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UNITED STATES DISTRICT COURT CALIFORNIA

FOR THE NORTHERN DISTRICT OF CALIFORNIA

AT SAN FRANCISCO

KEVIN E. BYBEE, JOHN R. SCHOLZ, VICTOR DRUMHELLER, and SALLY A. DILL, as individuals and plan participants in The Continental Retirement Plan; on behalf of themselves and all others similarly situated; and on behalf of the Continental Retirement Plan

Plaintiffs,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, a labor organization; JAMES HOFFA, in his official capacity as General President of the International Brotherhood of Teamsters; PETER FINN, in his official capacity as Principal Officer of Teamsters Local 856; CHRISTOPHER GRISWOLD, in his official capacity as the Principal Officer of Teamsters Local 986; PAUL STRIPLING, in his officical capacity as Principal Officer of Teamsters Local 781; GEORGE MIRANDA, in his official capacity as Principal Officer of Teamsters Local 210; UNITED AIR LINES, INC., a Delaware corporation; UNITED AIRLINES HOLDINGS, INC., a Delaware corporation; the UNITED AIRLINES HOLDINGS' ADMINISTRATIVE COMMITTEE, named fiduciary of The Continental Retirement Plan.

Defendants.

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

UNION DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT FOR FAILURE TO STATE A CLAIM AND LACK OF SUBJECT MATTER JURISDICTION

[F.R.C.P. §§ 12(b)(6) and 12(b)(1)]

Hearing Date:	February 4, 2021
Hearing Time:	10:00 a.m.
Courtroom:	11, 19th Floor
Judge:	Hon. James Donato
Complaint Filed:	October 31, 2018
Trial Date:	Not set.

NOTICE OF MOTION AND MOTION TO DISMISS

TO: PLAINTIFFS AND THEIR ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that February 4, 2021, at 10:00 a.m. or as soon thereafter as counsel may be heard in Courtroom 11, 19th Floor, of the above-entitled Court, located at 450 Golden Gate Avenue, San Francisco, California, 94102, Defendants INTERNATIONAL BROTHERHOOD OF TEAMSTERS; JAMES HOFFA; PETER FINN; CHRISTOPHER GRISWOLD; PAUL STRIPLING and GEORGE MIRANDA will move this Court for an order dismissing Plaintiffs' claims with prejudice pursuant to Rule 12(b)(6) and 12(b)(1) of the Federal Rules of Civil Procedure. This Motion is based upon this Notice of Motion, Motion and Memorandum of Points and Authorities, the Declarations of Nicolas Manicone and all other pleadings and papers presently on file with the Court, and any other evidence that the Court may allow before or at hearing.

Dated: November 20, 2020

BEESON, TAYER & BODINE, APC

By: */s/ Susan K. Garea*
SUSAN K. GAREA
Attorneys for INTERNATIONAL BROTHERHOOD OF TEAMSTERS; JAMES HOFFA; PETER FINN; CHRISTOPHER GRISWOLD; PAUL STRIPLING and GEORGE MIRANDA

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs' Second Amended Complaint ("SAC") fail to cure the deficiencies in the First Amended Complaint ("FAC") and all claims should be dismissed without leave to amend. Plaintiffs have added significantly more length mostly comprising inflammatory and false conclusory allegations unsupported by any alleged facts. Plaintiffs' claims against their Union, the International Brotherhood of Teamsters (the "IBT"), remain time-barred and Plaintiffs have failed to plead a breach of the Duty of Fair Representation ("DFR").

Plaintiffs' DFR claims have a six-month statute of limitations. Plaintiffs continue to ignore this statute of limitations and plead claims based on contract negotiations that led to a collective bargaining agreement that was ratified by the membership in December 2016 approximately two years before the filing of the original complaint. Plaintiffs can present no evidence that this conduct falls within the applicable six-month limitations period.

Plaintiffs continue to forward time-barred and meritless claims against the IBT for refusing to process their grievances. Plaintiffs allege that in 2011, United Airlines ("UAL") breached a collective bargaining agreement ("CBA") by failing to enroll its mechanics in the Continental Airlines Retirement Plan ("CARP"), and that the IBT refused to pursue Plaintiffs' grievances filed six years later in 2016. The IBT thoroughly investigated the grievances and retained a veteran labor lawyer who provided a 20-page legal opinion concluding that the grievances were meritless and untimely. The IBT exercised its judgment to withdraw the grievances. Plaintiffs admit that the IBT provided its judgment that the grievances lacked merit and advised each of the original named Plaintiffs that the grievances were withdrawn more than seventeen months before filing this lawsuit.

