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THOMAS NEAL MULLINS
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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

THOMAS NEAL MULLINS, an individual; JOHN R. SCHOLZ, III, an individual; on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, a labor organization; TEAMSTERS LOCAL 986, a labor organization; UNITED AIRLINES, INC., a Delaware corporation; UNITED AIRLINES HOLDINGS, INC., a Delaware Corporation,

Defendants.

Case No. 3:23-cv-03939-EMC

PLAINTIFFS' OPPOSITION TO THE UNION DEFENDANTS' MOTION TO DISMISS THE PLAINTIFFS' SECOND AMENDED COMPLAINT.

ORAL ARGUMENT REQUESTED.

Date: October 30, 2024
Time: 9:00 a.m.
Place: Courtroom 5, 17th Floor
Judge: Hon. Edward M. Chen

TABLE OF CONTENTS

I. INTRODUCTION 1

II. STATEMENT OF FACTS 2

III. LEGAL STANDARD 5

IV. ARGUMENT 6

A. The SAC Plausibly Pleads Timely, Cognizable DFR Claims Against All Defendants.....6

1. The SAC Plausibly Alleges A DFR Claim Against Local 986.....7

a. Local 986 is a proper party to this action. 7

b. Local 986 has breached its owed duty of fair representation.....9

2. The SAC Plausibly Alleges A DFR Claim Against the Teamsters.....13

3. The DFR Claims Are Not Time-Barred. 16

B. The SAC Plausibly Alleges A Third-Party Beneficiary Breach of Contract Claim 18

C. The SAC Plausibly Pleads Interference With A Statutory Right Under The RLA.....20

D. The SAC State Law Fraud Claim is Not Preempted By The RLA.....22

E. If SAC Allegations Are Insufficient, Leave to Amend Is The Appropriate Resolution....24

V. CONCLUSION 25

TABLE OF AUTHORITIES

CASES

Acri v. Int'l. Ass'n. of Machinists & Aerospace Wkrs.,
781 F.2d 1393 (9th Cir. 1986) 17

Aguinaga v. United Food & Com. Wkrs. Union,
993 F.2d 1463 (9th Cir. 1993) 15

Air Line Pilots Ass'n, Int'l v. O'Neill,
499 U.S. 65 (1991) 9

Alaska Airlines, Inc. v. Schurke,
898 F.3d 904 (9th Cir. 2018) (en banc) 22

Arnold v. Air Midwest Inc.,
100 F.3d 857 (10th Cir. 1996) 17

Aryeh v. Canon Bus. Sols., Inc.,
55 Cal.4th 1185 (2013) 17

Ashcroft v. Iqbal,
556 U.S. 662 (2009) 5

Ass'n. of Flight Attendants v. Horizon Air Indus., Inc.,
280 F.3d 901 (9th Cir. 2002) 7, 17

Banks v. Bethlehem Steel Corp.,
870 F.2d 1438 (9th Cir. 1989) 10

BASF-Wyandotte Corp.,
276 NLRB 498 (1985) 8

Beck v. United Food & Com. Wkrs. Union, Local 99,
506 F.3d 874 (9th Cir. 2007) 11

Beckington v. Am. Airlines, Inc.,
926 F.3d 595 (9th Cir. 1985) 9

Bell Atl. Corp. v. Twombly,
550 U.S. 544 (2007) 5, 13

Bloom v. Int'l. Bhd. of Teamsters Local 468,
752 F.2d 1312 (9th Cir. 1984) 10
Brock v. Republic Airlines, Inc.,
776 F.2d 523 (5th Cir. 1985) 18
Burkevich v. Air Line Pilots Ass'n, Int'l.,
894 F.2d 346 (9th Cir. 1990) 13
Carbon Fuel Co. v. Mine Wkrs.,
444 U.S. 212 (1979) 8
Carter v. Smith Food King,
765 F.2d 916 (9th Cir. 1985) 10
Caterpillar, Inc. v. Williams,
482 U.S. 386 (1987) 24
Cooper v. Pickett,
137 F.3d 616 (9th Cir. 1998) 6
Czosek v. O'Mara,
397 U.S. 25 (1970) 13
Dart Cherokee Basin Operating Co. v. Owens,
574 U.S. 81 (2014) 5
DelCostello v. Int'l. Bhd. of Teamsters,
462 U.S. 151 (1983) 16
Dogherra v. Safeway Stores,
679 F.2d 1293 (9th Cir. 1982) 10
Ertle v. Continental Airlines, Inc.,
136 F.3d 690 (10th Cir. 1998) 23
First Student Inc.,
366 NLRB No. 13 (2018) 8
Foman v. Davis,
371 U.S. 178 (1962) 24

Ford Motor Co. v. Huffman,
345 U.S. 330 (1953) 9
Galindo v. Stoody Co.,
793 F.2d 1502 (9th Cir.1986)..... 16
Goonewardene v ADP, LLC.,
6 Cal.5th 817 (2019)..... 19
Gregg v. Chauffeurs, Teamsters & Helpers Union Local 150,
699 F.2d 1015 (1983)..... 10
Griggs v. Pace Am. Grp., Inc.,
170 F.3d 877 (9th Cir. 1999) 25
Harris v. Am. Postal Wkrs. Union,
198 F.3d 245 (6th Cir. 1999)..... 8
Hines v. Anchor Motor Freight, Inc.,
424 U.S. 554 (1976)..... 10
Hughes v. Int'l. Bhd. of Teamsters, Local 683,
554 F.2d 365 (9th Cir. 1977)..... 11
Humble v. Boeing Co.,
305 F.3d 1004 (9th Cir. 2002)..... 23
In re Gilead Sciences Sec. Lit.,
536 F.3d 1049 (9th Cir. 2008) 5
Int'l. Ass'n. of Machinists & Aerospace Wkrs. v. Aloha Airlines, Inc.,
790 F.2d 727 (9th Cir. 1986)..... 16
Int'l. Bhd. of Elec. Workers v. Foust,
442 U.S. 42 (1979) 13
Machinists Local v. Labor Board,
362 U.S. 411 (1960)..... 18
Marqeuz v. Screen Actors Guild, Inc.,
525 U.S. 33 (1998) 9

Martin v. Am. Airlines, Inc.,
390 F.3d 601 (8th Cir. 2004)..... 20, 21
McNaughton v. Dillingham Corp.,
707 F.2d 1042 (9th Cir.1983)..... 16
Neubronner v. Milken,
6 F.3d 666 (9th Cir. 1993) 6
Nunes v. Ashcroft,
375 F.3d 805 (9th Cir. 2004) 24
Pencikowski v. The Aerospace Corp.,
08-55309, D.C. No. CV-07-08131-JFW (August 7, 2009)..... 20
Peters v. Burlington N. R.R. Co.,
931 F.2d 534 (9th Cir. 1991) 10
Peterson v. Kennedy,
771 F.2d 1244 (9th Cir. 1985) 13
Republic Steel Corp v. Maddox,
379 U.S. 650 (1965)..... 17
Rollins v. Comm. Hosp. of San Bernadino,
839 F.3d 1181 (9th Cir. 2016)..... 9
Robesky v. Quantas Empire Airways, Ltd.,
573 F.2d 1082 (9th Cir. 1978) 10
Safe Air for Everyone v. Meyer,
373 F.3d 1035 (9th Cir. 2004) 6
Scheuer v. Rhodes,
416 U.S. 232 (1974) 16
Sinegal v. Gateway Foods,
763 F.2d 354 (8th Cir. 1985)..... 10
Spellacy v. Air Line Pilots Ass'n., Int'l.,
156 F.3d 120 (2d Cir. 1998)..... 9

Steel Co. v. Citizens for Better Env't.,
523 U.S. 83 (1998) 5
Stevens v. Teamsters Local 2707, Airline, Aerospace & Allied Emps.,
504 F. Supp. 332 (W.D. WA 1980) 10, 21
Stewart v. Wachowski,
2005 U.S. Dist. LEXIS 46703 (C.D. Cal. June 13, 2005)..... 24
Stupy v. U.S. Postal Serv.,
951 F.2d 1079 (9th Cir. 1991) 10, 13
Supermail Cargo, Inc. v. United States,
68 F.3d 1204 (9th Cir. 1995)..... 18
Swartz v. KPMG, LLP,
476 F.3d 756 (9th Cir. 2007) 6
Taylor v. Anderson,
234 U.S. 74 (1914) 13
United Mine Workers of Am. V. Coronado Coal Co.,
259 U.S. 344 (1922)..... 8
Vaca v. Sipes,
386 U.S. 171 (1967) 9, 17
Vaughn v. Air Line Pilot Ass'n., Int'l.,
604 F.3d 703 (2d Cir. 2010)..... 11
Von Saher v. Norton Simon Museum of Art at Pasadena,
592 F.3d 954 (9th Cir. 2010)..... 18
Ward v. United Airlines, Inc.,
986 F.3d 1234 (9th Cir. 2021) 22
Zigas v. Superior Court,
120 Cal.App.3d 827 (1st Dist. 1981)..... 19
Zuniga v. United Can Co.,
812 F.2d 443 (9th Cir. 1987) 17

