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UNITED STATES DISTRICT COURT CALIFORNIA

FOR THE NORTHERN DISTRICT OF CALIFORNIA

AT SAN FRANCISCO

HARRY J. BEIER, an individual, JOHN R. SCHOLZ, an individual, KEVIN E. BYBEE, an individual; on behalf of themselves and all others similarly situated,

Plaintiffs

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, a labor organization; TEAMSTERS SFO LOCAL 856/986, a labor organization; JAMES HOFFA, in his official capacity as INTERNATIONAL BROTHERHOOD OF TEAMSTERS President and Representative; PETER FINN, in his official capacity as TEAMSTERS SFO LOCAL 856/986 Principal Officer; UNITED AIR LINES, INC., a Delaware corporation; UNITED CONTINENTAL HOLDINGS, INC., a Delaware corporation,

Defendants.

Case No. 4:18-CV-06632-JD

UNION DEFENDANTS' NOTICE OF MOTION; MOTION TO DISMISS FIRST AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS

[F.R.C.P. 12(b)(6)]

Hearing Date:	May 9, 2019
Hearing Time:	10:00 a.m.
Courtroom:	11, 19th Floor
Judge:	Hon. James Donato
Complaint Filed:	October 31, 2018
Trial Date:	None set

NOTICE OF MOTION AND MOTION TO DISMISS

TO: PLAINTIFFS AND THEIR ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on May 9, 2019, at 10:00 a.m. or as soon thereafter as counsel may be heard in Courtroom 11, 19th Floor, of the above-entitled Court, located at 450 Golden Gate Avenue, San Francisco, California, 94102, Defendants INTERNATIONAL BROTHERHOOD OF TEAMSTERS; TEAMSTERS LOCAL 856; TEAMSTERS LOCAL 986; JAMES HOFFA and PETER FINN will move this Court for an order dismissing Plaintiffs' claims with prejudice pursuant to Rule 12(b)(1) and/or Rule 12(b)(6) of the Federal Rules of Civil Procedure. This Motion is based upon this Notice of Motion, Motion and Memorandum of Points and Authorities, the Declaration of Nicolas Manicone filed herewith and all other pleadings and papers presently on file with the Court, and any other evidence that the Court may allow before or at hearing.

Dated: March 15, 2019

BEESON, TAYER & BODINE, APC

By: */s/ Susan K. Garea*
ANDREW H. BAKER
SUSAN K. GAREA
Attorneys for Defendants INTERNATIONAL BROTHERHOOD OF TEAMSTERS, TEAMSTERS LOCAL 856, TEAMSTERS LOCAL 986, JAMES HOFFA and PETER FINN

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs bring this lawsuit against their Employer, United Airlines, Inc. ("UAL") and its parent company United Continental Holdings, Inc. ("UCH"), collectively "Employer Defendants" on the one hand and their Union representatives, International Brotherhood of Teamsters ("IBT") and SFO Local 856/986, collectively "Union Defendants," on the other hand.[1] Both the original Complaint and the First Amended Complaint ("FAC"), allege that in 2011, the Employer Defendants breached a collective bargaining agreement ("CBA") by failing to enroll UAL mechanics in the Continental Airlines Retirement Plan ("CARP"), and that the Union Defendants refused to pursue Plaintiffs' grievances that were filed *five years* later in 2016. The Union Defendants thoroughly investigated the issue raised by the grievances and retained a veteran and well-respected labor lawyer who provided a 20-page legal opinion concluding that the grievances were meritless and untimely. The IBT exercised its judgment to withdraw the grievances.

Plaintiffs admit in their Complaint that the IBT provided their judgment that the grievances lacked merit and advised each of the original named Plaintiffs that the grievances were withdrawn on March 31, 2017 and again on April 17, 2017. On October 31, 2018, more than seventeen months after Plaintiffs admitted receiving notice of the withdrawal, Plaintiffs filed the instant lawsuit alleging that the Union Defendants breached their duty of fair representation ("DFR") by withdrawing the grievances. The DFR claim is, thus, barred by the applicable six-month statute of limitations.

[1] Plaintiffs have named SFO Local 856/986 in their Complaint. There is no such entity. Teamsters Local 856 and Teamsters Local 986 are separate local unions, affiliated with the IBT. The IBT is the exclusive representative, not the "SFO Local" and, therefore, as explained in section IV.A, the duty of fair representation claim can only be brought against the IBT. Plaintiffs also name the principal officer of IBT, James Hoffa and the principal officer of Teamsters Local 856, Peter Finn. Plaintiffs appear to only bring Count III, Breach of Fiduciary Duty, against Hoffa and Finn. As explained in section IV.B, those claims should be dismissed for failure to state a claim and failure to satisfy jurisdictional prerequisites. To the extent the FAC is read to name the individuals as defendants to any other counts they should be dismissed because union officers are not personally liable to individual union members. *Morris v. Local 819, Int'l Bhd. of Teamsters*, 169 F.3d 782, 784 (2d Cir. 1999); *Carter v. Smith Food King*, 765 F.2d 916, 920–21 (9th Cir. 1985).

