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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

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

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

**DEFENDANT ALLIED PILOTS
 ASSOCIATION'S REPOSE TO
 PLAINTIFFS' MOTION FOR
 APPOINTMENT OF THE LAW OFFICE OF
 TIMOTHY MCGONIGLE P.C. AND
 BRAUNSTEIN & BRAUNSTEIN, P.C. AS
 CLASS COUNSEL**

Date: N/A
 Time: N/A
 Courtroom: N/A
 Judge: Hon. Richard Seeborg

Defendant Allied Pilots Association (“APA”) hereby responds to Plaintiffs’ Motion for Appointment of the Law Office of Timothy McGonigle P.C. and Braunstein & Braunstein, P.C. as Class Counsel (“Motion”), Docket No. 156. APA takes no position on whether Plaintiffs’ Motion should be granted, except to state that the Court should not resolve it until it determines whether the plaintiff class should be decertified, which would moot Plaintiffs’ motion to appoint new class counsel. *See* APA’s Opposition to Plaintiffs’ Motion to Continue Trial Date, Discovery Cut-Off and Expert Deadlines and for an Order Requiring Mr. Katzenbach to Turnover [Sic] Litigation File, filed herewith, at 16. Further, lest APA someday be accused of having “recommended” the appointment of the Law Office of Timothy McGonigle P.C. and Braunstein & Braunstein, P.C. as class counsel, or be again accused of violating some duty of candor with regard to class and/or the Court, *see* Docket No. 155 at 5, APA makes the following observations.

1. Although Plaintiffs’ new counsel testify generally to having experience in labor and employment litigation, none of their three lawyers who submitted supporting declarations testified to having any experience actually litigating cases falling within the two particular areas of labor law that are the subject of this case: litigation under the Railway Labor Act and litigation of claims for breach of the duty of fair representation. None of Plaintiffs’ new counsel even reference any familiarity at all with the Railway Labor Act. And although Clark Anthony Braunstein and George G. Braunstein claim conclusorily to be “familiar with” the duty of fair representation, *see* Declaration of Clark Anthony Braunstein in Support of Motion for Approval as Class Counsel (“Clark Anthony Braunstein Decl.”), Docket No. 156-1 ¶ 6; Declaration of George G. Braunstein (“George G. Braunstein Decl.”), Docket No. 156-3 ¶ 8, neither of them testifies to having actually litigated any claims for breach of that duty. The third of Plaintiffs’ new counsel, Timothy McGonigle, does not even testify conclusorily to any familiarity with, much less actual experience litigating, duty of fair representation claims. *See* Declaration of Timothy McGonigle (“McGonigle Decl.”), Docket No. 156-2.¹ Notwithstanding those

¹ Rather, George Braunstein’s experience seems largely to lie in non-labor matters in the entertainment industry. *See* George G. Braunstein Decl. ¶¶ 6, 7. And Mr. McGonigle’s background is in “business litigation and transactional matters” and “legal malpractice by lawyers.” McGonigle Decl. ¶¶ 5, 7.

1 facts, they identify as one of the factors the Court must consider in appointing class counsel, “‘counsel’s
2 knowledge of the applicable law’” Motion at 2 (quoting Fed. R. Civ. P. 23(g)(1)(A)(i)-(iv)).

3 2. It is unclear from their declarations that Plaintiffs’ new counsel have much experience
4 representing plaintiff classes in class action litigation, and it appears that they have no such experience in
5 federal court. Clark Anthony Braunstein testifies to having class action experience in only two cases,
6 both of which were state court cases, and it is unclear from his declaration how far either case
7 progressed, much less whether either case went to trial. Clark Anthony Braunstein Decl. ¶ 4. George G.
8 Braunstein does not testify to any personal experience representing plaintiff classes in class action
9 litigation, but only generally that his “law firm” was appointed as class counsel in the same two state
10 court cases discussed by Clark Anthony Braunstein. George G. Braunstein Decl. ¶ 4. Mr. McGonigle
11 does not testify to any experience, either personally or on the part of his law firm, representing plaintiff
12 classes in any class action litigation, state or federal. McGonigle Decl. Notwithstanding Plaintiffs’ new
13 counsels’ paucity of experience representing plaintiff classes in class action litigation, they identify as
14 one of the factors the Court must consider in appointing class counsel, “‘counsel’s experience in
15 handling class actions’” Motion at 2 (quoting Fed. R. Civ. P. 23(g)(1)(A)(i)-(iv)).

16 3. Plaintiffs’ new counsel presumably seek to demonstrate their familiarity with the claims
17 remaining for trial in this case by stating that “plaintiffs are seeking a remedy for two claims,” and then
18 describing the claims in detail as one claim regarding length of service credit for pay purposes, and the
19 second regarding “the current seniority list integration proceedings” Clark Anthony Braunstein
20 Decl. ¶ 7. They are apparently unaware that (a) this Court granted summary judgment for APA on the
21 first portion of Plaintiffs’ first claim (*id.* ¶ 7(a)(1)) and on Plaintiffs’ second claim regarding the
22 seniority list integration proceeding (*id.* ¶ 7(b)) on June 16, 2016, in its Order re Motions for Summary
23 Judgment and Class Certification, Docket No. 67; (b) those claims therefore no longer remain in this
24 case; (c) the seniority integration proceeding that was the subject of Plaintiffs’ second claim was
25 concluded on September 6, 2016 by the issuance of an arbitration award; and (d) that arbitration award is
26 the subject of Plaintiffs’ challenge in the related case, *American Airlines Flow-Thru Pilots Coalition, et*
27 *al., v. Allied Pilots Association, et al.*, N.D. Cal. Case No. 3:17-cv-01160-RS, in which Plaintiffs’ new
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1 counsel entered their appearance on February 25, 2019. These errors result from the fact that Clark
 2 Anthony Braunstein appears to have copied Paragraph 7 of his declaration word-for-word from
 3 Paragraph 6 of Mr. Katzenbach's March 17, 2016 Declaration, Docket No. 50-1, which was filed prior to
 4 the Court's summary judgment decision (at a time when all of the described claims were still in the
 5 case), apparently without performing any inquiry into the current status of the claims in the case.
 6 Notwithstanding Plaintiffs' new counsels' lack of familiarity with the state of the underlying facts and
 7 with the claims remaining to be tried in this case, they identify as one of the factors the Court must
 8 consider in appointing class counsel, "counsel's work 'in identifying or investigating potential claims in
 9 the action'" Motion at 2 (quoting Fed. R. Civ. P. 23(g)(1)(A)(i)-(iv)).²

10 Dated: March 14, 2019.

Respectfully submitted,

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 26 ² When Mr. Katzenbach applied for appointment as class counsel, as part of Plaintiffs' motion
 27 for class certification, he supported that application with seemingly impressive credentials in all of the
 28 factors discussed above in the text. *See* Docket No. 50-1 ¶¶ 1-7. Mr. Katzenbach also testified that he
 had previously represented the American Eagle pilots. *See id.* ¶ 4.