

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

US AIRLINE PILOTS ASSOCIATION,)
)
Plaintiff,)

v.)

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

Civil Action No.:
3:14-CV-577-RJC-DCK

EDDIE BOLLMEIER, BILL TRACEY)
and, SIMON PARROTT,)
)
Plaintiffs,)

v.)

GARY HUMMEL, STEPHEN)
BRADFORD, ROB STREBLE,)
STEVE SMYSER, ROBERT FREAR,)
COURTNEY BORMAN, and JANE)
DOE BORMAN, RONALD NELSON,)
PAUL DIORIO, PAUL MUSIC,)
JOHN TAYLOR, JOE STEIN,)
PETE DUGSTAD, JAY MILKEY,)
and STEPHEN NATHAN,)
)
Defendants.)

Civil Action No.:
3:15-cv-00111-RJC-DCK

**REQUEST FOR JUDICIAL NOTICE OF NINTH CIRCUIT OPINION IN
SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER OR
PRELIMINARY INJUNCTION**

Plaintiffs Eddie Bollmeier, Bill Tracey, and Simon Parrott (“Plaintiffs”), hereby submit their request that this court take judicial notice of a Ninth Circuit opinion that issued

June 26, 2015, that directly impacts these proceedings. This is filed in support of Plaintiffs' Motion for TRO or Preliminary Injunction.

As the Court is aware, Plaintiffs filed the LMRDA action captioned *Bollmeier v. Hummel* 3:15-cv-00111-RJC-DCK¹, in part to stop Defendants from spending any further USAPA dues monies for purposes that are not on behalf of the entire pilot group. [See Complaint, 3:15-cv-00111-RJC-DCK, Doc. 1.] Plaintiffs filed a Motion for TRO or Preliminary Injunction on March 27, seeking immediate relief to enjoin Defendants from further spending. [See Motion for TRO/Injunction, 3:14-CV-577-RJC-DCK, Doc. 48/ 3:15-cv-00111-RJC-DCK, Doc. 16] The briefing is closed on Plaintiffs' Motion for TRO or Injunction, and it is at issue. A hearing on the Motion for TRO is scheduled for June 30, 2015.

Today, June 26, 2015, the Ninth Circuit Court of Appeals issued an opinion in *Addington v. USAPA*, Nos. 14-15757, 15874, 15892. (A true and correct copy of the opinion is attached as Exhibit A.)

The Ninth Circuit's opinion is relevant and germane to these LMRDA proceedings because the Ninth Circuit concluded that USAPA, the organization that the Hummel Defendants control and whose treasury funds the Hummel Defendants have wrongfully depleted in violation of the USAPA constitution and the LMRDA, violated its duty of fair representation to West Pilots when it *was* a certified union by organizing and operating for the sole benefit of East Pilots to the detriment of West Pilots. See Exhibit A, at pages 55-

¹ Now consolidated with *USAPA v. Velez*, 3:14-CV-577-RJC-DCK.

56 (“USAPA has served as the stalking horse for the East Pilots’ exclusive interests and left the West Pilots bereft of representation. USAPA’s manifest disregard for the interests of the West Pilots and its discriminatory conduct towards them constitutes a clear breach of duty.”) The Ninth Circuit’s opinion and conclusion is germane to these proceedings because the Bollmeier Plaintiffs claim that Defendants have breached their fiduciary duties to USAPA members by mispending treasury funds to support only the seniority interests of the East Pilots to the detriment of the West Pilots, while Defendants claim that they are authorizing expenditures for the benefit of the entire pilot group. As the Ninth Circuit confirmed,² however, USAPA has never, does not, can not and will not represent the interests of the West Pilots, especially in the continuing seniority proceedings. Accordingly, literally all of the money that Defendants have authorized USAPA to spend on seniority has been in violation of Defendants’ fiduciary duties to USAPA’s members, because none of the money spent on seniority was in furtherance of “collective action on behalf of the pilot group,” as required by the USAPA constitution and the duties imposed by the LMRDA.

Plaintiffs ask this Court to take judicial notice of the Ninth Circuit opinion as a matter of public record on file in a federal court. *See, e.g., Hall v. Virginia*, 385 F.3d 421, 424 (4th Cir.2004) (proper during Rule 12(b)(6) review to consider “publicly available [statistics]” (*citing Papasan v. Allain*, 478 U.S. 265, 268 n. 1, 106 S.Ct. 2932, 92 L.Ed.2d 209 (1986)) (taking notice of items in the public record).

² This is consistent with the decision of the Preliminary Arbitration Board (“PAB”) that the Bollmeier Plaintiffs attached to their LMRDA Complaint. [See Complaint, Doc. 1, Exhibit 4.]

Respectfully submitted this 26th day of June, 2015.

/s/ Kelly J. Flood

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the Request for Judicial Notice of Ninth Circuit Opinion in Support of Motion for TRO or Preliminary Injunction with the Clerk of the court using the CM/ECF system. John Gresham, of Tin, Fulton Walker & Owen, and Brian O'Dwyer of O'Dwyer & Bernstein, 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, 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
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I hereby certify that I additionally emailed this Notice of Service to Mr. Gresham this same date at jgresham@tinfulton.com, and Brian O'Dwyer at 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 notice in the United States Mail, certified first-class postage prepaid, return receipt requested, addressed as follows:

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Dated this 26th day of June, 2015.

/s/ Kelly J. Flood

Kelly J. Flood