CHRIS A. HOLLINGER (SB #147637)
chollinger@omm.com
O'MELVENY & MYERS LLP
Two Embarcadero Center, 28th Floor
San Francisco, California 94111-3823
Telephone: (415) 984-8700
Facsimile: (415) 984-8701

ROBERT A. SIEGEL (SB #64604)
rsiegel@omm.com
O'MELVENY & MYERS LLP
400 South Hope Street, 18th Floor
Los Angeles, CA 90071-2899
Telephone: (213) 430-6000
Facsimile: (213) 430-6407

Counsel for Defendant
American Airlines, Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

AMERICAN AIRLINES FLOW-THRU PILOTS COALITION, GREGORY R. CORDES, DRU MARQUARDT, DOUG POULTON, STEPHAN ROBSON, AND PHILIP VALENTE III, on behalf of themselves and all persons similarly situated,

Plaintiffs,

v.

ALLIED PILOTS ASSOCIATION; and AMERICAN AIRLINES, INC.,

Defendants.

Case No. 3:15-cv-03125-RS

DEFENDANT AMERICAN AIRLINES, INC.'S NOTICE OF MOTION AND MOTION TO DISMISS COUNT ONE OF THE SECOND AMENDED COMPLAINT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(B)(6); MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Hearing Date: March 17, 2016
Time: 1:30 P.M.
Place: Courtroom 3, 17th Fl.
Judge: Hon. Richard Seeborg

NOTICE OF MOTION AND MOTION TO DISMISS

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, on Thursday, March 17, 2016, at 1:30 P.M., or as soon thereafter as the matter may be heard, defendant American Airlines, Inc., by and through its undersigned counsel of record, will and hereby does move to dismiss with prejudice the only claim that has been asserted against it, Count One of the Second Amended Complaint, pursuant to Federal Rule of Civil Procedure 12(b)(6). Said motion will be heard at the United States District Court, 450 Golden Gate Avenue, San Francisco, California.

This motion is based upon this Notice of Motion and Motion to Dismiss, and the Memorandum of Points and Authorities in support thereof, served and filed herewith, all pleadings, papers, and records on file in this action, and any other matter of which the Court may take judicial notice, or which may be presented to the Court at or before the time of the hearing.

Dated: February 8, 2016.

Respectfully submitted,

CHRIS A. HOLLINGER
ROBERT A. SIEGEL
O'MELVENY & MYERS LLP

By: /s/ Chris A. Hollinger
CHRIS A. HOLLINGER

Counsel for Defendant
American Airlines, Inc.

MEMORANDUM OF POINTS AND AUTHORITIES

PRELIMINARY STATEMENT

On December 17, 2015, this Court granted Defendant American Airlines, Inc.'s ("American" or the "Company") Motion to Dismiss Count One of the First Amended Complaint ("FAC"). (Order Granting Motion to Dismiss, With Leave to Amend [ECF No. 37] ["Order"].) Acknowledging the "detailed allegations" in the FAC regarding the alleged discriminatory treatment by Co-Defendant Allied Pilots Association (the "APA" or "Union") and the Company towards the Flow-Through Pilots ("FTPs"), the Court nonetheless ruled that the FAC failed to contain allegations sufficient to impose liability on an employer for colluding in a ***union's*** alleged breach of its duty of fair representation ("DFR"). (Order at 5-6.)

Plaintiffs have now filed a Second Amended Complaint (ECF No. 38) ("SAC"), adding a handful of new and/or revised allegations with respect to American in Paragraphs 44-48, 52-56, and 79. These three sets of allegations, however, fail to cure the deficiencies which prompted this Court to dismiss Count One in response to American's original motion. ***First*****,** in Paragraphs 44-48 of the SAC, Plaintiffs have merely added details to their prior allegation that the APA and American reached a collectively-bargained agreement that negatively impacted the FTPs – but, as this Court previously ruled, such an allegation is insufficient as a matter of law to hold American responsible for the APA's alleged breach of DFR. ***Second*****,** in Paragraphs 52-56, Plaintiffs attempt to re-litigate disputes regarding the meaning of collectively-bargained agreements ("minor disputes" under the Railway Labor Act ["RLA"]) which were previously submitted to mandatory and exclusive arbitration and which resulted in arbitration awards in 2007 and 2010. With these allegations, Plaintiffs not only attempt to circumvent the RLA's defined procedures for enforcing or setting aside arbitration awards, but they do so long after the statute of limitations has expired. ***Third****,* Plaintiffs' contention in Paragraph 79 that the revised allegations in the SAC demonstrate that American has breached its collective

