

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

CIVIL ACTION NO.: 3:14-CV-577-RJC-DCK

US AIRLINE PILOTS ASSOCIATION,)
)
Plaintiff,)
)
vs.)
)
ROGER VELEZ, on behalf of himself and)
all similarly situated former America West)
Pilots, and LEONIDAS, LLC,)
)
Defendants.)

BRIEF IN OPPOSITION TO
DEFENDANTS ROGER VELEZ’S AND
LEONIDAS’ MOTIONS TO DISMISS
AND IN SUPPORT OF USAPA’S
CROSS MOTION FOR
JURISDICTIONAL DISCOVERY

Pursuant to Local Rule 7.1(c), plaintiff US Airline Pilots Association (“USAPA” or “the Association”) submits this Brief in Opposition to Defendants Roger Velez’s and Leonidas’ Motions to Dismiss and in Support of USAPA’s Cross Motion for Jurisdictional Discovery.¹

INTRODUCTION

This matter was commenced on September 16, 2014 in the Superior Court of North Carolina, General Court of Justice Division, Mecklenburg County. On October 16, 2014, defendants Leonidas, LLC (“Leonidas”) and Roger Velez (“Velez”) (collectively the “defendants”) removed the action on the grounds that this Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a) based on diversity of citizenship and amount in controversy exceeding \$75,000. Defendants also removed on the ground that because, in their view, plaintiff’s claims arise under the Railway Labor Act and the Labor Management Reporting

¹ Plaintiff respectfully seeks leave to file this brief in excess of the page limit in that plaintiff has consolidated its opposition to the separate motions of both defendants into one brief, as well as its support for the cross-motion for jurisdictional discovery.

and Disclosure Act, this Court has original federal question jurisdiction pursuant to 28 U.S.C. 1331.

On November 17, 2014, plaintiff made a motion to remand this action back to the Superior Court of North Carolina on the grounds that none of the alleged grounds for removal are present.² USAPA, as an unincorporated non-profit association, is a citizen of every state and there is no complete diversity of citizenship. USAPA has not alleged any amount in controversy, and indeed does not seek damages. USAPA does not allege any claims arising under the Railway Labor Act or the Labor Management Reporting and Disclosure Act. Moreover, those statutes do not completely preempt USAPA's state law claims, and that defendants raise those statutes as defenses cannot serve as a basis for removal to federal court. Accordingly, this matter should be remanded pursuant to 28 U.S.C. § 1447(c).

Prior to the timely filing of the Motion to Remand, Velez moved to dismiss this action for lack of personal jurisdiction, alleging that his contacts with North Carolina do not meet the standards for general or specific jurisdiction. Doc. 7-1. At the same time, Leonidas also moved to dismiss this lack for lack of personal jurisdiction, alleging that its contacts with North Carolina do not meet the standards for general or specific jurisdiction. Doc. 8-1. Leonidas also moved to dismiss for failure to state a claim upon which relief can be granted. *Id.* Both motions should be denied.

STATEMENT OF RELEVANT FACTS

On September 16, 2014, USAPA commenced an action against defendants Roger Velez, on behalf of himself and all similarly situated former America West pilots, and Leonidas, Inc., in

² Plaintiff's motion to remand involves "no arduous inquiry" and as such "both expedition and sensitivity to state court's coequal stature should impel . . . [this Court] to dispose of that issue first." *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 587-88, 119 S.Ct. 1563, 1572 (1999).

the Superior Court of North Carolina, Mecklenburg County, seeking a declaration as to the validity of certain actions taken by the duly elected National Officers of the Association pursuant to their constitutional authority as provided for in USAPA's Constitution and Bylaws.

USAPA is a private, unincorporated non-profit association existing and operating under the laws of North Carolina. Doc. 1-1, Complaint, ¶¶1, 44, annexed as Exhibit 1 to Notice of Removal. From April 18, 2008, when it was certified by the National Mediation Board ("NMB") as the certified bargaining representative of US Airways pilots, until its decertification on September 16, 2014, USAPA represented the pilots of US Airways for purposes of collective bargaining and the administration and enforcement of the collective bargaining agreements it had with US Airways. *Id.*, ¶¶45, 51. Upon its decertification by the NMB, USAPA ceased being a labor organization within the meaning of the Railway Labor Act ("RLA"), but continued and continues to exist as a non-profit association pursuant to North Carolina law. *Id.*, ¶51.

In recognition of the fact that USAPA was an association created and maintained to represent only one group of employees and that a subsequent merger with a larger airline could result in its decertification as the NMB certified bargaining representative of that group, the USAPA Constitution and Bylaws (as set out in Doc. 1-1, Exhibit B to Compl.) provide for specific dissolution procedures in the event of its decertification. *Id.*, ¶53. The dissolution language takes into account the fact that airline industry mergers often result in drawn out and contentious proceedings to integrate the pre-merger pilot seniority lists. As such, the Constitution and Bylaws allow USAPA's National Officers to defer commencement of USAPA's dissolution and to continue the Association for the purposes of representing the US Airways pilots in collective legal action, including seniority integration proceedings. *Id.*, ¶54.

In April, 2012, US Airways announced its intention to merge with American Airlines to become a single airline known as New American Airlines. *Id.*, ¶¶55, 59. In anticipation of the merger closing, USAPA, US Airways, American and the Allied Pilots Association (“APA”), the union representing the American pilots, entered into a four-party Memorandum of Understanding Regarding a Contingent Collective Bargaining Agreement (“MOU”). *Id.*, ¶56. The merger closed on December 9, 2013, at which time US Airways and American began integrating the operations of the two airlines. *Id.*, ¶¶57-58.

The MOU provides that within 30 days of the NMB certification of the collective bargaining representative of the New American Airlines pilots, negotiations for a Joint Collective Bargaining Agreement (“JCBA”) will commence or re-commence. *Id.*, ¶63. The MOU also provides that seniority integration cannot commence until the JCBA is complete. *Id.*, ¶64. On September 16, 2014, the NMB certified the APA as the certified bargaining representative of the New American Airlines pilots, and USAPA was decertified as the bargaining representative of the pre-merger US Airways pilots. *Id.*, ¶61. The NMB’s certification of the APA, and its concomitant decertification of USAPA, gave rise to the dissolution provisions in the USAPA Constitution and Bylaws. *Id.*, ¶¶61, 62.

