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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

HARRY J. BEIER, an individual, JOHN R. SCHOLZ, an individual, KEVIN E. BYBEE, an individual; and SALLY DILL, an individual;

on behalf of themselves and all others similarly situated;

Plaintiffs,

vs.

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 AIRLINES, INC., a Delaware corporation; UNITED CONTINENTAL HOLDINGS, INC., a Delaware corporation;

Defendants.

Case No.: 3:18-cv-06632-JD

CLASS ACTION

JOINT CASE MANAGEMENT STATEMENT PURSUANT TO LOCAL RULE 16-9

Hearing Date: July 25, 2019
Hearing Time: 10:00 a.m.
Location: Courtroom 11, 19th Floor
Judge: Hon. James Donato

Counsel for Plaintiffs Harry J. Beier, Kevin E. Bybee, Sally A. Dill, and John R. Scholz (collectively "Plaintiffs") and Defendants United Airlines, Inc. and United Continental Holdings, Inc., (collectively, "United Defendants") and International Brotherhood of Teamsters, Teamsters SFO Local 856/986, James Hoffa, and Peter Finn ("Union Defendants," together with United Defendants, "Defendants," all Defendants collectively with Plaintiffs, "the Parties"), have met and conferred as required by Federal Rule of Civil Procedure 26(f) and this Court's Order Setting Initial Case Management Conference, Docket 47, dated April 11, 2019. Pursuant to Rule 26(f), Civil Local Rule 16-9, and the Standing Order for All Judges of the Northern District of California, the Parties hereby submit the following Joint Statement for the Initial Case Management Conference scheduled for July 25, 2019, at 10:00 a.m. in Courtroom 11, 19th floor, 450 Golden Gate Avenue, in San Francisco, California.

1. Jurisdiction & Service

Plaintiffs assert this Court has subject matter jurisdiction over Plaintiffs' claims under 28 U.S.C § 1331, 28 U.S.C. §1337, 29 U.S.C. § 1132(e), and 29 U.S.C. § 501(b). Plaintiffs have served the presently named Defendants and there are currently no issues to be resolved regarding personal jurisdiction and venue as to those Defendants. Plaintiffs intend on adding additional parties, both plaintiffs and defendants; however, none of these "new" parties has yet been served.

The United Defendants have moved to dismiss the claims asserted against them in Plaintiffs' First Amended Complaint ("FAC") on the basis that, *inter alia*, this Court lacks subject-matter jurisdiction over those claims. Doc. 42. Defendant United Continental Holdings, Inc. changed its name, after the filing of the instant case and without any notice to Plaintiffs, to United Airlines Holdings, Inc. As of the filing of this Joint Statement, the parties

have not entered into any stipulation or other arrangement to recognize any necessary change regarding this name change. The United Defendants are not aware of any obligation to have provided Plaintiffs advance notice of a corporate name change. They also do not believe a stipulation or other arrangement regarding the name change is necessary, but will work cooperatively with the parties if events unfold otherwise.

The Union Defendants have not expressed an opinion regarding subject-matter jurisdiction. The Plaintiffs have named as a defendant "SFO Local 856/986," which the Union defendants contend is not an existing entity, stating Teamsters Local 856 and Teamsters Local 986 are separate local unions, affiliated with the IBT; however, each local accepted service in this lawsuit. Plaintiffs contend there is no separation or distinction between the two alleged separate locals as they relate to UAL Mechanics at United Airlines given that Plaintiffs allege that there is no office at SFO, all issues are handled by the same officers at SFO, and because the locals hold themselves out at one entity at SFO as can be shown by competent evidence.

