

THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

CIVIL ACTION NO.: \_\_\_\_\_

US AIRLINE PILOTS ASSOCIATION,

Plaintiff,

vs.

ROGER VELEZ, on behalf of himself  
and all similarly situated former America  
West Pilots, and LEONIDAS, LLC,

Defendants.

**DEFENDANT LEONIDAS' MOTION TO  
DISMISS FOR LACK OF PERSONAL  
JURISDICTION AND FOR FAILURE TO  
STATE A CLAIM UPON WHICH RELIEF  
CAN BE GRANTED, AND SUPPORTING  
MEMORANDUM**

Pursuant to Rule 12(b)(2) and (6) of the Federal Rules of Civil Procedure, Defendant Leonidas, LLC (“Leonidas”) hereby moves this Court to dismiss the Complaint for lack of personal jurisdiction over the defendant and for failure to state a claim upon which relief can be granted. As set forth in the accompanying Memorandum pursuant to LCvR 7.1(C), Leonidas is an Arizona limited liability corporation and lacks sufficient contacts with North Carolina to give rise either to specific or general jurisdiction. Further, the exercise of jurisdiction over Leonidas by this Court would offend traditional notions of fair play and substantial justice. Additionally, the Complaint seeks an order from this Court declaring that USAPA’s actions were consistent with its constitution and bylaws. Defendant

Leonidas is not a party to USAPA’s constitution or its bylaws, and is not a party to any legal proceedings involving Plaintiff. Leonidas is therefore irrelevant to the relief sought by USAPA.

### **BRIEF STATEMENT OF FACTS**

As set forth in the Complaint for Declaratory Judgment, Plaintiff U.S. Airline Pilots Association (“USAPA”) is a private, unincorporated non-profit association existing and operating under the laws of North Carolina. *See* Compl. ¶ 1. On September 16, 2014, USAPA lost its status as the representative of US Airways pilots. *Id.* ¶ 51. On that same date, “a majority of USAPA National Officers determined to defer the commencement date of the dissolution of USAPA” and that “it would be imprudent to make a distribution of the assets of the Association, in whole or in part, to ‘members in good standing’, as provided for in subdivision A of Section 3 of Article I of the USAPA Constitution and Bylaws.” *Id.* ¶ 66. Also on that date, USAPA filed its Complaint for Declaratory Judgment in the Superior Court of North Carolina, naming Leonidas as a Defendant. *Id.* ¶ 11.

In its Complaint, Plaintiff alleges as its only jurisdictional claim that Leonidas “solicited US Airways pilots who are domiciled in North Carolina to participate in and help finance [prior] litigation.” *Id.* ¶¶ 6, 7. Plaintiff further

claims that Leonidas “assisted and supported” two previous lawsuits against USAPA. *Id.* ¶ 14. Plaintiff fails to inform the Court, however, that both of these suits were filed in federal court in Arizona, Leonidas’ home jurisdiction. Plaintiff further alleges that an update issued by Leonidas on June 18, 2014 “threatened yet another lawsuit against USAPA”, *Id.* ¶ 16, and that “it is practically certain Defendants will commence another lawsuit against USAPA.” *Id.* ¶ 24.

Based on this information, Plaintiff seeks a declaratory judgment from this Court to “afford the parties relief from the uncertainty, insecurity, potential ongoing liability, and controversy giving rise to this action, which it is practically certain will result in future litigation without an order by this Court.” *Id.* ¶ 9.

Plaintiff requests an order “declaring that the National Officers’ decision to defer dissolution upon USAPA’s decertification and their decision to defer distribution of USAPA’s assets at present, were proper, valid, and enforceable exercises of their authority under USAPA’s Constitution and Bylaws. *Id.* ¶ 26. In effect, USAPA wants this Court to bar Leonidas from assisting or supporting future litigation against USAPA anywhere in the United States.

## **ARGUMENT**

### **A. This Court Lacks Personal Jurisdiction Over Leonidas.**

Plaintiff alleges without proof that Leonidas “solicited US Airways pilots who are domiciled in North Carolina to participate in and help finance [prior]

litigation.” Compl. ¶ 7. Plaintiff further speculates that “it is practically certain Defendants will commence another lawsuit against USAPA.” *Id.* ¶ 24. These conclusory statements fail to establish any reasonable basis for the Court’s exercise of personal jurisdiction over Leonidas.

