

United States District Court
Northern District of California

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ANTHONY L. WILLIAMS

Plaintiff,

vs.

UAL, INC., *ET AL.*,

Defendants.

Case No.: 12-CV-3781 YGR

ORDER GRANTING MOTIONS TO DISMISS

Plaintiff Anthony L. Williams (“Plaintiff”) filed his complaint on June 14, 2012, in the Superior Court for the State of California, County of Alameda, against Defendants Chief Judge James S. Ware; Judge Claudia Wilken; Clerk of the Court Richard W. Wiekling; Chief Appellate Judge Alex Kozinski; Judge Eugene E. Siler; Judge Carlos T. Bey [sic]; Judge M. Margaret McKeown; Judge Sidney R. Thomas; Judge Barry G. Silverman; Judge Richard R. Clifton, Judge Sidney R. Thomas; Judge Consuelo M. Callahan; Judge Mary H. Murguia; Secretary of Labor Hilda Solis; and Administrative Law Judges Wayne C. Beyer, Oliver M. Transue, Paul Igasaki, E. Cooper Brown and Gerald Etchingham (“Federal Defendants”), Defendant UAL, Inc., (“UAL”) and Defendants the International Association of Machinists and Aerospace Workers (“IAM”), R. Thomas Buffenbarger, Rich Delaney, and Robert Roach Jr. (collectively “the IAM Defendants”). (Notice of

1 Removal, Dkt. No. 1, Exh. 1.) The Federal Defendants removed the action by Notice of Removal
2 filed July 18, 2012. (*Id.*)

3 Presently before the Court are three motions to dismiss. Defendant United States filed a
4 motion to substitute and to dismiss the amended complaint on July 26, 2012. (Dkt. No. 11.)
5 Defendant UAL and Defendants the IAM Defendants also filed motions to dismiss. (Dkt. Nos. 6 and
6 14 respectively.)
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8 Having carefully considered the papers submitted and the pleadings in this action, and for the
9 reasons set forth below, the Court hereby **GRANTS** the Motions to Dismiss **WITHOUT LEAVE TO**
10 **AMEND.**

11 **BACKGROUND**

12 **A. PLAINTIFF’S COMPLAINT AND PRIOR LITIGATION**

13 Plaintiff brings this action alleging claims arising from the termination of his employment
14 with UAL in 2003. Plaintiff was employed by UAL, working under a collective bargaining
15 agreement between UAL and IAM. Plaintiff alleges that, on May 8, 2003, he was ordered into the
16 offices of “the former Oakland maintenance Center Committeeman” and “immediately set upon for a
17 [planned] assault.” (Complaint at 43:6-8.) He called the Alameda County Sheriff to report the
18 assault. (*Id.* at 43:9-11.) Subsequently UAL officials, “with the IAM in attendance” told Plaintiff he
19 was being terminated. (*Id.* at 43:17-21.). He was told that “[w]e are not firing you for assaulting
20 Javier Lectora. We cannot prove this. We are firing you for bringing the police on Company
21 property, and not allowing Oakland Management to take care of the situation.” (*Id.*) He further
22 alleges that the union conspired with UAL to terminate him and abandoned representation of him,
23 knowing that he had sent a “Letter of Concern to the FAA.” (*Id.* at 44:12-15.)
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1 Plaintiff appealed the termination decision through the internal grievance procedure. An
2 internal union-management grievance committee upheld the decision, and UAL officially terminated
3 Plaintiff in October 2003. (Complaint, Exh U 5:18-21.)

4 On September 8, 2004, more than a year after his termination, Plaintiff filed a complaint
5 against UAL and his former manager Ron King (“King”) in the federal district court, alleging
6 retaliatory discrimination under the Whistleblower Protection Program of the Wendell H. Ford
7 Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. section 42121 (“WPP”), and
8 common law claims for intentional infliction of emotional distress, intentional misrepresentation and
9 negligent misrepresentation (*Williams v. United Airlines, et al.*, N.D. Cal. Case No. 04-cv-3787 CW).
10 The district court in that action granted the motion of UAL and King for summary judgment on the
11 WPP claim and dismissal of failure to state a claim on the state tort claims. Plaintiff appealed that
12 ruling to the Ninth Circuit Court of Appeals, which affirmed the summary judgment and order of
13 dismissal. *Williams v. United Airlines, Inc.*, 500 F.3d 1019, 1021-25 (9th Cir. 2007).