The remaining causes of action similarly fail. Plaintiffs improperly sue the principal officers of IBT and various Teamsters locals for breach of fiduciary duty under section 501 of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §§ 401 *et seq*. ("LMRDA"). Section 501 requires union officers to manage a union's money appropriately. As this Court previously held, Plaintiffs have alleged no facts constituting a breach of fiduciary duty claim. The allegations regarding grievance handling have nothing to do whatsoever with the fiduciary obligations of the

LMRDA. Further, despite amendment, Plaintiffs still fail to comply with the jurisdictional prerequisites to bringing a 501 claim, including demanding relief from the unions and applying to the court for leave to file their claim. Having failed to satisfy these prerequisites, this Court has no jurisdiction over Plaintiffs' 501 claims. This Court also previously dismissed Plaintiffs' claims based in the Employee Retirement Income Security Act ("ERISA") as preempted by the Railway Labor Act ("RLA"). The claims require interpretation of the applicable CBA to determine whether Plaintiffs should have been enrolled as alleged. Plaintiffs have not cured these defects.

II. STATEMENT OF FACTS

Plaintiffs are mechanics employed by Defendant UAL. SAC ¶¶ 44-52. In 2002, UAL filed for bankruptcy and its single-employer defined benefit pension plans were terminated. *See* SAC ¶ 79. UAL negotiated a bankruptcy exit agreement with Plaintiffs' former collective bargaining representative, referred to as LOA 05-03, that modified the then-existing CBA. SAC ¶ 81. LOA 03-05 contains a "me too" provision stating, "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." *See* Exhibit A to the Nicholas Manicone Declaration submitted in support of Union Defendants' Mtn to Dismiss the FAC, hereinafter "Manicone Declaration I," Dkt. No. 44-1;[1] SAC ¶ 128.

UAL mechanics elected the IBT as their union representative in 2008. SAC ¶ 228. In 2010, UAL merged with Continental Airlines ("Continental"). Continental provided CARP, a defined benefit pension plan, for its mechanics. SAC ¶ 161. SAC ¶ 66. Plaintiffs allege that UAL's duties under the LOA were triggered upon this merger. SAC ¶ 147. In December 2011, the IBT and UAL reached agreement for a new CBA with a term of 2010-2013 which was ratified by the membership. *See* SAC ¶¶ 103, 180. Under the 2010-2013 CBA, UAL mechanics remained in the defined

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[1] Where documents are submitted in support of a motion to dismiss under Rule 12(b)(6) to shed light upon allegations in the complaint, they are properly considered and the court may rely upon them in deciding the motion to dismiss. *Watterson v. Page*, 987 F.2d 1, 4 (1st Cir. 1993) (courts may give consideration to "documents the authenticity of which are not disputed by the parties; for official public records; for documents central to plaintiff's claim; or for documents sufficiently referred to in the complaint.") *See also Cortec Indus. v. Sum Holding*, 949 F.2d 42, 47-48 (2d Cir. 1991).

contribution retirement plan and did not enroll in CARP. SAC ¶ 52. In 2015, the UAL mechanics were presented with a tentative agreement for a new CBA that provided a vote among UAL mechanics on whether to move to CARP or remain in the defined contribution plan. The members overwhelmingly rejected this tentative agreement. SAC ¶¶ 302-10. In December 2016, the union membership ratified a revised tentative agreement, resulting in a new Joint CBA covering the UAL and Continental operations, with a term of 2016-2022. SAC ¶ 373.

Plaintiffs Scholz and Bybee are employed by UAL at San Francisco International Airport. SAC ¶¶ 11-13. In 2016, six years after they allege UAL breached the 2010-2013 CBA by denying them rights under LOA 05-03M, Plaintiffs filed grievances. SAC ¶¶ 48, 350, 359, 366.

The IBT retained attorney Ed Gleason to evaluate the LOA 05-03M grievances and render a legal opinion on the merits. SAC ¶ 381. Gleason rendered a 20-page legal opinion to the IBT. A copy of the Gleason memo and a cover memo from Manicone is attached as Exhibit B to Manicone Declaration I, Dkt. No. 44-2. The legal memo thoroughly reviews both the facts and the law surrounding Plaintiffs' grievances. Gleason recommended against the IBT arbitrating the grievance. He summarized his findings that an arbitrator would likely conclude:

- The grievance is untimely by several years.
- [LOA]'s obligations attach only to pre-Merger United.
- Even if [LOA]'s obligations otherwise attach to post-Merger, *i.e.,* new United, the conditions giving rise to those obligations were not triggered. In this regard, LOA's obligations are triggered if the Company maintains or establishes single-employer defined benefit plan for any of its work groups. Here, CARP does not trigger [LOA]'s obligations because the CARP is a "multiple-employer defined benefit pension plan," not a single-employer defined benefit pension plan. Moreover, although the Continental pilots' frozen defined benefit plan likely is a single-employer pension plan, the fact that it has been closed to new participants and has not provided any pension accruals since it was frozen in 2005 makes it exceedingly unlikely that an arbitrator would conclude that that plan is one this is "maintained" by the Company within the meaning of [LOA].
- Even if its obligations otherwise attach to post-merger, *i.e.,* new United, [LOA] does not specify when or how those obligations must be satisfied. Here, an arbitrator likely would conclude that new United satisfied its obligations under [LOA] when it made the CARP available to the United mechanics effective on January 1, 2017 through its October, 2015 close-out proposal, which the membership rejected by an overwhelming majority vote, or when it agreed to make the CARP available to them effective January 1,2017 in the now ratified JCBA [Joint United-Continental Collective Bargaining Agreement].

