IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

PAUL CROOK,

Plaintiffs,

v.

PACIFIC GAS AND ELECTRIC COMPANY,

Defendant.
_____/

No. C-08-4623 MMC

ORDER AFFORDING PLAINTIFF OPPORTUNITY TO FILE SUR-REPLY; CONTINUING HEARING

Before the Court is defendant's motion to dismiss, filed October 9, 2008, in which defendant expands on the argument in its Notice of Removal that plaintiff's claims are governed by a collective bargaining agreement and thus may be brought, if at all, under § 301 of the Labor Relations Management Act, 29 U.S.C. § 185 ("§ 301"), and argues that such claims are barred by the six month statute of limitations for "hybrid § 301/fair representation" claims pursuant to DelCostello v. Int'l Brotherhood of Teamsters, 462 U.S. 151 (1983). See id. at 165, 169, 171 (holding six-month statute of limitations provided by § 10(b) of National Labor Relations Act applicable to § 301 claims by employees alleging both unfair representation by union and breach of collective bargaining agreement by employer).

Plaintiff, in his opposition, does not dispute that his claims arise under § 301; instead, plaintiff argues he has not alleged a "hybrid" claim, but, rather, that he has alleged

solely a breach of the collective bargaining agreement and that such claim, pursuant to Int'l Union, United Automobile, Aerospace & Agricultural Workers of Am. v. Hoosier Cardinal Corp., 383 U.S. 696 (1966), is governed by the appropriate state statute of limitations. See id. at 704-05 & n.7 (holding "the timeliness of a § 301 suit" for breach of collective bargaining agreement "is to be determined, as a matter of federal law, by reference to the appropriate state statute of limitations"). Plaintiff asserts the appropriate state statute, in the instant action, is California's four-year statute of limitations for breach of a written contract. See Cal. Code Civ. Proc. § 337.

Defendant, in its reply, argues that if plaintiff has alleged solely a breach of the collective bargaining agreement, such claim is precluded by the provisions in said agreement governing the finality of the grievance procedures provided therein, in which proceedings plaintiff participated and which, plaintiff admits, resulted in a decision in favor of defendant. (See Def.'s Req. Judicial Notice Ex. A (Agreement between Pacific Gas and Electric Company and Local Union Number 1245 of International Brotherhood of Electrical Workers) (hereafter, "CBA"), at § 102.4 (providing "[t]he resolution of a timely grievance at any of the steps provided herein shall be final and binding on the Company, Union and grievant")[1]; Compl. ¶ 12 (alleging "[plaintiff's] grievance was denied and his termination was upheld through the PG & E and Union grievance procedures")); see also DelCostello, 462 U.S. at 163-64 (noting employee who participates in "grievance or arbitration remedies provided in the collective bargaining agreement" will, "[s]ubject to very limited judicial review . . . be bound by the result according to the finality provisions of the agreement," but "when the union representing the employee in the grievance/arbitration procedure . . . breach[es] its duty of fair representation . . . . an employee may bring suit against both the employer and the union, notwithstanding the outcome or finality of the grievance or arbitration proceeding").

[1]Concurrently with the instant motion, defendant filed a Request for Judicial Notice. Plaintiff having made no objection, and good cause appearing, the request is hereby GRANTED.

As the argument made in defendant's reply is not based on the initially-raised ground of the statute of limitations, and, consequently, plaintiff has not had an opportunity to respond to such argument, the Court will afford plaintiff an opportunity to file a sur-reply. Any such sur-reply shall be filed no later than December 8, 2008, and shall not exceed 15 pages in length, independent of any declarations and/or exhibits.

In light of the above, the hearing scheduled for December 5, 2008 is hereby CONTINUED to January 9, 2009.

IT IS SO ORDERED.

Dated: November 26, 2008

MAXINE M. CHESNEY
United States District Judge