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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 DEFENDANTS UNITED AIRLINES, INC. AND UNITED CONTINENTAL HOLDINGS, INC. 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

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## I. INTRODUCTION

Defendants, United Airlines, Inc. ("UAL") and United Continental Holdings, Inc. ("UCH" collectively "United"), seek dismissal of Plaintiffs' First Amended Complaint ("FAC"), pursuant to the Railway Labor Act ("RLA") and Rule 12(b)(1), because the court lacks subject matter jurisdiction over Plaintiffs' claims. 45 U.S.C. §§ 151 et seq.; Fed. R. Civ. P. 12(b)(1). Defendant United further state Plaintiffs cannot plead or prove the requisite concerted action with Defendant Union nor any breach of fiduciary duty by Defendant United under ERISA.

As demonstrated below, Plaintiffs have plausibly alleged this court has subject matter jurisdiction over Plaintiffs' claims because Plaintiffs' complaints are not "major" disputes not "minor" disputes. Alternatively, should the court find Plaintiffs' claims are "minor" disputes, Plaintiffs' claims raise exceptions to the general rule of exclusive jurisdiction of the board because Defendant United has repudiated the administrative board remedy by its own conduct; because Defendant United breached its obligations under the collective bargaining agreement ("CBA") and acted in concert with Defendant Union in such breach; and because Plaintiffs properly and timely seek plan-wide relief for certain violations under ERISA. Therefore, Defendant United's Motion to Dismiss should be denied in its entirety.

## II. STATEMENT OF FACTS

In 2010, United Air Lines, Inc. merged with Continental Airlines, Inc. ("CAL") into a single legal entity named United Airlines, Inc., ("UAL"), a wholly owned subsidiary of a newly named parent company, United Continental Holdings, Inc. ("UCH" or collectively "United"). 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 Defendant United as mechanics and are members in good standing with their union. FAC ¶ 9. Defendant United is an air carrier subject to the Railway Labor Act ("RLA"), 45 U.S.C. §§ 151 et seq. And, Defendant United is the plan sponsor of the Continental Airlines Retirement Plan ("CARP"), the single-employer defined benefit pension plan, relevant to the case at hand. Id. ¶¶ 21-23.

**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. at ¶¶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% reduction suffered during the bankruptcy. Id. at ¶¶ 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. at ¶¶ 40-41.

**C. COLLECTIVE BARGAINING AGREEMENTS ("CBA")**

At the time of the merger, CAL mechanics were under a CBA set to become amendable in 2012 ("2009 CAL CBA"). Shortly after the merger was announced, UAL mechanics agreed to a CBA set to become amendable in 2013 ("2010 UAL CBA"). Id. at ¶51, 52. Each respective mechanic group had been in protracted negotiations for new CBA's. Defendant United and the

union representation for both CAL Mechanics and UAL Mechanics, Defendant IBT representing both, agreed to enter these separate agreements in order to prioritize other merger issues, leaving negotiations of a joint CBA until the separate agreements became amendable. FAC ¶¶48-54. 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 fully incorporated the terms of LOA 05-03M, including the defined contribution plan and profit-sharing rights. Id. at ¶ 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.

Negotiations for the joint CBA lasted several years and produced two tentative agreement prior to ratification. The first tentative had the stand-alone vote provisions included; however, that tentative agreement was soundly rejected by 93% of the vote. The second and final tentative agreement was released on or about September 29, 2016, and did not contain the specialized stand-alone vote provisions; no stand-alone vote had or has ever occurred in any fashion. Plaintiffs filed grievances prior to ratification of the 2016 JCBA regarding LOA 05-03M beginning in September of 2016. Pls. Decl. Scholz, Dill, and Bybee; FAC ¶¶ 87-182. A joint CBA for the mechanics groups was voted on in November 2016 and ratified in December 2016 ("2016 JCBA"). Id. at ¶¶ 55-67. Defendant United undertook many self-interested positions regarding the UAL Mechanics pension rights, never simply enforcing the CBA elective vote instead unilaterally altering the plan to suit their needs and denying the express mandates of LOA 05-03M. More, even if an impasse with Defendant Union existed, such an impasse was created, sustained and perpetuated by all Defendants to avoid their respective duties to Plaintiffs and the UAL Mechanics class.

**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 were aware of this ruling and provided this decision to both Defendant Union and Defendant United with the grievances as support for Plaintiffs' positions. FAC ¶¶ 82-182.