bargaining agreement with the APA expressly raises a minor dispute, without offering anything approaching the necessary allegations of collusion that would permit Plaintiffs to avoid the mandatory and exclusive grievance/arbitration process for resolving such disputes under the RLA; and, in any event, Plaintiffs' conclusory allegations do not state a claim that American can be held liable for APA's alleged DFR breach.

Because Plaintiffs, in the SAC as in the FAC, have not and cannot allege conduct by American evidencing bad faith, discrimination or hostility towards the FTPs, Count One should be dismissed as to American in its entirety, this time with prejudice.[1]

ARGUMENT

I. THE COURT'S ORDER GRANTING AMERICAN'S MOTION TO DISMISS COUNT ONE OF THE FAC.

In its December 17 Order, the Court noted that the FAC "set[] out in considerable detail the circumstances that plaintiffs contend constituted improper and discriminatory treatment of the [FTPs] in agreements reached between the Union and American." (Order at 3.) The "sole basis advanced for holding American liable" was found in Paragraph 39 of the FAC, which alleged that "[American] has entered into the agreements with [the Union/APA] alleged in paragraphs 23 and 27 ***knowing that these agreements would adversely affect and discriminate against FTPs and knowing that [the Union] intended to discriminate against FTPs in such agreements***." (Order at 3-4 [emphasis in original].) Even after drawing all inferences in Plaintiffs' favor,[2] the Court rejected Plaintiffs' contention that "American can be held liable simply because it entered into agreements

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[1] As was the case with the FAC, Plaintiffs have named American in Count Two only insofar as American might be necessary to secure their requested relief. (*See* SAC ¶ 89.) American is not required to respond to those allegations, and does not seek dismissal of Count Two through the instant motion.

[2] The Court stated that, "[f]or purposes of [the] motion," Plaintiffs "may be given the benefit of the doubt that the facts they have alleged are sufficient to support inferences that: (1) American knew that the agreements the Union was negotiating had discriminatory negative effects on the FTPs; (2) American knew the Union intended those effects, and even; (3) American knew such conduct by the Union was a violation of its duty to the FTPs of fair representation." (Order at 4.)

with that knowledge . . . ." (Order at 4; *id.* at 5 [citing *Rakestraw v. United Airlines, Inc.*, 765 F. Supp. 474 (N.D. Ill. 1991), *aff'd in part, rev'd in part*, 981 F.2d 1524 (7th Cir. 1992), for proposition that "merely agreeing to a union's contractual demands, even with knowledge that the union may not be advocating for all its members fairly, is not a sufficient basis for imposing liability on an employer"].) The Court concluded that, "[a]t least outside contexts such as discrimination against protected classes, the onus should not be on the employer to evaluate and consider whether distinctions a union draws among its members are appropriate." (Order at 5.)

Accordingly, the Court held that "something more than merely acceding to union demands must be alleged and proven to impose liability on an employer for 'colluding' in a breach of what ultimately remains the union's duty." (Order at 5-6.) Finding that Plaintiffs had failed to satisfy this legal standard, the Court granted American's motion to dismiss the first claim in the FAC as to American and, in the "Conclusion" to its Order, the Court stated:

> The detailed allegations of the First Amended Complaint, and the nature of the arguments they offered in opposition to the present motion, strongly suggests that their attempt to hold American liable in damages under the first claim for relief fails because this order rejects the legal premise of the claim, rather than because there are facts supporting liability that exist, but which they did not plead. Nevertheless, plaintiffs will be given the opportunity to amend the first claim for relief to attempt to state a claim against American Airlines, taking into account the preceding discussion. (Order at 6.)

As demonstrated below, the Court was correct in its prediction that Plaintiffs would be unable to adequately allege a claim against American in their SAC.

