

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

EDDIE BOLLMEIER, et al.,	)	
	)	
Plaintiffs,	)	
v.	)	Case No. 3:15-cv-00111-RJC-DCK
	)	
GARY HUMMEL, et al.,	)	
	)	
Defendants.	)	
<hr style="width:40%; margin-left:0;"/>		

**COMBINED RESPONSES TO DEFENDANTS’ MOTION TO RECONSIDER  
ORDER OF JUNE 17, 2015 GRANTING PLAINTIFFS’ EXPEDITED  
DISCOVERY, AND MOTION FOR EXPEDITED DISCOVERY AND REPLY TO  
DEFENDANTS’ MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS’  
MOTION FOR EXPEDITED DISCOVERY**

Plaintiffs Eddie Bollmeier, Bill Tracey, and Simon Parrott (“Plaintiffs”), by and through counsel, hereby reply and respond to the several pleadings filed by the Defendants on June 18, 2015.

**PRELIMINARY STATEMENT**

Nothing in the pleadings filed by the Defendants on June 18, 2015 requires the Court to reconsider its June 17, 2015 Order granting Plaintiffs’ request for expedited discovery. The Court clearly had the discretion to enter the Order it did on June 17, 2015, especially in light of the fast approaching TRO hearing on June 30, 2015. There is nothing in the Defendants’ pleadings that warrants the Court’s changing its decision. Finally, the Court’s Order was not “manifestly unjust,” as claimed by the Defendants. It simply directed the Defendants to produce some limited financial information that the Plaintiffs, as members in good standing of USAPA, are entitled to have.

Defendants' Motion for Expedited Discovery is based on a false premise and one that is intended to mislead the Court. Defendants wrongfully claim once again that the Plaintiffs' claim of irreparable harm is that USAPA has not funded the West Merger Committee like it has USAPA's East Merger Committee. That is not the harm the Plaintiffs complain about here. The harm they seek to redress is the wrongful depletion of USAPA's treasury of funds that should be returned to its members. *See* Doc. 16 at 19-21. For this, the only relevant factual inquiry is whether USAPA has depleted its treasury for a wrongful purpose and if so, in what amount. It is not about how much the Plaintiffs and West Pilots have spent over almost eight years of litigation with USAPA, which is the primary thrust of Defendants' expedited discovery request.

## **ARGUMENT**

### **I. Defendants' Point I: Plaintiffs Have Failed to Demonstrate a Legal Basis for Expedited Discovery.**

Plaintiffs contend that since decertification, the Defendants were obligated by USAPA's Constitution to spend USAPA's treasury funds (1) to wrap up USAPA's business reasonably and (2) to spend USAPA's remaining funds only on "collective legal action on behalf of the pilot group." *See* Verified Complaint, Doc. 1.

With respect to point 2 above, Plaintiffs complain that the Defendants have misspent treasury funds on things other than "collective legal action on behalf of the pilot group." Plaintiffs' request for expedited discovery is both targeted and limited. It seeks specific financial data to help the Plaintiffs and ultimately the Court determine if, in fact, the

Defendants have done this. If they have, the discovery will show this and then how much they have spent in violation of USAPA's Constitution.

Contrary to the Defendants' argument, the information the Plaintiffs seek is directly relevant to the TRO hearing on June 30, 2015. The requested discovery most likely will show that indeed the Defendants have been misspending USAPA monies since September 16, 2014. The requested discovery, therefore, will provide a good factual basis for the Court's entry of a TRO, directing the Defendants to stop their illegal actions and thereby stop them from depleting the USAPA treasury any further. This is exactly what well-focused discovery is supposed to do.

**II. Defendants' Point II: As a Matter of Fact, the Demands Are Misdirected to Defendants Herein, Sued in the Individual Capacities.**

This argument is essentially that the discovery was addressed to the wrong person(s). While a bit unbelievable, given the facts in this case, if true, it is easily remedied. Pending before the Court is a motion filed by USAPA to consolidate action number 3:14-cv-577 with this action. The Plaintiffs did not oppose this motion, so the Court should sign the Order it has on its desk and order consolidation of the two actions. This will then put the burden in the consolidated case jointly on USAPA and the Defendants to figure out a way to produce the materials the Court ordered produced in its June 17 Order. Since both the Defendants and USAPA are represented by the same lawyers, they can help the Defendants and USAPA figure out a way to comply with the Court's Order.