2. Facts

A. Statement by Plaintiffs

Plaintiffs, employed by United Airlines, Inc., a subsidiary of United Continental Holdings, as members of the craft or class of Mechanics or Other Related, brought this action for damages. Plaintiffs allege the Union Defendants have caused a major dispute by breaching their duties of fair representation under the Railway Labor Act, ("RLA"), 45 U.S.C. §151, et seq., and that the United Defendants have similarly caused a major dispute between the parties by violating certain contractual rights in securing the most recent collective bargaining agreement, ("CBA"), through unilateral decisions regarding a Continental Airlines Retirement

Plan, ("CARP"), and the United Defendants profit sharing plan, as it relates to Plaintiffs and others similarly situated. Plaintiffs further allege all Defendants have breached various fiduciary duties owed to the Plaintiffs and others similarly situated, under the RLA, the Labor Management Reporting Disclosure Act, ("LMRDA"), and the Employee Retirement Income Security Act, ("ERISA"). Plaintiffs assert the breaches by all Defendants have cost the Plaintiffs and others similarly situated hundreds of millions of dollars in lost pension benefits and in lost profit-sharing revenues. Plaintiffs respectfully request this court remedy these injustices.

B. Statement by Defendants

United is a "common carrier" by air as defined by the Railway Labor Act ("RLA"), 45 U.S.C. §§ 151 *et seq.*, and the IBT is the certified collective bargaining representative for United's mechanics. In its current incarnation, United is the product of a merger with Continental Airlines, Inc. ("Continental") in 2010. Plaintiffs are United mechanics and are represented by the IBT. Plaintiffs Beier, Scholz and Bybee work at San Francisco International Airport (hereinafter "SFO Plaintiffs"). Plaintiff Dill works at Chicago O'Hare.

On September 1, 2016, Plaintiff Beier requested that the IBT file a Step 1 grievance, pursuant to Article 19 of the United-IBT collective bargaining agreement ("CBA"), asserting that United had breached Letter of Agreement 05-03 ("LOA 05-03") of the CBA. LOA 05-03, which had been originally negotiated by United and the Aircraft Mechanics Fraternal Association ("AMFA") (the prior collective bargaining representative for United's mechanics) in May 2005, provided: "the Company shall not maintain or establish any single-employer defined benefit plan for any UAL [Corp.] 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." LOA 05-03 also provided for United mechanics to participate in a profit-sharing program that was detailed in the Letter of Agreement. The grievance claimed that, as of November 30, 2011, LOA 05-03 required United to provide pre-merger United mechanics with the pension benefit ("CARP") provided to Continental mechanics under the pre-merger Continental-IBT CBA because, purportedly, "the terms [of LOA 05-03] had become effective due to the Company maintaining CARP."

The IBT filed the grievance at Step 1, where it was denied by United, and then at Step 2, where it was again denied by the Company. The IBT then appealed the grievance denial to Step 3, the step for submission of grievances to arbitration, by which time the IBT had also filed separate Step 1 grievances on behalf of Plaintiffs Scholz and Bybee, asserting the same claims as plaintiff Beier with respect to LOA 05-03. The IBT consolidated the LOA 05-03 grievances and asked Ed Gleason, an outside attorney for the IBT, to evaluate them. In March 2017, Gleason sent the IBT a 20-page memorandum (the "Gleason Memo") detailing four grounds for his conclusion that the grievances were meritless and untimely. The Gleason Memo stated that the grievance "turns on whether United Airlines, Inc. violated LOA 05-03/LOA 17, and the answer is no."

After reviewing and evaluating the Gleason Memo, the IBT agreed with its reasoning and conclusions, and decided to withdraw the Beier grievance with prejudice. On or about March 31, 2017, the IBT notified Plaintiffs Beier, Scholz and Bybee that it was withdrawing the grievances and provided an explanation of the reasons, including disclosing the Gleason Memo. On April 17, 2017, the IBT sent a letter to United, "stating the matter had been closed, the grievance withdrawn, and dismissed with prejudice" and again notified Plaintiffs Beier, Scholz and Bybee of the withdrawal. In July 2017, the SFO Plaintiffs requested that IBT

permit each of them to proceed to arbitration on his own. In August 2017, the IBT again advised the Plaintiffs that the grievances were meritless and that they could not pursue these systemwide grievances individually. Approximately five months later, in January 2018, the SFO Plaintiffs sent letters to United's Managing Director of Labor Relations – Ground, Tom Reardon, "asking for the right to proceed in arbitration without the union." This request was plainly inconsistent with the CBA's grievance procedures, which expressly give the IBT sole authority to present and advance grievances, including sole authority to submit a grievance to arbitration. On May 1, 2018, Reardon sent all three plaintiffs a letter stating: "The IBT did not appeal your case to arbitration. In fact, the IBT withdrew your grievance in August 2017 and informed you that it did so. With this withdrawal there is no right to proceed to the Board of Arbitration because there is no live grievance."

