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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 FIRST AMENDED COMPLAINT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(B)(6); MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Hearing Date:	November 12, 2015
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, November 12, 2015, 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 First 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: October 5, 2015.

Respectfully submitted,

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By: /s/ Chris A. Hollinger
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Counsel for Defendant American Airlines, Inc.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Plaintiffs are five pilots, along with a purported association of other pilots, who currently fly for Defendant American Airlines, Inc. ("American") and received their jobs with American pursuant to a 1997 Flow-Through Agreement between American, American Eagle (a regional airline which provided feeder service for flights operated by American), Defendant Allied Pilots Association ("APA"), and the Air Line Pilots Association ("ALPA"). This Flow-Through Agreement established the terms under which American Eagle pilots, including Plaintiffs, could obtain employment as pilots with American. ALPA was (and still is) the exclusive collective bargaining representative for American Eagle's pilots; APA was (and still is) the exclusive collective bargaining representative for American's pilots.

In their First Amended Complaint ("FAC"), Plaintiffs allege that APA has acted against the interests of pilots who obtained employment with American pursuant to the Flow-Through Agreement (the "Flow-Through Pilots") by advancing the interests of other groups of American pilots at their expense. More particularly, in Count One, the only claim that has been asserted against American, Plaintiffs allege that APA breached its duty of fair representation ("DFR") toward the Flow-Through Pilots by negotiating collective bargaining agreement provisions with American which gave other groups of pilots, such as those who previously worked for Trans World Airlines ("TWA"), allegedly-greater access to pilot job opportunities at American, and which gave some groups of pilots (but not Plaintiffs) credit for pay and benefits purposes for their time spent flying with airlines other than American. Plaintiffs allege further, in Count One, that American colluded with APA in APA's alleged breach of DFR, because American entered into these collective bargaining agreements with APA knowing that APA intended to discriminate against the Flow-Through Pilots and knowing that those agreements would have a discriminatory impact on them. In Count Two, Plaintiffs contend that APA has

breached its DFR based on how Plaintiffs claim the Flow-Through Pilots will be treated in the pending seniority-integration arbitration involving American's pilots and the pilots who worked for US Airways, Inc. before its merger with American.[1]

Count One should be dismissed as to American under Federal Rule of Civil Procedure 12(b)(6) because it fails to state a claim against American. In order to sustain a claim that an employer colluded in a union's breach of its DFR by entering into a collective bargaining agreement with the union, a plaintiff must allege that his or her employer itself had a discriminatory intent against the plaintiff when the employer entered into the collective bargaining agreement – and not simply, as Plaintiffs contend here, that American was supposedly aware of such an alleged discriminatory intent on the part of the APA. The mere fact that a carrier (like American) negotiates a collective bargaining agreement with a union cannot, as a matter of law, suffice to establish actionable collusion. In Count One of the FAC, with respect to American, Plaintiffs have alleged only that it reached collective bargaining agreements with APA under circumstances where APA either acted with a discriminatory intent, or where the agreements at issue allegedly had a discriminatory impact on Plaintiffs. Because Plaintiffs have not alleged any discriminatory intent on the part of American against the Plaintiffs, they have failed to state a claim against the Company for collusion in APA's purported breach of its DFR and, accordingly, the claim asserted in Count One against American should be dismissed.

FACTUAL BACKGROUND

A. The Parties.

American is a commercial airline which is owned by American Airlines Group Inc. ("AAG"). FAC ¶¶ 6, 8.[2] AAG was formed by the merger of US Airways Group, Inc. and

[1] Plaintiffs have named American in Count Two only insofar as American might be necessary to secure the requested relief. *See* FAC ¶ 55. American is not required to respond to those allegations and does not seek dismissal of Count Two through the instant motion.

[2] For purposes of this Rule 12(b)(6) motion only, American accepts as true the well-pleaded factual allegations in the FAC.

AMR Corporation ("AMR") in 2013. *Id.* ¶ 6. Prior to that merger, AMR was the parent company of both American and American Eagle. *Id.* ¶¶ 4, 6.

