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 and the Class

**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.: 3:15-cv-03125 RS
 [Assigned to Judge Richard Seeborg

 PLAINTIFFS' UNOPPOSED EX PARTE
 APPLICATION FOR AN EXTENSION
 OF EXPERT WITNESS DEADLINES

 [DECLARATION OF TIMOTHY
 MCGONIGLE FILED UNDER
 SEPARATE COVER]

 [NO HEARING REQUESTED]

1 **TO THE COURT, ALL PARTIES AND COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that Plaintiffs American Airlines Flow-Thru Pilots
3 Coalition, Gregory R. Cordes, Dru Marquardt, Doug Poulton, Stephan Robson and
4 Philip Valente III, individually and on behalf of a class of similarly situated pilots
5 (collectively, “Plaintiffs”) will and hereby do move ex parte for an order extending all
6 expert witness deadlines as agreed by the parties.
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8 Pursuant to this Court’s Order dated April 18, 2019 [Dkt. No. 162], the Court
9 reset the expert witness deadlines as follows:
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- 11 • Deadline for expert witness disclosure: May 17, 2019.
12 • Any supplemental and rebuttal experts shall be designated no later than
13 June 7, 2019;
14 • Expert discovery shall be completed by June 28, 2019.
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18 The same Order required the parties to meet and confer regarding the need for
19 “certain narrowly targeted discovery” in the event Plaintiffs believe they can make a
20 particularly strong showing of the need for such discovery.
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22 Plaintiffs **do** believe they can make a strong showing of the need for certain
23 narrowly targeted discovery, and, in fact, believe that such discovery is necessary in
24 order to adequately prosecute the case on their own behalf and on behalf of the absent
25 class members. Declaration of Timothy McGonigle (“McGonigle Decl.”) at ¶2.
26 Accordingly, Class Counsel Mr. McGonigle has requested certain discovery from
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1 Defendant's counsel and counsel for both sides been engaged in meet and confer efforts
2 with respect to such discovery. *Id.*, at ¶3. Defendant's counsel has agreed to produce
3 documents by either May 22 or 23, 2019, approximately one week beyond the current
4 expert witness disclosure date of May 17, 2019. *Id.* These documents will be necessary
5 for Plaintiff's expert, Keitt "Kit" Darby, to prepare his damage report. *Id.*

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7 Furthermore, Class Counsel believes that a further extension of the expert
8 discovery period is required in order to first obtain discovery and that both the
9 extension and discovery are critically necessary to adequately represent the
10 interests of the absent class members (*id.*, at ¶¶2-3) which representation is
11 constitutionally mandated. *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797,
12 812, 105 S.Ct. 2965, 2974, 86 L.Ed.2d 628, 642). Although further meet and
13 confer efforts will occur with respect to other requested documents, the
14 documents that the defense has agreed to produce are necessary for Plaintiff's
15 expert to prepare his damage report. Mr. McGonigle spoke to Mr. Darby on
16 Wednesday, May 15, 2019, after he spoke to defense counsel in connection with
17 their meet and confer efforts and advised Mr. Darby as to what documents the
18 defense was willing to produce pursuant to the discussions, and Mr. Darby felt
19 that with the agreed production to be produced by defense counsel on or before
20 May 24, 2019, he will be able to prepare the damage report within thirty days of
21 that date. Mr. Darby has advised Mr. McGonigle that if any difficulties do arise
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wherein he may need some additional information he will so notify Mr. McGonigle and Mr. McGonigle will reach out to defense counsel to further meet and confer on those issues. The meet and confer efforts are continuing with counsel but those efforts will not impact Plaintiffs' ability to meet the expert report deadline if continued by the court, as requested. (*Id.*, at ¶3),

For these reasons, and because Defendant's counsel indicated in a teleconference on May 15, 2019 that Defendant would not oppose a thirty day extension of the expert witness disclosure deadline from the date that Defendant provides the promised documents to Plaintiffs (*id.*, at ¶3), Plaintiffs respectfully submit that there is good cause to extend all applicable expert deadlines -- as agreed by the parties -- so that the deadlines would be as follows:

	Current Deadline	Proposed Deadline
Deadline for expert witness disclosure	May 17, 2019	June 23, 2019
Deadline to designate any supplemental and rebuttal experts	June 7, 2019	July 29, 2019
Deadline for completion of expert discovery	June 28, 2019	August 19, 2019

This application is based on this Notice, the accompanying Memorandum of Points and Authorities, the accompanying Declaration of Timothy McGonigle, Esq., any reply papers filed by Plaintiff, all other papers on file in this action, all materials that may be properly considered in connection with this motion, and oral argument at any

1 hearing on this matter.

