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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 SECOND
 SUBPOENA**

LEONIDAS, LLC, moves pursuant to Rule 45¹ for an order to quash the second subpoena (the “Second Leonidas Subpoena”) served on it by US Airline Pilots Association (“USAPA”) on August 26, 2013. Leonidas does so on the grounds that the Second Leonidas Subpoena demands a Rule 30(b)(6) deposition (the “Leonidas 30(b)(6) Deposition”) that would subject 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. (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.) These pilots also formed a committee that: (1) makes decisions on

1 legal strategy; (2) identified West Pilots to serve as class representatives; and (3)
2 communicates with both East and West Pilots on issues related to defending the Nicolau
3 Award. Leonidas uses the funds it collects to pay for such activities and for legal
4 representation.

5 This litigation has two active claims arising from the impending merger of US
6 Airways with American Airlines. Claim One asserts that USAPA breached its duty of fair
7 representation by entering into a contract, the Memorandum of Understanding (the
8 “MOU”), with intention to free itself of the TA obligation to implement the Nicolau
9 Award and did so without having a legitimate purpose. Count Four asserts that the West
10 Pilots have the right to full party status with counsel of their own choosing at all stages of
11 the process of integrating American Airlines and US Airways pilot seniority.

12 USAPA’s answer to the First Amended Complaint lists a number of affirmative
13 defenses, none of which mention Leonidas. (Doc. 147 at 16-17.) It makes no affirmative
14 allegations. (*Id.*)

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

- 17 1. Leonidas, LLC, original articles of incorporation and any amendments to
18 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 documents
21 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, LLC to
24 [the named Plaintiffs].
- 25 6. Any and all documents and communications received by Leonidas, LLC
26 from [the named Plaintiffs].
- 27 7. Any and all documents and communications sent by Leonidas, LLC
28 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, LLC,
2 pertaining to any and all litigation regarding the Nicolau Award, the
3 Nicolau Award seniority list, and any claim against USAPA for breach
4 of the 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, LLC,
8 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
11 results.
- 12 11. Any and all documents and communications received by Leonidas, LLC,
13 pertaining to the MOU including, but not limited to, MOU negotiation,
14 ratification, and/or results.
- 15 12. Any and all documents and communications sent by Leonidas, LLC
16 pertaining to contributions or other financial support for Leonidas and/or
17 for any litigation regarding the Nicolau Award, the Nicolau Award
18 seniority list, and any claim against USAPA for breach of the duty of fair
19 representation.
- 20 13. Any and all documents and communications pertaining to payments
21 made or to be made to any attorneys working on behalf of Leonidas
22 and/or attorneys working on behalf of any litigation regarding the
23 Nicolau Award, the Nicolau Award seniority list, and any claim against
24 USAPA for breach of the duty of fair representation.

25 (USAPA Subpoena to Leonidas, Attachment A (Aug. 8, 2013) (Doc. 149-2).

26 On August 12, 2013, Leonidas filed a motion to quash. (Doc. 149.) That motion is
27 fully briefed and awaiting action by this Court. (Docs. 163, 168.)

28 On August 26, 2013, USAPA, took the depositions of one member (George Maliga)
and two member-managers of Leonidas (Jeff Koontz and Brian Stockdell). Immediately
thereafter, it emailed the Second Leonidas Subpoena to undersigned counsel. That
subpoena demands that Leonidas produce a witness, “pursuant to Rule 30(b)(6),” to
testify as to the following subjects:

