

Timothy D. McGonigle, Esq. (State Bar No. 115979)
TIMOTHY D. MCGONIGLE PROF. CORP.
1880 Century Park East, Suite 516
Los Angeles, California 90067
Telephone: (310) 478-7110
Facsimile: (888) 266-9410
tim@mcgoniglelaw.net

George G. Braunstein, Esq. (SBN 134602)
Clark Anthony Braunstein, Esq. (SBN 278023)
BRAUNSTEIN & BRAUNSTEIN, P.C.
11755 Wilshire Boulevard, Suite 2140
Los Angeles California 90025
Telephone: (310) 914-4999
george@braunsteinpc.com
clark@braunsteinpc.com

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

**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]
--	---

TO THE COURT, ALL PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Plaintiffs American Airlines Flow-Thru Pilots Coalition, Gregory R. Cordes, Dru Marquardt, Doug Poulton, Stephan Robson and Philip Valente III, individually and on behalf of a class of similarly situated pilots (collectively, “Plaintiffs”) will and hereby do move ex parte for an order extending all expert witness deadlines by approximately one week.

Pursuant to this Court’s Order dated May 17, 2019 [Dkt. No. 163], the Court reset the expert witness deadlines as follows:

- Deadline for expert witness disclosure: June 23, 2019.
- Any supplemental and rebuttal experts shall be designated no later than July 29, 2019;
- Expert discovery shall be completed by August 19, 2019.

This Court had previously ordered the parties to meet and confer regarding the need for “certain narrowly targeted discovery” in the event Plaintiffs believe they can make a strong showing of the need for such discovery [Dkt # 162]. Consistent with that Order, Plaintiffs submitted narrowly targeted informal discovery requests to Defendant Allied Pilots Association (“APA”), seeking very specific types of data and information believed to be maintained by APA, and which is most critically needed by Plaintiffs’ damages expert, Kit Darby. APA agreed to produce some of the requested documents and data by May 23, 2019, and in fact did produce certain requested documents a few

1 days later, on May 28, 2019. Declaration of Timothy McGonigle (“McGonigle Decl.”)
2 at ¶3. Although certain related discovery issues remain to be fully resolved, the parties
3 have worked toward that end in good faith thus far, and continue to meet and confer
4 regarding the few remaining issues. McGonigle Decl. at ¶41. Additionally, APA has
5 recently agreed to produce certain additional documents (expected within the next week,
6 subject to a stipulated protective order submitted concurrently herewith), and has
7 referred Plaintiffs to American Airlines as a possible source for certain documents no
8 longer maintained by APA. *Id.* at ¶4.
9
10

11 Thus, although the parties have made good progress, Plaintiffs request a deadline
12 extension in order to provide time to receive additional documents needed by their
13 damages expert, and to allow their expert adequate time to perform his calculations and
14 prepare his report. *Id.* at ¶6. Indeed, Class Counsel believes that a further extension of
15 the expert discovery and reporting period is critically necessary to adequately represent
16 the interests of the absent class members which representation is constitutionally
17 mandated. *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 812, 105 S.Ct. 2965,
18 2974, 86 L.Ed.2d 628, 642).
19
20

21 Defendant’s counsel has agreed (via email dated June 13, 2019) to not oppose a
22 brief, approximately one-week extension of the current deadline for expert witness
23 disclosure, contingent on corresponding one-week extensions of the deadline to
24 designate supplemental or rebuttal experts, and the deadline for completion of expert
25 discovery. *Id.* at ¶5. We are in agreement with Defendant’s proposal.
26
27
28

Plaintiffs respectfully submit that there is good cause to extend all applicable expert deadlines for approximately one week, resulting in the following deadlines:

	Current Deadline	Proposed Deadline (Next business day after 37 days, which would otherwise fall on a Sunday)
Deadline for expert witness disclosure	June 23, 2019	June 30, 2019
Deadline to designate any supplemental and rebuttal experts	July 29, 2019	August 5, 2019
Deadline for completion of expert discovery	August 5, 2019	August 26, 2019

The parties also ask that the Court sign the Stipulated Protective Order submitted concurrently with this ex parte application in order to avoid any unnecessary delay in APA's production of certain additional documents.

