CHRISTOPHER W. KATZENBACH
(SBN 108006)
Email: ckatzenbach@kkcounsel.com
KATZENBACH LAW OFFICES
912 Lootens Place, 2nd Floor
San Rafael, CA 94901
Telephone: (415) 834-1778
Fax: (415) 834-1842

Attorneys for Plaintiffs AMERICAN AIRLINES FLOW-THRU PILOTS COALITION, GREGORY R. CORDES, DRU MARQUARDT, DOUG POULTON, STEPHAN ROBSON, and PHILIP VALENTE III on behalf of themselves and all others similarly situated

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

AMERICAN AIRLINES FLOW-THRU PILOTS COALITION, GREGORY R. CORDES, DRU MARQUARDT, DOUG POULTON, STEPHAN ROBSON , and PHILIP VALENTE III, on behalf of themselves and all others similarly situated, Plaintiffs, vs. ALLIED PILOTS ASSOCIATION and AMERICAN AIRLINES, INC., Defendants.	Case No.: 3:15-cv-03125 RS **MEMORANDUM IN OPPOSITION TO MOTION IN LIMINE OF ALLIED PILOTS ASSOCIATION TO EXCLUDE EVIDENCE** April 19, 2018 1:30 P.M. Courtroom 3, 17th Floor Judge Richard Seeborg

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INTRODUCTION

This motion by the Allied Pilots Association (APA) is simply a re-hash of the arguments APA made in its prior summary judgment motion. In denying that motion, the Court ruled (Dkt # 67) at pp. 6-7:

> Although the question is close, the Union has not established that summary judgment in its favor is warranted on the present record. It may be that some of plaintiffs' evidence of hostility towards Eagle pilots involves specific American pilots (as opposed to the Union) or relates to time periods in which the Union was appropriately in an adversarial, or semi-adversarial position to them; nevertheless, plaintiffs have pointed to what may plausibly be characterized as a pattern of having been treated less favorably than those pilots arriving at American from other "mainline" carriers. While the distinction between those pilots who had been "furloughed" and those who had not may ultimately be accepted by a trier of fact as an appropriate one for the Union to have made, that conclusion is not subject to determination as a matter of law. Finally, although plaintiffs may face an uphill battle to show that American would have agreed to extend LOS credit to them had the Union pursued it, they have made an adequate showing to prevent summary judgment against them for lack of causation

As we discuss below, the APA's current motion simply repeats its contention that its pattern of discrimination against the Flow-Through Pilots (FTPs) is can be explained as legitimate and not the product of hostility, bad faith, discrimination or arbitrary acts. It is the trier of fact, however, that must consider these contentions on the full record.

It is simply wrong for APA to try to re-litigate the summary judgment issue in a motion *in limine*. A motion *in limine* is not a substitute for summary judgment. *C & E Services, Inc. v. Ashland Inc.*, 539 F.Supp. 2d 316, 323 (D.D.C. 2008) Accord: *Jackson v. Cty. of San Bernardino*, 194 F.Supp.3d 1004 (C.D.Cal. 2016); *Mixed Chicks LLC v. Sally Beauty Supply LLC*, 879 F.Supp.2d 1093, 1094 (C.D.Cal. 2012) (also providing examples of proper and improper motions in limine). A motion in limine is a preliminary ruling that cannot be dispositive. "The Supreme Court has recognized that a ruling on a motion in limine is essentially a preliminary opinion that falls entirely within the discretion of the district court." *United States v. Bensimon*, 172 F.3d 1121, 1127 (9th Cir. 1999). It is almost always better to assess the value

and utility of evidence at trial, particularly as this allows evidence to be assessed in context. *Wilkins v. Kmart Corp.*, 487 F.Supp.2d 1216, 1218 (D.Kan. 2007). Accordingly, a court should reserve making ruling *in limine* to those instances when the evidence is "plainly inadmissible on all potential grounds." *Id.* at 1218-1219 (internal quotes omitted). Accord: *Jonasson v. Lutheran Child and Family Services*, 115 F. 3d 436, 440 (7th Cir. 1997); *Hawthorne Partners v. AT & T Technologies, Inc.*, 831 F.Supp. 1398, 1400 (N.D. Ill. 1993). "To exclude evidence on a motion in limine 'the evidence must be inadmissible on all potential grounds.'" *MxConnell v. Wal-Mart Stores,Inc.*, 995 F.Supp.2d 1164, 1167 (D.Nev. 2014). "Unless evidence meets this high standard, evidentiary rulings should be deferred until trial so that questions of foundation, relevancy and potential prejudice may be resolved in proper context." *Ibid.*, quoting *Hawthorne Partners v. AT & T Technologies, Inc.*, supra, 831 F.Supp. at 1400 Rulings under Rule 403 of the Federal Rules of Evidence are particularly ill-suited for motions *in limine* because the necessary balancing is always subject to revision when the evidence come in and can be considered in context. *Wilkins v. Kmart Corp.*, supra, 487 F.Supp.2d at 1219.