FEDERAL STATUTES

45 U.S.C. § 153 21
45 U.S.C. § 181 21
45 U.S.C. § 182 21
45 U.S.C. § 184 ..... 1, 21

FEDERAL RULES OF CIVIL PROCEDURE

Fed. R. Civ. Proc. 6(1)(C) 17
Fed. R. Civ. Proc. 8(a)(2) 5
Fed. R. Civ. Proc. 9(b) 6, 24
Fed. R. Civ. Proc. 12(b)(1) 6, 7
Fed. R. Civ. Proc. 12(b)(6) ..... passim
Fed. R. Civ. Proc. 15(a) 24

CALIFORNIA STATE STATUTES

Cal. Civ. Code § 1559 19
Cal. Civ. Code § 1709 ..... 1, 23
Cal. Civ. Code § 1710 ..... 1, 23

TREATISES

Restatement (Second) of Contracts § 289 (Am. L. Inst. 1981) 8

OTHER AUTHORITIES

United Airlines, Inc., the "Employer" and the International Brotherhood of Teamsters, Local 986, the "Union" before the United Airlines-International Brotherhood of Teamsters System Board Of Adjustment, Grievance No. 2021-986-LAX-UA-17 (Robert Bishop), January 9, 2024, (Busto, F., Neutral Chair) 11

MEMORAMNDUM OF POINTS AND AUTHORITIES

Plaintiff Thomas Neal Mullins ("Mullins") and Plaintiff John R. Scholz, III ("Scholz," collectively with Mullins, "Plaintiffs") hereby allege and aver as follows in opposition to the motion to dismiss filed by Defendants International Brotherhood of Teamsters ("Teamsters"), and Teamsters Local 986 ("Local 986," collectively with Teamsters, "Union Defendants").

I. INTRODUCTION

Plaintiffs Second Amended Complaint ("SAC") sets forth detailed facts establishing that under the provisions of the Railway Labor Act ("RLA"), 45 U.S.C. §§ 151-188, and California's Civil Code ("CCC"), Sections 1559, 1709 and 1710. Cal. Civ. Code §§ 1559, 1709, and 1710. The conduct by the Defendants, the International Brotherhood of Teamsters ("Teamsters") and Teamsters Local 986 ("Local 986") (collectively the "Union Defendants"), has harmed the Plaintiffs and the putative class, abridging their statutory rights resulting in severe financial harm to them. The Union Defendants move to dismiss Plaintiffs' entire complaint, and all claims against them, with prejudice, pursuant to Federal Rules of Civil Procedure ("Rule") 12(b)(6), for failure to state a claim. Fed. R. Civ. P. 12(b).

The Teamsters and Local 986 have filed a joint motion to dismiss arguing Plaintiffs have not, and cannot, allege a single plausible claim against them over which this Court could exercise its jurisdiction. The Union Defendants argue this is so because all of the Union Defendants' conduct is immune from review, and/or protected from challenge, as the reasonable exercise of their judgment in some form or another. This argument is unfounded and unsubstantiated. As will be shown below, any protections either of them is afforded for conduct that is the necessary and legitimate exercise of judgment in carrying out representational duties for Plaintiffs, has been invalidated because such conduct was arbitrary, discriminatory, and in bad faith. Indeed, Plaintiffs plausibly alleged claims against the Union Defendants for breach of the duty of fair representation ("DFR claim") for their role in deceiving and defrauding Plaintiffs out of all of their earned, due, and owed wages by detrimentally interfering in Plaintiffs' contractual and statutory grievance rights, including unilaterally withdrawing and terminating grievances without Plaintiffs' prior knowledge or consent, and for breaching their own governing documents' duties and obligations

to Plaintiffs and the putative class. Because of this conduct, Plaintiffs cannot prosecute their breach of contract claim against the United Defendants in the RLA mandated grievance process, resulting in Plaintiffs' claims being entirely, and improperly, resolved in the United Defendants' favor, again, to the absolute detriment of Plaintiffs. Because Plaintiffs have plausibly alleged a breach of DFR claim against the Union Defendants, however, this Court can, and should, exercise its jurisdiction over all of Plaintiffs' claims against all Defendants, including those against the United Defendants.

The allegations in the SAC have been found in other federal court cases to state a DFR claim and that so stated such a claim was timely. Furthermore, the Supreme Court has held that an RLA-employee does not lose their statutory right to due process simply by working in the airline industry and thus, such employees have a right to access the congressionally mandated CBA-grievance process with or without their union to resolve disputes. The deprivation of such a right violates the RLA. Likewise, courts have found state law claims are not preempted by the RLA when the state law cause of action involves rights and duties existing independently of the collective bargaining agreement ("CBA"), particularly where a plaintiff would have the same claim against a defendant, and on the same basis, as if no CBA existed, which is the case here.

The Union Defendants' joint motion makes no meaningful attempt to articulate why the SAC allegations are not legally sufficient. and they fail to apply the proper legal standard for their motion by misstating the allegations in the SAC, entirely ignoring others, and misconstruing the others contrary to the applicable legal standard.

Accordingly, Plaintiffs request the Court deny the relief sought by Union Defendants, or alternatively, where the Court finds the allegations lacking, grant Plaintiffs leave to amend.

II. STATEMENT OF FACTS

Plaintiffs are employed by United as aircraft technician unit members, represented by the Union Defendants, at United's SFO Maintenance facility. SAC ¶¶ 23-28. Plaintiffs and United are parties to collective bargaining agreement ("CBA"), negotiated on Plaintiffs behalf by the Union Defendants, governing Plaintiffs employment at United. SAC ¶¶ 33-43, Exhibit 3. The Union Defendants' constitution and bylaws also govern Plaintiffs employment at United, articulating

representational rights, duties, and obligations as members of both the Teamsters and Local 986. SAC ¶¶ 25-38, 43, 86, Exhibits 1, 2.

In addition to containing the pay, hours, and terms and conditions of employment, the CBA contains Letters of Agreement ("LOA"), modifying and adding to the CBA. SAC ¶¶ 58-59. As is relevant here, the CBA contains LOA #29 – Industry Reset, an objective, wage adjustment process, implemented biennially, for Plaintiffs and the putative class. SAC ¶¶ 58-73, 147-153, 154-155 , 171, 175-176. LOA #29 provides that United will maintain a compensation level for Plaintiffs and the putative class that is "at least 102% of the combined average compensation level of [Plaintiffs' and the putative class'] counterparts at United's two main competitor airlines, American Airlines ("American" or "AA") and Delta Airlines ("Delta" or "DL")." SAC ¶¶ 61-64.; Exhibits 3, 4. LOA #29 details the process to determine compensation levels as the "Adjustment Calculation," defined as the "Annual Wages and Benefits" of each carrier. Id. "Annual Wages and Benefits is the sum of Annual Employee Wages, Annual Employee Benefits and Time-off Adjustment for 10, 20 and 30 years of service weighted 20 percent, 60 percent and 20 percent respectively." Id. Each biennial measurement was performed according to the measuring time periods listed in the CBA. SAC ¶¶ 89-145. United, the Teamsters, and Local 986, each post the result of the measurements to the respective electronic information portals through which each Defendant communicates with Plaintiffs and the putative class. SAC ¶¶ 88, 90, 119, 132, 154. This dispute is based upon the 2022 Adjustment Calculation. SAC ¶¶ 132-140, 155-157, 170, 178-184.

Both Mullins and Scholz performed the Adjustment Calculation to check that were being paid correctly. SAC ¶¶ 154-157, 170, 176-184. Both arrived at a result significantly higher, approximately $7.35, than the reported result, approximately $1.20. Id. Both challenged the accuracy of the reported result, specifically, that they were being paid correctly, by utilizing the mandated CBA grievance process at United. SAC ¶¶ 158-169, 184-213.

