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UNITED STATES DISTRICT COURT

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,

v.

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

Defendants.

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

DEFENDANTS UNITED AIRLINES, INC. AND UNITED CONTINENTAL HOLDINGS, INC.'S NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT UNDER RULE 12(B)(1) AND/OR RULE 12(B)(6) OF THE FEDERAL RULES OF CIVIL PROCEDURE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Hearing Date: May 9, 2019
Time: 10:00 A.M.
Place: Courtroom 11, 19th Fl.
Judge: Hon. James Donato

NOTICE OF MOTION AND MOTION TO DISMISS

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, on Thursday, May 9, 2019, at 10:00 A.M. or as soon thereafter as the matter may be heard, defendants United Airlines, Inc. and United Continental Holdings, Inc., by and through their undersigned counsel of record, will and hereby do move to dismiss with prejudice plaintiffs' First Amended Complaint, pursuant to Federal Rule of Civil Procedure 12(b)(1) or, in the alternative, Federal Rule of Civil Procedure 12(b)(6). Said motion will be heard at the United States District Court, 450 Golden Gate Avenue, San Francisco, California.

This motion is based upon this Notice of Motion and Motion to Dismiss and the Memorandum of Points and Authorities in support thereof, served and filed herewith, all pleadings, papers, and records on file in this action, and any other matter of which the Court may take judicial notice, or which may be presented to the Court at or before the hearing.

Dated: March 15, 2019.

Respectfully submitted,

CHRIS A. HOLLINGER
ROBERT A. SIEGEL
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By: /s/ Chris A. Hollinger
CHRIS A. HOLLINGER

Counsel for Defendants United Airlines, Inc. and United Continental Holdings, Inc.

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INTRODUCTION

Plaintiffs, mechanics employed by defendant United Airlines, Inc. ("United") and currently represented for collective bargaining purposes by defendant International Brotherhood of Teamsters ("IBT" or the "Union"), have sued the Union and certain individual officers of the Union (collectively with the Union, the "Union Defendants") for, among other things, breach of the duty of fair representation ("DFR"). They have also sued their employer and its parent company, United Continental Holdings, Inc. ("UCH") (collectively with United, the "United Defendants") for breach of collective bargaining agreement ("CBA"), collusion in the Union's alleged breach of its DFR, and related claims under the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001 *et seq.* ("ERISA"). According to plaintiffs' First Amended Complaint ("FAC"), the United Defendants failed to provide them with pension and profit-sharing benefits required by Letter of Agreement 05-03 of the CBA ("LOA 05-03") and also failed to comply with the CBA's dispute-resolution procedures vis-à-vis grievances filed by plaintiffs under the CBA. (*See* ECF 37 ¶¶ 224-228.) The plaintiffs also contend that the United Defendants colluded in the IBT's "failing to enforce the express terms of the [CBA]," including the IBT's "bad faith" withdrawal of the grievances plaintiffs had initiated. (*See* id. ¶¶ 245, 250.)

Plaintiffs' FAC raises substantially the same claims as their original Complaint (ECF 1) filed on October 31, 2018. On January 18, 2019, the United Defendants and the Union Defendants filed motions to dismiss the Complaint. (ECF 33, 34.) Plaintiffs did not respond to these motions, but instead filed the FAC. The FAC fails to correct the flaws in the plaintiffs' claims and, like the Complaint, should be dismissed in its entirety.

The claim against the United Defendants for breach of CBA (Count I) is, by its own terms, based on disputed interpretations of the provisions of the CBA (including LOA 05-03). It is well-settled law that claims against an airline such as United arising from the interpretation or application of a CBA are "minor disputes" under the Railway Labor Act, 42 U.S.C. §§ 151 *et seq.* (the "RLA"), and, as such, are subject to the mandatory and exclusive jurisdiction of the CBA's grievance procedure. *See, e.g., Ass'n of Flight Attendants v. Horizon Air Indus., Inc.,*

280 F.3d 901, 904, 906 (9th Cir. 2002) ("*Horizon*") ("Federal courts do not have jurisdiction to resolve minor disputes.") (citations omitted). Accordingly, Count I should be dismissed for lack of subject-matter jurisdiction.