The operative CBA for processing Plaintiffs' grievances outlines distinct processes and procedures to be filed. Id. at ¶¶ 82-182; Pls. Decl. Bybee, Ex. G. The limited grievance paperwork Plaintiffs' have been provided show none of these processes were followed correctly or timely. The only proof Defendant United or the union have ever given to Plaintiffs claiming to meet grievance procedure requirements per the CBA 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 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 memo. The adoption of this document by Defendant United shows not only agreement with the union as to the facts transpired but by adopting and not objecting to this memo as a deviation from the grievance procedures, Defendant United acted in concert with the union and individually to subvert the CBA. 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 Defendant United did not violate LOA 05-

03M – that is it, just a conclusory statement with no supporting facts, law, or evidence. Id. at ¶¶ 15-16. The memo goes on to state unequivocally CARP is not a single employer defined pension plan and then concedes CARP is. The memo also states Defendant United knew of the specific duties owed to the UAL Mechanics under LOA 05-03M, and told the union as much; the union did nothing and as a reward, Defendant United provided economic benefits to the union, not to the membership, as a quid pro quo for abandoning their representational duties, aiding United's economic interest. Defs. Decl. Manicone, Ex. B.

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 itself did not contain a successor and assigns clause. Id. at ¶ 17. Defendant United knew this was not true because LOA 05-03M was incorporated into the CBA, which contains the proper language. Defendant United was told as much when the pilot's arbitrator decided the same issue. And, Defendant United was aware of negotiations with mechanic negotiators in 2005 regarding merger proposals and their impact to induce the mechanic group to agree to concessions. The memo also erroneously states the vote to ratify the 2016 JCBA satisfies the vote requirement in LOA 05-03M; Defendant United knew the vote on the joint agreement could never satisfy the express language of LOA 05-03M and yet, made no objections to these statements. Id. Lastly, the memo concludes the grievance is untimely because presumably Plaintiffs' should have been enforcing the agreement in the amendable period when the union said they were. Id. at ¶ 19. Defendant United knew of the waiver of the statute of limitations in LOA 05-03M, and yet, said and did nothing.

## III. LEGAL STANDARD

Federal Rule of Civil Procedure 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).

A Rule 12(b)(1) motion to dismiss is a challenge to the court's subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). The party invoking the jurisdiction of the federal court bears the burden of establishing the court has the required subject matter jurisdiction to grant the relief requested. Kokkonen v. Guardian Life Ins. of Am., 511 U.S. 375, 377 (1994). "A Rule 12(b)(1) attack may be facial or factual. A facial attack alleges the facts in a complaint are insufficient on their face to invoke federal jurisdiction; a factual attack disputes the truth of the allegations that, on their own, would otherwise invoke federal jurisdiction." Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004). Defendant United has provided no clear standard by which its motion is to be weighed; however, in a footnote, Defendant United confirms a facial attack and argues in the alternative for a Rule 12(b)(6).

## IV. ARGUMENT

### A. PLAINTIFFS' PLAUSIBLY ALLEGE FACTS FOR BREACH OF CONTRACT.

Plaintiffs have sufficiently pled a claim for relief for Defendant United's failure to enforce and maintain contracts as required under the law. 45 U.S.C. § 152 First, Seventh. Defendant United asserts its interpretation of the contract is correct as a matter of law and thus, Plaintiffs' claims must be dismissed. This is a question more appropriate for summary judgment or trial.

Plaintiffs assert the parties' agreement did not give the employer the discretion to make such changes to the retirement benefits and profit sharing, changes to the working conditions, without prior cooperation with Plaintiffs, and others similarly situated. And, Plaintiffs argue the unilateral decisions made by Defendant United with respect to Plaintiffs claims are not arguably justified by the terms of LOA 05-03M or the CBA. All disputes arising between parties of a collective bargaining agreement are either major or minor. Elgin, Joliet and Eastern Ry. Co. v. Burley, 325 U.S. 711, 722-24 (1945). Major disputes are those related to the formation and modification of a CBA. Id. at 723. Major disputes arise where there is no CBA or where it is sought to change the terms of a CBA. "[Major] disputes look to the acquisition of rights for the future." Id. Minor disputes involve existence of a CBA "already concluded" and "involve controversies over the meaning of an existing collective bargaining agreement in a particular fact situation." Id. "Since they often depend on particularized facts, minor disputes resist a rigid definition." Saridakis v. United Airlines, 166 F.3d 1272, 1276 (9th Cir. 1999) (general focus of this inquiry is the source of the rights at issue).

