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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

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

on behalf of themselves and all others similarly situated;

Plaintiffs,

vs.

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

Defendants.

Case No.: 3:18-cv-006632-JD

PLAINTIFFS' OPPOSITION TO UNION DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

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

TABLE OF CONTENTS

Cases

Statutes

Rules

I. INTRODUCTION

Defendants, International Brotherhood of Teamsters ("IBT"), its president, James Hoffa, Teamsters SFO Local 856/986 (SFO Local), and its principal officer, Peter Finn, (collectively "Defendant Union"), seek dismissal of Plaintiffs' First Amended Complaint ("FAC"), which alleges claims against Defendant Union for breach of the duty of fair representation, breach of fiduciary duties under Labor Management Reporting Disclosure Act ("LMRDA"), violations of the Employee Retirement Income Security Act ("ERISA"), and for relief therefrom, under Federal Rule of Civil Procedure 12(b)(6). As demonstrated below, Plaintiffs have met their pleading burden. Plaintiffs have plausibly alleged Defendant Union breached its duty of fair representation owed to Plaintiffs, and to others, by acting in an arbitrary, discriminatory, and bad faith manner. Plaintiffs' timely filed their claims because damages were speculative until the 2016 CBA was ratified and because there is an express waiver of the statute of limitations in LOA 05-03M. Plaintiffs have plausibly alleged Defendant Union breached fiduciary duties owed under LMRDA by harming Plaintiffs' property interests and acted for the benefit of Defendant United and themselves instead of Plaintiffs. Lastly, Plaintiffs have plausibly alleged Defendant Union, as a knowing participant, is liable for certain breaches of fiduciary duties owed under ERISA. Accordingly, Defendants' Motion to Dismiss should be denied in its entirety.

II. STATEMENT OF FACTS

United Air Lines, Inc. merged with Continental Airlines, Inc. ("CAL") into a single legal entity named United Airlines, Inc., a wholly owned subsidiary of a newly named parent company, United Continental Holdings, Inc. (collectively "United"), in 2010. The present dispute arose between Plaintiffs, and others similarly situated ("UAL Mechanics"), regarding implementation of the merger of those two air carriers.

A. PARTIES

Plaintiffs are all employed by United as mechanics and are members in good standing with Defendant IBT. FAC ¶ 9. At all times relevant, Defendant IBT is and has been the certified collective bargaining agent for all UAL Mechanics. Id. ¶15. Defendant IBT's organizational structure includes local lodges responsible for carrying out its union business at a particular location. Id. ¶¶15-20.

B. BANKRUPTCY AGREEMENT LOA 05-03M

LOA 05-03M is an agreement entered into with United and its mechanics concerning concessions UAL Mechanics made to benefit United during United's bankruptcy reorganization, reduced to a writing, and incorporated into the then existing CBA as LOA 05-03M. Id. ¶¶29-32. LOA 05-03M states, "the Company shall not maintain or establish any single-employer defined benefit plan for any UAL or Company employee group unless AMFA-represented employees are provided the option of electing to receive a comparable defined benefit plan in lieu of the Replacement Plan Contribution." FAC ¶27, 33. LOA 05-03M also provided for UAL Mechanics to participate in a profit-sharing program to compensate for the 25% wage reduction suffered during the bankruptcy. Id. ¶¶ 37-39. And, LOA 05-03M, in Paragraph 13, further grants any of the parties to the agreement a right to bring actions relating to the performance under the agreement at any time. Id. ¶¶ 40-41.

C. COLLECTIVE BARGAINING AGREEMENTS ("CBA")

In 2009, prior to the merger, Defendant IBT entered into a CBA with CAL mechanics to be amendable after 2012 ("2009 CAL CBA"); in 2010, a few months after the merger was announced, Defendant IBT entered into a CBA with UAL mechanics, to become amendable after 2013 ("2010 UAL CBA"). FAC ¶51, 52. The stand-alone 2009 CAL CBA did not give profit