Plaintiffs' allegations fail to satisfy the narrow exception to the exclusive jurisdiction of the CBA's grievance procedure for situations "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'" as recognized by the Supreme Court in *Glover v. St. Louis-San Francisco Railway Co.*, 393 U.S. 324, 329 (1969). *See Faulkner v. Dominguez*, No. CV 08-07706 DDP, 2010 WL 342600, at *5 (C.D. Cal. Jan. 28, 2010). The *Glover* exception "requires a showing of invidious discrimination or unjustified hostility, not mere disagreement between the employee and the union on the merits of a grievance." *Croston v. Burlington N. R.R. Co.*, 999 F.2d 381, 387 (9th Cir. 1993), *overruled on other grounds by Hawaiian Airlines, Inc. v. Norris,* 512 U.S. 246 (1994). Here, there can be no federal-court jurisdiction over the minor disputes raised in the FAC because there is no well-pleaded factual allegation that the Union's decision to withdraw the grievances initiated by plaintiffs was made in concert with United and, to the contrary, there is an allegation in the FAC that the Union's decision was based on written advice from its attorney that the grievances were "meritless" and "untimely." (FAC ¶ 166.) Moreover, the Union's decision to withdraw the grievances based on its counsel's conclusions does not plausibly constitute a breach of the Union's DFR, and thus cannot possibly serve as a basis for federal-court jurisdiction over the minor disputes against the United Defendants. *See, e.g.*, *Gullaksen v. United Air Lines*, 68 F. Supp. 3d 66, 73-74 (D.D.C. 2014) (no subject-matter jurisdiction over "minor dispute" against carrier where union "rationally and in good faith concluded that [pilot's] grievance was not meritorious").

The claims against the United Defendants for violation of ERISA (Counts IV-V) are likewise based on disputed interpretations of the CBA (including the collectively-bargained pension plan). At the time of the October 2010 merger between United and Continental Airlines, Inc. ("Continental"), the Continental mechanics' CBA included a pension plan, the Continental Airlines Retirement Plan ("CARP"), while the United mechanics' CBA did not. In their ERISA

claims against United, plaintiffs allege that, under the United CBA, once United and Continental merged, "LOA 05-03M mandated UAL mechanics were eligible to be covered by CARP" and that United was therefore obligated by LOA 05-03 "to cover the UAL mechanics on the LOA Effective Date [i.e., the October 2010 merger date]." (FAC ¶¶ 279, 286-87.) Plaintiffs' allegations that United breached the CBA and therefore violated ERISA squarely present minor disputes under the RLA, over which this Court lacks jurisdiction. *See Long v. Flying Tiger Line, Inc.*, 994 F.2d 692, 695 (9th Cir. 1993) (affirming dismissal for lack of subject matter jurisdiction where "despite being clothed as an independent ERISA claim," court would be required to determine "the extent of the pilots' benefits under the collectively bargained pension agreement.").

Plaintiffs' claim against the United Defendants in Count II, for collusion in the IBT's breach of DFR, fails to state a valid claim. An employer, unlike a union, does not owe a duty of fair representation to its employees. *See, e.g., Am. Airlines Flow-Thru Pilots Coal. v. Allied Pilots Ass'n*, No. 15-cv-03125-RS, 2015 WL 9204282, at *2 (N.D. Cal. Dec. 17, 2015) ("*Flow-Through I*"). As such, it would not "be appropriate to impose liability where the employer is charged with nothing more than having acceded to the demands of the Union, even with knowledge of facts from which it might be inferred that the Union was not fulfilling its duty of fair representation to all of its constituents." *Id.* at *3. Here, the Union's attorney determined that plaintiffs' grievances asserting that United had breached LOA 05-03 were "meritless" and "untimely" and the Union thereafter withdrew the grievances with prejudice. In accordance with the CBA's grievance procedures, which expressly give the Union sole authority to submit a grievance to arbitration, United did not proceed to arbitration on plaintiffs' grievances once those grievances were withdrawn by the Union. (FAC ¶ 77.) With respect to this dispute-resolution process, the FAC contains only conclusory allegations of a "conspiracy" (*id.* ¶ 260) and no well-pleaded facts supporting a plausible inference that the United Defendants colluded with the Union in the Union's alleged breach of its DFR.