Prior to the merger, APA was the certified collective bargaining representative for American's pilots. *Id.* ¶ 4. Following the merger, APA has remained the collective bargaining agent for all pilots at American – a group which now includes pilots who worked for both American and US Airways, Inc. before the merger. *Id.* ¶ 7.

Plaintiffs Cordes, Marquardt, Poulton, Robson, and Valente III are pilots who originally were hired by American Eagle and later obtained employment with American pursuant to the Flow-Through Agreement. *Id.* ¶¶ 5-6. These pilots are now represented by APA, covered by the collective bargaining agreement negotiated by APA and American, and on American's pilot seniority list. *Id.* ¶ 5. Plaintiff American Airlines Flow-Thru Pilots Coalition ("AAFTPC") alleges that it is a subdivision of the American Eagle Pilots Association, and that it is an association of pilots who fly for American pursuant to the Flow-Through Agreement. *Id.* ¶ 4.

B. Factual Background.

On May 5, 1997, the Flow-Through Agreement was entered into by American, American Eagle, APA, and ALPA. FAC ¶¶ 4, 6. ALPA was the certified collective bargaining representative of American Eagle's pilots. *Id.* ¶ 4. Under the terms of the Flow-Through Agreement, pilots flying for American Eagle were able to request and receive a seniority number on American's pilot seniority list when they were offered a position in a new-hire pilot training class at American. *Id.* ¶ 16.

In 2001, American acquired the assets of TWA. *Id.* ¶ 17. Following the acquisition, the former TWA pilots were initially employed by TWA-LLC and represented by ALPA. *Id.* ¶¶ 4, 17. Since April 3, 2002, however, those pilots have been employed by American and represented by APA. *Id.* ¶ 20.

Under the terms of the Flow-Through Agreement, American pilots on furlough from American could displace captains at American Eagle under certain conditions. *Id.*

¶ 21. APA and American initially agreed in November 2001 that TWA-LLC pilots could not "flow down" to American Eagle (i.e., TWA-LLC pilots who were to be furloughed could not bump and replace American Eagle pilots from their jobs) until American pilots who had been on the American seniority list before September 2001 were recalled from furlough. *Id.* But, APA and American revised this agreement in 2003 to allow the former TWA-LLC pilots to immediately flow down to American Eagle. *Id.* ¶¶ 22-23. Plaintiffs allege that American entered into the agreement modification with APA "knowing that [this] agreement[] would adversely affect and discriminate against [Flow-Through Pilots] and knowing that APA intended to discriminate against" them. *Id.* ¶ 39.[3]

According to Plaintiffs, on a number of occasions since 2003, APA has "demanded," "urged," or "agreed with" American to take actions that allegedly had a detrimental impact on Flow-Through Pilots. Specifically, Plaintiffs allege that:

- APA "demanded or agreed with" American to have former TWA pilots placed into American's new-hire pilot training classes, beginning in June 2007, ahead of Flow-Through Pilots, even though the Flow-Through Pilots had seniority numbers on American's pilot seniority list;
- APA "urged" that American seniority numbers be forfeited for Flow-Through Pilots who were not flying for American as of May 2008;
- APA "agreed with" American to give Length-of-Service ("LOS") credit to American pilots for their prior service at TWA, TWA-LLC, US Airways, Reno Air, and AirCal, but APA has refused to negotiate for LOS credit for time spent by the Flow-Through Pilots at American Eagle; and
- APA "agreed with" American in the 2015 pilot collective bargaining agreement to give some LOS credit to pilots for time spent on furlough after

[3] The Plaintiffs' DFR claims, whether direct claims against APA or "collusion" claims against American, are governed by a six-month statute of limitations. *See Lea v. Republic Airlines, Inc.*, 903 F.2d 624, 633-34 (9th Cir. 1990). American includes in the text of this motion a number of alleged facts which occurred outside the six-month limitations period; American does so in order to fully summarize the allegations in the FAC, but does not concede that such facts are legally relevant here.

> September 11, 2001, which resulted in additional LOS credit for the former TWA pilots but not for the Flow-Through Pilots.

FAC ¶ 27. Plaintiffs allege that American entered into the above agreements knowing that APA had a discriminatory intent against the Flow-Through Pilots, and knowing that those agreements would have a discriminatory impact on Flow-Through Pilots. *Id.* ¶ 39.

