

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

CIVIL ACTION NO.: 3:14-CV-577-RJC-DCK  
CIVIL ACTION NO.: 3:15-CV-00111-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. )

**DECLARATION OF GARY  
SILVERMAN IN SUPPORT OF  
MOTION TO WITHDRAW AS  
COUNSEL**

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. )

Gary Silverman, declares as follows under penalty of perjury pursuant to 28 U.S.C. §

1746:

1. I am a member of the firm of O’Dwyer & Bernstein, LLP, counsel for defendants

Gary Hummel, Stephen Bradford, Rob Streble, Steve Smyser, John Taylor, Joe Stein, Pete

Dugstad, Jay Milkey and Stephen Nathan<sup>1</sup> (collectively the “defendants”), in the *Bollmeier* Action.

2. I submit this declaration in support of the motion to withdraw as counsel made by the Firm and the Firm attorneys who have appeared in the action (myself, Brian O’Dwyer, Joy K. Mele, and Zachary Harkin) (collectively the “Firm”), and am familiar with the facts and circumstances of this matter and the Firm’s representation of defendants.

3. The Firm was first retained by USAPA in or about April 2011.

4. Since its retention, the Firm has served as general counsel to USAPA. The Firm has also represented USAPA in several lawsuits, including but not limited to an action before this Court (*US Airways, Inc. v. USAPA and Cleary*, Case No. 2:11-cv-371-RJC-DCK) and two actions maintained in the District Court of Arizona (*US Airways, Inc. v. Addington, et al.*, Case No. 2:10-cv-01570-ROS and *Addington v. U.S. Airline Pilots Association*, Case No. 2:13-cv-00471-ROS).

5. The Firm has also represented individual USAPA officers, sued in their official capacities, in actions where USAPA’s interests and the officer’s interests were aligned. *See Lazear v. US Airline Pilots Association, et al.*, Case No. 3:12-cv-00210-FDW-DSC, Western District of North Carolina, Charlotte Division.

6. On February 23, 2015, rather than join issue in the first filed declaratory judgment action, *USAPA v. Velez, et al.*, Case No. 14-cv-00577-RJC-DCK, Doc. 1-1 (the “Declaratory Judgment Action”), also currently before this Court, three former West Pilots commenced an action under Section 501 of the Labor Management Reporting and Disclosure Act (“LMRDA”)

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<sup>1</sup> No appearances were entered in this action by this Firm for defendants Robert Frear, Courtney Borman, Ronald Nelson, Paul DiOrio, and Paul Music as they had not been served.

against USAPA current and former officers and Board of Pilot Representatives in their individual capacities regarding the same actions that are the subject of the Declaratory Judgment Action. *Bollmeier v. Hummel, et al.*, Case No. 15-cv-00111-RJC-DCK.

7. Because the challenged acts of the *Bollmeier* defendants were undertaken in good faith in their capacities as representatives of USAPA, and USAPA's interests in the litigation were aligned with defendants' and thus there existed no conflict of interest, the Firm, with the consent of USAPA, agreed to represent defendants in the *Bollmeier* Action. The representation was undertaken with the understanding that should a conflict arise, the Firm would seek to withdraw from representing the individual defendants and continue to represent USAPA.

8. On March 27, 2015, the *Bollmeier* plaintiffs moved for a temporary restraining order or preliminary injunction (Doc. 48), which was granted in part and denied in part by Order dated August 27, 2015. Doc. 75. In so ruling, the Court concluded preliminarily that plaintiffs demonstrated a likelihood of success on the merits of the LMRDA claim. Doc. 75 at 14.

9. In light of this conclusion, the potential for conflict between USAPA and the *Bollmeier* defendants now exists and requires this Firm to seek to withdraw as counsel for *Bollmeier* defendants.

10. The law firm of Seham, Seham, Meltz & Petersen, LLP ("SSMP") has represented that they are in the process of being retained by the individual defendants currently represented by this Firm in this action and will be able to file an answer to the *Bollmeier* complaint by December 31, 2015 on behalf of those individuals who retain SSMP. The current deadline to answer the complaint is November 13, 2015.

11. Counsel for *Bollmeier* plaintiffs consents to the Firms' motion to withdraw as counsel and further consents to extend the deadline for filing the answers to the complaint as per the Court's order of October 14, 2015 (text only) to December 31, 2015.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 13<sup>th</sup> day of November, 2015.

s/ Gary Silverman  
Gary Silverman

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing DECLARATION OF GARY SILVERMAN IN SUPPORT OF MOTION TO WITHDRAW AS COUNSEL with the Clerk of the Court using the CM/ECF system, with notification pursuant to the CM/ECF system sent to the following counsel for plaintiffs:

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This the 13<sup>th</sup> day of November, 2015.

s/ Joy K. Mele  
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