sharing rights; however, it did have defined single-employer pension plan benefits. Id. ¶ 51. The 2010 UAL CBA contained LOA 05-03M fully incorporated. FAC ¶ 52. The governing CBA by which to measure the actions taken regarding Plaintiffs' claims is the 2010 UAL CBA because it was the operative CBA for UAL Mechanics at the time Plaintiffs filed their grievances. A joint CBA combining the two mechanics groups was not agreed upon and ratified until December 2016 ("2016 JCBA"). Id. ¶¶ 55-67. Defendant IBT promised UAL Mechanics routinely the terms of LOA 05-03M would be addressed in the joint CBA. When the final tentative agreement was released, on or about September 29, 2016, and the specialized stand-alone vote of the UAL Mechanics had not occurred nor was there any language contained in the tentative relating to the vote, Plaintiffs filed grievances prior to ratification of the 2016 JCBA regarding LOA 05-03M. Pls. Decl. Scholz, Dill, and Bybee; FAC ¶¶ 87-182.

D. GRIEVANCES

The failure of the 2016 JCBA tentative agreement to address the promised enforcement of LOA 05-03M prompted UAL Mechanics across the system to grieve this failure. Around this same time, an arbitration board found United in violation of the pilot's bankruptcy agreement because United included CAL pilots in the UAL profit-sharing pool prior to amalgamating the CBA's of the two pilot groups. Pl. Decl. Scholz, Ex. L. Plaintiffs presented this decision to Defendant Union, along with their grievances, as support for Plaintiffs' positions to Defendant Union. FAC ¶¶ 82-182 . Defendant IBT and its officers and agents met Plaintiffs' evidence and grievances with fierce resistance, even presenting some grievances from being filed. Id. ¶¶ 82-182. The operative CBA for processing Plaintiffs' grievances outlines distinct processes and procedures to be filed. Id.; Pl. Decl. Bybee, Ex. G. None of these processes were followed and the only documentation Defendant Union produced to meet these requirements is a 22-page

memo written by Edward Gleason ("Gleason memo"), a person who is not a member of the union, not an employee of United, but was one of three people responsible for handling LOA 05-03M in the negotiations for the 2016 JCBA on behalf of Defendant Union. FAC ¶¶ 82-182; Defs. Decl. Manicone, Ex. B, Gleason mem. The "veteran and well-respected labor lawyer" is not a neutral party nor was he unbiased. Defendant Union, in essence, asked the fox who guarded the hen house to write a report on how well he guarded the hen house despite the fact there is not a single hen left in the hen house.

The Gleason memo appears to address a portion of Plaintiff Scholz' grievance and of Plaintiff Beier's, merging language to form a singular "quotation," stating a sole SFO-based mechanic grieved this issue. Defs. Decl. Manicone, Ex. B. The Gleason memo states no pension accrual service for UAL Mechanics because United did not violate LOA 05-03M – that is it, just a conclusory statement with no supporting facts, law, or evidence. Id. 15-16. The memo next states, unequivocally, CARP was not a single employer defined pension plan and then concedes it is; however, even though United told Defendant Union there was a duty under the LOA 05-03M, Defendant Union thought it was too expensive for United so Defendant Union arbitrarily and unilaterally decided to not enforce the duty. Id. The memo goes further to deny express terms of LOA 05-03M and the CBA stating LOA 05-03M only applies to pre-merger United because LOA 05-03M does not contain a successors and assigns clause. Id. at 17. The pilot's arbitration case, the CBA, and basic contract interpretation prove this statement false. And, Plaintiffs offered, many times, to provide the contemporaneous notes taken at the time of LOA 05-03M negotiations to prove mergers were expressly considered; Defendant Union rejected and rebuffed all of these offers. The memo, again inexplicably, goes on to say, if they did take some action on CARP, they would need the consent of the work groups; at least one, yes, the UAL

Mechanics. Id. 17-18. The memo also erroneously states the vote to ratify the 2016 JCBA satisfies the vote requirement in LOA 05-03M. Id. The vote on the joint agreement included CAL mechanics – it could never satisfy the express language of the CBA. Lastly, the memo concludes the grievance is untimely because presumably Plaintiffs' should have known to enforce the agreement in the amendable period even though Defendant Union said they were. Id. 19. The memo is the only "process" Plaintiffs have ever received with respect to their grievances.