3. Legal Issues

A. Statement by Plaintiffs

Plaintiffs have several claims against all Defendants, both collectively and individually. Plaintiffs claim United Defendants failure to enforce and maintain contracts as required under the law is a breach of the CBA, a breach of contract claim. 45 U.S.C. § 152 First, Seventh. Plaintiffs further contend the parties' relevant CBA did not give the Defendants the discretion to make any such changes to the retirement benefits and profit sharing, changes to the working conditions, absent cooperation from Plaintiffs, and others similarly situated.

All disputes arising between parties of a CBA, under the RLA, are either major or minor. Elgin, Joliet and Eastern Ry. Co. v. Burley, 325 U.S. 711, 722-24 (1945). "Where an employer asserts a contractual right to take the contested action, the ensuing dispute is minor if the action is arguably justified by the terms of the parties' collective-bargaining agreement."

Consol. Ry. Corp. v. Ry. Labor Execs.' Ass'n, 491 U.S. 299, 307 (1989). This presumption does not apply if the claim is "obviously insubstantial or frivolous . . . or made in bad faith." Id. at 310. When no reasonable contractual interpretation justifies the claim, the dispute is major. Wheeling & Lake Erie Ry. Co. v. Bhd. of Locomotive Eng'rs & Trainmen, 789 F.3d 681, 692 (6th Cir. 2015).

Plaintiffs contend this is a major dispute because the dispute involves the formation of a new CBA, the acquisition of new rights to be added to a CBA, because the claims arose during the amendable period and prior to ratification of the current CBA, and because the actions taken were not arguably justified. Alternatively, Plaintiffs contend, if the dispute is deemed to be a minor dispute, the actions of all Defendants have caused recognized judicial exceptions to the mandatory arbitration scheme of a minor dispute under the RLA to apply to the present case which allow for this court to hear this matter – the hybrid exception, the repudiation exception, the Childs exception, and the futility exception. Martin v. Amer. Airlines, Inc., 390 F.3d 601 (8th Cir. 2004).

In connection with the breach of contract claim, Plaintiffs claim the Union Defendants breached their duty of fair representation owed to Plaintiffs, and to others similarly situated, by acting in an arbitrary, discriminatory, and bad faith manner with regards to enforcing LOA 05-03M and the CBA, individually and in concert with United Defendants. 45 U.S.C. §§ 151 et seq.; Vaca v. Sipes, 386 U.S. 171, 190 (1967); see also Jones v. Union Pac. R.R., 968 F.2d 937 (9th Cir.1992). "Whereas the arbitrariness analysis looks to the objective adequacy of the Union's conduct, the discrimination and bad faith analyses look to the subjective motivation of the Union officials." Simo v. Union of Needletrades, Indus., 322 F.3d 602, 617 (9th Cir. 2003). While the union has substantial discretion in representing members, "a union can still breach

the duty of fair representation if it exercised its judgment in bad faith or in a discriminatory manner." Beck v. United Food & Commercial Wkrs., Local 99, 506 F.3d 874, 880 (9th Cir. 2007). Plaintiffs alleged the Union Defendants denied them fair representation in both negotiations and enforcement of the CBA, never providing a substantial or legitimate reason for doing so, by not holding the stand-alone vote, bargaining away their profit-sharing monies without consent, and by maintain incomprehensible contract interpretations regarding LOA 05-03M and the grievance procedures found in the CBA.

The Union Defendants claim they used their judgment, insulating them from liability for those decisions and because an attorney made those decisions. If a union claims it used judgment, such a decision can be arbitrary where such decision is without a rational basis or explanation. Beck v. United Food and Commercial Workers Union, 506 F.3d 874, 879 (9th Cir. 2007). Judgment was not needed; this was a ministerial task of holding the vote. There was no rational basis for not doing so nor have they ever offered a rational basis for not having done so after repeated and systemic demands to do so.