Bottom line, however, is that the Defendants collectively are or were in total control of USAPA. They run the organization. They are the ones who have authorized and

continue to authorize the expenditure of what the Plaintiffs reasonably believe is hundreds of thousands of dollars of USAPA treasury monies for unauthorized purposes, thereby wrongfully depleting USAPA's treasury. If the Defendants are capable of authorizing these wrongful expenditures of USAPA's money and then making sure the funds are spent the way they want, then surely they are capable of causing USAPA to produce the evidence the Court directed them to produce in its June 17 Order.

As it should be, USAPA's Constitution provides that its financial books and records shall be accessible to any number or group of members in good standing in accordance with federal law. *See* USAPA Constitution Art. III, Sec. 8(C), Doc. 1-2 at 17. The Plaintiffs are members in good standing and therefore are entitled to access the financial records they are seeking. (*See* Verified Complaint, Doc. 1 at 2). Unbelievably, the Defendants contend here that a clause in USAPA's Code of Ethics prevents them or USAPA from producing the discovery the Court has ordered to them to produce. A minor provision in USAPA's Code of Ethics does not trump a substantive provision in USAPA's Constitution which provides the Plaintiffs access to financial records they seek. Clearly, the line in the Code of Ethics is designed to remind members of USAPA that it is unethical for them to give important financial information to those who are unfriendly to USAPA. It is not intended to preclude the Officers and Directors of USAPA from giving its members financial information about their organization.

Finally, the Defendants conclude with the unsubstantiated claim that complying with the discovery requests will inevitably implicate personal confidential issues such as payroll data. On their face, the Plaintiffs' discovery requests do not ask for this type of

information. The discovery mainly seeks the amount of dues collected, and how certain dues were spent during a specified period. The discovery also seeks information about how much money was on hand on September 16, 2014. No personal information about any pilot or group of pilots has been requested, nor is it intended that any such information needs to be provided in order to comply with the Court's Order.

### **III. Defendants' Point IV: Defendants' Request for Expedited Discovery.**

Defendants are not entitled to "expedited" discovery because what they seek is not germane to the LMRDA Complaint or the TRO hearing. Nor is it a "limited" request as Defendants misclaim. For example, requests 6 and 7 call for the production of information that is "extensive and burdensome" discovery documentation that covers the six-year period from the summer of 2008 to the present. *See* Doc. 52-1 at 4. That is an extremely burdensome request.

More to the point, all of the Defendants' discovery focuses on the Plaintiffs and West Pilots and what they have done over the last six (6) years or more to hold USAPA responsible for not implementing the Nicolau seniority list. None of that is relevant to the LMRDA Complaint or the TRO hearing. What is at issue is the Defendants' conduct since USAPA was decertified in September, 2014. The sleight of hand Defendants use to suggest a legitimate basis for their request is to insinuate that the Plaintiffs and West Pilots will not suffer any "irreparable harm" because they have the means to raise money to support themselves. As noted above, that is not the harm the Plaintiffs complain about, no matter how many times the Defendants claim that it is. The Plaintiffs' complaint is about the Defendants' actions in wrongfully depleting the USAPA treasury since decertification.

In Items 2 and 4 of their proposed discovery requests, the Defendants seek information on how much the West Pilots have spent supporting the West Merger Committee. *See* Doc. 52-1 at 4, ¶¶ 2 and 4. The undersigned counsel offered to share this information with the Defendants as early as May 18, 2015. *See* Doc. 49 at 2, ¶¶ 5-6. This offer was contingent on the Defendants disclosing how much they authorized to be spent to support the USAPA (East) Merger Committee. The Defendants rejected this proposal. *See id.* at ¶ 10.

Then again on June 18, undersigned counsel offered to provide this information to the Defendants if the Defendants would simply agree to follow the Court's June 17 Order and produce the ordered discovery by 5:00 p.m. EST on Wednesday, June 24, 2015. *See* Exhibit A, attached. Once again, that offer was rejected. *See* Exhibit B, attached.

Without waiving their objection to the Defendants' Expedited Discovery Request, and with the consent of the managers of Leonidas, LLP, the undersigned counsel have been authorized to disclose that Leonidas has spent \$14,559.64 in support of the West Merger Committee. Leonidas has not paid West Merger Committee expenses since December 29, 2014.