"Where an employer asserts a contractual right to take the contested action, the ensuing dispute is minor if the action is arguably justified by the terms of the parties' collective-bargaining agreement." Consol. Ry. Corp. v. Ry. Labor Execs.' Ass'n, 491 U.S. 299, 307 (1989). This presumption does not apply if the claim is "obviously insubstantial or frivolous . . . or made in bad faith." Id. at 310. A claim is "arguably justified" if any reasonable arbitrator, applying proper principles of contract interpretation and after reviewing relevant evidence, finds a party's claimed right to take or refrain from taking an action is justified by the CBA. When no reasonable contractual interpretation justifies the claim, the dispute is major. Wheeling & Lake Erie Ry. Co. v. Bhd. of Locomotive Eng'rs & Trainmen, 789 F.3d 681, 692 (6th Cir. 2015).

**1. This Court Has Subject Matter Jurisdiction Under the RLA Because Defendant United's Actions are Not Arguably Justified**

A unilateral implementation by a carrier of a change in an agreement violates the RLA. 45 U.S.C. § 152 Seventh; Consol. Rail, 491 U.S. 299. Plaintiffs plausibly alleged the dispute between the parties is major. Plaintiffs' claims arose during the amendable period of the 2010 CBA, seeking to add new rights to the to be determined joint CBA. The operative CBA expressly stated the grievance procedures cannot add to or alter a CBA, only interpret; there was nothing to interpret in the present case, only add whatever new pension right UAL Mechanics elected. Any assertion by Defendant United the CBA allowed it to unilaterally subvert that election is frivolous and clearly unjustified in light of the express language of the CBA and LOA 05-03M.

**2. Exceptions Apply to Confer Subject Matter Jurisdiction**

Adjustment boards have exclusive jurisdiction to interpret or apply agreements under the RLA, subject to exceptions when the grievance procedures have been repudiated, rendered futile, or tainted by a union's breach of its duty of fair representation. Hawaiian Airlines, Inc. v. Norris, 512 U.S. 246 (1994); Arbaugh v. Y & H Corp., 546 U.S. 500, 511 (2006). Because courts recognize exceptions to RLA arbitral requirement, such a requirement cannot be jurisdictional because "subject matter jurisdiction . . . can never be forfeited or waived." Arbaugh, at 514 (quoting United States v. Cotton, 535 U.S. 625, 630 (2002) ("subject matter jurisdiction cannot be expanded to account for the parties' litigation conduct.")). Plaintiffs are not "opting" to have their claims heard before the court; Plaintiffs meet the tests for this court to exercise jurisdiction.

There are four recognized exceptions to the RLA exclusive jurisdiction - the hybrid exception, the repudiation exception, the Childs exception, and the futility exception; all four apply here. Martin v. Amer. Airlines, Inc., 390 F.3d 601, 607-08 (8th Cir. 2004). The hybrid exception requires allegations of the air carrier acting in concert with a union. Id. at 608. The

repudiation exception applies when an employer allegedly abandons contractually mandated grievance procedures. Martin at 608. The Childs exception applies when a union allegedly breaches its duty of fair representation by causing an employee to lose the opportunity to obtain meaningful relief before the relevant review board. Id. at 609. The futility exception applies when circumstances show administrative review of a claim would prove fruitless. Glover v. St. Louis-S.F. Ry. Co., 393 U.S. 324, 325-27 (1969).

**a. Hybrid**

Plaintiffs have plausibly alleged sufficient facts under the "hybrid" exception. The exception applies when there are good faith allegations and supporting facts supporting indicating concerted and coordinated action between employer and union. Plaintiffs address this argument in Section III. B below.

**b. Repudiation**

"When the employer's conduct amounts to a repudiation of the remedial procedures specified in the contract," a court has jurisdiction to hear the matter. Atkins v. Louisville & Nashville R.R. Co., 819 F.2d 644, 649–50 (6th Cir.1987) (citing Glover, 393 U.S. at 324; Vaca v. Sipes, 386 U.S. 171, 185–86 (1967)); . None of the grievance timelines were followed, none of the proper parties executed and/or carried out the promulgated procedures in the CBA in any reasonable, qualifying fashion, and all Defendants refused Plaintiffs their statutory right to proceed to the board without union support. Therefore, the repudiation exception is applicable.

**c. Childs**

In stands to reason, when a union or a company unfairly and without rational explanation eliminates the arbitration board as an option, this exception applies. Both Defendant United and the union patently refused to let Plaintiffs go to arbitration; the exception applies.