Plaintiffs have plausibly alleged Union Defendant breached fiduciary duties owed under Labor Management Reporting and Disclosure Act, ("LMRDA"), harming Plaintiffs' property interests and acted for the benefit of the United Defendants and themselves instead of Plaintiffs. 29 U.S.C. § 501. This fiduciary principle, under § 501, extends to all of the activities of union officials and other union agents or representatives. Stelling v. Intl Bhd. of Elec. Workers Local Union No. 1547, 587 F.2d 1379, 1386 (9th Cir. 1978) (Ninth Circuit adopted "the 'broad view" of the statute holding "union officials have fiduciary duties even when no monetary interest of the union is involved."). Plaintiffs claim one or all Union Defendants are directly responsible for mishandling and subverting the promulgated grievance procedures, allowed the improper

substitution of Nick Manicone and Ed Gleason, were present at all of the crucial points in the negotiations, vote ratification, and prevention of the exercise of contract rights by the Plaintiffs and others similarly situated. LMRDA § 501 authorizes an individual union member to bring suit if a union refuses or fails to sue. Intl. Ass'n. of Mach. & Aerospace Workers v. Intl. Longshoremen's & Warehousemen's Union, Local 13, 781 F.2d 685, 688 (9th Cir.1986); United Ass'n of Journeymen & Apprentices of the Plumbing & Pipefitting Indus. v. Local 344, 452 U.S. 615 (1980).

Plaintiffs make claims seeking plan wide relief for certain breaches of fiduciary duties by United Defendants and for the Union Defendants being a knowing participant in those breaches of fiduciary duty. By all Defendants' admissions, through corporate filings and adoption of the Gleason memo, all Defendants were horse trading to reap self-interested financial gain. An employer in the position of fiduciary can be held liable under ERISA if it significantly and deliberately misleads employees about their benefits and opens the plan up to loss, liability, or termination. 29 U.S.C. §§ 1104(a)(1)(A)-(D); Varity Corp. v. Howe, 516 U.S. 489 (1996). An employer can breach its fiduciary duty to comply with the plan documents when such employer unilaterally amends plan documents to permit actions barred under a collectively bargained agreement. Delgrosso v. Spang and Co., 769 F.2d 928 (3d Cir. 1985). And, a § 502(a)(3) claim may be brought against any defendant, including non-fiduciaries. Harris Trust & Sav. Bank v. Salomon Smith Barney, Inc., 530 U.S. 238, 251 (2000). The non-fiduciary must have had, "actual or constructive knowledge of the circumstances that rendered the transaction unlawful." Id. at 251. Courts allow plaintiffs to sue non-fiduciaries for "knowing participation" in breaches of fiduciary duties established by ERISA § 404(a). 29 U.S.C. § 1052(a)(1)(A); Daniels v. Bursey, 313 F. Supp. 2d 790, 806-07 (N.D. Ill. 2004).

B. Statement by United Defendants

Under the Railway Labor Act (the "RLA"), 42 U.S.C. §§ 151 *et seq.*, the federal statute governing labor relations in the railroad and airline industries, claims against an airline such as United arising from the interpretation or application of a CBA are "minor disputes" and, as such, are subject to the mandatory and exclusive jurisdiction of the CBA's grievance procedure. *Ass'n of Flight Attendants v. Horizon Air Indus., Inc.,* 280 F.3d 901, 904, 906 (9th Cir. 2002). The narrow exception to the exclusive jurisdiction of the CBA's grievance procedure recognized by the Supreme Court in *Glover v. St. Louis-San Francisco Railway Co.*, 393 U.S. 324, 329 (1969), applies only "where the employee alleges that the union breached its duty of fair representation by acting 'in concert' with the employer, making resort to the Adjustment Board 'absolutely futile.'" *See Faulkner v. Dominguez*, No. CV 08-07706 DDP, 2010 WL 342600, at *5 (C.D. Cal. Jan. 28, 2010). The *Glover* exception "was not predicated on mere disagreement between the employees and the union on the merits of a grievance, but on the fact that the Adjustment Board, according to the plaintiffs' allegations, would have been infected with racial bias." *Bautista v. Pan American World Airlines, Inc.*, 828 F.2d 546, 552 (9th Cir. 1987). Plaintiffs make no allegations of such discrimination here, and the FAC contains no other basis for federal-court jurisdiction over "minor" disputes that are ordinarily subject to the mandatory and exclusive jurisdiction of the RLA's non-judicial dispute-resolution procedures.

