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INTERNATIONAL BROTHERHOOD OF TEAMSTERS;  
JAMES HOFFA; and PETER FINN

**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
**AT SAN FRANCISCO**

KEVIN E. BYBEE, an individual, JOHN R.  
SCHOLZ, an individual, and SALLY DILL, an  
individual, on behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, 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 Principal  
Officer; UNITED AIR LINES, INC., a Delaware  
corporation; UNITED CONTINENTAL  
HOLDINGS, INC., a Delaware corporation,

Defendants.

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

**THE INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS’ OPPOSITION TO  
PLAINTIFFS’ MOTION FOR LEAVE TO  
AMEND**

Hearing Date: September 3, 2020  
Hearing Time: 10:00 a.m.  
Courtroom: 11, 19<sup>th</sup> Floor  
Judge: Hon. James Donato  
Complaint Filed: October 31, 2018

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## I. INTRODUCTION

1  
2 In its ruling on Defendants' Motions to Dismiss the First Amended Complaint (FAC) in this  
3 matter, the Court ordered Plaintiffs to seek leave of court to add any new defendants or claims.  
4 Plaintiffs filed the instant Motion seeking leave to add one new claim and four additional defendants ,  
5 including three individual officers of three local union affiliates of the International Brotherhood of  
6 Teamsters (the "IBT").

7 In filing their Motion, Plaintiffs failed to comply with Civil Local Rule 10-1 and did not  
8 include any proposed amended complaint. Nor did Plaintiffs identify what causes of action they seek  
9 to bring against any of the proposed additional defendants or any factual basis for any claims against  
10 the proposed defendants. Plaintiffs' Motion should be denied on these grounds.

11 Assuming, *arguendo*, that Plaintiffs seek to name the individual union officers as defendants  
12 to any of the claims that were contained in the FAC, Plaintiffs' motion should be denied as futile. Not  
13 one of the FAC's claims can lie against these proposed individual union officer defendants. Union  
14 officers are not individually liable on a claim for a breach of the duty of fair representation (DFR).  
15 Plaintiffs can only name the IBT as a defendant to the DFR claim. Plaintiffs cannot bring a breach of  
16 fiduciary duty claim against the individual officers under the Labor Management Reporting and  
17 Disclosure Act (LMRDA) for the same reasons that such a claim was already dismissed against the  
18 two previously-named union officers. Plaintiffs have failed to fulfill the jurisdictional prerequisites of  
19 bringing such a claim. Plaintiffs have also failed to allege any facts that would constitute a breach of  
20 fiduciary duty under the LMRDA. In the FAC, Plaintiffs merely recast their DFR claims. In this  
21 Motion, Plaintiffs fail to do even that. Plaintiffs include no explanation for any breach of fiduciary  
22 duty claims against these individual officers; indeed, they make no reference whatsoever to the  
23 proposed new individual defendants anywhere in their Memorandum of Points of Authorities.

## II. STATEMENT OF FACTS

24  
25 This lawsuit arises from Plaintiffs' assertions that in 2011, the United Defendants, United  
26 Airlines, Inc. (UAL) and its parent company United Continental Holdings, Inc. (UCH), breached a  
27 collective bargaining agreement in failing to enroll United mechanics in the Continental Airlines  
28 Retirement Plan (CARP). Plaintiffs filed grievances five years later and the IBT refused to pursue the

1 grievances after determining that the grievances were meritless based on a 20-page legal opinion by a  
 2 legal expert concluding that the grievances were meritless and untimely. The IBT informed Plaintiffs  
 3 on March 31, 2017, that it was not pursuing the grievances and Plaintiffs untimely filed the instant  
 4 action more than seventeen months later.

5 Plaintiffs filed its initial complaint on October 31, 2018 against six defendants, the two United  
 6 Defendants, the IBT, an alleged local union affiliated with the IBT,<sup>1</sup> and two individual union  
 7 officers. (Dkt. 1.) On January 18, 2019, all Defendants moved to dismiss the complaint. The Union  
 8 Defendants moved to dismiss pursuant to Federal Rules of Civil Procedure, Rule 12(b)(6). (Dkt. 34.)  
 9 The United Defendants moved to dismiss pursuant to Rules 12(b)(1) and 12(b)(6).

10 Plaintiffs responded by filing their FAC on February 8, 2019. (Dkt. 37.) The FAC added  
 11 another plaintiff, dropped a preempted state tort claim and added three inapplicable claims under the  
 12 Employee Retirement Income Security Act (“ERISA”). The FAC brought the following causes of  
 13 action.

