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

KEVIN E. BYBEE, an individual, JOHN R. SCHOLZ, an individual, and SALLY A. DILL, an individual,

on behalf of themselves and all others similarly situated;

Plaintiffs,

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, a labor organization; JAMES HOFFA, in his official capacity as International Brotherhood of Teamsters' President and Representative; PETER FINN, in his official capacity as Teamsters Local 856 Principal Officer; UNITED AIRLINES, INC., a Delaware corporation; and UNITED AIRLINES HOLDINGS, INC., a Delaware corporation;

Defendants.

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

PLAINTIFFS' REPLY TO THE DEFENDANTS INTERNATIONAL BROTHERHOOD OF TEAMSTERS, JAMES HOFFA, AND PETER FINN OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO ADD NEW PARTIES AND ONE NEW CLAIM

Date: September 3, 2020
Time: 10:00 a.m.
Place: Courtroom 11, 19th Floor
Judge: Hon. James Donato

PLAINTIFFS' REPLY TO UNION DEFENDANTS' OPPOSITION

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2 Plaintiffs, Kevin J. Bybee, John R. Scholz, and Sally A. Dill, by and through their attorney
3 of record, submit the following Reply to the Defendants International Brotherhood of Teamsters,
4 James Hoffa, and Peter Finn Opposition to Plaintiffs' Motion to Add New Parties and One New
5 Claim as follows:
6

7 **I. PROCEDURAL HISTORY**

8 Plaintiffs filed a motion to add new parties and one new claim on July 20, 2020. (Docket
9 78). Plaintiffs set the matter for briefing and hearing, with all Defendants' opposition due on
10 August 3, 2020, and any reply by Plaintiffs due on August 10, 2020.
11

12 The Court had previously extended the deadline for Plaintiffs to file the Second Amended
13 Complaint due to personal health issues of Plaintiffs' counsel related to the public health crisis,
14 ordering Plaintiffs' Second Amended Complaint due on July 29, 2020. (Docket 77). Because
15 the deadline of July 29, 2020, would occur prior to completion of briefing and the hearing on the
16 motion to add new parties and one new claim, on July 24, 2020, Plaintiffs filed a motion to extend
17 the time for filing Plaintiffs' Second Amended Complaint (Docket 79). The Court granted the
18 motion to extend time and reset the deadline for Plaintiffs to file the Second Amended Complaint
19 to seven (7) days after the Court issues its order on the motion to add parties and one new claim.
20 (Docket 80).
21

22 All Defendants filed their responses on August 3, 2020. Plaintiffs now reply to Defendant
23 International Brotherhood of Teamsters, Defendant James Hoffa, and Defendant Peter Finn,
24 collectively the "Union Defendants," opposition to Plaintiffs' motion to add new parties and one
25 new claim. Plaintiffs reply to Defendant United Airlines, Inc. and Defendant United Airlines
26 Holdings, Inc. is filed separately.
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1 **II. ARGUMENT**

2 Plaintiffs' motion to add new parties and one new claim should be granted despite the
3 Union Defendants' opposition.

4 **A. Plaintiffs Met the Filing Requirements**

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6 The Plaintiffs disagree Plaintiffs have failed in any requirement under the relevant local
7 court rules or rules of civil procedure. Plaintiffs properly identified the parties Plaintiffs proposed
8 to add to the action in order for the Court to provide complete and final relief. Plaintiffs also
9 alleged sufficient facts to provided notice as to each party's posture as either proposed plaintiff
10 or proposed defendant, and alleged sufficient reasons as why each party's presence was necessary
11 in this action. Similarly, Plaintiffs provided detailed facts and reasoning for the addition of the
12 singular new claim.
13

14 The Union Defendants misconstrue Plaintiffs motion. The motion is not a motion to file
15 an amended complaint - that motion has already been decided by the Court in its April 21, 2020,
16 order, and therefore, local rule 10-1 is inapplicable. Plaintiffs are only moving to add additional
17 parties and one claim by motion per the same order of the Court. Therefore, no amended
18 complaint is required to be attached.
19

20 **B. Addition of the Principal Officer of Each Plaintiff's Local is Not Futile**