1. Leonidas, LLC articles of incorporation, incorporating documents and
amendments thereto;

- 1 2. Leonidas, LLC bylaws and amendments thereto;
- 2 3. Operating guidelines, policies, operating agreements and/or objectives of
3 Leonidas, LLC.
- 4 4. Authority to bind Leonidas and/or enter into agreements on behalf of
5 Leonidas, LLC.
- 6 5. Authority to receive and/or disburse funds on behalf of Leonidas, LLC.
- 7 6. Financial records maintained by Leonidas LLC including all financial
8 institutions that Leonidas, LLC retains accounts with, all financial
9 contributions received by Leonidas, LLC, all cash disbursements, all
10 funds transferred or paid.
- 11 7. Agreements between Leonidas LLC and any company or organization
12 providing tax, legal and/or accounting advice.
- 13 8. Number of individuals, organizations and associations contributing to
14 Leonidas, LLC.
- 15 9. Amounts and dates of all contributions received by Leonidas, LLC and
16 identity of individuals, organizations and associations who made any
17 contributions to Leonidas LLC.
- 18 10. Documents maintained regarding any actions taken by or authorized by
19 Leonidas, LLC.
- 20 11. Any and all assistance provided by Leonidas, LLC in the matter of
21 Addington v. US Airline Pilots Association, No. 13-cv-00471-PHX-
22 ROS, including but not limited to financial assistance.

23 (USAPA Subpoena to Leonidas, Attachment A (Aug. 26, 2013) (Copy attached hereto as
24 Exhibit "A."))

25 On August 26, 2013, the Court reset the trial dates to October 22 and 23, 2013, but
26 kept the discovery deadlines in place. (Doc. 174.)

27 **II. LEGAL ARGUMENT**

28 **A. A subpoena that seeks information that is irrelevant and immaterial to 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

1 reasons set forth in Rule 45(c)(3)(A), such as the subpoena “requires disclosure of
2 privileged or other protected matter and no exception or waiver applies” or it “subjects a
3 person to undue burden.” See *Pennwalt Corp. v. Durand-Wayland, Inc.*, 708 F.2d 492,
4 494 n. 5 (9th Cir. 1983).

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

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

16 USAPA then must demonstrate that the Leonidas 30(b)(6) Deposition would seek
17 information that is relevant and material to the allegations and claims at issue here.
18 USAPA cannot do so.

19 **B. The information that USAPA would seek at the Leonidas 30(b)(6)**
20 **Deposition would have no bearing on any material fact.**

21 A careful look at the pleadings here shows that the information that USAPA would
22 seek in the Leonidas 30(b)(6) Deposition would be irrelevant and immaterial to the
23 claims and defenses that are at issue.

24 **1. Claim One.**

25 Union conduct “unrelated to legitimate union interests” is wrongful.” *Robesky v.*
26 *Oantas Empire Airways Ltd.*, 573 F.2d 1082, 1090 (9th Cir. 1978). “[A] union may not
27 juggle the seniority roster for no reason other than to advance one group of employees
28 over another.” *Rakestraw v. United Airlines, Inc.*, 981 F.2d 1524, 1537 (7th Cir. 1992). A

1 union must “show some objective justification” when it reorders seniority. *Barton*
2 *Brands, Ltd. v. NLRB*, 529 F.2d 793, 800 (7th Cir. 1976). To prevail on the duty of fair
3 representation claim, Claim One, therefore, Plaintiffs need show only the following: (1)
4 the TA required use of the Nicolau Award in the merger of seniority with pilots from a
5 third airline; (2) paragraph 10(h) of the MOU purports to eliminate that requirement; and
6 (3) USAPA did not have an objective legitimate union purpose for putting (or allowing)
7 paragraph 10(h) into the MOU. (Doc. 134 at ¶¶ 96-100.)

8 No action by a majority of union members can deprive an individual worker of the
9 right to fair representation by his or her union. *See Emporium Capwell Co. v. Western*
10 *Addition Community Org.*, 420 U.S. 50, 64 (1975) (“In vesting the representatives of the
11 majority with this broad power Congress did not, of course, authorize a tyranny of the
12 majority over minority interests.”). Surely, no actions taken by a limited liability
13 company that is managed by a handful of workers can deprive some 1600 workers other
14 of that right.