On September 16, 2014, a majority of the USAPA National Officers determined to defer the commencement date of USAPA’s dissolution, finding that existing circumstances present, or may present in the future, the need for collective legal action on behalf of the US Airways pilots, including seniority integration proceedings. *Id.*, ¶66. At the time and continuing to the present, there are various ongoing legal proceedings in which USAPA is either a named party on behalf of US Airways pilots, or otherwise represents the interests of US Airways pilots. *Id.*, ¶69. In addition, under the terms of the Seniority Integration Protocol Agreement entered into by

USAPA, the APA, US Airways, and American, the USAPA Merger Committee will continue to exist notwithstanding USAPA's decertification, and both USAPA and the USAPA Merger Committee will continue to be involved in seniority integration proceedings. *Id.*, ¶¶70-72.

On September 16, 2014, consistent with the authority granted exclusively to them, the National Officers also determined to defer 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 1 of the USAPA Constitution and Bylaws. *Id.*, ¶66. The bases for this decision included, *inter alia*, USAPA's potential liability in proceedings in which it is a defendant, including the *Addington* litigation, the continued roles of USAPA and the USAPA Merger Committee in the seniority integration proceedings, and USAPA's outstanding obligations to vendors, service providers, and creditors. *Id.*, ¶¶73-74; Doc. 1-1, Exhibit C to Compl.

The dissolution provisions, including the deferral provisions of the USAPA Constitution and Bylaws, are clear and unambiguous, and a permissible exercise of the power provided to an unincorporated non-profit association to govern its internal affairs pursuant to its formative documents. *Id.*, ¶67. The provisions provide the National Officers the sole discretion to (a) determine whether or not to defer dissolution, and (b) to determine whether or not to distribute excess monies to the pilots in the interim notwithstanding the deferred dissolution. *Id.*, ¶68.

In this action, USAPA seeks a judicial determination as to the validity of the National Officers' decision, as per the Constitution and Bylaws, to defer dissolution of USAPA and defer immediate distribution of its assets. *Id.*, at ¶¶85, 92.

Since its inception in 2007 and continuing to the present, USAPA's headquarters have been in Charlotte, North Carolina. Declaration of Robert Streble, ¶4. The National Officers maintain their offices in USAPA headquarters, and its headquarters is where all of USAPA's

finances, membership, and official organizational records are maintained. *Id.* The organization maintains accounts with North Carolina-based financial institutions, all but one of which is located in Charlotte. *Id.* USAPA's governing body, the Board of Pilot Representatives ("BPR") conducts semi-annual in-person meetings in Charlotte. *Id.*, ¶7. These meetings generally extend over two or three consecutive days, during which time BPR members in attendance will typically remain in Charlotte or the surrounding area. *Id.* The BPR shares the governmental powers of USAPA with the National Officers pursuant to the USAPA Constitution and Bylaws. *Id.*, ¶5. Its members are duly elected representatives from each US Airways domicile: Philadelphia, Washington D.C., Charlotte, and Phoenix. *Id.* BPR members are considered officers of USAPA under the Constitution. *Id.*, ¶6.

The BPR also conducts special meetings via telephone conference call where members call into USAPA's telephonic system, maintained in Charlotte, to join. *Id.*, ¶8. These special BPR meetings range from 30 minutes to 3 hours. *Id.* Official records of BPR meetings, including special meetings, are made and maintained in Charlotte. *Id.*

From 2011 through 2013, the BPR conducted between 11-20 meetings per year. *Id.*, ¶7. In 2013, there were 13 BPR meetings in total, including 4 regular meetings and 9 special meetings. *Id.*, ¶9. The last in-person BPR meeting was held on September 4, 2014. *Id.*

USAPA records reflect that defendant Velez has been a USAPA member in good standing since 2008. *Id.*, ¶10. Velez was previously a pilot for America West Airlines before its merger with US Airways in 2005. There has been a long history of contentious litigation resulting from the 2005 US Airways/America West merger that to date has not been resolved. Doc. 1-1, Compl., ¶14. The US Airways pilots who had formerly been employed by America West filed two class action lawsuits, both dismissed, alleging that USAPA has breached its duty

of fair representation to its members. *Id.* Velez was one of the individually named plaintiffs and class representatives of the certified class of plaintiffs in *Addington, et al. v. US Airline Pilots Ass'n, et al.*, Case No. 2:13-CV-00471-ROS, and *Addington, et al. v. US Airline Pilots Ass'n, et al.*, Case No. 2:08-cv-01633-NVW, and individually named defendants and representatives of the certified class of West Pilots in *US Airways, Inc. v. Addington, et al.*, Case No. 2:10-cv-01570-ROS.³ *Id.*, ¶33. These lawsuits were funded and aided by defendant Leonidas. *Id.*, ¶14.

Velez was a duly elected BPR member in 2010 and 2012 (his term ended on March 31, 2014). Streble Decl., ¶10. During this tenure, he was present in Charlotte for 33 days of BPR meetings and participated in 14 other BPR meetings via USAPA's Charlotte-based teleconferencing system. *Id.*

In addition, although no longer a member of the BPR as of March 31, 2014, Velez was present in Charlotte on April 15, 2014 for a portion of the BPR's First Quarter Regular Meeting as a "duly designated representative" ("DDR") for BPR member John Scherff. *Id.*, ¶11. A DDR is a member of USAPA that is chosen by a sitting BPR member to attend meetings on behalf of said BPR member. The DDR acts as a temporary BPR member and thus possesses all the voting rights and authority of the BPR member he is replacing. *Id.*, ¶12. At the April 15, 2014 meeting, Velez and his fellow Phoenix domicile representatives attempted to present a resolution to the rest of the BPR regarding the issue of the National Officers' authority and discretion to delay dissolution of USAPA. *Id.*, ¶11. The resolution was not acted upon at that time by the BPR. *Id.*

As an active and vocal opponent of USAPA and advocate for the interests of the former America West pilots (the "West Pilots"). Velez has sent Robert Streble, USAPA's Secretary-Treasurer since April 2009, 247 e-mails on various USAPA-related subjects. *Id.*, ¶13. The e-mails were all sent to Mr. Streble's official USAPA e-mail address. *Id.*

³ All three cases were commenced in the United States District Court, District of Arizona.

