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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Don Addington; et al.,
Plaintiffs,

vs.

US Airline Pilots Ass'n, et al.,
Defendants.

No. CV-13-00471-PHX-ROS

MOTION TO QUASH

LEONIDAS, LLC, moves pursuant to Rule 45¹ for an order to quash the August 7, 2013, subpoena (the "Subpoena") served on it by US Airline Pilots Association ("USAPA") on the grounds that it seeks materials that subjects Leonidas to an undue burden. This motion is supported by a Memorandum of Points and Authorities that follows. A form of order is attached hereto and has been sent to chambers by email.

¹ All references to "Rules" are to the Federal Rules of Civil Procedure.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

“[I]n 2005, . . . pursuant to a ‘Transition Agreement’ or ‘TA,’ US Airways merged with America West Airlines, Inc. (‘America West’) to form a single airline.” (Doc. 122 at 1:25 to 1:27.) “The America West pilots at the time of the merger are generally referred to as the West Pilots and the US Airways pilots are generally referred to as the East Pilots.” (*Id.* at 1:27 to 2:2.)

“After the merger, the West Pilots and East Pilots could not agree on how the[ir] two pilot seniority lists should be integrated and the issue proceeded to arbitration.” (*Id.* at 2:1 to 2:2.) The TA provided that this arbitration would be final and binding on the pilots and US Airways (the airline resulting from the merger). (Doc. 14-1 at 94 [TA at § IV.A, incorporating ALPA Merger Policy (“MP”); *id.* at 123 [MP pt.1H.5].)

“The arbitration decision, referred to as the Nicolau Award, was issued on May 1, 2007.” (Doc. 122 at 2:1 to 2:2.) “The Nicolau Award created an integrated seniority list that placed approximately 500 of the most senior East Pilots at the top of the list but placed at the bottom all of the East Pilots who were on furlough at the time of the merger. It then blended the remaining pilots.” (*Id.* at 2:4 to 2:6.) “Certain East Pilots did not like this result and decided to do something about it.” (Doc. 122 at 2:7.)

“A group of East Pilots formed a new labor organization known as USAPA.” (*Id.* at 2:8.) “USAPA was originally, and remains to this day, committed to the combined pilot list being based primarily on a date-of-hire [seniority order].” (*Id.* at 2:8 to 2:10.) “In other words, USAPA was formed to ensure that the Nicolau Award [would] not govern the seniority issue.” (Doc. 122 at 2:10 to 2:11.) “After some maneuvering, USAPA won a representation election and became the certified bargaining representative for all pilots at the merged airline.” (*Id.* at 2:11 to 2:12.)

West Pilots formed Leonidas, LLC, for the sole purpose of collecting voluntary West Pilot contributions to be used to defend the Nicolau Award in and out of litigation. (Doc. 5-1 at 1-2, ¶ 4.) A group of West Pilots formed a committee to make decisions on

1 legal strategy, identified West Pilots to serve as class representatives, communicated with
2 West Pilots and communicated with the entire group of pilots to express facts and
3 opinions on issues related to defending the Nicolau Award. Funds collected by Leonidas
4 were used to pay for such activities and for legal representation.

5 This litigation has two active claims (the claim for a fee award under common
6 benefit doctrine will not be “active” until there is final judgment on the merits of the
7 other claims). Claim One asserts that USAPA breached its duty of fair representation by
8 entering into the Memorandum of Understanding (the “MOU”) with intention to free
9 itself of the TA obligation to implement the Nicolau Award and did so without having a
10 legitimate purpose. Count Four asserts that the West Pilots have the right to full party
11 status with counsel of their own choosing at all stages of the process of integrating the
12 American Airlines pilot seniority with that of the US Airways pilots. USAPA’s answer
13 makes no affirmative allegations. (Doc. 147.) It merely lists by name a number of
14 affirmative defenses, none of which mention Leonidas. (*Id.* at 16-17.)

