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 Pilots Coalition, Gregory R. Cordes, Dru Marquardt,
 Doug Poulton, Stephan Robson and Philip Valente III

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

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,

v.

ALLIED PILOTS ASSOCIATION and
 AMERICAN AIRLINES, INC.
 Defendants.

Case No.: 3:15-cv-03125 RS

PLAINTIFFS' NOTICE OF MOTION AND
 MOTION TO CONTINUE TRIAL DATE,
 DISCOVERY CUT-OFF AND EXPERT
 DEADLINES AND FOR AN ORDER
 REQUIRING MR. KATZENBACH TO
 TURNOVER LITIGATION FILE; MEMO.
 OF POINTS AND AUTHORITIES

DATE: April 4, 2019
 TIME: 1:30 p.m.
 CTRM: 3. 17th Floor

1
2 TO ALL PARTIES AND THEIR ATTORNEY(S) OF RECORD:

3 PLEASE TAKE NOTICE THAT at 1:30 p.m. on April 4, 2019, or as soon thereafter as
4 the matter may be heard, in Courtroom 3 on the 17th floor of the United States District Court
5 for the Northern District of California at 450 Golden Gate Avenue, San Francisco, California
6 94102, Plaintiffs, American Airlines Flow-Thru Pilots Coalition, Gregory R. Cordes, Dru
7 Marquardt, Doug Poulton, Stephan Robson and Philip Valente III will and hereby do move
8 this Court for an order (1) continuing the trial date for at least 120 days; (2) vacating the
9 existing discovery cut-off dates for purposes of permitting limited additional discovery; (3)
10 modifying the pre-trial Order of this Court such that both sides have until at least one month
11 prior to trial to designate expert witnesses, disclose their reports and conduct expert
12 depositions, (4) directing that former class counsel Christopher Katzenbach provide a copy of
13 his litigation file to plaintiff's new counsel forthwith; and (5) setting a new Case Management
14 Conference regarding mediation after Plaintiffs have had time to obtain the necessary case
15 documents required to participate in a meaningful mediation.
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18 This motion is made under the Court's inherent authority to supervise class counsel and
19 on the grounds that such action is required in order to protect the interests of named plaintiffs
20 and the class following class counsel's abandonment of the case, pursuant to Northern District
21 of California Civil Local Rules 7-2 and 7-4.
22

23 This Motion is based on this Notice of Motion and Motion, the accompanying
24 Memorandum of Points and Authorities; the supporting evidence filed in connection with this
25 Motion (the Declarations of Timothy McGonigle and Gregory Cordes), and the evidence
26 previously filed on behalf of Plaintiff's prior Motion for a Stay and For an OSC re Adequacy of
27

1 Class Counsel (Dkt. No. 152)(including but not limited to the Declarations of Gregory Cordes,
2 Gavin Mackenzie, Artemas Keitt (“Kit”) Darby, Timothy McGonigle, George Braunstein and
3 John L. Gavello); all of the Court’s pleadings and papers on file in this matter; and upon such
4 further evidence and argument as may be presented at or before the hearing of this motion.
5

6 Dated: February 28, 2019

7 TIMOTHY D. MCGONIGLE PROF. CORP.

8
9 By: /s/ Timothy D. McGonigle
Timothy D. McGonigle

10
11 BRAUNSTEIN & BRAUNSTEIN, P.C.

12 By: /s/ George Braunstein
13 George Braunstein

14 Attorneys for Plaintiffs, American Airlines Flow-Thru
15 Pilots Coalition, Gregory R. Cordes, Dru Marquardt,
16 Doug Poulton, Stephan Robson and Philip Valente III
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In its Order dated February 13, 2019 (Dkt. No. 154) (the “Order”), following the filing of Plaintiffs’ Motion for a Stay etc. (Dkt. No. 152) and defendant Airline Pilots Association’s (“APA”) Opposition/Response (Dkt. No. 153), this Court relieved Attorney Christopher Katzenbach from his prior role as class counsel. Implicitly, that Order recognized that the Mr. Katzenbach was no longer adequately representing Plaintiffs.

The factual record makes it clear that this lack of adequate representation persisted in this case for a significant period of time, notwithstanding the fact that Mr. Katzenbach was still actively participating in discovery in December 2017 (Dkt.153-1 Rosenthal Decl. ¶6 page 2 of 17), filed an opposition to a Motion in Limine in March 2018 (Dkt. 118), and made court appearances on behalf of Plaintiffs in June and August 2018 (Dkt. 135 &145) and in the related action 3:17-cv-01160-RS on December 20, 2018 (Dkt. 84).

