreement”). The new agreement Mendez distributed falsely purported to be between the parties to the lawsuit. Mendez misled the Board by representing to them that the Confidentiality Agreement was part of the settlement. In truth, it was not part of the settlement proposal from Alvarez or the final settlement agreement with her that he signed on behalf of the Local. (Exs. 17, 20, 23) Mendez’ sham agreement forbade, among others, the board member from discussing all terms of the settlement with anyone, including Local members, despite the fact that those members’ dues money was being used to settle the lawsuit against him and the Local based on his alleged misconduct. (Ex. 23)<sup>9</sup> Under the terms of Mendez’ “agreement,” all that a Board member could

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<sup>9</sup> The agreement that Mendez gave to the board members provided: “Teamsters Local 683 and its officers and Krista Alvarez (“the Parties”) expressly understand and agree that this Agreement and its contents (including but not limited to, the fact of payment and the amounts to be paid hereunder) shall remain CONFIDENTIAL and shall not be disclosed to any third party whatsoever, except the Parties’ counsel, accountants, financial advisors, tax professionals retained by them, any federal, state, or local governmental taxing or regulatory authority, and except as required by law or order of court. Any person identified in the preceding sentence to whom information concerning this Agreement is disclosed is bound by this confidentiality provision and the disclosing party shall be liable for any breaches of confidentiality by persons to whom he/she/it has disclosed information about this Agreement in accordance with this paragraph including liquidated damages of \$5,000.00 per incident. Nothing contained in this paragraph shall prevent any Party from stating that the Parties have “amicably resolved all differences,” provided, however, that in so doing, the Parties shall not disclose the fact or amount of any payments made or to be made hereunder and shall not disclose any other terms of this Agreement or the settlement described herein. If any subpoena, order or discovery request (the “**Document Request**”) is received by any of the Parties hereto calling for the production of the Agreement, such Party shall promptly notify the other Party hereto prior to any disclosure of same. In such case, the subpoenaed Party shall: (a) make available as soon as practicable (and in any event prior to disclosure), for inspection and copying, a copy of the Agreement it intends to produce pursuant to the Document Request unless such disclosure is otherwise prohibited by law; and (b) and, to the extent possible, shall not produce anything in response to the Document Request for at least ten (10) business days following such notice. If necessary, the subpoenaed Party shall take appropriate actions to resist production, as permitted by law, so as to allow the Parties to try to reach agreement on what shall be produced. This paragraph is a material part of the Settlement Agreement”. (Ex. 23) (Emphasis added)

disclose to a Local member was that the parties had “amicably resolved all differences”. (Ex, 23)  
If he breached the confidentiality requirement in Mendez’ separate “agreement,” a Board member would be liable for \$5,000 in liquidated damages for each breach. (Ex. 23)

Mendez’ “agreement,” however, was not, as it represented to be, an agreement between the parties. It was not any part of the actual agreement with Alvarez to settle the lawsuit. Mendez’ intent was to use the sham confidentiality agreement to prevent the Board from disclosing to members the use of Local funds used to settle the action against him and the Local.

At his IIO sworn examination, Mendez denied this intent, stating:

I was never -- it was never my intention to hide this from anybody. I was very transparent. The fact is I had my attorney on a conference call during this meeting at the executive board you are referring to. And it was -- that's why I had the documents for everyone to sign. Everybody was very clear exactly what was going on.

(Ex. 3 at 131)

The Board minutes for October reflected the Board voted to table a vote on the approval of the proposed settlement. (Ex. 21) The Recording Secretary Fletcher prepared the minutes. (Ex.10 at 33-35) At his IIO sworn examination, Fletcher stated:

Q. Was there ever a discussion about the lawsuit, the pending lawsuit, in the executive board?

A. We started the meeting in October. He [Mendez] brought out confidentiality agreements for everybody, had everybody sign them. Then he discussed paying Krista \$100,000; that it would be cheaper to make her go away than to fight it, but he's innocent. And then as I'm taking the minutes I go: So you want me to put this in the minutes? No. Table it. We are not taking a vote right now.

