No. 22-16280

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KEVIN E. BYEBEE; et al.,

Plaintiffs-Appellants,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, a labor organization; et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of California
No. 18-cv-06632-JD
Honorable James Donato

APPELLANT'S OPENING BRIEF

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INTRODUCTION

This is an employment case about real people who made real sacrifices to help their employer succeed and exit bankruptcy. Those sacrifices were reduced to a writing in a letter agreement, Letter of Agreement 05-03M ("LOA 05-03M"). (9-ER-1079-86). Under the terms of this agreement, certain triggering events – the merger with another air carrier and financial success – should have provided the employees with increased benefits; however, when both triggering events occurred, the employer refused to honor its side of the bargain. The employees' union simultaneously abandoned their members' right under LOA 05-03M as well as other rights under the collective bargaining agreement ("CBA"). These employees again did what was required of them, following the dictates of the congressionally mandated remedial process under the controlling Railway Labor Act, 45 U.S.C. §151, *et seq*. ("RLA") and the contractual procedures by grieving using the agreed to procedures; however, these efforts were purposefully and intentionally thwarted by their unions and employer. (9-ER-958-9; 9-ER-1018-26; 9-ER-1007-13; 8-ER-796-801). Appellants have now turned to the courts for a remedy.

Specifically, Appellants-employees in this case are employed as airplane mechanics by United Airlines, Inc. ("United"), a subsidiary of United Airlines Holdings, ("UAH"). (4-ER-241-51). Appellants allege United breached the contractual duties owed to Appellants under the RLA pursuant to the CBA and

LOA 05-03M. (4-ER-297-316, 320-323). Appellants allege the United Airlines Holdings' Administrative Committee ("Administrative Committee") breached its fiduciary duties owed to the plans pursuant to the Employee Retirement Income Security Act ("ERISA"). (4-ER-336-44). Finally, Appellants allege their local affiliated unions, Local 210, Local 781, Local 856, and Local 986 (collectively, "Local Unions") and the international union, the International Brotherhood of Teamsters, ("Teamsters" collectively with the Local Unions "Union Appellees"), breached the duties of fair representation each owed collectively and individually to Appellants under the RLA and the Labor Management Reporting Disclosure Act ("LMRDA"). (4-ER-281-95, 305-16, 323-35, 340-42; 7-ER-745-56).

STATEMENT OF JURISDICTION

This case is an appeal from the August 1, 2022 order of the District Court for the Northern District of California ("district court"), dismissing Appellants' complaint with prejudice pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure ("FRCP") and the August 2, 2022 final judgment order in favor of all Appellees. (1-ER-2-12). The Notice of Appeal was filed within thirty (30) days of these orders, pursuant to Rule 4(a)(1)(A) of the Federal Rules of Appellate Procedure ("FRAP"), on August 21, 2022. (9-ER-1115-18). The district court had jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337 and this Court has

jurisdiction to consider this appeal pursuant to 28 U.S.C. § 1291 because this appeal is from an order dismissing all claims and from a final judgment.

STATUTORY AND REGULATORY AUTHORITIES

All relevant statutory and regulatory authorities pertinent to this appeal are set out verbatim in the Addendum filed with this brief.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Whether the district court abused its discretion and acted contrary to Ninth Circuit precedent when it denied Appellants the opportunity to amend their complaint?

II. Given the law and the evidence in this case, whether the district court correctly found Appellants had not stated any claim for relief as required under the FRCP 8 pleading standard?

III. Given the law and evidence in this case, whether the district court properly found that it lacked subject matter jurisdiction over Appellants' claims?

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

Appellants brought an action against the Appellee Unions, individual Union officers, United, UAH, and UAH's fiduciary of the Appellant United's pension plan, the Administrative Committee. (4-ER-236-347). The lawsuit centers around LOA 05-03M, which was negotiated by the Appellants former union, the Aircraft

Mechanics Fraternal Association ("AMFA"), and former United Air Lines as a part of, and a condition of, United Air Lines' bankruptcy exit plan in May 2005. (5-ER-538-69; 9-ER-1079-86).

While in voluntary bankruptcy, United terminated its defined benefit plans for all United's employee work groups. (5-ER-538-69; 9-ER-1079-86). As part of its exit strategy United and its mechanics entered into LOA 05-03M which detailed the wage and benefit concessions the mechanics agreed to in order to assist United Air Lines in reorganizing and exiting bankruptcy. (5-ER-538-69; 9-ER-1079-86). Part of those concessions included a defined contribution plan ("401k") in lieu of the terminated pension and new profit-sharing rights to compensate for the 40% wage reductions. (5-ER-538-69; 9-ER-1079-86). LOA 05-03M expressly and clearly stated in the event United maintained or established a defined benefit plan for any United or company employee group, United would be required to provide United mechanics with the option of voting on whether to replace the 401k plan for the maintained defined benefit plan or, at a minimum, stay in the 401k, albeit with better terms. (9-ER-1082). A key term negotiated strongly for by AMFA was for LOA 05-03M to waive any limitations period to enforce its terms. (9-ER-1085).

In 2008, the Teamsters, running on a platform of immediately restoring the mechanics' pensions, were elected as the mechanics' certified representative union displacing AMFA. In May 2010, almost five years to the day the parties agreed to

the terms of LOA 05-03M, UAL Corporation, the then parent holding company of United, purchased Continental Airlines ("Continental"), forming a new holding company named United Continental Holdings ("UCH"). As part of the acquisition, UCH agreed to assume responsibility of Continental's ERISA covered pension plans, including the Continental Airlines Retirement Plan ("CARP"). (4-ER-681-2). Shortly after this acquisition, UCH merged its two subsidiary airlines into one airline, with Continental the surviving entity, yet named United Airlines.

At the time of the merger, the United mechanics were in negotiations for a new CBA as the previous agreement had become amendable at the end of 2009. The Continental mechanics, also in negotiations for a new agreement at the time of the merger, agreed to a new CBA shortly after the merger, in December 2010. The Teamsters were already the certified representative of both work groups at the time of the merger and the contract negotiations. Rather than entering into one contract with its mechanics, United insisted on stand-alone agreements with the mechanic groups of the previously separate airlines and, once the merger was finalized, the Teamsters and United would negotiate one CBA, a "joint" CBA ("JCBA"), for the newly merged airline mechanics group. LOA 05-03M has been, and is included in every CBA since United exited from bankruptcy, including the United mechanics' 2010-2013 CBA and the JCBA. Notably, LOA 05-03M is still the only source of the current United mechanics' 401k rights. (4-ER-266-78).

The United mechanics have never been accorded the aforementioned option of voting on participating in CARP either prior to, during, or after the ratification of any of the CBAs since the merger. The Teamsters and United stated the United mechanics rights were preserved, would be honored, and they would be provided the vote; however, as time has shown, this was a lie. (9-ER-1103-1108).

Despite this unexplained delay, and ultimate refusal, in honoring its LOA 05-03M contractual rights to the United mechanics, United immediately began providing Continental mechanics with profit sharing benefits found only in LOA 05-03M at that time, pooling Continental mechanics in with the United mechanics. (4-ER-266-78). This was wrong for two reasons – one, Continental mechanics operated under a CBA that did not contain LOA 05-03M and Continental mechanics surrendered profit-sharing rights in their CBA during their most recent negotiations. (9-ER-1040-41). Nevertheless, United began distributing profit-sharing monies, the United mechanics' wage replacement monies from their bankruptcy concessions, to Continental mechanics providing them with their first check just a few short months after the merger, on February 14, 2011.

The joint agreement took years to negotiate but was ratified on December 6, 2016. Among the more contentious terms was the mandatory enrollment of all of the United mechanics of the newly formed airline into CARP. While drafts of tentative agreements over the years reflected terms to hold the pension election

vote, this final version did not. (4-ER-267-72, 292-95). All United mechanics would simply be enrolled in CARP with a start date of January 1, 2017. However, prior to ratification of the JCBA, Appellants Bybee, Scholz, Dill, and Drumheller, as well as hundreds of other mechanics across the system, filed separate grievances with their Local Unions about the violations of LOA 05-03M, specifically, about addressing the failure to afford "pre-merger" United mechanics the mandated vote. (4-ER-297-304 and 9-ER-958-9; 9-ER-1018-26; 9-ER-1007-13; AND 8-ER-796-801). The Appellants also grieved dilution of their wage concession profit-sharing monies. Inexplicably, and shortly after ratification, the SFO Appellants' grievances were dismissed, without hearing or notice, while many other grievances languished unresolved, and while still others were deemed meritless and not worth pursuing. The Teamsters closed Bybee and Scholz' grievances without prior notice or hearing to them and let the Dill and Drumheller's grievances remain open and pending. When Bybee and Scholz pressed United to resolve their grievances, United refused citing the Teamsters unwillingness to support them as the reason, and stated the matter was closed. (9-ER-960-68, 1025-1035). Bybee and Scholz initiated the lower court action shortly thereafter.