II. THE SECOND AMENDED COMPLAINT DOES NOT CURE THE DEFECTS IN COUNT ONE.

In the SAC, filed on January 22, 2016, Plaintiffs added a handful of new and/or revised allegations in an effort (albeit unsuccessful) to address the many shortcomings

cited in the Court's prior Order. In a new Paragraph 79, Plaintiffs summarize their attempt to rectify the deficiencies in the FAC, alleging that:

> AAL has undertaken a pattern of discrimination and collusion with APA in discriminating against FTSs [sic], including the actions alleged in Paragraphs 44 through 48 and Paragraphs 52 through 56. As alleged in Paragraphs 44 through 48 and Paragraphs 52 through 56, AAL's actions have included actions that breached the terms of the Flow-Through Agreement, breached and ignored the decisions of arbitrators and abrogated the rights of FTPs under the AAL/APA collective bargaining agreement and the Flow-Through Agreement that is Supplement W to the AAL/APA collective bargaining agreement, infurther [sic] violated Section 24.T of the collective bargaining agreement between AAL and APA. (SAC ¶ 79.)

The adequacy of Plaintiffs' claim in Count One as to American thus turns on the allegations in Paragraphs 44-48, 52-56, and 79 of the SAC. None of those revised allegations, however, are sufficient to state a claim that American can be held liable for APA's alleged breach of DFR. Accordingly, for the same reasons Count One of the FAC was dismissed, the Court should dismiss Count One of the SAC as to American – this time, with prejudice.

A. <u>Paragraphs 44-48 Of The SAC Do Not Support A Claim Against American</u>.

Each of the material facts in Paragraphs 44-48 of the SAC was previously included in the FAC. In Paragraphs 22-24 of the FAC, Plaintiffs alleged that: (1) in November 2001, American and the APA agreed that Trans World Airlines ("TWA")-LLC pilots would be restricted from flowing-down to American Eagle under the Flow-Through Agreement; (2) in 2003, American and the APA reached a new agreement that allowed TWA-LLC pilots to flow-down to American Eagle more quickly; and (3) the 2003 American-APA agreement resulted in TWA-LLC pilots displacing FTPs from captain positions at American Eagle. In Paragraphs 44-48 of the SAC, Plaintiffs have made no

additions or revisions to their original allegations that are in any way material to their claim against American.

While the SAC adds an assertion that the 2003 agreement between American and APA "abrogated the rights of FTPs" by expanding the flow-down rights of TWA-LLC pilots, this allegation is indistinct from the allegation in the FAC that the 2003 agreement "adversely affected the interests of FTPs" and "allowed TWA-LLC pilots to displace FTPs." (*Compare* FAC ¶ 24 *with* SAC ¶ 47.) As in the FAC, Plaintiffs' "revised" allegations in Paragraphs 44-48 of the SAC allege nothing more than a collectively-bargained agreement between American and APA, and, for the reasons set forth in the Court's prior Order, those allegations do not state a claim against American.

B. Paragraphs 52-56 Of The SAC Do Not Support A Claim Against American.

The new allegations in Paragraphs 52-56 of the SAC focus primarily on arbitration awards that were issued by RLA Boards of Adjustment in 2007 and 2009.[3] Although these arbitration decisions were previously described and relied on by Plaintiffs in the FAC (*see* FAC ¶¶ 27-28), in the SAC Plaintiffs have expanded their discussion of the arbitrators' rulings with the following allegations:

- Following a May 11, 2007 ruling from Arbitrator John LaRocco in Case No. FLO-0903 that TWA-LLC pilots were "new-hire pilots" under the Flow-Through Agreement, "APA allowed [American] to continue to hire TWA-LLC Staplees in preference to FTPs," despite "the rights of FTPs to employment at [American] for new-hire positions." (SAC ¶ 52(b).)
- In connection with the FLO-0108 arbitration before Arbitrator George Nicolau, American and APA, "on or about March 30, 2010," "entered into off-the-record discussions with the arbitrator and the other parties" and "requested Arbitrator

[3] Because they are incorporated by detailed reference in the SAC, the Company has attached the two arbitration awards, including both the liability and remedy opinions for each award. *See* Exhibits A-D. The Court may properly consider these awards in deciding the instant motion. *See United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) ("A court may, however, consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice—without converting the motion to dismiss into a motion for summary judgment.") (citation omitted).

Nicolau to issue a remedy award" that abrogated the rights of FTPs under both the Flow-Through Agreement and the American-APA collective bargaining agreement. (SAC ¶¶ 54-56.)