2 DATED: May 16, 2019

3
4 TIMOTHY D. MCGONIGLE PROF. CORP.

5
6 By: /s/ Timothy D. McGonigle
7 Timothy D. McGonigle

8 BRAUNSTEIN & BRAUNSTEIN, P.C.

9
10 By: /s/ George Braunstein
11 George Braunstein

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

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

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4 The instant *Ex Parte* Application of Plaintiffs American Airlines Flow-Thru
5 Pilots Coalition, Gregory R. Cordes, Dru Marquardt, Doug Poulton, Stephan Robson
6 and Philip Valente III and the Class (collectively, “Plaintiffs”) is necessary to prevent
7 substantial prejudice to Plaintiffs’ ability to prosecute their claims in this action. As this
8 Court is already aware, through no fault of their own, the named Plaintiffs and the Class
9 were abandoned without notice by their own prior attorney Mr. Katzenbach. Following
10 appointment of present counsel as Class Counsel, and this Court’s Order resetting the
11 expert witness deadlines dated April 18, 2019 [Dkt. No. 162], Class Counsel has been
12 engaged in working with named class members and Mr. Darby, the Plaintiffs’ expert, to
13 determine what information is reasonably required in order to prosecute Plaintiffs’ case.
14 McGonigle Decl. at ¶2.

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18 Counsel for both sides have been engaged in a vigorous meet and confer process
19 which culminated in Defendant’s counsel agreeing to produce certain categories of
20 documents not later than May 23, 2019. *Id.*, at ¶3. But, because that proposed date of
21 production is beyond the current deadline for expert disclosures (May 17, 2019), it is
22 apparent that relief from the currently-existing expert deadlines is warranted and
23 Defendant’s counsel has indicated Defendant will not object to a thirty day extension
24 from the time it provides the documents responsive to Plaintiff’s request for production,
25 which is anticipated to take place either May 22 or 23, 2019. McGonigle Decl. at ¶3.

1 Both sides have agreed to the proposed schedule. Id.

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3 **II. FACTUAL AND PROCEDURAL BACKGROUND**
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5 The named plaintiffs in this action are five individual pilots and an association of
6 more than 150 similarly-situated pilots who originally were employed by an airline
7 named “American Eagle”— a collective name for several regional affiliates of
8 American Airlines (“AAL”). In 1997, American Eagle pilots became eligible to
9 become pilots at AAL by virtue of a so-called “Flow-Thru Agreement” - (hereinafter
10 referenced as the “FTP Pilots.”) Plaintiffs contend that defendant Allied Pilots
11 Association (the “APA”) breached its duty of fair representation by, among other things,
12 regularly and repeatedly acting against the interests of the FTP Pilots as to their terms
13 and conditions of employment at AAL, by acting to advance the interests of other pilot
14 groups as to the terms and conditions of employment at AAL contrary to the interests of
15 the FTP Pilots and without taking account of the interests of the FTP Pilots.
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18 As the Court is aware, during the course of this case, former class counsel Mr.
19 Katzenbach abandoned his clients and, among other lapses, is believed to have
20 permitted the originally-set expert deadlines to lapse without designating any experts.
21 On March 8, 2019, this Court issued an Order [Dkt. No. 157] relieving Mr. Katzenbach
22 from his position as class counsel, and vacating the trial date. Following the
23 appointment of Mssrs. McGonigle and Braunstein as new class counsel on April 18,
24 2019 [Dkt. No. 162], and their attempts to meet and confer with Defendant’s counsel
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1 regarding discovery issues, counsel for both sides reached agreement on the scope of a
2 document production. McGonigle Decl. at ¶3. Defendant's counsel would only commit
3 to producing responsive documents by May 22 or 23, 2019, while also indicating that
4 Defendant would not object should Plaintiffs wish to seek an extension of the current
5 expert deadlines based upon an agreed-on schedule. *Id.*

6 7 8 **III. GOOD CAUSE EXISTS TO GRANT THE REQUESTED RELIEF**

9 Plaintiffs are aware that *ex parte* applications are solely for extraordinary relief
10 and are discouraged. However, given extraordinary abandonment of Plaintiffs by Mr.
11 Katzenbach and the urgent need for discovery prior to the lapse of the upcoming expert
12 witness deadlines, there is insufficient time for Plaintiffs to make this request via a
13 regularly noticed motion.