Appellants contend the Teamsters breached its duty of fair representation in failing to enforce the LOA 05-03M, at the bargaining table, and in the handling of its members grievances. Appellants assert LOA 05-03M mandated "pre-merger"

United mechanics were not only owed the elective vote but, by the express terms of CARP's plan document, were eligible to be covered under CARP at the time of the merger, the plan United was maintaining following the merger and that was available to Continental mechanics. (6-ER-615-57 and 5-ER-570-613). Notably, LOA 05-03M was painstakingly reviewed by the bankruptcy court with the parties prior to the court signing off on it. (5-ER-538-569). There can be no doubt that United was aware and understood its duties under LOA 05-03M as it pertained to these United employees. The vote never occurred nor were they enrolled in CARP seven years after they were eligible. Remarkably, neither the Teamsters or United have ever disputed the meaning or understanding of these terms, obligations, or duties as stated in LOA 05-03M at any time.

Appellants ERISA claims are based on plan wide relief for: (1) failing to recognize Appellants as participants until January 1, 2017, and not the time of the merger, October 2010; and (2) for providing non-participant former Continental mechanics with profit sharing monies in February 2011 when those mechanics were only eligible in January 2017 to receive such benefits. (4-ER-335-44). As a result of these breaches, Appellants lost 7-years of pension credits and suffered 7-years of diluted profit-sharing.

Appellants further contend the Union Defendants mishandled the grievances in wrongfully refusing to allow the grievances to proceed and through intentional

and wildly misleading misrepresentations to the Appellants and others as to the merit of these grievances not only under the express terms of LOA 05-03M and the CBA but also under the terms of the Union Defendants own constitution and bylaws. (9-ER-883-931; 8-ER-800-881; 7-ER-758-94; 5-ER-475-516). When Appellants vowed to proceed without the support of the Union Defendants, turning to United to complete the grievance process, United similarly refused to do so despite being statutorily required to. (9-ER-968).

Appellants filed the lawsuit below for claims for: (1) breach of the duty of fair representation against the Teamsters and its affiliated Local Unions, including several officers; (2) breach of contract against United for violating bankruptcy exit agreement LOA 05-03M; (3) right to independently grieve under the RLA; and (4) various ERISA claims for plan wide relief given the breaches of fiduciary duties to the plan including failing to accept Appellants and the class as plan participants, failing to demand required contributions to the plan, and for failing to safeguard that profit sharing monies only went to plan participants. Appellants also alleged an ERISA claim against the Teamsters for knowingly participating in the above-mentioned fiduciary breaches by United.

Appellees argued the lawsuit was filed too late.

II. PROCEDURAL HISTORY

Appellants filed a class action complaint on October 31, 2018 in the United

States District Court for the Northern District of California alleging the claims as stated above. All Appellees moved to dismiss the action, filing separate motions under Federal Rules of Civil Procedure ("FRCP") 12(b)(1), lack of subject matter jurisdiction and 12(b)(6), failure to state a claim. Instead of responding to the motions to dismiss, Appellants amended their complaint. All Appellees again filed the same motions to dismiss pursuant to FRCP 12(b)(1) and 12(b)(6). Before the Appellants could respond, one of the named Plaintiffs suffered a near fatal medical event which led to an initial 60-day pause in the case. (9-ER-1127). Over the better part of the next year, there was substantial parallel litigation in the district court, and the state court, regarding Appellants ability to continue in the lawsuit due to the severity of the medical injuries sustained. (9-ER-1126-28)

Appellants, at the end of the 60-day pause, filed oppositions to the motions to dismiss. (9-ER-1126-27). Appellees filed reply briefs. (9-ER-1126-27). Oral argument on the motions was scheduled to be heard at the same hearing as the initial case management conference ("CMC"); however, two days prior, the court issued a minute order cancelling oral argument, but still requiring appearance for the CMC. (9-ER-1126-27) . The initial CMC was extremely brief because two high profile cases involving Homeland Security and the State Department were on the same docket. (9-ER-1126-27; 1-ER-35-40). At this hearing, the Appellants were able to raise the matter with the district court of the Appellees refusal to provide

required initial disclosures. (1-ER-35-40). While the district court did issue an order stating the CMC was held, the district court never issued the required Rule 16 Scheduling Order following the CMC. (1-ER-34; 9-ER-1119-37). Moreover, *sua sponte*, the district court stayed the matter while the district court decided the motions to dismiss. (1-ER-34)9-ER-1127).

On April 21, 2020, the district court issued its Order as to the motions to dismiss filed by Appellees. (1-ER-26-33) The district court ordered any amended pleading to be filed by May 15, 2020, and, in the alternative, if additional time was needed, the parties could agree by joint stipulation to some other reasonable date. (1-ER-26-33). The parties stipulated to, and the district court ordered, Appellants' counsel to file the amended pleading no later than Monday, June 29, 2020. (9-ER-1128). This date was subsequently extended to July 29, 2020. (9-ER-1129)

On July 20, 2020, per the district court's April 21, 2020 order, Appellants filed a motion with the district court to add new parties and to add a claim and the district court set a briefing schedule. (9-ER-1129). Seeking efficiency and to avoid undue work for all parties, Appellants further requested the district court order the Second Amended Complaint be filed within seven (7) days of the court issuing its order on the Motion for Leave to Add Parties and a New Claim. (9-ER-1129). All Appellees filed oppositions to Appellants' motion and Appellants replied. (9-ER-1129). The district court granted Appellants' motion, including the 7-day deadline

to file the Second Amended Complaint, by written order on September 1, 2020. (9-ER-1129). Appellants complied with the district court's order, filing a Second Amended Complaint on September 8, 2020. (9-ER-1130)

All Appellees requested an extension of time to respond to the complaint and the parties stipulated to the deadline for Appellees to so respond. (9-ER-1129). A briefing schedule was set extending the normal response time from September 22, 2020 to November 20, 2020, as well as the deadline for Appellants to file any opposition brief, which would be due January 4, 2021. (9-ER-1129-30). All of the Appellees again moved to dismiss for lack of subject matter jurisdiction and failure to state a claim. (9-ER-1130-31). The newly added Teamsters Appellees moved, in a separate motion, for dismissal pursuant to FRCP Rule 12(b)(2), lack of personal jurisdiction. (9-ER-1130). Appellants filed oppositions to all of Appellees' motions along with supporting declarations. (9-ER-1131-33). Appellants filed a Motion for Expedited and Limited Initial Jurisdictional Discovery in response to the Union Appellees Rule 12(b)(2) Motion. (9-ER-1131). The court issued a minute order granting Appellants' request to shorten time and set a briefing schedule ordering Appellees' response to the jurisdictional motion due by January 19, 2021, with Appellants' reply due by January 26, 2021, and set the motion for hearing on February 4, 2021, along with the other motions to dismiss. (9-ER-1134-35).

The Appellees replied to Appellants' oppositions to their motions to dismiss. (9-ER-1134). The Union Appellees opposed the Appellants motion for expedited discovery. (9-ER-1134). Appellants filed their reply. (9-ER-1134). The Appellants next filed a discovery dispute letter according to the district court's procedures. (9-ER-1134). After reviewing Appellants letter brief, the district court called for a responsive letter brief from Appellees to be filed by February 1, 2021, at 5:00 p.m. CST. (9-ER-1134). United responded. (9-ER-1135). On February 4, 2021, the court held the hearing on all outstanding motions. (1-ER-14-23). The hearing was brief and the district court stated it was administratively closing the case to work through the complaint, the three sets of motions to dismiss filed by Appellees, the Appellants' motion for jurisdictional discovery, and the discovery dispute letters. (1-ER-13). The court further stated it would issue a written order, which it did on August 8, 2022. (1-ER-3-12). The district court granted all Appellees' motions to dismiss and, despite granting the Appellants' motion for jurisdictional discovery, the district court then held both it and the Appellants' discovery issues to be moot. (1-ER-3-12). The Court issued a final judgment on August 9, 2022. (1-ER-2).

SUMMARY OF ARGUMENT

United is liable for the breach of LOA 05-03M, and the Union is liable for breaching its duty of fair representation for their individual and collective failures to honor and enforce LOA 05-03M and the CBA, including impermissibly working

in concert to harm Appellants for financial gain. United and the Union Appellees, in order not to be held liable for these misdeeds, denied the Appellants access to, and the benefit of, the congressionally mandated statutory remedial process. The failure to permit Appellants to adjudicate these wrongs has caused Appellants and the plan damages in the hundreds of millions of dollars. In deciding the motions to dismiss, the district court considered, in addition to the allegations in the pleading, the declarations and exhibits that were referenced in the complaint and attached to the Appellants' oppositions to these motions to dismiss. Nevertheless, the district court granted the motions to dismiss without leave to amend. In so doing, the court made three erroneous determinations of law: (1) it was futile for the Appellants to amend their complaint; (2) the district court lacked subject matter jurisdiction over Appellants' claims because Appellants' lawsuit was untimely; and (3) Appellants had failed to state any claim for relief. These flawed conclusions must be reversed.

ARGUMENT

I. Whether the district court abused its discretion and acted contrary to Ninth Circuit precedent when it denied Appellants the opportunity to amend their complaint.

Appellants contend the District Court abused its discretion in dismissing the Second Amended Complaint with prejudice thereby denying leave to amend. The District Court abused its discretion because it failed to provide sufficient reasons to overcome the presumption in favor of granting leave to amend. Appellants assert

the Foman factors weigh in favor of amendment. In addition, because the District Court failed to provide the mandated Scheduling Order following the Initial Case Management Conference, Appellants have unfairly been denied discovery and the disclosures which could have prevented the need for this amendment.