APA'S CONTENTIONS

First, APA contends that it was legally obligated to represent the interests of the TWA pilots over the FTPs. APA Mem. pp. 7-14. But this contention simply tries to prove too much. The issue is not whether APA had a duty of fair representation to the FTPs in the past, but whether its actions in advancing the interests of the TWA pilots indicate a discriminatory or hostile motive towards the FTPs that carried over to the time when APA indisputable had the duty to represent the FTPs. As we show below, APA's actions raise such an inference as a matter of fact.

Second, APA contends that evidence of hostility by "non-decision makers" is irrelevant and not probative of the motives of the union negotiators who negotiated Letter G. APA Mem. pp. 14-17. But the evidence in this case presents a long pattern of hostility and bad faith, not

isolated comments or events, by APA acting in its official capacity. Background evidence of this kind does not require a consistent group of decision makers harboring animus (*Lyons v. England*, 307 F.3d 1092, 1009-1010 (9th Cir. 2002)) and is broadly construed to permit "any evidence that tends to prove the [actor's] discriminatory intent or otherwise to disprove the proffered legitimate reason." *Id.* at 1111. Accord: *RK Ventures, Inc. v. City of Seattle*, 307 F.3d 1045, 1050 (9th Cir. 2002). This case does not turn on a few hostile remarks from the past directed at a few pilots. Compare *Air Line Pilots Ass'n, Int'l v. DOT*, 279 U.S. App. D.C. 168, 880 F.2d 491, 498- 499 (1989), cited by APA at Mem. pp. 16-17.

Third, APA contends that certain evidence is irrelevant. Mem. pp.. 17-22. Again, this evidence goes directly to issues of discrimination, bad faith and arbitrary conduct.

Fourth, APA contends that the evidence should be excluded under Rule 403 because APA would have to explain its conduct. Mem. pp. 23-24. That is not the unfair burden Rule 403 is designed to prevent. The evidence of the pattern of mistreatment, bad faith and discrimination is highly probative of APA's current motives and not unduly prejudicial.

ARGUMENT

I. APA'S REPRESENTATION DUTIES DO NOT PRIVILEGE APA TO VIOLATE ITS OTHER CONTRACTUAL OBLIGATIONS OR TAKE ACTIONS DELIBERATELY DESIGNED TO HARM THE PROMISES APA MADE TO FLOW-THROUGH PILOTS.

A. The Evidence Showing A Pattern Of Discrimination and Bad Faith.

As this Court is aware, this case involves discrimination by APA in negotiating LOS credits (Letter G) for all other pilot groups and excluding FTPs from that benefit. The background of this dispute—the background evidence involved—is, in summary, as follows:

In 1997 the Allied Pilots Association (APA) threatened to strike to get the regional jets for APA-represented pilots at American Airlines ("American"). APA considered the American Eagle ("Eagle") pilots who were to fly these jets as scabs and job stealers. The APA Board took

the position in negotiations that "[r]egional jets shall be flown only by American Airline pilots."[1] APA took the position that there was no significant difference in flying regional jets than flying other jet aircraft at American and the work belonged to the APA-represented pilots.[2]

However, under the dispute resolution provisions of the Railway Labor Act, a Presidential Emergency Board (PEB) determined that the regional jets should be flown by Eagle pilots. That decision resulted in the Flow-Through Agreement.[3] Of particular significance, the senior Eagle pilots flying regional jets had been systematically discriminated against in getting jobs at American and the agreement was intended to give the Eagle pilots a vested interest in the American Airlines pilots contract."[4] A key part of this agreement was the balance of risk and reward for the Eagle pilots: "In the end, the balance was struck with ALP A agreeing that Eagle pilots who became CJ captains (on what was then a nonexistent CJ fleet) could accept the risk of displacement from furloughed AA pilots in return for the reward of the right to flow up when AA was hiring off the street." Hunter Declaration in FLO-0903 (Document No. AA002417).