Manicone's March 29, 2017, cover memo states, "I have reviewed [the Gleason] memorandum and agree with its reasoning and conclusion. Accordingly, I have advised the IBT-AD

[Airline Division] that the grievance should be withdrawn." On or about March 31, 2017, Scholz received the Gleason memo and showed it to Bybee. SAC ¶¶ 392, 399. Plaintiffs disagreed with the conclusions that the grievances were "meritless and untimely." SAC ¶ 400. IBT withdrew the LOA-05-03 grievances with prejudice. SAC ¶ 401.[2] In mid-July 2017, Plaintiffs Scholz and Bybee requested to be permitted to take their grievances forward individually. SAC ¶ 404. On August 4, 2017, the IBT rejected that request. SAC ¶ 495. On August 9, 2017, Plaintiff Scholz received a written confirmation from Manicone stating "the grievance had [no] merit" and that "Plaintiffs could not grieve on behalf of a group." SAC ¶ 409. Manicone's August 9, 2017, letter is attached as Exhibit D to the Manicone Declaration I.[3]

III. ARGUMENT

A. Plaintiffs Fail to State a Claim for Breach of the DFR (Count II)

1. Plaintiffs' DFR Claims are Untimely

A DFR claim brought under federal labor law is subject to a six-month statute of limitations. *DelCostello v. Int'l Bhd. of Teamsters*, 462 U.S. 151, 169 (1983); *Kelly v. Burlington N. R. Co.*, 896 F.2d 1194 (9th Cir. 1990). Courts routinely dismiss complaints where, on the face of the pleadings, the claims fall outside the applicable limitations period. *See, e.g.*, *Teamsters Local 617 Pension & Funds v. Apollo Group, Inc.*, 633 F.Supp.2d 763, 779 (D. Ariz. 2009) ("If the expiration of the applicable statute of limitations is apparent from the face of the complaint, it is well settled that the defendant may raise that defense in a Rule 12(b)(6) motion to dismiss") (internal quotations and alterations omitted); *see also In re Perry*, No. 19-07731 JAK, 2020 U.S. Dist. Lexis 153770, *18 (C.D. Cal., Apr. 9, 2020). Here, Plaintiffs filed their initial complaint on October 3, 2018. Thus, Plaintiffs' DFR claims are time barred if their cause of action arose before April 2, 2018.

Plaintiffs allege that the IBT engaged in unlawful conduct leading up to the 2016 Joint Agreement. *See, e.g.,* SAC ¶ 212 (sCO mechanics allegedly began unlawfully participating in a profit sharing plan in 2010); ¶¶ 245-47 (in 2008, IBT's outside counsel allegedly misstated the applicable

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[2] In the FAC, Plaintiffs allege that Plaintiff Scholz "received Plaintiff Beier's closeout letter on April 20, 2017." FAC ¶ 141. This allegation is absent from the SAC. A copy of Manicone's April 17, 2017, "closeout" letter is attached as Exhibit C to Manicone Declaration I.

[3] Newly added plaintiff Victor Drumheller alleges that he filed a grievance in November 16, 2016, and it was "rejected out of hand" and was not processed. SAC ⁋ 366.

prohibition on a defined benefit plan); ¶¶ 270-73 (IBT allegedly promoted its interests and the interests of certain third-party vendors prior to the 2016 Joint Agreement). But Plaintiffs acknowledge that the Joint Agreement was ratified on December 5, 2016. SAC ¶ 378. All of this conduct thus occurred before April 2, 2018, and therefore falls outside of the applicable limitations period. Plaintiffs' DFR claims related to the Joint Agreement must be dismissed.

Plaintiffs' DFR claims also relate to the 2017 Gleason memorandum and the accompanying decision to not pursue Plaintiffs' grievances. *See*, *e.g.* SAC ¶¶ 340-41 (Plaintiff Scholz allegedly learned of an arbitration decision related to United pilots in September 2016); ¶ 405 (IBT in-house counsel alleged made a misrepresentation to Plaintiff Scholz on August 4, 2017); ¶ 409 (in 2017, IBT in-house counsel allegedly opined that grievances had no merit). All of those decisions thus also occurred well outside of the applicable limitations period.

For these reasons alone, Plaintiffs' DFR claims must be dismissed as untimely.