14 In 2008, Plaintiff filed a complaint against UAL with the United States Department of
15 Labor.¹ A Department of Labor Administrative Law Judge (“ALJ”) recommended dismissal of
16 Plaintiff’s complaint because he filed his claim more than ninety days after the filing deadline for
17 such claims. On September 21, 2009, the Administrative Review Board (“ARB” or “Board”)
18 affirmed the ALJ. *Williams v. United Airlines*, ARB No. 08-063, ALJ No. 2008- AIR-003 (ARB
19 Sept. 21, 2009). The Board also denied reconsideration. *Williams v. United Airlines*, ARB No. 08-
20 063, ALJ No. 2008- AIR-003 (ARB June 23, 2010). Plaintiff appealed the Board’s decision to the
21 Federal Circuit, which found that it did not have jurisdiction to review the decision and transferred
22 the case to the Ninth Circuit. *Williams v. U.S. Dept. of Labor*, 370 Fed. Appx. 97, 97-98 (Fed. Cir.
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28 ¹ This portion of the procedural history is drawn, in part, from the district court’s order in *Williams v. Department of Labor*, N.D. Cal. Case No. 11-cv-6653 CW, 2012 WL 1536338 (N.D. Cal. May 1, 2012).

1 2010). In August 2011, the Ninth Circuit determined that it had jurisdiction and affirmed the
2 Board's denial of Plaintiff's claim. *Williams v. U.S. Dept. of Labor*, 447 F. App'x 853, 854 (9th Cir.
3 2011).

4 In December 2011, Plaintiff sued the Department of Labor based upon the handling of his
5 administrative complaint. On May 1, 2012, the district court granted the Department of Labor's
6 motion to dismiss that action. *Williams v. U.S. Dept. of Labor*, Case No. 11-cv-6653 CW, 2012 WL
7 1536338 (N.D. Cal. May 1, 2012).

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9 **B. PROCEDURAL HISTORY OF THIS ACTION**

10 Plaintiff filed the instant action in the state court on June 14, 2012. The Federal Defendants
11 filed their Notice of Removal on July 18, 2012. All defendants filed motions to dismiss and Plaintiff
12 filed a Motion for Remand.

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14 On September 13, 2012, this Court issued its order denying Plaintiff's Motion for Remand
15 and setting a further briefing schedule on the pending motions to dismiss. (Dkt. No. 38.) In that
16 Order, the Court noted that Plaintiff's appeal of the removal had been dismissed by the United States
17 Court of Appeals for the Ninth Circuit by Order issued August 14, 2012. (*See* Dkt. No. 36.) The
18 September 13, 2012 Order required Plaintiff to file an opposition brief no later than September 28,
19 2012. (*Id.* at 4.)

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21 On September 21, 2012, Plaintiff submitted a document entitled "A Verified Complaint for
22 Declaratory and Injunctive Relief and Damages From Racketeering, Conspiracy to Engage in a
23 Pattern of Racketeering Activity, Judicial Discrimination and Misconduct Including Obstruction of
24 Justice, Violates of the Equal Employment Act of 1991; Title VII of the Civil Rights Act of 1964, the
25 Equal Access to Justice Act of 1980, Statute Nullification in Violation of the Tenth Amendment; and
26 Related Claims. . . Plaintiff's Reply to Court; A Motion to Remand/and Opposition to Dismiss Dated
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1 by Court: Sept. 13, 2012.” (Dkt. No. 41.) Defendants filed their respective replies on October 17,
2 2012, (Dkt. Nos. 42, 44, 46) and Plaintiff filed a sur-reply on October 25, 2012. (Dkt. No. 47.)²