III. LEGAL STANDARD

Rule 8(a) requires a plaintiff to plead each claim with enough specificity to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests" and "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007); Fed. R. Civ. P. 8(a). In deciding sufficiency, the court must accept as true all of the factual allegations contained in the complaint. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Where "two alternative" conclusions can be drawn from factual allegations, "one advanced by defendant and the other advanced by plaintiff, both of which are plausible, plaintiff's complaint survives a motion to dismiss under Rule 12(b)(6)." Starr v. Baca, 652 F.3d 1202 (9th Cir. 2011); Fed. R. Civ. P. 12(b)(6). A court should deny a motion to dismiss based on a statute of limitations unless it can be "determine[d] with certainty" the statue has run. Supermail Cargo, Inc., v. United States, 68 F.3d 1204, 1207 (9th Cir. 1995). "[A] complaint cannot be dismissed unless it appears beyond doubt the plaintiff can prove no set of facts that would establish the timeliness of the claim." Id., at 1207.

IV. ARGUMENT

A. PLAINTIFFS STATE A CLAIM FOR BREACH OF THE DUTY OF FAIR REPRESENTATION.

The general duty of fair representation arises from the Railway Labor Act ("RLA"). 45

U.S.C. §§ 151 et seq.; Vaca v. Sipes, 386 U.S. 171, 190 (1967). A union breaches this duty when its conduct toward a member is "arbitrary, discriminatory, or in bad faith." Jones v. Union Pac. R.R., 968 F.2d 937, 941 (9th Cir.1992) (quoting Vaca v. Sipes, 386 U.S. 171, 190 (1967)). A union's actions are arbitrary "only if, in light of the factual and legal landscape at the time of the union's actions . . . [are] so far outside a 'wide range of reasonableness' as to be 'irrational.' " Air Line Pilots Ass'n v. O'Neill, 499 U.S. 65, 67 (1991); Conkle v. Jeong, 73 F.3d 909, 915–16 (9th Cir. 1995) (holding union's decision is arbitrary if it lacks rational basis); Johnson v. U.S. Postal Serv., 756 F.2d 1461, 1465 (9th Cir. 1985) (reckless disregard may constitute arbitrary conduct); Tenorio v. NLRB, 680 F.2d 598, 601 (9th Cir. 1982) (defining arbitrary as "egregious disregard for the right of union members").

Each of wrong is mutually independent. "Just as . . . fiduciaries owe their beneficiaries a duty of care as well as duty of loyalty, a union owes employees a duty to represent them adequately as well as honestly and in good faith." Air Line Pilots Ass'n Int'l v. O'Neill, 499 U.S. 65, 75 (1991); Simo v. Union Of Needletrades, Indus., 322 F.3d 602, 617 (9th Cir. 2003). "Whereas the arbitrariness analysis looks to the objective adequacy of the Union's conduct, the discrimination and bad faith analyses look to the subjective motivation of the Union officials." Simo, at 618. While the union has substantial discretion in representing members, "a union can still breach the duty of fair representation if it exercised its judgment in bad faith or in a discriminatory manner." Beck v. United Food & Commercial Wkrs., Local 99, 506 F.3d 874, 880 (9th Cir. 2007).

1. Plaintiffs Plausibly Allege Defendant Unions Breached the Duty of Fair Representation Because Defendant Unions Actions Were Arbitrary, Discriminatory, and in Bad Faith and Caused Plaintiffs' Damages.

Individual employees are to have a substantial role in the grievance process. Elgin, J. &