The Order further required new plaintiffs’ counsel (attorneys McGonigle and Braunstein) to meet and confer with APA’s counsel regarding “any deadlines that may have already expired and from which new counsel contends relief is warranted.” Order at 2:6-7. Following such a meet and confer process, while the APA would have agreed to a 60 day trial continuance it would not agree to the 120 day trial continuance Plaintiffs deem necessary, and was entirely unwilling to either reopen discovery or to permit Plaintiffs to belatedly designate an expert witness or engage in expert discovery, although the APA indicated it would not object to the issuance of an Order directing Mr. Katzenbach to turn over his litigation files to successor counsel. (McGonigle Decl. at ¶2). Because all of this requested relief is absolutely critical in order for Plaintiffs to adequately present their case and to protect the interests of

absent class members (McGonigle Decl. at ¶7), and because the failings of their former counsel (which occurred through no fault of their own) should not be permitted to prejudice the rights of Plaintiffs or those of absent class members, Plaintiffs respectfully submit that good cause exists to continue the trial and grant relief from the discovery and expert deadlines. Furthermore, Plaintiffs respectfully request an order requiring Mr. Katzenbach to deliver a copy of his litigation file to new counsel for Plaintiffs forthwith, and to set a new mediation schedule once Plaintiffs new counsel have had an ability to review the file, conduct some discovery, and to obtain an expert opinion. (Plaintiffs believe that absent such relief, it is unlikely that a mediation would be fruitful).

II. BACKGROUND

The named plaintiffs in this class action are five individual pilots and an association of more than 150 similarly-situated pilots who were employed by an airline named “American Eagle”—a collective name for several affiliates of American Airlines (“AA”). In 1997, American Eagle pilots became eligible to become pilots at AA by virtue of a so-called “Flow-Thru Agreement.” Plaintiffs contend that defendant APA discriminated against them.

Mr. Katzenbach filed the initial complaint in this action on July 6, 2015 (Dkt. No. 1) and a Second Amended Complaint on January 22, 2016 (Dkt. No. 38). On June 16, 2016, this Court issued an order granting summary judgment in favor of the APA on certain claims and certified the class on the remaining claim. (Dkt. No. 67), with the APA’s consent.

III. THIS COURT’S PRIOR SCHEDULING ORDERS

On November 3, 2016 the Court issued a Case Management Scheduling Order (Dkt. No. 85) requiring all non-expert discovery to be completed by December 31, 2017, and setting

the following expert discovery deadlines:

- a. On or before January 30, 2018, parties will designate experts in accordance with Federal Rule of Civil Procedure 26(a)(2).
- b. On or before March 1, 2018, parties will designate their supplemental and rebuttal experts in accordance with Federal Rule of Civil Procedure 26(a)(2).
- c. On or before April 15, 2018, all discovery of expert witnesses pursuant to Federal Rule of Civil Procedure 26(b)(4) shall be completed.

Dkt. No. 85. On June 14, 2018, the APA filed a unilateral Case Management Statement (Dkt. No. 133) -- in lieu of a joint statement -- after Katzenbach failed to respond to “multiple voicemails” and “multiple emails” from APA’s counsel for a prolonged period. See Dkt. No. 133.

A Case Management Conference was held telephonically on August 2, 2018 in which Mr. Katzenbach participated, and the Court set a Final Pretrial Conference for April 17, 2019 and trial to commence on April 29, 2019 (Dkt. No. 145).

IV. ATTORNEY ABANDONMENT PROVIDES GOOD CAUSE TO GRANT RELIEF FROM SCHEDULING DEADLINES AND THE TRIAL DATE

Court deadlines, such as the scheduling deadlines entered before the final pretrial conference, “may be modified upon a showing of ‘good cause,’ Fed. R. Civ. P. 16(b).” *Johnson v. Mammoth Recreations* (9th Cir. 1992) 975 F.2d 604, 608. Under that standard, Mr. Katzenbach’s abandonment and apparent gross negligence provides that sufficient good cause to grant the relief requested by this Motion.

As was previously documented in the various declarations filed in support of Plaintiffs’ prior Motion for a Stay, etc. (Dkt. No. 152), the attorney-client relationship with Katzenbach broke down during 2018 when he ceased substantive communications with the named

1 plaintiffs. However, long before the communications broke down, it is apparent that
 2 Katzenbach had already been derelict in fulfilling his duties as class counsel and counsel for the
 3 named plaintiffs, *at the very least*, by failing to comply with the deadlines for expert disclosure
 4 and by failing to communicate significant case developments to plaintiffs -- such as his failure
 5 to comply with the expert deadline, and by his misleading assurance in the fall of 2017 (prior to
 6 expiration of the expert deadline) that “everything was on track.” (Cordes Decl. ¶4.).
 7 (However, because new plaintiffs’ counsel have not yet been able to obtain Mr. Katzenbach’s
 8 file in any of the cases in which he is still counsel of record for Plaintiffs, the exact extent of his
 9 negligence is still to be determined. McGonigle Decl. at ¶7.)

11
 12 **(1) Katzenbach Effectively Abandoned The Class By Failing to Designate An
 13 Expert In January 2018 -- And The APA Knew It All Along.**

14 The APA’s Opposition/Response (Dkt. No. 153), to Plaintiff’s prior motion for relief
 15 from the existing deadlines removed any lingering doubt concerning Mr. Katzenbach’s
 16 abandonment of the class. That Opposition/Response -- while dancing around the issue --
 17 nevertheless confirmed the truth of a fact that Plaintiffs previously never knew: Mr.
 18 Katzenbach failed to designate *any* expert witnesses prior to the Court-ordered deadline.