Because Count I and Counts IV-V 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. There is no basis for this Court to exercise jurisdiction over these claims, and these claims must be dismissed under Federal Rule of Civil Procedure 12(b)(1) for lack of subject-matter jurisdiction or, alternatively, under Federal Rule of Civil Procedure 12(b)(6) on the basis of federal statutory preclusion. And Count II, the claim against the United Defendants for collusion in the Union's alleged breach of its DFR, should be dismissed for failure to state a claim pursuant to Rule 12(b)(6).

FACTUAL BACKGROUND

A. The Parties.

As a result of a merger in 2010, United Air Lines, Inc. and Continental became wholly-owned subsidiaries of UAL Corporation ("UAL"), and UAL's name was changed to United Continental Holdings, Inc. ("UCH"). (FAC ¶ 42.) Subsequently, United Air Lines, Inc. merged with and into Continental, with Continental continuing as the surviving corporation, which was then re-named United Airlines, Inc ("United"). (*Id.*) United remained a wholly-owned subsidiary of UCH. (*Id.*) United is a "common carrier" by air as defined by the RLA. (*Id.* ¶ 22.)

In accordance with the RLA, the National Mediation Board certified the IBT as the collective bargaining representative for United's mechanics in 2013. (FAC ¶¶ 15-16.) The IBT also had been the representative for mechanic groups at both United and Continental at the time of the merger. (*Id.* ¶ 49).

Plaintiffs are mechanics who worked for pre-merger United and continue to work for United today. (FAC ¶¶ 1, 11-14.) Plaintiffs are represented by the IBT. (*Id.*)

B. Collective Bargaining Agreements for Mechanics.

At the time of the merger in 2010, the Continental mechanics' CBA included a collectively-bargained pension plan, CARP. (FAC ¶ 51.) The pre-merger United mechanics' CBA did not. (*Id.* ¶¶ 24, 52.) Following the merger, the IBT decided to complete negotiations for amended stand-alone CBAs covering the separate pre-merger Continental and United mechanic groups before entering into negotiations for a joint CBA that would cover the combined mechanic group. (*Id.* ¶ 43.) In 2011, the IBT and United negotiated and executed an amended CBA covering the pre-merger United mechanics. (*Id.* ¶ 52.) That CBA "did not provide any

change in pension benefits; however, [it] did continue the bankruptcy wage replacement profit-sharing plan." (*Id.*)

In the amended CBA for pre-merger United mechanics, the IBT and United agreed to carry forward LOA 05-03. (FAC ¶ 54.) LOA 05-03 had been originally negotiated by United and the Aircraft Mechanics Fraternal Association ("AMFA") (the prior collective bargaining representative for pre-merger United's mechanics) in May 2005 as part of a bankruptcy-related restructuring of United. (*Id.* ¶¶ 23-27.) LOA 05-03 provided: "the Company shall not maintain or establish any single-employer defined benefit plan for any UAL [Corporation] 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."[1] (*Id.* ¶ 33.) It also provided for United mechanics to participate in a profit-sharing program that was detailed in the letter. (*Id.* ¶ 37.) As carried forward in the amended CBA, LOA 05-03 was designated Letter of Agreement 17. (*Id.* ¶ 54.)

C. Plaintiffs' Grievances

On September 1, 2016, plaintiff Beier requested that the Union file a Step 1 grievance, pursuant to Article 19 of the CBA, asserting that United had breached LOA 05-03. (FAC ¶ 94.) The grievance claimed that 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 CBA once United "began to maintain CARP." (*Id.* ¶¶ 94, 153-55, 173, 224, 279.)