[1] This language was in a APA Board resolution published on the APA website with the signatures of the APA Board members. There are other statements of the same position by APA Board members during this period. APA rejected a tentative agreement because it did not give APA the work flying regional (or small) jets.

[2] In a report APA issued on the APA website, one of the APA negotiations stated: "Moreover, the Eagle jets embody cutting edge technology with performance capabilities exceeding that of many current large jets in American's fleet, and the Company has no choice but to acquire these aircraft."

[3] In the same section of the report noted in footnote 2, APA stated: "The Company created a situation where American pilots and Eagle pilots were competing for work. . . . APA believes the responsible method to handle this potential outcome is to offer a bridge for the hiring of Eagle pilots at American Airlines." The Flow-Through Agreement was that bridge.

[4] Ralph Hunter, APA President, stated in a declaration in arbitration FLO-0903: "The intent was to involve Eagle pilots, by right, in what otherwise would be norn1al off the street hiring. At the time, the parties understood this concept to be a significant boon to Eagle pilots, since AA did not ordinarily hire a high percentage of commuter pilots, and if anything, AA normally seemed disinclined to hire Eagle pilots because of consequent, costly training cycles triggered at Eagle when senior pilots left that carrier." Document AA-002415-16. In a subsequent arbitration, Hunter testified that the Flow-Through Agreement intended to give "the pilots flying those jets to have a vested interest in the American Airlines pilots contract." He stated that the pilots he was referring to were the Eagle pilots. FLO-200, TR p. 239 (Document APA010120).

Despite these understandings and promises, APA soon started taking actions to undermine the Eagle pilots flow-through rights and destroy the risk-reward balance it had agreed to in the negotiations. These actions continue to the present.

- APA renegotiated flow-down rights for TWA-LLC pilots to expand these pilots ability to take jobs at Eagle and displace Eagle pilots. This undermined the risk-reward component of the agreement by increasing the Eagle pilots' risk of displacement and (as shown below) and undermining the reward of flow-up by putting the TWA-LLC pilots ahead. APA did not involve the Eagle pilots or their representatives in these negotiations, even though APA knew this affected the Eagle pilots rights and risks under the Flow-Through Agreement.
- APA sought to have the FTPs American seniority numbers voided even though nothing in either the FTA or the collective bargaining agreement (CBA) provided for such a result.
- APA has refused to abide by arbitration decisions favoring the FTPs.[5] When Arbitrator LaRocco determined in May 2007 that the TWA-LLC Staplee pilots were new hire pilots so that the priority hiring for FTPs had to apply if the Staplees were offered jobs, APA and American ignored his ruling and proceeded to hire Staplees and not FTPs to new hire positions.
- APA colluded with American and other parties to the FTA to implement a settlement that took away FTPs rights under prior arbitration awards and disguise that settlement as if it were a decision by a neutral arbitrator.
- APA has repeatedly refused to respond to FTPs requests for information or explanations of APA's actions.[6] This includes (a) the negotiation of Letter G

[5] The factual findings in the various arbitrations are admissible as collateral estoppel against APA and American. *C.D. Anderson & Co, v. Lemos*, 832 F.2d 1097, 1100 (9th Cir. 1987); *Greenblatt v. Drexel Burnham Lambert, Inc.*, 763 F.2d 1352, 1360 (11th Cir. 1985).

[6] Responding to union members' reasonable request for information and documents is a part of a union's duty of fair representation. *NLRB v. Carpenters Local 608*, 811 F.2d 149, 153 (2nd Cir. 1987); *Auto Workers Local 909*, 325 NLRB 859, 865 (1998). Because APA failed to respond to any of the FTPs letters on LOS credits, or explain any problems with negotiating LOS for the

itself, (b) why APA has negotiated benefits for all other pilots that put FTPs at the bottom of the pay scale earning far less that comparable pilots and (c) why APA has acted in the Seniority List Integration (SLI) process to the detriment of FTPs. APA's last response, in the SLI process, was that it would not respond because of this lawsuit—in effect punishing the FTPs for their prior efforts to get explanations from the APA for its actions.