2. Even if Timely, Plaintiffs' DFR Claims Fail on Their Merits

Assuming *arguendo* that Plaintiffs' DFR claims were timely (they are not), they otherwise fail on their merits. A union only breaches its duty of fair representation if "its actions are either arbitrary, discriminatory, or in bad faith." *Beckington v. Am. Airlines, Inc.*, 926 F.3d 595, 600 (9th Cir. 2019) (internal quotations and citations omitted). "Mere negligence on the part of the union does not constitute a breach of duty." *Peterson v. Kennedy*, 771 F.2d 1244, 1253 (9th Cir. 1985). Relatedly, "[g]ood faith errors in judgment do not constitute a breach of duty because unions must retain wide discretion to act in what they perceive to be their members' best interests." *Thompson v. Permanente Med. Group, Inc.,* No. 12-1301 EMC, 2012 U.S. Dist. LEXIS 171496, *12-13 (N.D. Cal. Dec. 3, 2012) (internal quotations omitted); *see also Peterson*, 771 F.2d at 1254 ("In all cases in which we found a breach of the duty of fair representation based on a union's arbitrary conduct, it is clear that the union failed to perform a procedural or ministerial action, that the act in question did not require the exercise of judgment and that there was no rational and proper basis for the union's conduct.").

The Union's decision not to pursue Plaintiffs' grievances was hardly arbitrary, discriminatory, or in bad faith. The 20-page 2017 Gleason memorandum spells out in great detail why the grievances were both untimely and meritless. *See* Dkt. No. 44-2. Plaintiffs disagree with this conclusion, but that

does not make the Union's decision to not to proceed with the grievances a violation of the duty of fair representation. To the contrary, reliance on a well-reasoned legal opinion defeats a DFR claim, given the wide discretion afforded to unions in determining whether to pursue a grievance. *See*, *e.g.*, *Vaca v. Sipes*, 386 U.S. 171, 191 (1967) ("Though we accept the proposition that a union may not arbitrarily ignore a meritorious grievance or process it in perfunctory fashion, we do not agree that the individual employee has an absolute right to have his grievance taken to arbitration…."); *Nat'l Ass'n of Letter Carriers*, 347 N.L.R.B. 289, 289-90 (2006) (no DFR where the union reasonably relied upon advice of counsel); *see also Peterson*, 771 F.2d at 1254 ("We have never held that a union has acted in an arbitrary manner where the challenged conduct involved the union's judgment as to how best handle a grievance."); *Fountain v. Safeway Stores, Inc.* 555 F.2d 753, 756-76 (9th Cir. 1977) (union's decision to not proceed with a "bad case" is not a breach of the duty of fair representation).

Relatedly, Plaintiffs' allegations regarding the IBT's conduct leading up to the 2016 Joint Agreement fail to demonstrate conduct that was arbitrary, discriminatory, or in bad faith. The Supreme Court has made clear that a union's actions in negotiations are arbitrary only "if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside of a wide range of reasonableness … as to be irrational." *Air Line Pilots Ass'n v. O'Neill*. 499 U.S. 65, 67 (1991) (internal quotations and citation omitted); *see*, *e.g.*, *id.* at 78 ("Congress did not intend judicial review of a union's performance to permit the court to substitute its own view of the proper bargain for that reached by the union."). Here, Plaintiffs' allegations suggest that, at most, the Union recommended certain pension plans and third-party vendors during the course of negotiations. Plaintiffs generally protest the deal struck by the Union, but that does not render the 2016 Joint Agreement "irrational" and thus simply does not rise to a violation of the duty of fair representation. Indeed, Plaintiffs' own allegations demonstrate that the Union advocated strenuously in order to obtain a contract that protected its members' interests. *See, e.g.*, SAC ¶ 283 ("The Teamsters blamed United for anemic contract proposals and United blamed the Teamsters for not countering to the United proposal…."). Perhaps most damning to Plaintiffs' complaints regarding the 2016 Joint Agreement is that it was presented to the Union membership for a vote and was ratified. SAC ¶ 378;

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see Rakestraw v. United Airlines, Inc., 981 F.2d 1524, 1534 (7th Cir. 1992) ("Adult pilots, of sound mind and aware of the consequences of their acts, must expect to keep their contracts, even when they wish they could have made better deals."). Plaintiffs' allegations are lengthy, but they fail to *plausibly* connect the Union Defendants' conduct with any illegal behavior regarding the 2016 Joint Agreement. Even if Plaintiffs alleged the "sheer *possibility* that [the Union] has acted unlawfully," the allegations in the SAC do not rise to the plausibility requirement required to survive a motion to dismiss. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (emphasis added).

B. Plaintiffs' Claim for Violation of the Railway Labor Act Must Be Dismissed (Count III)

Plaintiffs attempt to allege a separate cause of action under the Railway Labor Act, 45 U.S.C. §§ 151 *et seq*. ("RLA"), against the IBT[4] based on Plaintiffs' assertion that the RLA provides them a statutory right to individually arbitrate disputes over the interpretation of a collective bargaining agreement. There is no legal support for Plaintiffs' claims.