Leonidas is an Arizona based limited liability corporation formed by certain West Pilots in 2007 principally to fund litigation against USAPA. Doc. 1-1, Compl., ¶6. Upon information and belief, Leonidas solicits donations from all former America West pilots, including 10 West Pilots who have listed their home address as in North Carolina when submitting contact information to USAPA. Streble Decl., ¶17. According to the Leonidas website, www.cactuspilot.com, Leonidas was founded by two America West pilots Eric Ferguson and Jeff Koontz. Leonidas “About Us” web page, annexed as Exhibit 11 to the Declaration of Zachary Harkin.

In early 2008, the group expanded to include Velez. *Id.* Currently, there are 20 members of Leonidas, who collectively make decisions regarding Leonidas. *Id.*; *see also* Holmes Deposition Transcript, 20:5-6⁴, excerpts annexed as Exhibit 10 to the Harkin Decl. Leonidas members also have a duty to solicit money to continue to fund legal actions against USAPA. Ex. 10, 20-21:1-2. In addition to the members, there are 40 pilots who make up the Leonidas Information Group, which was created to reach pilots through pilot-to-pilot contact with the goal of having Leonidas Information Group members function as conduits of information to the line pilots. Ex. 11.

Leonidas members Eric Ferguson and Dave Simmons are current BPR members. Streble Decl., ¶18. Eric Ferguson has been a BPR member for almost 4 years. *Id.* Mr. Ferguson has participated in numerous BPR in-person and telephonic meetings. *Id.* In 2013, Mr. Ferguson attended 8 BPR meeting dates in Charlotte. *Id.* Dave Simmons has been a BPR member for almost 4 years. *Id.*, ¶19. As a BPR member, he also has participated in in-person and telephonic meetings. *Id.* In 2013, Mr. Simmons attended 17 BPR meeting dates in Charlotte. *Id.* Both Ferguson and Simmons attended the February 11, 2014 BPR meeting in Charlotte, during which

⁴ References transcript page and line numbers.

the BPR voted to send out a resolution to the USAPA membership for a referendum on whether the USAPA Constitution's dissolution deferral language should be amended to vest the discretion to decide on deferring dissolution with the BPR instead of the National Officers. *Id.*, ¶20. The referendum was rejected by 54% of voters, announced by the USAPA Ballot Certification Committee on March 17, 2014. *Id.*

As of August 28, 2013, the managers of Leonidas were Eric Ferguson, Jeffrey Koontz, Dave Button, Brian Stockdell, and John Bostic. Ex. 10, 22:24-25. As managers, they make the decision to commence litigation. *Id.*, 128:1-7.

These members, of which defendant Velez is one, are active and vocal opponents of USAPA. The members have actively participated in litigation against USAPA. The "Addington Control Team" was made up of Leonidas members, including Velez, who assisted and strategized with the attorneys for the West Pilots. Deposition Transcript of Roger Velez, 47:25, 48:1-11, excerpts annexed as Exhibit 9 to the Harkin Decl. Other "Addington Control Team" members included Leonidas founding members Eric Ferguson and Brian Stockdell, and Leonidas member Jeff Koontz. *Id.*; Ex. 10, 23:3.

Brian Stockdell, a Leonidas member and manager, attended the depositions of David Ciabattini, USAPA President Gary Hummel, USAPA Vice-President Stephen Bradford, Negotiating Committee Chair Dean Colello, Negotiating Committee Member John Owens, Merger Committee Chair Jess Pauley, and BPR members Paul DiOrio and Steven Crimi, in the action *Addington, et al. v. US Airline Pilots Ass'n, et al.*, Case No. 2:13-CV-00471-ROS. See Exhibits 1 through 8, annexed to the Harkin Decl. These depositions were held in Charlotte, North Carolina between September 17 and 20, 2013. *Id.* These depositions were also attended by Johan de Vicq, another Leonidas member. *Id.*

Leonidas member Kenneth Holmes has maintained the Leonidas website. Ex. 10, 27:12-14. Leonidas updates, which are posted on the website, are also sent out via email to anyone who has registered to receive emails from Leonidas. *Id.*, 26:1-5; Ex. 9, 46:18-20. Upon information and belief, this includes East and West pilots. Ex. 10, 106:19-21.

As part of the process to approve the MOU, USAPA held various roadshows where pilots could hear presentations from USAPA officials and legal counsel and ask questions regarding the effect of the MOU. Streble Decl., ¶21. One such roadshow was held on September 22-23, 2013 in Charlotte at Charlotte Douglas International Airport. *Id.* Leonidas member Dave Button and West Pilot Class member and Leonidas contributor John Scherff attended the Charlotte roadshow. Ex. 10, 84:23-25.

In a June 18, 2014 update, Leonidas threatened yet another lawsuit against USAPA in the event USAPA is decertified as the certified bargaining representative of the US Airways pilots. Doc. 1-1, Compl., ¶16. By letter dated September 12, 2014, Velez, writing on behalf of himself and the class of West Pilots and addressed to the Charlotte headquarters, demanded of USAPA: (a) its immediate dissolution; and (b) immediate distribution of USAPA's assets. *Id.*, ¶15; Doc. 1-1, Exhibit A to the Compl. In his letter, he further demanded an accounting of USAPA's treasury to determine: (a) the value of all of USAPA's assets (including, but not limited to all cash accounts, investing and saving vehicles and all tangible, saleable assets); (b) all outstanding indebtedness; (c) the total dues, fees and assessments paid by each US Airways pilot to USAPA for the 12 months prior to the date of USAPA's decertification; and (d) the total amount of dues, fees and assessments paid by all US Airways pilots to USAPA for the 12 months prior to USAPA's decertification. *Id.* Velez also demanded that USAPA take immediate steps to

calculate the monies to be returned to each US Airways pilot pursuant to the formula contained in the USAPA Constitution and Bylaws. *Id.*

All the records responsive to Velez's demand are located and maintained in Charlotte. Streble Decl., ¶16. The personnel necessary to respond also are employed in USAPA's headquarters in Charlotte. *Id.* Any distribution of USAPA assets to pilots would be drawn upon USAPA's banking institutions based in North Carolina. *Id.*

ARGUMENT

POINT I

LEGAL STANDARD ON A RULE 12(b)(2) MOTION TO DISMISS

Personal jurisdiction, including for actions in the federal court, is governed by North Carolina law, and traditionally involves a two-step process. Fed.R.Civ.P. 4(k)(1)(A); N.C.G.S. 1-75.4(5)(a) & (c); *Ellicott Mach. Corp., Inc. v. John Holland Party Ltd.*, 995 F.2d 474, 477 (4th Cir. 1993); *Olympus Managed Health Care, Inc., v. American Housecall Physicians, Inc.*, 662 F.Supp.2d 427, 436 (W.D.N.C. 2009) (“[B]ecause ‘the North Carolina long-arm statute . . . has been interpreted as the legislature’s attempt to allow the exercise of personal jurisdiction in all cases where such jurisdiction does not contravene due process, [the] normal two-step inquiry merges into one.’”). First, whether North Carolina’s long-arm statute authorizes the exercise of jurisdiction under the present circumstances, and if so, whether the exercise of jurisdiction meets Fourteenth Amendment due process standards. *Ellicott Mach. Corp., Inc.*, 995 F.2d at 477.