### ***1. Legal Standard***

When a non-resident defendant challenges personal jurisdiction under Fed. R. Civ. P. 12(b)(2), a plaintiff bears the burden of proving the grounds for personal jurisdiction. *Carefirst of Maryland v. Carefirst Pregnancy Ctrs.*, 334 F.3d 390, 396 (4th Cir. 2003). To meet this burden, the plaintiff must satisfy a two-step inquiry. First, it must show that the State’s long-arm statute confers personal jurisdiction. While “the mere act ... of entering into a contract with a resident of a forum state will not provide sufficient minimum contacts with that forum,” *Tutterrow v. Leach*, 421 S.E.2d 816, 819-20 (N.C. Ct. App. 1992), the courts of North Carolina have made clear that the State’s long-arm statute, N.C. Gen. Stat. § 1-75.4, confers “the full jurisdictional powers permissible under federal due process.” *Dillon v. Numismatic Funding Corp.*, 291 N.C. 674, 674 (1977). Thus, the due process inquiry becomes “the ultimate determinative factor in assessing whether jurisdiction may be asserted.” *Phoenix Am. Corp. v. Brissey*, 265 S.E.2d 476, 479 (N.C. Ct. App. 1980).

The Due Process Clause of the Fourteenth Amendment requires that “certain

minimum contacts [exist] ... such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” *Tom Togs, Inc. v. Ben Elias Indus. Corp.*, 318 N.C. 361, 365, 348 S.E.2d 782, 786 (1986) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). Minimum contacts do not arise ipso facto from actions of a defendant having some incidental effect in the forum state. *Starco, Inc. v. AMG Bonding & Ins. Serv., Inc.*, 477 S.E.2d 211, 217 (N.C. Ct. App. 1996). Rather, in determining whether minimum contacts exist, courts must ascertain what is fair and reasonable and just under the facts and circumstances of each case. *Chapman v. Janko, U.S.A.*, 462 S.E.2d 534, 536 (N.C. Ct. App. 1995). Factors to be considered include: (1) the quantity of the contacts; (2) the nature and quality of the contacts; (3) the source and connection of the cause of action to the contacts; (4) the interest of the forum state; and (5) the convenience to the parties. *Replacements, Ltd. v. MedweSterling*, 133 N.C. Ct. App. 139, 143 (1999).

## ***2. Leonidas’ Contacts with North Carolina Do Not Meet the Standards for General or Specific Jurisdiction.***

Where a controversy arises out of or relates to a defendant’s activities in a forum state, a plaintiff must prove that the court has specific jurisdiction over the defendant. To establish specific jurisdiction, a plaintiff must show that the defendant “purposefully directed” his activities at the forum—here North

Carolina—and the litigation must result from alleged injuries that “arise out of or relate to” the defendant’s activities directed at the forum. *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984). Isolated acts that give rise to only an attenuated connection with the forum are insufficient to support a court’s exercise of specific jurisdiction. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 n.18 (1985). Rather, “[t]he contacts related to the cause of action must create a ‘substantial connection’ with the forum state.” *ESAB Group, Inc. v. Centricut, Inc.*, 126 F.3d 617, 625 (4th Cir. 1997) (quoting *McGee v. Int’l Life Ins. Co.*, 355 U.S. 220, 223 (1957)). The defendant’s actions must be directed at the forum state in “more than a random, fortuitous, or attenuated way.” *ESAB*, 126 F.3d at 625. The contacts must be so substantial that “they amount to a surrogate presence and thus render the sovereignty just.” *Id.* at 623. Leonidas’ prior support of litigation against USAPA far beyond the borders of North Carolina fail this test.

Alternatively, if the cause of action does *not* arise from or relate the defendant’s activities in the forum state, the plaintiff must prove general jurisdiction by showing “continuous and systematic” contacts between the defendant and the forum state. *Helicopteros*, 466 U.S. at 415-16. General jurisdiction does not exist unless a defendant’s contacts with the State are so extensive, systematic, and continuous that they approximate physical presence. *Lab. Corp. of Am. Holdings v. Schumann*, 474 F.Supp.2d 758, 765 (M.D.N.C.

2006). USAPA offers no proof to satisfy this test.