E. Rwy. Co. v. Burley, 325 U.S. 711, 734-736 (1945). 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) quoting Tenorio v. NLRB, 680 F.2d 598, 601 (9th Cir. 1982). And, courts have found air carrier employees covered by the RLA have a statutory right to process their grievances individually under the RLA. Pyles v. United Airlines, Inc., 79 F.3d 1046, 1052 (11th Cir. 1996) (citing Stevens v. Teamsters Local 2707 et al, 504 F. Supp. 332, 334 (W.D. Wash. 1980) (individual airline employee entitled to convene special boards of adjustment as a matter of statutory right without union assistance)). 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). It is well established a collective bargaining representative has no authority to bargain away vested rights without an employee's consent. See e.g., Allied Chemical & Alkali Workers of America v. Pittsburgh Plate Glass Co., 404 U.S. 157, 181 n. 20 (1971). "Where the Union actions are governed by its interpretation of contractual provisions, bad faith may exist if the Union maintains an illegitimate contract interpretation and prevents employees from using established grievance procedures to challenge the interpretation." Stupy v. U.S. Postal Service, 951 F.2d 1079, 1083 (9th Cir.). Reliance on an attorney's advice should not insulate the union from liability for its breach of its duty to represent its members fairly. Weitzel v. Oil Chemical & Atomic Workers International Union, Local 1-5, 667 F.2d 785 (9th Cir.1982).

Plaintiffs alleged Defendant Union denied them fair representation in both negotiations and enforcement of the CBA, never providing a substantial or legitimate reason for doing so. Defendant Union acted arbitrarily and in bad faith by failing to enforce express terms of LOA

05-03M by not holding the stand-alone vote, bargaining away their profit-sharing monies without consent, and by maintain incomprehensible contract interpretations regarding LOA 05-03M and the grievance procedures found in the CBA. Years of self-dealing and taking asserted actions solely for their own financial self-interest are clear examples of arbitrary, discriminatory, and bad faith acts.

Defendant IBT claims it used its judgment, insulating it from liability for those decisions and because an attorney made those decisions. If a union claims it used judgment, such a decision can only be arbitrary where such decision is without a rational basis or explanation. Beck v. United Food and Commercial Workers Union, 506 F.3d 874, 879 (9th Cir. 2007). Judgment was not needed; this was a ministerial task of holding the vote. There was no rational basis for not doing so nor have they ever offered a rational basis for not having done so after repeated and systemic demands to do so. Liability for a labor union's deceptive conduct in breach of the fiduciary duty of fair representation arises only if the breach directly causes damage to an individual or group to whom the duty is owed not just that union improperly viewed the grievance as meritless but rather the union withdrew the grievances without according a party with their statutory right individually to process those grievances. Stevens, 504 F.Supp. at 334; Robesky, v. Qantas Empire Airways Ltd., 573 F.2d 1082, 1091 (9th Cir. 1978) (a union acts arbitrarily when fails to provide adequate notice of or justification for a decision to withdraw an employee's grievance). The power of a collective agent to represent employees before the Railroad Adjustment Board does not extend to the settlement of grievances to the exclusion of the aggrieved employees having any effective voice in settlement and/or individual hearing before the board. Railway Labor Act §2, subds. 1–4, 6, 8, 45 U.S.C. §152, subds. 1–4, 6, 8, §184; Santiago v. United Air Lines, Inc., 77 F.Supp. 3d 694 (N.D. Ill 2014).

Plaintiffs have plausibly alleged a claim for the breach of the duty of fair representation, satisfying the Rule 8 standard, and acts have been alleged which, if proved, would also allow Plaintiffs to establish Defendant IBT had no authority to enter into any terms regarding the pension election option via the stand-alone vote of UAL Mechanics nor was Defendant IBT, as Defendant United was aware, able to acquiesce to the dilution of the UAL Mechanics profit-sharing pool prior to ratification and inclusion of the CAL Mechanics in a joint CBA. Defendant IBT and its officers and agents did allow this to happen though and did not raise a single objection all in contravention to the sole purpose a union even exists in labor relations – to challenge the actions of the employer solely for the benefit of the potentially aggrieved employee.

Plaintiffs also plausibly allege Defendant IBT's bad acts are the cause of their injuries – years of lost pension rights and substantially less money from the dilution of the profit-sharing pool are a direct result of Defendant Union's failures. A union does not breach its duty of fair representation unless it "intentionally caus[es] harm to an employee," Graf v. Elgin, Joliet & Eastern Railway Co., 697 F.2d 771, 777-81 (7th Cir.1983). Plaintiffs have sufficiently plead facts at this stage to meet their burden.