Q. He said affirmatively: We are not taking a vote right now?

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Alvarez’ proposed agreement already had a confidentiality provision which provided no penalty for violations by any Local officer of the confidentiality provision. Paragraph 7 of the Settlement Agreement that Mendez signed (without Board approval) contained a confidentiality provision applicable to “the Parties”, defined as Plaintiff Alvarez and Local 683. Mendez is also identified in the agreement as a “Defendant”. (Ex. 17)

A. Right, because he did not want it read.

Q. To the members?

A. Yes. It's a month before nominations and then another month for voting.

(Ex. 10 at 23-24)

The Board had a practice of reading and affirming the previous Board meeting minutes at the next Board meeting. (Exs 28; 29; 35; 36; 37) The Board accepted these October minutes with no changes at its November meeting. (Ex. 21; Ex. 38)

Local 683's customary practice also was that Mendez read to the members the previous month's board minutes at the next month's membership meeting. (Exs. 10 at 12-13; 28; 29; 35; 36; 37) The October minutes were not read to the members at either the November or December meetings, the two remaining membership meetings before the election in 2015. (Exs. 22; 39; 40) Mendez claimed that the October, 2015 Board minutes were read at the January 2016 membership meeting held after the election.<sup>10</sup> At that point the first settlement payment had been made to Alvarez. (Ex. 3 at 115; Ex.19; Ex. 41) No Local document supported Mendez' claim the October

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<sup>10</sup> In February, 2017, over a year after Mendez claimed he had read the October 8, 2015 Board meeting minutes to the membership at the January, 2016 membership meeting, he was asked how many of the members were aware of the \$100,000 expenditure of Local funds to settle the Alvarez lawsuit. Mendez replied:

Q. How many of the members are aware that \$100,000 of their money went to settle this lawsuit?

A. I don't know. I don't know how many. There has been chatter because I think -- well, I don't think. I know that Lee has been sharing it with people and so has Richard, because I get -- I have had people ask me about it.

Q. What have they asked you?

A. What happened with the lawsuit. And I told them that, Hey, this is -- this was a frivolous lawsuit; it was politically driven, and under the advice of my legal counsel, the best thing to do in the best interest of the members was to settle it, and that I can't talk about -- I signed a confidentiality agreement and I can't talk about the details.

Q. Isn't it their money? Isn't it their right to know?

A. I shared with them as much as I possibly legally could.

Q. So you're basing your less-than-full disclosure on a confidentiality clause?

A. No. I read those minutes in January.

Q. Where are those minutes?

A. Ask Lee Fletcher.

Q. I'm asking you.

A. I have no idea, sir...

(Ex. 3 at 155-156)

8 minutes had been read. The Local under Mendez' control failed to provide any January membership meeting minutes to the IIO. (Ex. 34) Despite repeated requests, as of the date of this report, the Local has not provided any minutes for the January membership meeting. (Ex. 34; Ex. 3 at 130) The then Recording Secretary testified that the members were not told about the settlement at the January meeting. (Ex. 10 at 41) In any event, Mendez achieved his goal of hiding from the members the terms of the settlement and the suit against him until after they voted on his re-election.<sup>11</sup>

In sum, the October 8 Board minutes prepared by the Recording Secretary reflect that there was no vote to approve the settlement. The motion to approve was tabled at that meeting without any Board decision. (Ex. 21) Consistent with the Local's practice, those October Board minutes were read and approved at the November Board meeting. (Ex. 21; Ex. 38) No Board member challenged the accuracy of the minutes reporting the settlement had been tabled and that it was never voted upon. (Ex. 21; Ex. 38)

Recording Secretary Fletcher testified that at the October 8, 2015, Board meeting, Mendez instructed the Board members not to mention the lawsuit to the members during the membership meeting later that day. (Ex. 10 at 23-24) He also testified that Mendez ordered them not to discuss it during the nominations meeting scheduled to take place the following month. (Ex. 10 at 24)

Mendez testified a motion to suspend normal business was made and accepted for the October membership meeting. (Exs. 3 at 115; 22) According to Mendez, the membership meeting on October 8, 2015, was to have included a candidate's debate between Mendez and Murguia.

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<sup>11</sup> Fletcher, who was fired as Business Agent on January 28, 2016, asserted his notes from the January meeting were in his desk drawer to which he was denied access after his firing. (Ex. 41) The Local has not produced the minutes from this meeting. (Ex. 34)

(Ex. 3 at 115, 117) Murguia was not in attendance at the membership meeting. (Ex. 22) Consequently, there was no debate between the candidates. Mendez never told the members about the settlement before the election<sup>12</sup>. (Ex. 22; Ex. 34; Ex. 40)