Section 184 of the RLA provides no private right of action against a union. It does not exist in the statute and has not been written in by the courts. To the extent that union members are dissatisfied with their union representation – including their union's decision not to pursue a grievance to arbitration – members may challenge that through a claim for breach of the DFR.[5]

Moreover, as this Court has held, Plaintiffs' suit is based on allegations that the United Defendants breached the CBA. This is foreclosed. Under the RLA, "minor disputes" which involve the interpretation or application of a CBA are exclusively within the jurisdiction of Adjustment Board and this Court has no jurisdiction over them. 45 USC § 184; *Hawaiian Airlines, Inc. v. Norris,* 512 U.S. 246, 252-53 (1994); *Alaska Airlines, Inc. v. Shurke*, 898 F.3d 904, 920-921 (9th Cir. 2018).

Plaintiffs' theory would undermine the entire structure of the RLA and role of the IBT as the exclusive representative which, ultimately, would destroy the underpinnings of the DFR. If Plaintiffs

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[4] Plaintiffs appear to bring this claim against all "Union Defendants." SAC ⁋ 516. Plaintiffs have not alleged any facts establishing that the named individual officers took any action relevant to this claim or could be held liable. Individual officers are not individually liable for claims against the union. *See Atkinson v. Sinclair Refining Co*., 370 U.S. 238 (1962); *Coleman v. S. Wine & Spirits of Cal., Inc.*, No. 11-00501 SC, 2011 U.S. Dist. LEXIS 131173, at *4 (N.D. Cal. Nov. 14, 2011).

[5] Plaintiffs again attempt to repackage their DFR claim against the IBT. These claims are time-barred and otherwise without merit as discussed above. The IBT made a reasoned determination that it was unlikely to prevail. The IBT relied on a 20-page legal memorandum from a skilled and seasoned labor and benefits attorney outlining four separate legal basis supporting his conclusion.

were given a statutory right to pursue contract grievances, they would supplant the IBT and become the unelected and unaccountable representatives of the bargaining unit. Indeed, it is contrary to the IBT Constitution which affirms that members authorize their union to act as their exclusive bargaining representative and the union has "final authority in presenting, processing and adjusting any grievance." Declaration of Nicolas Manicone ISO Union Defendants' Motion to Dismiss the SAC (hereinafter "Manicone Declaration II,") Exhibit A, IBT Constitution, Art. XIV, Section 3.

C. Plaintiffs' Claims Against Hoffa, Finn, Griswold, Stripling and Miranda for Breach of Fiduciary Duty Under Section 501 of the LMRDA Must Be Dismissed (Count IV)

1. The LMRDA Fiduciary Duty Standard

Section 501(a) of the LMRDA imposes fiduciary obligations on Union officers as follows:

> The officers . . . of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization.

29 U.S.C. § 501(a). A union member may bring a 501 claim only "to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization." *Id.* § 501(b). The thrust of a section 501 claim must be the misuse of union assets with a remedy of returning such assets to the union, not damages or relief for Plaintiffs.

2. There Is No Individual Officer Liability for DFR Claims

It is settled black letter Supreme Court law that individual union officers are not liable for breach of DFR claims. Such claims lie against a union, not against its individual officers. In *Atkinson v. Sinclair Refining Co.*, 370 U.S. 238 (1962) (overruled on other grounds), the Supreme Court held that individual damage claims may not be maintained against union officials for acts undertaken on behalf of the union. *See also Coleman v. S. Wine & Spirits of Cal., Inc.*, No. 11-00501 SC, 2011 U.S. Dist. LEXIS 131173, at *4 (N.D. Cal. Nov. 14, 2011) ("[A] number of cases have held that individual officers, employees, and members of a union cannot be held liable for breaches of fair representation

committed by their union.") (citing *Peterson v. Kennedy*, 771 F.2d 1244, 1257 (9th Cir. 1985)). The breach of fiduciary duty claims against the individual principal officers based on allegations of failing to adequately represent plaintiffs must be dismissed.

The gravamen of Plaintiffs' claims against the individual officers are restyled DFR claims against the IBT. Plaintiffs literally plead that the individual officer defendants breached their fiduciary duties by failing to adequately represent Plaintiffs. *See, e.g.*, SAC ⁋ 529 ("Each individual union Defendant officer breached their respective fiduciary duties to the Plaintiffs and the Class by unreasonably failing to enforce all agreements entered into between the employer and their members."); ⁋ 530 ("Each individual union Defendant officer breached their respective fiduciary duties . . . by . . denying improper conduct of business agents, appointed negotiators, and other under their individual control and supervision whose decisions were hostile and averse [sic] to the interests of the Plaintiffs and the Class. . . "); ⁋ 531 ("Hoffa violated the Teamsters oath of office and its constitution by failing to bargain in good faith"); ⁋ 548 ("Each individual union Defendant officer breached their respective fiduciary duties to the Plaintiffs and the Class by unreasonably failing to give adequate representation arising out of the collective bargaining agreement"); *see also* ⁋⁋ 523, 536, 538, 539, 544, 546, 547, 549, 551, 552. Plaintiffs attempt to bring claims against individual officers for breach of the DFR has been squarely rejected by the U.S. Supreme Court. No allegation relating to the Union's DFR can be the basis for a breach of fiduciary duty claim against any officer.