3 STANDARDS APPLICABLE TO THESE MOTIONS

4 A motion to dismiss under Rule 12(b)(6) tests for the legal sufficiency of the claims
5 alleged in the complaint. *Ileto v. Glock, Inc.*, 349 F.3d 1191, 1199-1200 (9th Cir. 2003).
6 Review is generally limited to the contents of the complaint. *Allarcom Pay Television, Ltd. v.*
7 *Gen. Instrument Corp.*, 69 F.3d 381, 385 (9th Cir. 1995). All allegations of material fact are
8 taken as true. *Erickson v. Pardus*, 551 U.S. 89, 93, 94 (2007). However, legally conclusory
9 statements not supported by actual factual allegations need not be accepted. *See Ashcroft v.*
10 *Iqbal*, 556 U.S. 662, 679 (2009) (“*Iqbal*”).

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13 A complaint should not be dismissed under Rule 12(b)(6) “unless it appears beyond doubt
14 that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.”
15 *Conley v. Gibson*, 355 U.S. 41, 45–46. “So long as the Plaintiff alleges facts to support a theory that
16 is not facially implausible, the court’s skepticism is best reserved for later stages of the proceeding
17 when the Plaintiff’s case can be rejected on evidentiary grounds.” *Balderas v. Countywide Bank*, 664
18 F.3d 787, 790 (9th Cir. 2009). Nevertheless, “when the allegations in a complaint, however true,
19 could not raise a claim of entitlement to relief,” dismissal is appropriate. *Bell Atl. Corp. v. Twombly*,
20 550 U.S. 544, 558 (2007) (“*Twombly*”). Thus, a motion to dismiss will be granted if the complaint
21 does not proffer enough facts to state a claim for relief that is plausible or actionable on its face.
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23 *See id.* at 558-59.

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25 ² The document appearing at Docket No. 41, Plaintiff’s opposition to the motions to dismiss, was
26 mailed directly to chambers and, due to a clerical error, was not recognized immediately as a new filing,
27 resulting in a delay in its entry on the electronic docketing system until October 10, 2012. Defendants
28 contend that their replies were timely filed, as they did not receive notice of the opposition until the document
was entered on ECF. Plaintiff’s October 25, 2012 filing objects to the replies as untimely, in addition to
making substantive arguments on the merits of the motions. (Dkt. No. 47.) In the interests of justice and
judicial efficiency, the Court deems the replies to have been filed timely and has considered the additional
substantive arguments raised in Plaintiff’s unauthorized October 25 filing in reaching this ruling.

DISCUSSION

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2 Plaintiff's complaint generally alleges that Defendants engaged in a conspiracy to terminate
3 him from his employment for improper reasons and to uphold that termination through the various
4 legal challenges he has made over the past several years. Plaintiff's legal theories primarily rely on
5 the Racketeer Influenced Corrupt Organizations Act, 18 U.S.C. § 1961 et seq. ("RICO") and the
6 Sarbanes-Oxley Act, 18 U.S.C. § 1514A, ("SOX") as amended by the Dodd-Frank Wall Street
7 Reform and Consumer Protection Act of 2010.³

9 A. FEDERAL DEFENDANTS

10 1. Judicial Immunity

11 "[J]udicial immunity is an immunity from suit, not just from ultimate assessment of
12 damages." *Mireles v. Waco*, 502 U.S. 9, 11 (1991); *see also Stump v. Sparkman*, 435 U.S. 349 356-
13 57 (1978). "Accordingly, judicial immunity is not overcome by allegations of bad faith or malice."
14 *Mireles*, 502 U.S. at 11. An act is considered "judicial" when it is a function normally performed by
15 a judge and the parties dealt with the judge in a judicial capacity. *Stump*, 435 U.S. at 362.
16 Allegations of conspiracy do not defeat such immunity. *Ashelman v. Pope*, 793 F.2d 1072, 1078 (9th
17 Cir. 1986). Plaintiff's claims against judges of the Ninth Circuit and District Court are all directly
18 related to actions they took in performing their normal functions in a judicial capacity. (Complaint at
19 44-58.)