As to the first inquiry, North Carolina’s long-arm statute, which enumerates twelve circumstances in which the exercise of jurisdiction over a non-resident is permitted (N.C. Ged. Stat. 1-75.4(1)-(12)), is liberally construed “in favor of finding personal jurisdiction to the fullest extent allowed by the Due Process Clause.” *Cornerstone Orthopedic Hosp. v. Marquez*, 944 F.

Supp. 451, 452 (W.D.N.C. 1996); *see also CEM Corp. v. Personal Chemistry AB*, 192 F.Supp.2d 438, 440 (W.D.N.C. 2002) (“The North Carolina Supreme Court has liberally construed the North Carolina long-arm statute to extend the full jurisdictional powers permissible under federal Due Process.”) (citing *Vishay Intertechnology, Inc. v. Delta Int’l Corp.*, 696 F.2d 1062, 1065 (4th Cir. 1982)).

If the first inquiry is satisfied, the Court must then determine whether the defendant has made sufficient contacts with the forum state to satisfy the requirements of the Due Process Clause of the Fourteenth Amendment. And it is the requirements of due process that is “the ultimate test of jurisdiction over a non-resident defendant.” *Tom Togs, Inc. v. Ben Elias Industries Corp.*, 318 N.C. 361, 365, 348 S.E.2d 782, 785 (1986) (internal citations omitted). As such, “following the mandate of the United States Supreme Court, . . . [the Supreme Court of North Carolina] ha[s] rejected any *per se* rule of long-arm jurisdiction. *Id.*, citing *Buying Group v. Coleman*, 296 N.C. 510, 251 S.E.2d 610 (1979).

To meet the due process requirement, “there must be sufficient ‘minimum contacts’ between the nonresident defendant and our state ‘such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” *Bauer v. Douglas Aquatics, Inc.*, 207 N.C.App. 65, 71, 698 S.E.2d 757 (2010) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 158 (1945)). “In each case, there must be some act by which the defendant purposefully avails himself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws [,] ... [and] [t]his relationship between the defendant and the forum must be such that he should reasonably anticipate being haled [sic] into court there.” *Tom Togs, Inc. v. Ben Elias Industries Corp.*, 318 N.C. 361, 365, 348 S.E.2d 782, 786 (1986) (internal quotation marks and citations omitted).

“Factors for determining existence of minimum contacts include ‘(1) quantity of the contacts, (2) 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) convenience to the parties.’ ” In cases which arise from or are related to *359 defendant's contacts with the forum, a court is said to exercise “specific jurisdiction” over the defendant. However, in cases ... where defendant's contacts with the state are not related to the suit, an application of the doctrine of “general jurisdiction” is appropriate. Under this doctrine, “jurisdiction may be asserted even if the cause of action is unrelated to defendant's activities in the forum as long as there are sufficient ‘continuous and systematic’ contacts between defendant and the forum state.”

Bruggeman v. Meditrust Acquisition Co., 138 N.C.App. 612, 617, 532 S.E.2d 215, 219, (citations omitted), *disc. review denied*, 353 N.C. 261, 546 S.E.2d 90 (2000). The above factors are not controlling but merely aid in the determination of whether minimum contacts exist. *See Dataflow Companies, Inc. v. Hutto*, 114 N.C. App. 209, 213, 441 S.E.2d 580 (1994).

The focus for specific jurisdiction is whether “the defendant purposefully availed itself of the privilege of conducting activities in-state, thereby invoking the benefits and protections of the forum state's laws, and jurisdiction may be proper even if the defendant has never set foot in the forum state.” *Bauer*, 207 N.C.App at 71, 698 S.E.2d at 762 (quoting *Wyatt v. Walt Disney Co.*, 151 N.C.App 158, 165, 565 S.E.2d 705, 710 (2002)). Due process is satisfied where either specific or general jurisdiction over a defendant. *Vitela v. Richardson*, 212 N.C. App. at 380. “[I]t is well established that physical presence in the forum state is not a prerequisite to jurisdiction.” *Marquez*, 944 F.Supp. at 453-54 (citing *Burger King Corp. v. Rudzewocz*, 471 U.S. 462, 475-77, 105 S.Ct. 2174, 2184 (1985)).

Where the cause of action relates to or arises out of defendant’s actions within the state, plaintiffs may establish specific jurisdiction by proving that:

“the defendant has created a substantial connection to the forum state by action purposefully directed toward the forum state or otherwise invoking the benefits and protections of the laws of the state; and (2) the exercise of jurisdiction based on those minimum contacts would not offend traditional notions of fair play and substantial

justice, taking into account such factors as (a) the burden on the defendant, (b) the interests of the forum state, (c) the plaintiff's interest in obtaining relief, (d) the efficient resolution of controversies as between states, and (e) the shared interests of the several states in furthering fundamental substantive social policies.”

CEM Corp., 192 F.Supp.2d at 440 (quoting *Lesnick v. Hollingsworth & Vose Co.*, 35 F.3d 939, 945-46 (4th Cir. 1994)).

In deciding a defendant's motion to dismiss for lack of personal jurisdiction, the burden is on the plaintiff “simply to make a prima facie showing of a sufficient jurisdictional basis to survive the jurisdictional challenge.” *Combs v. Bakker*, 886 F.2d 673, 676 (4th Cir. 1989). All factual disputes are resolved in the plaintiff's favor. *Id.*, at 676; *see also Olympus Managed Health Care, Inc.*, 662 F.Supp.2d 427 (District Court adopting Magistrate Judge's recommendation of denying third-party defendant's motion to dismiss for lack of personal jurisdiction.).