The CBA contains a multi-step grievance procedure for disputes between Plaintiffs and United. SAC ¶¶ 44-57. Local 986 is designated as the "exclusive bargaining representative" for administering and enforcing the grievance procedures. SAC ¶¶ 30, 47-54, Exhibits 1, 2. This duty

includes initiating, presenting, and processing grievances, as well as investigating and requesting relevant information from, and communicating with, United on behalf of Plaintiffs and the putative class. SAC ¶¶ 30, 47-54, 98, 123, 172-174, 211-212; Exhibits 1, 2. The Union Defendants utilize an electronic data system for carrying out these grievance duties. SAC ¶¶ 52-55, 140. Plaintiffs have no independent access to this system. Id., 172-174.

Both Mullins and Scholz grieved the 2022 wage increase result. SAC ¶¶ 158-169, 184-213. However, neither was able to complete the grievance process. SAC ¶¶ 163-168, 187-213. The Union Defendants withdrew and terminated the grievances, without explanation, and without prior notice or consent from Plaintiffs, following the Second Step of the grievance process for lack of merit. SAC ¶¶ 166-168, 202-204. United denied the grievances after the Second Step on the grounds the information to confirm or deny Plaintiffs were paid correctly was "confidential and proprietary." SAC ¶¶ 159, 166, 201-202. United asserted, and the Union Defendants did not contest or challenge, that the wage increase was determined by the Cost Model agreement in LOA #29. SAC ¶¶ 134-145, 159.

The Cost Model calculates Annual Employee Cost. SAC ¶¶ 65-74, Exhibits 3, 4. The Cost Model depicts the data used to arrive at the assigned values to do the Adjustment Calculation. A draft of this agreement was provided to Plaintiffs and the putative class prior to ratification. SAC ¶¶ 65-73, 83, Exhibit 4. The Cost Model was explained as terms and conditions upon which the parties would agree the Adjustment Calculation results were correct. SAC ¶¶ 65-76. A failure to perform under this agreement could be the basis of a contract dispute. SAC ¶¶ 76. All Defendants have asserted ever evolving explanations to Plaintiffs, and many members of the putative class, as to why the Cost Model cannot be provided to them – NMB prohibited it, it is "confidential and proprietary," or "United and the Unions agree not to." SAC ¶¶ 77, 78, 95, 96, 125, 130, 134, 137, 138, 145, 150, 159, 176, 179, 185, 190, 199, 205, 208218, 225-227. Likewise, all Defendants have offered varying explanations related to the significance of the Cost Model on the Adjustment Calculation. Id. Indeed, United did not, and has not, ever confirmed or denied Plaintiffs were, or are, paid correctly or, as the grievances disputed, provided any computational explanation or proof Plaintiffs' pay was, and is, correct. SAC ¶¶ 248-250.

Requests to be released by the Union Defendants to pursue their grievances independently were rebuffed or ignored. SAC ¶¶ 206. Other grievants across the United system received the same response from their local unions, and the Teamsters, in attempting to pursue similar grievances across the system. SAC ¶¶ 228, 234-36. Unable to complete the CBA-grievance process, Plaintiffs filed this lawsuit for a forum to decide these unresolved wage disputes.

III. LEGAL STANDARD

A complaint must contain a "short and plain statement" to put the defendant on 'fair notice' of the nature of the claim against them. Fed. R. Civ. Proc. 8(a)(2). However, the requirement is not "meant to ... require, or even invite, the pleading of facts," Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 580 (2007), rather, a pleading must show only "facial plausibility." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). "So long as the plaintiff alleges facts to support a theory not facially implausible, the court's skepticism is best reserved for later stages of the proceedings when the plaintiffs' case can be rejected on evidentiary grounds." In re Gilead Sciences Sec. Lit., 536 F.3d 1049, 1057 (9th Cir. 2008).

Under Rule 12(b)(6), a defendant may test the sufficiency of a complaint's alleged facts. Fed. R. Civ. Proc. 12(b). A complaint must allege "only enough facts to state a claim to relief that is plausible on its face," or enough facts to "nudge[the] claims across the line from conceivable to plausible." Twombly, at 570. No matter how improbable the facts alleged are, they must be accepted as true for the purposes of the motion, and need only be sufficient to "raise a right to relief above the speculative level (even if doubtful in fact)." Twombly, at 571. In deciding, courts should rely on "judicial experience and common sense" to determine if the allegations, "plausibly give rise to an entitlement to relief." Iqbal, at 679.

A motion to dismiss under Rule 12(b)(1) challenges the court's subject matter jurisdiction. Fed. R. Civ. Proc 12(b). A plaintiff must plausibly allege all jurisdictional elements. Dart Cherokee Basin Operating Co. v. Owens, 574 U.S. 81, 89 (2014) Dismissal on this basis is only proper when the claim is so "completely devoid of merit as not to involve a federal controversy." Steel Co. v. Citizens for Better Env't., 523 U.S. 83, 89 (1998). Dismissal is warranted if, looking at the complaint as a whole, it appears to lack federal jurisdiction either "facially" or "factually."

Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004). Under a facial attack, all material allegations in the complaint will be taken as true and construed in the light most favorable to a plaintiff. Id. In a factual attack, "no presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." Id. (quotation citation omitted).

Rule 9(b) requires only that a pleading identify "the circumstances constituting fraud so that the defendant can prepare an adequate answer from the allegations." Neubronner v. Milken, 6 F.3d 666, 671-72 (9th Cir. 1993). The Ninth Circuit construes Rule 9(b) as requiring only that allegations are "specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged so that they can defend against the charge and not just deny that they have done anything wrong." Swartz v. KPMG, LLP, 476 F.3d 756, 764 (9th Cir. 2007). Thus, while Rule 9(b) imposes a heightened standard, it does not require alleging every detail. *See* Cooper v. Pickett, 137 F.3d 616, 627 (9th Cir. 1998).

IV. ARGUMENT

The Teamsters and Local 986 have filed one joint motion to dismiss the SAC.[1] The Union Defendants seek dismissal, without leave to amend, pursuant to Rule 12(b)(6) and Rule 12(b)(1)[2], arguing "Plaintiffs have not, and cannot, allege any colorable claims against the Union Defendants over which this Court has jurisdiction." Def. Mot. 1. Plaintiffs disagree and assert the SAC meets all required pleading standards to provide a basis for jurisdiction to hear these claims.

A. The SAC Plausibly Pleads Timely, Cognizable DFR Claims Against All Defendants.

With respect to the breach of the duty of fair representation ("DFR claim"), the Union Defendants argue the allegations: (1) fail to state a valid DFR claim against Local 986; (2) fail to

[1] As a threshold matter, it is nearly impossible to distinguish in the motion for whom an argument presented is argued on behalf of. Defendants' Notice of Motion and Motion to Dismiss provides in part "Defendants INTERNATIONAL BROTHERHOOD OF TEAMSTERS and TEAMSTERS LOCAL 986 [are] collectively, "Union Defendants," Def. Mot. 1, and therefore, it must be presumed only where "Union Defendants" is used are both defendants referenced. It follows then that where the motion indicates "IBT" or "Union" presumably that refers to the "Teamsters" (Plaintiffs' moniker) and where the motion indicates "Local 986" or even "the Local" that refers to Local 986 (also Plaintiffs' moniker). Each argument will be applied under this understanding.

[2] While stating the motion is only based on Rule 12(b)(6), the Union Defendants argued basis "over which this Court has jurisdiction" implicates Rule 12(b)(1). However, the Union Defendants do not provide any legal standard upon which to assess the SAC, i.e., under Rule 12(b)(6) or Rule 12(b)(1), or for which claim each applies. Plaintiffs argue both out of an abundance of caution so as not to waive opposition to any dispute over jurisdiction for any claim.

state a valid DFR claim against the Teamsters; and (3) DFR claim is time-barred. Def. Mot. 8-15. Because a DFR claim is based on a statutory violation of the RLA, a federal district court has jurisdiction to hear such a claim. *See* Ass'n. of Flight Attendants v. Horizon Air Indus., Inc., 280 F.3d 901 (9th Cir. 2002) ("Horizon Air"). Thus, if the SAC alleges sufficient facts to state a claim against each Union Defendant, and such a claim is not time barred, dismissal with prejudice is inappropriate under either Rule 12(b)(6) or Rule 12(b)(1).

1. The SAC Plausibly Alleges A DFR Claim Against Local 986.

Local 986 moves to dismiss the DFR Claim alleged against it on the grounds that it does not owe any duty of fair representation to Plaintiffs[3] as it is not a proper party for such a claim. Plaintiffs argue the DFR claim is sufficient to show Local 986 is a joint exclusive bargaining representative with the Teamsters and as such, owes its own duty to fairly represent Plaintiffs and the putative class, a failure of which it can be held liable for.

a. Local 986 is a proper party to this action.

