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14 **IN THE UNITED STATES DISTRICT COURT**
15 **DISTRICT OF ARIZONA**

18 Don Addington, *et. al.*,)
19)
20 *Plaintiffs,*)
21 v.)
22)
23 US Airline Pilots Association, *et. al.*,)
24 *Defendants.*)
25)
26)

Case No.: CV-13-00471-PHX-ROS
**US Airline Pilots Association's
Opposition to Leonidas LLC's
Motion to Quash Second Subpoena**

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1 Defendant US Airline Pilots Association (“USAPA”) opposes Leonidas LLC’s
2 (“Leonidas”) Motion to Quash the subpoena served on August 27, 2013.

3 **INTRODUCTION**

4 The matters into which inquiry is sought in USAPA’s 30(b)(6) deposition of
5 Leonidas are relevant and likely to lead to the discovery of admissible evidence on
6 plaintiffs’ claims and USAPA’s defenses, in addition to the adequacy of plaintiffs as class
7 representatives. Recent depositions have revealed that not only is Leonidas the funding
8 source for this litigation, but that it actually controls this litigation. For example,
9 Leonidas retained plaintiffs’ counsel (which firm also represents Leonidas) and Leonidas
10 is in regular contact with plaintiffs’ counsel regarding the direction of this litigation.
11 These facts, along with the fact that the members of Leonidas are part of the “Addington
12 Control Group”, which Leonidas’ and plaintiffs’ counsel states works directly with class
13 counsel “to move all litigation aspects”¹ of this case forward, raises significant questions
14 as to who or what actually controls this litigation, whether there is a conflict of interest
15 between plaintiffs and Leonidas, the adequacy of representation, and whether the
16 plaintiffs are adequate representatives for the remedy they are seeking in the Amended
17 Complaint.
18

19 These questions and the claims in the Amended Complaint entitle USAPA to
20 understand the nature and extent to which this litigation is being controlled and financed
21 by a third party and its directorate, including its managers and members. Moreover, as
22 the Court has an obligation to assure that class representatives will represent the class
23 adequately, USAPA must be allowed to depose Leonidas to develop a proper record with
24 respect to this question. Finally, as to the claim that a 30(b)(6) deposition “would
25 subject Leonidas to an undue burden”, it was counsel for plaintiffs and Leonidas who
26

27 ¹ Plaintiffs’ Response to Defendant USAPA’s First Set of Interrogatories to Plaintiffs,
28 Response to Interrogatory No. 1, annexed hereto as Exhibit A.

1 invited USAPA to take a 30(b)(6) deposition of Leonidas. Doc. 178, Motion to Quash
2 Second Subpoena, at 1²; Deposition Transcript of Brian Stockdell (“Stockdell Tr.”), at
3 32:20-23³, annexed hereto as Exhibit B.⁴ The motion to quash should be denied.

4 **I. LEONIDAS CONTROLS THIS LITIGATION**

5 The subpoena seeks relevant information about Leonidas and Leonidas has not
6 met its burden to show that the subpoena should be quashed. *See, e.g., Goodman v.*
7 *United States*, 369 F.2d 166, 169 (9th Cir. 1966) (burden on party moving to quash
8 subpoena); *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 637 (C.D. Cal. 2005) (“the party
9 who moves to quash a subpoena has the burden of persuasion under Rule 45(c)(3)”)
10 (citations omitted); *Jackson v. AFSCME Local 196*, 246 F.R.D. 410, 412 (D. Conn. 2007)
11 (“The burden of persuasion in a motion to quash a subpoena is borne by the movant.”).
12

13 Leonidas was created in August 2007 “to safeguard the legal rights of the former
14 America West pilots.” Deposition Exhibit 163, annexed hereto as Exhibit C. Leonidas is
15 run by four managers who have “the authority to act for or bind the Company.” Leonidas
16 Operating Agreement (Deposition Exhibit 147), annexed hereto as Exhibit D. The four
17 managers are currently Brian Stockdell, Jeffrey Koontz, Dave Button, and John Bostic.
18 Stockdell Tr. (Ex. B), at 19:5-10; Deposition of Jeffrey Koontz (“Koontz Tr.”), at 16:19-
19 21, annexed hereto as Exhibit E. The four managers constitute the Board of Directors for
20 Leonidas, and as such have the power and authority on behalf of Leonidas to:

- 21
- 22 • Remit funds received by the Company to pay for legal representation
23 in connection with promoting the legal interests of the America West
24 pilots in the matter of the seniority integration;

25 ² The page numbers refer to the ECF docket page number.