The claims against the United Defendants for breach of CBA (Count I) and for violations of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.* ("ERISA") (Counts IV and V), are all based on a disputed interpretation of the provisions of LOA 05-03. Plaintiffs expressly allege that Count I is "a claim against [the United Defendants]

for breach of contract with regards to the collective bargaining agreement entered into with the UAL Mechanics Class." (FAC ¶ 217.) Counts IV and Count V are also entirely dependent on interpretation of the CBA (including a collectively-bargained pension plan); because these claims present "disputes concerned with 'duties and rights created or defined by' the collective bargaining agreement," they "must be resolved only through the RLA mechanisms." *See Alaska Airlines, Inc. v. Schurke*, 898 F.3d 904, 917 (9th Cir. 2018).

Because plaintiffs' claims are based on disputed interpretations of the CBA, they raise "minor disputes" under the RLA within the exclusive jurisdiction of the CBA's grievance procedure. That procedure produced a final and binding resolution – the IBT's withdrawal of the grievances with prejudice. There is no basis for this Court to exercise jurisdiction over the matter, and the claims against the United Defendants must be dismissed – for lack of subject matter jurisdiction under Rule 12(b)(1) or, alternatively, for failure to state a claim under Rule 12(b)(6) on the basis of RLA preemption of state-law claims and RLA preclusion of federal claims.

Furthermore, Count II against United, for its alleged role in the IBT's alleged breach of its duty of fair representation ("DFR"), fails as a matter of law. On June 10, 2019, the Ninth Circuit specifically held that there is no cause of action against a carrier under the RLA for participation (however characterized) in a union's breach of DFR. *See Beckington v. American Airlines, Inc.*, 926 F.3d 595, 2019 WL 2415936 at *1 (9th Cir. 2019). "[W]hether an employer sits by as the union neglects some of its constituents, or actively encourages the union through some amorphous concept of 'collusion,' the employer's conduct does not violate any duty under the RLA and thus cannot provide the basis for liability." *Id.*

C. Statement by Union Defendants

1. Whether Plaintiffs' claim for breach of the duty of fair representation (DFR) is time-barred by the applicable six-month 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.R. Co.*, 896 F.2d 1194 (9th Cir. 1990); *see also Galindo v. Stoody Co.*, 793 F.2d 1502, 1509 (9th Cir. 1986) (statute of limitations on DFR claim begins to run when employee learns or should have learned that union has decided not to file grievance). Plaintiffs filed their Complaint on October 3, 2018. Thus, plaintiffs' DFR claim is time barred if their cause of action arose before April 2, 2018. Plaintiffs admit in their Complaint that they were apprised in March 2017 that IBT had determined the grievances were meritless and untimely and had dismissed the grievances.

2. Whether Plaintiffs can state a claim for breach of DFR against the local unions, who are not the recognized exclusive representative for the purposes of collective bargaining with United?

In *Vaca v. Sipes*, 386 U.S. 171, 177, 182 (1967), the Supreme Court explained that the DFR 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). The "SFO Local" named in the FAC is not the designated exclusive bargaining representative of the employees.

3. Whether Plaintiffs can state a claim for breach of DFR against the IBT, when the IBT exercised its judgment to dismiss the grievances as meritless and untimely, based on its analysis of the grievances, including a 20-page legal memorandum from a veteran labor attorney?

A union breaches its DFR only if its conduct is arbitrary, discriminatory or in bad faith. Where a union's conduct constitutes an exercise of judgment, it is entitled to deference, even if its judgment is wrong or mistaken. "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." *Beck v. United Food & Commercial Workers Union, Local 99*, 506 F.3d 874, 879-80 (9th Cir. 2007) (citations omitted); *see also Marquez v. Screen Actors Guild, Inc.*, 525 U.S. 33 (1988). The IBT exercised its judgment in making the decision not to pursue the 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 IBT. The IBT thoroughly reviewed the issues raised by the 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. 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 IBT could not prevail in arbitration.