3. Plaintiffs' DFR Claims Against the Local Principal Officers Must Be Dismissed; the SAC Is Devoid of Any Factual Allegations Establishing a Claim

This Court granted the motion to dismiss Plaintiffs' claims in the FAC against Hoffa and Finn for breach of fiduciary duty reasoning, "[T]he claim is entirely too vague to give the notice required under Rule 8." Order, Dkt. 73, at p. 7. The Court went on to note, "Not only that, the rest of the FAC – containing plaintiffs' factual allegations – barely mentions Hoffa or Finn at all." (Id.) Plaintiffs fail to cure these deficiencies; in fact, they are magnified. The Plaintiffs greatly expand the length of the complaint and the number of officers sued, but offer no more specificity to their claims and include no factual allegations that could constitute a breach of fiduciary duty.

Plaintiffs make vague allegations against "the individual Principal Officer Defendants"

without ever identifying which Principal Officer allegedly did what to whom or when. *See* SAC ¶¶ 522 – 552 (LMRDA claim pled and, apart from allegations against Hoffa, fails to identify a single action taken by an individual principal officer.)

In the entire 111-page complaint, Peter Finn's name is mentioned a total of fourteen times. Six times the references are simply to identify Peter Finn as the principal officer of Teamsters Local 856 and describe the location of his office and duties. SAC ¶¶ 37, 41, 43, 232, 239. One time alleges that Finn has selected some members from his local to serve on the negotiation committee. SAC ⁋ 167. One time alleges that Finn "conducted 'roadshows' to promote ratification of the 2010 [CBA] to the membership." SAC ¶ 181. Three times the reference is in connection to an allegation that Scholz emailed Finn regarding his grievance and that Finn failed to respond adequately in 2016. SAC ¶ 337. Two references are in regard to the allegation that Finn did not notify Bybee regarding the status of his grievance. SAC ¶¶ 365, 399. The final reference is the statement that Plaintiffs bring a claim against Finn for breach of fiduciary duty. SAC ¶ 523. Assuming that every single one of these allegations is true, they do not establish any breach of fiduciary duty. This Court has already dismissed this claim against Finn and Plaintiffs have included no additional allegations that could support a different outcome.

Christopher Griswold's name is mentioned a total of fifteen times in the SAC. Seven times the references identify Griswold as the principal officer of Teamsters Local 986 and describe the location of his office and duties. SAC ¶¶ 38, 41, 43, 232, 239. One time is to identify him as the brother of Clacy Griswold. SAC ¶ 166.[6] One time alleges that Griswold has selected some members from his local to serve on the negotiation committee. SAC ¶ 167. One reference alleges that Griswold "conducted 'roadshows' to promote ratification of the 2010 [CBA] to the membership." SAC ¶ 181. Two references are in connection with an allegation that Griswold ruled on internal union charges against James Seitz in 2013. SAC ¶¶ 258-259.[7] Two are references to allegations that Griswold did

[6] The SAC also includes references to Clacy Griswold who is referred to as "Griswold," whereas Christopher Griswold is referred to as "Defendant Griswold."

[7] James Seitz is not a plaintiff in this lawsuit. The lawsuit does not allege any claims related to these internal union charges and Plaintiffs have no standing to assert any such claim. Further, there was no exhaustion of internal remedies, and any such claim is time-barred. *Masters v. Screen Actors Guild*, No. 04-2101 SVW, 2004 U.S. Dist. LEXIS 27297 at *23-27 (C.D. Cal. Dec. 8, 2004) (two-year statute of limitations for LMRDA claims); *see* Manicone Decl. II, Exh. A (Art. XIX, Sec. 13.)

not respond to inquiries from Scholz or Bybee. SAC ¶¶ 337, 399. One is a reference to a statement about Griswold. SAC ¶ 393. The final reference is the statement that Plaintiffs bring a claim against Griswold for breach of fiduciary duty. SAC ¶ 523. Assuming that every single one of these allegations is true, they do not establish any breach of fiduciary duty.

Paul Stripling and George Miranda's names are each mentioned a total of fourteen times. Seven times the references identify them as the principal officer of Teamsters Locals 781 and 210, respectively, and describe their office location and duties. SAC ¶¶ 39, 40, 41, 43, 232, 239. One time alleges that Stripling and Miranda have selected some members from their locals to serve on the negotiation committee. SAC ¶ 167. Three times reference alleged statements by Stripling regarding contract negotiations such as that Hoffa and the lead negotiators did not believe that the members understood a contract proposal in 2016 and that he hoped members would approve a contract proposal and that "TeamCare" would be reworked. SAC ¶ 312. Two references are in connection to allegations that Plaintiff Dill was not adequately apprised of the status of her grievance by Stripling. SAC ¶¶ 351, 422. Four references regard the allegation that Miranda failed to process Plaintiff Drumheller's grievance. SAC ¶¶ 367, 431. One reference is regarding a statement allegedly recently made by Miranda to a business agent regarding cancellation of systems boards due to the pandemic. SAC ¶ 432. The final reference is the statement that Plaintiffs bring a claim against Stripling and Miranda for breach of fiduciary duty. SAC ¶ 523. Assuming that every single one of these allegations is true, they do not establish any breach of fiduciary duty.