- In the Equity Distribution process in 2013, APA manipulated the cut-off date for qualifying for the distribution to ensure that the last TWA-LLC Staplee would be at American and receive the benefit but the FTPs remaining at Eagle would not be at American by the cut-off and not receive the benefit.
- In the Seniority List Integration process, on June 19, 2015, APA proposed seniority lists that put FTPs behind less senior US Air pilots, including US Air pilots flying regional jets as first officers rather than captains.
- Recently, in January 2018, APA negotiated full LOS credits for all pilots—except the FTPs.

As a result of APA's discrimination, FTPs are paid less than other pilots at American who have less flying experience than the FTPs. APA has refused to respond to requests to explain why this is justified and to requests that APA take action to rectify this disparity.

B. APA's Claimed Bargaining Duties Do Not Privilege Actions To Undermine Its Agreements With The FTPs.

APA's argument rests on the idea that it was just representing its bargaining unit. But the issue is not APA's duty to represent pilots. The issue is whether APA's actions in purportedly doing so provide background evidence of hostility, discrimination and bad faith towards the FTPs that supports the position that this hostility, discrimination and bad faith impacted the negotiation of Letter G.[7]

FTPs, a jury would be entitled to conclude that APA's actions were deliberate and intended to ensure that FTPs did not get LOS credits.

[7] As well as the recent negotiations increasing the LOC credits for all pilots except FTPs.

In this case, APA agreed to the Flow-Through Agreement to obtain rights APA-represented pilots would not have obtained otherwise—that is, the right to flow-back to Eagle and displace Eagle pilots. These flow-back rights were not just the right to be hired into vacancies at Eagle, but the right to bump Eagle pilots out of their jobs. In exchange, Eagle pilots received a reward of preferential hiring at American.

The Flow-Through Agreement also expressly provided that it superseded the parties' individual collective bargaining agreements. Section A(c) provides:

> This Supplemental Agreement supplements and makes certain exceptions to the Basic Agreements between the parties. The provisions of the Basic Agreements will continue to apply, except as modified herein and, in the event of a conflict, the provisions herein shall apply.

Simply put, APA agreed that its collective bargaining duties would be *subordinate* to the terms of the Flow-Through Agreement.

It is a triable factual issue, in this context, whether APA was merely engaged in good faith representation of pilots when it systematically undermined and repudiated its promises and commitments after getting the benefit of the bargain. A jury could properly reach the opposite conclusion.

Contrary to APA's argument (Mem. pp. 13-14), this case falls under the rule of *Brotherhood of Railroad Trainmen v. Howard*, 343 U.S. 768 (1952). In *Howard*, the union claimed that it was discriminating against train porters that were in a separate bargaining unit and "argued that the Brotherhood owed no duty at all to refrain from using its statutory bargaining power so as to abolish the jobs of the colored porters and drive them from the railroads." *Id.* at 773. The Supreme Court rejected that argument: "The Federal Act [RLA] thus prohibits bargaining agents it authorizes from using their position and power to destroy colored workers' jobs in order to bestow them on white workers. And courts can protect those threatened by such an unlawful use of power granted by a federal act." *Id.* at 774. The Court added: "Bargaining agents who enjoy the advantages of the Railway Labor Act's provisions must execute their trust without lawless invasions of the rights of other workers." *Ibid.* In *Allen v. CSX Transp., Inc.*,

325 F.3d 768 (6th Cir. 2003), the court recognized that the *Howard* rule would apply if "UTU negotiated the 1993 agreement in order to force CSX to eliminate the jobs of engineers and replace them with trainmen," but concluded that the allegations in *Allen* did not make such a claim. *Id.*, supra, 325 F.3d at 775.

Allied Chem. & Alkali Workers, Local Union No. 1 v. Pittsburgh Plate Glass Co., 404 U.S. 157, 181 n.20 (1971), cited by APA (Mem. pp. 14-15) does not repudiate this element of *Howard*. Rather, the court held that the union did not have to consider the interests of non-unit members in "making bona fide economic decisions in behalf of those whom it does represent." *Ibid.* However, the court also noted that "Under established contract principles, vested retirement rights may not be altered without the pensioner's consent." *Ibid.* Accordingly, while a union may not have a bargaining duty to non-unit persons, it may create "vested" rights for those same persons that it cannot freely repudiate.