During his deposition, Mendez acknowledged the Confidentiality Agreement he provided to the Board members prohibited the Board members from discussing the details of the suit and the settlement with the members. (Ex. 3 at 125; 155-156) Despite its language and Mendez' representations to the Board indicating otherwise, Mendez' "agreement" was not an agreement between the parties. Neither Alvarez nor her counsel signed it or requested it in any way. The document's language asserting it was part of the settlement was false. Indeed, the confidentiality "agreement" Mendez had the Board members sign was more onerous to Board members than the one Alvarez had requested, in that it called for a \$5,000 penalty per breach. (Compare Ex. 23 with Ex. 17) Unlike Mendez', Alvarez' proposed confidentiality agreement did not provide for any penalties against Board members for any breach by them. Only the document provided for signature to the Board by Mendez contained individual financial penalties to be imposed on Local officers who breached its provisions by revealing the cost of the settlement to the Local members. (Exs. 17; 23)

Mendez' "agreement" misled the Board members by presenting them with an agreement that asserted it was part of the settlement agreement between the parties. The actual settlement agreement that Mendez unilaterally signed on behalf of the Local (without Board approval) provided: "This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and no other agreement, oral or written, shall be deemed to exist or to bind any of the Parties hereto". (Ex. 17 at 4) This completed settlement

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<sup>12</sup> Murguia, Mendez' opponent, was also not present at the October Board meeting. (Ex. 21) Murguia resigned from the Board before the November Board meeting. (Ex. 38)

agreement made no reference to the Mendez' "agreement" containing the penalty clauses, which he distributed to the Board members. The "agreement" he gave the Board members was not part of the lawsuit and its settlement, despite the false representation in its text.

With the exception of the Local's purchase of a new building in 2014, the \$100,000 settlement expenditure Mendez concealed from the members was the largest single expense the Local had paid in the preceding five years. (Exs. 42-46)

At his IIO sworn examination on February 2, 2017, Mendez falsely testified that Florice Hoffman, Esq. ("Hoffman"), the Local's and his attorney, had drafted the bogus confidentiality agreement he presented to the Board. Mendez stated:

Q. Who prepared these documents?

A. Legal counsel.

Q. Who was that?

A. Florice Hoffman.

Q. So Florice Hoffman prepared these documents?

A. Correct.

Q. When did she do that?

A. I don't recall. They were ready for me for that meeting, for the e-board meeting.

(Ex. 3 at 138-139)

None of the Board members had spoken with Hoffman concerning it. (Ex. 14 at 15-16) Trustee Hennessey testified the Board members were told Hoffman prepared it. (Ex. 25 at 44) Trustee Nakanishi recalled Mendez told him that Hoffman requested that the Board sign the agreements he presented at the October meeting. (Ex. 26 at 47) Mendez also swore that Hoffman had been available to discuss matters concerning the settlement with the Board on speaker phone during the October 8, 2015 Executive Board meeting. (Ex. 3 at 131) According to Mendez, she was prepared to advise the Board during the meeting as needed. Lyons, Hennessey and Nakanishi also stated that Hoffman was on a speaker phone during that October 8, 2015 meeting. (Ex. 26 at 29, 47; Ex. 25 at 44) Hennessey stated that he was not positive, but that his recollection was that Hoffman

was on the phone. He thought she would have been “if something that big,” such as a \$100,000 settlement was discussed at the Board meeting. (Ex. 25 at 44) Lyons concluded that Hoffman “obviously” was on the phone “because it was a very important document we were signing... and what we were voting on, the legal part of it.” (Ex. 24 at 39-40).<sup>13</sup> No other Board member recalled her speaking on the call<sup>14</sup>. (Ex. 25 at 44; Ex. 26 at 47) Mendez misled the Board members as to Hoffman’s involvement in the Confidentiality Agreement he provided in October.

Contrary to Mendez’ claim, Hoffman testified under oath she had no involvement in the preparation, drafting or circulation of the bogus Mendez Confidentiality Agreement. (Ex. 14 at 47-49) She testified that she had never seen the Mendez Confidentiality Agreement provided to the Board before it was shown to her at her IIO deposition. (Ex. 14 at 47-49) In addition, Hoffman testified that she neither participated in a conference call with the Local Board for the October meeting, nor attended the meeting through an open line via speaker phone on October 8, 2105<sup>15</sup>. (Ex. 14 at 31-33) Hoffman’s telephone records for that date evidenced no telephone calls to or from the Local on any of the telephone lines she used during that period.<sup>16</sup> (Ex. 30) In addition, the approved minutes of the October 8, 2015 Executive Board meeting do not reflect Hoffman’s participation via telephone. (Ex. 21) Hoffman, who had represented the Local for six years, further stated that it was not her practice to participate in Board calls and had not done so on any other