19 Without access to the file (which Mr. Katzenbach has continued to withhold), and
 20 having been mislead by Mr. Katzenbach regarding the status of the case in 2017, and never
 21 having been informed by Mr. Katzenbach that any deadlines had been missed (Cordes Decl. at
 22 ¶¶5-6), Plaintiffs had no way of knowing that his lack of communications were in order to
 23 cover up for his shortcomings. Indeed, Plaintiffs lacked proof of the fact -- which the APA’s
 24 Opposition confirmed -- that Mr. Katzenbach actually allowed the expert deadline to lapse
 25 without designating any expert, a critical shortcoming that will plainly prejudice the interests of
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the class should the relief sought by this Motion not be afforded.¹ Yet, the APA's counsel *have themselves known* since January 30, 2018 that Mr. Katzenbach failed to designate any expert on behalf of the class prior to the Court-ordered deadline. Apparently APA's counsel did not feel constrained by any duty of candor which would have required them to mention this important fact to the Court -- notwithstanding their own explicit recommendation that Mr. Katzenbach be appointed as class counsel.² Instead, they chose to remain silent, biding their time, perhaps in order to be able to argue over a year later, that Plaintiffs failed to "diligently" raise any issue regarding Mr. Katzenbach's adequacy.

But, as pointed out in Plaintiffs' prior Motion to Stay etc.: (1) the Court has its own continuing obligations to constantly supervise class counsel (*McNeil v. Guthrie* (10th Cir. 1991) 945 F.2d 1163, 1166-1167)³ and, (2), adequate representation is constitutionally mandated. *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 812, 105 S.Ct. 2965, 2974, 86 L.Ed.2d 628, 642. Furthermore, facts amounting to gross negligence/attorney abandonment --

¹ Plaintiffs' own ignorance of the status of the case is reflected in Plaintiffs' recently-retained counsel's letter to the State Bar dated January 15, 2019 (Ex. A. to the McGonigle Decl. -- Docket Number 152-1, pg. 7), in which Mr. McGonigle, having not yet reviewed the entire docket, presumed that the deadline for expert designation had not yet lapsed: ("Unless the court ordered otherwise, an expert report will be due on January 29, 2019.") But, as was later determined, the deadline had already lapsed a year earlier.

² Indeed, if one were inclined to cynicism, one might suspect that the reason that the APA consented to class certification while recommending Mr. Katzenbach's appointment as class counsel (Docket No. 51 pg. 23-24) (the Court "should appoint . . . Mr. Katzenbach as class counsel") was because it recognized the inadequacy of Mr. Katzenbach's representation at an even earlier date. In any event, having taken the position that he should be appointed to represent the absent class members, at a minimum, it would appear incumbent on Defendant's counsel to at least inform the Court as soon as they became aware that Mr. Katzenbach permitted the expert designation deadline to lapse and was no longer adequately representing the class.

³ Citing *North Am. Acceptance Corp. Sec. Cases v. Arnall, Golden & Gregory*, 593 F.2d 642, 645 (5th Cir.), *cert. denied*, 444 U.S. 956, 62 L. Ed. 2d 328, 100 S. Ct. 436 (1979); *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 100, 68 L. Ed. 2d 693, 101 S. Ct. 2193 (1981).

1 as the record establishes here -- are sufficient "good cause" to grant relief from scheduling
2 orders (and even final judgments) under well established Ninth Circuit authorities.

3
4 **(2) Plaintiffs Acted With All Reasonable Diligence Under The Circumstances**

5 APA's prior Opposition/Response accused Plaintiffs of not acting with diligence after
6 Katzenbach started failing to return phone calls in August 2018; while also arguing that it
7 would have been too late in any event, since the damage was already done at that point
8 (Katzenbach having apparently failed to comply with the deadline for expert designation in
9 January 2018). Yet, the APA's Opposition/Response also argued that Mr. Katzenbach
10 remained active in this case -- "through at least June 2018, when he succeeded in defeating
11 Defendant APA's Motion in Limine." (APA's Opp./Resp. Dkt. No. 153 at 5:17-18.) Indeed,
12 this Court may take judicial notice that Mr. Katzenbach participated in a telephonic Case
13 Management Conference on August 2, 2018 (Dkt. No. 145) and (in the related case 3:17-cv-
14 01160-RS - Dkt. 84) on December 20, 2018.

15
16 Plainly, the standard of care that APA wishes to impute to Plaintiffs -- a group largely
17 comprised of currently-employed commercial airline pilots (lacking both legal training and the
18 spare time to spend constantly monitoring the progress of the case and Mr. Katzenbach's every
19 move) borders on the absurd. By the APA's standard, Plaintiffs lacked diligence because they
20 relied upon their well-qualified counsel, the same highly experienced attorney who had been
21 approved to act as class counsel by this Court with the APA's recommendation, who assured
22 Plaintiffs that the case was "on track" in the fall of 2017, and who remained active on the
23 related cases through December 2018, almost a year *after* he had already allowed the critical
24 expert deadlines to lapse without notice to Plaintiffs. Cordes Decl. at ¶4-9. Moreover, it was
25 entirely reasonable for Mr. Cordes to believe Mr. Katzenbach's excuse of not having time to
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1 update Plaintiffs due to an extremely busy litigation practice and a pending trial. (In mid-2018,
 2 Mr. Katzenbach similarly informed the Court that his time was being consumed by litigating a
 3 case in Los Angeles that was “eating [him] alive” (Dkt. No. 141 - Hearing Transcript of June
 4 21, 2018 at 39:9) and which was set for trial in early 2019.)