A. Standard of Review

Rule15(a)(2) provides leave to amend "shall be freely given when justice so requires." Fed. R. Civ. Proc. 15(a)(2). The District Court should keep in mind "the underlying purpose of Rule 15 is to facilitate decisions on the merits, rather than on pleadings or technicalities." Nunes v. Ashcroft, 375 F.3d 805, 808 (9th Cir. 2004) (citations removed). The factors to be considered in making a determining whether to permit amendment are "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment." *See* Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (per curiam) (quoting Foman v. Davis, 371 U.S. 178, 182 (1962)). When weighing these factors in order to determine whether to grant leave to amend, a District Court must draw "all inferences in favor of granting the motion." Griggs v. Pace Am. Grp., Inc., 170 F.3d 877, 880 (9th Cir. 1999) (citing DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 186 (9th Cir. 1987)). In the Ninth Circuit, prejudice to the opponent carries the most weight

of the Foman factors. Eminence Capital, 316 F.3d at 1052. "Absent prejudice, or a strong showing of any of the remaining factors, there exists a presumption under Rule 15(a) in favor of granting leave to amend." Id. More importantly, "outright refusal to grant the leave without any justifying reason appearing for the denial" is an abuse of discretion. Foman, 371 U.S. at 182. The Foman court did not address whether the "justifying reason" must be set forth in the district court's denial order or if it is sufficient for the "justifying reason" to be apparent in the record but not identified by the district court's denial order. Id.; *see* Chappel v. Laboratory Corp., 232 F.3d 719, 725-26 (9th Cir. 2000) (finding an abuse of discretion where leave to amend would not be futile, would not cause undue prejudice to Appellee, or was not sought in bad faith). Thus, a failure by the court to consider the relevant factors and articulate why dismissal should be with prejudice instead of without prejudice constitutes abuse of discretion. Foman, 371 U.S. at 182. Furthermore, the party opposing amendment bears the burden of overcoming this presumption. DCD Programs, 833 F.2d 183, 187 (9th Cir. 1987).

B. Analysis

1. The district court erred and abused its discretion by not providing justification for denying leave to amend

In the present case, the district court dismissed Appellants' complaint with prejudice and without leave to amend stating "[i]n its last order, the court advised Appellants they were 'not likely to be given any further opportunities to amend.' "

(1-ER-10). Appellants requested leave in the respective oppositions to the motions to dismiss. (9-ER-1131). The district court, however, not only appears to have not provided the required justification under Foman but also appears to have denied the Appellants' request to amend on a very narrow (incorrect) reading of Rule 15 finding, in essence, because Appellants previously amended the complaint, and because the court previously warned Appellants any opportunity to amend were unlikely, Appellants were now precluded now from so amending the complaint. (1-ER-3-12). A simple denial of leave to amend without explanation by the district court is subject to reversal because such a finding is "not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules." Foman, 371 U.S. at 182.

Dismissal with prejudice and without leave to amend is also not appropriate unless it is clear, on de novo review, the complaint cannot be saved by amendment. Chang v. Chen, 80 F.3d 1293, 1296 (9th Cir. 1996). A district court's failure to consider the relevant factors and articulate why dismissal should be with prejudice instead of without may constitute an abuse of discretion. *See* Foman, 371 U.S. at 182. The court in the present case cites to a case, Chodos v. West Publishing Co., Inc., 292 F.3d 992, 1003 (9th Cir. 2002), to bolster the court's decision having previously amended the complaint disqualifies a party from further amending the complaint; however, Chodos is distinguishable from the present case. In Chodos,

the Appellant sought leave to amend his previously amended complaint to add a claim of fraud against the Appellee contending that he had learned new facts that supported that claim shortly before the close of, and after conducting substantial, discovery. The Chodos court denied the motion finding undue delay for having waited to the last minute, as well as prejudice and dilatory motive to add a new claim. Significantly, the Chodos court found a court must consider and weigh in on the Foman factors in deciding whether to permit amendment. Id. at 1003. Also relevant to the present case is the district court's failure to issue the required Rule 16 Scheduling Order, even though the parties had prepared one for the court's approval and signature. The district court also failed to require Appellees to serve its initial disclosures. Because the court failed in its statutory duties, Appellants could not conduct any discovery, nor would the Appellees freely cooperate in discovery. Most important, the district court provided no Foman factor analysis in order to justify denying leave to amend. No Appellee argued against Appellants amending except to state Appellants should not be permitted to do so.

2. Foman Factors support amendment

a. There will be no prejudice to any Appellee.

Appellants' request to amend is reasonable, and no Appellee has made any arguments or pointed to any evidence that if leave to amend was granted, prejudice would occur. *Cf.* DCD Programs, 833 F.2d at 186-87 (party opposing amendment

"bears the burden of showing prejudice"). Nor is there any evidence Appellants' request is calculated to gain an unfair advantage. Appellants do not seek to add a new theory of liability but to clarify existing legal claims. Accordingly, because no prejudice to any of the Appellees is present, this Court should grant leave to amend

b. Amendment would not be futile.

Leave to amend is not appropriate if the amendment would be "futile." Madeja v. Olympic Packers, 310 F.3d 628, 636 (9th Cir. 2002). Futility exists where there is a tenuous legal basis for a cause of action. Nunes v. Ashcroft, 375 F.3d 805, 808 (9th Cir. 2004). Amendment is futile where "the pleading could not possibly be cured by the allegation of other facts." Watison v. Carter, 668 F.3d 1108, 1117 (9th Cir. 2012) (quotation omitted). In the present case, the district court did not specify whether it would be futile to amend one or all of Appellants' claims. The district court criticized the complaint for being "unclear," "lengthy," "confusing," and "meandering" but such issues do not make amendment futile. The amendments sought will not change the legal basis for the claims but rather will add new facts, and clarify existing ones, in order to support the current legal theories. Because Appellants' amendments will provide clarity, and the interests of justice will be served, these favors permitting Appellants to amend. Eminence Capital, 316 F.3d at 1052.

c. Amendment is not made in bad faith.

Amendment is made in bad faith where "evidence in the record which would indicate a wrongful motive" on the part of the litigant requesting leave to amend is present. DCD Programs, 833 F.2d at 187. "In the context of a motion for leave to amend, 'bad faith' means acting with intent to deceive, harass, mislead, delay, or disrupt." Leon v. IDX Sys. Corp., 464 F.3d 951, 961 (9th Cir. 2006). Here, there is nothing in the record, nor did the district court find, Appellants' request to amend was made in bad faith or for a dilatory motive. More, nothing suggests amending would be made for an improper purpose or include any false allegations. Indeed, the opposite is true. Just as the previous amendments did, the amended complaint would clarify the claims, add newly discovered factual allegations, and correct misunderstood or incorrect allegations. Importantly, no Appellee has argued, or suggested, amendment, or any previous amendment, has been in bad faith. Since there is no evidence in the record which would indicate a wrongful motive, there is no cause to uphold the denial of leave to amend on the basis of bad faith.

d. There is no undue delay on the part of Appellants.

In evaluating undue delay, the inquiry focuses on whether the moving party knew or should have known the facts and theories raised by the amendment in the original pleading." Amerisourcebergen Corp. v. Dialysist W., Inc., 465 F.3d 946, 953 (9th Cir. 2006) (quoting Jackson v. Bank of Haw., 902 F.2d 1385, 1388 (9th Cir. 1990)). More importantly, "[u]ndue delay by itself . . . is insufficient to justify

denying a motion to amend." Bowles v. Reade, 198 F.3d 752, 758 (9th Cir. 1999). Appellants are not raising leave to amend for the first time on appeal. Appellants' requested amendment in their oppositions to Appellees' motions to dismiss should the district court find any deficiencies.

In addition, the district court took eighteen (18) months to render its decision on these motions, which accounts for almost half of elapsed time since this action was filed. Moreover, "undue delay" alone is insufficient basis to justify denying leave to amend under Rule 15. Bowles v. Reade, 198 F.3d at 758 (a court must provide a contemporaneous specific finding of bad faith by the moving party, prejudice to the opposing party, or futility of amendment to deny amendment).

e. All previous amendments have cured deficiencies.

Neither United nor the Union Appellees argue that the Appellants' Second Amended Complaint cannot be cured by the allegation of other facts to support Appellants' claims. In fact, all Appellees argue Appellants' Second Amended Complaint insufficiency is a lack of specificity not an incurable substantive issue. Furthermore, each amendment by Appellants has properly addressed perceived or stated deficiencies. The First Amended Complaint added a newly discovered party and clarified the legal basis for all of Appellants' claims. The Second Amended Complaint removed the lead Appellant due to the aforementioned health reasons; added another recently discovered party to provide new and additional support for

Appellants' claims; added newly identified Appellees; and added an additional claim for relief. With each amendment, Appellants have strived, in good faith, to meet the required pleading standard and to comply with the court's guidance. The Appellants have not filed three substantially similar complaints. Appellants argue the district court did not appropriately exercise its discretion by denying Appellants leave to amend where, as is the case here, Appellants' allegations are not frivolous, and the Appellants are endeavoring in good faith to meet the heightened pleading requirements of Iqbal and Twombly and to comply with court guidance, and most significantly, it appears they have a reasonable chance of successfully stating a claim if given another opportunity. Appellants have address pleading deficiencies the court had previously pointed to, namely lack of specificity of the violations of the union duty and a lack of facts re ERISA.