26 ³ Refers to page and line numbers in deposition transcript.

27 ⁴ Plaintiffs’ counsel: “Judge Silver seemed to agree with us in her courtroom. If you
28 want to go to her and if you want to take discovery about Leonidas, then you should
notice a 30(b)(6) for Leonidas.” Stockdell Tr. (Ex. B), 32: 20-23.

- 1 • Communicate with and direct the attorneys of the law firm chosen
2 by the Board to prosecute the legal claims of the America West
3 pilots in the matter of the seniority integration with US Airways (and
4 any other company with which the new US Airways may be
5 combined), to insure that America West pilots are fairly represented
6 by the collective bargaining agent by which they are represented,
7 and to insure that all legal rights of the America West pilots are fully
8 realized now and in the future;
- 9 • Invest Company funds temporarily to the extent not required to pay
10 the current expenses of the Company;
- 11 • Execute on behalf of the Company all instruments and documents,
12 including, without limitation, checks, drafts, notes, and any other
13 instruments or documents necessary, in the opinion of the Board, to
14 accomplish the purposes of the Company;
- 15 • Employ accountants, legal counsel, managing agents, or other
16 experts to perform services for the Company and to compensate
17 them from Company funds;
- 18 • Enter into any and all other agreements on behalf of the Company,
19 with any other Person for any purpose, in such forms as the Board
20 may approve;
- 21 • Do and perform all other acts as may be necessary or appropriate to
22 accomplish the purposes of the Company; and
- 23 • Take such other actions as do not expressly require the consent of
24 the Members under this Agreement.

25 Operating Agreement of Leonidas, LLC, Section V, annexed hereto as Ex. C.

26 There are currently 19 members of Leonidas. Ex. C; Stockdell Tr. (Ex. B), at
27 17:6-11. According to a Leonidas document, all named plaintiffs are members of
28 Leonidas. Ex. C. Some or all of the members, along with the four managers are also part
of the “Addington Control Group” which works with class counsel regarding all aspects
of this litigation. *See* Ex. A; Stockdell Tr. (Ex. B), at 50:25, 51:1-18; Deposition of
Steven Wargocki (Rough Draft Transcript) (“Wargocki Tr.”), at 26:3-27:6; annexed
hereto as Exhibit H.

Since its inception, Leonidas has had the following seven objectives:

1. We fully demand all of our legal rights, in their entirety, within the
new US Airways, or any successor airline.

- 1 2. We require full, good faith compliance with our existing contract,
the Transition Agreement and ALPA merger policy from all parties.
- 2 3. We will not allow our rights to be trod upon by USAPA, the East
3 MEC, ALPA National, or the Company.
- 4 4. We will aggressively seek any and all available legal remedies
against any party which might seek to dilute our rights.
- 5 5. We will not tolerate discrimination against the pilots of America
6 West in any form, including the dilution of the Nicolau Award by
any means, contractual or otherwise.
- 7 6. We will not engage in fruitless debates over matters already settled.
- 8 7. We will remain perpetually poised to aggressively defend our rights
until such time when we are no longer threatened.

9 Leonidas LCC Objectives (Deposition Exhibit 148), annexed hereto as Exhibit F; Ex. E;
10 Koontz Tr. (Ex. E), at 49:2-10.

11 Leonidas' argument that the 30(b)(6) deposition would be irrelevant (Doc. 178, at
12 9) has no merit. It is clear from Leonidas' own Operating Agreement, confirmed by the
13 recent depositions, that its purpose is much broader than merely collecting "voluntary
14 West Pilots contributions to be used to defend the Nicolau Award in and out of litigation"
15 as plaintiffs assert. Doc. 178, at 5. Indeed, its Operating Agreement specifically states
16 that the four managers have the power and authority "to communicate with and direct the
17 attorneys of the law firm chosen by the Board to prosecute the legal claims of the
18 America West pilots in the matter of the seniority integration with US Airways (and any
19 other company with which the new US Airways may be combined), to insure that
20 America West pilots are fairly represented by the collective bargaining agent by which
21 they are represented, and to insure that all legal rights of the America West pilots are
22 fully realized now and in the future." Ex. D, Section V.