Local 986 argues it is not a proper party to a DFR claim as: (1) the National Mediation Board ("NMB") certified only the Teamsters as exclusive bargaining representative; (2) the CBA irrefutably proves Local 986 is not the exclusive bargaining representative of Plaintiffs; and (3) Article XII of the Teamsters constitution only applies under the NLRA. Def. Mot. 8-9. None of these arguments warrant finding local 986 is not a proper party to this litigation. The SAC alleges Local 986 is an "exclusive bargaining representative for grievances," responsible for the grievance process for Plaintiffs. SAC ¶¶ 27, 30. The SAC alleges the Teamsters' constitution and Local 986 bylaws expressly state the same. Id. Local 986 does not contest the accuracy of these statements or the authenticity of these documents. Indeed, Local 986 does not mention any allegation related to the bylaws. If Local 986 disagreed with, or was not responsible as alleged, surely Local 986 would object, deny, or otherwise articulate so but Local 986 did not.

Local 986 next argues because the NMB certified only the Teamsters as the exclusive bargaining representative, only the Teamsters owe a duty to fairly represent not Local 986. This

[3] The motion does not argue the merits of a Rule 12(b)(6) basis for dismissal of the SAC's DFR claim against Local 986, Def. Mot. 8-9; however, Plaintiffs argue the merits for the same reasons stated in n.1 and 2.

misstates the law and ignores the allegations in the SAC. The SAC does not refute the NMB certified the Teamsters as the exclusive bargaining representative just that Local 986 is a joint representative along with the Teamsters. SAC ¶¶ 27, 30, 32. Federal courts hold local unions and the international unions with which a local is affiliated are separate entities, United Mine Workers of Am. V. Coronado Coal Co., 259 U.S. 344, 395 (1922), and where a local union and an international union share representational duties, each is responsible for its own conduct. Harris v. Am. Postal Wkrs. Union, 198 F.3d 245 (6th Cir. 1999). Indeed, where a local is the exclusive bargaining representative of, or responsible for, processing grievances, only the local can be held responsible. Carbon Fuel Co. v. Mine Workers, 444 U.S. 212, 216-218 (1979). Jointly assuming contractual obligations means that Local 986 can be held responsible for those obligations. Restatement (Second) of Contracts § 289 (Am. L. Inst. 1981). Hence, NMB certification alone is not a basis for dismissing Local 986 as not a proper party.

Local 986 also misstates the SAC allegations. The SAC alleges Local 986 signed the CBA as evidenced by the CBA. SAC Exhibit 3. Local 986 does not contest the authenticity of the CBA or provide evidence to rebut its authenticity and therefore, the contrary assertion it did not sign the CBA is disregarded.

When a union and its affiliated local union are signatories to a CBA, both the union and its affiliated local are joint representatives of the employees covered by the CBA. First Student Inc., 366 NLRB No. 13 fn. 4 (2018); BASF-Wyandotte Corp., 276 NLRB 498, 504-505 (1985). Local 986 further claims Article XII, Sec. 2 of the Teamsters' constitution only applies under the "NLRA." Def. Mot. 9. Plaintiffs do not understand this argument as it is contradicted by the express terms of the Teamsters' constitution. SAC Exhibit 1. Nor did Local 986 offer any legal authority to support such a claim so as to make it "fail as a matter of law." Notably, nothing in the Teamsters' constitution states it only applies under the NLRA. SAC Exhibit 1. Local 986 also asserts the CBA was not created by any action taken by the affiliated local unions contrary to the allegations in the SAC. SAC ¶¶ 30, 35-39. Committees of rank and file and local union officials negotiate the CBA, as stated in the Teamsters constitution. Id. Therefore, Local 986's arguments do not stand up to scrutiny under Rule 12(b)(6).

Local 986 disregards the specific allegations in the SAC and offers unsupported, disputed facts without support. This is not sufficient to meet its burden under Rule 12(b)(6) motion. Local 986 is a necessary party as Plaintiffs' union and is liable for its own conduct, including owing a duty to fairly represent Plaintiffs.

b. Local 986 has breached its owed duty of fair representation.

The joint motion argues only "[t]he IBT did not breach DFR." Def. Mot. 10. This is sufficient to support finding Local 986 does not dispute the allegations in the SAC do plausibly state a claim against them for DFR. For the sake of completeness, Plaintiffs argue below the SAC states a plausible DFR claim against Local 986 under the Rule 12(b)(6) review standards.

To plausibly state a DFR claim, an employee must show a union's actions were arbitrary, discriminatory, or in bad faith, and that there is a causal connection between the union's breach and the plaintiff's injury. Beckington v. Am. Airlines, Inc., 926 F.3d 595, 600 (9th Cir. 1985); Vaca v. Sipes, 386 U.S. 171, 190 (1967). That duty serves as a check on a union's authority to act as exclusive bargaining representative of its members during the negotiation, administration, and enforcement of the CBA. Vaca, at 190; Ford Motor Co. v. Huffman, 345 U.S. 330, 338 (1953) (A union "is responsible to, and owes complete loyalty to, the interests of all whom it represents.").

To meet the arbitrary standard, the union's conduct must be "so far outside a wide range of reasonableness that it is wholly irrational." Marquez v. Screen Actors Guild, Inc., 525 U.S. 33, 44 (1998); Air Line Pilots Ass'n., Int'l. v. O'Neill, 499 U.S. 65, 67 (1991) (Arbitrary conduct is conduct lacking any rational basis). A union's contractual analysis may be arbitrary if it never seriously considered the grievant's rights, if it improperly considered the grievant's facts, or if the union's explanation is factually inconsistent and contradictory. Rollins v. Comm. Hosp. of San Bernadino, 839 F.3d 1181 (9th Cir. 2016). (union acts arbitrarily "when it ignores or perfunctorily presses a meritorious claim").

A plaintiff can also prevail on a breach of DFR claim by showing that the union acted in bad faith or in a discriminatory manner. Spellacy v. Air Line Pilots Ass'n., Int'l., 156 F.3d 120, 126 (2d Cir. 1998). A union acts in bad faith if it acts with an "improper intent, purpose or motive." Id. (citation omitted). Bad faith is found where the union makes misrepresentations in

resolving a grievance. Bloom v. Teamsters Local 468, 752 F.2d 1312, 1314 (9th Cir. 1984); *see also* Dogherra v. Safeway Stores, 679 F.2d 1293, 1296-98 (9th Cir. 1982) (if lie of an employer's agent causes a union to withdraw a grievance, the employer's fraud may result in setting aside the fouled grievance process). Bad faith may also be found where the union maintains illegitimate contract interpretation and prevents employees from using the established grievance process to challenge the interpretation. Stupy v. UPS, 951 F.2d 1079, 1083 (9th Cir. 1991).

If the union acts with "egregious disregard for the rights of union members," the union has violated the duty to fairly represent. Peters v Burlington, 931 F.2d 534, 538 (9th Cir. 1991) (quotation omitted); Robesky v. Quantas Empire Airways, Ltd., 573 F.2d 1082, 1088-90 (9th Cir. 1978) (conduct reflecting a reckless disregard of the rights of the employee, severely prejudices the employee, and that the policies behind DFR would not be served by shielding the union from liability, is arbitrary). If a grievance is "important and meritorious," a union must provide a "more substantial reason for abandoning it." Gregg v. Chauffeurs, Teamsters and Helpers Union Local 150, 699 F.2d 1015, 1016 (1983) (the merits of the grievance are relevant to the sufficiency of the unions representations).

Likewise, in all cases a union's investigation must be sufficiently thorough so that the union understands the facts. Banks v. Bethlehem Steel Corp., 870 F.2d 1438, 1442-44 (9th Cir. 1989) (union refusal to question a witness sufficient for DFR claim). Failure to fully investigate must be deliberate, hostile, irrational, or done in bad faith to allege a DFR claim. Hines v. Anchor Motor Freight, Inc., 424 U.S. 554, 571 (1976). The union must consider the interpretation urged by a grievant and investigate facts consistent with grievant's position. Sinegal v. Gateway Foods, 763 F.2d 354, 359-60 (8th Cir. 1985). Withdrawing or terminating a grievance without notice or consent is sufficient for a DFR claim. Stevens v. Teamsters Local 2707, Airline, Aerospace & Allied Emplys., 504 F. Supp. 332, 336 (W.D. WA 1980); Carter v. Smith Food King, 765 F.2d 916, 920 (9th Cir. 1985). Processing a grievance only through only pre-arbitration steps and not arbitrating further due to union and employer decision to settle a grievance without a grievant's consent states a DFR claim. Robesky v. Quantas Empire Airways, Ltd., 573 F.2d 1082, 1090 (9th Cir. 1978)

A union's inaction is discriminatory when its conduct is "unrelated to legitimate union objectives." Beck v. United Food & Com. Wkrs. Union, Local 99, 506 F.3d 874, 880 (9th Cir. 2007); *see also* Vaughn v. Air Line Pilot Ass'n., Int'l., 604 F.3d 703, 709 (2d Cir. 2010).