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<sup>13</sup> The minutes of that meeting show Lyons as “excused”, and that Murguia was “absent” for the meeting. (Ex. 21) Lyons, however, claimed that he was present for the October 8, 2015 Executive Board Meeting. He signed a copy of the Mendez Agreement but unlike those the other board members signed, it is dated a month earlier. (Ex. 23) He did not correct the statement when the October minutes were read at the November Board meeting for which he was present. (Ex. 21; Ex. 38)

<sup>14</sup> On October 8, Nakanishi was an advisor to the Board. He later became one of the trustees. He stated that he “thought” Hoffman had been on a conference call, and that she discussed the settlement of the Alvarez matter. (Ex. 26 at 47-48)

<sup>15</sup> Hoffman testified pursuant to a subpoena the IIO obtained from United States District Court Judge Preska. (Exs. 14,18)

<sup>16</sup> Hoffman identified the phone numbers in the records as her cell phone, her office phone and an iPad that has phone call capability (Ex. 14 at 39-45)

occasion. (Ex. 14 at 31-32) A review of the Board meeting minutes from January, 2012 through December, 2015, showed Hoffman did not participate, either in person or by telephone, in any Board meeting in that period. (Exs 28; 29; 35; 36; 37) When no Board members attended, it was the practice in the minutes to indicate their absence. (Exs 28; 29; 35; 36; 37)

In addition, in light of the confidentiality agreement Alvarez' lawyer previously proposed, there would have been no purpose for the Local's lawyer to draft one like that Mendez distributed with a more severe punitive provision for breaches against her clients than that sought by the plaintiff. On its face, its only purpose was to keep information from the members voting in the Local's single contested election for Mendez' position.

Moreover, that the Mendez Confidentiality Agreement was not incorporated into the later signed settlement agreement, which contained the same confidentiality clause Alvarez initially proposed, is further proof that the Mendez agreement was not part of the settlement of the suit in which Hoffman was representing the Local and Mendez. (Compare Ex. 17 and Ex. 23) Paragraph 12 of the Settlement Agreement provided:

Entire Agreement: This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and no other agreement, oral or written, shall be deemed to exist or to bind any of the Parties hereto.

(Ex. 17 at 4)

In addition, Alvarez' and Mendez' signatures on the Settlement Agreement were dated October 13, 2015. (Ex. 17) On that date, both the attorneys for the plaintiff and the defendants



approved the Settlement Agreement, “as to form,” indicating the parties’ belief that it reflected the full agreement between the parties.<sup>17</sup> (Ex. 17)

The Local paid the initial \$35,000 the settlement required on October 20, 2015, seven days after the execution of the agreement on October 13, 2015, according to its terms. (Ex. 17; Ex. 19) Alvarez’ attorney filed a notice of Unconditional Settlement with the court on November 4, 2015. (Ex. 31 at 2) Pursuant to the settlement agreement, the Local paid the remaining \$65,000 on March 1, 2016. (Ex. 20) Hoffman testified under oath that at the time the plaintiff proposed the Settlement Agreement, she advised Mendez that a settlement required the approval of both the Executive Board and the members. Hoffman stated that Mendez confirmed he understood that advice. (Ex. 14 at 15-20)

From the Local records it was established that prior to the payments being made Mendez secured neither approval. Despite the lack of Board approval the Bylaws required, Mendez and Hurd impermissibly signed both checks that transferred the Local’s \$100,000 to the plaintiff. (Ex. 19; Ex. 20)

In an attempt to provide an explanation to the IIO why the Local’s records were inconsistent with his testimony, Mendez suggested that Patti Henry, a Local employee who started on November 10, 2015 (after the October Board meeting) be examined. Henry subsequently claimed under oath that on reviewing the October minutes during the IIO’s Investigators’ examination of records in August, 2016, she recognized that the minutes were erroneous. Specifically, she claimed the minutes mistakenly stated the motion for approval was tabled. According to Henry, that was a “typo” and the minutes should have indicated the Board had voted

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<sup>17</sup> Under California law, an attorney approving an agreement as to form, is asserting that she was the party’s attorney, that the document is in the proper form and it embodies the deal that was made between the parties. Freedman v. Brutzkus, 182 Cal.App.4<sup>th</sup> 1065,1070 (California Court of Appeals, 2010)

on and approved and not tabled it. Lacking facial credibility, her testimony, even if she believed it was true, was not based on actual knowledge of the events at the time. (Ex. 32 at 15-18; Ex. 21) She was not present at the Board meeting, or, indeed, employed at the Local in October. In addition, she offered no explanation as to why the Board members who (unlike her) were present at the October meeting, would have accepted at the November meeting minutes showing the approval issue was tabled in October if in fact they had actually approved it. (Ex. 32 at 21-22) This approval would not have been a *de minimis* action they would have easily forgotten a month later. The \$100,000 involved was the Local's highest expenditure in five years. (Exs. 42-46) Henry's claim that it was a typo is not credible.