20 Likewise, the matters alleged against Defendant Wieking, Clerk of the Court, are also
21 protected by absolute quasi-judicial immunity. Court personnel have absolute quasi-judicial
22 immunity when they perform tasks that are an integral part of the judicial process. *Moore v.*
23 *Brewster*, 96 F.3d 1240, 1244 (9th Cir. 1996); *Samuel v. Michaud*, 980 F. Supp. 1381, 1403 (D.
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28 ³ Plaintiff's allegations mention Title VII of the Civil Rights Act of 1964, the Equal Employment Act
of 1991; the Equal Access to Justice Act of 1980, and other authorities. However, the focus of the allegations
appears to be RICO and SOX and alleged predicate acts thereunder.

1 Idaho 1996) *aff'd*, 129 F.3d 127 (9th Cir. 1997); *In re Castillo*, 297 F.3d 940, 952 (9th Cir. 2002).

2 Here the allegations against Defendant Wieking are all actions that are part of the judicial function.

3 (Complaint at 48-49.)

4 Accordingly, Defendants Kozinski, Siler, Bey (sic), McKeown, Thomas, Silverman, Clifton,
5 Thomas, Callahan, and Murguia, Ware, Wieking and Wilken are **DISMISSED WITHOUT LEAVE TO**
6 **AMEND.**

8 2. Claims Against Department of Labor Employees

9 The doctrine of *res judicata* bars a plaintiff from bringing a claim under any “grounds for
10 recovery which could have been asserted, whether they were or not, in a prior suit between the same
11 parties (or their privies) on the same cause of action, if the prior suit concluded in a final judgment
12 on the merits rendered by a court of competent jurisdiction.” *Ross v. Int’l Bhd. of Elec. Workers*, 634
13 F.2d 453, 457 (9th Cir. 1980); *see also Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713
14 (9th Cir. 2001).

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16 The claims against defendants Solis, Beyer, Transue, Igasaki, Brown and Etchingham here
17 allege that these employees conspired and wrongly denied Plaintiff’s administrative claims against
18 UAL. (Complaint at 57-70.) Plaintiff previously litigated claims complaining of the same conduct
19 against the Department of Labor. Those claims were rejected by the district court in a final
20 judgment. Thus, the motion here must be granted and the claims against Defendants Solis, Beyer,
21 Transue, Igasaki, Brown and Etchingham are **DISMISSED WITHOUT LEAVE TO AMEND.**⁴

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27 ⁴ The Federal Defendants also move to dismiss under Rule 12(b)(1) of the Federal Rules of Civil
28 Procedure for lack of subject matter jurisdiction on the grounds that Plaintiff’s damage claims could only be
brought against the United States, not individual federal defendants acting in their official capacities, and are
subject to dismissal on sovereign immunity grounds. The Court does not reach this argument given Plaintiff’s
failure to allege a basis for relief against the Federal Defendants otherwise.

B. DEFENDANT UAL

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2 Plaintiff's employment was terminated in 2003. He alleges no actions by UAL since that
3 time giving rise to his claims. Instead, Plaintiff's claims are little more than generalized allegations
4 that UAL engaged in racketeering activity in violation of RICO and SOX. (Complaint at 40-41.)
5 Any suit under SOX (as amended by Dodd-Frank) must be filed within 180 days of the actions
6 giving rise to the claim. 18 U.S.C. § 1514A(b)(2)(D). An action under the civil RICO statute must
7 be filed within four years of the actions giving rise to the claim. *Agency Holding Corp. v. Malley-*
8 *Duff & Associates, Inc.*, 483 U.S. 143, 156 (1987) (establishing four year statute of limitations).

9
10 Because Plaintiff has not alleged facts sufficient to establish a claim for relief and does not
11 appear able to state a claim that is not otherwise time-barred, UAL's motion to dismiss is **GRANTED**
12 **WITHOUT LEAVE TO AMEND.**