In Appellants' view, the complaint sets forth factual allegations about specific violations, including violations to the plan. Appellants are naturally at a disadvantage pre-discovery, and as the non-moving party, the court is required to construe the complaint in their favor. Even so, in the eyes of the district court the complaint could not be seen as plausible, even under this favorable view. The district court's only analysis, however, is a passing reference to its previous order, which similarly had no indication of exactly what was deficient or what would trigger such a dire result from the court other than a caution regarding future

amendment. (1-ER-33). These remaining factors also weigh in favor of granting leave to amend. Eminence Capital, 316 F.3d at 1052 (holding absent a "strong showing of any of the remaining Foman factors, there exists a presumption under Rule 15(a) in favor of granting leave to amend").

3. Rule 16

On July 18, 2019, prior to the CMC, the parties submitted a proposed CMC Statement. (9-ER-932-53). The CMC was held on July 25, 2019. (9-ER-1127); yet, the district court did not adopt any of the parties' proposals nor did it ever issue the mandated Scheduling Order. From the start of this case, Appellees have refused to comply fully with initial disclosure requirements, which became the subject of a discovery dispute filed with the district court. (2-ER-52). The district court never ruled on this dispute, only finding the matter was now moot given the dismissal of the case with prejudice. Therefore, this Court should not only permit amendment of the Complaint but order the district court to file the mandatory Scheduling Order and address the unresolved discovery disputes. Based on these deficiencies, the Appellants have been denied the opportunity to develop their case. In light of the above, Appellants should have been granted leave to amend the complaint to cure any perceived deficiencies because this request does not meet any of the articulated Foman basis for not granting leave to amend. Should this Court agree, this Court need not decide this appeal on any of the further argued grounds.

II. The district court erred in finding Appellants' claims are untimely.

As a general rule, a court should not dismiss a complaint on a statute of limitations basis unless a court can "determine with certainty" that the statute of limitations has run and "it appears *beyond doubt* that the Appellant can prove no set of facts that would establish the timeliness of the claim." Supermail Cargo, Inc., v. United States, 68 F.3d 1204, 1207 (9th Cir. 1995) (emphasis added). Since the statute of limitations is heavily dependent on many factual determinations, at the motion to dismiss stage under each of Appellants' claims, the court could not "determine with certainty" the statute of limitations had run, such that the court could not have determined "beyond doubt that the Appellant could prove no set of facts that would establish the timeliness of the claim." Id. Thus, at this stage of the proceedings, it was error for the Court to dismiss on those grounds. Appellants concede the six-month statute of limitations applies to their hybrid claim; however, Appellants dispute that the date chosen by the district court to start the limitations period was correct in that it ignored many other factual statements in the complaint and in Appellants' sworn declarations supporting a contrary determination.

A. Standard of Review

The court of appeals reviews the District Court's conclusion regarding an application of the statute of limitations de novo. See Gov't of Guam v. Guerrero, 11 F.4th 1052, 1055 (9th Cir. 2021). Under the de novo standard, a court deciding

the issues must do so without reference to any legal conclusion or assumption that was made by the previous court to hear the case. Further, this Court must take all factual assertions as true and must construe them in the complaint in the light most favorable to the Appellants.

B. The District Court erred in finding it was beyond certainty from the face of the complaint each Appellants' claims were untimely or that there were no set of facts that could establish the timeliness of the claims.

In the context of 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. Int'l Ass'n of Machinists, 781 F. 2d 1393, 1396 (9th Cir. 1986). The Complaint alleges (i) with respect to SFO Appellants Bybee and Scholtz, the date to start the running of the statute of limitations was May 4, 2018 (4-ER-298-304); and (ii) with respect to the O'Hare Appellant Dill and the Dulles Appellant Drumheller, the applicable limitations period did not begin to run prior to becoming Appellants in this action.(4-ER-301-34). Because at the motion to dismiss stage of this case, the court was required to take these statements as true and because these applicable dates are within the six-month limitations period, these claims are not time barred and thus, cannot be dismissed on statute of limitations grounds.

C. The district court erred in applying the RLA six-month statute of limitations period with respect to Appellants' ERISA claims since ERISA has its own statute of limitations.

With respect to an ERISA claim, the claim accrues when the party has actual knowledge of the injury. Northern Cal. Retail Clerks Unions v. Jumbo Markets, 906 F. 2d 1371, 1372 (9th Cir. 1990). As stated above, the accrual of a claim is a factual determination. The Appellants allege the date they had actual knowledge of the injury was May 4, 2018. Because at the motion to dismiss stage the court was required to take these statements as true and because all of these dates are within either the 3-year or 6-year ERISA statute of limitations, these claims are not time barred and cannot be dismissed on statute of limitations grounds.

"It is axiomatic that 'the motion to dismiss for failure to state a claim is viewed with disfavor and is rarely granted.' " Thibodeaux v. Bay Area Building Material Teamsters, Local 853, (9th Cir. 2017) (citations removed). This belief is most appropriate where, as here, a defendant seeks to dismiss a plaintiffs claim(s) based on a statute of limitations basis. See Rivera v. Green, 775 F.2d 1381, 1384 (9th Cir. 1985) (reversing dismissal of claims based on statute of limitations grounds noting "the disfavored nature of the statute of limitations defense."). While the court now requires a plaintiff to plead facts showing a "plausible" claim, Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555–56 (2007) and Ashcroft v. Iqbal, 556 U.S. 662, 677–79 (2009), the idea complaints must now plead facts negating an affirmative defense goes beyond those reasonable pleading standards.

III. Appellants stated claims for relief over which the district court has subject matter jurisdiction.

It is unclear from the district court's order whether the district court found all of Appellants' claims failed for a lack of subject matter jurisdiction or for a failure to state a claim. All of Appellants claims were brought pursuant to federal statutes and thus, present a federal question, theoretically giving the court subject matter jurisdiction. 28 U.S.C. §§ 1331 and 1337. One claim, however, the breach of contract claim against United, generally can only be heard in the congressionally mandated arbitral forum. Consolidated Rail Corp. v. Ry. Labor Executives' Ass'n., 491 U.S. 299, 303-04 (1989). There are exceptions to this rule, however, which give a plaintiff and a federal court jurisdiction to hear the claim. Beckington v. Am. Airlines, Inc., 926 F.3d 595 (9th Cir. 2019); *see also* Dean v. Trans World Airlines, Inc., 924 F.2d 805, 810-11 (9th Cir. 1991). Appellants plausibly pled facts to state claims supporting subject matter jurisdiction in the district court. Dismissal of all of Appellants' claims with prejudice was error.

A. Standard of Review

This Court reviews de novo the district court's grant of a motion to dismiss under Rule 12(b) and may affirm on any ground supported by the record. Ebner v. Fresh, Inc., 838 F.3d 958, 962 (9th Cir. 2016). Dismissal is appropriate where the Appellant failed to allege "enough facts to state a claim to relief that is plausible on its face." Id. at 962-63 (quoting Turner v. City & Cty. of San Francisco, 788 F.3d

1206, 1210 (9th Cir. 2015)). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements" are insufficient. Ashcroft, 556 U.S. at 678. "A court may consider evidence on which the complaint 'necessarily relies' if: (1) the complaint refers to the document; (2) the document is central to the claim; and (3) no party questions the authenticity of the copy attached to the 12(b)(6) motion," Marder v. Lopez,450 F.3d 445, 448 (9th Cir. 2006), "without converting the Rule 12(b)(6) motion into one for summary judgment." Van Buskirk v. Cable News Network, Inc., 284 F.3d 977, 980 (9th Cir. 2002). Also, statutory questions regarding the RLA are reviewed de novo. See Wharf v. Burlington N. R.R., 60 F.3d 631, 636 n.2 (9th Cir. 1995). If there are alternative explanations, one advanced by an appellee and the other advanced by an appellant, both of which are plausible, an appellant's complaint survives a motion to dismiss under Rule 12(b)(6). An appellant's complaint may be dismissed only when the appellee's plausible alternate explanation is so convincing appellant's explanation is implausible. In addition, the reviewing standard at this stage of the litigation is not Appellant's explanation must be true or even probable; the factual allegations of the complaint need only "plausibly suggest an entitlement to relief." ... Rule 8(a) "does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation ... discovery will reveal evidence" to

support the allegations. Starr v. Baca, 652 F.3d 1202, 1216-17 (9th Cir. 2011) (internal citations omitted) (emphases in original).

B. Appellants sufficiently stated a hybrid action conferring subject matter jurisdiction on the court.

Appellants alleged a hybrid action, i.e., claims for breach of contract against their employer and a breach of fair representation claim against their union. Courts are permitted to exercise jurisdiction when these two claims are joined in a single action as long as the employee properly alleges "the union and the employer 'acted in concert' so that arbitration before a panel of employer and union representatives would be 'absolutely futile.' " Beckington v. Amer. Airlines, Inc., 926 F.3d 595, 606-607 (9th Cir. 2019) (citing Bautista v. Pan Am. World Airlines, Inc., 828 F.2d 546, 551 (9th Cir. 1987) (quotation omitted). "[T]he degree of concerted conduct necessary to invoke this jurisdictional exception, [this Court] and other courts have sometimes used the term "collusion." Beckington, 926 F.3d at 607 (citing Croston v. Burlington N. R.R. Co., 999 F.2d 381, 387 (9th Cir. 1993) (citations omitted). "Although Appellants in a hybrid suit may allege collusion as basis for jurisdiction, collusion is not the basis for liability." Beckington, 926 F.3d at 607. In this case, the Appellants pled facts sufficient to state a claim for a hybrid action in federal court under Twombly and Iqbal. This was not a summary judgment motion; this was a motion to dismiss.