In this case, APA created vested rights for the FTPs. It had no legal right to repudiate the vested rights to which it had agreed, particularly when it agreed that its separate collective bargaining agreements could not change the terms of the Flow-Through Agreement. Similarly, as the Ninth Circuit held in *Addington v. US Airline Pilots Association*, 791 F.3d 967, 989-990 (9th Cir. 2015), that a union's efforts "to free [one employee group] from the consequences of the arbitration to which they were bound" was "blatantly discriminatory" and "outside the 'wide range of reasonableness'" afforded unions. While *Addington* involved two-groups within the same bargaining unit, the point that a union acts in bad faith, arbitrarily and discriminatorily in taking efforts to avoid the consequence of an arbitration decision to which the union was bound is entirely applicable. In *Addington*, the arbitration decision was to resolve disputes between the East and West pilot groups. In this case, the various arbitrations were to resolve disputes between the parties to the Flow-Through Agreement—in particular the American and Eagle pilot groups. APA was as much bound by the results of these arbitrations as the union in *Addington*. As in *Addington*, repudiating binding arbitration decisions is simply outside the wide range of reasonableness afforded unions. The repudiation of the arbitrations and duties under the Flow-

Through Agreement is persuasive background evidence of hostility towards the FTPs that cannot be explained away by claiming good faith representation of American pilots.

II. BACKGROUND EVIDENCE OF APA'S ACTIONS HARMING THE FTPS DOES NOT REQUIRE SHOWING THAT THE SAME UNION OFFICIALS WERE INVOLVED.

Contrary to APA's argument (Mem. pp. 14-17), background evidence does not require a consistent group of decision makers harboring animus. *Lyons v. England*, 307 F.3d 1092, 1009-1010 (9TH Cir. 2002) (rejecting standard that limited background evidence of discrimination to acts "perpetrated by a consistent group of actors"). Admissible background evidence is broadly construed: "appropriate background evidence will be any evidence that tends to prove the [actor's] discriminatory intent or otherwise to disprove the proffered legitimate reason." *Id.* at 1111. In *RK Ventures, Inc. v. City of Seattle*, 307 F.3d 1045, 1050 (9th Cir. 2002), the Ninth Circuit explained how this background evidence can look to conduct involving past interactions between the parties and interaction with other groups:

> In determining whether the City's conduct falling within the limitations period raised a triable issue, the district court erred in analyzing such conduct without considering any of the background evidence in the record. The court should have considered the City's time-barred acts against appellants, as well as the City's similar acts against other clubs, as evidence that the conduct falling within the limitations period had an unconstitutional purpose.

The evidence in this case involves repeated actions over many years. It extends into the present. It shows a consistent pattern of discrimination. It shows a consistent pattern of repudiating APA contractual promises. It shows a continued patter of APA's refusal to explain or justify its actions when the FTPs have asked—justifying an inference that APA has no legitimate justification at all. In short, this case does not turn on a few hostile remarks from the past directed at a few pilots. Compare *Air Line Pilots Ass'n, Int'l v. DOT*, 279 U.S. App. D.C. 168, 880 F.2d 491, 498- 499 (1989), cited by APA at Mem. pp. 16-17.

APA's argument simply seeks to reinstate the "consistent group of actors" requirement the Ninth Circuit abandoned in *Lyons v. England*, supra, 307 F.3d at 1009-10. There is no reason to do so.

III. THE EVIDENCE OF SYSTEMATIC MISTREATMENT OF FTPS IS RELEVANT TO APA'S MOTIVES IN NEGOTIATING LETTER G.

APA argues that certain evidence does not support an inference of hostility to FTPs. Mem. pp. 17-22. To the contrary, this evidence is entirely probative of APA's hostility towards FTPs.

A. Negotiating New Flow-Back Rights For TWA-LLC Pilots.

APA argues that it was obligated by its representational duty to negotiate the new flow-back rights for the TWA-LLC pilots. Mem. pp. 17-19.