The Union filed the Step 1 grievance shortly thereafter and United denied the grievance on September 16, 2016. (FAC ¶ 95.) The Union then appealed to Step 2, where the Company again denied the grievance. (*Id.* ¶ 96.) In that denial, the Company informed plaintiff Beier that the Union had appealed the grievance to Step 3, which is the step for submission of grievances to

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[1] The Retirement Plan Contribution, which was detailed in LOA 05-03, was a defined contribution plan for pre-merger United mechanics. (*See* Declaration of Chris A. Hollinger ("Hollinger Decl.") ¶ 2, Ex. 1 at 17-1–17-7.) This Court may consider any relevant documents in determining whether it has subject-matter jurisdiction pursuant to a motion under Rule 12(b)(1). *See Savage v. Glendale Union High Sch. Dist. No. 205*, 343 F.3d 1036, 1040, n.2 (9th Cir. 2003). Under Rule 12(b)(6), the Court may properly consider "documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice . . . without converting the motion to dismiss into a motion for summary judgment." *See United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

arbitration. (*Id.*) By this time, the Union had also submitted separate Step 1 grievances on behalf of plaintiffs Scholz and Bybee, asserting the same claims as plaintiff Beier with respect to LOA 05-03. (*Id.* ¶ 103.) Plaintiff Beier subsequently was informed that IBT "had consolidated the grievances of Plaintiff Beier, Plaintiff Scholz, and Plaintiff Bybee into one grievance and that the totality of LOA 05-03M was under review." (*Id.* ¶ 108.) The Union confirmed that its processing of the consolidated grievances would include all claims under both the pension and profit-sharing components of LOA 05-03. (*Id.* ¶ 151.)

In January 2017, the IBT informed plaintiff Scholz that the IBT's Airline Division "ha[d] asked Ed Gleason, an IBT attorney, to evaluate the LOA 05-03M grievances." (FAC ¶ 138.) On or about March 31, 2017, the Union showed plaintiff Beier "a written document authored by IBT attorney Edward Gleason" (the "Gleason Memo") that explained in 20 pages of detail his conclusion that "the grievances [are] meritless and untimely." (*Id.* ¶¶ 109, 166; *see also* Hollinger Decl. ¶ 3, Ex. 2 at 1.)

Following issuance of the Gleason Memo, Plaintiff Beier was informed "IBT had decided to withdraw his grievance and dismiss it with prejudice." (FAC ¶ 109.) Plaintiffs Beier, Scholz, and Bybee understood that all three grievances had been consolidated and ultimately were considered, analyzed, and addressed in the same memo. (*Id.* ¶¶ 108, 113.) On April 17, 2017, Nick Manicone, an IBT attorney, "sent a closeout letter to UAL on behalf of [IBT and SFO Local 856/986] stating the matter had been closed, the grievance withdrawn, and dismissed with prejudice." (*Id.* ¶ 141.)

Approximately nine months later, in January 2018, these three plaintiffs sent letters to United's Managing Director of Labor Relations, Tom Reardon, "asking for the right to proceed in arbitration without the union." (FAC ¶ 116.) According to plaintiffs, authorization to proceed without the Union was provided by "the promulgated procedures afforded . . . under the CBA and IBT constitution." (*Id.* ¶ 145.) This allegation is plainly inconsistent with the CBA's grievance procedures, which expressly give the Union sole authority to present and advance grievances, including sole authority to submit a grievance to arbitration. (*See id.* ¶¶ 72-77; *see, e.g.*, *id.* ¶ 77 ("If the Board deadlocks, the Union may appeal the case to arbitration.").) On May 1, 2018,

Reardon sent the 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." (*Id.* ¶¶ 118, 148, 170; Hollinger Decl. ¶ 4, Ex. 3 ("Reardon Letter").)

In the FAC, plaintiffs allege that United mechanic Sally Dill, a newly-added plaintiff, also filed a grievance in 2016 alleging that United had breached LOA 05-03 by failing to include the United mechanics in CARP following the merger with Continental. (*See* FAC ¶¶ 172-183.) Although Dill's grievance is apparently still pending, there is no reason to believe that it will ultimately be handled any differently by the IBT or United than the other three plaintiffs' grievances and, as a result, for purposes of this motion to dismiss, the United Defendants do not contend that plaintiff Dill's claim is deficient on ripeness grounds.