In the specific context of a union's refusal to press an employee's meritorious grievance, a plaintiff can demonstrate a DFR breach by showing: (1) employee's grievance had merit; (2) the union was aware of the grievance; and (3) union's actions in failing to process the grievance were arbitrary. *See e.g.,* Hughes v. Int'l. Bhd. of Teamsters, Local 683, 554 F.2d 365, 368-69 (9th Cir. 1977) (perfunctory interview with employee before deciding not to arbitrate is breach of DFR).

Given the above, the SAC plausibly alleges a DFR claim against Local 986 . The SAC alleges Local 986 had a duty to enforce the terms of the CBA and to represent Plaintiffs in seeking enforcement of the CBA. SAC ¶¶ 23-43. Plaintiffs grieved the calculation of their pay as inaccurate according to the CBA. SAC ¶¶ 156-168, 183-213. In that process, Local 986 as Plaintiffs' representative had a duty to fully investigate Plaintiffs' claims, request information, advocate for Plaintiffs, and disclose known relevant information as according to the legal standard stated above. Credible allegations of the failure to do so states a DFR claim.

The SAC plausibly alleges Local 986 did not oppose, and instead supported, denial of Plaintiffs' grievance by United on the grounds the calculation was accurate pursuant to the CBA despite knowing it was false. SAC ¶¶ 134, 183-229, 235-237. Local 986 also mischaracterized the information as "confidential" despite knowing it was, and is, not. Id. Such conduct meets the arbitrary, or bad faith, standards described above. Local 986 attended the November 22, 2022, Zoom meeting with the Teamsters, and Teamsters' economic expert Dan Akins, where the correct calculation was provided and United's demand revealed. Yet, Local 986 did not defend or inform Plaintiffs. SAC ¶¶ 134, 220-229. Local 986 refused to request information from United or use its own information to assist the Plaintiffs. SAC ¶¶ 134, 138, 141-143, 185-211, 220-229. As alleged in the SAC, Local 986 falsely told Plaintiffs their grievances had no merit as the calculation was accurate. SAC ¶¶ 204-209 . Such actions by Local 986 qualifies, and plausibly alleges, the type of conduct that is so far outside the range of reasonableness, so deceitful and dishonest, as to constitute nothing short or arbitrary and bad faith conduct sufficient to state a DFR claim.

Local 986 offers no excuses or reasons for its conduct so as to satisfy its burden under a Rule 12(b)(6) motion. Indeed, the motion to dismiss does not even proffer any argument that the SAC allegations related to Local 986's breach of DFR do not plausible state a claim for relief. The assertion Local 986 needed to acquiesce to United related to anything to do with representing its due-paying unit members is belied by the law and Local 986's own past conduct in carrying out its representation duties. *See* United Airlines, Inc., the "Employer" and the International Brotherhood of Teamsters, Local 986, the "Union" before the United Airlines-International Brotherhood of Teamsters System Board Of Adjustment, Grievance No. 2021-986-LAX-UA-17 (Robert Bishop), January 9, 2024, (Busto, F., Neutral Chair) (Local 986 Business Agent Mark DesAngles asserted under system board precedent the failure to conduct a full and fair grievance investigation, including turning over requested, relevant information to the grievant and/or the union, is an independent ground to sustain an employee's grievance, because such refusal does not meet the standard for a fair and unbiased investigation as required by the CBA.). In sum, the SAC plausibly alleges conduct that is arbitrary, or in bad faith to meet the first part of the test.

There is a causal connection between Local 986's conduct and Plaintiffs' damages. Local 986 had an unqualified, unambiguous duty to represent Plaintiffs in their grievances against United. Local 986 was required to demand a proper accounting and demand United turn over relevant information related to the underpayment payment of wages asserted in Plaintiffs' grievances. These grievances were based solely on the CBA that had been ratified, was in force, and demonstrably unchanged since ratification, and therefore, Plaintiffs could rely, and did rely on Local 986's previous affirmative statements regarding the calculation of their pay. Local 986 itself possessed information supporting Plaintiffs' version of the calculation yet, inexcusably, not only did Local 986 refuse to do anything on behalf of Plaintiffs, they withdrew and terminated the grievances without Plaintiffs' prior authorization or consent. That Plaintiffs vehemently protested the withdrawal of their grievances indicates that they neither contemplated nor acceded to this action taken by the union, were not given any warning such drastic steps would be taken, were not consulted as to their views, and were not given the opportunity to take over the processing of their grievances. Because of Local 986's conduct, Plaintiffs experienced, and continue to experience,

significant losses in earned, owed, and due wages, without any ability to remedy such losses in pay because Local 986 permanently extinguished Plaintiffs' rights to do so. These facts are all alleged in the SAC and none are refuted by Local 986. More important, such facts, in combination with the above alleged facts, are sufficient to show a causal connection between Local 986's conduct and Plaintiffs' damages to state a DFR claim.

2. The SAC Plausibly Alleges A DFR Claim Against the Teamsters.

The same legal standard for finding a DFR claim – arbitrary, discriminatory, or bad faith conduct that is the causal connection of a plaintiff's damages – as stated above applies to the Teamsters and is realleged herein. And, as the Teamsters state, in this circuit, a two-step analysis is employed to analyze the union conduct under the standards described above. First, ask whether the alleged union conduct involves a "union's judgment, or ... was [it] 'procedural or ministerial.' " Peterson v. Kennedy, 771 F.2d 1244, 1254 (9th Cir. 1985). Second, apply the proper standard to that characterization. If the conduct involved the union's judgment, then a "claimant may prevail only if the union's conduct was discriminatory or in bad faith." Id.; Burkevich v. Air Line Pilots Ass'n, Int'l., 894 F.2d 346 (9th Cir. 1990). Notably, the United States Supreme Court reasons that "courts are called upon to fulfill the role as primary guardians of the duty of fair representation," complaints should be construed to avoid dismissals. Czosek v. O'Mara, 397 U.S. 25, 27 (1970).

The Teamsters argue that the SAC fails to state a claim under Rule 12(b)(6) against it because its conduct was an exercise of judgment which Plaintiffs cannot challenge, arguing the SAC is devoid of any factual allegations satisfying articulated standards to state a DFR claim. To support these arguments, the Teamsters add their own facts, misstate the facts in the SAC, and argue the merits of the claim. What they do not do is state how their exercise of judgment under the accepted reviewing standard does not plausibly state a DFR claim nor do they assert any deficiencies, specific or otherwise, with the allegations in the SAC. This is not a basis for dismissal under Rule 12(b)(6). A plaintiff is not required to prove their claims at the pleading stage, only to provide enough factual allegations sufficient to provide notice of plausible claims against a defendant. Twombly, at 570-71. Plaintiffs have done so here. Determinations of any factual dispute is not required at this stage. Taylor v. Anderson, 234 U.S. 74, 75 (1914).

Plaintiffs argue even if this is an exercise of judgement it was in bad faith. The Teamsters proffered basis to substantiate their conduct is in essence abandonment of representation, and acquiescence to United instead of their constituents. The SAC alleges, and identifies, specific statements, by named union officials, who expressly and knowingly made demonstrably false and misleading statements ranging from non-existent contract terms to the existence of illegitimate undisclosed agreements with United. These same Teamsters prevented Plaintiffs from challenging United's clear and significant unilateral changes to the CBA, including conducting the grievance process and enforcing the CBA against United, facts the Union defendants and their agents readily admit. Any one of these allegations is sufficient to find bad faith sufficient to state a claim. Stupy v. U.S. Postal Serv., 951 F.2d 1079, 1083 (9th Cir. 1991); Int'l. Bhd. of Elec. Workers v. Foust, 442 U.S. 42 (1979) (Proof of grievance merit is at least circumstantial evidence that the failure to process the claim constituted bad faith sufficient to survive dismissal). The Teamsters explicitly refused to permit internal appeals of the grievance merit decision. SAC ¶ 235. Peterson v. Kennedy, 771 F.2d 1244, 1257-59 (9th Cir. 1995) (a union inexplicably ignoring strong substantive argument that must be advanced for employee to prevail on grievance violates duty). The Teamsters, and their agents, took extra steps to not only conceal agreements they entered into with United, they permitted United to reduce Plaintiffs' raise from approximately $7.35 to $1.20. There can be no legitimate union objective to agree to accept 15% of what a raise should have been. The Teamsters affirm all of this conduct in its motion but claim it is excused because they were exercising their judgment. The SAC alleges the arguable merit to Plaintiffs' grievances. SAC ¶¶ 147-156, 176-183 . The SAC alleges the Cost Model was to be provided to Plaintiffs, that none of its information is proprietary, and specifically, that it does not involve any "costs" to United. SAC ¶¶ 58-76, 245-250 Yet, the Teamsters, in their motion, do not provide any contrary evidence or proof to refute these allegations, they simply state the opposite. Under a Rule 12(b)(6) motion, the complaint's allegations are assessed for providing the proper notice to a defendant and to state a plausible claim, it is not to argue the merits or insert new facts or to resolve factual disputes. The Teamsters, as alleged in the SAC, falsely claimed, and continue to claim, the information in the CBA, and related to the CBA, is proprietary and confidential. This in the face