ARGUMENT

COUNT ONE SHOULD BE DISMISSED AS TO AMERICAN BECAUSE IT FAILS TO STATE A CLAIM AGAINST AMERICAN.

In Count One, Plaintiffs allege that American colluded with APA in APA's alleged breach of its DFR in the negotiation of certain collective bargaining agreement provisions. FAC ¶¶ 45-46. Count One should be dismissed under Rule 12(b)(6) as to American for failure to state a claim for which relief can be granted.

To withstand a motion to dismiss pursuant to FRCP 12(b)(6), a complaint must "contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "Mere conclusory statements do not suffice." *Id.* After disregarding any and all conclusory statements, the court must determine if any remaining well-pleaded factual allegations "plausibly suggest an entitlement to relief." *Id.* at 681. Allegations that demonstrate "the mere possibility of misconduct" do not show "that the pleader is entitled to relief." *Id.* at 679. Thus, even where allegations taken as true "are consistent with" unlawful conduct, the complaint still must be dismissed if those allegations are "more likely explained by, lawful . . . behavior." *Id.* at 680 (internal citations omitted).

To support their claim of collusion against American, Plaintiffs must adequately allege ***actual conduct by American*** evidencing bad faith, discrimination, or hostility towards the Flow-Through Pilots. *See Rakestraw v. United Airlines, Inc.*, 765 F.

Supp. 474, 493-94 (N.D. Ill. 1991) (dismissing claim against carrier on summary judgment), *aff'd in relevant part, rev'd in part*, 981 F.2d 1524 (7th Cir. 1992). In *Rakestraw*, the district court dismissed plaintiffs' claim against the carrier because plaintiffs had failed to establish as a matter of law collusion by the carrier in the union's breach of DFR. The district court ruled that even though the carrier was well-aware of the animosity between the union and the disfavored minority group of pilots, there was no "evidence that [the carrier] acted in bad faith or discriminated against plaintiffs in accepting [the union's] proposal." 765 F. Supp. at 493; *see, generally, Addington v. US Airline Pilots Ass'n*, 588 F. Supp. 2d 1051, 1063 (D. Ariz. 2008) (conclusory allegations that carrier participated in alleged breach of DFR by union do not establish actionable collusion, because "[e]ven if the union's goals or means were improper, the record does not show that the airline pursued or shared those goals or means"), *rev'd on other grounds*, 606 F.3d 1174 (9th Cir. 2010).

The reasoning of *Rakestraw* is soundly based in labor policy. Without requiring evidence (or, in the case of a Rule 12(b)(6) motion, well-pleaded factual allegations) of ***carrier*** misconduct, courts would effectively impose an affirmative obligation on the employer to supervise the union at the collective bargaining table. *See Am. Postal Workers Union, Local 6885 v. Am. Postal Workers Union*, 665 F.2d 1096, 1108-09 (D.C. Cir. 1981) ("The [employer] was required only to bargain in good faith with the employees' exclusive representative, and in so doing, it was expected to represent its own interests, not those of the employees."); *Davis v. Bhd. of Ry., Airline & S.S. Clerks*, 444 F. Supp. 200, 201-02 (W.D. Va. 1978) ("By agreeing to negotiate with [the union] on this issue, the Railway did not assume a duty to examine the motives of the union . . . ."). Indeed, courts have consistently rejected "the proposition that potential knowledge of a Union's discrimination is enough to support a finding of collusion on the part of [the carrier]," in light of the "detrimental effect on labor-management relations" that would occur "if an employer were 'forced to ignore union representations and take the initiative

in dealing with employees whenever it suspects a discriminatory union motive.'" *Cunningham v. United Airlines, Inc.*, No. 13 C 5522, 2014 WL 441610, at *6 (N.D. Ill. Feb. 4, 2014) (citing *Carroll v. Bhd. of R.R. Trainmen*, 417 F.2d 1025, 1028 (1st Cir. 1969)).