Plaintiffs' FAC fails to cure the facial statute of limitations bar to the DFR claims of the original named Plaintiffs. Plaintiffs add a fourth named Plaintiff to the lawsuit who claims that she filed an identical grievance in 2016, and that as of February 2019 her local union representatives were advising her that the grievance was still pending, awaiting arbitration. The FAC's claim that the Union Defendants have breached the DFR with respect to this grievance is premature and unripe.

The remaining causes of action against the Union Defendants similarly fail. Plaintiffs improperly sue the principal officers of IBT and Teamsters Local 856 for breach of fiduciary duty under section 501(a) of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §§ 401 *et seq*. ("LMRDA"). Section 501 requires union officers to manage a union's money appropriately. Plaintiffs have alleged no facts constituting a breach of fiduciary duty claim. The allegations regarding grievance handling have nothing to do whatsoever with the fiduciary obligations of the LMRDA. Plaintiffs simply attempt to restyle their DFR claims. Further, despite amendment, Plaintiffs still fail to comply with the jurisdictional prerequisites to bringing a 501 claim, including demanding relief from the Union Defendants and applying to the court for leave to file their claim. Having failed to satisfy these prerequisites, this court has no jurisdiction over Plaintiffs' 501 claims.

The FAC drops the preempted state tort claim and adds two claims against the Union Defendants purportedly based on the Employee Retirement Income Security Act ("ERISA"). Plaintiffs allege that the Union Defendants breached their fiduciary duty under ERISA by failing to enroll, and acting to prevent the CARP fiduciaries from enrolling, the UAL mechanics in CARP in 2011. CARP is an employer-operated plan, and the Union Defendants are not fiduciaries to the plan. The ERISA claims are preempted, requiring interpretation of the applicable CBA to determine whether Plaintiffs were entitled to participate in CARP in 2011, and are restyled DFR claims.

For the foregoing reasons, all of Plaintiffs claims against the Union Defendants should be dismissed without leave to amend.

II. STATEMENT OF FACTS

As appropriate for a motion to dismiss, and for purposes of this motion only, the facts set forth herein are as asserted by Plaintiffs in their FAC. Consequently, the Union Defendants accept Plaintiffs' recitation of facts only for purposes of this motion to dismiss. *See Hishon v. King &*

Spalding, 467 U.S. 69, 73 (1984).

Plaintiffs are mechanics employed by Defendant UAL. (FAC ¶¶ 11-14.) In 2002, UAL filed for protection under Chapter 11 of the Bankruptcy Code and UAL's single-employer defined benefit pension plans (including the plan in which Plaintiffs participated) were terminated. (FAC ¶¶ 23-24.) UAL negotiated a bankruptcy exit agreement with Plaintiffs' former collective bargaining representative, the Aircraft Mechanics Fraternal Association ("AMFA"), referred to as LOA 05-03, that modified the then-existing CBA and governed the terms and conditions of employment of Plaintiffs. (FAC ¶¶ 24-25.) The letter agreement provided for various wage and benefit concessions and established new defined contribution plans. (FAC ¶ 24.) LOA 03-05 contains a "me too" provision that states:

> Following the Plan Termination Date, the Company shall not maintain or establish any single-employer defined benefit plan for any UAL or Company employee group unless AMFA-represented employees are provided the option of electing to receive a comparable defined benefit plan in lieu of the Replacement Plan Contribution.

(Exhibit A to the Nicholas Manicone Declaration submitted herewith[2]; FAC ¶ 27.)

After the bankruptcy and negotiation of the LOA between UAL and the AMFA, UAL mechanics elected the IBT as their union representative in 2008. (FAC ¶ 31.) On May 2, 2010, UAL merged with Continental Airlines ("Continental"). (FAC ¶ 42.) UAL and Continental maintained separate bargaining agreements with the IBT for the two work groups. (FAC ¶ 43.)

Continental provided CARP, a defined benefit pension plan, for its mechanics. IBT and Continental entered into a CBA in 2009 that continued the CARP defined benefit plan for Continental mechanics. (FAC ¶¶ 44, 51.)

In December 2011, IBT and UAL reached agreement for a new CBA with a term of 2010-2013. (FAC ¶ 52.) That 2010-2013 CBA provided for the UAL mechanics to remain in the defined

[2] Where documents are submitted in support of a motion to dismiss under Rule 12(b)(6) to shed light upon specific allegations referenced in the complaint, they are properly considered without converting the motion to one for summary judgment and the court may rely upon them in deciding the motion to dismiss. *Watterson v. Page*, 987 F.2d 1, 4 (1st Cir. 1993) (courts may give consideration to "documents the authenticity of which are not disputed by the parties; for official public records; for documents central to plaintiff's claim; or for documents sufficiently referred to in the complaint.") *See also Commercial Money Ctr., Inc. v. Ill. Union Ins. Co.*, 508 F.3d 327, 335-36 (6th Cir. 2007); *Cortec Indus. v. Sum Holding*, 949 F.2d 42, 47-48 (2d Cir. 1991).

contribution retirement plan (and did not have them participating in Continental's CARP). (FAC ¶ 52.) LOA 03-05 is listed in the 2010-2013 CBA as LOA #17. (FAC ¶ 54.)