POINT II

LEGAL STANDARD ON A 12(b)(6) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of claims for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). In order to survive a Rule 12(b)(6) motion to dismiss for failure to state a claim, the complaint “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcraft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 1974 (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.” *Id.*, citing *Twombly*, 550 U.S.

at 556, 127 S.Ct. 1955. “[A] complaint attached by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations” *Twombly*, 550 U.S. at 555, 127 S.Ct. at 1964.

The requirements of Rule 8(a)(2) provide guidance on the issue of whether a complaint adequately states a claim for relief. *See* Fed. R. Civ. P. 8(a)(2) (providing that, ordinarily, a complaint need only contain “a short and plain statement of the claim showing that the pleader is entitled to relief.”). Essentially, “[t]o satisfy the minimal requirements of [Rule 8(a)(2)], the complaint must set forth ‘enough factual matter (taken as true) to suggest’ a cognizable cause of action, ‘even if...[the] actual proof of those facts is probable and...recovery is very remote and unlikely.” *Reed v. Md., Dep't of Human Res.*, 2013 WL 489985, at *3 (D. Md. Feb. 7, 2013) (quoting *Twombly*, 550 U.S. at 555); *see also Coleman v. Md. Court of Appeals*, 626 F.3d 187 (4th Cir. 2010) (“A complaint ‘need only give the defendant fair notice of what the claim is and the grounds upon which it rests.’”) (quoting *Erickson v. Pardus*, 551 U.S. 89, 93, 127 S.Ct. 2197 (2007)).

The issue at the dismissal stage “‘is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.’” *Revene v. Charles Cnty. Comm'rs*, 882 F.2d 870, 872 (4th Cir. 1989) (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 1686 (1974)).

In deciding a Rule 12(b)(6) motion, “a court ‘must accept as true all of the factual allegations contained in the complaint’ and ‘draw all reasonable inferences in favor of the plaintiff.’” *Kensington Volunteer Fire Dep't, Inc. v. Montgomery Cnty., Md.*, 684 F.3d 462 (4th Cir. 2012) (internal citations omitted). Moreover, “[a]ll reasonable factual inferences from the allegations must be drawn in plaintiff’s favor.” *Ahern v. Omnicare ESC LLC*, 2009 WL

2591320, at *4 (E.D.N.C. Aug. 19, 2009) (citing *Edwards v. City of Goldsboro*, 178 F.3d 231, 244) (4th Cir. 1999).

POINT III

SPECIFIC JURISDICTION EXISTS OVER DEFENDANT VELEZ

A. North Carolina's long-arm statute applies to defendant Velez.

Personal jurisdiction over Velez may be exercised by using the “local services, goods or contracts” section of North Carolina’s long-arm statute. N.C. Gen.Stat. § 1-75.4(5)(b).⁵ Velez provided services in North Carolina based on his status as a BPR member and a DDR. As a BPR member, he attended 33 days of BPR meetings in Charlotte. Streble Decl., ¶10. He also participated in 14 BPR meetings via USAPA’s Charlotte based teleconferencing system. *Id.* He was also present in Charlotte on April 14, 2014 for a portion of the BPR’s First Quarter Regular Meeting as a DDR of BPR member John Scherff. *Id.*, ¶11. During that meeting, Velez and his fellow Phoenix domicile representatives attempted to present a resolution to the rest of the BPR regarding the issue of the National Officers’ authority and discretion to delay dissolution of USAPA. *Id.* The resolution was not acted upon at that time by the BPR. *Id.*

As an active and vocal opponent of USAPA and advocate for the interests of the former America West pilots (the “West Pilots”), Velez has sent Robert Streble, USAPA’s Secretary-Treasurer since April 2009, 247 e-mails on various USAPA-related subjects. *Id.*, ¶13. The e-mails were all sent to Mr. Streble’s official USAPA e-mail address. *Id.*

⁵ “(5) Local Services, Goods or Contracts.--In any action which:

...

b. Arises out of services actually performed for the plaintiff by the defendant within this State, or services actually performed for the defendant by the plaintiff within this State if such performance within this State was authorized or ratified by the defendant...”

Velez's September 12, 2014 letter to the USAPA National Officers concerned USAPA's dissolution and distribution of USAPA assets. *See Olympus Managed Health Care, Inc.*, 662 F.Supp.2d at 437 (Sufficient "minimum contacts" with North Carolina exist to satisfy due process where contacts included two visits to Charlotte, several telephone communications and multiple emails). By these actions, Velez exposed himself to the reach of North Carolina's long-arm statute, and personal jurisdiction over him is proper in this action.

Personal jurisdiction over Velez may also be exercised under Section 1-75.4(5)(e)⁶ in that Velez remitted dues to USAPA in North Carolina. The National Officers' decision to defer distribution of assets is central to this litigation. Velez's September 12, 2014 letter to the National Officers concerned USAPA's dissolution and distribution of assets upon loss of its NMB certification as the bargaining representative of the US Airways pilots. In his letter, Velez seeks an immediate calculation of the amount of money to be returned to each US Airways pilot. Velez exposed himself to the reach of North Carolina's long-arm statute by remitting dues to a location in North Carolina, and sending the September 12, 2014 letter on behalf of himself and all former America West pilots seeking an immediate accounting and no deferral of dissolution unless specific conditions are met.

Personal jurisdiction over Velez may also be exercised pursuant to N.C. Gen. Stat. § 1-75.4(8)⁷ (permitting long-arm jurisdiction over directors or officers of domestic corporations). Although Velez does not have the technical status of a director or officer of a corporation as such, he was a member of USAPA's BPR for two terms, his last term ending on March 31, 2014,

⁶ "Relates to goods, documents of title, or other things of value actually received by plaintiff in this State from the defendant through a carrier without regard to where delivery to the carrier occurred." N.C. Gen.Stat. § 1-75.4(5)(e).

⁷ N.C. Gen. Stat. § 1-75.4(8) ("(8) Director or Officer of a Domestic Corporation.--In any action against a defendant who is or was an officer or director of a domestic corporation where the action arises out of the defendant's conduct as such officer or director or out of the activities of such corporation while the defendant held office as a director or officer.").

and as such was considered an officer during the time he was a BPR member. Streble Decl., ¶¶6, 10. Moreover, it is the actual activities rather than the official titles that courts will analyze in determining the extent of personal jurisdiction. *See Marquez*, 944 F.Supp. at 454 (Rejecting defendant’s argument “that being a limited partner is not enough to create personal jurisdiction” where defendant’s “situation is more like that of a general partner than a stockholder such that the Court believes the exercise of personal jurisdiction in this case is proper . . .”). Thus, courts are permitted to characterize defendants’ status (as active versus passive participant) not merely based on their formal title but rather by evaluating their specific responsibilities and/or actual duties undertaken.