23
24 Recent depositions also confirm that Leonidas has been intimately involved at all
25 stages of this litigation, including:

- 26 • the decision to bring this lawsuit (Stockdell Tr. (Ex. B), at 61:20-25, 62:1-7),
- 27
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- 1 • selecting the plaintiffs (Koontz Tr. (Ex. E), at 62:15-25, 63:1-9; Stockdell Tr.
2 (Ex. B), at 62:8-25, 63:1-2, 64:4-7, 65:24-25, 66:1-8),
- 3 • reviewing documents provided by counsel (Koontz Tr. (Ex. E), at 66:1-6),
- 4 • in consultation with the attorneys, making decisions regarding the direction of
5 this lawsuit (Stockdell Tr. (Ex. B), at 88:19-25; Deposition of Afshin Iranpour
6 (Rough Draft Transcript), annexed hereto as Exhibit I, at 23:14-24:9), and
- 7 • influencing the outcome of the MOU ratification vote by encouraging putative
8 West Class members to vote for the MOU because it furthered the legal
9 strategy to implement the Nicolau Award (Koontz Tr. (Ex. E), at 110:7-10;
10 Maliga Tr., 90:15-18, annexed hereto as Exhibit G).

11
12 Moreover, Leonidas is the main avenue of communicating with the putative West
13 Class via the Leonidas Updates and “meet and greets” in which putative class members
14 are invited to attend and counsel for Leonidas and plaintiffs (the same counsel) are
15 present. Koontz Tr. (Ex. E), at 51:7-25, 52:9-13. Leonidas sends out Leonidas Updates
16 to its donors, and these updates are first reviewed by counsel who represent the putative
17 class and Leonidas. Koontz Tr. (Ex. E), 39:7-25, 40:1-2.

18 Plaintiffs assert they should be permitted to represent “approximately 1,600
19 members” that comprise the putative class. Am. Compl., Doc. 134, ¶ 87. Plaintiffs also
20 seek remedies on behalf of that putative class that include, *inter alia*, “party status and the
21 right (but not the obligation) to participate fully (with counsel of their own choice)” on
22 behalf of those 1,600 individuals. *Id.* ¶ 132.

23 The extent to which Leonidas or members and managers of Leonidas are
24 controlling this litigation is highly relevant to the adequacy of the named plaintiffs to
25 represent an entire class of West Pilots.⁵ Fed. R. Civ. P. 23(a)(4). The information
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27 ⁵ Even if the class certification order had already issued, the requirements of class
28 certification must continue to be met and discovery would still be appropriate. *See* 4
Herbert Newberg & Alba Conte, *Newberg on Class Actions* sec. 13:20 (4th ed. 2002)

1 sought is also relevant to the merits of the claims and relief plaintiffs are requesting in the
2 Duty of Fair Representation claim (Count One) and in Count Four, including the
3 assertion that plaintiffs have the “right (but not the obligation)” to participate in the
4 McCaskill-Bond proceedings on behalf of the class. Am. Compl., ¶132.

