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13 Attorneys for US Airline Pilots Association

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

18 Don Addington, *et. al.*,

19 )  
20 *Plaintiffs,* )

21 v. )

22 US Airline Pilots Association, *et. al.*, )

23 *Defendants.* )  
24 )  
25 )  
26 )

Case No.: CV-13-00471-PHX-ROS

**US Airline Pilots Association's  
Opposition to Plaintiffs' Third  
Motion *in Limine* Seeking to  
Preclude USAPA From Offering  
Testimony or Exhibits Concerning  
Leonidas, LLC**

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1 Defendant US Airline Pilots Association (“USAPA”) hereby opposes Plaintiffs’  
2 Third Motion *in Limine* seeking to preclude USAPA from offering “evidence or  
3 argument concerning the formation, operation and activities of Leonidas” including  
4 testimony of Brian Stockdell or USAPA Trial Exhibits 147, 148, 162-164 and 167.<sup>1</sup>

5 **Plaintiffs Make No Showing that Justifies Their Motion *in Limine***

6 Plaintiffs’ motion should be denied. Plaintiffs offer no justification for their  
7 request to exclude this testimony other than the “same reasons that the Court granted  
8 [the] motions to quash” the Leonidas subpoenas.<sup>2</sup>

9 Evidence is relevant if:

- 10 (a) it has any tendency to make a fact more or less probable than it would  
11 be without the evidence; and  
12 (b) the fact is of consequence in determining the action.

13 Fed. R. Evid. 401. Relevant evidence is admissible unless prohibited under the United  
14 States Constitution, a federal statute, another rule of evidence or other rules prescribed by  
15 the Supreme Court. Fed. R. Evid. 402. As shown in the Pretrial Order in which Plaintiffs  
16 stipulate to facts regarding Leonidas, Doc. 206-1 ¶¶169-174, and herein, there are many  
17 ways the evidence Plaintiffs seek to exclude is potentially relevant at trial.

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20 <sup>1</sup> Plaintiffs stipulated to numerous facts regarding Leonidas, LLC in the Pretrial  
21 Order including facts based on some of the documents they seek to exclude. *See* Doc.  
22 206-1 ¶¶ 169-174. For example, Leonidas’ objectives include, *inter alia*:

23 (5) We will not tolerate discrimination against the pilots of America  
24 West in any form, including the dilution of the Nicolau Award by any  
25 means, contractual or otherwise.

26 (6) We will not engage in fruitless debates over matters already settled.

27 Doc. 206-1 p. 31 ¶ 171. Plaintiffs’ motion seeks to exclude the same document setting  
28 forth the Objectives quoted in part in the Stipulated Facts of the Pretrial Order Exhibit  
148.

<sup>2</sup> In the Joint Proposed Pretrial Order, Plaintiffs have objected to the documents  
only on relevance grounds. *See* Joint Proposed Pretrial Order Doc. 206-1 pp. 73-74.

1 Plaintiffs make no showing nor even assert that granting their motion *in limine*  
2 would result in “substantial saving of time or effort during trial” as required by the  
3 Scheduling Order. Accordingly, the motion should be summarily denied. *See* First  
4 Amended Scheduling Order Doc. 195 (“Because this is a bench trial, **only** those motions  
5 *in limine* that might result in a substantial saving of time or effort during trial should be  
6 filed. Motions *in limine* that do not qualify as such will be summarily denied.”). *See*,  
7 *e.g.*, *Crane-Mcnab v. Cnty. of Merced*, CIV. 1:08-1218, 2011 WL 94424 (E.D. Cal. Jan.  
8 11, 2011) (“The first purpose of a motion *in limine*, protecting the jury, is inapplicable in  
9 the context of a bench trial.”) (*citing United States v. Heller*, 551 F.3d 1108, 1112 (9th  
10 Cir. 2009) (in a bench trial, the need for an advanced ruling on a motion *in limine* to  
11 exclude evidence is “generally superfluous”)). *Id.* (“The second, saving time, is  
12 outweighed here by the additional time that would be used in litigating the motions  
13 before trial and by the loss of the court’s ability to consider evidence in the context of the  
14 trial and weigh the probative value of the evidence against the admissibility concerns.”)  
15 (*citing Sperberg v. Goodyear Tire & Rubber Co.*, 519 F.2d 708, 712 (6th Cir.1975)).