- 14 1. Breach of Contract against UAL and UCH
- 15 2. Breach of the Duty of Fair Representation (DFR) against “the Union” and “Defendant  
 16 Unions”
- 17 3. Breach of Fiduciary Duty of Officers of Labor Organizations (29 USC § 501) against  
 18 individual union officers James Hoffa and Peter Finn
- 19 4. Exclusion of Plaintiffs from CARP under ERISA against “Company and Union  
 20 Defendants”
- 21 5. ERISA Breach of Fiduciary Duty against UAL and UCH
- 22 6. ERISA Knowing Participation of Non-Fiduciaries in Breach of Fiduciary Duty against  
 23 “Defendant Unions” and “Defendant Union”

24 \_\_\_\_\_  
 25 <sup>1</sup> Plaintiffs initially named as a Defendant “SFO Local 856/986.” There is no such entity. Teamsters Local 856 and  
 26 Teamsters Local 986, two separate local unions affiliated with the IBT, accepted service in the instant action and moved  
 27 to dismiss all claims against the locals because the IBT is the designated exclusive collective bargaining representative.  
 28 The duty of fair representation (DFR) applies only to the exclusive bargaining representative of the unit of employees.  
*Vaca v. Sipes*, 386 U.S. 171, 177, 182 (1967); *accord Dycus v. NLRB*, 615 F.2d 820, 827 (9th Cir. 1980).. Thus, only the  
 IBT is properly named as a defendant in this matter. In its Order dismissing all but one of Plaintiffs’ claims in the FAC,  
 the Court ordered Defendant to remove “Teamsters SFO Local 856/986” because only the IBT is a properly named  
 defendant for the DFR claim. (Dkt. 73 at p. 8.) In this Motion, Plaintiffs complied with the Court’s Order and eliminated  
 any local union from its caption.

1 On April 21, 2020, the Court dismissed all claims except for the DFR claim against the IBT,  
2 with leave to amend. The Court ordered that further pleadings must remove Defendant “Teamsters  
3 SFO Local 856/986” as IBT is the only properly named defendant for the DFR claim.

4 The Court ordered that “[n]o new claims or defendants may be added without prior leave of  
5 Court.” The Court granted the parties’ stipulation to give Plaintiffs an additional 45 days to file an  
6 amended pleading, extending the deadline to June 29, 2020. On June 19, 2020, Plaintiffs sought an  
7 additional 30 days to file an amended complaint by motion and Defendants did not oppose the  
8 request. The Court granted the motion extending the deadline to July 29, 2020.

9 On July 20, 2020, Plaintiffs filed the instant motion seeking to amend the pleadings to add  
10 new parties, including four new defendants and a new cause of action. Plaintiffs seek to add as  
11 defendants the principal officers of three affiliate local unions of the IBT: Chris Griswold, Paul  
12 Stripling and George Miranda. (Dkt. 78 at p. 2.)

13 Plaintiffs did not include a proposed amended complaint with the Motion. Plaintiffs fail to  
14 disclose in their Motion or supporting brief which cause(s) of action they propose to bring against  
15 Mr. Griswold, Mr. Stripling or Mr. Miranda. Nor does the Motion or supporting brief include any  
16 description of any alleged actions taken by Mr. Griswold, Mr. Stripling or Mr. Miranda that would  
17 form the basis for a claim. On this procedural defect alone, the Motion for Leave should be denied.

18 Further, it would be futile to give leave to amend to name the principal officers of the locals  
19 as Defendants to any claims that have been raised in this action.

20 Plaintiffs also seek leave to add a claim for violation of Plaintiffs’ rights under the Railway  
21 Labor Act to access the grievance and arbitration process without identifying against whom Plaintiffs  
22 seek to bring this claim or the basis for the claim. Thus, leave should be denied.

### 23 III. ARGUMENT

#### 24 A. Plaintiffs’ Motion Should Be Denied In Its Entirety for Failing to Include a Proposed 25 Amended Complaint or Identify Any Claims or Factual Bases for Claims

26 Plaintiff failed to include a proposed amended complaint with its Motion for Leave to file an  
27 Amended Complaint in violation of Civil Local Rule 10-1. Local Rule 10-1, Amended Pleadings,  
28 states, “Any party filing or moving to file an amended pleading must reproduce the entire proposed

1 pleading and may not incorporate any part of a prior pleading by reference.”