21 In the case cited by the Union Defendants, DCD Programs, Ltd. v. Leighton, 833 F.2d
22 183, 186 (9th Cir. 1987), the court stated, "liberality in granting leave to amend is not dependent
23 on whether the amendment will add causes of action or parties. It is, however, subject to the
24 qualification that amendment of the complaint does not cause the opposing party undue
25 prejudice, . . . is not sought in bad faith, . . . and does not constitute an exercise in futility." And,
26 adding the party should be permitted "unless it appears beyond doubt" Plaintiffs' could prove no
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1 set of facts to support addition of the parties. This Court dismissed Plaintiffs' First Amended
2 Complaint without prejudice, permitting Plaintiffs to amend, which implies some belief that the
3 defects in Plaintiffs complaint can be remedied by amendment which, in fact, Plaintiffs will do.
4 Therefore, adding the proposed principal officers to account along with Defendant Hoffa and
5 Defendant Finn, is proper and not futile. Plaintiffs address each of the Union Defendants specific
6 arguments against permitting the addition of the proposed principal officers as defendants in this
7 action in turn.
8

9
10 **1. Breach of Contract Claim Is Permissible**

11 Each proposed individual principal officer is the principal officer of the affiliated local
12 union of the Plaintiffs in this matter and as such is responsible for enacting and enforcing both
13 the international union constitution and the affiliated local unions' bylaws under the principal
14 officers' control. The international union constitution and the affiliated local union bylaws are
15 contracts and violations of these contracts can be addressed by a suit for breach of contract by
16 individual members against the union for breaches. Wooddell v. International Brotherhood of
17 Electrical Workers, Local 71, et al., 502 U.S. 93 (1991); see also Plumbers v. Plumbers Local
18 334, 452 U.S. 615 (1981). The proposed principal officers are party to the respective bylaws to
19 the international union constitution as Plaintiffs alleged in the motion to add. As such, each can
20 and has breached a contract.
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23 **2. The International Brotherhood of Teamsters is the Only Proper Defendant**
24 **under the Breach of the Duty of Fair Representation Claim.**

25 The Court has previously ruled the only proper party to a claim for the breach of the duty
26 of fair representation is the International Brotherhood of Teamsters. Plaintiffs have read and
27 understood the Court's order and would not, therefore, be bringing a breach of the duty of fair
28 representation claim against any proposed principal officer defendant.

1 **3. A Breach of Fiduciary Duty Claim Under LMRDA Section 501 Against**
2 **Individual Union Officers is Appropriate, Permitted, and Not Futile.**

3 The Union Defendants again seek to argue the merits of Plaintiffs' previous complaint.
4 The Court has permitted Plaintiffs to amend their complaint which suggests the defects in
5 Plaintiffs' claims can be remedied by amendment which, as alleged above and again here,
6 Plaintiffs will do. And, the court did not bar Plaintiffs from alleging new and additional facts
7 against Defendant Hoffa or Defendant Finn; the Court did order the fictional entity, Teamsters
8 SFO Local 856/986, be removed from the action and caption, which Plaintiffs have done.

9 Plaintiffs only recently learned that the San Francisco based Plaintiffs, Plaintiff Bybee
10 and Plaintiff Scholz, in fact belong to two separate affiliated local unions, each governed by a
11 distinct principal officer, instead of the previous named Teamsters SFO Local 856/986. Plaintiffs
12 here seek to correct the record and bring the proper parties before the court in adding the proposed
13 principal officers to this action in order to fully and finally resolve their claims.

14 More, the officers named have a specific fiduciary duty under LMRDA 29 U.S.C. § 501
15 and a breach of those duties provides for a cause of action by a union member under LMRDA 29
16 U.S.C. § 501(b). In fact, the duty extends to the organization as a whole as well as to the members.
17 In Services Employees International Union v. National Union of Healthcare Workers, the court
18 held § 501 of the LMRDA "create[d] a fiduciary duty to the union as an organization, not merely
19 the union's rank-and-file members." 718 F.3d 1036, 1045 (9th Cir. 2013).