5
 6 Holding lay plaintiff to a standard under which they could not reasonably rely on their
 7 own counsel under such circumstances would be as unrealistic as it is ridiculous and there are
 8 no known authorities remotely supporting imposition of such a standard, and particularly not in
 9 the class action context. Class action plaintiffs are not required to act as their own attorneys;
 10 nor are they required to retain independent counsel to monitor class counsel for any potential
 11 lapses at every step of the litigation. The Plaintiffs here did they best they could reasonably be
 12 expected to under the rather unusual facts of this case.

13
 14 One of the cases relied upon by the APA in support of its previous Opposition/Response
 15 (Dkt. No. 153) was *Plum Healthcare Group, LLC v. One Beacon Prof. Ins.*, Case No. 15-cv-
 16 2747-W-MDD, 2017 BL 134829, at *1-*4 (S.D. Cal. April 24, 2017)(“ *Plum Healthcare*”). As
 17 the *Plum Healthcare* decision is apparently not available on Westlaw, it was attached as Ex. B
 18 to the Declaration of Mr. Rosenthal filed in support of the APA’s prior Opp./Resp. (Dkt. No.
 19 153-1 pages 13-17).

20
 21 Although *Plum Healthcare* is distinguishable because (1) it did not involve a class
 22 action (and therefore had no reason to discuss class-action specific issues such as the
 23 constitutionally-required adequacy of representation of absent class members nor the Court’s
 24 continuing responsibility to oversee class counsel), and (2) did not involve “gross negligence”
 25 *id.* at *3 (“Selman's performance does not amount to gross negligence”); the case nevertheless
 26 offers some guidance for a Rule 16 motion for relief from a scheduling order. There, the
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 28

defendants' counsel argued that their prior counsel were so negligent that the defendants had been "essentially abandoned and left without representation." *Id.* at *1. As noted above, the Magistrate Judge disagreed that prior counsel's conduct constituted "gross negligence," but noted that:

Under Ninth Circuit precedent, "a client is ordinarily chargeable with his [prior] counsel's negligent acts." *Community Dental Servs. v. Tani*, 282 F.3d 1164, 1168 (9th Cir. 2002); and *see Link v. Wabash R.R. Co.*, 370 U.S. 626, 633-34, 82 S. Ct. 1386, 8 L. Ed. 2d 734 (1962). Courts must distinguish, however, between "a client's accountability for his counsel's neglectful or negligent acts-too often a normal part of representation-and his responsibility for the more unusual circumstances of his attorney's extreme negligence or egregious conduct." *Id.*;

...
Parties may be able to satisfy the "good cause" requirement of Rule 16(b)(4) when they can show that prior counsel's actions amount to "gross negligence or abandonment." *See, e.g., Matrix Motor Co., Inc. v. Toyota Jidosha Kabushiki Kaisha*, 218 F.R.D. 667,674 (C.D. Cal. 2003).

Plum Healthcare at *2-*3. The *Matrix* decision cited in *Plum Healthcare* noted "[i]f, on the other hand, it has shown that its lawyers were guilty of gross negligence or abandonment, then, applying *Johnson* and *Tani*, a finding of extraordinary circumstances or good cause, justifying a modification of the scheduling order, would be warranted." *Matrix Motor Co., Inc.*, 218 F.R.D. at 674.

In *Tani*, 282 F.3d at 1170 (9th Cir. 2002) the Ninth Circuit had joined the majority of the other circuits to hold that an attorney's gross negligence is an extraordinary circumstance that is a ground for equitable relief under Rule 60(b)(6)). In *Tani*, among other failings, the defendant's lawyer failed to file a written memorandum in opposition to the plaintiff's motion for a default. After the default was entered, the defendant sought equitable relief, which was denied by the District Court for the identical reasons previously urged by the APA here: the

1 District Court denied relief, reasoning that “the acts and omissions of counsel . . . were
2 chargeable to Tani.” *Id.* at 1167. On appeal, the Ninth Circuit reversed, holding “gross
3 negligence by a party’s counsel may constitute ‘extraordinary circumstances’ under Rule
4 60(b)(6).” *See, also, Moore v. U.S.* (9th Cir. 2008) 262 Fed.Appx. 828, 829 (“Here, the
5 attorney ‘virtually abandoned’ the Moores . . . Because the attorney’s actions amounted to
6 gross negligence, the district court erred in denying relief under Rule 60(b)(6).”)
7