Plaintiffs' attempt to state claims for breach of fiduciary duty against these local officers wholly fail. They are hollow, conclusory allegations.

4. <u>The Allegations Against Hoffa Are Too Vague to State a Claim</u>

The SAC strategically slips between factual allegations against unnamed "Teamsters officials" or "Teamsters" in the body of the complaint to naming Hoffa directly in Count IV. *Compare* SAC ¶¶ 290-292 *with* SAC ¶ 535. Absent everywhere, however, is any specificity as to what is being alleged. For example, the SAC states, "Hoffa . . . improperly solicit[ed] things of value from the company in the extensive TeamCare solicitation availability on company property. . . ." SAC ¶ 532. The allegation is nonsensical. It also neglects to allege what "things of value" were

allegedly solicited, when they were allegedly solicited or any details of the alleged solicitation. The SAC states, "Hoffa received gifts, overseas golf trips, parties, in exchange for participating in and allowing other officers and employees to participate in, fiduciary breaches involving members health care options, pension plan options, grievance prevention, and diversion of dues money . . . ." SAC ¶ 535. These allegations are, again, too vague to be sufficiently pled. Plaintiffs fail to allege who provided these gifts, when they were provided, what was provided and what the "gifts" were provided in exchange for.

The complaint fails to meet the basic pleading standard of Rule 8. While the Court must accept material factual allegations as true, pleadings that contain "no more than conclusions are not entitled to the assumption of truth." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009); *see also Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir. 1998) ("conclusory allegations . . . and unwarranted inferences" are insufficient). The allegations against Hoffa amount to conclusory allegations and unwarranted inferences devoid of factual basis. Further, Plaintiffs have failed to establish that any of these allegations fall with the statute of limitations.

5. Plaintiffs' LMRDA Claims Are Time-Barred

None of Plaintiffs claims against any individual officer are based solely upon "an internal dispute not directly related in any way to collective bargaining or dispute settlement under a collective bargaining agreement." *Reed v. United Transp. Union*, 488 U.S. 319, 329 (1989). Plaintiffs' claims relate to representation or collective bargaining and are subject to a six-month statute of limitations. *Walls v. Int'l Longshoremen's & Warehousemen's Union, Local 23*, 10 Fed. Appx. 485, 488 (9th Cir. 2001) (applying six-month statute of limitations to LMRDA claim regarding dispute over joint union-employer hiring hall). Plaintiffs' claims against the individual officers are based on complaints about how the IBT bargained and enforced a contract and the handling of grievances. There are no allegations that relate solely to internal union disputes. Plaintiffs have failed to establish any breach of fiduciary duty claims within six months of the filing of the complaint.[8]

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[8] Additionally, the SAC raises for the first time claims against Griswold, Stripling and Miranda. Plaintiffs cannot establish any compliance with Rule 15(c)(1)(C) to allow them to relate back the SAC to the initial complaint. Thus, any claims against them must have arisen within six months of the filing of the SAC on September 8, 2020, which is March 8, 2020. Plaintiffs' SAC includes no dates of any alleged breaches of fiduciary duty by any of these individuals on or after March 8, 2020.

6. Plaintiffs Have Continued to Fail to Comply with Section 501(b)

Even if Plaintiffs had pled a viable cause of action, this Court would have no jurisdiction to hear it. Section 501(b) sets procedural prerequisites to bringing a 501 claim in court. "When . . . the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer . . . to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization. No such proceeding shall be brought except upon leave of the court obtained upon verified application and for good cause shown, which application may be made ex parte." 29 U.S.C. § 501(b). Plaintiffs must have first made a demand upon the unions to secure appropriate relief for the union officials' alleged breaches of fiduciary duty. Second, only after the unions refused to take corrective action, Plaintiffs must have applied to the court for leave to file their Section 501 claim. Section 501(b)'s procedural prerequisites are "strictly construed" jurisdictional requirements. *Flaherty v. Warehousemen, Garage and Services Station Employees' Local Union No. 334*, 574 F.2d 484, 487 (9th Cir. 1978). A Section 501(a) suit cannot lie where plaintiffs have failed to allege the required demand to the labor organizations to remedy the alleged fiduciary duty breaches. *Id*. "An allegation of the futility of such a request will not suffice." *Id. citing Coleman v. Bhd. of Ry. & S.S. Clerks*, 340 F.2d 206, 208 (2d Cir. 1965); *Phillips v. Osborne*, 403 F.2d 826, 830 (9th Cir. 1968). Despite amendment, Plaintiffs' SAC still lacks these requisite allegations. Thus, the 501 claim must be dismissed.

