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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JEFFREY STEVEN GARRETT,)	Case No.: 10-CV-05603-LHK
)	
Plaintiff,)	ORDER GRANTING MOTION TO
v.)	DISMISS IN PART WITH PREJUDICE
)	AND IN PART WITH LEAVE TO
HARRY TURNER, ET AL.,)	AMEND
)	
Defendants.)	(re: Dkt. #4)

Presently before the Court is Defendants’ unopposed motion to dismiss Plaintiff’s complaint. *See* Dkt. #4. The Court deems this matter appropriate for resolution without oral argument. *See* Civ. L.R. 7-1(b). Accordingly, the March 24, 2011 motion hearing and Case Management Conference are vacated. For the reasons described below, Defendants’ motion is GRANTED in part with prejudice and GRANTED in part with leave to amend.

I. BACKGROUND

Plaintiff Jeffrey Garrett filed a claim in Small Claims Court for the Superior Court of Santa Clara County on December 1, 2010. *See* Exh. A. to Defs.’ Notice of Removal. In that document, Plaintiff alleges that he “was a member of Local Lodge #93 for 6 months at Northrop Grumman,” “was overcharged EVERY week for dues,” and that the “Union did not help him when [he] was terminated.” Plaintiff claimed that Defendants owed him \$730.00 for the alleged overcharged dues

1 that occurred between October 2009 and April 2010. Plaintiff named as Defendants: Harry Turner,
2 Laura Saiu, Richard Breckenridge, and Kim Foss.

3 Defendants timely removed this matter on December 9, 2010. *See* Defs.’ Notice of
4 Removal. According to Defendants, all Defendants named by Plaintiff are individual officers or
5 representatives of Machinists Local Lodge 93 (the “Union”), a labor organization. In addition,
6 Defendants state that Plaintiff was an employee under the terms and conditions of a collective
7 bargaining agreement between the Union and the employer. *Id.* at 2. Defendants removed this
8 action arguing that it arises under, and is preempted by, §301 of the Labor Management Relations
9 Act (“LMRA”), 29 U.S.C. §185.

10 On December 21, 2010, Defendants moved to dismiss on the ground that Union officers
11 acting in their union capacity are shielded from liability under the LMRA. Upon reassignment,
12 Defendants’ motion was set for a hearing on March 24, 2011. Plaintiff, proceeding *pro se* in this
13 action, did not file an Opposition.

14 II. LEGAL STANDARDS

15 Dismissal under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim is
16 “proper only where there is no cognizable legal theory or an absence of sufficient facts alleged to
17 support a cognizable legal theory.” *Shroyer v. New Cingular Wireless Services, Inc.*, 606 F.3d 658,
18 664 (9th Cir. 2010) (quoting *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001)). In considering
19 whether the complaint is sufficient to state a claim, the court must accept as true all of the factual
20 allegations contained in the complaint. *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). However,
21 the court need not accept as true “allegations that contradict matters properly subject to judicial
22 notice or by exhibit” or “allegations that are merely conclusory, unwarranted deductions of fact, or
23 unreasonable inferences.” *St. Clare v. Gilead Scis., Inc. (In re Gilead Scis. Sec. Litig.)*, 536 F.3d
24 1049, 1055 (9th Cir. 2008).

25 If the Court concludes that the complaint should be dismissed, it must then decide whether
26 to grant leave to amend. “[A] district court should grant leave to amend even if no request to
27 amend the pleading was made, unless it determines that the pleading could not possibly be cured
28

1 by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (quoting *Doe*
2 *v. United States*, 58 F.3d 494, 497 (9th Cir. 1995)). In addition, the Court recognizes that it has “a
3 duty to construe pro se pleadings liberally, including pro se motions as well as complaints.”
4 *Bernhardt v. Los Angeles County*, 339 F.3d 920, 925 (9th Cir. 2003).

5 III. DISCUSSION

6 Section 301(b) of the LMRA provides:

7 (b) Responsibility for acts of agent; entity for purposes of suit; enforcement
8 of money judgments. Any labor organization which represents employees in
9 an industry affecting commerce as defined in this Act and any employer whose
10 activities affect commerce as defined in this Act shall be bound by the acts of
11 its agents. Any such labor organization may sue or be sued as an entity and in
12 behalf of the employees whom it represents in the courts of the United States.
13 Any money judgment against a labor organization in a district court of the United States
14 shall be enforceable only against the organization as an entity and against its assets,
15 and shall not be enforceable against any individual member or his assets.

16 29 U.S.C. §185(b) (emphasis added). The Supreme Court has held that Section 301(b) of the
17 LMRA “exempts agents and members from personal liability for judgments against the union
18 (apparently even when the union is without assets to pay the judgment).” *See Atkinson v. Sinclair*
19 *Ref. Co.*, 370 U.S. 238, 248 (1962); *see also Peterson v. Kennedy*, 771 F.2d 1244, 1257-58 (9th
20 Cir. 1985) (“It has long been recognized that union officers and employees are not individually
21 liable to third parties for acts performed as representatives of the union in the collective bargaining
22 process.”)

23 Plaintiff’s claims that his dues were improperly deducted and that the union officials did not
24 help him with his employment are clearly claims that the Union breached its duty of fair
25 representation, and are subject to removal under federal question jurisdiction. *See Stallcop v.*
26 *Kaiser Foundation Hospitals*, 820 F.2d 1044, 1047 (9th Cir. 1987) (claim that union breached duty
27 of fair representation is based on federal labor law). Plaintiff, however, may not bring a damages
28 claim against individual union officials under section 301 of the LMRA. *See Carter v. Smith Food*
King, 765 F.2d 916, 920-21 (9th Cir. 1985) (“It is well settled that section 301 provides the basis
for an action for breach of the duty of fair representation only against a union as an entity, and not
against individuals who happen to hold positions in that union.”).