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15 In *Mission Power Eng'g Co. v. Continental Casualty Co.*, 883 F. Supp 488, 492
16 (C.D. Cal. 1995), the court set forth a two-part test to determine whether a moving party
17 is entitled to *ex parte* relief: the moving party must show (1) that its "cause will be
18 irreparably prejudiced if the underlying motion is heard according to regular noticed
19 motion procedures"; and (2) that the moving party is "without fault in creating the crisis
20 that requires *ex parte* relief, or that the crisis occurred as a result of excusable neglect."
21 Both prongs are met here as Plaintiffs will be irreparably harmed should this request be
22 made on regular notice -- as there is insufficient time in which to have a motion heard
23 on regular notice prior to the expiration of the expert disclosure deadline. Furthermore,
24 no party is at fault: Plaintiffs' new counsel has been diligently engaged in working with
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1 Defendant's counsel to narrow the scope of discovery (and discovery disputes);
2 however, after agreement on discovery was reached, Defendant's counsel indicated they
3 would not be able to produce responsive documents prior to the May 17, 2019 existing
4 deadline for expert witness disclosure. McGonigle Decl. at ¶3. But, because
5 Defendant's counsel also indicated they were amenable to an extension for the expert
6 deadlines, good cause exists to grant such a further extension as agreed upon by the
7 parties.
8

9
10 Had Katzenbach not abandoned the class, this relief would never have been
11 required. And, if attorney abandonment is enough to grant Rule 60(b) relief after a final
12 judgment (and it is), it is plainly good cause to grant the short delay in the expert
13 witness schedule sought by Plaintiffs under these circumstances. *See Community*
14 *Dental Servs. v. Tani*, 282 F.3d 1164, 1170 (9th Cir. 2002) *as amended on denial of*
15 *reh'g and reh'g en banc* (Apr. 24, 2002) (where the Ninth Circuit joined the majority of
16 the other circuits to hold that an attorney's gross negligence is an extraordinary
17 circumstance that is a ground for equitable relief under Rule 60(b)(6)).
18

19 IV. CONCLUSION

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21 For all of the above-stated reasons, Plaintiffs respectfully request that an Order
22 issue granting an extension of the current expert deadlines so that the new deadlines
23 would be as follows:
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- 25 • Deadline for expert witness disclosure: **June 23, 2019;**
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- Deadline for designation of any supplemental and rebuttal experts: **July 29, 2019;**
- Completion of expert discovery: **August 19, 2019.**

DATED: May 16, 2019

TIMOTHY D. MCGONIGLE PROF. CORP.

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

BRAUNSTEIN & BRAUNSTEIN, P.C.

By: /s/ George Braunstein
George Braunstein

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

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**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.: 3:15-cv-03125 RS
 [Assigned to Judge Richard Seeborg]

DECLARATION OF TIMOTHY
 MCGONIGLE IN SUPPORT OF
 PLAINTIFFS' EX PARTE
 APPLICATION FOR AN
 EXTENSION OF EXPERT WITNESS
 DEADLINES

[NO HEARING REQUESTED]

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 and the Class 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' Ex Parte Application to Continue Expert Deadlines. 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. Following this Court's Order resetting the expert witness deadlines dated April 18, 2019 [Dkt. No. 162], I have been engaged in analyzing the issues of this case, and working with certain of the named class members and Mr. Keitt "Kit" Darby, the Plaintiffs' damage expert, to determine what information is reasonably required in order to prosecute Plaintiffs' case, including the preparation of his expert report. I firmly believe that Plaintiffs can make a strong showing of the need for certain narrowly targeted discovery, and that such discovery is necessary in order to adequately prosecute the case on behalf of named Plaintiffs and also on behalf of the absent class members.