2. Plaintiffs Plausibly Allege their Breach of the Duty of Fair Representation Claim is Not Time-Barred and is Ripe.

a. LOA 05-03M expressly waives the statute of limitations.

LOA 05-03M contains an explicit waiver of the statute of limitations, providing, "any party at any time to require performance of any provision of this Letter of Agreement shall not affect the right of that party at a later time to enforce the same or a different provision." Defs. Decl. Manicone, Ex. A; FAC ¶ 40. More, the grievance procedures provide failure to follow the timelines is a waiver of that step. Pl. Decl. Bybee, Ex. G. And, Defendant Union has not offered a single fact or explanation as to why this occurred in the manner it did.

b. Tolling

If a party is induced or tricked by opposing party misconduct into missing a filing deadline, then tolling operates to right the injustice. "Tolling should be allowed "if [it] otherwise vindicates an important federal policy." DelCostello v. Int'l. Bhd. Of Teamsters, 462 U.S. 151, 155 (1983). There is nothing in the CBA, or any other relevant policy or contract, to have given Plaintiffs any idea Gleason's memo had the significance Defendant Union asks this court to attach to it. Tolling Plaintiffs claim until they received final word from Defendant United, their employer, is appropriate under these circumstances and that date is May 1, 2018. Pl. Decl. Scholz, Bybee. Plaintiffs tried to avoid unnecessary litigation by relentlessly invoking the administrative process. And, Plaintiffs commenced the suit within a reasonable time after Defendant United similarly rejected their request for a no-fund case on May 1, 2018; the statute of limitations should be tolled until May 1, 2018.

c. Equitable estoppel doctrine is appropriate in this case.

To invoke equitable estoppel, plaintiffs must allege facts indicative of "improper purpose by the defendant, or of the defendant's actual or constructive knowledge that its conduct was deceptive." Stallcop v. Kaiser Found. Hosps., 820 F.2d 1044, 1050 (9th Cir.1987). "Conduct or representations" by the defendant that "tend to lull the plaintiff into a false sense of security can estop the defendant from raising the statute of limitations on the general equitable principle that no man may take advantage of his own wrong." Huseman v. Icicle Seafoods, Inc., 471 F.3d 1116, 1121 (9th Cir.2006). A plaintiff must show the defendant engaged in "affirmative misconduct involving "a deliberate lie" or "a pattern of false promises." Socop-Gonzalez v. INS, 272 F.3d 1176, 1184 (9th Cir.2001). This is precisely the set of facts Plaintiffs have pled. Here, during the entirety of negotiations through to ratification, concealment of the true state of the

negotiations and grievances was misrepresented and misstated by Defendant Union; they should not be allowed to benefit from such conduct to escape liability.

d. Plaintiff Dill's claim is ripe because 2016 JCBA has been ratified.

Plaintiff Dill filed her claim on November 17, 2016. In determining ripeness, the "fitness of the issues for judicial decision," and the "hardship to the parties of withholding court consideration" are the main factors to weigh a decision. Addington v. US Airlines Ass'n, 791 F.3d 967, 974 (9th Cir. 2015) (quoting Addington I, 606 F.3d 1174, 1179 (9th Cir. 2010). With a duty of fair representation claim, "a cause of action does not accrue at the time plaintiff becomes aware of a wrong if, at that time, the plaintiff's damages are not certain to occur or too speculative to be proven." Acri v. Intl Ass'n of Machinists, 781 F. 2d 1393, 1396 (9th Cir. 1986). The joint CBA has been ratified and any possible contingencies regarding LOA 05-03 enforcement and resultant injuries now exists. Plaintiff Dill has waited years; a resolution should not be deferred any longer. And, it is unclear whether Plaintiffs will have any remedy available if the court declines to adjudicate this dispute now because Defendant Union has stated the Gleason memo is the only and final word on the subject.

B. PLAINTIFFS' MEMBERSHIP PROPERTY INTERESTS WERE HARMED WHEN DEFENDANT UNIONS EXCEEDED THEIR AUTHORITY AND ACTED FOR BENEFIT OF DEFENDANT UNITED AND THEMSELVES.