15 The information that USAPA would seek in the Leonidas 30(b)(6) Deposition
16 would concern the sources of funds contributed to Leonidas and the company’s internal
17 management. This information cannot possibly be used to relieve USAPA of its duty of
18 fair representation or to establish that USAPA had a legitimate union purpose to favor the
19 seniority interests of the East Pilots to the detriment of those of the West Pilots. The
20 Court, therefore, should rule that the information that USAPA would seek in the
21 Leonidas 30(b)(6) Deposition would have no bearing whatsoever on the merits of Claim
22 One.

23 “It is a frequently stated proposition of virtually universal acceptance . . . that a
24 failure to plead an affirmative defense as required by Federal Rule 8(c) results in the
25 waiver of that defense.” Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Fed.*
26 *Prac. & Proc.* § 1278. USAPA, therefore, can only make affirmative defenses that are
27 adequately pleaded. USAPA made no mention of Leonidas in its pleadings.
28 Consequently, even if in some way Leonidas has acted improperly (which it did not),

1 USAPA did not plead an affirmative defense to Claim One (or any other claim) that
2 relates to Leonidas conduct. Moreover, there is no valid affirmative defense to plead. The
3 Court, therefore, should rule that the Leonidas 30(b)(6) Deposition can have no bearing
4 whatsoever on any affirmative defense to Claim One (or any other claim at issue).

5 **2. Claim Three**

6 Claim Three seeks a common benefit fee award. (Doc. 134 at ¶¶ 113-119.) To
7 prevail, the West Pilots need only demonstrate that “the litigation conferred a substantial
8 benefit” on the pilots represented by USAPA and that a fee award against USAPA would
9 pass on to those pilots. *See Southerland v. Int’l Longshoremen’s & Warehousemen’s*
10 *Union, Loc. 8*, 845 F.2d 796, 799 (9th Cir. 1987). The fact that the West Pilots’ litigation
11 expenses have been funded by voluntary contributions that pass through a limited liability
12 company has no bearing on either of those elements.

13 When it is time to address Claim Three, the Court may want to assure itself that the
14 award will fairly accrue to the benefit of Leonidas. That might require some inquiry into
15 agreements between Plaintiffs and Leonidas and it might, based on that inquiry, require
16 tailoring the fee award to have that effect. But this is not time to address those issues.

17 As West Pilot class counsel suggested to the Court during argument on August 15,
18 2013, it is premature to conduct any discovery related to a fee award before there is a
19 determination of prevailing party. *See Fed. R. Civ. P. 54(d)(2)* (claim for attorneys’ fees
20 is made by motion after entry of judgment). This Court, therefore, should rule that the
21 information that USAPA would seek in the Leonidas 30(b)(6) Deposition would have no
22 direct bearing on Claim Three and no bearing whatsoever on the issues to be litigated on
23 October 22 and 23, 2013.

24 **3. Claim Four**

25 In Claim Four, Plaintiffs seek a ruling that the West Pilots are entitled to full party
26 status and representatives of their choosing. (Doc. 134 at ¶ 132.) “Sections 3 and 13 [of
27 the LPP’s, which are incorporated by McCaskill-Bond,] impose upon the carrier a duty to
28 integrate seniority listings fairly and equitably and a duty to submit certain disputes

1 between it and its employees to arbitration.” *Great No. Pilots Ass’n*, 91 C.A.B. 795, 799-
2 800 (1981). Without question, fair and equitable procedures require unconflicted
3 representation. To prevail on Claim Four (Doc. 134 at ¶¶ 120-132), therefore, the West
4 Pilots need only demonstrate that USAPA and the East Pilot majority have a material
5 conflict of interest with the West Pilots’ interests in seniority integration.

6 None of the information that USAPA would seek in the Leonidas 30(b)(6)
7 Deposition would address its blatant conflict of interest. Moreover, the Court need not
8 inquiry into whether Leonidas should play a role on that representation because Count
9 Four does not ask the Court to determine who should represent the West Pilots. If that
10 issue does arise later, USAPA would have no legitimate interest in such an inquiry.

11 This Court, therefore, should rule that the information that USAPA would seek in
12 the Leonidas 30(b)(6) Deposition would have no bearing whatsoever on Claim Four or on
13 any affirmative defense to that claim.