B. Velez has had sufficient “minimum contacts” with North Carolina to satisfy due process requirements.

As discussed in the Complaint, USAPA seeks a declaration as to the validity of the National Officers’ decision to defer USAPA’s dissolution and defer immediate distribution of its assets. Because of the litigious history that exists with Velez and the West Pilots against USAPA that has been funded by Leonidas, USAPA is injured by the uncertainty and unavoidable threat of litigation and ongoing liability. Doc. 1-1, Compl., ¶¶83-85, 90-92. The uncertainty, insecurity, threat of ongoing liability and controversy surrounding the decision of the National Officers to defer dissolution interferes with USAPA’s constitutional mandate to pursue collective legal action and from fulfilling its responsibilities in advocating on behalf of the interests of all US Airways pilots. *Id.*

As a USAPA dues paying member, BPR member and DDR, as a named party in litigation against USAPA, individually and as class representative, and as an active member of

Leonidas, Velez “purposefully directed” his activity at USAPA, headquartered in North Carolina, and this litigation results from alleged injuries to USAPA that relate to his activities. *See Olympus Managed Health Care, Inc.*, 662 F.Supp.2d at 437; *Vishay Intertechnology, Inc.*, 696 F.2d at 1068. Thus, the 33 days of BPR meetings for which Velez was present in North Carolina, the 14 BPR meetings via USAPA’s Charlotte-based teleconferencing system, the 274 emails to USAPA’s Secretary-Treasurer, his active participation in previous litigation against USAPA as a named plaintiff, class representative, and member of the Addington Control Team, and his September 12, 2014 letter to the National Officers are sufficient “minimum contacts” with North Carolina such that the maintenance of this suit against Velez “does not offend ‘traditional notions of fair play and substantial justice.’” *Bauer*, 207 N.C.App. at 71, 698 S.E.2d 757. By his activities, Velez purposefully availed himself of the privilege of conducting activities within North Carolina, thus invoking the benefits and protections of its laws such that he should reasonably have anticipated being hailed into court here. *See Tom Togs, Inc.*, 318 N.C. at 365, 348 S.E.2d at 786.

POINT IV

SPECIFIC JURISDICTION EXISTS OVER DEFENDANT LEONIDAS

A. North Carolina’s long-arm statute applies to defendant Leonidas.

Personal jurisdiction over Leonidas may be exercised by using the “Local Act or Omission” ground of North Carolina’s long-arm statute. N.C. Gen.Stat. § 1-75.4(3).⁸ Leonidas was created in 2007 to purportedly safeguard the legal rights of the former America West pilots by funding litigation against USAPA concerning the integration of seniority as between the America West and US Airways pilots. Ex. 11; Doc. 1-1, Compl., ¶6. A main obligation of

⁸ “(3) Local Act or Omission. –In any action claiming injury to person or property or for wrongful death within or without this State arising out of an act or omission within this State by the defendant.”

Leonidas members is the duty to solicit money to continue to fund its legal efforts against USAPA. Ex. 10, 20:24-25, 21:1-2. As part of its money raising efforts, Leonidas has solicited donations from West Pilots residing in North Carolina. Streble Decl., ¶17. Leonidas members Eric Ferguson and Dave Simmons are current BPR members, and have both attended BPR meetings in Charlotte. *Id.*, ¶¶18-19. Both Ferguson and Simmons attended the February 11, 2014 BPR meeting in Charlotte, during which the BPR voted to send out a resolution to the USAPA membership for a referendum on whether the USAPA Constitution's dissolution deferral language should be amended to vest the discretion to decide on deferring dissolution with the BPR instead of the National Officers. *Id.*, ¶20. The referendum was rejected by 54% of voters, announced by the USAPA Ballot Certification Committee on March 17, 2014. *Id.*

In addition, Leonidas members have actively participated in litigation against USAPA. Brian Stockdell and Johan de Vicq, both Leonidas members and members of the class of West Pilots in the three previous litigations against USAPA, attended the depositions of David Ciabattoni, USAPA President Gary Hummel, USAPA Vice-President Stephen Bradford, Negotiating Committee Chair Dean Colello, Negotiating Committee Member John Owens, Merger Committee Chair Jess Pauley, and BPR members Paul DiOrio and Steven Crimi in the action *Addington v. US Airline Pilots Ass'n, et al.*, Case No. 2:13-CV-00471-ROS. Exs. 1-8. These depositions were all held in Charlotte between September 17 through September 20, 2013. *Id.* Indeed, the long history of contentious litigation, all funded by Leonidas, and Leonidas' most recent threat of continued litigation should USAPA seek to continue to act on behalf of US Airways pilots post decertification, and possible legal action to recover dues money served as an impetus in this litigation and USAPA's need for declaratory relief. *See* Leonidas June 18, 2014 Update, annexed as Exhibit 12 to the Declaration of Zachary Harkin.

John Scherff, a financial contributor to Leonidas and a member of the West Pilot Class, and West Pilot Class member and Leonidas member Dave Button attended the Charlotte Roadshow. Ex. 10, 84:23-25.

The Leonidas June 18, 2014 Update, which discussed possible future legal action against USAPA concerning the issues in this action, in addition to being posted on the Leonidas website, were also emailed to any pilot who registered to receive updates via email. *See* Ex. 9, 46:18-20; Ex. 10, 106:11-12, 19-21. Pilots who receive information from Leonidas include East and West pilots. Ex. 10, 106:19-21. Leonidas' acts of soliciting monies within North Carolina, participating in litigation against USAPA in North Carolina, distributing information in support of its mission to pilots who, upon information and belief, reside in North Carolina, and seeking to change the USAPA Constitution's dissolution deferral language to vest discretion to decide on deferring dissolution with the BPR instead of the National Officers, have all caused injury to USAPA within North Carolina.