of their own documents and videos stating the exact opposite. SAC ¶¶ 65-73. Moreover, this has been debunked by United's own public filings. What is alleged to be proprietary and confidential is not and would not cause any competitive damage to United because it is publicly disclosed annually; it was all pretext. Just like the false statements regarding the NMB. SAC ¶ 95. These facts plausibly allege a DFR claim sufficient for the SAC to survive a motion to dismiss.

The SAC does credibly allege "secret agreements" with United. The Teamsters admitted on November 29, 2022, at a craft meeting that they had agreed to lower the raise, that they entered into a non-disclosure agreement with United, which they never revealed or ratified with the members. SAC ¶¶ 220-229 . A union cannot enter into secret deals to alter the material terms of Plaintiffs' CBA without consent and ratification from, and by Plaintiffs. SAC ¶¶ 35-43, Exhibit 1. This violates the Teamsters constitution because they effect the material terms of the CBA and were not ratified. *See* Aguinaga v. United Food & Com. Wkrs., 993 F.2d 1463, 1471 (9th Cir. 1993) (procedural history omitted) (union may not execute secret side agreements that vitiate clear contractual rights and then trick employees into believing that their rights were protected). Likewise, the SAC credibly alleges the Teamsters violated their own oath, and its constitution, by taking actions directly in conflict with the duties proscribed therein. SAC Exhibit 1.

Nor can the Teamsters now add words to the SAC allegations or to LOA #29 terms and definitions to try and meet the Rule 12(b)(6) burden. The Teamsters continue to state in its brief, it is "annual wages and benefits costs" "the calculation is the annual wages and benefits costs." Def. Mot. 2, 4. It is not nor does the SAC allege it is. A plain review of LOA #29 demonstrates this is not the case. SAC Exhibit 3. This alone is a basis to deny this motion.

The Union Defendants argument is a union possesses unfettered discretion over all matters and that when such power is exercised, it constitutes the union's "judgment" that cannot be challenged or examined, by anyone, least not the Plaintiffs or this Court. This is false and is not grounds to dismiss a claim on a Rule 12(b)(6) motion. At the pleading stage, Plaintiffs are required to allege a claim that is plausible. Plaintiffs are not required to prove their claim or even make it more probable than not. The question is "not whether [Plaintiffs] will ultimately prevail but whether [Plaintiffs] [are] entitled to offer evidence to support the claims." Scheuer v. Rhodes,

416 U.S. 232, 236 (1974) (procedural history omitted). When viewed with the other facts in the complaint, or even in isolation, these facts highly suggest the kind of irrational and dishonest conduct constituting wrongdoing on the part of the Union Defendants sufficient to state a claim at the pleading stage. Therefore, this Court should not dismiss Plaintiffs claim. Indeed, should the Court find Plaintiffs' allegations are lacking or need clarification, Plaintiffs submit amendment is the course of action not dismissal with prejudice as the Union Defendants demand.

The motion is devoid of any factual basis and silent to the existence of any contrary facts that would render Plaintiffs' DFR claim implausible such that it fails to state a claim for relief. The Teamsters do not offer any evidence to demonstrate that their failure to investigate, failure to provide relevant information, and failure to enforce the CBA is a reasonable exercise of their judgment beyond saying if they do it, it is reasonable. As such, the motion should be denied.

3. The DFR Claims Are Not Time-Barred.

The Teamsters make two arguments the DFR claim is time barred.[4] Neither argument is sufficient to support this affirmative defense.

First, the Teamsters argue that the claim arose prior to February 6, 2023, and thus under DelCostello v. Int'l. Bhd. of Teamsters, 462 U.S. 151 (1983), it is time-barred. DelCostello holds the statute of limitations for a DFR claim is six-months. Id. at 169. This limitations period does not begin to run however until the claim accrues and thus, a claim must be brought within six months after its accrual date. Int'l. Ass'n. of Machinists & Aerospace Wkrs. v. Aloha Airlines, Inc., 790 F.2d 727, 735 (9th Cir. 1986) ("Aloha Airlines"). A claim accrues, including a DFR claim, with the last act of the union that it will no longer support the grievance. Galindo v. Stoody Co., 793 F.2d 1502, 1509 (9th Cir.1986); McNaughton v. Dillingham Corp., 707 F.2d 1042, 1046 (9th Cir.1983) (a claim does not accrue until the union and the employer "resolve the grievance or terminate further consideration of it"). And, in the Ninth Circuit, tolling (delayed accrual) is applied in cases where the plaintiff exhausted his contractual remedies before filing a DFR claim. Galindo, at 1509-10. The SAC alleges Plaintiffs learned of false calculation result on November

[4] It is not clear that Local 986 makes a timeliness argument. For the sake of completeness, Plaintiffs address the timeliness argument as to all Defendants.

23, 2022, and they both immediately filed grievances, pursuing them until exhausted by required CBA grievance process. SAC ¶¶ 157-168, 184-213. The SAC alleges the date either Plaintiff received notice of, knew of, or learned that, Local 986 would no longer support their grievances was February 6, 2023, when they received the "closeout letter." SAC ¶¶ 166, 204. Receipt of this letter is sufficient for the DFR claim to accrue. Zuniga v. United Can Co., 812 F.2d 443, 449 (9th Cir.1987). For the sake of this analysis, the soonest the DFR claim began to accrue was on February 6, 2023. The lawsuit was filed on August 6, 2023, within six months of accrual and therefore, the claim is timely.[5]

The Teamsters also appear to argue that because the SAC includes factual allegations prior to February 6, 2023, the claim accrued sooner and is time barred. This argument should be rejected. When a violation begins outside the limitations period but continues into the limitations period, the claim is not time barred. Aryeh v. Canon Bus. Sols., Inc., 55 Cal.4th 1185, 1192 (2013) ("[t]he continuing violation doctrine aggregates a series of wrongs or injuries for purposes of the statute of limitations, treating the limitations period as accruing for all of them upon commission or sufferance of the last of them."). In the Ninth Circuit, a party may not rely solely on events occurring more than six-months before the suit was filed to establish a violation of the RLA; however, events occurring outside the limitations period may be proven to shed light on the true character of matters occurring within the limitations period, that the violation of the RLA upon which the plaintiff relies occurred within the period. Horizon Air, at 547–48 (9th Cir. 1992). Under Supreme Court precedent, employees are obligated to exhaust any exclusive and mandatory grievance and arbitration procedure established by the CBA. Vaca v. Sipes, 386 U.S. 171, 184 (1967); Republic Steel Corp v. Maddox, 379 U.S. 650 (1965). Thus, even if a grievant believes the union has breached its DFR at an early stage of the grievance process, the limitations period is tolled so long as employee makes a good faith attempt to exhaust the grievance procedure. *See* Acri v. Int'l. Ass'n. of Machinists & Aerospace Wkrs., 781 F.2d 1393, 1397-98 (9th Cir. 1986); Arnold v. Air Midwest, Inc., 100 F.3d 857, 861 (10th Cir. 1996). The Union

[5] In fact, even if Plaintiffs filed the lawsuit on August 7, 2023, this lawsuit would be timely because August 6, 2023, was a Sunday. See Rule 6(1)(C) ("if the last day [of the period] is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.").

Defendants engaged in unlawful actions before and during the limitations period, causing injuries before and after the limitations period. While the earlier actions that continued into the limitations period, combined with actions within the period, are also viable injuries for which Plaintiffs seek relief, Plaintiffs do not rely on the earlier actions for their claims. The Court must reject the Union Defendants argument that their ability to conceal years long misconduct thus far renders them immune from liability in 2022, when a new and separate violation arose, because such illegality is beyond the limitations period.