ARGUMENT

I. COUNT I, FOR BREACH OF CBA, SHOULD BE DISMISSED.

Count I alleges that the United Defendants "breached the CBA when they began to maintain CARP, a defined benefit plan for another group of employees, Continental mechanics, at UAL," and when United "gave profit-sharing monies destined for the UAL Mechanic Class to Continental mechanics." (FAC ¶¶ 224-26, 231-32.) Count I also alleges that the United Defendants "categorically denied Plaintiffs' contractual rights to due process regarding Plaintiffs' stated grievances, thereby breaching the contract." (*Id.* ¶¶ 227-229.) As demonstrated below, Count I should be dismissed for lack of subject-matter jurisdiction.

A. This Court Lacks Subject-Matter Jurisdiction Under the RLA.

Under the RLA, claims grounded in the interpretation or application of CBAs are known as "minor" disputes. *See Elgin, Joliet & E. Ry. Co. v. Burley*, 325 U.S. 711, 722-23 (1945). "Federal courts do not have jurisdiction to resolve minor disputes." *Horizon,* 280 F.3d at 904; *see also Long*, 994 F.2d at 693 ("No federal or state court has jurisdiction over the merits of any employment dispute subject to determination by a system board of adjustment."); *Bhd. of Teamsters & Auto Truck Drivers Local No. 70 v. W. Pac. R.R. Co.*, 809 F.2d 607, 610 (9th Cir. 1987) ("The district judge's view of the merits is understandable. However, the federal courts are

not the proper forum to resolve this dispute."). Instead, "[m]inor disputes must be addressed through the CBA's established grievance mechanism, and then, if necessary, arbitrated before the appropriate adjustment board." *Alaska Airlines, Inc. v. Schurke*, 898 F.3d 904, 917 (9th Cir. 2018).

In this case, plaintiffs disagree with United's (and their Union's) interpretation that, among other things, LOA 05-03 of the CBA: (1) did not provide for plaintiffs' participation in CARP because CARP was not a "single-employer defined benefit plan for any UAL or Company employee group," and (2) did not prohibit the Company from "includ[ing] Continental mechanics as part of the pool of people included in the profit-sharing calculation" at post-merger United. (FAC ¶¶ 33, 206, 279.) According to plaintiffs, the Court has subject-matter jurisdiction because the claim in Count I raises a "major" dispute under the RLA (*see id.*), but nothing could be farther from the truth. A "major" dispute refers to a dispute between the carrier and a union over the negotiation of a new CBA (as opposed to a dispute over the interpretation of an existing CBA). *See Horizon*, 280 F.3d at 904.[2] The disagreement here is manifestly with regard to the interpretation and application of an existing CBA (i.e., LOA 05-03), and is therefore a minor dispute over which this Court lacks subject-matter jurisdiction. *See, e.g., Consol. Rail Corp. v. Ry. Labor Execs.' Ass'n*, 491 U.S. 299, 307 (1989) (noting that the carrier's burden in showing that a dispute is "minor" is "relatively light") (quotations omitted); *Horizon,* 280 F.3d at 906.

Count I also asserts that the United Defendants' "failure to follow procedural steps for processing a grievance, for missing contractual deadlines and duties for dealing with the grievance, for moving the grievance to various next steps without informing Plaintiffs . . . and for allowing Ed Gleason to usurp the . . . contractually agreed upon grievant [sic] procedures, is a breach of the CBA." (FAC ¶ 228.) But other portions of the FAC directly contradict this claim, alleging that the grievances were in fact processed by the Union and United Defendants until the

[2] Under the RLA, a dispute between an individual employee and a carrier can never be a "major" dispute. *See Wien Air Alaska, Inc. v. Bachner*, 865 F.2d 1106, 1109 (9th Cir. 1989) ("[b]ecause a major dispute will affect the future of the unit's entire constituency, its resolution lies exclusively within the authority of the employees' collective bargaining representative"); *see also Schurke*, 898 F.3d at 917 ("Major disputes must be resolved through an extensive bargaining, mediation, and noncompulsory arbitration process, in which both sides are subject to certain duties enforceable in federal court.").

