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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LAURA MCNABOE,  
Plaintiff,  
v.  
SAFEWAY INC., et al.,  
Defendants.

Case No. [13-cv-04174-SI](#)

**ORDER ON REMAINING CAUSE OF ACTION**

Re: Dkt. Nos. 1, 62, 69

By order of this Court all of plaintiff’s claims against defendant Safeway have been dismissed with prejudice. Dkt. 1, 69. A cause of action for Unlawful Discharge and Breach of Union’s Duty of Fair Representation against defendant Local 5 of the United Food and Commercial Workers (“Union”) remains. *See* Dkt. 1 at 10-11; Dkt. 69 at 5-7.

Plaintiff’s supplemental brief on this issue conceded that “it may be appropriate to withdraw the First Cause of Action and dismiss Union at this juncture.” Dkt. 61 at 3. And Union’s response to plaintiff’s supplemental brief asked this Court to *sua sponte* issue an order dismissing this remaining cause of action. *See* Dkt. 62 at 2. Union argued, in a single paragraph with no reference to the record in this case, that

[It] aggressively represented Ms. McNaboe. It won everything after five days of difficult arbitration. Ms. McNaboe chose not to return to work. The Union then had to fight aggressively over back pay issues. The Arbitrator finally issued a decision requiring Safeway to pay a specified amount. The Union fully anticipates that Safeway will comply with that requirement. If Safeway doesn’t, the Union will pursue that with Safeway.

*Id.* at 1.

To date, no party has moved or formally stipulated to dismiss Union from this case. The Court has found that no future amendment to plaintiff’s complaint would overcome the applicable six-month statute of limitations that governs a claim for breach of duty of fair representation. Dkt.


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69 at 5-7; *see also* 29 U.S.C. 160(b); *DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151, 165-169 (1983).

The parties are therefore ordered to meet and confer **and file a joint statement no later than January 25, 2016** advising this Court of the appropriate resolution concerning Union's involvement in this case.

**IT IS SO ORDERED.**

Dated: January 14, 2016

  
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SUSAN ILLSTON  
United States District Judge