8 Significantly, the Ninth Circuit has indicated that it is not necessary for a lawyer to
9 completely abandon the client in order to sever the agency relationship - the theory under
10 which which the client may be answerable for the attorney’s acts of ordinary negligence. The
11 attorney in *Tani*, for example, appeared on behalf of his client at a preliminary case
12 management conference and a hearing, but was held to have “virtually abandoned” his client
13 for purposes of issuing Rule 60(b) relief. *Tani*, 282 F.3d 1164, 1170 (“Salmonsén virtually
14 abandoned his client by failing to proceed with his client’s defense despite court orders to do
15 so.”)
16

17 Here, because of Mr. Katzenbach’s repeated failures to communicate, his failure to
18 comply with the expert discovery deadlines, his failure to respond to Plaintiff’s prior motion
19 regarding his adequacy to continue representing the class, his continuing failure to turn over his
20 file to plaintiff’s new counsel following repeated requests and even *after* enlisting the
21 assistance of the State Bar (McGonigle Decl. at ¶2), it is apparent that he abandoned the case
22 and has been grossly negligent.
23

24 Given these facts, as well as in view of all of the equities including the prejudice to the
25 rights of absent class members; Katzenbach’s misleading statement to plaintiffs that the case
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1 was still “on track” in the fall of 2017,⁴ and the APA’s own silence while knowing he failed to
 2 meet the expert discovery cut-off deadlines, Mr. Katzenbach’s abject abandonment and other
 3 conduct provides sufficient “good cause” for relief from any scheduling orders, just as it would
 4 have constituted Rule 60(b) grounds for relief from a final judgment under *Tani*.

5
 6 Additionally, because Plaintiffs are *still* hamstrung by their lack of access to Mr.
 7 Katzenbach’s litigation file, an Order should also issue him to produce those records to
 8 plaintiffs’ new counsel forthwith, and a further mediation date should be set once Plaintiffs
 9 have access to the documents they need to prepare a mediation brief.

10 V. CONCLUSION

11
 12 For all of the above-stated reasons, it is respectfully requested that this Court grant the
 13 relief requested by this Motion.

14 DATED: February 28, 2019

15
 16 TIMOTHY D. MCGONIGLE PROF. CORP.

17
 18 By: /s/ Timothy D. McGonigle
 Timothy D. McGonigle

19
 20 BRAUNSTEIN & BRAUNSTEIN, P.C.

21 By: /s/ George Braunstein
 22 George Braunstein

23 Attorneys for Plaintiffs, American Airlines Flow-Thru Pilots
 24 Coalition, Gregory R. Cordes, Dru Marquardt, Doug Poulton,
 25 Stephan Robson and Philip Valente III

26
 27 ⁴ Indeed, this misleading assurance would by itself justify relief under *Tani*, 282 F.3d at 1167
 28 (noting that the attorneys “represented to Tani that the litigation was proceeding smoothly” and
 that the client relied upon those assurances).

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Pilots Coalition, Gregory R. Cordes, Dru Marquardt,
Doug Poulton, Stephan Robson and Philip Valente III

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

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
Plaintiff,

v.

ALLIED PILOTS ASSOCIATION and
AMERICAN AIRLINES, INC.
Defendants.

Case No.: 3:15-cv-03125 RS

DECLARATION OF GREGORY CORDES
IN SUPPORT OF MOTION TO CONTINUE
TRIAL DATE ETC.

DATE: April 4, 2019
TIME: 1:30 p.m.
CTRM: 3. 17th Floor

DECLARATION OF GREGORY R. CORDES

I, GREGORY CORDES, declare under penalty of perjury:

1. I am a Plaintiff in this action, and a representative for the Class. The following facts are known personally to me except to the extent otherwise indicated. If called as a witness, I could and would competently testify to the truth thereof under oath. I submit this declaration in support of plaintiffs' Motion to Continue the Trial Date, Discovery Cut-Off and Expert Deadlines and for the issuance of an Order requiring former Class Counsel Christopher W. Katzenbach, Esq. ("Katzenbach") to turn over his litigation file regarding this case to successor counsel.

2. I am a pilot for American Airlines. Presently I am serving as a First Officer on a Boeing 777 aircraft. I am a former "American Eagle" pilot and a named plaintiff in this action.

3. I first met Katzenbach in January of 2002, as he helped Gavin Mackenzie ("Mackenzie") and I form the American Eagle Pilots Association ("AEPA") and drafted the bylaws for the organization.

4. In September of 2014, Mackenzie and I contacted Katzenbach to represent the AAFTPC (a DBA of the AEPA) as it became apparent that the Allied Pilots Association, in keeping with past practice was preparing to give away the Flow-Through pilots' AA seniority rights in the Seniority List Integration negotiations. I was impressed by Katzenbach's credentials and, at least during the early years of this litigation, had no reason to doubt that he was adequately representing my interests and those of the absent class members after he was appointed to serve as class counsel. Katzenbach indicated to me in the fall of 2017 that the litigation was "on track."