Union exercised its discretionary right under the CBA not to submit the grievances to arbitration because they were meritless and untimely. (*See* FAC ¶¶ 93-118.) In any event, disputes over the processing and scheduling of grievances are also "minor" disputes, over which a court has no jurisdiction, because they involve the interpretation or application of the CBA's grievance procedures. For example, the Eastern District of New York, addressing a claim that an airline should be ordered "to restore the grievance and arbitration process as previously practiced by the parties," held that "[b]ecause the parties' disagreements over grievance and dispute resolution procedures are minor, the court does not have jurisdiction." *U.S. Airlines Pilots Ass'n ex rel. Cleary v. U.S. Airways, Inc.*, 859 F. Supp. 2d 283, 303 (E.D.N.Y. 2012); *see also Local 591, Transp. Workers Union of Am. v. Am. Airlines, Inc.*, No. 15 C 652, 2015 WL 3852958, at *4 (N.D. Ill. June 19, 2015) ("Defendant argues that plaintiffs' first claim . . . is nothing more than a dispute over the processing and scheduling of grievances, and, because this dispute implicates a contractual right, can properly be classified as minor under the RLA. The court agrees.").

B. No Exception Applies To Confer Subject-Matter Jurisdiction.

Courts have recognized a "narrow exception," permitting federal-court jurisdiction over minor disputes, "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*, 2010 WL 342600, at *5 (quoting *Glover,* 393 U.S. at 329 (1969)). The *Glover* exception does not apply here.

In *Glover*, based on detailed allegations that the union was "acting in concert with the railroad employer to set up schemes and contrivances to bar [African Americans] from promotion wholly because of race," the Supreme Court concluded "a formal effort to pursue contractual or administrative remedies would be absolutely futile." *Glover,* 393 U.S. at 331. The *Glover* exception thus "requires a showing of invidious discrimination or unjustified hostility, not mere disagreement between the employee and the union on the merits of a grievance." *Croston*, 999 F.2d at 387. It has also been recognized that "[w]here an employee attempts to bring a *Glover*-style suit against his union and employer, the court must first examine the claim against the union," and "[i]f the court finds that the employee does not have a triable claim against the

union . . . *Glover* does not apply." *Faulkner*, 2010 WL 342600 at *5 (citing *Bautista v. Pan Am. World Airlines, Inc.*, 828 F.2d 546, 552 (9th Cir. 1987)). Thus, "courts have exercised jurisdiction over collective bargaining claims against employers under the RLA where such claims: (1) were joined with an action against a union for the breach of duty of fair representation, and (2) there [were] well-plead allegations of something like collusion between the [employer] and the union in denying the employee their rights under the [CBA] and the [RLA]." *Bryan v. Allied Pilots Ass'n*, No. 17-CV-12460-DJC, 2018 WL 6697681, at *6 (D. Mass. Dec. 19, 2018) (alterations omitted).

In this case, the FAC fails to satisfy any of the requirements for the *Glover* exception. For the reasons set forth in the Union's Motion to Dismiss, there is no plausible claim for breach of DFR – especially because the plaintiffs concede that the Union withdrew their grievances following a comprehensive review and conclusion by the Union's counsel that the grievances were without merit and untimely. Without a viable claim for breach of DFR against the Union, there can be no federal court jurisdiction over plaintiffs' breach of CBA claim against United. *See Croston,* 999 F.2d at 387; *Bautista*, 828 F.2d at 551-52. Additionally, even if plaintiffs' claim for breach of DFR against the Union is not dismissed at this stage of the litigation, that claim does not create federal-court jurisdiction over the breach of CBA claim against the United Defendants because there is no well-pleaded factual allegation that the Union's decision to withdraw the grievances (which is the only Union decision which matters when determining the applicability of the *Glover* exception) was made in concert with United. Here, where the Union withdrew plaintiffs' grievances, and the United Defendants then adhered to the CBA's procedural requirement that only the Union can submit a grievance to arbitration, plaintiffs cannot manufacture a claim against United through conclusory allegations of a "conspiracy" (FAC ¶ 260). *See Bryan*, 2018 WL 6697681, at *8 ("something more than merely acceding to union demands must be alleged for the Court to hold [the airline] responsible for the union's breach") (citations and quotations omitted).