So, since the Plaintiffs have told the Defendants how much the West Pilots have spent supporting the West Merger Committee, the Defendants once again should be ordered to do the same. The Court should decline to reconsider its June 17, 2015 Order and once again order the Defendants and USAPA, if necessary, to produce the discovery by 5:00 p.m. EST on Wednesday, June 24, 2015, so that it can be used by the Plaintiffs and considered by the Court at the TRO hearing on June 30, 2015.

## CONCLUSION

The Defendants clearly do not want to disclose what they have caused USAPA to spend supporting the USAPA (East) Merger Committee since September, 16, 2014. It is also clear that they do not want the membership as a whole to know how much they have depleted the USAPA treasury since September 16, 2014.

Notwithstanding that they have been told by this Court to produce the discovery requested by the Plaintiffs, they refuse to do so. The Court, therefore, should reiterate its Order of June 17, 2014 and order the Defendants to produce the requested discovery by a date certain in advance of the TRO hearing. Plaintiffs suggest June 24, 2014 by 5:00 p.m. EST.

Respectfully submitted this 19th day of June, 2015.

*/s/ Kelly J. Flood*

---

Marty Harper (*admitted pro hac vice*)  
Kelly J. Flood (*admitted pro hac vice*)  
ASU Alumni Law Group  
Two North Central, Suite 600  
Phoenix, AZ 85004  
(602) 251-3621  
(602) 251-3622  
marty.harper@asualumnilawgroup.org  
[kelly.flood@asualumnilawgroup.org](mailto:kelly.flood@asualumnilawgroup.org)

Jeffrey Freund (*admitted pro hac vice*)  
Zachary Ista (*admitted pro hac vice*)  
Bredhoff & Kaiser, P.L.L.C  
805 15th Street N.W.  
Washington, D.C. 20005  
(202) 842-2600 (p)  
(202) 842-1888 (f)

jfreund@bredhoff.com  
zista@bredhoff.com

C. Grainger Pierce, Jr.  
Nexsen Pruet, PLLC  
Carillon Building  
227 West Trade Street, Suite 150  
Charlotte, NC 28202  
(704) 338-5321 (p)  
(704) 805-4712 (f)  
gpierce@nexsenpruet.com

## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the Motion for Expedited Discovery with the Clerk of the court using the CM/ECF system. John Gresham, of Tin, Fulton Walker & Owen, has notified Plaintiffs' counsel that he is counsel for Defendants Bradford, Streble, Hummel, Stein, Nathan, Taylor, Dugstad, Milkey and Smyser. In the event that notification pursuant to the CM/ECF system cannot be sent to John Gresham or Brian O'Dwyer, I hereby certify that the foregoing document was duly served upon counsel for the Defendants in accordance with the provisions of Rule 5 of the Federal Rules of Civil Procedure by depositing it in the United States Mail, first-class postage prepaid, addressed as follows:

John Gresham  
Tin Fulton Walker & Owen  
301 East Park Avenue  
Charlotte, NC 28203

Brian O'Dwyer  
bodwyer@odblaw.com  
O'DWYER & BERNSTIEN, LLP  
52 Duane Street, 5th Floor  
New York, NY 10007

I hereby certify that I additionally emailed this Motion to Mr. Gresham this same date at [jgresham@tinfulton.com](mailto:jgresham@tinfulton.com), and Brian O'Dwyer at [bodwyer@odblaw.com](mailto:bodwyer@odblaw.com).

I hereby certify that, with respect to the Defendants who have to our knowledge not been served or are evading service, I have placed a copy of this motion in the United States Mail, certified first-class postage prepaid, return receipt requested, addressed as follows:

COURTNEY BORMAN  
2402 E 5th Street, #1641  
Tempe, AZ 85281

COURTNEY BORMAN  
1421 East El Parque Drive  
Tempe, AZ 85282

PAUL DIORIO  
325 Summer Street  
North Andover, MA 01845

RONALD NELSON  
5554 Champion Creek Blvd.  
Medina, OH 44256

PAUL MUSIC  
213 NE Treebine Terrace  
Jensen Beach, FL 34957-6716

ROBERT FREAR  
420 Bath Club Blvd. S.  
North Redington Beach, FL 33708

Dated this 19<sup>th</sup> day of June, 2015.

*/s/ Kelly J. Flood*

---

Kelly J. Flood