1. Appellants plausibly pled facts sufficient to show a breach of the duty of fair representation claim against the Union that was timely and not excused by an exercise of judgment.

Appellants' complaint alleges the Union Appellees breached its duties of fair representation by failing to enforce Loa 05-03M and the CBA; by failing in their statutory duties at the negotiating table; and in failing in their duties in handling the Appellants' grievances. (4-ER-258-315, 320-335). The district court previously found the Appellants sufficiently pled a DFR claim related to the Union Appellees' failures in their duties at the negotiating table in abandoning the Appellants' rights under LOA 05-03M in negotiations. (1-ER-6-9). However, the district court did not find Appellants plausibly alleged a DFR claim for failing to enforce LOA 05-03M or in grievance handling because the Union Appellees had "exercised its reasoned judgment." (1-ER-6-9). The district court, in its order under review, did not revisit these findings but found the conclusion that a union's exercise of its judgment bars a DFR claim "still holds." (1-ER-6-9). Appellants argue the district court erred. The Complaint plausibly alleges facts to support an inference the "exercise of judgment" alleged by the Union Appellees was so riddled with factual impossibilities and flawed reasoning that when this "exercise of judgment" is considered "in light of the factual and legal landscape" in which it occurred, it is "fairly characterized as so far outside of a range of reasonableness that it is wholly

irrational." Air Line Pilots Ass'n, Int'l v. O'Neill, 499 U.S. 65, 66 (1991). This conduct, thus, fails to insulate the Union Appellees from a DFR claim.

Appellants further argue the district court misapplied this Court's holdings in Beck v. United Food and Commercial Workers Union, Local 99, 506 F.3d 874, 879 (9th Cir. 2007), in that the district court held the mere exercise of a union's judgement is an absolute bar to alleging a DFR claim; this is a misreading the case. The Beck court held that despite the deference afforded to a union's exercise of its judgment, the union can still breach its duty of fair representation if it exercised its judgment in a bad faith or discriminatory manner. Beck, 506 F.3d at 878-880. The Complaint plausibly alleges facts to meet this standard. (4-ER-278-329). The Ninth Circuit also rejected the contention a union can avoid examination of the adequacy of investigation by claiming it was "judgment." Peters v. Burlington Northern R. Co., 931 F.2d 534, 540–41 (9th Cir. 1990), *as amended on denial of reh'g* (Apr. 23, 1991). Appellants allege this conduct by the Union Appellees is not good faith, non-discriminatory errors of judgment made in the processing of grievances. See Castelli v. Douglas Aircraft Co., 752 F.2d 1480 at 1482 (9th Cir. 1985); Dutrisac, 749 F.2d at 1273; Singer v. Flying Tiger Line, Inc., 652 F.2d 1349 at 1355 (9th Cir. 1981); Hines v. Anchor Motor Freight, Inc., 424 U.S. 554, 571 (1976).

More importantly, these standards are properly decided at the summary judgment stage, or at trial, where the Appellant has the burden of proof. At this

stage of the proceedings, at the motion to dismiss stage, Appellants need only give proper notice to the Appellees of the claims against them. The district court also dismissed Appellants' DFR claim related to grievance handling on the grounds that claim was time-barred. Appellants argued this above and reallege those arguments here. This Court must reverse this improper application of the pleading standard.

2. Appellants plausibly pled facts sufficient to show a breach of contract claim, including "collusion" facts, over which the District Court has subject matter jurisdiction.

The district court also dismissed the Appellants' breach of contract claim against United on an erroneous interpretation of Appellants "collusion" allegations; these allegations were pled to establish jurisdiction not to establish liability. This Court, in Beckington v. American Airlines articulated the "collusion" necessary to confer subject matter jurisdiction such claim in a hybrid action:

> [U]nder the RLA, an employee who alleges that their employer breached a CBA must ordinarily submit to mandatory arbitration; "[f]ederal courts lack subject matter jurisdiction over [these] disputes." Konop v. Hawaiian Airlines, Inc., 302 F.3d 868, 881 (9th Cir. 2002). That remains true even if the employees also claim their union has breached its duty of fair representation. *See* Crusos v. United Transp. Union, 786 F.2d 970, 972–73 (9th Cir. 1986). If, however, the 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. Bautista v. Pan Am. World Airlines, Inc., 828 F.2d 546, 551 (9th Cir. 1987) (quotation Glover v. St. Louis–S.F. Ry. Co., 393 U.S. 324, 331 (1969)). And in describing the degree of concerted

> conduct necessary to invoke this jurisdictional exception, we and other courts have sometimes used the term "collusion." Croston v. Burlington N. R.R. Co., 999 F.2d 381, 387 (9th Cir. 1993), abrogated on other grounds by Norris, 512 U.S. 246; accord Emswiler v. CSX Transp., Inc., 691 F.3d 782, 791 (6th Cir. 2012); Raus v. Bhd. Ry. Carmen of U.S. & Can., 663 F.2d 791, 798 (8th Cir. 1981); Richins v. S. Pac. Co. (Pac. Lines), 620 F.2d 761, 762 (10th Cir. 1980); Goclowski v. Penn Cent. Transp. Co., 571 F.2d 747, 761 n.18 (3d Cir. 1977).

926 F.3d 595, 606-607 (9th Cir. 2019).

Therefore, an employee is required to plead some facts related to "collusion" to properly plead support for a court to exercise its jurisdiction; this is not done to plead a claim of liability. Appellants plausibly pled the required facts to confer subject matter jurisdiction. In toto, these allegations, construed as true and most favorably to Appellants as required under the Rule 12(b) standard of review, sufficiently pled "collusion" between the Appellees to confer subject matter jurisdiction upon the court.

3. Appellants plausibly pled facts sufficient to show resort to the arbitral forum is futile because United has repudiated the grievance processes.

In Dean v. Trans World Airlines, this circuit held repeated that unheeded complaints, union-controlled grievance procedures, and unsuccessful attempts to pursue administrative remedies by appellants, warrant a judicial forum. 924 F.2d 805, 811 (9th Cir. 1991). This Court found repeated complaints to the airline and the union sufficed to excuse exhaustion of the required grievance procedures prior

to seeking a federal forum where such procedures were wholly controlled by the airline and union and the employee had tried for over 17-months to comply with these procedures but was rebuffed by both the union and the employer. Id. at 810-811. This amounted to repudiation of the grievance procedures by their conduct and exhaustion of those procedures was thus excused because the administrative remedies were futile. Id. at 811. Appellants' similar diligent and persistent failed efforts to exhaust all of the mandated remedial procedures to no avail are sufficient to provide them with a federal forum for their claims.

Moreover, an employer who by its conduct refuses to arbitrate a grievance under the agreement, repudiates the grievance process and the court can find the arbitral forum is futile. Sidhu v. Flecto Co., Inc., 279 F.3d 896, 897 (9th Cir.2002). See Vaca v. Sipes, 386 U.S. 171, 185–86 (1967). Appellants never received any hearing for their grievances from, or with, United at any step of the contractual process despite properly filing grievances and diligently attempting to exhaust the contractual procedures. (9-ER-751-56, 967-68, 1034-35, 1109-1114). United did receive the Appellants' grievances and documents; however, United refused to complete the grievance process, as required under the RLA, with Appellants. The Union Appellees similarly refused to process Appellants' grievances according to the dictates of the RLA, including denying Appellants their independent statutory right to the grievance process. (9-ER-1087-1108). When "the union has the sole

power ... to invoke the ... higher stages of the grievance procedure" and refuses to provide an employee access to that process, the RLA provides an exception to the exclusivity of those procedures so that employees are not left "remediless" and "without a forum" to present their grievances. Vaca v. Sipes, 386 U.S. 171, 185-86 (1967). Without a federal forum, Appellants will be left without a remedy.

This conduct by both United and the Union Appellees is sufficient to show the deep-seated bias and hostility required to give the Appellants a federal forum for their claim. A "remedy administered by the union [and] by the company to pass on claims by the very employees whose rights they have been charged with neglecting and betraying" is no remedy at all. Czosek v. O'Mara, 397 U.S. 25 (1970). There are facts in the record of the open hostility to Appellants' evidence and witnesses and therefore, it is impossible for these Appellants to hope to receive impartial treatment by the union officials who would make up the board deciding their grievances. As the record below shows, the Union Appellees have completely made up their minds against Appellants and have shown that it cannot weigh competing evidence or determine credibility. (7-ER-667-73, 749-50; 9-ER-1042-75, 1087-1108). Nor will it conduct any investigation to support the Appellants. It therefore is a foregone conclusion the two union officials on the panel would vote against Appellants as would the two United officials and Appellants would lose. Appellants are not "opting" to have their claims heard before a court; this is their

only hope for a fair hearing on their claims. Resort to the arbitral forum is futile in light of United's repudiation of the grievance process and the Union Appellees' entrenched and deeply rooted opposition to Appellants' grievances. The district court erred when it determined the repudiation exception did not apply to this case and this decision therefore must be reversed.