5 Plaintiff John Bostic is a manager of Leonidas, and thus owes a fiduciary duty and
6 duty of loyalty to Leonidas. The three other managers, Jeffrey Koontz, Brian Stockdell,
7 and Dave Button, are members of the “Addington Control Group” and therefore are
8 directly involved in litigation strategy. These facts raise significant questions of
9 adequacy of representation. As a class representative, Bostic owes a fiduciary duty to the
10 class, but he also owes a fiduciary duty to Leonidas. USAPA is entitled to discovery to
11 see if these duties conflict with each other. USAPA is further entitled to discovery on
12 whether all of the class members are members of Leonidas, as Leonidas asserts, the
13 duties owed by the named plaintiffs to Leonidas to which they are all members,
14 particularly because Leonidas’ objectives, including not tolerating any dilution of the
15 Nicolau Award, may create conflicts with the plaintiffs’ duties to fairly and adequately
16 represent the entirety of the 1600 member putative class and/or may impede their ability
17 to represent the minority group at a McCaskill-Bond proceeding. *See, e.g., Dechert v.*
18 *Cadle Co.*, 333 F.3d 801, 803 (7th Cir. 2003) (“When the named plaintiff is a fiduciary,
19 however, he cannot just ‘go along’ with the class lawyer. He has a duty to seek to
20 maximize the value of his claim, and this duty may collide with his fiduciary duty as
21 class representative (if he is permitted to be the class representative) to represent all
22 members of the class equally.”). Discovery into Leonidas is relevant with respect to the
23 plaintiffs’ ability to represent the class both in this litigation and to “fully participate” in a
24 McCaskill-Bond proceeding (their desired outcome) on behalf of a group of former
25 America West pilots.
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28 (continuing duty to monitor appropriateness of class).

1 In addition, discovery regarding Leonidas' funding of this litigation, as well as its
2 funding of *Addington I* and the Declaratory Judgment action filed by US Airways against
3 USAPA and the West Pilots is also relevant. In Count III of the Amended Complaint,
4 Plaintiffs seek attorneys' fees under the common benefit doctrine. Doc. 134, at ¶¶113-
5 119. Notwithstanding the fact that the case against USAPA in *Addington I* was dismissed
6 on appeal, plaintiffs' cross-claim in the Declaratory Judgment action dismissed, and
7 summary judgment granted in favor of USAPA in the Declaratory Judgment action,
8 plaintiffs allege they are entitled to attorneys' fees incurred in the two previous actions
9 because "[b]y obtaining the rulings in the 2008 and 2010 actions and by prevailing in this
10 action, Plaintiffs conferred a substantial benefit on all US Airways Pilots." Doc. 134, at
11 ¶116. Despite this claim, plaintiffs have taken the position that USAPA is not entitled to
12 any discovery on Count III because -- in their view -- Count III will not be litigated at the
13 hearing scheduled for October 22nd and 23rd. Doc. 178, at 11.

15 As an initial matter, this Court has made no such ruling, and there is no order
16 bifurcating either the claims or discovery. The amount Leonidas has funneled to counsel
17 pay for this action and the two prior actions is highly relevant to whether plaintiffs -- who
18 have paid no fees -- are entitled to a fee award as well as the amount of fees that are
19 recoverable under Count III. By their request for damages consisting of attorneys' fees,
20 plaintiffs have placed the relationship and arrangements between them and Leonidas
21 squarely in contention. In this regard, it is noteworthy there has been deposition
22 testimony that Leonidas paid the fees for *Addington I*, the Declaratory Judgment Action,
23 and for this litigation as well. Koontz Tr. (Ex. F), 49:15-22, 50:2-25, 51:1-20; Stockdell
24 Tr. (Ex. B), 79:24-25, 80:1-25, 81:1-10. Plaintiffs cannot have it both ways: seek to
25 charge USAPA fees that have been paid voluntarily by a third party and at the same time
26 -- acting in the guise of Leonidas -- seek to foreclose discovery on this claim. USAPA
27 would be severely prejudiced in its ability to defend this claim if the Court upholds this
28

1 egregious position. If Leonidas is wholly unrelated to plaintiffs but has voluntarily paid
2 or advanced money for fees and/or expenses for this action and the two previous actions,
3 then plaintiffs have no right to seek attorneys' fees against USAPA, and indeed the claim
4 for fees is frivolous. If fees have already been paid by Leonidas, then plaintiffs have
5 sustained no monetary losses and have no claim for attorneys' fees. In either event, it is
6 plain that **Leonidas**, as a third party, has no claim against USAPA for fees or for
7 anything else. *See, e.g., Morrison v. C.I.R.*, 565 F.3d 658, 666 (9th Cir. 2009) (discussing
8 when fees may be awarded where third party pays litigation fees).