**d. Futility**

The futility exception applies "where the effort to proceed formally with contractual or administrative remedies would be wholly futile. Martin, at 607-08. Here, all defendant parties have decided the issue – the Gleason memo is the decision of the Defendants. The RLA reflects a strong congressional interest in seeing that employees are not left "remediless" and without a forum to present their grievances. Vaca v. Sipes, 386 U.S. 171, 185-86 (1967). Courts must keep both of these congressional objectives in mind, and one should be sacrificed to the other only when there is no realistic alternative. Therefore, when meaningful arbitration is rendered impossible by predisposition or prejudice, courts have been forced to allow employee access to a court because otherwise, an employee would be left without a meaningful remedy. And, an employee should not be required to submit their controversy to persons chosen by the group being criticized. Williams v. Pacific Maritime Association, 617 F.2d 1321, 1328–29 n. 13 (9th Cir.1980). Plaintiffs have met the requisite pleading standard, demonstrating this court has subject matter jurisdiction to hear Plaintiffs' claims.

**B. PLAINTIFFS PLAUSIBLY ALLEGE DISTINCT CLAIMS FOR BREACH OF CONTRACT ANND FOR BREACH OF DUTY OF FAIR REPRESENTATION.**

Defendant United makes an apparent authority argument to explain away its role in Plaintiffs' injuries, arguing it had no duty to correct a bad deal, when it has done "nothing more than having acceded to demands of the union." Def. Mot. at 12. Defendant United did more than accede to the union's requests – Defendant United ignored the express terms of the CBA and participated individually and collectively in the union cover up of abandoning the entirety of the contractual grievance role to that of a single non-employee, non-union member, and outside counsel to the union; such acts go well beyond standing by while a union makes poor choices on behalf of its constituency.

Liability can attach when a party has knowledge of limitations placed on the grant of an agent's authority by the agent's principle. Hines v. Anchor Motor Freight, Inc., 424 U.S. 554 (1976) (employer implicated in dismissal of employees based on false allegations); Glover, 393 U.S. 324 (union unfairly represented its African-American members, employer retained as a defendant). If breach of the duty of fair representation took place in negotiating an agreement, an employer can be independently liable for involvement in the union's breach of such duty. Rakestraw v. United Airlines, Inc., 765 F. Supp 474, 493-494 (N.D. Ill. 1991); Glover, at 331 (exercising jurisdiction where a union had acted in "concert" with an employer to prevent employees from exercising rights under the CBA at issue).

The recent decision in Beckington does not change that analysis. Beckington v. Amer. Airlines, Inc., No. 18-15648, D.C. No 2:17-cv-00328-JJT, (9th Cir. 2019). All parties have a duty to uphold and enforce contractual agreements. 45 U.S.C. § 152 First. "If . . . employees allege that their employer and their union 'acted in concert' to discriminate against them, such that arbitration before a panel of employer and union representatives would be 'absolutely futile,' we have held that the employees can 'circumvent the statutory administrative remedies' and join their breach-of-contract claim against the employer with their breach-of-duty claim against the union in federal court." Beckington, at 22 quoting Bautista v. Pan Am. World Airlines, Inc., 828 F.2d 546, 551 (9th Cir. 1987) (citations omitted). "[P]laintiffs in a hybrid suit may allege collusion as a basis for jurisdiction, collusion is not the basis for liability. Id. The present case is not a scenario where the employer's action is only a consequence of the union's discriminatory conduct. Defendant United's liability stems from its pro-active choices to not enforce and maintain the CBA, including LOA 05-03M and the grievance procedures. Thus, Plaintiffs sufficiently pled a claim for breach of contract against Defendant United for its own obligations

under the RLA and the CBA. While it is true the employer is required to deal and enter into contracts with the duly designated bargaining representatives of its employees, an employer has no right to rely on the appearance of authority of the bargaining agent if it has knowledge to the contrary. Czosek v. O'Mara, 397 U.S. 25 (1970). Plaintiffs' plausibly allege facts Defendant United knew the terms of LOA 05-03M required the vote because of having already litigated the same issue with the pilots and because Defendant United expressly acknowledged the same. Defendant United knew the only authority granted to the union was the ministerial task of holding the stand-alone vote. Defendant United knew abandoning grievance procedures was well beyond the authority entrusted to them, and to the union, by Plaintiffs, and others similarly situated, constituting a breach. Air carrier employees have the right to process a grievance individually. Stevens v. Teamsters Local 2707 etc., 504 F. Supp 322 (W.D. Wash. 1980). When the union told Plaintiffs such a right did not exist, the union did so to trick Plaintiffs into abandoning their complaints; Defendant United knew that was an erroneous statement and yet, they perpetuated the falsehood, failing to initiate a no-fund case when Plaintiffs so requested, constituting individual and separate acts of breach. There may be a factual question as to whether Plaintiffs proof of these facts is sufficient to prevail on a cause of action against Defendant United; however, such allegations are sufficient to meet the pleading burden allowing jurisdiction.