Appellants satisfied all three elements of a hybrid action and as a result, the District Court had subject matter jurisdiction over Appellants' claims. If at this stage of the proceedings, the absence of factual detail does not enable this Court to ascertain whether the Union properly exercised its discretion, the proper decision is to not dismiss. Ford Motor Co. v. Huffman, 345 U.S. 330, 337-338 (1953).

C. Appellants sufficiently pled breach of fiduciary duty claims under ERISA over which the court had subject matter jurisdiction.

Appellants appeal from the district court's order dismissing with prejudice the Appellants' ERISA claims. It is unclear from the district court's order whether the court determined if it lacked subject matter jurisdiction over Appellants' ERISA claims. Appellants allege the ERISA claims present a federal question such that the District Court had subject matter jurisdiction. Thus, FRCP 12(b)(1) is not a basis for dismissal. Nor is clear from the District Court's order whether the court found Appellants had failed to state claims for relief under ERISA. The District Court appears to base its findings that the ERISA claims fail on two main reasons. Each is addressed in turn and each must be reversed. Counts V-X of the Complaint

allege violations of fiduciary duties, prohibited transactions, and failure to enroll by acting in a manner contrary to the express terms of the plan and in the interest of the Appellees rather than the plans and plan beneficiaries, seeking plan-wide injunctive relief. 29 U.S.C. §§ 1104(a)(1)(A), (D); 29 U.S.C. § 1105(a); 29 U.S.C. § 1132(a)(2), (3).

1. ERISA claims are not "peripheral" claims.

The district court's order is fairly incoherent as to the grounds for granting dismissal with prejudice of Appellants' ERISA claims for failure to state a claim; however, the District Court found "[t]hese [ERISA] claims are peripheral at best to Appellants' main case, and the allegations for them underscore that Appellants' real complaint is that they were not enrolled in CARP as of October 1. 2010, which is the same issue at the heart of Appellants' DFR claim against the union." (1-ER-10). The district court does not appear to take fault with the ERISA allegations just with the fact that there are common facts related to Appellants' other claims. The district court does not explain why these allegations cannot be the basis for, or to give rise to, more than one claim, particularly in light of the fact that claims arising from the same facts, from the same case or controversy, should be brought in a single action. It is not at all clear what the district court meant by "peripheral" claims; however, the Appellants ERISA claims are not restated breach of contract claims but instead are an independent statutory basis for recovery for Appellants'

injuries. Appellants plausibly alleged violations of ERISA's statutory dictates for plan wide relief for violations of ERISA fiduciary duties, disclosure requirements, and prohibited transaction rules satisfying the pleading standard under FRCP 8.

Appellants pled United, UAH, and the Administrative Committee each owed fiduciary duties under ERISA. (4-ER-335-344). Appellants pled the Administrative Committee is the named fiduciary of CARP and that UAH and United, are the plan sponsor and employer respectively. (4-ER-335). Appellants further alleged facts outlining the fiduciary acts that violated ERISA. (4-ER-260-66, 273-279, 335-344). Under Iqbal's pleading standard, Appellants sufficient pled facts to "allow[ ] the court to draw the reasonable inference" Appellees had the proper notice of the allegations that their actions were in violation of ERISA. Iqbal, 556 U.S. at 678.

More, the claims in this action seek equitable "plan wide relief" and are not individual claims for benefits.[1] Under ERISA, any fiduciary must adhere to "the documents and instruments governing the plan" so long as such documents are consistent with ERISA. 29 U.S.C. § 1104(a)(1)(D). A party is a fiduciary under ERISA if "he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of assets." 29 U.S.C. 1002(21). An ERISA

[1] There was a typographical error in Appellants' opposition to Appellees' motion to dismiss which results in a contradictory statement regarding Appellants ERISA claims which are clearly for plan wide relief and not claims for benefits.

fiduciary must act for the exclusive benefit of plan participants, and beneficiaries, and must act "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims." 29 U.S.C. § 1104(a)(1)(B). Such duties are the "highest known to the law." Howard v. Shay, 100 F.3d 1484, 1488 (9th Cir. 1996) (citation omitted). In this circuit, making affirmative misrepresentations also violates "core obligation[s] of the ERISA fiduciary." Wayne v. Pacific Bell, 238 F.3d 1048, 1055 (9th Cir. 2001). Appellants pled, and the record indicates, that the United Appellees owed fiduciary duties to the plans at issue, i.e., CARP, the profit-sharing plan, and the defined contribution pension plan ("401k") and that their actions fell below the standard of care set out in ERISA required of a fiduciary. These facts all state a claim for relief pursuant to ERISA. To state otherwise would be to nullify the entire ERISA statutory scheme. Accordingly, the district court finding on this should be reversed.

2. ERISA plan wide relief claims are not preempted by RLA

The district court found "the ERISA claims fail for the same reason they were previously dismissed: they ultimately turn on CBA interpretation, in which case the RLA mandated boards are the exclusive system for dispute resolution." (1-ER-10-11). The district court applied the wrong legal standard in analyzing

Appellants' ERISA claims. ERISA claims are federal claims, not state law claims hence the correct legal standard is preclusion not preemption. Because ERISA and RLA are both federal statutes, one does not preempt the other, instead the question is which statute did Congress intend to take precedence. This circuit emphasizes the general focus of preclusion analysis is on the source of the rights at issue. Saridakis v. United Airlines, 166 F.3d 1272, 1276 (9th Cir.1999); Espinal v. Nw. Airlines, 90 F.3d 1452, 1456 (9th Cir.1996). The RLA requires deference only when construction of, not mere reference to, the CBA provisions is necessary to adjudicate a claim. Haralson v. United Airlines, Inc., 224 F. Supp. 3d 928 (N.D. Cal. 2016). Here, it is the interpretation of, or the construction of, the CARP plan document, a document independent of the CBA, which is the focus of Appellants' ERISA claims to determinate whether the ERISA fiduciaries breached their owed duties under CARP, engaged in prohibited transactions, and failed to provide the required disclosures, not the CBA. ERISA expressly provides exclusive federal court subject matter jurisdiction over claims for breach of fiduciary duties and plan wide relief. 29 U.S.C. § 1132(a)(3); Varity Corp. v. Howe, 516 U.S. 489 (1996). Even the "Supreme Court has expressly rejected the idea that 'all employment-related disputes, including those based on statutory or common law' fall under the exclusive jurisdiction of the system board of Adjustment." Pearson v. N.W. Airlines, Inc., 659 F. Supp. 2d 1084, 1090 (C.D. Cal. 2009).

As Appellants argued below, Air Line Pilots Ass'n (ALPA) v. Nw. Airlines, 627 F.2d 272, 277-78 (D.C.Cir.1980), is instructive and aligned with the facts in this case. In Northwest, ALPA alleged Northwest unreasonably delayed payments due under the collectively bargained pension plan, thus accumulating interest to itself and thereby violating the terms of the plan as well as Northwest's fiduciary duty under ERISA to act only for the benefit of plan participants. The court held ALPA's fiduciary duty claim was an independent, non-arbitrable claim because even if Northwest's conduct was permissible under a proper interpretation and application of the CBA or the plan, that same conduct might have constituted a breach of Northwest's fiduciary duties owed under ERISA. Id. at 277. These are our facts. Moreover, only the kind of injunctive relief available under 29 U.S.C. § 1132(a)(3) will provide the complete relief sought by Appellants. The arbitration board cannot provide the relief requested because the board would have no power, or jurisdiction over the plan, to order the type of relief sought by the Appellants. Moreover, the district court's determination the Appellants' ERISA claims "turn on CBA interpretation in which case the RLA-mandated boards are the exclusive system for dispute resolution," (1-ER-11), for the reasons stated, this was error and should be reversed.

The district court also deems fatal to these ERISA claims the allegations in the "SAC expressly alleg[ing] that 'LOA 05-03M mandated Appellants and the

class were eligible to be covered by CARP' ... making clear that Appellants' eligibility for enrollment in CARP is a matter of CBA interpretation." (1-ER-10-11). This is error because the district court failed to consider this allegation along with Appellants other ERISA allegations. In particular, the allegations that this is so is because of CARP's express terms not because of any term in the CBA. In fact, finding Appellants' complaint alleges a failure to enroll claim as a breach of the CBA completely misstates and misunderstands the breach of contract claim alleged by Appellants, which is that LOA 05-03M vested in Appellants the right to choose whether or not to participate in any maintained defined benefit plan or in some other plan not United. However, just because it was the Appellants' choice to ultimately participate or not in CARP does not change the fact that by the express terms of the CARP plan document, on October 1, 2010, Appellants were eligible to become participants. Nor does the Appellants' elective right nullify or relieve an ERISA fiduciary from his or her duties under ERISA. In fact, this vested vote is highly persuasive as to why the Appellees' refusal to provide this vote was so damaging – it is not only the cause of Appellants' injuries but it caused ERISA fiduciaries to breach their owed fiduciary duties under ERISA.