Plaintiffs here do not allege that American negotiated or applied the collective bargaining agreement provisions at issue with discriminatory intent toward the Flow-Through Pilots, or that American shared in any alleged discriminatory intent or conduct on the part of APA. Plaintiffs merely assert that American "joined with APA in discriminating against" Flow-Through Pilots, because American negotiated agreements with APA "knowing that APA was hostile to the interest[s]" of the Flow-Through Pilots. FAC ¶ 45. But simply negotiating collective bargaining agreements with a properly-certified union is not evidence of collusion. *See United Indep. Flight Officers, Inc. v. United Air Lines, Inc.*, 756 F.2d 1274, 1282-83 (7th Cir. 1985) (rejecting – as "patently fallacious" – the argument that negotiation between a carrier and union resulting in a new collective bargaining agreement "necessarily entails collusion"); *see also Air Wisc. Pilots Protection Comm. v. Sanderson*, 124 F.R.D. 615, 617 (N.D. Ill. 1988) (concluding that, under Railway Labor Act, "negotiation between [the carrier and union resulting in a new collective bargaining agreement] is not evidence of collusion"). Plaintiffs make no allegation that ***American*** harbored any intent to adversely affect the new-hire training dates or length-of-service credit of the Flow-Through Pilots, and as a result there is no plausible basis for a claim that American was "complicit" in APA's purported breach of its DFR.[4]

[4] Moreover, Plaintiffs' allegation of collusion between APA and American in Count One is nothing more than a conclusory statement. *See* FAC ¶ 46 ("[American] has participated in, enabled and agreed to engage in discrimination against the FTPs and APA's breach of its duty of fair representation."). Conclusory and vague allegations of collusion are insufficient as a matter of law to state a claim against an employer and should be disregarded. *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).

Plaintiffs, in their Statement of Legal Issues in the recently-filed Joint Case Management Statement, cite two decisions for the proposition that American "can be held jointly liable for a DFR breach where the union and the employer actively participated in the other's breach." (*See* Doc. No. 24, at 6 (citing *Bennett v. Local Union No. 66*, 958 F.2d 1429 (7th Cir. 1992); and *Vaca v. Sipes*, 386 U.S. 171 (1967)).) But those cases involved "hybrid" claims, where an employee brings suit against the union for breach of DFR and against the employer for breach of the collective bargaining agreement; Plaintiffs have not asserted a hybrid claim here, because they have not and cannot allege that American has in any way violated the terms of a collective bargaining agreement. *See, generally*, *Smith v. American Airlines, Inc.*, 414 F.3d 949, 953 (8th Cir. 2005) (noting that "hybrid" claims "allege both a breach of the collective bargaining agreement by the employer and a breach of the duty of fair representation by the union") (citation omitted).[5] Plaintiffs' citation to *O'Mara v. Erie Lackawanna R.R.*, 407 F.2d 674, 679 (2d Cir. 1969), is also unavailing. (*See* Doc. No. 24, at 6.) In *O'Mara*, the court expressly applied a standard requiring conduct beyond mere knowledge in holding that "dismissal of the employer from this suit will be proper if it appears that its action furloughing the plaintiffs, and the union's discriminatory refusal to process grievances concerning these furloughs, were not part of ***a combined attempt to discriminate***." *Id.* (emphasis added). Here, Plaintiffs have not made any non-conclusory allegations of a "combined attempt to discriminate" – nor can they.

CONCLUSION

For the foregoing reasons, Defendant American Airlines, Inc. respectfully requests

[5] Additionally, Plaintiffs have not stated a "hybrid" claim because, as noted in footnote 4 (above), the FAC does not contain sufficient allegations of collusion. *See, e.g., Rios-O'Donnell v. American Airlines, Inc.*, No. 10 C 6219, 2013 WL 157610, at *7 (N.D. Ill. Jan. 10, 2013) ("The hybrid exception applies where there are good faith allegations and facts . . . indicating collusion or otherwise tying the [employer] and the union together in allegedly arbitrary, discriminatory, or bad faith conduct amounting to a breach of the duty of fair representation.") (citing *Martin v. American Airlines, Inc.*, 390 F.3d 601, 608 (8th Cir. 2004).

that this Court dismiss with prejudice Count One of the First Amended Complaint as to American.

Dated: October 5, 2015.

Respectfully submitted,

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