In addition to the *Glover* exception discussed above, some courts have exercised jurisdiction over minor disputes "if the employer repudiates the specific grievance procedures

provided for in the CBA, such as when it expressly takes the position that the grievance procedures do not govern the dispute." *Debeikes v. Hawaiian Airlines, Inc.*, No. CV 13-00504 ACK-RLP, 2015 WL 12781641, at *14 (D. Haw. Feb. 17, 2015), *aff'd,* 725 F. App'x. 499 (9th Cir. Feb. 21, 2018), *cert denied*, 139 S. Ct. 477 (2018). But that is not the case here. There is no allegation that United took the position that the CBA's grievance procedures do not govern the LOA 05-03 dispute – rather, United fully adhered to those procedures, including by honoring the provisions indicating that only the Union could submit a grievance to arbitration. (FAC ¶¶ 72-77.) In short, Count I describes a properly functioning grievance process, not a "repudiation" of that process.

Finally, plaintiffs allege that they have "exhausted all possible administrative remedies" in light of United's denial of their request to proceed to arbitration without the IBT's approval. (FAC ¶ 148.) This allegation is irrelevant. The RLA does not create federal-court jurisdiction over a minor dispute simply because a plaintiff has exhausted the CBA's grievance process in the way that filing a claim with an administrative agency might be a prerequisite to bringing a lawsuit in court under some federal employment statutes. *Cf. Dornell v. City of San Mateo*, 19 F. Supp. 3d 900, 905 (N.D. Cal. 2013) ("A claimant must exhaust his or her administrative remedies before filing a discrimination or retaliation case in federal court.") To the contrary, the RLA's minor dispute process is not one of administrative remedy, but instead is an exclusive-jurisdiction process (subject to narrow exceptions like those noted above). *See Schurke*, 898 F.3d at 917; *Horizon*, 280 F.3d at 904; *Long*, 994 F.2d at 693.

II. COUNT II, FOR COLLUSION IN THE UNION'S ALLEGED BREACH OF ITS DUTY OF FAIR REPRESENTATION, SHOULD BE DISMISSED.

In Count II, plaintiffs allege in conclusory fashion that the Union engaged in a "conspiracy" with the United Defendants; that there was "complete cooperation" between the Union and United Defendants; and that the Union "work[ed] in concert with the Company to thwart" plaintiffs' grievances. (FAC ¶¶ 242, 250, 260, 263.) These "conclusory allegations alone are insufficient to raise a plausible inference of collusion between employer and union." *Bryan*, 2018 WL 6697681, at *7; *see also Crusos v. United Transp. Union, Local 1201*, 786 F.2d 970,

973 (9th Cir. 1986) ("Appellant's allegations are merely conclusory, as they fail to allege any act demonstrating a conspiracy between the Union and the Railroad"); *Addington v. US Airline Pilots Ass'n*, 588 F. Supp. 2d 1051, 1063 (D. Ariz. 2008), *rev'd on other grounds*, 606 F.3d 1174 (9th Cir. 2010) (declining to exercise subject-matter jurisdiction over breach of CBA claims against carrier where plaintiffs failed to "allege[] nor present[] any specific facts suggesting collusion," and noting that "conclusory allegations . . . are insufficient to establish collusion."). As to the United Defendants, plaintiffs' only factual allegations merely repeat the "minor" dispute allegations in Count I – namely, that United allegedly breached the CBA by failing to provide pension and profit-sharing benefits and by not proceeding to arbitration on plaintiffs' grievances after those grievances were withdrawn with prejudice by the Union based on advice by its counsel that the grievances were meritless and untimely. (*See, e.g.*, FAC ¶ 243, 253, 257.) Because these allegations are insufficient to show "affirmative action that would constitute collusion" by United, they provide "no basis to hold [United] liable for a breach of the union's duty of fair representation." *See Am. Airlines Flow-Thru Pilots Coal. v. Allied Pilots Ass'n*, No. 15-cv-03125-RS, 2016 WL 8203217, at *1 (N.D. Cal. Apr. 20, 2016); *In re AMR Corp.*, No. 11-15463, 2018 WL 2997104, at *28 (Bankr. S.D.N.Y. June 12, 2018).