2 In addition to the absence of a proposed amended complaint, Plaintiffs fail to identify what  
3 specific claims it seeks to bring against proposed Defendants Chris Griswold, Paul Stripling or  
4 George Miranda. Plaintiffs also fail to identify any basis for the claims against these proposed  
5 defendants. In fact, the only reference to these individuals is made in the Notice of Motion. Not one  
6 of these proposed individual defendants is referenced in Plaintiffs’ Memorandum of Points and  
7 Authorities. The portion of Plaintiffs’ brief addressing “futility” does not put forward any argument  
8 as to why its proposed amended (unidentified) claims against the proposed individual defendants  
9 would not be futile.

10 Plaintiffs essentially ask the Court to take their word that adding these individual defendants  
11 is not futile without identifying which claims will be brought against defendants. It is an attempted  
12 end-run around this Court’s Order requiring a motion for leave to add new defendants.

13 Failure to attached a proposed amended complaint is grounds for denial. *See, e.g., Ko v.*  
14 *Brennan*, 2018 U.S. Dist. LEXIS 45838 (N.D. Cal. March 20, 2018); *Stewart v. Chick-Fil-A*, 2020  
15 U.S. Dist. LEXIS 104130 (June 15, 2020); *cf. Young v. Nooth*, 539 F. App’x 710, 711 (9th Cir. 2013)  
16 (“The district court did not abuse its discretion in denying Young leave to amend his complaint  
17 because Young failed to attach a proposed amended complaint as required by local rule.”). The case  
18 here is even stronger because the Motion does not identify the claims against the new proposed  
19 defendants or any factual allegations establishing the basis for such claims. Thus, Plaintiffs Motion  
20 should be denied.

21 **B. Plaintiffs’ Motion to Include Three Additional Principal Officers Should Be Denied as**  
22 **Futile**

23 The decision to grant or deny a motion for leave to amend is within the discretion of the  
24 district court. Fed. R. Civ. P. 15(a). A motion to make amendment “is to liberally granted *where from*  
25 *the underlying facts or circumstances, the plaintiffs may be able to state a claim.*” *DCD Programs,*  
26 *Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987) (emphasis added). A motion for leave to amend  
27 should be denied “if it appears to be futile or legally insufficient.” *Miller v. Rykoff-Sexton, Inc.*, 845  
28 F.2d 209, 214 (9th Cir. 1988).

1 While Plaintiffs have failed to identify which claim(s) they seek to bring against the principal  
2 officers, none of the claims that have been raised in the instant lawsuit can lie against the individual  
3 union officer defendants.

4 1. No Breach of Contract Claim Can Lie Against the Individual Union Officers

5 It futile to name the individual union officers in the breach of contract claim. None are parties  
6 to the contract and none did anything to breach it. Indeed, no Union Defendant has been or could be  
7 named in the breach of contract claim.

8 2. No DFR Claim Can Lie Against Individual Union Officers

9 Plaintiffs cannot bring their DFR claim against individual union officers. Union officers are  
10 not personally liable to individual union members. *Morris v. Local 819, Int'l Bhd. of Teamsters*, 169  
11 F.3d 782, 784 (2d Cir.1999); *Carter v. Smith Food King*, 765 F.2d 916, 920–21 (9th Cir.1985). “It is  
12 well settled that section 301 provides the basis for an action for breach of the duty of fair  
13 representation only against a union as an entity, and not against individuals who happen to hold  
14 positions in that union.” *Carter*, 765 F.2d at 921 (citations omitted). The *Carter* Court upheld the  
15 District Court’s dismissal of the claims against individual union officers reasoning that “[t]he  
16 individually named defendants were thus entitled to judgment as a matter of law.”

17 3. It Would Be Futile to Allow Amendment to Include a Breach of Fiduciary Duty Claim  
18 under LMRDA Section 501 Against These Individual Union Officers

19 This Court has already dismissed the breach of fiduciary duty claim in the FAC against  
20 defendants Mr. Hoffa and Mr. Finn under Rule 8 and Rule 12(b)(6) as too vague. (Dkt. 73 at p. 7.)  
21 Plaintiffs Motion is even more vague than the FAC. Plaintiffs have not identified a single action  
22 taken by the proposed individual defendants that would form the basis of a 501 claim.