In any event, Mendez' testimony at his IIO sworn statement was false as to the Confidentiality Agreement he caused the Board members to sign.

### **Analysis**

#### **Standard of Proof**

The standard of proof to establish the charge against Mendez is a preponderance of evidence. Rules Governing the Authorities of Independent Disciplinary Officers and the Conduct of Hearings, Section C ("The purpose of the hearing shall be to determine whether the proposed findings, charges, or recommendations regarding discipline or trusteeship found in the Independent Investigations Officer's Investigative Report are supported by a preponderance of reliable evidence"); United States v. IBT [Simpson], 931 F. Supp. 1074, 1089 (S.D.N.Y. 1996), aff'd, 120 F. 3d 341 (2nd Cir. 1997); IBT Constitution, Art. XIX, Sec. 1(e).

#### **Mendez Failed to Reasonably Cooperate with the IIO**

Mendez testified falsely concerning the Confidentiality Agreements he distributed and caused Board members to sign. His distributed agreement in its text purported falsely to be part

of an agreement with the plaintiff. Contrary to the interests of the Board members and Local members, his agreement provided for serious financial penalties against Board members who informed Local members of the settlement terms, including the amount it cost the Local. The Local's lawyer, under oath, contradicted Mendez' claim that she had provided the agreement. She testified she had no role with respect to the agreement he had the Board members sign. Indeed, she recommended he secure members' approval of the plaintiff's proposed settlement agreement rather than hide it from them. (Ex. 14 at 15-16, 19-20) She had not seen the Mendez confidentiality agreement prior to her testimony. (Ex. 14 at 46-48) The lawyer's testimony is fully corroborated. Both the circumstances and documents undercut Mendez' claim. The document Mendez presented on its face contradicted the terms of the settlement agreement that the plaintiff proposed and Mendez accepted through his signature on behalf of himself and the Local.

As noted, Mendez also claimed that the lawyer was available on a conference call for the Board to speak to during the Board meeting. The lawyer denied that. Her telephone records and past practice over years representing the Local corroborated her testimony. Moreover, no Board member heard her speak over the telephone during the meeting. The minutes do not reflect her presence by telephone.

In addition, on its face, the Mendez agreement was not part of the lawyer's representation of the Local and Mendez. Its terms imposed penalties against Board members for breaches of confidentiality more onerous than that the plaintiff had requested. In a representation of the Local and its Principal Officer, there would have been no legitimate purpose for a lawyer to request such terms. A sophisticated client such as Mendez, if acting in good faith, would have rejected any such advice that was not in the Local's and its Board members' best interest.

Only Mendez' personal interest was served in his attempt to keep the settlement terms from the members through his separate confidentiality "agreement" imposing financial penalties on Board members for breaches. He alone faced a contested election. Because he did not want the settlement payment and the complaint against him to be an issue in the election campaign, he had the motive to secure Board member agreement to the sham confidentiality agreement to ensure they would not inform the Local's members of its cost. (Ex. 23)

Further evidencing Mendez' false testimony concerning his proposed Confidentiality Agreement was that the plaintiff never agreed to it. Despite its textual representation, the document was not part of the lawsuit. The actual Settlement Agreement explicitly foreclosed any such separate agreement from being part of the settlement. (Ex. 23; Ex. 17) In intentionally testifying falsely in his IIO testimony concerning the confidentiality agreement he distributed, Mendez unreasonably failed to cooperate with the IIO.

### **Proposed Charge**

While a member of Local 683 and the IBT, you brought reproach upon the IBT in violation of Article II, Section 2(a) and violated Article XIX, Sections 7(b) (1) and (2) and Section 14(a) of the IBT Constitution by obstructing, interfering and unreasonably failing to cooperate with the Independent Investigations Officer as set forth in the Final Agreement and Order, to wit:

As described above, while a member of the IBT, on February 2, 2017, you unreasonably failed to cooperate with the Independent Investigations Officer pursuant to the Final Agreement and Order and Rules Governing the Authorities of Independent Disciplinary Officers and the Conduct of Hearings when you gave intentionally false testimony concerning a proposed confidentiality agreement that would have penalized Board members who informed a Local

member of the terms of the Local's and your settlement of a lawsuit a former local employee brought against you individually and the Local, alleging serious misconduct, as described above.