In late 2015, the UAL mechanics were presented with a tentative agreement for a new CBA that provided for a vote among UAL mechanics six months after ratification to determine whether the UAL mechanics wished to move to CARP or remain in the defined contribution plan. The members overwhelmingly rejected this tentative agreement. (FAC ¶¶ 59-60, 62.) The UAL mechanics were then presented with a revised tentative agreement, one in which all UAL mechanics would automatically enroll in CARP effective January 1, 2017. (FAC ¶ 63.) In December 2016, the Union membership ratified this revised tentative agreement, resulting in a new CBA covering both the UAL and Continental operations, with a term of 2016-2022. (FAC ¶ 164.) Under this new agreement, "all mechanics [are] enrolled in the CARP with a start date of January 1, 2017." (FAC ¶ 63.) And, under this new agreement, LOA 05-03M was moved to a section of the CBA captioned "Historical Records Only" and which provides that letters contained therein do "not constitute part of the CBA," and "impose no obligations and confer no rights upon the Company, the Union, or the employees covered under the 2016-2022 CBA." (FAC ¶ 161.)

Plaintiffs Beier, Scholz and Bybee are employed by UAL as mechanics at the UAL facility at San Francisco International Airport. (FAC ¶¶ 11-13.) In 2016, before the 2016-2022 CBA was ratified, all three filed grievances regarding LOA 05-03M. (FAC ¶ 67.) On or about September 1, 2016, Plaintiff Beier submitted a Step 1 grievance, which became IBT Grievance Number SFO 2016-0901-053. The grievance alleged that the Employer Defendants violated the 2010-2013 CBA by denying employees their rights under LOA 05-03M. (FAC ¶¶ 94, 96.) On or about November 11, 2016, Plaintiff Beier received notice that the grievance had been denied at Step 2 and appealed to Step 3 (arbitration). (FAC ¶¶ 101-102.) On or about October 21, 2016, Plaintiff Scholz submitted a grievance of the same nature. (FAC ¶ 128.) On or about November 14, 2016, Plaintiff Bybee filed a grievance of the same nature. (FAC ¶ 155.) The IBT "consolidated the grievances of Plaintiff Beier, Plaintiff Scholz, and Plaintiff Bybee into one grievance." (FAC ¶¶ 108, 163.)

On or about January 17, 2017, IBT attorney Nicolas Manicone advised Plaintiff Scholz that IBT Attorney, Ed Gleason, had been asked to "evaluate the LOA 05-03M grievances." (FAC ¶ 138.)

Gleason rendered a 20-page legal opinion to the IBT regarding the merits of the grievances. A copy of the Gleason memo and a cover memo from Manicone is attached as Exhibit B to the Manicone Declaration. The memo thoroughly reviews both the facts and the law surrounding Plaintiffs' LOA 05-03M grievances. At the conclusion of the memo, Gleason recommended against the IBT arbitrating the grievance. He summarized his findings that an arbitrator would likely conclude:

- The grievance is untimely by several years.
- LOA 17's obligations attach only to pre-Merger United.
- Even if LOA 17's obligations otherwise attach to post-Merger, *i.e.,* new United, the conditions giving rise to those obligations were not triggered. In this regard, LOA 17's obligations are triggered if the Company maintains or establishes single-employer defined benefit plan for any of its work groups. Here, CARP does not trigger LOA 17's obligations because the CARP is a "multiple-employer defined benefit pension plan," not a single-employer defined benefit pension plan. Moreover, although the Continental pilots' frozen defined benefit plan likely is a single-employer pension plan, the fact that it has been closed to new participants and has not provided any pension accruals since it was frozen in 2005 makes it exceedingly unlikely that an arbitrator would conclude that that plan is one this is "maintained" by the Company within the meaning of LOA 17.
- Even if its obligations otherwise attach to post-merger, *i.e.,* new United, LOA 17 does not specify when or how those obligations must be satisfied. Here, an arbitrator likely would conclude that new United satisfied its obligations under LOA 17 when it made the CARP available to the United mechanics effective on January 1, 2017 through its October, 2015 close-out proposal, or when it agreed to make the CARP available to them effective January 1,2017 in the now ratified JCBA [Joint United-Continental Collective Bargaining Agreement].

Manicone's March 29, 2017, cover memo to the Gleason memo notes, "I have reviewed [the Gleason] memorandum and agree with its reasoning and conclusion. Accordingly, I have advised the IBT-AD [Airline Division] that the grievance should be withdrawn."