15 On August 8, 2013, USAPA served the Subpoena, demanding that Leonidas
16 produce the following materials within fourteen (14) days:

- 17 1. Leonidas, LLC, original articles of incorporation and any
18 amendments to the articles of incorporation.
- 19 2. Leonidas, LLC, bylaws and any amendments to its bylaws.
- 20 3. Any other operating guidelines, policy statement or similar
21 documents concerning the organization, goals, objects of Leonidas, LLC.
- 22 4. Minutes of any meeting held by Leonidas, LLC.
- 23 5. Any and all documents and communications sent by Leonidas,
24 LLC to [the named Plaintiffs].
- 25 6. Any and all documents and communications received by Leonidas,
26 LLC from [the named Plaintiffs].
- 27 7. Any and all documents and communications sent by Leonidas,
28 LLC pertaining to any and all litigation regarding the Nicolau Award, the
Nicolau Award seniority list, and any claim against USAPA for breach of the
duty of fair representation.

1 8. Any and all documents and communications received by Leonidas,
2 LLC, pertaining to any and all litigation regarding the Nicolau Award, the
3 Nicolau Award seniority list, and any claim against USAPA for breach of the
4 duty of fair representation.

5 9. Any and all documents and communications pertaining to “Nic or
6 Nothing.”

7 10. Any and all documents and communications sent by Leonidas,
8 LLC, pertaining to the Memorandum of Understanding between USAPA, US
9 Airways, the Allied Pilots Association and American Airlines, ("MOU")
10 including, but not limited to, MOU negotiations, ratification, and/or results.

11 11. Any and all documents and communications received by Leonidas,
12 LLC, pertaining to the MOU including, but not limited to, MOU negotiation,
13 ratification, and/or results.

14 12. Any and all documents and communications sent by Leonidas,
15 LLC pertaining to contributions or other financial support for Leonidas and/or
16 for any litigation regarding the Nicolau Award, the Nicolau Award seniority
17 list, and any claim against USAPA for breach of the duty of fair
18 representation.

19 13. Any and all documents and communications pertaining to
20 payments made or to be made to any attorneys working on behalf of Leonidas
21 and/or attorneys working on behalf of any litigation regarding the Nicolau
22 Award, the Nicolau Award seniority list, and any claim against USAPA for
23 breach of the duty of fair representation.

24 (USAPA Subpoena to Leonidas, Attachment A (Aug. 8, 2013) (Copy attached hereto as
25 Exhibit “A.”)

26 **II. LEGAL ARGUMENT**

27 **A. A subpoena that demands materials that are irrelevant and immaterial, to** 28 **factual allegations must be quashed.**

 Rule 45 provides that any party may serve a subpoena commanding a non-party to
attend and give testimony or to produce and permit inspection and copying of documents.
Upon a timely motion, the court must quash or modify the subpoena for any one of the
reasons set forth in Rule 45(c)(3)(A), such as the subpoena “requires disclosure of
privileged or other protected matter and no exception or waiver applies” or it “subjects a

1 person to undue burden.” See *Pennwalt Corp. v. Durand-Wayland, Inc.*, 708 F.2d 492,
2 494 n. 5 (9th Cir. 1983).

3 A Rule 45 subpoena is subject to the relevance requirements set forth in Rule 26(b).
4 See *Compaq Computer Corp. v. Packard Bell Elecs.*, 163 F.R.D. 329, 335-36 (N.D. Cal.
5 1995) (“Obviously, if the sought after documents are not relevant nor calculated to lead
6 to the discovery of admissible evidence, then any burden whatsoever imposed . . . would
7 be by definition undue.”).

8 “Although the party who moves to quash has the burden of persuasion under Rule
9 45(c)(3), the party issuing the subpoena must demonstrate that the information sought is
10 relevant and material to the allegations and claims at issue in the proceedings.” *Monge v.*
11 *Maya Magazines, Inc.*, No. 2:10-CV-00230-RJC-PA, 2010 WL 2776328, at *4 (D. Nev.
12 Jul. 14, 2010) (internal quotations and citations omitted, emphasis added) (*quoting Green*
13 *v. Baca*, 226 F.R.D. 624, 654 (C.D. Cal. 2005); see also “*Xcentric Ventures, LLC v.*
14 *Arden*, No. C 09-80309, 2010 WL 424444, at *1 (N.D. Cal. 2010) (same).

15 USAPA then must demonstrate that the information sought by the Subpoena is
16 relevant and material to the allegations and claims at issue here. As shown below,
17 USAPA cannot do so.