1 5. I have been one of the most active and involved of the named plaintiffs --
2 including submitting a twenty page declaration in opposition to Defendant's Motion for
3 Summary Judgment in 2016 - see Docket No. 56. Yet, because I am currently employed as a
4 commercial airline pilot (as are most of my co-plaintiffs) I lack both the free time and the
5 training that would be required in order to closely monitor all aspects of this lawsuit. Instead I
6 placed my reliance upon Mr. Katzenbach to do so, and had no inkling that there was any
7 shortcomings in his representation until he started becoming difficult to reach in August 2018.
8 Even then, I believed that he was still competently performing his other obligations as class
9 counsel and am informed and believe that he made a telephonic appearance at a status
10 conference in a related case in December 2018.

11
12 6. Mr. Katzenbach never informed me, nor to my knowledge did he inform any of
13 the other plaintiffs, that there was a deadline for expert witness disclosure in this action under
14 which plaintiffs were required to designate experts on or before January 30, 2018. The first I
15 became aware of this deadline was in January 2019. Because Mr. Katzenbach never mentioned
16 the deadline, I did not know that he had allowed it to lapse without designating an expert until I
17 learned that had occurred through other means in January 2019. Nor, to my knowledge, did
18 any of the other plaintiffs know of Mr. Katzenbach's failure to designate an expert until
19 January 2019, and even then, we did not learn that information from Mr. Katzenbach, who has
20 remained effectively incommunicado since August 2018. I attempted to contact Mr.
21 Katzenbach by telephone and email more than 15 times during the latter half of 2018 without
22 being able to obtain any substantive information from him regarding the case or get any
23 questions answered. On at least one occasion in the latter half of 2018, I managed to actually
24 reach Mr. Katzenbach by phone, but at that time he informed me he did not have time to get
25 into a substantive discussion involving this case because he was involved in another case that
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1 was consuming all of his time and which was set for trial. For that reason, I believed his non-
2 responsiveness was due to a busy trial schedule and not because he was abandoning our case.
3 After growing concerned by Mr. Katzenbach's failure to respond to calls, I reviewed part of the
4 PACER docket in December of 2018 and I became aware that Mr. Katzenbach had signed off
5 on language in a case management document in a related case that was factually incorrect.
6 When he would not respond to our attempts to communicate with him after that, it became
7 clear that we needed to take immediate action to protect the cases which we did by retaining
8 new counsel.
9

10 7. Starting in mid-2018, Katzenbach stopped responding to my telephone calls and
11 emails, and I am informed and believed that he similarly failed to respond to co-plaintiff Gavin
12 Mackenzie's repeated efforts to obtain answers to questions about this case. As far as I can tell,
13 he has completely abandoned this case without making any effort to protect the rights of the
14 plaintiffs.
15

16 8. I had expected Katzenbach to retain the services of an expert witness, Mr.
17 Artemas Keitt "Kit" Darby, III, an aviation industry expert for purposes of providing expert
18 testimony on behalf of the class prior to the expiration of the deadline for designation of expert
19 witnesses. On or about January 14, 2019, I spoke to Mr. Darby and learned that he had
20 communications regarding the case with Katzenbach in 2016, but was never retained. I am
21 informed and believe that Katzenbach not only did not retain Mr. Darby, but failed to designate
22 any expert witness prior to the expiration of the deadline, and has not sought relief from this
23 Court for that lapse. In the meantime, I have retained Mr. Darby and have paid him his
24 retainer. However, I do not have access to all of the information that Mr. Darby has requested
25 and need to review the file to determine if Katzenbach even obtained that information.
26
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1 Unfortunately, Katzenbach has failed to provide the requisite information or any access to his
2 file.

3 9. Mr. Katzenbach never informed me that he had missed any deadlines with
4 respect to this litigation or the related cases. I am informed and believe that he remained
5 active in representing me and the other plaintiffs as late as December 2018 when he apparently
6 made a telephonic appearance at a case management conference in a related case.
7

8 10. Plaintiffs will be seriously prejudiced unless relief from the expert and discovery
9 deadlines and trial date is granted in that we will be unable to put on a case for damages in the
10 absence of the information that we need to provide to our expert. To the extent that such
11 information cannot be obtained from Mr. Katzenbach (which seems increasingly likely), it will
12 need to be obtained from defendant APA and/or third parties.
13

14 I declare under penalty of perjury under the laws of the United States and the State of
15 California that the foregoing is true and correct.
16

17 Dated this February 27, 2019 at Morro Bay, California.

18
19
20 By: 

Gregory R. Cordes

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Attorneys for Plaintiffs, American Airlines Flow-Thru
 Pilots Coalition, Gregory R. Cordes, Dru Marquardt,
 Doug Poulton, Stephan Robson and Philip Valente III

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

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,

v.

ALLIED PILOTS ASSOCIATION and
 AMERICAN AIRLINES, INC.
 Defendants.

Case No.: 3:15-cv-03125 RS

DECLARATION OF TIMOTHY
 MCGONIGLE IN SUPPORT OF MOTION
 TO CONTINUE TRIAL DATE ETC.