Plaintiffs have sufficiently pled facts for a claim under § 501; the interests protected under the LMRDA are not just "money" as Defendant Union asserts; a union member's membership in that union is a protected property right. 29 U.S.C. § 501. The fiduciary principle extends to all the activities of union officials and other union agents or representatives. The Supreme Court stated Congress was concerned unions need to be made legally accountable for agreements into which they entered themselves, an objective that by itself would further stability among labor

organizations. United Ass'n of Journeymen & Apprentices of the Plumbing & Pipefitting Industry v. Local 344, 452 U.S. 615, 624 (1980); Stelling v. Intl Bhd. of Elec. Workers Local Union No. 1547, 587 F.2d 1379, 1386 (9th Cir. 1978) (Ninth Circuit adopted "the 'broad view" of the statute holding "union officials have fiduciary duties even when no monetary interest of the union is involved.").

All union Defendants are proper parties to this action under the above standard and legal landscape. One or all are directly responsible for mishandling and subverting the promulgated grievance procedures and allowed the improper substitution of Nick Manicone and Ed Gleason. All were present at all of the crucial points in the negotiations, vote ratification, and prevention of exercise of contract rights by the Plaintiffs and others similarly situated. And, Defendant Local and its officers operate as the direct agents of Defendant IBT and are therefore, liable. These union officers and officials signed off on diluting the profit-sharing pool of UAL Mechanics, as well as agreeing to amend plan documents in order to create some sort of pretext as to why Defendant United did not have to honor LOA 05-03M. And, Defendant Local officers had ample opportunity to convey the critical information to membership regarding the two plans – CARP or WCTPT – and let the membership vote. LMRDA § 501 is clear – it authorizes an individual union member to bring suit if a union refuses or fails to sue. Intl. Ass'n. of Mach. & Aerospace Workers v. Intl. Longshoremen's & Warehousemen's Union, Local 13, 781 F.2d 685, 688 (9th Cir.1986); United Ass'n of Journeymen & Apprentices of the Plumbing & Pipefitting Indus. v. Local 344, 452 U.S. 615 (1980). Plaintiffs further allege any jurisdictional prerequisites not completed by Plaintiffs are harmless error and Plaintiffs should be granted leave to amend instead of granting Defendants motion for dismissal. Plaintiffs honest belief, in light of the Gleason memo and Plaintiffs many complaints operated as requests to review Defendant officer's

and agent's behavior. Should the court find Plaintiffs present complaint insufficient to meet the leave requirement, Plaintiffs ask they be now granted leave in order to so amend their complaint.

C. PLAINTIFFS' ERISA CLAIMS SHOULD NOT BE DISMISSED BECAUSE THE DEFENDANT UNIONS WERE KNOWING PARTICPANTS IN THE BREACH

Plaintiffs have sufficiently pled a claim for liability by Defendant Union under a theory of knowingly participating in a fiduciary's breach of duty. By Defendant IBT's own admission, by adopting the Gleason memo findings as their own, Plaintiffs, and others similarly situated, Defendant IBT and its officers and agents were horse trading with the UAL Mechanics vested option to elect CARP or some other comparable plan for over six years. Defendant IBT also stood by while Defendant United not only diluted profit-sharing monies held in trust under a plan, but while Defendant United made certain amendments to the plan potentially causing the plan losses and possibly cause it to be terminated and allowing Defendant United to delay certain qualified employees from enrolling in the plan to avoid a penalty payment to the PBGC, as also detailed in SEC filings of Defendant United. These are not repackaged duty of fair representation claims; these are stand-alone additional violations of statute, trust and good faith.

