

1 **PATRICK J. SZYMANSKI** (*pro hac vice*)
2 **PATRICK J. SZYMANSKI, PLLC**
3 1900 L Street, NW, Ste 900
4 Washington, DC 20036
5 Telephone: (202) 721-6035
6 szymanski@msn.com

SUSAN MARTIN (AZ#014226)
JENNIFER KROLL (AZ#019859)
MARTIN & BONNETT, P.L.L.C.
1850 N. Central Ave. Suite 2010
Phoenix, Arizona 85004
Telephone: (602) 240-6900
smartin@martinbonnett.com
jkroll@martinbonnett.com

7 **BRIAN J. O'DWYER** (*pro hac vice*)
8 **GARY SILVERMAN** (*pro hac vice*)
9 **JOY K. MELE** (*pro hac vice*)
10 **O'DWYER & BERNSTIEN, LLP**
11 52 Duane Street, 5th Floor
12 New York, NY 10007
13 Telephone: (212) 571-7100
14 bodwyer@odblaw.com
15 gsilverman@odblaw.com
16 jmele@odblaw.com

17 Attorneys for US Airline Pilots Association

18 **IN THE UNITED STATES DISTRICT COURT**
19 **DISTRICT OF ARIZONA**

20 Don Addington, *et. al.*,)
21 *Plaintiffs,*)
22 v.)
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 Plaintiffs' Fourth
Motion *in Limine* Seeking to
Preclude USAPA from Using Mr.
Szymanski as a Source of Evidence
Either by Testimony or in the
Course of Oral Argument**

27
28

1 Defendant US Airline Pilots Association (“USAPA”) hereby opposes Plaintiffs’
2 Fourth Motion *in Limine* seeking to preclude USAPA from “using Mr. Szymanski as a
3 source of evidence, either by testimony or in the course of oral argument.” Doc. 210, at
4 p. 1.

5 **Plaintiffs Make No Showing Justifying Their Motion *in Limine***

6 Plaintiffs’ motion can only be described as bizarre given that Mr. Szymanski is
7 USAPA’s counsel, and not a witness on behalf of USAPA. If plaintiffs thought Mr.
8 Szymanski was a possible fact witness, then there were procedures and motions plaintiffs
9 could have made. They chose not to do so, and their motion should be summarily denied.

10 First, the motion is improper as it fails to comply with this Court’s order that “**only**
11 those motions in limine that might result in a substantial saving of time or effort during
12 trial should be filed.” First Amended Scheduling Order, Doc. 195 (emphasis in original);
13 *see also Crane-Mcnab v. Cnty. of Merced*, CIV. 1:08-1218, 2011 WL 94424 (E.D. Cal.
14 Jan. 11, 2011) (“The first purpose of a motion *in limine*, protecting the jury, is
15 inapplicable in the context of a bench trial.”) (*citing United States v. Heller*, 551 F.3d
16 1108, 1112 (9th Cir. 2009) (in a bench trial, the need for an advanced ruling on a motion
17 *in limine* to exclude evidence is “generally superfluous”)). Plaintiffs make no such
18 showing, and indeed cannot.

19 Second, plaintiffs are absolutely correct when they state that “Mr. Szymanski has
20 never provided sworn testimony . . .” Doc. 210, at p. 2. Mr. Szymanski has never been
21 subpoenaed to testify in this case. If plaintiffs thought Mr. Szymanski’s deposition was
22 necessary to their affirmative case, then they should have availed themselves of the
23 subpoena powers allowed under Rule 45 of the Federal Rules of Civil Procedure.
24 Plaintiffs chose not to subpoena Mr. Szymanski. Having failed to employ discovery
25 procedures pursuant to the Federal Rules of Civil Procedure, including seeking court
26 intervention, plaintiffs cannot now seek to silence Mr. Szymanski at trial.
27
28

1 Third, as plaintiffs are well aware, USAPA agreed to produce Mr. Szymanski for
2 deposition, and counsel for plaintiffs and USAPA were in communication to work out the
3 details and scope of the deposition. *See* email correspondence between counsel for
4 USAPA and plaintiffs.¹ It was plaintiffs' counsel who chose not to proceed with Mr.
5 Szymanski's deposition under the guise that "discovery closed" notwithstanding the fact
6 that USAPA's counsel had previously agreed to Plaintiffs' request that Mr. Szymanski's
7 deposition could take place on October 10, 2013, 10 days after the September 30, 2013
8 discovery cut off.²

9
10 Lastly, Mr. Szymanski's statements to the Court on May 14, 2013 were in
11 *response* to the Court's questions to him. Indeed, the transcript of that court appearance
12 shows that the Court posed questions to counsel for all parties, and counsel responded.
13 For instance, Mr. Harper told the Court on May 14, 2013 that "[USAPA] had the duty to
14 insist on the Nicolau and they didn't." Transcript of May 14, 2013 Court Appearance, at
15 51:9-10.³ Yet, Mr. Harper later agreed with the Court that "[t]here could be" other
16 seniority agreements that could potentially be considered other than Nicolau. *Id.*, at
17 56:16-25, 57:1. The logical consequence of plaintiffs' argument is that it would be
18 equally improper for Mr. Harper to respond to Court inquiries because he has never
19 provided sworn testimony. Plaintiffs' position in this regard leads to an improper and
20 absurd result and must be rejected. It is simply absurd for plaintiffs to suggest that
21 USAPA counsel can or should disrespect the Court by refusing to answer an inquiry and
22 this argument should be rejected.

23
24
25 ¹ Annexed as Exhibit "A".

26 ² Pursuant to the Court's Order, dated August 26, 2013, the parties could stipulate to
change the deadlines in the Scheduling Order, Doc. 174.

27 ³ Excerpts of the transcript of the May 14, 2013 court appearance are annexed as Exhibit
28 "B".

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

For the foregoing reasons, USAPA respectfully requests that the Court deny plaintiffs' fourth motion *in limine*.

Respectfully submitted this 16th day of October, 2013.

Martin & Bonnett, P.L.L.C.

By: s/Susan Martin
Susan Martin
Jennifer L. Kroll
Martin & Bonnett
1850 N. Central Ave., Suite 2010
Phoenix, AZ 85004

Patrick J. Szymanski (*pro hac vice*)
Patrick J. Szymanski, PLLC
1900 L Street, NW, Suite 900
Washington, DC 20036

Brian J. O'Dwyer (*pro hac vice*)
Gary Silverman (*pro hac vice*)
Joy K. Mele (*pro hac vice*)
O'Dwyer & Bernstien, LLP
52 Duane Street, 5th Floor
New York, NY 10007

Attorneys for US Airline Pilots Association

CERTIFICATE OF SERVICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I hereby certify that on October 16, 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:

Marty Harper
Andrew S. Jacob
Jennifer Axel
Polsinelli & Shughart, PC
CityScape
One East Washington St., Ste. 1200
Phoenix, AZ 85004

Attorneys for Plaintiffs

s/T. Mahabir