Personal jurisdiction over Leonidas may also be exercised under Section 1-75.4(4)⁹ in that Leonidas solicits or services activities within North Carolina which have caused injury to USAPA. While Leonidas is an Arizona based limited liability corporation, it not only conducts nationwide advocacy, but its members, on behalf of the work of Leonidas, have availed themselves of the jurisdiction of North Carolina when they attended depositions with the intent, upon information and belief, to gather information on behalf of Leonidas. Such actions, which, upon information and belief, have informed Leonidas' decisions and strategy, have harmed USAPA.

⁹ "(4) Local Injury; Foreign Act. – In any action for wrongful death occurring within this State or in any action claiming injury to person or property within this State arising out of an act or omission outside this State by the defendant, provided in addition that at or about the time of the injury either:

a. Solicitation or services activities were carried on within this State by or on behalf of the defendant."

Moreover, Velez is an active member of Leonidas, and his September 12, 2014 letter to the National Officers concerned USAPA's dissolution and distribution of assets upon loss of its NMB certification as the bargaining representative of the US Airways pilots. In his letter, Velez seeks an immediate calculation of the amount of money to be returned to each US Airways pilot. Thus, Velez, on behalf of himself and Leonidas, exposed himself to the reach of North Carolina's long-arm statute by sending the September 12, 2014 letter on behalf of himself and all former America West pilots seeking an immediate accounting and no deferral of dissolution unless specific conditions are met.

B. Leonidas has had sufficient "minimum contacts" with North Carolina to satisfy due process requirements.

As discussed in the Complaint, USAPA seeks a declaration as to the validity of the National Officers' decision to defer USAPA's dissolution and defer immediate distribution of its assets. Because of the litigious history that exists with Velez and the West Pilots against USAPA that has been funded by Leonidas, USAPA is injured by the uncertainty and unavoidable threat of litigation and ongoing liability. Doc. 1-1, Compl., ¶¶83-85, 90-92. The uncertainty, insecurity, threat of ongoing liability and controversy surrounding the decision of the National Officers to defer dissolution interferes with USAPA's constitutional mandate to pursue collective legal action and from fulfilling its responsibilities in advocating on behalf of the interests of all US Airways pilots. *Id.*

As a named party in litigation against USAPA, individually and as class representative, and as an active member of Leonidas, Velez "purposefully directed" his activity at USAPA, headquartered in North Carolina. Moreover, Leonidas members' attendance at depositions held in Charlotte, West Pilot Class members' attendance at the Charlotte roadshow, and Leonidas

members' actions in BPR meetings held in Charlotte in-person and by phone, were intended, upon information and belief, to gather information against USAPA and to further Leonidas' goal of funding litigation against USAPA. This litigation results from alleged injuries to USAPA that relate to Leonidas and its members' activities. *See Olympus Managed Health Care, Inc.*, 662 F.Supp.2d at 437; *Vishay Intertechnology, Inc.*, 696 F.2d at 1068. As such, Leonidas had sufficient "minimum contacts" with North Carolina such that maintenance of this suit "does not offend 'traditional notions of fair play and substantial justice.'" *Bauer*, 207 N.C.App. at 71, 698 S.E.2d 757.

POINT V

THE COMPLAINT STATES A CLAIM AGAINST LEONIDAS

Leonidas argues the Complaint fails to state a claim as to it on the grounds that "plaintiff's requests for declaratory relief are based wholly on a Constitution to which Leonidas is not a party", as a consequence of which, "there are no rights to be declared as between Plaintiff and Leonidas." Doc. 8-1, at 9.

USAPA concurs that Leonidas is a stranger to any matter involving application or interpretation of its Constitution and Bylaws. However, the reason that USAPA joined Leonidas in this action is precisely because its actions belie this disclaimer and it has a consistent pattern of obtruding into USAPA's affairs, and more particularly, the subject matter of this declaratory judgment action, the decision by the National Officers to defer dissolution and distribution of the Association's assets. First and foremost in this regard is the June 18, 2014 Leonidas Update wherein additional litigation is specifically discussed including actions with respect to the decision of the National Officers to defer distribution of the USAPA assets. Ex. 12. Among

other things, this update is interesting for its consistent use of possessive pronouns, “we”, “our”, clearly encompassing West Pilot concerns and activities.¹⁰

USAPA’s concern about Leonidas is not academic or idle. For example, Leonidas has admitted to being the funding mechanism for the West Pilot class in prior litigation against USAPA (Ex. 10, 19:1-2) and Leonidas managers were the ones who made the decision to file the second *Addington* lawsuit in 2013. *Id.*, 128:1-7.

The Supreme Court has held that a declaratory judgment action meets the case or controversy requirement where “whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007) (citations omitted). For the purposes of the Article III “case or controversy” requirement, the Court held that the dispute must be “definite and concrete, touching the legal relations of parties having adverse legal interests”; and that it be “real and substantial” and “admi[t] of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.” *Id.*

Thus, “[t]he Declaratory Judgment Act was designed to relieve potential defendants from the Damoclean threat of impending litigation which a harassing adversary might brandish, while initiating suit at his leisure or never.” *See Yahoo! Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d 1199, 1242 (9th Cir. 2006) (quoting *Yahoo II*, 169 F.Supp.2d 1181, 1189 (N.D.Cal. 2001)).

¹⁰ Consider the statement, “While we didn’t pick this fight, defending ourselves has been worth the effort.” Although Leonidas does not appear as a party to the Phoenix-based litigations, it is so closely aligned with those efforts that it wraps itself in the mantle of “we” and “ourselves”. Ex. 12.

As stated above, USAPA does not believe that Leonidas has the legal right to insert itself into its internal affairs. However, and notwithstanding Leonidas' statements to this Court, Leonidas has repeatedly done so, as in the June 18, 2014 Update, raising the "Damoclean threat of impending litigation". Leonidas should not be permitted to have it both ways: on the one hand to threaten litigation against USAPA and on the other to avoid the consequences of a judgment against it. In that regard a judgment enjoining Leonidas from threatening and entering into litigation against USAPA relating to or arising out of USAPA's internal governing documents (since it has admitted it has no right to do and would thus be frivolous) would be consistent with the position Leonidas has taken in its moving papers in response to this motion.

POINT VI

LIMITED JURISDICTIONAL DISCOVERY IS WARRANTED IN THIS CASE

It is well-established that district courts have the authority to compel discovery to aid in the resolution of personal jurisdiction issues. *Cent. Wesleyan Coll. v. W.R. Grace & Co.*, 143 F.R.D. 628, 644 (D.S.C. 1992) (citing *In re Uranium Antitrust Litig.*, 480 F. Supp. 1138 (N.D. Ill. 1979)), *aff'd* 6 F.3d 177 (4th Cir. 1993).