**3. *Specific Jurisdiction Does Not Apply Because the Alleged Injuries Do Not “Arise Out of” and Are Not “Related to” Leonidas’ Actions.***

In its Complaint, Plaintiff relies on the unsupported assertion that “Defendant Leonidas solicited US Airways pilots who are domiciled in North Carolina to participate in and help finance [prior] litigation” in Arizona. Compl. ¶ 7. In its statement of jurisdiction, Plaintiff alleges no facts showing that Leonidas’ activities in North Carolina are at all related to the subject matter of this suit, which seeks a declaration that the USAPA officers satisfied their fiduciary obligations when they decided on September 16, 2014 to delay the dissolution of USAPA. Instead, Plaintiff abrogates its claim by simply stating that “[a] dispute exists between the parties requiring clarification and settling of the parties’ rights.” *Id.* ¶ 9. However, the mere fact that there is a disagreement between the parties over the terms of USAPA’s constitution and bylaws does not create specific jurisdiction over Leonidas, any more than jurisdiction would exist over any of the thousands of pilots who disagree with Plaintiff’s interpretation of its constitution and bylaws. Thus, the Complaint fails on its face to establish that this dispute—seeking clarification of the terms of a contract between USAPA and its members—“arises out of” or “relates to” any of Leonidas’ contacts with North Carolina. Accordingly, the Court should not apply the specific jurisdiction analysis, but

instead should focus its analysis on whether general jurisdiction exists.

However, even if Plaintiff alleged that specific jurisdiction applied here, this argument would fail because (1) Leonidas' prior activities were wholly unrelated to the pending action, which is based on USAPA's Constitution to which Leonidas is not a party; and (2) Plaintiff has not shown that Leonidas has "purposefully availed" itself of the benefits and protections of North Carolina's laws. In fact, Leonidas has never been a party to litigation in North Carolina, and has never sought the benefits or protections of its laws. Any communicative activities engaged in by Leonidas to support its mandate to protect the seniority rights of the former American West pilots ("West Pilots") are conducted broadly toward its members and pilots located throughout the United States, and do not target or focus on North Carolina. Such untargeted and widespread communication, where only incidental and limited contact is made with the forum state, is insufficient to confer specific jurisdiction. *See ESAB Group*, 126 F.3d at 625 (holding that solicitation activities focused on customers nationwide, including customers in the forum state, did not give rise to specific jurisdiction). Thus, Plaintiff fails to demonstrate how any of Leonidas' past actions relate to or give rise to the USAPA constitution issue laid out in the Complaint. Nor has Plaintiff shown that Leonidas' nationwide advocacy activities in support of the West Pilots' seniority status constitute "purposeful availment" of the benefits and protections of North

Carolina's laws. Accordingly, even under the specific jurisdiction analysis, the Court should hold that it lacks personal jurisdiction over Leonidas.

***4. Leonidas' Limited Contacts with North Carolina Do Not Support the Exercise of General Jurisdiction.***

As this Court lacks specific jurisdiction over Leonidas, the proper analysis then is whether Leonidas' contacts with North Carolina are "systematic and continuous" so as to give rise to general jurisdiction. *Goodyear Dunlop Tires Operations v. Brown*, 564 U.S. \_\_ (2011). This analysis is considerably more demanding than that for specific jurisdiction, and Plaintiff lays no basis at all for establishing that general jurisdiction exists. To establish general jurisdiction, Plaintiff must show that Leonidas' contacts with North Carolina are so extensive that this Court would have personal jurisdiction regardless of the subject matter of the suit.

It is demonstrably clear that Leonidas' contacts with North Carolina, if any, fall far short of supporting the exercise of general jurisdiction. *See, e.g., Helicopteros*, 466 U.S. at 416-17 (no general jurisdiction despite extensive business contacts with the State). Leonidas is an Arizona limited liability corporation, with its principal place of business in Arizona. At no time was Leonidas, or any of its members, a citizen of North Carolina. At no time has Leonidas done business in North Carolina. Accordingly, the Court should dismiss

the Complaint because Plaintiff has failed to show the “continuous and systematic” contacts required to support the exercise of general jurisdiction.

**B. The Complaint Fails to State a Claim for Which Relief Can Be Granted with Respect to Leonidas.**

*1. Legal Standards*

Under the Federal Rules, a complaint must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). The Court may dismiss a complaint if it fails to “state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). The Supreme Court has held that the rules require that a complaint include “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim has facial plausibility “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009). However, a pleading that offers mere “labels and conclusions” or that “tenders naked assertions devoid of further factual enhancement” will not survive a motion to dismiss under Rule 12(b)(6). *Id.* at 678. Thus, at the very minimum, Plaintiff is required to plead and prove that Leonidas is a party to the USAPA constitution, and that its asserted injuries would be redressed by a judgment against Leonidas. Because it has failed to do so, the Complaint should be dismissed.