23 A union member may bring a 501 claim only “to recover damages or secure an accounting or  
24 other appropriate relief for the benefit of the labor organization.” *Id.* § 501(b). The thrust of a section  
25 501(a) claim must be the misuse of union assets with a remedy of returning such assets to the Union,  
26 not damages or relief for Plaintiffs. There is no basis for any such claims and Plaintiffs have alleged  
27 none.

28 To the extent that Plaintiffs’ unknown claims against these individual defendants are based in



1 their complaints that the IBT or a local affiliate failed to represent them, that is merely a repackaged  
2 DFR claim and cannot form the basis for a 501 claim against an individual officer.

3 Moreover, Section 501(b) sets procedural prerequisites to bringing a 501 claim in court.  
4 Plaintiffs must first make a demand upon the union to secure appropriate relief for these proposed  
5 new individual defendants' alleged breaches of fiduciary duty. Second, only after the union has  
6 refused to take corrective action, Plaintiffs may then apply to the court for leave to file their Section  
7 501 claim. *See Flaherty v. Warehousemen, Garage and Services Station Employees' Local Union No.*  
8 *334*, 574 F.2d 484, 487 (9th Cir. 1978). Plaintiffs have failed to allege that any of these procedural  
9 prerequisites to the filing of a Section 501 claim have been satisfied with regard to any of the three  
10 individual proposed defendants.

11 4. No ERISA Claims Can Lie Against the Proposed Individual Local Union Officers

12 This Court correctly dismissed all of the ERISA claims against all Defendants as preempted.  
13 The ERISA claims in the FAC are based on an allegation that a collective bargaining agreement  
14 required enrollment of Plaintiffs in a benefit plan. The claims are inextricably intertwined with  
15 interpretation of a collective bargaining agreement and are preempted.

16 Even if an ERISA claim could lie against any defendants, the proposed local union officers  
17 are not fiduciaries to the CARP plan and have taken no action with respect to CARP. The Motion  
18 contains no such allegations, nor could it.

19 **C. Plaintiffs' Motion to Add a Claim Should be Denied as Futile**

20 Plaintiffs propose to add a claim for an independent cause of action under the Railway Labor  
21 Act. Plaintiffs fail to identify against whom they propose to bring this claim. Plaintiffs also fail to  
22 identify a basis for a separate statutory cause of action under the Railway Labor Act apart from its  
23 previously brought claims in the FAC for a breach of contract claim and a breach of fiduciary duty  
24 claim.

25 Thus, Plaintiffs' request to add a claim should be denied.<sup>2</sup>

26 \_\_\_\_\_  
27 <sup>2</sup> In its Motion, Plaintiffs allege various facts without including any declarations or other submissions of evidence. For  
28 example, Plaintiffs insinuate that the Union Defendants failed to comply with Rule 26 initial disclosures. (Plaintiffs Mem.  
of P's and A's at p. 3.) That is false. On January 23, 2019, the Union Defendants served initial disclosures that complied  
with Rule 26, including "a description by category and location" of documents that may be used to support claims or  
defenses. Fed. Rule Civ. P. § 26(a)(ii). On March 21, 2019, the Union Defendants timely responded to Plaintiffs' First Set

1 **IV. CONCLUSION**

2 For the foregoing reasons, Plaintiffs’ Motion should be denied in its entirety or, in the  
3 alternative, denied as to the proposed individual Union officers.

4  
5 Dated: August 3, 2020

BEESON, TAYER & BODINE, APC

6  
7 By:  /s/ Susan K. Garea  
8 SUSAN K. GAREA  
9 Attorneys for INTERNATIONAL  
10 BROTHERHOOD OF TEAMSTERS; JAMES  
11 HOFFA and PETER FINN  
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26 of Requests for Production of Documents and provided copies of the requested documents. In its Motion, Plaintiffs assert  
27 that the Union Defendants’ responses were insufficient (Plaintiffs Mem. of P’s and A’s at p. 5) and stated that Plaintiffs  
28 “subsequently made multiple requests to meet and confer over these assertions and insufficiencies in the discovery  
responses.” (Plaintiffs’ Mem. of P’s and A’s, at p. 6.) Both claims are false. Plaintiffs have never once identified to Union  
Defendants a deficient response to the first set of discovery propounded and have never once requested to meet and confer  
with Union Defendants about any alleged deficiencies in their discovery responses. These false allegations are not  
supported by any cognizable evidence and are not relevant to the instant motion.