Courts have consistently held that "[d]iscovery under the Federal Rules of Civil Procedure is, of course, broad in scope and freely permitted....[y]et...district courts 'have broad discretion in [their] resolution of discovery problems that arise in cases pending before [them].'" *Mylan Labs., Inc. v. Akzo, N.V.*, 2 F.3d 56, 64 (4th Cir. 1993) (quoting *In re Multi-Piece Rim Prods. Liab. Litig.*, 653 F.2d 671, 679 (D.C. Cir. 1981)).

Generally, district courts retain broad discretion in determining whether to grant discovery to explore jurisdictional facts, including personal jurisdiction. *See, e.g., Penn Va. Operating Co., LLC v. Equitable Prod. Co.*, 466 F. Supp. 2d 718, 719 (W.D. Va. 2006)

(“Jurisdictional discovery, that is, discovery concerning facts upon which the court's jurisdiction is based, is within a district court's discretion to grant or deny.”) (citing *Carefirst of Md., Inc. v. Carefirst Pregnancy Ctrs., Inc.*, 334 F.3d 390, 402–03 (4th Cir.2003)); *Erdmann v. Preferred Research, Inc. of Ga.*, 852 F.2d 788 (4th Cir. 1988) (“The scope and conduct of discovery, however, are within the sound discretion of the district court.”) (citing *Lewis v. Bloomsburg Mills, Inc.*, 608 F.2d 971, 973 (4th Cir. 1979)).

District courts may choose to grant limited or full discovery. *See e.g., Mylan Labs.*, 2 F.3d at 64 (“[L]imited discovery may be warranted to explore jurisdictional facts in some cases.”) (internal citations omitted); *McLaughlin v. McPhail*, 707 F.2d 800, 806–07 (4th Cir. 1983) (stating that limited discovery “may be warranted to explore jurisdictional facts in some cases”); *Tuttle Dozer Works, Inc. v. Gyro-Trac (USA), Inc.*, 463 F. Supp. 2d 544, 548 (D.S.C. 2006) (“While some courts in these circumstances have permitted only limited discovery on the jurisdictional issue..., the parties here may proceed with full discovery.”) (internal citations omitted). District courts additionally retain the “discretion to stay consideration of a motion to dismiss for lack of personal jurisdiction to allow the parties additional time to engage in discovery relevant to the jurisdictional issue when there is some basis for believing that would be fruitful.” § 1067.6 *Procedural Aspects of Personal Jurisdiction*, 4 Fed. Prac. & Proc. Civ. § 1067.6 (3d ed.).

Although district courts undoubtedly have sound discretion in deciding whether to grant jurisdictional discovery requests, Fourth Circuit precedent indicates that such requests should be granted where plaintiff proffers sufficient need for such discovery. *See Rich v. KIS Cal., Inc.*, 121 F.R.D. 254, 259 (M.D.N.C. 1988) (“When plaintiff can show that discovery is necessary in order to meet defendant’s challenge to personal jurisdiction, a court should ordinarily permit

discovery on that issue unless plaintiff's claim appears to be clearly frivolous."); *Cent. Wesleyan Coll.*, 143 F.R.D. at 644 ("When the Plaintiff's claim does not appear to be frivolous, a district court should ordinarily allow discovery on jurisdiction in order to aid the Plaintiff in discharging the burden of establishing the court's jurisdiction.") (internal citations omitted).

Courts in the Fourth Circuit have granted motions requesting jurisdictional discovery where sufficient evidence has been proffered to justify the use of such discovery. *See e.g.*, *Mamo v. BP P.L.C.*, No. 1:05CV1323 (JCC), 2006 WL 572327, at *1 (E.D. Va. Mar. 7, 2006) (granting plaintiff's motion for leave to conduct jurisdictional discovery); *Cent. Wesleyan Coll.*, 143 F.R.D. at 644 (granting jurisdictional discovery request where "[p]laintiff is not engaged in some frivolous fishing expedition in the sea of jurisdictional proof"); *FrenchPorte IP, LLC v. Martin Door Mfg., Inc.*, 2014 WL 4094265, at *13 (D. Md. Aug. 14, 2014) (holding that "[b]ecause [plaintiff's] assertion of personal jurisdiction is not plainly frivolous, and because there are easily obtainable, additional facts that would enable this Court to resolve the personal jurisdiction question, the Court accordingly orders limited jurisdictional discovery from [defendant]...") (citing *Mylan Labs., Inc.*, 2 F.3d at 64).

USAPA requests discovery for purposes of determining specific personal jurisdiction in the underlying dispute. Such discovery is undoubtedly necessary given that both Velez and Leonidas are in possession of all the facts necessary to decide the personal jurisdictional issue, yet surprisingly neither submitted a declaration in support of their motion to dismiss for lack of personal jurisdiction. *See FrenchPorte*, 2014 WL 4094265, at *5 ("When the existing record is inadequate to support personal jurisdiction over a defendant, the plaintiff is entitled to jurisdictional discovery if it can demonstrate that such discovery would yield 'additional facts'")

that would ‘assist the court in making the jurisdictional determination.’”). As such, USAPA’s request is not a “fishing expedition” on a frivolous claim.

CONCLUSION

For the reasons set forth above, defendant Velez’s Motion to Dismiss for Lack of Personal Jurisdiction, and defendant Leonidas’ Motion to Dismiss for Lack of Personal Jurisdiction and for Failure to State a Claim upon Which Relief Can be Granted should be denied in their entirety. USAPA’s motion for jurisdictional discovery should be granted.

Respectfully submitted this 24th day of November, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing BRIEF IN OPPOSITION TO DEFENDANTS ROGER VELEZ'S AND LEONIDAS' MOTIONS TO DISMISS AND IN SUPPORT OF USAPA'S CROSS-MOTION FOR JURISDICTIONAL DISCOVERY with the Clerk of the Court using the CM/ECF system, and that notification pursuant to the CM/ECF system will be sent to:

C. Grainger Pierce, Jr.
NEXSEN PRUET, PLLC
227 West Trade Street, Suite 1550
Charlotte, NC 28202

This the 24th day of November, 2014.

s/ John W. Gresham
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