In the SAC, Plaintiffs attempt to side-step this requirement by asserting that they have "exhausted all internal union procedures *with respect to their grievances.*" SAC ¶ 540 (emphasis added). That allegation and whatever actions Plaintiffs have taken with respect to UAL's alleged breach of contract is irrelevant to the exhaustion requirement of the LMRDA claim. Plaintiffs are required to have exhausted internal remedies by filing internal charges against the named officers alleging fiduciary duty breaches by the named union officers.[9]

[9] The policy purpose behind the exhaustion requirement is amplified by Plaintiffs claims. Plaintiffs allege that Hoffa allowed the national office to receive a payment of $1.5M on June 6, 2020 from UAL. There is no universe in which the IBT would receive a $1.5 million payment from an employer that would not be reviewed by accountants and lawyers to ensure that it was LMRDA-compliant. Per the IBT Constitution, the IBT utilizes an Audit Committee and independent accountants who review

In a further attempt to side-step the statutorily imposed jurisdictional prerequisites to these claims, Plaintiffs baselessly allege that "neither the Teamsters constitution nor the bylaws of the affiliated local unions provides a remedy for claims of this nature against union officers." SAC ¶ 541. That is a demonstrably false statement. Article XIX of the IBT Constitution sets forth the mechanism for filing charges against Union officers of Local unions and elected officers of the International Union. *See* Manicone Decl. II, Exh. A. Article XIX, Section 7 sets forth the grounds for such charges, which include, (1) "violation of any specific provision of the Constitution. . . (2) "violation of oath of office or of the oath of loyalty to the Local Union and the International Union; (13) "accepting money or other things of value from any employer"; and (14) "attempting to influence the operation of any employee benefit plan in violation of applicable law." Article XIX provides for penalties that include "reprimands, fines, suspensions, expulsions, revocations, denial to hold any office . . . commands to do or perform, or refrain from doing or performing." In sum, the Plaintiffs failed to exhaust internal remedies and on this basis alone their 501 claims cannot lie.

D. Plaintiffs' ERISA Claims Against the "Union Defendants" Must Be Dismissed

Plaintiffs name the "Union Defendants" in two of their six ERISA-based claims (Count VIII and Count X). [10] Underpinning both claims is Plaintiffs' allegation that they should have been enrolled in CARP in October 2010 and certain other contributions made. Plaintiffs' contention is based exclusively on their assertion that the enrollment was compelled by collective bargaining agreement. SAC ¶¶ 594-599; 614-616. Plaintiffs allegations admittedly and explicitly turn on the interpretation of a collective bargaining agreement, thus they are preempted by the RLA.

Plaintiffs' 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 [Railway Labor Act] mechanisms." *See Alaska Airlines v. Schurke*, 898 F.3d 904, 919, 921 (9th Cir. 1987); *see also Long v. Flying Tiger Line, Inc.*, 994 F.2d 692, 695 (9th Cir. 1993); *Oakey v. US Airways Pilots Disability Income Plan*,

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the IBT's books and records on a quarterly basis. (Manicone Decl. II, Exh. A, IBT Constitution, Article VIII.) Had Plaintiffs filed internal charges, this allegation could easily have been disposed of.

[10] Plaintiffs also purport to name the Union Defendants in Count IX, but include no allegations whatsoever actually identifying any Union Defendant or the nature of the claim against them.

723 F.3d 227, 229 (D.C. Cir. 2013) (affirming dismissal of ERISA claim under Rule 12(b)(1) because claim was "grounded in the application and interpretation of the collective bargaining agreement"); *Everett v. USAir Group*, 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 USAir purposely misinterpreted the [CBA] and, thus, the pension plan".)

This Court has already dismissed these claims as preempted. *See* Order, Dkt. No. 73. Plaintiffs have done nothing to cure this preemption. Accordingly, Counts IV and VI should be dismissed for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) or, alternatively, for failure to state a claim based on RLA preclusion pursuant to Rule 12(b)(6).

Additionally, Plaintiffs have failed to plead with sufficient particularity their conclusory assertion that the "Union Defendants" "conspired" with the United Defendants to breach ERISA. Moreover, Plaintiffs re-allege their claim in Count X that the "Union Defendants" breached 26 U.S.C. §1051(a)(1)(A) by failing to enroll the UAL mechanics in CARP in 2011. SAC ¶ 619. CARP is an employer-sponsored benefit plan, and the "Union Defendants" have no role in sponsoring or administering the plan. *See* Manicone Decl. I, Exh. G, p. 21, Dkt. No. 44-10. The SAC does not allege that the "Union Defendants" are fiduciaries, nor could they. *See Rosen v. Hotel & Restaurant Employees Union, Local 274*, 637 F.2d 592, 599 n. 10 (3rd Cir. 1981), cert. denied, 454 U.S. 898 (1981) ("While the union does owe a duty of fair representation to its members, ... it does not control, nor is it in a position to oversee, the employer's contributions to the fund.")

IV. CONCLUSION

For the foregoing reasons Plaintiffs' SAC should be dismissed without leave to amend.

Dated: November 20, 2020

BEESON, TAYER & BODINE, APC

By: /s/ Susan K. Garea
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