In the Ninth Circuit, dismissal under Rule 12(b)(6) on the grounds a claim is time barred is permissible only if it is apparent on the face of the complaint, Von Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 969 (9th Cir. 2010), and only if "it appears beyond doubt that the plaintiff can prove no set of facts that would establish the timeliness of the claim." Supermail Cargo, Inc. v. United States, 68 F.3d 1204, 1207 (9th Cir. 1995). This is not the case here nor have the Union Defendants pointed to any facts, or contrary authority, to so find. Two additional points should be made. One, while the six-month limitations period under the RLA applies to DFR claims, it does not apply for fraud. *See* Brock v. Republic Airlines, Inc., 776 F.2d 523, 526 (5th Cir. 1985) (10(b) governs DFR claims but not fraud and corruption within the meaning of the RLA). And two, even claims barred by the statute of limitations can be considered as background evidence. *See* Machinists Local v. Labor Board, 362 U.S. 411, 422 (1960). In sum, he DFR claims against the Union Defendants are not time barred.

B. The SAC Plausibly Alleges A Third-Party Beneficiary Breach of Contract Claim.

The Teamsters[6] next argue, without analysis or reference of the facts alleged, or citation to any legal authority, this claim is "utterly devoid of sufficient factual allegations to establish this claim[,] ... has no support in fact, law or logic [and][ ] ... must be dismissed as a matter of law." Def. Mot. 16. The Teamsters have not met their burden to warrant dismissal.

The Court previously determined the Cost Model agreement is not part of the CBA. ECF No. 59. Plaintiffs cannot arbitrate agreements that are not part of the CBA. SAC Exhibit 3. Under

[6] Only the Teamsters argue the allegations in the SAC do not plausibly state a claim against them. Local 986 does not assert any such deficiencies. Therefore, this claim should not be dismissed as to Local 986.

California law, a non-signatory to a contract may enforce that contract as a third-party beneficiary if the contract was made expressly for the benefit of that third party by meeting three-prerequisites: (1) the third party would in fact benefit from the contract; (2) a motivating purpose of the contracting parties was to provide a benefit to the third party; and (3) permitting a third party to bring its own breach of contract action against a contracting party is consistent with the objectives of the contract and the reasonable expectations of the contracting parties. Cal. Civ. Code, § 1559; *see* Goonewardene v ADP, LLC., 6 Cal.5th 817, 826-837 (2019). The intent to benefit must be gathered from the contract as a whole under the situation under which the parties entered into it; however, it is not necessary the intent to benefit the third-party be manifested by the promisor. Zigas v. Superior Court, 120 Cal.App.3d 827 (1st Dist. 1981) (tenants had standing to sue as third-party beneficiaries of landlords' contract with HUD obligating them not to charge more than HUD approved rent schedule). The SAC allegations satisfy all three prerequisites.

First, the SAC alleges the Union Defendants are the bargaining representative of Plaintiffs and the putative class and this agreement was entered into to carry out this representation by determining their wage increases. This agreement was warranted between Akins and the Union Defendants because the Union Defendants chose the "economic expert" to audit and confirm the determination. Second, as alleged, Akins explained the "motivating purpose" of this agreement to Plaintiffs and the putative class and how the negotiated terms would benefit them. SAC ¶¶ 65-72, SAC Exhibit 4. The SAC details this and includes a partial draft of the agreement provided to the Plaintiffs by the Union Defendants and Akins. Id. The present motion does not challenge the authenticity of the exhibit nor deny or refute the exhibit is a partial draft of the Cost Model agreement. The SAC further alleges the implementation language of this agreement "following ratification of the United agreement as Exhibit A" show an intent for the Cost Model agreement to directly benefit Plaintiffs and the class, as deriving its purpose from the CBA. SAC Exhibit 3. This requires the Teamsters to enter into this agreement to carry out the CBA for Plaintiffs and the putative class benefit. Third, permitting Plaintiffs and the putative class to bring a breach of contract action against the Union Defendants is consistent with the objectives of the contract, and the reasonable expectations of the contracting parties, i.e., to accurately calculate, and truthfully

convey, the contracted for services. The SAC alleges a breach of this agreement, in part, by allowing United to unilaterally alter the terms of the agreement and demand Akins not perform as contracted. Furthermore, by its own terms, the agreement contemplates claims by non-signatory parties in that the agreement is meant to protect non-signatories from an unfair and dishonest result by United. These allegations satisfy the three-pronged test for recognition of third-party beneficiary status sufficient to state a claim.

The Teamsters argue Plaintiffs have failed to state this claim because the Teamsters do not pay Plaintiffs and the putative class, United does, and any CBA-compensation received involves United not the Teamsters. Def. Mot. 16. This argument misstates the allegations in Plaintiffs' complaint. Plaintiffs allege the Union Defendants breached agreed to terms of an agreement that is outside of the CBA, i.e., the Cost Model agreement. As intended third-party beneficiaries, Plaintiffs and the putative class can enforce this contract in court if timely. In California, breach of contract claim has 4-year statute of limitations, Pencikowski v. The Aerospace Corp., 08-55309, D.C. No. CV-07-08131-JFW (August 7, 2009), and thus, this claim is also timely.

C. The SAC Plausibly Pleads Interference With a Statutory Right Under the RLA.

The Teamsters next argue the SAC fails to allege any facts sufficient to impose liability on them for interfering in Plaintiffs access to the grievance process. As the legal basis for their argument, they cite generally to this Court's previous order, ECF No. 59, and Martin v. Am. Airlines, Inc., 390 F.3d 601, 608-609 (8th Cir. 2004). Def. Mot. 16. Neither asserted basis is sufficient to meet their burden to warrant dismissal of this claim with prejudice. The Teamsters persist in trying to introduce facts that are not in the record and argue the merits of their position from these impermissibly added, and often false, facts. For example, the motion argues, "Plaintiffs assert that they had an individual right to proceed to the System Board under the RLA despite the contractual provision of that right *only* to the Union." Def. Mot. 16. (emphasis added). The SAC does not allege this nor does the CBA state this. SAC ¶ 209, SAC Exhibit 3. The SAC alleges, as supported by the unrefuted CBA attached to the SAC as Exhibit 3, it is "may" not "only." Those terms are not equivalent as the Teamsters insist. Simply because the CBA states the "Union" may file an appeal at the Third Step does not mean a unit member-employee cannot

particularly in light of the employee's statutory right to do so. Nor does the CBA contain a clear and unequivocal waiver of these rights. SAC Exhibit 3. The CBA does not prevent unit member-employees from accessing the process other than the Union Defendants having unilaterally removed access to it. SAC ¶¶ 140, 158. The suggestion only the Union Defendants can appeal should be disregarded. The Teamsters argue, without factual support or citation to the SAC, "Plaintiffs complain that the Union Defendants somehow interfered with their alleged statutory right to proceed to arbitration on their own without Union participation but do not include any such factual allegations." Def. Mot. 16. This is patently false, see SAC ¶¶ 204-213, 232-236 , and should be disregarded.

The Teamsters only legal authority is irrelevant and out of this circuit. The Teamsters cite Martin v. American Airlines, Inc., 390 F.3d 601 (8th Cir. 2004), for the proposition "RLA does not give employees statutory right to pursue arbitration individually before an airline's system board of adjustment." Def. Mot. 16 n.5. Martin is inapposite. The Martin court based its decision on the inapplicability of Section 103 of the RLA, 45 U.S.C. § 153, to air carrier employees, finding Sections 201, and 202, of the RLA, 45 U.S.C. §§ 181, 182, expressly states Section 103 does not apply to air carrier employees, only Section 204 of the RLA, 45 U.S.C. §184, does. Martin, at 608-609. Correctly stated, Martin holds the RLA does not give airline employees a statutory right to pursue arbitration individually before the National Railroad Adjustment Board because, by its own terms, Section 103 is inapplicable to airline employees. The SAC brings the claim under Section 204 not Section 103. Thus, the reasoning of this case, and citation to it, is unpersuasive in addition to non-binding on this Court and should be disregarded. Plaintiffs have met the required pleading standard. The Union Defendants feeble attempts to state otherwise must be rejected. The SAC plausibly alleged the Union Defendants thwarted, and refused to permit, Plaintiffs to complete the mandated CBA-grievance process, as required by the RLA, specifically, the last pre-arbitration step, the Third Step, without legal basis or forewarning. This is sufficient to plausibly state this claim and to deny the relief the Union Defendants seek because they have not stated what is deficient in the pleading of this claim so as to warrant its dismissal with prejudice, which is their burden to demonstrate not Plaintiffs.