#### 17 **The Evidence is Relevant to Claim Four and USAPA’s Defenses**

18 Plaintiffs’ claims under Claim Four of the Amended Complaint render the  
19 Leonidas documents and information relevant. Although USAPA has asserted that as a  
20 matter of law, Plaintiffs’ claims under Claim Four should be dismissed, *see* Doc. 211 pp.  
21 10-15, if the Court does not grant USAPA’s motion for summary judgment Leonidas’  
22 role in this litigation will be highly relevant to the Court’s determination of Plaintiffs’  
23 request for the “right (but not the obligation) to participate fully (with counsel of their  
24 own choice) in the MOU Seniority Integration process.” Doc 134, ¶132. Although  
25 Leonidas refused to respond to discovery requests, deposition testimony established that a  
26 subset of Leonidas, including the “Addington litigation control group” consisting of non-  
27 named Plaintiffs who are members or managers of Leonidas, including Brian Stockdell  
28

1 (and allegedly some named Plaintiffs)<sup>3</sup>, has controlled the strategy of this and all prior  
2 litigations regarding seniority. Deposition Transcripts of Brian Stockdell p. 50:25-51:18,  
3 54:3-7 and Afshin Iranpour pp. 27:5-28:1, annexed hereto as Exhibit “B”. Plaintiffs  
4 identify Brian Stockdell, one of the four “Managers” of Leonidas, as a witness and most  
5 of Plaintiffs’ other witnesses are likewise either “Managers” or “Members” of Leonidas  
6 LLC.

7 Leonidas and the Addington Control Group were never elected by the West Pilots  
8 nor certified as class representatives in this case. Needless to say, they are not unions and  
9 were never certified by the National Mediation Board in any capacity to be  
10 representatives of any pilots. Not only does Leonidas owe no duty of fair representation  
11 to the West Pilots, it has no Rule 23 accountability to this Court or to members of the  
12 Class the Court has certified. Plaintiffs seek to grant these “single issue” self-appointed  
13 individuals the power of a bargaining representative with none of the responsibilities  
14 attending a properly designated bargaining representative. USAPA is entitled to show at  
15 trial that Plaintiffs’ strategy is controlled by Leonidas and USAPA is entitled to introduce  
16 evidence regarding why Leonidas should not be permitted to participate in the process for  
17 seniority integration set forth in paragraph 10 of the MOU. Among other matters,  
18 USAPA is entitled to present evidence regarding whether Leonidas’ rigid and inflexible  
19 insistence on the Nicolau Award is not in the best interests of USAPA as a whole or even  
20 in the best interests of the West Pilot class and evidence regarding whether Leonidas’  
21 influence and control renders Plaintiffs particularly inappropriate and potentially harmful  
22 to the interests of the US Airways pilots as a whole in any merger integration proceedings  
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26 <sup>3</sup> Several of the named Plaintiffs indicated they had no idea what the Addington  
27 litigation control group was and/or did not know what they did. Deposition Transcripts of  
28 Don Addington 50:4-51:5, Rodney Brackin 59:24-60:1, Mark Burman 79:12-80:15,  
George Maliga 77:24-78:1, Michael Soha 33:6-11, annexed hereto as Exhibit “A”.

1 with the much larger American Airlines workforce.<sup>4</sup> See USAPA's Local Rule 56.1  
2 Separate Statement of Facts in Support of USAPA's Motion for Summary Judgment,  
3 Doc. 213, ¶¶109-118 and exhibits thereto.

#### 4 **The Evidence is Also Relevant to Claim One and USAPA's Defenses**

5 USAPA has asserted that Plaintiffs and class members were well aware that the  
6 MOU was seniority neutral, that they knew the benefits contained within the MOU, and  
7 that these benefits were for all US Airways pilots. USAPA's Local Rule 56.1 Separate  
8 Statement of Facts in Support of USAPA's Motion for Summary Judgment, Doc. 213,  
9 ¶¶59-60, 74-90 and Exhibits thereto. The ratification of the MOU establishes that  
10 Plaintiffs stood ready to reap the benefits of the MOU and cannot prevail on their breach  
11 of the duty of fair representation claims or their claim seeking separate representation at  
12 the seniority integration proceedings under the MOU. *Id.* ¶¶83-84; 107, 106. See  
13 *Gullickson v. Southwest Airlines Pilots' Ass'n*, 87 F.3d 1176, 1183-84 (10th Cir. 1996);  
14 *Papcin v. Dichello Distributors, Inc.*, 697 F.Supp. 73, 80 (D. Conn. 1988) (in dismissing  
15 plaintiffs' hybrid DFR claim, finding that the 1980 agreement modified seniority  
16 provisions, and "plaintiffs knew this to be the case when they voted to ratify the 1980  
17 agreement") (judgment aff'd in unpublished decision 862 F.2d 304 (2d Cir. 1988)). In  
18 apparent response to USAPA's argument that Plaintiffs' assent to the benefits of the  
19 MOU precludes their claims in this case, Plaintiffs asserted in the Joint Pretrial Order as  
20 one of their Disputed Facts that the USAPA Merger Committee somehow did not advise  
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23 <sup>4</sup> See e.g., Deposition Transcript of Plaintiff Iranpour, who stated that "the notion  
24 that we as West Pilots can be part of any seniority integration is ludicrous and needs to be  
25 put to rest firmly" and explaining he meant "Leonidas is not a union" and has "no  
26 position to negotiate a compromise to the Nicolau award on behalf of the West Pilots."  
27 Deposition Transcript of Afshin Iranpourr 45:18-46:2, Tab 31 to USAPA's Local Rule  
28 56.1 Separate Statement of Facts in Support of USAPA's Motion for Summary Judgment  
(Doc. 213-10) and Exhibit 202, Tab 30 to Local Rule 56.1 Separate Statement of Facts in  
Support of USAPA's Motion for Summary Judgment (Doc. 213-10).