APA's argument on this issue simply repeats its contention that it had a duty to represent the TWA-LLC pilots and its argument that different decision makers were involved. Mem. pp. 18-19. As discussed above, neither explanation shows that a jury could not find this evidence shows a motive to use APA's negotiating ability to repudiate is agreements and harm FTPs after getting the benefits of the flow-back parts of the Flow-Through Agreement. The duty to represent pilots does not mean that APA is privileged to violate its contractual promises and repudiate its obligations after getting its benefit of the bargain. In fact, APA promised it would not do so—as it agreed that its collective bargaining agreement would be subordinate to the Flow-Through Agreement. It is difficult to imagine that such actions would be taken except for APA's hostility to the FTPs. APA has no conceivable duty to violate its other contracts to favor the TWA pilots. Lawlessness is not the standard of a union's bargaining duty. Rather this is the kind of "lawless invasions of the rights of other workers" condemned in *Brotherhood of Railroad Trainmen v. Howard*, supra, 343 U.S. at 774 and a violation of vested contract rights noted in *Pittsburgh Plate Glass*, supra, 404 U.S. at 181 n.20. A jury could property reject APA's contentions on the facts of this case.

B. APA's Argument That TWA-LLC Pilots Were Not "New Hire" Pilots.

APA asserts that it had a duty to argue that the TWA-LLC pilots were not "new hire" pilots and that no adverse inference can be made from that argument. APA Mem. pp. 19-20.

First, the issue of bad faith here is not that APA argued this position to the arbitrators. Rather, the issue is that, once APA lost this argument, APA ignored the arbitrator's decision and put the TWA-LLC pilots at American ahead of the FTPs. Arbitrator LaRocco's decision that the TWA-LLC pilots were "new hire" pilots under the Flow-Through Agreement issued on May 11, 2007. That was *before* American began hiring the majority of the TWA-LLC pilots ahead of the FTPs. It is APA's refusal to abide by Arbitrator LaRocco's ruling that shows its bad faith. *Addington v. US Airline Pilots Association*, supra, 791 F.3d at 989-990. The additional evidence that APA undermined a remedy for this violation to ensure that the TWA-LLC pilots were still able to get to American ahead of FTPs confirms APA's hostile motive.

Second, the TWA-LLC pilots because flow-back and "furloughed" pilots only because APA agreed to include them in these categories. Once again, APA is bargaining for new benefits for new employees contrary to its promises in the Flow-Through Agreement. Again, it is reasonable to infer that APA would not violate its contractual promises in the Flow-Through Agreement unless it was hostile to the FTPs and, because of that hostility, was willing to breach its agreements notwithstanding its promises. Again, nothing in APA's bargaining duty justifies—much less requires—such lawless actions directed at the FTPs.

C. The Evidence Shows A Collusive Settlement Of The FTPs Claims After They Were Discriminated Against.

APA argues that the collusive deal in the Nicolau arbitration is not evidence of bad faith or hostility towards the FTPs. Again, APA relies on its purported bargaining duty obligations. APA Mem. pp. 20-21.

First, as discussed, APA's bargaining duties do not privilege lawless behavior such that a jury could not find APA was acting out of hostility towards the FTPs. Colluding with the

arbitrator to take away the benefits of a remedy for APA's violation of the Flow-Through Agreement is not privileged, but lawless behavior, justifying an inference of hostility.

Second, the remedy Nicolau ordered was a deal between the parties, not an independent decision. The facts supporting this position are set out in Gavin Mackenzie's declaration (dated March 31, 2016) submitted in opposition to APA's summary judgment motion. See Mackenzie Decl. ¶¶ 19 through 21, 23-25, 27. In particular, the remedy jumped the remaining TWA-LLC pilots ahead of half the FTPs still at Eagle so that the TWA-LLC pilots would again get to American first—APA's objective from the start. Nicolau imposed new conditions on FTPs that had no purpose other than to reduce the number of FTPs going to American. All of this was done in secret and then presented as if this was a considered arbitration award. Inferring bad faith and hostility from these events is a permissible inference—even a compelling one.

D. Statements Critical of Eagle Pilots.

APA argues that statements of hostility towards Eagle pilots could not have influenced the Letter G negotiations. APA Mem. p. 22.

Again, APA's argument rests on the "consistent group of actors" contention the Ninth Circuit abandoned in *Lyons v. England*, supra, 307 F.3d at 1009-10. The hostility to Eagle pilots as "job stealers" arose in 1997 from the very top of APA and its Executive Board. The fact that this attitude is part of APA's rank and file simply shows the pervasiveness of this hostility. It would be hardly surprising for APA to act on the basis of a pervasive hostility its members express.