In addition to not conducting the mandatory vote, the Appellants plausibly alleged the United Appellees, as CARP fiduciaries, breached owed fiduciary duties to CARP and its participants, for: (i) not objectively and adequately reviewing the

plan documents and required filings with the due care; (ii) for taking positions contrary to express terms of CARP plan documents in violation of an ERISA fiduciary's duty; (iii) allowing improper amendment to CARP despite clear and express language in CARP plan documents such amendments were prohibited; (iv) stating false and misleading legal positions to participants in order to deceive those participants as to their participation in CARP; and (v) failing to ensure all contributions were timely and correctly submitted. (4-ER-320-21, 335-340, 342-344). These allegations, which must be taken as true and construed most favorable for Appellants for this motion, not only establish breaches of fiduciary duties by the United Appellee fiduciaries, but also sufficiently show these claims are not dependent upon interpretation of the CBA. Even under the preemption analysis, Appellants claims are not mandated to the arbitral forum.

Under the RLA, the distinguishing feature of a "minor dispute" is that "the dispute may be conclusively resolved by interpreting the existing CBA." Hawaiian Airlines v. Norris, 512 U.S. 246, 256 (1994). "[M]ajor disputes," on the other hand are those disputes that concern rights independent of the CBA and thus, do not fall within the exclusive jurisdiction of the congressionally mandated board. Id. Just because a court must "refer to the CBA in adjudicating a claim does not therefore make such a claim a minor dispute." Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 211-212 (1985); see also Livados v. Bradshaw, 512 U.S. 107, 124 (1994)

("the bare fact the CBA will be consulted in the course of evaluating Appellants claim does not require RLA pre-emption."). In Long v. Flying Tiger Line, Inc. Fixed Pension Plan for Pilots, 994 F.2d 692, 694 (9th Cir. 1993), the case cited by the district court, the court found "where the RLA applies, the Hawaiian Airlines distinction between major and minor disputes controls [the] adjudication of ERISA claims ... ." See Coker v. Transworld Airlines, Inc. et al., 165 F.3d 579, 583-584 (N.D. Ill 1999) ("[t]he choice between two federal statutes requires an analysis of both, to see if they [ ] are incompatible or if they can be harmonized, and if they are incompatible to decide which one Congress meant to take precedence ... ."). The approach utilized in these cases is consistent with the law of this circuit, in that the determination centers on whether the dispute involves rights emanating from "sources outside the agreement." Id. Here, while Appellants' pension and profit-sharing rights can be traced back to LOA 05-03M and the CBA, determining if any ERISA plan's fiduciaries have breached owed fiduciary duties to such plans cannot be found anywhere in those agreements nor could it be conclusively determined by LOA 05-03M and the CBA because it involves a determination of fact and law not found in either. Consequently, under the district court's decision, the RLA can entirely displace ERISA's intended protections for hundreds of thousands of air carrier employees working under the RLA, resulting in subjecting the RLA union-represented workers to a parallel system of justice. As in the state law preemption

cases have held, the fact "a CBA provides a remedy or duty related to a situation also directly regulated by non-negotiable state law does not mean the employee is limited to a claim based on the CBA." Hawaiian Airlines v. Norris, 512 U.S. 246, 261 (1994); Lingle v. Norge Div., Magic Chef, Inc., 486 U.S. 399, 412–13 (1988). The reasoning in these cases applies here for Appellants' ERISA claims.

Appellants' ERISA claims are not trivial and should not be dismiss as such. At this stage of the litigation, and given the fact intensive nature of determining if the ERISA claims are precluded under the RLA, it was error to dismiss Appellants' claims for failure to state a claim. Appellants pled sufficient facts, when construed as required for a Rule 12(b)(6) motion to dismiss, to have stated the elements for an ERISA breach of fiduciary claim – a plan, a fiduciary, and actions violating the statutorily defined corresponding duties. As argued above, and realleged here, the proper remedy if one is required is to grant Appellants leave to amend as requested not to dismiss Appellants' Complaint with prejudice. The district court erred in finding otherwise and should be reversed.

D. Appellants sufficiently stated a claim for a statutory due process violation.

This court reviews de novo a district court's dismissal under FRCP 12(b)(6), Flores v. Cty. of Los Angeles, 758 F.3d 1154, 1158 (9th Cir. 2014), including if a statute provides an implied private cause of action, Northstar Fin. Advisors, Inc. v. Schwab Invs., 615 F.3d 1106, 1115 (9th Cir. 2010). Statutory questions regarding

the RLA are reviewed de novo. See Wharf v. Burlington N. R.R., 60 F.3d 631, 636 n.2 (9th Cir. 1995).

The district court dismissed Appellants' claim on the grounds "Appellants are again challenging the union's failure to support Appellants' grievances, that is a repeat of their DFR claims, and it fails for the same reasons [as the DFR claim]." This finding is illogical and cannot be supported by Appellants' allegations below. Appellants specifically pled, and argued, the RLA provides a statutory right in Appellants to the congressionally mandated remedial procedures *without* union support and which no Appellee could block Appellants from accessing. (4-ER 329-30). That is the exact opposite of what the district court contends Appellants are complaining of but what also defeats Appellants' claim. This is error and must be reversed. The record below unequivocally supports this. This is true especially in light of the fact the court granted a motion by the Appellants to add this specific claim to their complaint. (1-ER-25). The district court did not state, or suggest, then that this claim is duplicative of a breach of the duty of fair representation claim. (1-ER-25). To hold so now, at the pleading stage, and dismiss this claim with prejudice is error.

The district court also refused to consider whether Appellants sufficiently pled this claim, finding "in the absence of controlling authority on this point, the Court declines Appellants' request to 'imply a private right of action' against the

union and United to enforce Appellants' alleged right under the RLA to proceed to arbitration over the Union's objections." (1-ER-9). This decision by the district court appears to have judged the sufficiency of the Appellants' allegations on an incorrect standard. Appellants are only required to set forth "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007); see also Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Under this pleading standard, a court may not dismiss a complaint when a plaintiff has plead "enough facts to state a claim to relief that is plausible on its face." Twombly, 550 U.S. at 570. A motion under Rule 12(b)(6) does not test the merits of the claim but simply tests whether an Appellant has adequately stated a claim. Applying that standard here, Appellants have provided the required notice. Therefore, the district court, having to accept those facts as true and favorable for the Appellants, erred in dismissing this claim with prejudice. More importantly, given the district court's apparent confusion as to the basis of the Appellants' claim, the proper remedy is for amendment not dismissal with prejudice.

The Supreme Court has held air carrier employees covered by the RLA have a statutory right to process their grievances individually. Elgin, J. & E. Rwy. Co. v. Burley, 325 U.S. 711, 734-736 (1945) (finding "without individual rights workers become only shadows with no voice"); International Bhd. of Elect. Workers v. Foust, 442 U.S. 42, 49 n.11 (1979) (requiring a system board to hear a grievance

submitted by an individual employee, even if not supported by the employee's union); Smith v. Evening News Association, 371 U.S. 195 (1962) (labor contracts create rights in individual employees not just labor unions and employers; those rights can be enforced in courts of law). Notably, the Seventh Circuit, the United Appellees home circuit, has repeatedly found such a right exists in cases to which the United Appellees were parties to. Bumpus v. ALPA, (7th Cir. 2022) (a union and an employer cannot act as a "gatekeeper," and prevent a union member or an employee from invoking his statutory right to arbitration); see Santiago v. United Air Lines, Inc., 969 F.Supp.2d 955 (N.D. Ill 2013) ("Nothing in §184 suggests that the union and employer could agree to place a limitation upon an individual employee right to unilaterally seek relief before an adjustment board," and are precluded "from deciding, on [their] own" ... "to bar [Appellants] from bringing [a] grievance to the System Board."). If the purposes of FRCP 8 is to provide fair notice to an Appellee of the claims against them, these sister circuit precedents should have guided the district court in finding Appellants had stated a claim for relief over which the district court had subject matter jurisdiction.

Appellants do note the Supreme Court narrowed down the analysis from the four Cort factors, as Appellants argued below, to the single Cort factor related to the legislative intent. Alexander v. Sandoval, 532 U.S. 275, 286-291 (2001) (courts are tasked with determining only if Congress intended to create a private cause of

action). However, even a cursory glance at the statute at issue warrants finding it is a reasonable inquiry as to whether Appellants, as employees working under the RLA, are one of the groups with a right to access the process:

> "[t]he disputes between an employee or group of employees and a carrier or group of carriers by air growing out of grievances ... shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board . . .

45 U.S.C. §184.

When possible, federal courts should provide a remedy where there is a wrong. "[I]t is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit or action at law whenever that right is invaded." Marbury v. Madison, 5 U.S. 137, 163 (1803). To the extent that this Court is not completely convinced it should reverse the district court and reinstate this claim, this Court should be persuaded to do so by the inequity of not allowing it.

E. Appellants sufficiently stated a statutory violation of LMRDA §501 over which the district court had subject matter jurisdiction.