1 West Pilots “how to vote” on the MOU “to protect [their] interest” in the Nicolau Award.  
2 Doc. 206-1 ¶ 65. In their findings of fact, Plaintiffs further attempt to disclaim that their  
3 ratification vote for the MOU did not mean they supported the MOU. Doc. 218 ¶¶ 56-57.

4 In testimony of Brian Stockdell and other Plaintiffs that this motion apparently  
5 seeks to shield from the Court’s consideration, USAPA will show that Leonidas  
6 aggressively urged West Pilots to vote in favor of the MOU with full and complete  
7 knowledge that the MOU did not include the Nicolau Award, claiming that the MOU  
8 somehow “moved them closer to ripeness.” In other words, not only were Plaintiffs fully  
9 informed about the MOU through Leonidas, Leonidas actively participated and  
10 encouraged passage of the MOU as a scheme to then assert a breach of the duty of fair  
11 representation. It is well established that union members who acquiesce or participate in  
12 a union’s actions and/or conduct and fail to take measures to avoid or ameliorate a breach  
13 of duty cannot be heard to complain about those very actions. Leonidas repeatedly  
14 advised the West Pilots that the MOU was “seniority neutral” and further  
15 “recommend[ed] that West Pilots vote yes if they want to see a merger with American  
16 Airlines according to the terms of the MOU.” Mr. Stockdell, for example, testified at his  
17 deposition that he drafted and/or edited parts of relevant communications with other  
18 Leonidas members that described the benefits of the MOU and encouraged West Pilots to  
19 vote for the MOU. *See* Stockdell Deposition Transcript 41:24-46:21 (referring to Exhibit  
20 159) & 48:13-50:1 (referring to Exhibit 158) and Exhibits 158 & 159, annexed hereto at  
21 Exhibit “C”. This evidence is relevant to Plaintiffs’ asserted claims and USAPA’s  
22 defense of the claim that the MOU breached the duty of fair representation.  
23

#### 24 **The Evidence Plaintiffs Seek to Exclude Is Relevant Impeachment Evidence**

25 The Court should reject Plaintiffs’ blanket attempt to preclude USAPA from  
26 questioning Mr. Stockdell and other witnesses on behalf of Plaintiffs on their affiliation  
27 with Leonidas, the group that is controlling this litigation and that has repeatedly rejected  
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1 any attempts at compromise and has taken a firm “Nic or Nothing” approach. The  
2 Supreme Court has held that a witness’s membership in an organization is probative of  
3 bias and that a fact finder may draw inferences that a witness subscribes to the tenets of  
4 an organization of which he is a member. *United States v. Abel*, 469 U.S. 45, 52 (1984);  
5 *United States v. Sommerstedt*, 752 F.2d 1494, 1499 amended, 760 F.2d 999 (9th Cir.  
6 1985) (“testimony that Sommerstedt and other defense witnesses were associated with  
7 Condo and shared his anti-tax beliefs was clearly admissible to prove the bias of these  
8 witnesses”). Depending on the witness’s testimony at trial, evidence concerning  
9 Leonidas is potential impeachment evidence and relevance simply cannot be adjudicated  
10 on a motion *in limine* prior to the witness testifying in Court.

### 11 **The Evidence is Relevant to Claim Three and USAPA’s Defenses**

12 Under Claim Three, Plaintiffs seek attorneys’ fees that have not been paid  
13 individually or even collectively by Plaintiffs. The evidence Plaintiffs seek to exclude is  
14 relevant to the fact that all fees and costs have been paid solely by Leonidas, a distinct  
15 entity that accepts contributions from anyone without restriction, including non-class  
16 members and organizations, and Plaintiffs are not entitled to fees paid by Leonidas.  
17 USAPA’s Local Rule 56.1 Separate Statement of Facts in Support of USAPA’s Motion  
18 for Summary Judgment, Doc. 213, ¶¶102-103 and exhibits thereto.

### 19 **CONCLUSION**

20 For the foregoing reasons, USAPA respectfully requests that Plaintiffs’ Third  
21 Motion *in Limine* be denied.

22 Respectfully submitted this 16<sup>th</sup> day of October 2013.

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

24  
25 By: s/Susan Martin  
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**CERTIFICATE OF SERVICE**

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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:

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