4. Whether Plaintiff Dill's claim is ripe?

Because Plaintiff Dill pleads that her grievance, out of Chicago, is still pending, she has no ripe claim against the IBT.

5. Whether Plaintiffs' claims against Hoffa and Finn for breach of fiduciary duty under Section 501 of the LMRA must be dismissed for failure to state a claim?

A union member may bring a Section 501 claim only "to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization." 29 U.S.C. § 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. There is not one allegation in the complaint that Hoffa or Finn took any action to breach their fiduciary duty to the Union and Plaintiffs do not sue to return money or property to the Union. Plaintiffs allege no new facts in support of their Section 501 claim and merely repackage their breach of DFR claim. Plaintiffs complain that the Union Defendants failed to properly represent them by failing to vindicate an alleged contract right and failing to force the United 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. In requesting relief and damages for themselves, instead of the Union, Plaintiffs disqualify themselves from proceeding under Section 501. *Phillips v. Osborne*, 403 F.2d 826, 832 (9th Cir. 1968).

6. Whether Plaintiffs' claims against Hoffa and Finn for breach of fiduciary duty under Section 501 of the LMRA must be dismissed for failure to exhaust internal remedies and failure to obtain leave of Court to file the claim?

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)). Because Plaintiffs' Complaint does not contain these requisite allegations, the Section 501 claim must be dismissed.

7. Whether Plaintiffs' claims against the Union Defendants for ERISA violations for failing to enroll United mechanics in CARP must be dismissed?

CARP is an employer-sponsored benefit plan, and the Union Defendants have no role in sponsoring or administering the plan. 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). The claim 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. Thus, Plaintiffs' claim here is inextricably entwined with a dispute under the applicable CBA. 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); *Everett v. USAir Group*, 927 F. Supp. 478, 483 (D.D.C. 1996), aff'd, 194 F.3d 173 (D.C. Cir. 1999).

4. Motions

On January 18, 2019, the United Defendants filed a motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1) or, alternatively, for failure to state a claim under Rule 12(b)(6). Doc. 33. On the same date, the Union Defendants filed a motion to dismiss under Rule 12(b)(6), asserting a failure to state a claim as to all claims alleged against them in plaintiffs' Complaint. Doc 34.

On February 8, 2019, Plaintiffs filed their FAC. Doc. 36-37. On February 20, 2019, the Court approved a jointly stipulated proposed briefing and hearing schedule for Defendants' motions to dismiss the FAC. Doc. 40. Pursuant to that schedule, Defendants filed their motions to dismiss on March 15, 2019. Doc. 42-43. On April 10, Plaintiffs filed a stipulated request for a 60-day extension of all deadlines due to an unexpected medical trauma to Plaintiff Beier. Doc. 45. On April 11, 2019, the Court granted Plaintiffs' request. Doc. 47. Under the agreed upon and approved new schedule of deadlines, on June 17, 2019, Plaintiffs' filed their responses to Defendants' motions to dismiss. Doc. 49-50. On June 21, 2019, Plaintiffs filed a request to submit revised responses to Defendants' motions to dismiss, along with the revised responses, and Plaintiffs' request was approved by the Court on June 28, 2019. Doc. 52, 54. On July 8, 2019, Defendants filed their replies in support of their motions to dismiss. Doc. 55-56. The hearing on the motions to dismiss is presently scheduled for July 25, 2019.

On June 6, 2019, Plaintiffs' counsel filed an unopposed motion to withdraw as attorney for Plaintiff Harry Beier. Docket 48. The motion was heard on July 18, 2019.

5. Amendment of Pleadings

Plaintiffs filed their FAC on November 8, 2019. Plaintiffs anticipate seeking to further amend the pleadings to add additional parties and potentially if this court grants such amendment relating to the adjudication of the Defendants' motions to dismiss. The parties propose a deadline of March 6, 2020, for Plaintiffs to amend their pleadings.

6. Evidence Preservation

The parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored Information ("ESI Guidelines") and have met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps taken to preserve evidence relevant to the issues reasonably evident in this action. The parties have taken reasonable and appropriate measures to preserve relevant evidence.

7. Disclosures

All parties have served their initial disclosures.