On or about March 31, 2017, Plaintiff Beier was shown the Gleason memo and learned that "the IBT had decided to withdraw his grievance and dismiss it with prejudice." (FAC ¶ 109.) Plaintiff Scholz that same day received a copy of the Gleason memo and was "stunned by the result – withdraw, with prejudice, no merit, and untimely." (FAC ¶ 140.) That same day Plaintiff Bybee was advised of the Gleason memo rejecting all three grievances. (FAC ¶ 165.) "Plaintiff Bybee completely disagreed with that assessment [in the Gleason memo] and voiced that opinion." (FAC ¶ 166.) On or about April 17, 2017, Manicone "sent a closeout letter to UAL on behalf of IBT" stating that the three LOA 05-03M grievances "had been closed, the grievance[s] withdrawn, and dismissed with prejudice." (FAC ¶ 141.) Plaintiff Scholz "received Plaintiff Beier's closeout letter on April 20,

2017." (FAC ¶ 141.) A copy of Manicone's April 17, 2017, "closeout" letter is attached as Exhibit C to the Manicone Declaration submitted herewith.

After IBT issued the April 17, 2017, memo, all three Plaintiffs "got together … and decided to forge ahead on their own without their Union." (FAC ¶ 113.) On or about July 12, 2017, Plaintiff Scholz sent a letter to Manicone claiming a right to take his grievance to arbitration on his own. (FAC ¶ 142.) On or about July 13, 2017, Plaintiffs Beier and Bybee each sent a similar letter to Manicone. (FAC ¶¶ 114, 167.) On August 4, 2017, Manicone told Scholz that "IBT was not going to let the Plaintiffs go forward." (FAC ¶ 143.) On August 9, 2017, Plaintiff Scholz received a written confirmation from Manicone stating "the grievance had [no] merit" and that "Plaintiffs could not grieve on behalf of a group." (FAC ¶ 144.) Manicone's August 9, 2017, letter is attached as Exhibit D to the Manicone Declaration. In that letter, Manicone notes:

> … Mr. Beier's representative grievance was considered carefully by the IBT-AD, which referred the matter for review by attorney Ed Gleason, who specializes in ERISA and pension matters and was counsel to the IBT-AD's United Negotiating Committee for seven years. Mr. Gleason evaluated the grievance, considering a wide variety of evidence, including your and Mr. Bybee's grievances. He concluded that the grievance's claim that United violated LOA 17-05-03M lacked merit and explained his reasoning in a lengthy memo to the IBT dated March 29, 2017.
> ….
> The IBT-AD negotiated for many years to allow sub-United Mechanics to participate in the CARP plan. If it believed there was a plausible argument that United Mechanics were entitled to be included in the plan because of LOA 17-05-03M, it would have pursued that remedy aggressively. Unfortunately, the facts and the law do not support that interpretation of the LOA, and the IBT-AD will not pursue any grievances on that basis. I hope that even if you disagree, you understand and respect this decision.

Plaintiff Dill, unlike the other three, named Plaintiffs, is employed by UAL as a mechanic at the O'Hare Airport in Chicago. (FAC ¶ 14.) On November 11, 2016, Dill filed a grievance identical in substance to the three filed in San Francisco by Plaintiffs Beier, Scholz and Bybee. (FAC ¶ 173.) Her grievance remains "open" as of February 2019, and is at the top of "a grievance list kept in Local 781's office." (FAC ¶ 178.) When Dill has asked about the status of her grievance, she has been told that termination cases come first and that she will have to wait. (FAC ¶ 179.)

IV. LEGAL STANDARD

A motion to dismiss challenges the legal sufficiency of the complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Dismissal is appropriate where there is no cognizable legal theory or an absence of sufficient facts alleged to support a cognizable legal theory. *Id*. (citing *Balistreri v. Pacifica Police Dep't,* 901 F.2d 696, 699 (9th Cir. 1988)). In such a motion, all material allegations in the complaint must be taken as true. *Navarro*, 250 F.3d at 732. However, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009). "[T]he court is not required to accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994).

While leave to amend is granted liberally, the court may dismiss a claim without leave to amend if amendment would be futile. *Rivera v. BAC Home Loans Servicing, L.P.,* 756 F. Supp.2d 1193, 1197 (N.D. Cal. 2010) (citing *Dumas v. Kipp*, 90 F.3d 386, 393 (9th Cir. 1996)).

V. ARGUMENT

A. Plaintiffs Fail to State a Claim for Breach of the Duty of Fair Representation (Count II)

As a preliminary matter, Plaintiffs improperly name the so-called "SFO Local" as one of the defendants to their duty-of-fair-representation claim. (FAC ¶ 240.) ("Union" is defined to mean the IBT and SFO Local (FAC ¶ 1).) It is only the IBT that is properly named as a defendant in this claim for breach of the duty of fair representation (DFR).

The collective bargaining agreement between UAL and the IBT, repeatedly referenced in the FAC, clearly states that it is the IBT, and not any IBT-affiliated local union, that is the exclusively recognized collective bargaining agent for the UAL mechanics. (*See* Exhs. E-1 and E-2 and F-1, F-2 and F-3 to Manicone Declaration.) In *Vaca v. Sipes*, 386 U.S. 171, 177, 182 (1967), the Supreme Court explained that the duty of fair representation is imposed only upon a labor organization which has been designated as the "exclusive collective bargaining representative" of a unit of employees. *Accord Dycus v. NLRB*, 615 F.2d 820, 827 (9th Cir.1980). Thus, it is the IBT, and only the IBT, that is properly named as a DFR defendant in this matter.