The district court similarly erred in finding "union officers cannot be held personally liable for union activities." (1-ER-9). Appellants allege a violation pursuant to the Labor Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. § 401 et seq., specifically, § 501 related to fiduciary duties of officers in

unions covered by the Act. (4-ER-330-35). Under LMRDA § 501(a), a member of a union may bring an action in federal court to recover damages or other relief against any union officer violating his or her duties under this section. 29 U.S.C. § 501. Atkinson v. Sinclair Refining Co., 370 U.S. 238 (1962), cited by the district court, is inapposite. Atkinson involved a § 301 case under the National Labor Relations Act where the employer alleged the claims against multiple individual officers and agents of the union for breaching the collective bargaining agreement and tortious interference with contractual relations. These are not the facts of the case at issue. The complaint specifically alleges a claim under LMRDA § 501, a statute intentionally and unambiguously enacted to permit a private right of action against individual officers and officials for breaches of fiduciary duty as defined under the LMRDA. Appellants alleged the elements of the claim; however, the District Court found "[w]hile allegations like these have a veneer of specificity (by, for example, mentioning the specific date and the amount of the payment), the substance of what Appellants are trying to allege (that the payment was improper and that Hoffa breached his legal duties by "allow[ing] the national office to receive" it) relies on unwarranted deductions of fact and unreasonable inferences, which the Court need not accept." (1-ER-10). Such a finding by the district court belies the reviewing standard for a FRCP 12(b) motion by not accepting all of the Appellants well-pled allegations as true and construing them in their favor.

Notably, in the Ninth Circuit, "[t]he language of the statute certainly does not require that the district court ... make a searching inquiry into the merits of the suit." Pimentel v. Aloise, Case No. 18-cv-00411-EMC (N.D. Cal. Nov. 16, 2018). Moreover, in George v. Local Union No. 639, the court remarked "[i]t would ... be illogical to impose a heightened pleading standard, requiring a plaintiff to show a high likelihood of success on the merits" at the motion to dismiss stage. 98 F.3d 1419, 1422 (D.C. Cir. 1996). Furthermore, as the record below shows, Appellants provided a sworn declaration and other supporting documentation referred to in the Complaint related to his claim and thus, this claim is not based on a frolic or on "unwarranted deductions and unreasonable inferences," as the district court held. Nor has any Appellee, as shown in the record below, offered any evidence so as to render such allegations as without foundation warranting dismissal at this stage in the litigation. The district court must be reversed.

CONCLUSION

For the foregoing reasons, this Court should reverse the district court's order that dismissed Appellants' case with prejudice.

Dated: December 30, 2022

Signed: /s/ Jane C. Mariani

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CERTIFICATE OF SERVICE

I hereby certify that on December 30, 2022, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I further certify that the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

Dated: December 30, 2022

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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STATUTORY ADDENDUM

Addendum Table of Contents

Railway Labor Act

45 USC 184: System, group, or regional boards of adjustment

§184. System, group, or regional boards of adjustment

The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on April 10, 1936 before the National Labor Relations Board, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board, as hereinafter provided, with a full statement of the facts and supporting data bearing upon the disputes.

It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of this subchapter, to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 153 of this title.

Such boards of adjustment may be established by agreement between employees and carriers either on any individual carrier, or system, or group of carriers by air and any class or classes of its or their employees; or pending the establishment of a permanent National Board of Adjustment as hereinafter provided. Nothing in this chapter shall prevent said carriers by air, or any class or classes of their employees, both acting through their representatives selected in accordance with provisions of this subchapter, from mutually agreeing to the establishment of a National Board of Adjustment of temporary duration and of similarly limited jurisdiction.

(May 20, 1926, ch. 347, §204, as added Apr. 10, 1936, ch. 166, 49 Stat. 1189 .)

Employee Retirement Income Security Act ("ERISA")

29 U.S.C. §1002. Definitions

For purposes of this subchapter:

(21)(A) Except as otherwise provided in subparagraph (B), a person is a fiduciary with respect to a plan to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or

responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan. Such term includes any person designated under section 1105(c)(1)(B) of this title.

29 U.S.C. §1104. Fiduciary duties

(a) Prudent man standard of care

(1) Subject to sections 1103(c) and (d), 1342, and 1344 of this title, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and-

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

***

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this subchapter and subchapter I

29 U.S.C. §1105. Liability for breach of co-fiduciary

(a) Circumstances giving rise to liability

In addition to any liability which he may have under any other provisions of this part, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances:

(1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach;

(2) if, by his failure to comply with section 1104(a)(1) of this title in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or

(3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

29 U.S.C. §1132. Civil enforcement

(a) Persons empowered to bring a civil action

A civil action may be brought-

***

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;

Labor Management Reporting and Disclosure Act.

29 USC § 501: Fiduciary responsibility of officers of labor organizations

(a) Duties of officers; exculpatory provisions and resolutions void.

The officers, agents, shop stewards, and other representatives 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. A general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy.

(b) Violation of duties; action by member after refusal or failure by labor organization to commence proceedings; jurisdiction; leave of court; counsel fees and expenses.

When any officer, agent, shop steward, or representative of any labor organization is alleged to have violated the duties declared in subsection (a) and 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, agent, shop steward, or representative in any district court of the United States or in any State court of competent jurisdiction 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. The trial judge may allot a reasonable part of the recovery in any action under this subsection to pay the fees of counsel prosecuting the suit at the instance of the member of the labor organization and to

compensate such member for any expenses necessarily paid or incurred by him in connection with the litigation.

(c) Embezzlement of assets; penalty

Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use, or the use of another, any of the moneys, funds, securities, property, or other assets of a labor organization of which he is an officer, or by which he is employed, directly or indirectly, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(Pub. L. 86–257, title V, §501, Sept. 14, 1959, 73 Stat. 535 .)

Federal Rules of Civil Procedure

TITLE III. PLEADINGS AND MOTIONS

Rule 8. General Rules of Pleading

(a) CLAIM FOR RELIEF. A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction, and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings

……..

(b) HOW TO PRESENT DEFENSES. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;

……

(6) failure to state a claim upon which relief can be granted;

……..

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

Rule 15. Amended and Supplemental Pleadings

(a) AMENDMENTS BEFORE TRIAL.

(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

Rule 16. Pretrial Conferences; Scheduling; Management

(a) PURPOSES OF A PRETRIAL CONFERENCE. In any action, the court may order the attorneys and any unrepresented parties to appear for one or more pretrial conferences for such purposes as:

(1) expediting disposition of the action;

(2) establishing early and continuing control so that the case will not be protracted because of lack of management;

(3) discouraging wasteful pretrial activities;

(4) improving the quality of the trial through more thorough preparation; and

(5) facilitating settlement.

(b) SCHEDULING.

(1) Scheduling Order. Except in categories of actions exempted by local rule, the district judge—or a magistrate judge when authorized by local rule—must issue a scheduling order:

(A) after receiving the parties' report under Rule 26(f); or

(B) after consulting with the parties' attorneys and any unrepresented parties at a scheduling conference.

(2) Time to Issue. The judge must issue the scheduling order as soon as practicable, but unless the judge finds good cause for delay, the judge must issue it within the earlier of 90 days

after any defendant has been served with the complaint or 60 days after any defendant has appeared.

(3) Contents of the Order.

(A) Required Contents. The scheduling order must limit the time to join other parties, amend the pleadings, complete discovery, and file motions.

(B) Permitted Contents. The scheduling order may:

(i) modify the timing of disclosures under Rules 26(a) and 26(e)(1);

(ii) modify the extent of discovery;

(iii) provide for disclosure, discovery, or preservation of electronically stored information;

(iv) include any agreements the parties reach for asserting claims of privilege or of protection as trial preparation material after information is produced, including agreements reached under Federal Rule of Evidence 502;

(v) direct that before moving for an order relating to discovery, the movant must request a conference with the court;

(vi) set dates for pretrial conferences and for trial; and

(vii) include other appropriate matters.

(4) Modifying a Schedule. A schedule may be modified only for good cause and with the judge's consent.

TITLE V. DISCLOSURES AND DISCOVERY

Rule 26. Duty to Disclose; General Provisions Governing Discovery

(a) REQUIRED DISCLOSURES.

(1) Initial Disclosure.

(A) In General. Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the

other parties:

(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that

information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(ii) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(iii) a computation of each category of damages claimed by the disclosing party—who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

(iv) for inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

……..

(C) Time for Initial Disclosures—In General. A party must make the initial disclosures at or within 14 days after the parties' Rule 26(f) conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in this action and states

the objection in the proposed discovery plan. In ruling on the objection, the court must determine what disclosures, if any, are to be made and must set the time for disclosure.

……..

(E) Basis for Initial Disclosure; Unacceptable Excuses. A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

Federal Rules of Appellate Procedure

Rule 4. Appeal as of Right—When Taken

(a) Appeal in a Civil Case.

(1) Time for Filing a Notice of Appeal.

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.

LIST OF ABBREVIATIONS

Administrative Committee	United Airlines Holdings Administrative Committee
AMFA	Aircraft Mechanics Fraternal Association
CARP	Continental Airlines Retirement Plan
CBA	collective bargaining agreement
CMC	initial case management conference
Continental	Continental Airlines
District Court	U.S. District Court for the Northern District of CA
ERISA	Employee Retirement Income Security Act
FRAP	Federal Rules of Appellate Procedure
FRCP	Federal Rules of Civil Procedure
LMRDA	Labor Management Reporting Disclosure Act
LOA-05-03M	Letter of Agreement 05-03M
Local Unions	Teamsters Locals 210, 781, 856, and 986
RLA	Railway Labor Act
SAC	Second Amended Complaint
Teamsters	International Brotherhood of Teamsters
UCH	United Airlines Holdings
United	United Airlines, Inc.