9
10 The source of the funding used by plaintiffs for this lawsuit and conditions tied to
11 that funding are also highly relevant inquiries regarding adequacy and potential conflict
12 of interest between Leonidas, plaintiffs, the putative West Class and counsel who seeks to
13 represent the putative class and also represents Leonidas. *See, e.g., In re ML-Lee*
14 *Acquisition Fund II, L.P. & ML-Lee Acquisition Fund (Ret. Accounts) II, L.P. Sec. Litig.*,
15 149 F.R.D. 506, 509 (D. Del. 1993) ("At a minimum, a Court must be satisfied that a
16 Plaintiff's resources are sufficient to preclude the possibility that a Plaintiff could be
17 coerced into complying with an attorneys' advice with regard to different options that
18 may be available on legal issues in a class action because of the potential threat of
19 funding revocation."). Again, based upon the claim that Leonidas and plaintiffs are not
20 one and the same, to the extent that class counsel is being paid by Leonidas, there is the
21 potential that counsel will take actions and positions that maximize the interests of their
22 funding source -- Leonidas -- in derogation of the interests of the class. For example,
23 steadfast insistence upon undiluted Nicolau might advance Leonidas' interests in
24 motivating its base and raising money, but it has the potential to conflict with the interests
25 of the West Pilot class generally and in the McCaskill-Bond process should that be
26 granted. It would be naïve to believe that there is no possibility for conflict. *See, e.g.,*
27 *Wargocki Tr. (Ex. H)*, at 54:2-4 ("As a class representative you can bring an action and
28

1 you can also decide to end it. And most everything in between is handled by the
2 lawyers.”).

3 Plaintiffs’ allegations and their testimony place the role of Leonidas squarely at
4 issue and relevant to the claims and defenses. The testimony sought is relevant and
5 discoverable.

6 **II. LEONIDAS MAKES NO SHOWING OF BURDEN**

7 Leonidas makes no showing that the request is burdensome. “The burden of
8 showing that a subpoena is unreasonable and oppressive is upon the party to whom it is
9 directed.” *Goodman*, 369 F.2d at 169. “[T]he party opposing discovery has the burden
10 of showing that discovery should not be allowed and also has the burden of clarifying,
11 explaining and supporting its objections with competent evidence.” *Louisiana Pac.*
12 *Corp. v. Money Mkt. 1 International Inv. Dealer*, 285 F.R.D. 481, 485 (N.D. Cal. 2012)
13 (citing *DIRECTV, Inc. v. Trone*, 209 F.R.D. 455, 458 (C.D. Cal. 2002)).

14 Plaintiffs’ assertion that “the individuals and counsel who would have to comply
15 with the Second Leonidas Subpoena are presently focused on preparing for trial” (Doc.
16 178, at 14) does not establish that a 30(b)(6) deposition is burdensome. Indeed it bolsters
17 the relevancy of the testimony sought in that there exists an irreconcilable conflict
18 between the purported class representatives and the parties that actually control this
19 litigation who are not and will not be answerable to the Court. In fact, plaintiffs are
20 deliberately attempting to evade any inquiry into Leonidas and the exact nature of their
21 involvement in this litigation by making the incredible and contradictory claim that
22 Leonidas’ involvement in this litigation is subject to “work-product protection.”⁶ *See*
23

24
25 ⁶ Plaintiffs’ claim of privilege is wholly without merit as the unsubstantiated claim that
26 Leonidas’ work is subject to “work-product protection” fails to establish that there is
27 blanket work product protection. Plaintiffs’ claim of work product merely confirms that
28 Leonidas is actively involved in this litigation and with the named plaintiffs, is likely to
have relevant information. It is insufficient to show that the subpoena should be quashed
on that basis. *See S. Union Co. v. Sw. Gas Corp.*, 205 F.R.D. 542, 550 (D. Ariz. 2002)

1 Plaintiffs' Response to Defendant USAPA's First Set of Interrogatories to Plaintiffs (Ex.
2 A), Response to Interrogatory 5, stating "[w]hat Leonidas, LLC, might have written or
3 sent to class members or others was also done in furtherance of these litigations and, thus,
4 subject to work-production protection.")