1) The Duty of Fair Representation

The Railway Labor Act imposes on the bargaining representative "the duty to exercise fairly the power conferred upon it [o]n behalf of all those for whom it acts, without hostile discrimination against them." *Steele v. Louisville & Nashville R. Co.*, 323 U.S. 192, 203 (1944). In *Addington v. US Airline Pilots Ass'n*, 791 F.3d 967 (9th Cir. 2015), the Ninth Circuit sketched out the general parameters of the DFR.

> A union must act in the general interest of its membership, and it may have to compromise on positions that will inevitably favor a majority of its members at the expense of other of its members. *See Humphrey [v. Moore*], 375 U.S. [335,] 349-50 [1964] ("Conflict between employees represented by the same union is a recurring fact."); *Ford Motor Co. [v. Huffman]*, 345 U.S. [330,] 338 [1953] ("The complete satisfaction of all who are represented is hardly to be expected."); *Rakestraw v. [United Airlines, Inc.]*, 981 F.2d [1524,] 1530 [7th Cir. 1992] ("Bargaining has winners and losers."); *Hendricks v. Airline Pilots Ass'n*, 696 F.2d 673, 677–78 (9th Cir.1983). Such a winners-and-losers compromise does not mean that the union has violated its duty of fair representation.

791 F.3d at 983.

2) Plaintiffs Beier, Scholz and Bybee's DFR Claims Are Barred by the Statute of Limitations

A DFR claim brought under federal labor law is subject to a six-month statute of limitations. *DelCostello v. Int'l Bhd. of Teamsters*, 462 U.S. 151, 169 (1983); *Kelly v. Burlington N. R. Co.*, 896 F.2d 1194 (9th Cir. 1990). Plaintiffs filed their Complaint on October 31, 2018. Thus, Plaintiffs' DFR claims are time barred if their cause of action arose before April 30, 2018.

The statute of limitations begins to run when a plaintiff learns, or through the exercise of reasonable diligence should have learned, of his injury. "[T]he touchstone for determining the commencement of the limitations period is notice: 'a cause of action generally accrues when a plaintiff knows or has reason to know of the injury which is the basis of his action.'" *Hoestry v. City of Cathedral City*, 945 F.2d 317, 319 (9th Cir.1981), *cert. denied*, 504 U.S. 910 (1992); *Allen v. United Food & Commercial Workers Int'l*, 43 F.3d 424, 427 (9th Cir. 1994). The Ninth Circuit explained in *Galindo v. Stoody Co.*, how the statute of limitations standard applies to DFR claims:

> The vast majority of duty of fair representation claims arise in the grievance procedure context: the employee claims that a union failed to process a

> grievance . . . . In determining when the six-month period accrues, the simplest case is one where a union decides not to file a grievance; the cause of action generally accrues when the employee learns or should have learned of the union's decision. …

793 F.2d 1502, 1509 (9th Cir.1986) (citations omitted).

Plaintiffs Beier, Scholz and Bybee (the SFO Plaintiffs) generally complain that the IBT failed to act to enforce LOA 05-03M, and specifically complain that the IBT refused to process their LOA 05-03M grievances to arbitration. The SFO Plaintiffs were on notice and had actual notice as of their receipt of the Gleason memo on or about March 31, 2017, that the IBT had made a final decision dropping their grievances. The SFO Plaintiffs admit that they were aware as of that date that the IBT had withdrawn their grievances "with prejudice." The SFO Plaintiffs further admit that in April they received notice of the IBT's April 17, 2017, memo to UAL dropping their grievances with prejudice.[3] The "injury" underlying the SFO Plaintiffs' DFR claim is the IBT's refusal to process their grievances to arbitration. The FAC reveals unequivocally that the SFO Plaintiffs were well aware of their "injury" no later than March 31, 2017. As their Complaint was not filed until October 31, 2018 – *nineteen months later* – their DFR claims are time-barred by the applicable six-month statute of limitations and must be dismissed without leave to amend.

To the extent that the SFO Plaintiffs purport to raise other DFR claims, they are children of and subsumed in the claim that the IBT unfairly refused to take their grievances to arbitration. This applies to the claims that the IBT breached the DFR by: failing "over the course of seven (7) years … to enforce the mandatory contract rights and mandatory contract language in LOA 05-03M" (FAC ¶ 243); trying to enroll the UAL mechanics in a Teamsters pension fund instead of CARP (FAC ¶ 244); unfairly handling the SFO Plaintiffs' three grievances (FAC ¶ 245); relying on legal advice in making its determination not to take the SFO Plaintiffs' three grievances to arbitration (FAC ¶ 246); failing to

[3] After April 17, 2017, Plaintiffs attempted to get IBT support to proceed to arbitration on their own in violation of the CBA. Any claim that Plaintiffs might have a right to proceed to arbitration without the Union does not implicate the IBT's DFR. The DFR comes into play only for issues with respect to which the Union, and only the Union, can take the issue to arbitration. Further, Plaintiffs' attempts to get IBT blessing to proceed on their own constitutes an admission that they knew the IBT had dropped the LOA 05-03M grievances and that the IBT would *not* be taking their grievances to arbitration. Finally, the IBT expressly rejected this effort in August 2017, itself outside the statute of limitations period.

keep the SFO Plaintiffs "informed" about their three grievances (FAC ¶ 247); and telling the SFO Plaintiffs that their grievances would be handled in arbitration, and then deciding not to do so (FAC ¶ 249). Moreover, each of these allegations are even more stale. All are time-barred.