1 3. Upon making such determination, I reached out to Defendant's
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3 counsel on April 26, 2019, with a list of proposed discovery items. On April 29,
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5 2019, Mr. Rosenthal (counsel for Defendant) responded with several objections
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7 and a request for further information. Thereafter, I engaged in a vigorous attempt
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9 to reduce the requested documents and engage in a further meet and confer
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11 process with Defendant's counsel with the intent of reaching agreement regarding
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13 the scope and timing of discovery. That process culminated in a reduced list of
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15 requests for production, and Defendant's counsel agreeing to produce certain
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17 categories of documents not later than May 23, 2019 (although further meet and
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19 confer efforts will occur with respect to other requested documents).
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21 Fortunately, in view of the pending expert disclosure deadline (currently set for
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23 May 17, 2019), Defendant's counsel also indicated that Defendant will not object
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25 to a thirty day extension from the time it provides the documents responsive to
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27 Plaintiff's request for production, which is anticipated to take place either May 22
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29 or 23, 2019. These documents are necessary for Plaintiff's expert, Kit Darby, to
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31 prepare his damage report. In fact, I spoke to Mr. Darby on Wednesday, May 15,
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33 2019, after I spoke to defense counsel in our meet and confer efforts and advised
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35 him as to what documents they were willing to produce pursuant to our
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37 discussions, and Mr. Darby felt that with the agreed production to be produced by
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39 defense counsel, he expects to be able to prepare his damage report based on the

1 documents that will be produced by defense counsel on or before May 24. Mr.
2 Darby is presently in Portugal on vacation but expects to be able to complete his
3 report upon his return within the thirty day time period that has been requested.
4 He has advised me that if any difficulties do arise wherein he may need some
5 additional information he will so notify me and I will reach out to defense counsel
6 to further meet and confer on those issues. However, at this time I do not expect
7 that to happen. I believe that both the discovery and the extension for the expert
8 disclosure deadlines are necessary in order to provide adequate representation to
9 the named and absent class members. Our meet and confer efforts are continuing
10 with counsel but those efforts will not impact our ability to meet the expert report
11 deadline if continued by the court. During communications with Defendants'
12 counsel, I was informed that Defendant would not object to the new expert
13 deadlines proposed by Plaintiff in this ex parte application, namely, (1) new
14 deadline for expert witness disclosure to be June 23, 2019; (2) new deadline for
15 designation of any supplemental and rebuttal experts to be July 29, 2019; and (3)
16 new deadline for completion of expert discovery to be August 19, 2019.

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I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct to the best of my knowledge and belief.

Dated this May 16, 2019 at Los Angeles, California.

A handwritten signature in black ink, appearing to read "Tim McGonigle". The signature is stylized with a large, looped 'M' and a cursive 'G'.

By: _____
Timothy D. McGonigle

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 and the Class

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

AMERICAN AIRLINES FLOW- THRU PILOTS COALITION, et al., <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> ALLIED PILOTS ASSOCIATION et al. <p style="text-align: center;">Defendants.</p>	Case No.: 15-cv-03125 RS [PROPOSED] ORDER GRANTING PLAINTIFFS' EX PARTE APPLICATION FOR AN EXTENSION OF EXPERT WITNESS DEADLINES
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Upon consideration of the Ex Parte Application for an Extension of Expert

1 Witness Deadlines brought by Plaintiffs, American Airlines Flow-Thru Pilots
2 Coalition, Gregory R. Cordes, Dru Marquardt, Doug Poulton, Stephan Robson
3 and Philip Valente III and the Class (collectively, "Plaintiffs"), all papers filed in
4 connection with the Application, the Court's records and files of this case and
5 oral argument as deemed necessary, and for good cause shown, the Court hereby
6 orders as follows:
7

- 8
- 9 1. Plaintiffs' Ex Parte Application is GRANTED;
 - 10 2. The new deadline for expert witness disclosure shall be: **June 23, 2019;**
 - 11 3. The new deadline for designation of any supplemental and rebuttal
12 experts shall be: **July 29, 2019;**
 - 13 4. The new deadline for completion of expert discovery shall be: **August**
14 **19, 2019.**

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17 IT IS SO ORDERED.

18 Dated: _____, 2019
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22 HON. RICHARD SEEBORG
23 UNITED STATES DISTRICT JUDGE
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