Plaintiffs make no plausible allegation that the United Defendants acted in a discriminatory or bad faith manner towards them when they decided not to proceed to arbitration after the Union withdrew plaintiffs' grievances from the CBA grievance procedure. Courts have recognized that it would not be "appropriate to impose liability when the employer is charged with nothing more than having acceded to the demands of the Union, even with knowledge of facts from which it might be inferred that the Union was not fulfilling its duty of fair representation to all of its constituents." *Flow-Through I*, 2015 WL9204282, at *5-6. This holding reflects a general premise of national labor policy that "the onus should not be on the employer to evaluate and consider whether distinctions a union draws among its members are appropriate." *Id.*; *see also Cunningham v. United Airlines, Inc.*, No. 13 C 5522, 2014 WL 441610, at *6 (N.D. Ill. Feb. 4, 2014) ("The employer must in most circumstances be able to rely on the union's disposition in spite of some employee objections; and it would have a detrimental

effect on labor-management relations if an employer were forced to ignore union representations and take the initiative in dealing with employees whenever it suspects a discriminatory union motive.") (quotations omitted).[3]

III. COUNTS IV AND V, FOR ERISA VIOLATIONS, SHOULD BE DISMISSED.

Counts IV and V, which allege violations of ERISA, should be dismissed because they are based entirely on disputed interpretations of the CBA, including CARP (a collectively-bargained pension plan). In Count IV, plaintiffs allege that the United Defendants violated 26 U.S.C. § 1051(a)(1)(A) by "their failure to enroll the UAL mechanics" in CARP "in order to further their own pecuniary interests."[4] (FAC ¶¶ 281-82.) In Count V, plaintiffs allege that the United Defendants violated their fiduciary duties under 29 U.S.C. § 1104(a)(1) by "failing to cover the UAL Mechanics" in CARP under LOA 05-03. (*Id.* ¶¶ 286-87.) Plaintiffs allege further that the United Defendants were "preventing Plaintiffs from becoming participants in CARP," even though plaintiffs "met the definition of participant and eligible employee to accrue pension benefits as of October 1, 2010." (*Id.* ¶ 291 & 60.C.)

These 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 mechanisms." *Schurke*, 898 F.3d at 919, 921; *see also Long*, 994 F.2d at 695; *Oakey v. US Airways Pilots Disability Income Plan*, 723 F.3d 227, 229 (D.C. Cir. 2013) (affirming dismissal of ERISA claim because claim was "grounded in the application and interpretation of the collective bargaining agreement."); *Everett v. USAir Grp., Inc.*, 927 F. Supp. 478, 483 (D.D.C. 1996), *aff'd*, 194 F.3d 173 (D.C. Cir. 1999) (claim for "breach of fiduciary duty under ERISA" precluded by the RLA where "central contention is that [the airline] purposely misinterpreted the [CBA] and, thus, the pension plan" to exclude certain plan benefits).

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[3] This is true whether or not plaintiffs are correct in their assertion that "[e]mployees have a statutory right to arbitration before [a] system board under 45 USC § 184" (FAC ¶ 252) – an alleged right which plaintiffs do not seek to vindicate in this case (i.e., they are not asking the Court to compel arbitration of their contractual disputes).

[4] There is no 26 U.S.C. § 1051(a)(1)(A). In context, it appears that plaintiffs mean to invoke 29 U.S.C. § 1052(a)(1)(A).

Additionally, Count IV should be dismissed under Rule 12(b)(6) because it fails to state a plausible claim for relief. *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009). 29 U.S.C. § 1052(a)(1)(A), which addresses "Minimum participation standards" for pension plans, provides that "[n]o pension plan may require, as a condition of participation in the plan, that an employee complete a period of service with the employer or employers maintaining the plan extending beyond the later of the following dates – (i) the date on which the employee attains the age of 21; or (ii) the date on which he completes 1 year of service." Plaintiffs do not allege that they were denied enrollment in CARP on the basis of any minimum participation standards, or age or length-of-service requirement. Rather, according to plaintiffs, the United Defendants determined that plaintiffs had not "met the definition of participant and eligible employee to accrue pension benefits as of October 1, 2010." (FAC ¶ 291; FAC at 60.C.) Count IV should therefore also be dismissed for failure to state a claim.

IV. CONCLUSION

The First Amended Complaint should be dismissed in its entirety against the United Defendants.

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Respectfully submitted,

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