3) The SFO Plaintiffs Cannot Prove the Union Breached the Duty of Fair Representation

Assuming *arguendo* that the SFO Plaintiffs' DFR claims were filed within the applicable statute of limitations their FAC nevertheless establishes that they fail to state such a claim. The face of the FAC reveals that the Union exercised its judgment in deciding not to pursue the LOA 05-3M grievances. Given this, the Union *a priori* did not breach its DFR to Plaintiffs.

The Ninth Circuit in *Beck v. United Food & Commercial Workers Union, Local 99*, 506 F.3d 874, 879-880 (9th Cir. 2007), recited a concise summary of the standard applicable to a DFR claim, emphasizing the important distinction between discretionary and ministerial union decisions.

> Conduct can be classified as arbitrary "only when it is irrational, when it is without a rational basis or explanation." . . . This deferential standard for arbitrary conduct "gives the union room to make discretionary decisions and choices, even if those judgments are ultimately wrong." (citations omitted.)
>
> In light of this standard, we have analyzed the breach of the duty of fair representation on a continuum. *See Peters v. Burlington N.R.R. Co.,* 931 F.2d 534, 539-40 (9th Cir.1991) ("[M]inisterial act' and 'act of judgment' represent ... opposing points on a continuum that broadly attempts to separate discretionary decision making from inexplicable conduct."); *see also Marino v. Writers Guild of Am., E., Inc.,* 992 F.2d 1480, 1486 (9th Cir.1993). On one end of the continuum is intentional conduct by a union exercising its judgment. *Peters,* 931 F.2d at 539-40. As noted above, a union's conduct constitutes an exercise of judgment entitled to deference even when the union's "judgments are ultimately wrong." *Marquez* [*v. Screen Actors Guild, Inc.*], 525 U.S. [33,] 45-46 [1998]. Under Supreme Court precedents, so long as a union exercises its judgment, no matter how mistakenly, it will not be deemed to be wholly irrational. *Id.* at 46; [*Airline Pilots Assoc. v.*] *O'Neill,* 499 U.S. [65,] 78 [1991]. We may decline to give a union the deference owed to an exercise of judgment only where union actions or inactions are "so far outside a wide range of reasonableness that [they are] wholly irrational or arbitrary." *O'Neill,* 499 U.S. at 78 (internal quotations and citations omitted); *see also Peters,* 931 F.2d at 540 ("[I]t makes little sense to allow a union to hide behind the mantle of 'judgment' and 'discretion' when the evidence suggests that it actually exercised neither."); *Peterson,* 771 F.2d at 1254 ("In *all* cases in which we found a breach of the duty of fair representation based on a union's arbitrary conduct, it is clear that the union failed to perform a procedural or ministerial act, that the act in question did not require the exercise of judgment and that there was no rational and proper basis for the union's conduct." (emphasis added)).
>
> Although we cannot deem a union's exercises of judgment to be wholly irrational and thus arbitrary, a union can still breach the duty of fair representation if it exercised its judgment in bad faith or in a discriminatory

> manner. *Moore v. Bechtel Power Corp.,* 840 F.2d 634, 636 (9th Cir.1988). To establish that the union's exercise of judgment was discriminatory, a plaintiff must adduce "substantial evidence of discrimination that is intentional, severe, and unrelated to legitimate union objectives." *Amalgamated Ass'n of St., Elec. Ry. & Motor Coach Employees of Am. v. Lockridge,* 403 U.S. 274, 301 (1971) (internal quotations omitted); *see also Vaca,* 386 U.S. at 177. To establish that the union's exercise of judgment was in bad faith, the plaintiff must show "substantial evidence of fraud, deceitful action or dishonest conduct." *Lockridge,* 403 U.S. at 299.

Here, it is clear that the IBT exercised its judgment in making the decision not to pursue the SFO Plaintiffs' grievances. The IBT action on which the SFO Plaintiffs base their DFR claim – the decision not to pursue Plaintiffs' grievance - was a discretionary decision based on the judgment of the Union.

The facts as revealed by the FAC, establish that the Union thoroughly reviewed the issues raised by Plaintiffs' grievances, a review that resulted in a comprehensive, twenty-page legal memo assessing the merits of the claims raised by the grievances. Gleason's legal memo comprises a comprehensive and objective analysis of the strengths and weaknesses of Plaintiffs' grievances. Finally, the facts as alleged demonstrate that the IBT decided not to pursue Plaintiffs' grievances solely on its conclusion, based on that legal memo, that the Union could not prevail in arbitration. The IBT's decision to withdraw the grievances was based on nothing other than the IBT's conclusion that "the facts and the law" did not support the theory underlying Plaintiffs' grievances.