Nothing that has transpired shows any reason to believe that this hostility has dissipated. To the contrary, the continued history of mistreatment and APA's continued refusal to respond to or justify its actions when FTPs have asked for explanations supports the position that this hostility has not abated but continues to drive APA's actions. The mere fact that APA refuses to respond to FTPs questions and concerns supports an inference of on-going hostility. Maybe APA can explain why it won't even answer the FTPs questions. But it is for the jury to decide if an purported legitimate explanation APA may eventually offer dispels any inference of

continued hostility towards the FTPs. In reaching this decision, the jury may property consider, among other things, all the background evidence of APA's hostility towards FTPs. *Lyons v. England*, supra, 307 F.3d at 1011.

IV. THERE IS NO BASIS TO BELIEVE THAT THE EVIDENCE WILL BE UNDULY PREJUDICIAL, CONFUSING OR INVOLVE DELAY AND WASTE OF TIME.

Citing Rule 403, APA argues that presenting the full story of its mistreatment of FTPs will consume too much time on side issues, outweighing the probative value of this evidence. APA Mem. pp. 23-24. The fundamental premise of APA's argument is that years of mistreatment, violations of APA's obligations, refusal to explain or justify APA's actions and deliberate undermining of the promises APA made is not sufficiently probative of current hostility to justify this evidence.

First, it is pure speculation to think that substantial time will be spent in APA's justification for its actions. It is more likely that APA's justification for its lawless behavior will be as hollow at trial as in this motion.

Second, showing APA's years of mistreatment towards FTPs is highly probative of its bad faith in negotiating Letter G. These are not side issues, but issues going to the very heart of the case, showing at every turn APA tried to harm the FTPs and undermine the rights they had under the Flow-Through Agreement. Without such evidence, it is all too easy for APA to assert homilies such as "everyone can't be satisfied" or assert its "broad range of discretion." But such statements turn hollow if the FTPs are the only ones who are regularly dissatisfied and if the FTPs are the only ones who suffer when APA exercises its discretion. The evidence plaintiffs will present directly goes to this issue and is, accordingly, not unduly prejudicial and far from a waste of time.

CONCLUSION

For the forgoing reasons, APA's motion *in limine* should be denied.

Dated: March 8, 2016.

KATZENBACH LAW OFFICES

By s/ *Christopher W. Katzenbach*
Christopher W. Katzenbach
Attorneys for Plaintiffs AMERICAN AIRLINES FLOW-THRU PILOTS COALITION, Et Al.

CHRISTOPHER W. KATZENBACH
(SBN 108006)
Email: ckatzenbach@kkcounsel.com
KATZENBACH LAW OFFICES
912 Lootens Place, 2nd Floor
San Rafael, CA 94901
Telephone: (415) 834-1778
Fax: (415) 834-1842

Attorneys for Plaintiffs AMERICAN AIRLINES FLOW-THRU PILOTS COALITION, GREGORY R. CORDES, DRU MARQUARDT, DOUG POULTON, STEPHAN ROBSON, and PHILIP VALENTE III on behalf of themselves and all others similarly situated

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AMERICAN AIRLINES FLOW-THRU PILOTS COALITION, GREGORY R. CORDES, DRU MARQUARDT, DOUG POULTON, STEPHAN ROBSON , and PHILIP VALENTE III, on behalf of themselves and all others similarly situated, Plaintiffs, vs. ALLIED PILOTS ASSOCIATION and AMERICAN AIRLINES, INC., Defendants.	Case No.: 3:15-cv-03125 RS [Proposed] **ORDER DENYING MOTION IN LIMINE OF ALLIED PILOTS ASSOCIATION TO EXCLUDE EVIDENCE**. April 19, 2018 1:30 P.M. Courtroom 3, 17th Floor Judge Richard Seeborg

This matter is before the Court on the motion in limine of defendant Allied Pilots Association "APA") to exclude evidence.

The Court denies the motion. APA's motion is a repeat of its prior summary judgment motion. That is not a proper purpose of a motion in limine. *C & E Services, Inc. v. Ashland Inc.*, 539 F.Supp. 2d 316, 323 (D.D.C. 2008) Accord: *Jackson v. Cty. of San Bernardino*, 194

F.Supp.3d 1004 (C.D.Cal. 2016); *Mixed Chicks LLC v. Sally Beauty Supply LLC*, 879 F.Supp.2d 1093, 1094 (C.D.Cal. 2012).

The Court further finds that the factual issues raised in the motion are disputed issues that can only be resolved at trial.

SO ORDERED.

Dated:

_____

Richard Seeborg, United States District Judge