**2. *The Complaint Alleges a Contract Dispute Between USAPA and Its Members, and Leonidas is Not a Party to the Contract.***

USAPA seeks a judgment declaring that the actions of its officers were consistent with its constitution and bylaws. Compl. 18. Courts have long recognized that a union constitution is a contract between the union and its members. *See United Ass'n of Journeymen & Apprentices of Plumbing & Pipefitting v. Local 334*, 452 U.S. 615, 619-20 (1981); *Parks v. IBEW*, 314 F.2d 886, 917 (4th Cir. 1963). As such, USAPA's constitution is a contract between the organization and its members. Yet Plaintiff does not allege, because it cannot in good faith do so, that Leonidas is a member of USAPA and thus a party to its constitution, or that Leonidas is bound by the terms of the constitution. Avoiding the issue altogether, it instead relies on the conclusory statements that Leonidas has "threatened yet another lawsuit," Compl. ¶ 16, and that "it is practically certain Defendants will commence another lawsuit against USAPA." *Id.* ¶ 24. But Leonidas has never been a party to a lawsuit against Plaintiff. Thus, because Plaintiff's requests for declaratory relief are based wholly on a Constitution to which Leonidas is not a party, there are no rights to be declared as between Plaintiff and Leonidas. Accordingly, the Complaint should be dismissed as it fails to state a claim upon which relief can be granted.

**3. To the Extent That the Complaint Seeks Injunctive Relief, It is Not Ripe for Adjudication.**

Further weakening Plaintiff's argument that it is entitled to the relief sought, the Complaint is ambiguous as to what that relief is. While the Complaint purports to seek declaratory relief to clarify the terms of the Constitution between USAPA and its members, Plaintiff asks the Court for an order "enjoining defendants from instituting legal action in this or another jurisdiction." *Id.* at ¶¶ 82, 89. An action for declaratory judgment, however, is not a panacea for all legal ills.

"A claim should be dismissed as unripe if the plaintiff has not yet suffered injury and any future impact 'remains wholly speculative.'" *Doe v. Va. Dep't of State Police*, 713 F.3d 745, 758 (4th Cir. 2013) (quoting *Gasner v. Bd. Of Supervisors*, 103 F.3d 351, 361 (4th Cir. 1996)). Plaintiff here speculates, based on "Defendants' statements and past actions," that Leonidas will likely challenge actions taken by Plaintiff's National Officers. Compl. ¶ 12. Setting aside the fact that Leonidas has never been a party to litigation involving USAPA, it is clear that the Complaint is a thinly-veiled attempt to improperly deny Defendants future access to the courts. This issue, if it presents a justiciable question at all, is not ripe for review unless and until Leonidas files a legal action. *See Doe v. Va. Dep't of State Police*, 713 F.3d 745, 758 (4th Cir. 2013) (a case is not fit for judicial decision until "the action in controversy is final and not dependent on future

uncertainties.”); *cf. Setra of North Am., Inc. v. Schar*, 2004 WL 1554195 at \*10 (M.D.N.C. July 7, 2004) (dismissing a claim for declaratory judgment absent an explicit threat of litigation). Future legal action by Leonidas is speculative at best, particularly in light of the fact that Leonidas has never been a party to litigation against Plaintiff. Accordingly, because the harm that Plaintiff alleges is entirely speculative, the Complaint against Defendant Leonidas should be dismissed.

### **CONCLUSION**

Plaintiff has failed to establish any basis, whether specific or general, by which this Court can properly exercise personal jurisdiction over Defendant Leonidas. Additionally, the Complaint fails to state a claim for which relief can be granted because (1) the Complaint arises out of the Constitution between USAPA and its members, to which Defendant Leonidas is not a party; and (2) any harm that may arise if Leonidas files a lawsuit is entirely speculative and cannot give rise to relief here.

WHEREFORE, Defendant Leonidas respectfully requests that the Court grant its Motion to Dismiss the Complaint for lack of personal jurisdiction and for failure to state a claim upon which relief can be granted, dismissing Leonidas from the case.

Respectfully submitted this 23<sup>rd</sup> day of October, 2014.