The present case is a classic example of union conduct that constitutes an exercise of judgment and is thus entitled to deference even if the union's "judgments are ultimately wrong." *Marquez*, 525 U.S. at 45-46; *see Slevira v. Western Sugar Co.*, 200 F.3d 1218, 1222 (2000) (union counsel's letter considering the merit of grievance reflects deliberative process that Court will not second guess). There is no suggestion in the FAC – nor can there be – that IBT's decision not to pursue the grievances was somehow made in bad faith or in a discriminatory manner. The Gleason memo, and the undisputed fact that the IBT relied on the Gleason memo in declining to proceed with the SFO Plaintiff's grievances, irrefutably demonstrate a decision made in good faith and in a non-discriminatory manner. The SFO Plaintiffs thus have not, and cannot, make out a valid claim that the IBT breached its DFR to Plaintiffs by refusing to pursue their LOA 05-03M grievances to arbitration.

4) Plaintiff Dill Has Not Stated a Cause of Action for Breach of the DFR

Under Article III of the United States Constitution, federal courts may adjudicate "only actual, ongoing cases or controversies." *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990). A case is not considered ripe for adjudication unless there is a "threat of significant and immediate impact on the plaintiff." *Kerr-McGee Chemical Corp. v. United States Dep't of Interior*, 709 F.2d 597, 600 (9th Cir. 1983).

Because Plaintiff Dill states that her grievance, out of Chicago, is still pending, and is queued up on a Local Union arbitration list, means that she currently has no claim that the IBT (and certainly not the so-called SFO Local) has breached the DFR with regard to her grievance.[4] The most that Plaintiff Dill can complain about is a delay in the processing of her grievance, but the FAC reveals that Union representatives have responded to her questions about her grievance and explained that other cases have taken priority over hers. Nothing in the allegations regarding Plaintiff Dill's grievance discloses any Union conduct that has caused her harm giving rise to a potential DFR claim.[5] Moreover, Plaintiff Dill failed to allege exhaustion of internal remedies in contrast with the SFO Plaintiffs. (FAC ¶ 114.)

B. Plaintiffs' Claims Against Hoffa and Finn of Breach of Fiduciary Duty Under Section 501 of the LMRDA Must Be Dismissed (Count III)

Section 501(a) of the LMRDA imposes fiduciary obligations on Union officers as follows:

> The officers . . . of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from

[4] As described above, only the IBT owes a DFR to the Plaintiffs. Even if a DFR claim could lie against the IBT's local representative body, Plaintiff Dill works in Chicago, not San Francisco, and is not a member of or eligible to be a member of Teamsters Local 856 or Teamsters Local 986.

[5] The FAC alleges no factual distinctions regarding the merits of Dill's grievance as compared the SFO Plaintiffs' grievances. Dill's grievance presents the exact same legal issue as the SFO grievances. (Compare FAC ¶¶ 173 & 94 & 128 & 155 (i.e. that UAL breached LOA 05-03M).) Plaintiffs' DFR allegations do not distinguish between Dill's grievance and the SFO grievances. (See FAC ¶¶ 239-268.) While the Dill grievance is not ripe, any finding that the SFO Plaintiffs failed to state a DFR claim should have a preclusive effect on any future Dill claim. The IBT has satisfied its DFR by retaining an experienced attorney to analyze the legal issue and making a reasoned, good faith, non-discriminatory determination that the grievance lacked merit.

> dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization.

29 U.S.C. § 501(a). A union member may bring a 501 claim only "to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization." *Id.* § 501(b). The thrust of a section 501(a) claim must be the misuse of Union assets with a remedy of returning such assets to the Union, not damages or relief for Plaintiffs.

Plaintiffs make no allegations that constitute a section 501(a) violation. Plaintiffs allege no new facts in support its 501 claim and merely repackage their DFR claim. Plaintiffs complain that the Union Defendants failed to properly represent them by failing to vindicate an alleged contract right and forcing the Employer Defendants to provide certain benefits to Plaintiffs as employees. Such allegations relate to the Union Defendants' representation, not the misuse of money or property by Union officers. Plaintiffs make no allegations of any actions or conduct of Hoffa or Finn apart from the alleged actions taken by the Union Defendants in representing Plaintiffs and handling Plaintiffs' grievances. Thus, Plaintiffs' 501(a) claims must be dismissed.

Moreover, Section 501(b) sets procedural prerequisites to bringing a 501 claim in court.

> When any officer . . . of any labor organization is alleged to have violated the duties declared in subsection (a) and the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer, agent, shop steward, or representative in any district court of the United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization. No such proceeding shall be brought except upon leave of the court obtained upon verified application and for good cause shown, which application may be made ex parte.