C. CLAIMS AGAINST THE IAM DEFENDANTS

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15 Plaintiff alleges claims against IAM and the individual IAM defendants arising out of his
16 termination and the arbitration hearing that affirmed that termination. (See Complaint at 41-44.) His
17 allegations against these defendants are that they did not represent him fairly in connection with his
18 grievance arising from that termination. Both federal labor law and the federal statutory duty of fair
19 representation completely preempt Plaintiff's claims. See *Hawaiian Airlines, Inc. v. Norris*, 512 U.S.
20 246, 253, 260 (1994) (disputes arising out of terms of collective bargaining agreement are preempted
21 by Railway Labor Act ["RLA"], and preemption analysis is "virtually identical" to the pre-emption
22 standard in cases involving § 301 of the LMRA); see also *Adkins v. Mireles*, 526 F.3d 531 540-42
23 (9th Cir. 2008) (§ 301 preempted claims for breach of contract, fraud, intentional infliction of
24 emotional distress and RICO). Regardless of whether such claims are framed as a violation of
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1 another state law or of a federal law, such as RICO, they are preempted. *Adkins*, 526 F.3d at 542;
2 *Saridakis v. United Airlines*, 166 F.3d 1272 (9th Cir. 1999).⁵

3 Claims of breach of a duty of fair representation are subject to a six-month statute of
4 limitations. *See DelCostello v. Teamsters*, 462 U.S. 151 (1983) (duty of fair representation claims
5 under the Labor Management Relations Act, section 301, are governed by six-month statute of
6 limitations); *Lea v. Republic Airlines*, 903 F.2d 624, 633 (9th Cir. 1990) (applying six-month statute
7 of limitations to duty of fair representation claims under analogous provisions of the RLA.) The
8 statute of limitations begins to run when the plaintiff knows or should know of the union's alleged
9 wrongdoing. *Stone v. Writers Guild of America*, 101 F.3d 1312, 1314 (9th Cir. 1996). Even if
10 Plaintiff's claims were construed to fall outside the duty of fair representation framework, as stated
11 above, the longest statute of limitations in play (the RICO limitations period) is four years.
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14 Here, the statute of limitations on Plaintiff's claims began running no later than his
15 termination in 2003. He makes no allegations of any subsequent acts or occurrences that would
16 change the triggering event for statute of limitations purposes. To the contrary, his allegations focus
17 on the May 2003 altercation between himself and other union members, and his subsequent
18 termination notice and arbitration confirming the termination. (Complaint at 43-44.)⁶ Moreover, the
19 history of Plaintiff's litigation prior to the instant action demonstrate that Plaintiff was aware of the
20 acts giving rise to his complaint no later than the 2004 filing of his original action against UAL for
21 retaliatory discharge. As a result, regardless of which statute of limitations applies to Plaintiff's
22 claims, they are time-barred.
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26 ⁵ Further, to the extent that Plaintiff is attempting to state a claim based upon SOX against the union,
27 that statute applies only to publicly traded companies, not to labor unions. 18 U.S.C. § 1514A.

28 ⁶ Indeed, Plaintiff stated in his response to the motions that it was not the IAM Defendants but a
completely different union that was responsible for his representation by the time of his grievance hearing.
(Plaintiff's Response, Dkt No. 41, at 12:11-13.)

1 Finally, federal law is well-established that claims against individual union officers for
2 breach of the duty of fair representation are not permitted. *See Atkinson v. Sinclair Refining Co.*, 370
3 U.S. 238, 245-49 (1962); *Evangelista v. Inlandboatmen's Union of Pac.*, 777 F.2d 1390, 1400 (9th
4 Cir. 1985); *Peterson v. Kennedy*, 771 F.2d 1244, 1257-58 (9th Cir. 1985). Thus the claims against
5 Defendants Buffenbarger, Delaney, and Roach are barred as well.
6

7 As a result, the IAM Defendants' Motion to Dismiss is **GRANTED WITHOUT LEAVE TO**
8 **AMEND.**


9 **CONCLUSION**

10 The Motions to Dismiss of the Federal Defendants, UAL, and the IAM Defendants are
11 **GRANTED.** As no amendment could cure the above deficiencies in the complaint, no leave to amend
12 is granted.
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14 This Order terminates Docket Nos. 6, 11, and 14.

15 **IT IS SO ORDERED.**

16 **Date: December 13, 2012**

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18 **YVONNE GONZALEZ ROGERS**
19 **UNITED STATES DISTRICT COURT JUDGE**

United States District Court
Northern District of California

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