1. Plaintiffs Seek Plan-Wide Relief Not Individual Claims for Benefits.

The difference between denial of individual claims and a plan wide mishandling of claims are two distinct injuries. Spindex Physical Therapy v. United Healthcare, 770 F.3d 1282 (9th Cir. 2014) and Graphic Comm. Union Dist. Council No. 2, AFL-CIO v. GCIU- Employee Retirement Benefit Plan, 917 F.2d 1184 (9th Cir. 1990). Plan-wide relief must be something directly for the plan. Isola v. Hutchinson, 780 F.Supp 1299 (N.D. Cal. 1991). An ERISA breach of fiduciary claim must be based on facts plausibly alleging a claim beyond a singular claim mishandling; it must allege a plan-wide injury has occurred. Wise v. Verizon Commc'ns, Inc., 600 F.3d 1180, 1189 (9th Cir. 2010). A beneficiary who brings a complaint for fiduciary breach

may also be allowed to amend the complaint to clarify which portions of the action are brought on behalf of the plan. Bartz v. Carter, 709 F.Supp 827 (N.D. Ill 1989).

2. Defendant Unions Knowingly Participated in Breaches of Fiduciary Duty.

A § 502(a)(3) claim may be brought against any defendant, including non-fiduciaries. Harris Trust & Sav. Bank v. Salomon Smith Barney, Inc., 530 U.S. 238, 251 (2000). The non-fiduciary must have had, "actual or constructive knowledge of the circumstances that rendered the transaction unlawful." Id. at 251. Courts allow plaintiffs to sue non-fiduciaries for "knowing participation" in breaches of fiduciary duties established by ERISA § 404(a). 29 U.S.C. § 1052(a)(1)(A); Daniels v. Bursey, 313 F. Supp. 2d 790, 806-07 (N.D. Ill. 2004). In addition to the knowledge requirement, claims against non-fiduciaries require plaintiffs to establish the non-fiduciary somehow participated in the ERISA violations. Harris Trust, at 241–43. "Participation" means "affirmative assistance, or a failure to act when required to do so, enabling a breach [of fiduciary duty] to proceed." Rutledge v. Seyfarth, Shaw, Fairweather & Geraldson, 201 F.3d 1212, 1220 (9th Cir. 2000). Plaintiffs plausibly alleged facts to give rise to this claim and the merits of those allegations is a factual question to be decided at trial.

3. RLA Cannot Be Properly Applied to Plaintiffs' ERISA Claims.

ERISA and the RLA are both federal statutes and therefore, the preclusion analysis as to which statute Congress meant to take precedence must be done; if two statutes are incompatible, decide which statute Congress meant to take precedence whilst scrutinizing each to see if they are incompatible or can instead be harmonized. Here, ERISA's primary goal is to "protect . . . the interests of participants and . . . beneficiaries" of employee benefit plans and assure participants receive promised benefits from their employers. 29 U.S.C. § 1001. And, notwithstanding the policies encouraging arbitration under the RLA, different considerations

apply where the employee claim is based on rights arising out of statute designed to provide minimum substantive guarantees to workers who are pension plan participants and/or recipients. Barrentine v. Arkansas-Best Freight Sys., 450 U.S. 728, 737 (1981). It seems inconceivable Congress intended an employee participant who suffered injury or harm through mismanagement, discriminatory application and/or denial of the clear plan terms would be denied recovery under ERISA simply because she might also be able to process a labor organization grievance under the RLA to some conclusion.

D. PLAINTIFFS SHOULD BE ALLOWED TO AMEND.

If the Court is inclined to grant any portion of Defendant's motion, Plaintiffs should be granted leave to amend. Defendant has not met its burden of showing an amendment would be futile or would result in undue prejudice. Leave to amend a party's pleading shall be denied only upon showing of bad faith, undue delay, futility, or undue prejudice to the opposing party. Leadsinger, Inc. v. BMG Music Publ'g, 512 F.3d 522, 532 (9th Cir. 2008) (citing Foman v. Davis, 371 U.S. 178, 182 (1962)).

V. CONCLUSION

Defendant United's Motion to Dismiss should be denied in its entirety. Pursuant to this Court's standing order, counsel presenting this motion has less than six-years bar certification and therefore, oral argument is respectfully requested.

Dated: June 21, 2019

Respectfully submitted:
s/ Jane C. Mariani
JANE C. MARIANI,
Attorney for Plaintiffs

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on June 21, 2019, I electronically transmitted the attached documents 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: June 21, 2019

Respectfully submitted:

s/ Jane C. Mariani
JANE C. MARIANI,
Attorney for Plaintiffs

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