Lastly, the Teamsters appear to argue because this is not a DFR claim, Plaintiffs cannot allege it against the Union Defendants. The SAC alleges interference and purposeful deprivation by the Union Defendants of their grievance rights; it is this deprivation Plaintiffs seek to remedy. In the Ninth Circuit, at least one district court of competent jurisdiction holds airline employees covered by the RLA have the right to individually process grievances, with or without the union, particularly in the context of DFR where the union unilaterally withdrew grievances without giving notice to the effected employees as such action has the effect of foreclosing the employees from vindicating statutory rights to pursue arbitration without union involvement. *See* Stevens v. Teamsters Local 2707, Airline, Aero. & Allied Emps., 504 F.Supp. 332 (1980). This is more persuasive than the argument offered by the Union Defendants.

The Union Defendants arguments are not responsive in moving under Rule 12(b)(6) and therefore, the motion with respect to this issue should be denied.

D. The SAC State Law Fraud Claim Is Not Preempted By The RLA.

The Union Defendants argue Plaintiffs' fraud claim must be dismissed with prejudice, citing Ward v. United Airlines, Inc., 986 F.3d 1234, 1244 (9th Cir. 2021), as it is preempted by the RLA because it is based on the meaning of the CBA, and therefore is a dispute that must be resolved by the CBA-grievance procedures. However, Ward explicitly holds not every use of a CBA in deciding a state law claim warrants preemption; mere reference to does not. Id.; *see also* Alaska Airlines, Inc. v. Schurke, 898 F.3d 904, 920-21 (9th Cir. 2018) (en banc) (independent statutory rights are not preempted by the RLA if they do not require interpretation of the CBA; mere reference to is not interpretation). The Union Defendants argue there are disputes over "the meaning of contract terms," and thus, this claim is preempted. Yet, the Union Defendants do not identify any disputed terms. Instead, they insert words into the CBA that are not there to create disputes. For example, the biennial raise is not "Annual Wages and Benefits costs" or "the costs of Annual Wages and Benefits," simple reference to LOA #29 shows it is "Annual Wages and Benefits." SAC Exhibit 3. Adding the word "costs" to manufacture a dispute is an insufficient basis to require interpretation. and, it illustrates the "mere reference to" exception to preemption for if that was an actual dispute, it could easily be resolved by simply looking at the words in

LOA #29, which clearly and plainly lack the word "costs" in the Adjustment Calculation definitions as the United Defendants suggest.

More importantly, the Union Defendants fail to appreciate this claim turns on their conduct. The SAC alleges the reason provided to Plaintiffs to substantiate the wage rate was that the information was secret and confidential, not that Plaintiffs had interpreted or construed or applied any part of the CBA improperly. Moreover, even if the Union Defendants could find support in the CBA, "reliance on CBA provisions to defend against an independent state law claim does not trigger ... preemption." Humble v. Boeing Co., 305 F.3d 1004, 1011 (9th Cir. 2002). A state law claim is not automatically preempted simply because the facts underlying the claim may also support an action pursuant to a CBA. *See* Ertle v. Continental Airlines, Inc., 136 F.3d 690 (10th Cir. 1998) (resolution of state law claim requires only mere reference to CBA and claim is not minor dispute preempted under RLA because a state law claim is not automatically preempted simply because underlying facts support action pursuant to CBA.).

The Union Defendants violated a separate duty imposed not by the CBA but a law to promote the fundamental public policy contained in the California Civil Code, Sections 1709 and 1710, to discourage and guard against deceit and dishonesty. This claim arises independently of the CBA because Union Defendants obligation to refrain from deceiving and misleading its members does not depend upon any express or implied promise set forth in this CBA or any CBA. Plaintiffs alleged affirmative misrepresentations and concealment of important facts upon which Plaintiffs were meant to rely, and in fact did rely, to their detriment, which states a claim. The intentional perversion of the truth in order to induce another to part with something of value or surrender a legal right is actionable. The SAC alleges the Adjustment Calculation is what Plaintiffs says it is, approximately $7.35 and not $1.20, and no party disputes this. Indeed, no Defendant disputes this is the correct Adjustment Calculation result in either motion. The SAC further alleges all Defendants have asserted it is the Cost Model that legitimately forced the reduction of the wage increase from the Adjustment Calculation result to the reported level. Thus, the accuracy of these statements related to the Cost Model is what is at issue and relevant. Significantly, as the Court ruled, the Cost Model is not part of the CBA and therefore, the CBA

does not need to be interpreted. ECF No. 59. Thus, because the Cost Model evaluates the conduct and affirmative statements of the Union Defendants to determine plausibility and actionable, this claim is not preempted. Likewise, Plaintiffs' reliance on the Akins' PowerPoint, SAC Exhibit 4, also not part of the CBA, to plausibly allege this claim will not trigger preemption.

Plaintiffs alleged the "who" (the Union Defendants, and its officers and agents including Bob Fisher, Vinnie Graziano, Joe Ferreira, Marc DesAngles). SAC ¶ 95, 134, 148, 208-210, 220-228, 235-236, 239-244. The "when" (from 2016 to the present, with specific time periods and dates alleged). Id. The "what" and the "how" (Union Defendants reported the raise result to Plaintiffs and the putative class and failed to disclose the true calculation result for the profit motives of United and misrepresented to Plaintiffs and the putative class that the result was accurate so that they would not challenge it). Id. And, the "where" (emailed to Plaintiffs and the putative class emails, posted to all local unions websites and bulletin boards, throughout the system, and on the Teamsters websites) Id. The SAC alleges a consistent practice of deception and fraud, which suffices at this stage of the litigation proceedings. *See, e.g.,* Stewart v. Wachowski, 2005 U.S. Dist. LEXIS 46703, at *33 (C.D. Cal. June 13, 2005) (a complaint meets the requirements of Rule 9(b) where it "adequately pleads the existence of a scheme to defraud"). The Union Defendants have not met their burden to establish preemption. *See* Caterpillar, Inc. v. Williams, 482 U.S. 386, 393 (1987).

E. If SAC Allegations Are Insufficient, Leave to Amend Is The Appropriate Resolution.

If the Court is inclined to grant any portion of the Union Defendants' motion, Plaintiffs should be granted leave to amend. The Union Defendants have not met their burden of showing such an amendment would be futile, or would result in undue prejudice. Leave to amend a party's pleading "should [be] freely give[n] ... when justice so requires," because Rule 15(a) is designed "to facilitate decision on the merits, rather than on the pleadings or technicalities." Fed. R. Civ. P. 15(a); Nunes v. Ashcroft, 375 F.3d 805, 808 (9th Cir. 2004). A plaintiff ought to be afforded an opportunity to test its case on the merits. Foman v. Davis, 371 U.S. 178, 182 (1962). Leave generally shall be denied only upon showing of bad faith, undue delay, futility, or undue prejudice to the opposing party. *See* Leadsinger, Inc. v. BMG Music Publ'g., 512 F.3d 522, 532 (9th Cir.

2008) (citation omitted). The Union Defendants do not explain why or what it is about the SAC's allegations that demand denial of amendment. They appear to simply disagree with, and dispute, the SAC factual allegations. This is not sufficient to overcome the presumption that a court must draw "all inferences in favor of granting the motion." Griggs v. Pace Am. Grp., Inc., 170 F.3d 877, 880 (9th Cir. 1999) (citations omitted).

V. CONCLUSION

Although Plaintiffs have shown their allegations to be more than sufficient to survive dismissal, if this Court is inclined to grant any portion of the Union Defendants' motion, Plaintiffs argue leave to amend is the appropriate remedy to cure such deficiencies not dismissal. The stay on discovery has hamstrung Plaintiffs in defending the present motions, as well as in amending their complaint. The Court should lift the stay and allow at least limited discovery so that Plaintiffs can amend their complaint and defend against dismissal. For the reasons stated above, this Court should deny the motion to dismiss in its entirety. Should this Court find the complaint insufficient to such a degree so as to require dismissal, leave to amend should be granted to address any concerns raised by the Court.

Dated: September 16, 2024

LAW OFFICE OF JANE C. MARIANI
By: /s/ Jane C. Mariani
JANE C. MARIANI

Attorney for Plaintiffs,
THOMAS NEAL MULLINS
JOHN R. SCHOLZ, III

CERTIFICATE OF ELECTRONIC SERVICE

I, Jane C. Mariani, hereby certify that on September 16, 2024, 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: September 16, 2024

LAW OFFICE OF JANE C. MARIANI

By: /s/ Jane C. Mariani
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