

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. )

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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. )

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO WITHDRAW AS  
COUNSEL IN THE *BOLLMEIER* ACTION**

Pursuant to Local Rule 83.1F, O’Dwyer & Bernstien, LLP and counsel Brian O’Dwyer,  
Gary Silverman, Joy K. Mele, and Zachary Harkin (collectively “the Firm”) and Tin Fulton

Walker &Owen, PLLC, and counsel John Gresham (“the Charlotte Firm”) 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”), respectfully submit this memorandum of law in support of their motion to withdraw as counsel for defendants in the *Bollmeier* Action on the ground that a conflict exists between these defendants and USAPA, plaintiff in *USAPA v. Velez, et al.*, Case No. 3:14-cv-577-RJC-DCK. At this early stage in the litigation, withdrawal can be accomplished without material adverse effect on the interests of defendants or the other litigants to these consolidated actions.

### **FACTS AND PROCEDURAL HISTORY**

The Firm was first retained by USAPA as general labor counsel in or about April 2011. Over the course of the representation, the Firm has also represented USAPA in litigation, including but not limited to actions before this Court (*US Airways, Inc. v. USAPA*, 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). 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 (*Lazear v. US Airline Pilots Association, et al.*, Case No. 3:12-cv-00210-FDW-DSC, Western District of North Carolina, Charlotte Division). The Charlotte Firm has handled matters in North Carolina only, including actions in both state court and this Court

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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.

including the pending consolidated actions, *USAPA v. Velez*, Case No. 14-cv-577-RJC-DCK, and *Bollmeier v. Hummel, et al.*, Case No. 15-cv-111-RJC-DCK.

On September 16, 2014, in light of the contentious litigation history between USAPA and West Pilots, and the West Pilots' threat of ongoing litigation, the Firms represented and continue to represent USAPA in a Declaratory Judgment Action (*USAPA v. Velez*, Case No. 14-cv-577-RJC-DCK) that was commenced in the Superior Court of North Carolina, Mecklenburg County against Roger Velez, a former West Pilot and Leonidas, a limited liability company formed by certain former West Pilots in 2007 principally for the purpose of funding litigation against USAPA. The Declaratory Judgment Action seeks declarations as to the validity of actions taken by the National Officers of USAPA in September, 2014, including the decision to defer the commencement date of USAPA's dissolution and their determination not to distribute USAPA's assets. Doc. 1-1. On October 16, 2014, defendants Velez and Leonidas removed the action to this Court. Doc. 1, Notice of Removal.

On February 23, 2015, rather than join issue in the Declaratory Judgment Action, three former West Pilots commenced an action under Section 501 of the Labor Management Reporting and Disclosure Act ("LMRDA") 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.<sup>2</sup>

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

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<sup>2</sup> The Declaratory Judgment Action and the *Bollmeier* Action were consolidated by Order dated June 25, 2015. Doc. 47.

aligned with the interests of defendants and thus there existed no conflict of interest, the Firm and the Charlotte Firm, with the consent of USAPA, agreed to represent defendants in the *Bollmeier* Action.

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 preliminarily concluded the *Bollmeier* plaintiffs demonstrated a likelihood of success on the merits of the LMRDA claim. Doc. 75 at 14.<sup>3</sup> In light of this conclusion, the potential for conflict between USAPA and the *Bollmeier* defendants now exists and requires the Firms to seek to withdraw as counsel for *Bollmeier* defendants.

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 the 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.

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.

### **ARGUMENT**

#### **THE PRELIMINARY INJUNCTION RULING HAS CREATED A CONFLICT BETWEEN USAPA AND THE *BOLLMEIER* DEFENDANTS**

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<sup>3</sup> By Order dated September 30, 2015, this Court dismissed as moot *Bollmeier* defendants’ Motion to Vacate the Order of March 5, 2015, or, in the Alternative, to Dismiss the Verified Complaint. Doc. 76.

In granting *Bollmeier* plaintiffs a preliminary injunction and finding that they will likely succeed on the merits of their Section 501(a) claim, this Court made a preliminary finding that creates the potential for conflicting positions as between the individual defendants and USAPA, which makes it untenable for the Firms to continue with the joint representation.<sup>4</sup> *See, e.g.*, Rule 1.7 of the North Carolina Rules of Professional Conduct (prohibiting an attorney from representing one client if the representation involves a concurrent conflict, which is defined, *inter alia*, as “the representation of one client will be directly adverse to another client”.); *Sears v. Price*, 2012 WL 3637245 (E.D.N.C. Aug. 22, 2012) (Finding the potential conflict of interest, *inter alia*, a compelling reason to grant attorney’s motion to withdraw as counsel.); *In re Goines*, 2007 WL 2410592 (Bankr. M.D.N.C. Aug. 21, 2007) (Granting motion to withdraw as counsel where the potential for a conflict of interest was almost certain to arise.).

WHEREFORE, the firm of O’Dwyer & Bernstien, LLP and the firm of Tin Fulton Walker and Owen PLLC, respectfully request that they be granted permission to withdraw as counsel for the *Bollmeier* defendants, and that defendants have until December 31, 2015 to answer the complaint.

This the 13th day of November, 2015.

s/ Gary Silverman  
Gary Silverman (admitted *pro hac vice*)  
Brian O’Dwyer (admitted *pro hac vice*)  
Joy K. Mele (admitted *pro hac vice*)  
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<sup>4</sup> While acknowledging the effect of the Court’s ruling, the Firms respectfully submit the preliminary finding regarding the LMRDA claim will not prevail upon a fuller examination of the facts or legal basis for the claim.

s/ John W. Gresham  
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JOE STEIN, PETE DUGSTAD,  
JAY MILKEY, and STEPHEN NATHAN

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing MEMORANDUM OF LAW IN SUPPORT OF MOTION TO WITHDRAW AS COUNSEL IN THE *BOLLMEIER* ACTION 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 October, 2015.

s/ Joy K. Mele  
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