DATE: April 4, 2019
 TIME: 1:30 p.m.
 CTRM: 3. 17th Floor

DECLARATION OF TIMOTHY MCGONIGLE

I, TIMOTHY MCGONIGLE, declare under penalty of perjury:

1. I am an attorney for Plaintiffs American Airlines Flow-Thru Pilots Coalition, Gregory R. Cordes, Dru Marquardt, Doug Poulton, Stephan Robson and Philip Valente III in this action. I am an attorney at law duly licensed to practice before this Court and all of the courts of the State of California. I am submitting this declaration in support of plaintiffs' Motion to Continue the Trial Date, Discovery Cut-Off and Expert Deadlines and for the issuance of an Order requiring former Class Counsel Christopher W. Katzenbach, Esq. ("Katzenbach") to turn over his litigation file regarding this case to successor counsel. I have personal knowledge of the following matters, except to the extent otherwise indicated. If called as a witness, I could and would competently testify to the truth thereof under oath.
2. Attached hereto as Exhibit "A" is a true and correct copy of an email I caused to be sent to counsel for Defendant APA's counsel as part of the meet and confer process.
3. On March 22, 2019, I spoke on a conference call with counsel for Defendant APA and asked whether they would stipulate to a 120 day trial continuance, to reopen discovery, to permit belated expert designation and expert discovery, and to request that this Court require Mr. Katzenbach to turnover his client files. While the APA's counsel did not object to requesting the Court's assistance obtaining the client file from Mr. Katzenbach, agreed to exchange certain documents, and would have agreed to a 60 day trial continuance, they would not consent to a 120 day trial continuance or the other relief from deadlines sought by this motion.

1 4. After being contacted by plaintiff Gregory R. Cordes (“Cordes”) and Gavin
2 Mackenzie (“Mackenzie”) the president of plaintiff unincorporated association American
3 Airlines Flow-Thru Pilots Coalition in January 2014, I began to attempt to communicate with
4 Mr. Katzenbach regarding his representation of the named plaintiffs and the absent class
5 members. Thus far I have been unable to speak with Mr. Katzenbach, have been unable to
6 obtain his file, and have had no response from him to the letter I caused to be sent to the State
7 Bar of California (seeking the State Bar’s assistance in obtaining his file) on or about January
8 15, 2019.

10 5. A true and correct copy of the postcard returned by the State Bar acknowledging
11 receipt of that letter is attached hereto as Exhibit “B”.

12 6. On January 14, 2019, I spoke with Mr. Artemas Keitt “Kit” Darby, III the
13 aviation industry damages expert who the plaintiffs had believed would be retained for
14 purposes of providing expert testimony in this action. Mr. Darby indicated that he had not
15 been retained by Mr. Katzenbach. In fact, Mr. Darby was not retained by anyone on behalf of
16 plaintiffs until January 2019. I am informed and believe that Mr. Katzenbach failed to
17 designate any expert prior to the court-ordered deadline for expert designation and has thereby
18 damaged the interests of the class without ever notifying the plaintiffs of his lapse in this regard
19 or of the fact that there was a January 30, 2018 deadline for expert designation.

21 7. More time is needed to prepare this case for trial. In particular, given an
22 intervening heavy trial calendar this summer and the necessity for obtaining further information
23 for purposes of Mr. Darby’s expert analysis, in order to adequately prepare this case for trial
24 plaintiffs reasonably require an additional 120 days from the currently-set trial date, and need
25 to reopen discovery to obtain damage documents necessary for Mr. Darby’s analysis. Because
26
27

we have been unable to obtain, much less review, Mr. Katzenbach's litigation files it is unclear whether all of the information required has already been obtained by Mr. Katzenbach, but, given his other failings, that seems very unlikely. As a consequence, plaintiffs will need to conduct some additional discovery on the issues of damages and, if relief from the expert cut-off dates is granted, on the APA's expert, should one or more be designated.

Dated this February 28, 2019 at Los Angeles, California.



By: _____
Timothy D. McGonigle

EXHIBIT A

Fax: [888.266.9410](tel:888.266.9410)



From: Timothy McGonigle

Sent: Thursday, February 21, 2019 1:52 PM

To: Steven Hoffman

Cc: George Braunstein; Jeffrey B. Demain (jdemain@altshulerberzon.com); Danny M. Rosenthal; Nari E. Ely

Subject: Re: Flow Throught Pilot Litigation

Our proposal for meet and confer purposes pursuant to the Court's order that we meet and confer is that the parties agree as follows:

1. Move the Trial date for four months;
2. Permit Plaintiffs until March 14, 2019 to oppose the motion for judgment on the pleadings.
3. Reopen discovery for a period of six months, including specifically to produce the following documents and conduct limited depositions:
 - a. An exchange of damage documents.
 - b. Pilot Seniority Lists for AA, AE, USA, and TWA - pre-merger and post-merger for each group for the period before, during, and after the period in question.
 - c. the Pilot Contracts with all side letters and agreements for each group for the period before, during, and after the period in question.
 - d. documents relating to the historical pay rates for AA, AE, USA, and TWA pilots for each group for the period before, during, and after the period in question.
 - e. documents relating to the monthly and system bid Awards for all aircraft, seats and bases held by any pilot involved in AA, TWA, USA, or AE for each group for the period before, during, and after the period in question.
 - f. documents relating to the base rosters that contain any pilots involved at AA, TWA, USA, or AE for each group for the period before, during, and after the period in question.
 - g. documents relating to the junior man-in-seat list for AA & AE for each group for the period

before, during, and after the period in question.