Not only are these allegations flatly contradicted by the arbitration awards themselves, but even if they were true, they do not state a claim that American can be held liable for APA's alleged breach of its DFR to the Flow-Through Pilots. Instead, Plaintiffs are attempting, through these allegations, to re-litigate disputes regarding the interpretation of collectively-bargained agreements that were adjudicated years ago by labor arbitrators acting pursuant to the mandatory and exclusive dispute-resolution procedures of the RLA. Disagreements over American's compliance with the arbitration awards, or with the substance of the awards themselves, do not provide a basis for holding American liable for APA's alleged DFR breach; and, in any event, the time for Plaintiffs to challenge these arbitration proceedings has long since passed.

The RLA requires disputes over the meaning of collective bargaining agreements, such as those which gave rise to the arbitration decisions in Case Nos. FLO-0903 and FLO-0108, to be submitted to a Board of Adjustment for final and binding arbitration. *See* 45 U.S.C. §§ 153, 184. The jurisdiction of the Board of Adjustment over these "minor disputes" is "mandatory, exclusive and comprehensive." *See, e.g., Andrews v. Louisville & N.R.R. Co.*, 406 U.S. 320, 322-24 (1972); *Bhd. of Locomotive Eng'rs v. Louisville & N.R.R. Co.*, 373 U.S. 33, 36-38 (1963). Both the FLO-0903 and FLO-0108 arbitrations identified in the SAC were conducted by a Board of Adjustment in accordance with the mandates of the RLA.

With respect to FLO-0903, Plaintiffs imply that American failed to comply with Arbitrator LaRocco's award. Plaintiffs' suggestion is demonstrably incorrect,[4] but, even if true, Plaintiffs nowhere allege that the reason American failed to comply with the award

[4] Plaintiffs allege only that American made certain hiring decisions "[n]otwithstanding Arbitrator LaRocco's ruling." (SAC ¶ 52(b).) In the FLO-0903 remedy award, however, Arbitrator LaRocco concluded that he did not have jurisdiction to decide the hiring dispute referenced in Paragraph 52(b) of the SAC, and that dispute was ultimately resolved by Arbitrator Nicolau in the FLO-0108 award. *See* Exhibit C at 2-3.

in FLO-0903 involved any sort of animus towards the Flow-Through Pilots – as opposed to, for example, an honest disagreement over the meaning of Arbitrator LaRocco's award. Indeed, Plaintiffs are unable to conjure up any basis to contend that American in any way discriminated against them or even so much as a hint that American acted in bad faith or was hostile towards them. Rather, they allege nothing more than that the Company did not comply with their interpretation of Arbitrator LaRocco's award. Any dispute over the interpretation or application of the award in FLO-0903 had to be submitted to final and binding arbitration under the RLA – which is, of course, exactly what happened in FLO-0108. *See* Exhibit C at 2-3; Exhibit D at 1-3.

With respect to FLO-0108, Plaintiffs imply that Arbitrator Nicolau's award should have been set aside altogether, because American and APA allegedly jointly requested, in "off-the-record discussions," that Arbitrator Nicolau issue an award that had a deleterious effect on the Flow-Through Pilots. (*See* SAC ¶¶ 54-56.) But again, even if true, Plaintiffs nowhere allege that American agreed with the APA to the remedy award in FLO-0108 due to any kind of animus the Company might have had towards the Flow-Through Pilots and, thus, Plaintiffs' allegation does not support a claim for "collusion" against American. Moreover, if the Plaintiffs believed there were improprieties in Arbitrator Nicolau's formulation of the award in FLO-0108, their recourse was to file an action to set aside the award, *see* 45 U.S.C. §§ 153, First (p) & (q), but the time for challenging a 5+ year-old arbitration decision has long since expired.[5]

[5] The RLA does not expressly prescribe the limitations period for judicial review of arbitration decisions in the airline industry. A number of federal appellate courts have adopted the two-year limitations period for review of arbitration decisions in the railroad industry. *See Lekas v. United Airlines, Inc.* 282 F.3d 296, 298 (4th Cir. 2002); *Ass'n of Flight Attendants v. Republic Airlines*, 797 F.2d 352, 356-357 (7th Cir. 1986). Other courts have borrowed the statute of limitations for state-law actions to vacate arbitration awards. *See Granlund v. Northwest Airlines*, 2001 U.S. Dist. LEXIS 21148, at *6 (D. Minn. Dec. 12, 2001); *Vaughter v. E. Air Lines*, 619 F. Supp. 463, 472-73 (S.D. Fla. 1985), *aff'd*, 817 F.2d 685 (11th Cir. 1987). The statute of limitations for an action to vacate an arbitration award under California law is 100 days. Cal. Civ. Proc. Code § 1288.