5 Moreover, the fact that the same individuals who would be involved in
6 compliance with the 30(b)(6) deposition notice are also preparing for trial would seem to
7 make the request less burdensome as such individuals already have an obligation to
8 respond to discovery requests propounded by USAPA. *See* Doc. 145, Notice of Service
9 of USAPA's Initial Request for the Production of Documents and First Set of
10 Interrogatories to Plaintiffs. This trial is, of course, in response to plaintiffs' motion for
11 preliminary injunction and their repeated claim that despite the Government's antitrust
12 action, and the uncertainty of whether the merger between US Airways and American
13 Airlines will go forward, their motion for preliminary injunction should still nevertheless
14 be decided expeditiously.
15

16 Although USAPA took the depositions of Leonidas managers Brian Stockdell and
17 Jeffrey Koontz, those depositions were not 30(b)(6) depositions, and thus their testimony
18 did not bind Leonidas. "[C]ourts have rejected the argument that a Rule 30(b)(6)
19

20 ("the burden to establish the applicability of any privilege is on the proponent, and that
21 burden begins with providing an adequate identification of the reasons why the privilege
22 is warranted with respect to each and every communication and each and every document
23 claimed to be protected") (citing Fed.R.Civ.P. 26(b)(5) & 45(d)(2)); *Fairview v. Aztex*
24 *Custom Homebuilders, LLC*, No. CV-07-0337-PHX-SMM, 2008 WL 2113492, at *2 (D.
25 Ariz. May 16, 2008) ("A witness who withholds information on a claim of privilege or
26 other protection must state the claim expressly and support it with sufficient
27 documentation to enable the demanding party to contest the claim.") (citing Fed. R. Civ.
28 P. 45 (d)(2)(A)(ii)). *See also In re Osterhoudt*, 722 F.2d 591, 593 (9th Cir. 1983) ("Fee
arrangements usually fall outside the scope of the privilege simply because such
information ordinarily reveals no confidential professional communication between
attorney and client...").

1 deposition is unnecessary or cumulative simply because individual deponents – usually
2 former or current employees of the entity whose Rule 30(b)(6) deposition is sought –
3 have already testified about the topics noticed in the Rule 30(b)(6) deposition notice.”
4 *Louisiana Pac. Corp.*, 285 F.R.D. at 487 (citing several cases for same proposition).
5 Moreover, it was clear, at least as to Mr. Stockdell, that he was being deliberately
6 evasive. While claiming to know how Leonidas operates (Stockdell Tr. (Ex. B), at 17:13-
7 16), and claiming to be responsible for developing ways of collecting contributions and
8 funding this litigation (Stockdell Tr. (Ex. B), at 19:1-6), Mr. Stockdell nevertheless
9 testified that Leonidas has no Board of Directors (Stockdell Tr. (Ex. B), at 17:18-20), that
10 he did not know whether Leonidas maintained financial books other than a spreadsheet
11 which keeps track of the level of contributions from each pilot (Stockdell Tr. (Ex. B), at
12 21:7-12, 23:19-23), and that he did not know whether any corporations or organizations
13 contribute to Leonidas (Stockdell Tr. (Ex. B), at 37:11-15)). However, this testimony
14 was contradicted by other witnesses, including that of Leonidas manager Jeffrey Koontz,
15 who testified, “We have two people who are intimately involved in the collection, the
16 actual collection, that is, and recording and disbursement process, and that is David
17 Button and Brian Stockdell.” Koontz Tr. (Ex. E), at 41:16-19. Requiring Leonidas to
18 designate a duly authorized witness for deposition will have the salutary effect of
19 curtailing this kind of gamesmanship or at least provide USAPA with a range of remedies
20 if it persists.
21

22 CONCLUSION

23 For the foregoing reasons, USAPA respectfully requests that the motion to quash
24 the second subpoena be denied and that Leonidas be ordered to comply with the
25 subpoena by designating and producing one or more officers, directors, Managers,
26 Members, managing agents, or other persons to testify regarding the topics set forth in
27 Attachment A to the Subpoena, dated August 26, 2013, on a date certain set by the Court.
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Respectfully submitted this 13th day of September 2013.

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CERTIFICATE OF SERVICE

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I hereby certify that on September 13, 2013, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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