29 U.S.C. § 501(b). Plaintiffs must have first made a demand upon the Union Defendants to secure appropriate relief for Hoffa and Finn's alleged breaches of fiduciary duty. Second, only after the Union Defendants refused to take corrective action, Plaintiffs must have applied to the court for leave to file their Section 501 claim. Section 501(b)'s procedural prerequisites are "strictly construed" jurisdictional requirements. *Flaherty v. Warehousemen, Garage and Services Station Employees' Local Union No. 334*, 574 F.2d 484, 487 (9th Cir. 1978).

A Section 501(a) suit cannot lie where plaintiffs have failed to allege the required demand to the labor organizations to remedy the alleged fiduciary duty breaches. *Id*. "An allegation of the futility of such a request will not suffice." *Id.* (citing *Coleman v. Bhd. of Railway & Steamship Clerks*, 340 F.2d 206, 208 (2d Cir. 1965) and *Phillips v. Osborne*, 403 F.2d 826, 830 (9th Cir. 1968)). Despite amendment, Plaintiffs' FAC still lacks these requisite allegations. Thus, the 501 claim must be dismissed.

C. Plaintiffs' Claims Against the Union Defendants for Violation of ERISA Must Be Dismissed (Counts IV and VI)

In Count IV of the FAC, Plaintiffs allege the "Union Defendants" breached 26 U.S.C. §1051(a)(1)(A) by failing to enroll the UAL mechanics in CARP in 2011. (FAC ¶¶ 278-282.)[6] This claim fails for two reasons.

First, CARP is an employer-sponsored benefit plan, and the Union Defendants have no role in sponsoring or administering the plan. (See Manicone Decl., Exh. G, p. 21.) In relation to an ERISA plan, an entity is a fiduciary if it: (1) exercises any discretionary authority respecting management; (2) renders investment advice; or (3) has any discretionary authority or discretionary responsibility in the administration of such plan. 29 U.S.C. §1002(21)(A). The Union Defendants fit none of these definitions, and are thus not plan fiduciaries within the meaning of ERISA. *See Rosen v. Hotel & Restaurant Employees Union, Local 274*, 637 F.2d 592, 599 n. 10 (3rd Cir.), cert. denied, 454 U.S. 898 (1981) ("While the union does owe a duty of fair representation to its members, ... it does not control, nor is it in a position to oversee, the employer's contributions to the fund.").

Second, the claim here presupposes that Plaintiffs were eligible to participate in CARP in 2011. That supposition is based on Plaintiffs' interpretation of the 2010-2013 collective bargaining agreement between UAL and the IBT. But, as the FAC makes abundantly clear, UAL did not interpret the collective bargaining agreement as do Plaintiffs, and Plaintiffs allege that UAL breached the CBA in failing to enroll them in CARP in 2011. Thus, Plaintiffs' claim here is inextricably entwined with a dispute under the applicable CBA.

[6] 26 U.S.C. §1051(a)(1)(A) is a provision of the Internal Revenue Code ("IRC") that was repealed in 2014. Assuming Plaintiffs meant to refer to ERISA, and not the IRC, it would appear the allegation is the Union Defendants' conduct breached a fiduciary duty under 29 U.S.C. §1052(a)(1)(A).

Plaintiffs' allegations, on their face, present "disputes concerned with duties and rights created by the collective bargaining agreement" and, even though couched as a breach of fiduciary duty under ERISA, they "must be resolved only through the RLA [Railway Labor Act] mechanisms." *See Alaska Airlines v. Schurke*, 898 F.3d 904, 919, 921 (9th Cir. 1987); *see also Long v. Flying Tiger Line, Inc.*, 994 F.2d 682, 695 (9th Cir. 1993); *Oakey v. US Airways Pilots Disability Income Plan*, 723 F.3d 227, 229 (D.C. Cir. 2013) (affirming dismissal of ERISA claim under Rule 12(b)(1) because claim was "grounded in the application and interpretation of the collective bargaining agreement"); *Everett v. USAir Group*, 927 F. Supp. 478, 483 (D.D.C. 1996), aff'd, 194 F.3d 173 (D.C. Cir. 1999) (claim for "breach of fiduciary duty under ERISA" precluded by the RLA where "central contention is that USAir purposely misinterpreted the [CBA] and, thus, the pension plan".)

Count VI is only a slight variation on the theme of Count IV. In this Count, Plaintiffs claim that the Union Defendants "conspired" with the Employer Defendants and "took affirmative steps to delay the UAL mechanics CARP coverage," thus causing the Employer Defendants to violate their fiduciary duty to enroll the UAL mechanics in CARP in 2011. (FAC ¶ 291.) On its face, this claim, like that in Count IV, presents "disputes concerned with duties and rights created by the collective bargaining agreement" and, even though couched as a claim under ERISA, it "must be resolved only through the RLA mechanisms." See cases cited above.

Accordingly, Counts IV and VI should be dismissed for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) or, alternatively, for failure to state a claim based on RLA preclusion pursuant to Rule 12(b)(6) .

VI. CONCLUSION

For the foregoing reasons, Plaintiffs' First Amended Complaint should be dismissed without leave to amend.

Dated: March 15, 2019

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