h. documents relating to the pay records for each pilot involved at each airline for each group for the period before, during, and after the period in question.

i. documents relating to the payment records for each pilot who benefited from the *equity distribution**;

j. documents relating to the longevity date used to calculate the *equity distribution** payout for each pilot;

k. documents relating to the Preferential Bidding System average hours flown for all aircraft, seats and bases held by any pilot involved AA, TWA, USA, or AE for each group for the period before, during, and after the period in question.

l. Depositions of the Defendant's persons most knowledgeable regarding Plaintiffs' claims including but not limited to the specific designees of Defendants regarding how decisions were made as to how flow-thru pilots seniority was determined, and regarding how it was decided that American Eagle flow thru pilots would not be included in the Letter G (restoration of two years longevity) negotiations.

m. Permit the Plaintiffs to obtain the Defendants' internal non-privileged documents relating to the arbitrations.

4. Provide to us copies of all discovery and responses submitted by either side to date;
5. Provide a copy of the Rule 26 disclosures as well as what documents were produced;
6. Relief from the expert designation and permit Plaintiff to submit a damage expert report and permit depositions of experts, if necessary.
7. Request that the Court order that Katzenbach turn over all the case files in his possession.

**equity distribution* (The equity distribution was the consideration given to the APA by American Airlines in their Chapter 11 Bankruptcy proceeding in 2013 for distribution to the pilots pursuant to the 2013 Arbitration decision.)

[Quoted text hidden]

EXHIBIT B

OFFICE OF CHIEF TRIAL COUNSEL/INTAKE
The State Bar of California
845 S. Figueroa Street
Los Angeles, CA 90017-2515

Name

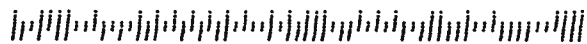
Timothy D McGonigle Esq.
obo Greg Cordes & Gavin MacKenzie
1880 Century Park E Ste 516
Los Angeles, CA 90067

Street

City

State

Zip



We have received your complaint against a California attorney and have assigned it the number shown below. We will contact you when our evaluation of your matter is complete.

Thank you for your patience.

OFFICE OF CHIEF TRIAL COUNSEL/INTAKE

Inquiry # _____

19-11076

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Attorneys for Plaintiffs, American Airlines Flow-Thru
 Pilots Coalition, Gregory R. Cordes, Dru Marquardt,
 Doug Poulton, Stephan Robson and Philip Valente III

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

AMERICAN AIRLINES FLOW-THRU
 PILOTS COALITION, et al.,
 Plaintiffs,
 v.
 ALLIED PILOTS ASSOCIATION et al.
 Defendants.

Case No.: 15-cv-03125 RS

[PROPOSED] ORDER GRANTING
 PLAINTIFF'S MOTION TO CONTINUE
 TRIAL DATE, DISCOVERY CUT-OFF
 AND EXPERT DEADLINES AND FOR AN
 ORDER REQUIRING MR. KATZENBACH
 TO TURNOVER LITIGATION FILE

Upon consideration of the Motion to Continue Trial Date and for other relief brought by
 Plaintiffs, American Airlines Flow-Thru Pilots Coalition, Gregory R. Cordes, Dru Marquardt,
 Doug Poulton, Stephan Robson and Philip Valente III (collectively, "Plaintiffs"), all papers
 filed in connection with the Motion, the Court's records and files of this case and of the related
 case (17-cv-01160-RS) and oral argument as deemed necessary, and for good cause shown, the

1 Court hereby orders as follows:

2 1. Plaintiffs' Motion is GRANTED;

3 2. Trial shall be continued until _____, 2019 with a final pre-trial conference to take
4 place on _____, 2019;

5 3. The existing discovery cut-off and expert designation/discovery dates shall be
6 vacated;

7 4. The parties shall have until _____ to conduct further non-expert discovery;

8 5. On or before _____, 2019, the parties will designate experts in accordance with
9 Federal Rule of Civil Procedure 26(a)(2);

10 6. On or before _____, 2019, the parties will designate their supplemental and
11 rebuttal experts in accordance with Federal Rule of Civil Procedure 26(a)(2);

12 7. On or before _____, 2019, all discovery of expert witnesses pursuant to Federal
13 Rule of Civil Procedure 26(b)(4) shall be completed;

14 8. Former Class Counsel Christopher Katzenbach is ordered to provide a copy of his
15 litigation file to plaintiff's new counsel forthwith; and

16 9. A further Case Management Conference regarding mediation shall take place on
17 _____, 2019.

18 IT IS SO ORDERED.

19 Dated: _____, 2019

20
21
22
23 _____
24 HON. RICHARD SEEBORG
25 UNITED STATES DISTRICT JUDGE
26
27
28