20 The technical procedural requirements to filing a LMRDA 29 U.S.C. § 501(b) have been
21 interpreted differently to determine what constitutes an adequate request under the statute. Where
22 the constitution and the bylaws of the union do not provide any adequate internal remedy or any
23 remedy at all, this may excuse the exhaustion requirement prior to filing a claim for breach of
24 the fiduciary duty under LMRDA § 501(b). The international union constitution in this case

1 excludes such controversies. The Supreme Court, in NLRB v. Marine Workers, held "there
2 cannot be any justification to make the public processes wait until the union member exhausts
3 internal procedures plainly inadequate to deal with all phases of the complex problem concerning
4 employer, union, and employee member." 391 U.S. 418, 425 (1968) (citations omitted). And,
5 the exercise of the court's discretion to "require, or . . . not require, the exhaustion of internal
6 union remedies prior to court intervention depends upon the reasonableness of such requirements
7 in terms of the facts and circumstances of a particular case." Id. at 428.

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9 Any requirement Plaintiffs must exhaust intraunion remedies as a condition precedent to
10 the bringing of this claim should be excused because the international union constitution does
11 not expressly provide a procedure available to Plaintiffs reasonably calculated to redress the
12 particular grievances Plaintiffs complain of nor was any intraunion remedy clearly called to
13 Plaintiffs' attention by any union official at any time throughout this process to do so.

14
15 Lastly, in Stelling v International Brotherhood of Electrical Workers, the court declared
16 §501, which permits action to be taken against any officer, agent, shop steward, or representative
17 of any labor organization, establishes union officials have fiduciary duties even if no monetary
18 interest of the union is involved. 587 F.2d 1379 (9th Cir. 1978). And, where union officers failed
19 to disclose information to the membership, where the thrust of the action was the officers acted
20 in secret, failed to disclose, failed to process grievances, and failed to conduct union affairs by
21 union officers in a position of trust as required by law, the court concluded "that is what § 501
22 by its very language is all about." Richardson v National Post Office Mail Handlers, 442 F. Supp
23 193 (E.D. Va. 1977). Plaintiffs claim under LMRDA § 501 is not futile.

24
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26 **4. Proposed Principal Officers are Knowing Participants in ERISA Breaches.**

27 The proposed principal officer defendants can be knowing participants in ERISA
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1 breaches. A claim for plan wide relief may be brought against any defendant, including non-
2 fiduciaries. Harris Trust & Sav. Bank v. Salomon Smith Barney, Inc., 530 U.S. 238, 251 (2000).
3 Courts allow plaintiffs to sue non-fiduciaries for "knowing participation" in breaches of fiduciary
4 duties established by ERISA § 404(a). Participation means "affirmative assistance, or a failure
5 to act when required to do so, enabling a breach [of fiduciary duty] to proceed." Rutledge v.
6 Seyfarth, Shaw, Fairweather & Geraldson, 201 F.3d 1212, 1220 (9th Cir. 2000). Each of the
7 proposed principal officers failed to act and enabled breaches to proceed. More importantly, the
8 Union Defendants continue to argue the merits of Plaintiffs' claims from the First Amended
9 Complaint that Plaintiffs are permitted to amend and will do.

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12 **C. Statutory Due Process Claim is Viable Against All Defendants**

13 Plaintiffs properly alleged this claim against all Defendants and stated as much in the
14 motion to add. Plaintiffs provided facts and a legal standard to support those facts in the motion
15 to add. The Union Defendants do not challenge or refute any of the legal authorities provided in
16 Plaintiffs' moving papers and such failure to do so is a concession on their part of the accuracy
17 and validity of such assertions since the authorities set forth are indefensible. Plaintiffs request
18 to add this singular claim, therefore, is not futile and should be granted.

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20 **III. CONCLUSION**

21 For all these reasons stated herein, Plaintiffs request the Court grant Plaintiffs' motion for
22 leave to add new parties and to add one new claim.

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24 Date: August 10, 2020

Respectfully submitted,

25 JANE C. MARIANI
Law Offices of Jane C. Mariani

26 By: /s/ Jane C. Mariani
27 JANE C. MARIANI

28 *Counsel for Plaintiffs Kevin E. Bybee, et al*

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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on August 10, 2020, 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.

Date: August 10, 2020

Respectfully submitted,

JANE C. MARIANI
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By: /s/ Jane C. Mariani
JANE C. MARIANI

Counsel for Plaintiffs Kevin E. Bybee, et al.