8. Discovery

The parties propose the discovery schedule set forth in the Scheduling section, below. The parties do not anticipate needing to modify the discovery limitations contained in the Federal Rules of Civil Procedure and the Northern District's Local Rules at this time.

Plaintiffs have propounded limited interrogatories and document requests. Defendants have responded to those requests; however, Plaintiffs have requested a meet and confer regarding the completeness of said responses, which has yet to be scheduled by the parties.

If Defendants' motions to dismiss are denied, defendants anticipate deposing the named Plaintiffs.

9. Class Actions

This case has been pleaded as a class action. The parties propose that Plaintiffs file any motion for class certification on or before March 6, 2020, and that subsequent briefing be in accordance with the Local Rules unless the Court orders otherwise.

10. Related Cases

The parties are unaware of any related cases or proceedings pending under Civil Local Rule 3-12.

11. Relief

A. Statement by Plaintiffs

The relief sought by Plaintiffs is fully set forth on pages 41-42 in the Plaintiffs' Complaint. Docket 1. The Plaintiffs approximated and calculated the damages for their pension plan claims using the United Defendants' promulgated pension calculator with consideration of the potential number of United Mechanics affected. Plaintiffs approximated and calculated the damages for their profit-sharing claims using the profit-sharing formula promulgated in Letter of Agreement 05-03M with consideration of the potential number of United Mechanics affected. Plaintiffs will provide a more definite calculation of damages once Plaintiffs have completed discovery.

B. Statement by Defendants

The Defendants deny that Plaintiffs are entitled to any relief. The Defendants lack sufficient and readily-available information, at this time, to evaluate Plaintiffs' damages calculations.

12. Settlement and ADR

The parties met and conferred pursuant to ADR Local Rule 3-5 to discuss the ADR

process; however, the parties did not reach agreement on an ADR process. The parties did agree to discuss the matter further at the Initial Case Management Conference with the Court.

13. Consent to Magistrate Judge for All Purposes

All parties did not consent to have a magistrate judge conduct all further proceedings including trial and entry of judgment.

14. Other References

The parties do not believe the case is suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

15. Narrowing of Issues

The parties are not aware of any issues that can be narrowed by agreement at this time but will continue to consider the subject if and when this litigation proceeds further. The Court's rulings on the pending motions to dismiss may result in a narrowing of issues.

16. Expedited Trial Procedure

The parties do not believe this case is the type of case that can be handled under the Expedited Trial Procedure of General Order No. 64, Attachment A.

17. Scheduling

The parties propose the following schedule:

Event	Date
Last Day to File Any Motions to Join Additional Parties	Friday, November 8, 2019
Last Day to File Any Motions to Amend the Pleadings	Friday, November 8, 2019
Last Day to File Class Certification Motion	Friday, March 6, 2020
Designation of Merits Experts	Friday, June 26, 2020
Designation of Rebuttal Merits Experts	Friday, July 31, 2020

Non-Expert Fact Discovery Cutoff	Friday, September 4, 2020
Expert Discovery Cutoff	Friday, October 2, 2020
ADR Completed By	Friday, June 5, 2020
Last Day to File Dispositive Motions	Friday, October 2, 2020
Last Date for Hearing on Dispositive Motions	Friday, November 13, 2020
Last Day to File Motions in Limine	Friday, December 18, 2020
Pretrial Conference	Monday, January 11, 2021
Trial	Monday, January 25, 2021

18. Trial

Plaintiffs have requested a trial by jury for all triable issues. The parties have proposed a trial date of Monday, January 25, 2021. Plaintiffs believe the trial should last at least five (5) trial days; Defendants have no basis to disagree with Plaintiffs' estimate at this time.

19. Disclosure of Non-party Interested Entities or Persons

All parties have filed the "Certification of Interested Entities or Persons" required by Civil Local Rule 3-15.

20. Professional Conduct

All relevant attorneys have reviewed the Guidelines for Professional Conduct for the Northern District of California.

21. Other

The parties have not identified any other matters that may facilitate the just, speedy, and inexpensive disposition of this matter.

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Dated: July 18, 2019

/s/ Jane C. Mariani

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Dated: July 18, 2019

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Dated: July 18, 2019

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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify on July 18, 2019, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants for this case.

Dated: July 18, 2019

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