14 **4. Class Certification**

15 Plaintiffs have already addressed USAPA’s argument that they are unsuited to be
16 class representatives. (Doc. 136.) It is important to recognize that this case would go
17 forward if there were no class because Plaintiffs can make these claims in their own right.
18 By operation of res judicata, class certification merely precludes other West Pilots from
19 later bringing the same claim in other actions. That said, it is impossible to conceive how
20 information concerning the sources and amounts of funds contributed to Leonidas or the
21 operation of Leonidas could impact the determination of whether Plaintiffs are adequate
22 representatives. This Court, therefore, should rule that the information that USAPA
23 would seek in the Leonidas 30(b)(6) Deposition would have no bearing whatsoever on
24 class certification.

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1 **C. The Second Leonidas Subpoena is unduly burdensome.**

2 **1. A subpoena is unduly burdensome if it seeks only irrelevant**
3 **material.**

4 “An evaluation of undue burden requires the court to weigh the burden to the
5 subpoenaed party against the value of the information to the serving party” and mandates
6 the court’s consideration of such factors as relevance, the serving party’s need for the
7 requested documents, the breadth of the discovery request, the particularity with which
8 the documents are described, and the burden imposed. *See Moon v. SCP Pool Corp.*, 232
9 F.R.D. 633, 636 (C.D. Cal. 2005); *see also Compaq Computer Corp. v. Packard Bell*
10 *Elecs.*, 163 F.R.D. 329, 335-36 (N.D. Cal. 1995) (“Obviously, if the sought after
11 documents are not relevant nor calculated to lead to the discovery of admissible evidence,
12 then any burden whatsoever imposed . . . would be by definition undue.”). Because, the
13 information that USAPA would seek in the Leonidas 30(b)(6) Deposition has no
14 relevance to the merits of any of the claims or defenses, the Second Leonidas Subpoena is
15 overly burdensome and must be quashed.

16 **2. Preparation for the Leonidas deposition would put an extraordinary**
17 **burden on Plaintiffs and their counsel at a most inopportune time.**

18 To comply with the Second Leonidas Subpoena, one or more Leonidas managers
19 would have to spend considerable time collecting and reviewing “all” the financial
20 records of a company that has collected and disbursed approximately \$3 million over the
21 past six years. It would also require extensive investigation into the activities of all
22 nineteen members of Leonidas in order to become knowledgeable as to “all assistance
23 provided” by Leonidas in this litigation. It would require revealing the names of hundreds
24 of contributors who, based on a past history of harassment by USAPA, may fear
25 retaliation if they are identified. Whereas the First Leonidas Subpoena demanded that
26 Leonidas produce every paper and electronic file in its possession or control, the Second
27 Leonidas Subpoena demands that Leonidas produce a deponent who has personal
28 knowledge of all such materials. It comes to the same thing. Moreover, USAPA makes

1 these demands knowing full well that the individuals and counsel who would have to
2 comply with the Second Leonidas Subpoena are presently focused on preparing for trial.

3 Courts have broad discretion to determine whether a subpoena is unduly
4 burdensome. *Exxon Shipping Co. v. U.S. Dep't of Interior*, 34 F.3d 774, 779 (9th
5 Cir.1994). This is surely a case where the Court should exercise such discretion.

6 **III. CONCLUSION**

7 Leonidas, LLC, respectfully asks this Court to quash the Second Leonidas
8 Subpoena that USAPA sent to counsel by email on August 26, 2013.

9 Dated this 27th day of August, 2013.

10 **POLSINELLI PC**

11 By /s/ Andrew S. Jacob

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16 One East Washington St., Ste. 1200

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18 *Attorneys for Leonidas, LLC*

19 **CERTIFICATE OF SERVICE**

20 I hereby certify that on this 27th day of August 2013, I electronically transmitted
21 the foregoing document to the U.S. District Court Clerk's Office by using the ECF
22 System for filing and transmittal.

23 By /s/ Andrew S. Jacob