18 **B. The Subpoena it is unduly burdensome and demands information that is**
19 **immaterial to the allegations and claims at issue.**

20 **1. The Subpoena is unduly burdensome.**

21 The Subpoena demands producing virtually every document, email, and internet
22 posting created by, or transmitted to, Leonidas over the past 5 years. This would be an
23 undue burden in any context. It is particularly burdensome where the individuals who
24 would be collecting such materials need to focus their efforts on preparing for the
25 September 24, 2013, trial. Moreover, much of the material demanded in the Subpoena is
26 subject to attorney-client privilege. (See, e.g., request #13, *supra*.) With a few exceptions,
27 such as for corporate filings and materials that were published to all US Airways pilots,
28 much of these materials are subject to work-product protection because they were created

1 to prepare for litigation. With little over a month to prepare for trial, it would be an
2 excessive burden for the West Pilots supporting this litigation effort to be distracted from
3 that preparation to respond to discovery that, as shown below, is immaterial to the
4 allegations and claims at issue.

5 **2. The information sought is immaterial to the allegations and claims**
6 **at issue.**

7 The Subpoena demands materials that have little relevance and no materiality to the
8 allegations and claims at issue. The active claims have just a few factual elements. Claim
9 One requires that the West Pilots prove: (1) that USAPA made a contract that allows it to
10 dishonor the Nicolau Award and (2) that it did so without a legitimate union purpose. As
11 to the first factual element, Leonidas plainly cannot provide any information that speaks
12 to the terms of the MOU. As to the second element, USAPA should not need Leonidas to
13 tell USAPA why USAPA sought to evade the agreement and obligation to implement the
14 Nicolau Award. To the extent that USAPA does not know the information that it might
15 receive on the Subpoena from Leonidas, how can that information explain why USAPA
16 acted in the past?

17 Claim Four requires proving only one fact—that USAPA has a conflict with West
18 Pilot seniority interests. There is no evident explanation how the materials demanded in
19 the Subpoena could show that USAPA does not have such conflict of interest.

20 USAPA’s purported affirmative defenses do not provide a basis for discovery
21 against Leonidas. USAPA made no factual allegations to support these affirmative
22 defenses. Moreover, the law recognizes only one defense to a union disregarding a
23 commitment to a particular seniority order: legitimate union purpose.² There is no evident
24

25 ² See *Robesky v. Oantas Empire Airways Ltd.*, 573 F.2d 1082, 1090 (9th Cir. 1978)
26 (Union conduct “unrelated to legitimate union interests” is wrongful.); *Barton Brands,*
27 *Ltd. v. NLRB*, 529 F.2d 793, 800 (7th Cir. 1976) (A union must “show some objective
28 justification” when it reorders seniority); *Rakestraw v. United Airlines, Inc.*, 981 F.2d
1524, 1537 (7th Cir. 1992) (“[A] union may not juggle the seniority roster for no reason
other than to advance one group of employees over another.”); *Polonski v. Trump Taj*

1 explanation how the materials demanded in the Subpoena could possibly show that
2 USAPA had a legitimate union purpose for abandoning the commitment and obligation to
3 use the Nicolau Award.

4 In sum, USAPA demands a burdensome amount of materials in the Subpoena. And
5 it has not indicated in its pleadings or otherwise how such could help it defeat an element
6 of Plaintiffs' claims or demonstrate that it had a legitimate union purpose. Unless it does
7 so in response to this motion, the Court should quash the Subpoena altogether.

8 **III. CONCLUSION**

9 Leonidas, LLC, respectfully asks this Court to quash the Subpoena served on it by
10 USAPA on August 7, 2013.

11 Dated this 12 th day of August, 2013.

12 **POLSINELLI PC**

13 By /s/ Jennifer J. Axel

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21 **CERTIFICATE OF SERVICE**

22 I hereby certify that on this 12th day of August 2013, I electronically transmitted
23 the foregoing document to the U.S. District Court Clerk's Office by using the ECF
24 System for filing and transmittal.

25 By /s/ Jennifer Axel

26
27 *Mahal Assocs.*, 137 F.3d 139, 143 (3d Cir. 1998) (“[T]he Monitor [standing in the shoes
28 of the union] had in fact breached his duty of fair representation by attempting to reopen
[a seniority] arbitration in an arbitrary manner.”).