Accordingly, the details concerning the arbitrators' rulings in FLO-0903 and FLO-0108 that have been added to the allegations in the SAC are insufficient to state a viable claim against American. While the Plaintiffs may not like those rulings, they cannot challenge them in this action.

C. **Paragraph 79 Of The SAC Does Not Support A Claim Against American.**

Although Paragraph 79 includes a new conclusory assertion that "[American] has undertaken a pattern of discrimination and collusion with APA in discriminating against [FTPs]," an allegation which is insufficient in and of itself to state a cognizable claim against American,[6] the sole factual support cited by Plaintiffs for the conclusion in Paragraph 79 consists of the allegations in Paragraphs 44-48 and 52-56 of the SAC. Because, as demonstrated in Sections II.A and B, above, Paragraphs 44-48 and 52-56 do not allege conduct by American evidencing bad faith, discrimination, or hostility towards the Flow-Through Pilots, they fail to state a claim against American. *See Rakestraw*, 765 F. Supp. at 493-94; Order at 5.

Plaintiffs' only new allegation in Paragraph 79 of the SAC, a contention that the actions described in Paragraphs 44-48 and 52-56 also constitute a breach of Section 24.T of the American-APA collective bargaining agreement in addition to the Flow-Through Agreement, adds nothing to their claim. Plaintiffs have not asserted a cause of action against American for breach of the collective bargaining agreement, and, if they tried to do so, they would fail. Under the RLA's mandatory and exclusive grievance/arbitration procedures, a breach-of-contract claim against a carrier can be joined with a DFR claim against a union, and adjudicated by a district court, only "where a union acts 'in concert'

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[6] Conclusory and vague allegations of collusion are insufficient as a matter of law to state a claim against an employer. *Crusos v. United Transp. Union, Local 1201*, 786 F.2d 970, 973 (9th Cir. 1986); *Kozy v. Wings W. Airline, Inc.*, No. C-94-1678 FMS, 1995 WL 32915, at *2 (N.D. Cal. Jan. 25, 1995), *aff'd and remanded sub nom. Kozy v. Wings W. Airlines, Inc.,* 89 F.3d 635 (9th Cir. 1996).

with the carrier-employer, setting up 'schemes and contrivances' to stymie aggrieved employees." *Addington v. US Airline Pilots Ass'n,* 588 F. Supp. 2d 1051, 1063 (D. Ariz. 2008), *rev'd on other grounds*, 606 F.3d 1174 (9th Cir. 2010). Without establishing the requisite level of collusion that was missing from the FAC, and is still missing in the SAC, Plaintiffs cannot state a judicially-cognizable breach-of-contract claim against American. *See Croston v. Burlington N.R.R. Co.*, 999 F.2d 381, 387 (9th Cir. 1993) (holding, in hybrid action, that "[c]onclusory allegations that do not demonstrate any act of collusion between the union and the railroad will not establish jurisdiction"), *overruled on other grounds by Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246 (1994). And, even if they could, any such breach-of-contract claim against American would be barred by the applicable six-month statute of limitations. *See Int'l Ass'n of Machinists & Aerospace Workers, AFL-CIO v. Aloha Airlines, Inc.*, 790 F.2d 727, 735 (9th Cir. 1986).

CONCLUSION

For the foregoing reasons, Defendant American Airlines, Inc. respectfully requests that Count One of the Second Amended Complaint be dismissed as to American with prejudice.

Dated: February 8, 2016.

Respectfully submitted,

CHRIS A. HOLLINGER
ROBERT A. SIEGEL
O'MELVENY & MYERS LLP

By: /s/ Chris A. Hollinger
CHRIS A. HOLLINGER

Counsel for Defendant American Airlines, Inc.