**C. PLAINTIFFS' ERISA CLAIMS SHOULD NOT BE DISMISSED**

Plaintiffs plausibly alleged a claim for plan wide relief based upon liability by Defendant United fiduciary breach of duty as the plan sponsor. By Defendant United's own admissions, through corporate filings and adoption of the Gleason memo, its officers and agents were horse trading with the union in order to reap self-interested financial gain. Defendant United not only illicitly diluted profit-sharing monies held in trust solely for Plaintiffs, Defendant United made

certain amendments to the plan potentially causing damages to the plan, including possible termination. And, Defendant United delayed 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.

**1. Plaintiffs Seek Plan-Wide Relief**

The difference between denial of individual claims and a plan wide mishandling of claims are they 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 Ret. Benefit Plan, 917 F.2d 1184 (9th Cir. 1990). Relief sought must be something directly for the plan. Isola v. Hutchinson, 780 F. Supp 1299 (N.D. Cal. 1991). An "ERISA breach of fiduciary breach claim must be based on facts plausibly alleging a claim beyond his own was mishandled or that 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). Plaintiffs seek this relief.

**2. Breach of Fiduciary Duty**

Defendant United violated specific fiduciary duties owed to Plaintiffs, and others similarly situated, through the systemic, plan-wide discriminatory manner in which Defendant United administered and managed the plan, all contrary to the terms of the plan's documents. 29 U.S.C. §§ 1104(a)(1)(A)-(D). ERISA further provides a "single-employer plan" is *any* employee benefit plan other than a "multi-employer" plan. 29 U.S.C. § 1002(41). A "multiple" employer plan is not a "multi-employer" plan. And, a "multiple" plan, for purposes of participation, vesting, and benefit-accrual rules applicable to pension plans, states such a plan is to be tested under the statute as if all participants are employed by a single employer, as if all such employers

constitute a single employer, as if all participants in the plan are employed by a single employer. 29 U.S.C.§ 1060; 29 C.F.R. § 2530.210. A multiple employer plan is a single employer plan.

An employer in the position of fiduciary can be held liable under ERISA if it significantly and deliberately misleads employees about their benefits. 29 U.S.C. §§ 1104(a)(1)(A)-(D); Varity Corp. v. Howe, 516 U.S. 489 (1996). Claims for breach of fiduciary duty are not required to be submitted to the arbitration board. Air Line Pilots Ass'n Intl v. Northwest Airlines, Inc., 627 F.2d 272 (D.C. Cir. 1980). An employer can breach its fiduciary duty to comply with the plan documents when such employer unilaterally amends plan documents to permit actions barred under a collectively bargained agreement. Delgrosso v. Spang and Co., 769 F.2d 928 (3d Cir. 1985). Plaintiffs' claims are not claims for individual benefits but are instead claims for plan wide relief and can be heard by this court regardless of Defendant United's interpretation of the CBA. Defendant United has misled and misstated the plan and its provisions to Plaintiffs, and others similarly situated, for its own financial self-interest in contravention to plan documents and ERISA rules when Defendant United unilaterally and wrongfully included CAL Mechanics in a profit-sharing pool designated and intended exclusively for UAL Mechanics. Plaintiffs have plausibly alleged facts to prove the same. The failure to enroll Plaintiffs, and others similarly situated, and to not hold the stand-alone option vote likely violates the plan and ERISA rules also

**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, each statute must be scrutinized to see if they are in fact incompatible or can be harmonized. Notwithstanding the policies encouraging arbitration under the RLA, different considerations apply where the worker's claim is based on rights arising from a statute designed to provide other

substantive guarantees. 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 grievance under the RLA to some conclusion. The RLA was enacted for the efficient adjudication of disputes; ERISA to protect interests of participants, ensuring compliance by employers. ERISA provides the proper frame to analyze Plaintiffs' claims because the CBA evidences no such fiduciary duty provisions nor is there an interpretation of the CBA which can conclusively resolve the issues of fact and law raised by Plaintiffs' allegations regarding breaches under ERISA. Therefore, the federal court's original and exclusive jurisdiction over ERISA claims should be exercised in this case and preclude the sole application of the RLA.

**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. Rule 15(a) is designed "to facilitate decision on the merits, rather than on the pleadings or technicalities." United States v. Webb, 655 F.2d 977, 979 (9th Cir. 1981); Fed. R. Civ. P. 15(a). Plaintiffs' request the opportunity to amend.

## 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*