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

1 may be properly considered in connection with this motion, and oral argument at any
2 hearing on this matter.
3

4
5 DATED: June 19, 2019

6
7 TIMOTHY D. MCGONIGLE PROF. CORP.

8 By: /s/ Timothy D. McGonigle
9 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 Pilots
15 Coalition, Gregory R. Cordes, Dru Marquardt, Doug
16 Poulton, Stephan Robson and Philip Valente III and the
17 Class
18
19
20
21
22
23
24
25
26
27

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

This *Ex Parte* Application of Plaintiffs American Airlines Flow-Thru Pilots Coalition, Gregory R. Cordes, Dru Marquardt, Doug Poulton, Stephan Robson and Philip Valente III and the Class (collectively, “Plaintiffs”) is necessary to prevent substantial prejudice to Plaintiffs’ ability to prosecute their claims in this action. As this Court is already aware, through no fault of their own, the named Plaintiffs and the Class were abandoned without notice by their own prior attorney Mr. Katzenbach. Following appointment of present counsel as Class Counsel, Class Counsel has been engaged in working with named class members and Kit Darby, the Plaintiffs’ expert, to determine what information is reasonably required in order to prosecute Plaintiffs’ case, focusing first and foremost on the information most urgently needed by Plaintiffs’ damages expert in order to complete his analysis and prepare his expert report. McGonigle Decl. at ¶2.

Consistent with this Court’s Order directing the parties to meet and confer regarding the need for limited and narrowly targeted discovery [Dkt # 162], Plaintiffs submitted narrowly targeted informal discovery requests to Defendant Allied Pilots Association (“APA”), seeking very specific types of data and information believed to be maintained by APA, and which is most critically needed by Plaintiffs’ damages expert. APA agreed to produce some of the requested documents and data by May 23, 2019, and in fact did produce certain requested documents a few days later, on May 28, 2019.

1 Declaration of Timothy McGonigle (“McGonigle Decl.”) at ¶3. Although certain
2 related discovery issues remain to be fully resolved, the parties have worked toward that
3 end in good faith thus far, and continue to meet and confer regarding the few remaining
4 issues. McGonigle Decl. at ¶4. Additionally, APA has recently agreed to produce
5 certain additional documents (expected within the next week, subject to a stipulated
6 protective order submitted concurrently herewith), and has referred Plaintiffs to
7 American Airlines as a possible source for certain documents no longer maintained by
8 APA. *Id.* at ¶4.
9

11 Thus, although the parties have made good progress, an extension of the current
12 expert disclosure deadline is warranted in order to provide time for Plaintiffs to receive
13 additional documents needed by their damages expert, and to allow their expert
14 adequate time to perform his calculations and prepare his report. *Id.* at ¶6. And indeed,
15 counsel for Defendant has agreed not to oppose a one-week extension of the current
16 expert disclosure and related deadlines.
17

19 II. FACTUAL AND PROCEDURAL BACKGROUND

20 The named plaintiffs in this action are five individual pilots and an association of
21 more than 150 similarly-situated pilots who originally were employed by an airline
22 named “American Eagle”— a collective name for several regional affiliates of
23 American Airlines (“AAL”). In 1997, American Eagle pilots became eligible to
24 become pilots at AAL by virtue of a so-called “Flow-Thru Agreement” - (hereinafter
25 referenced as the “FTP Pilots.”) Plaintiffs contend that defendant Allied Pilots
26
27
28

1 Association (the “APA”) breached its duty of fair representation by, among other things,
2 regularly and repeatedly acting in favor of other pilot groups and against the interests of
3 the FTP Pilots as to their terms and conditions of employment at AAL, and specifically
4 discriminated against the FTP pilots in negotiating an agreement known as Letter G.
5

6 As the Court is aware, during the course of this case, former class counsel Mr.
7 Katzenbach abandoned his clients and apparently permitted the originally-set expert
8 deadlines to lapse without designating any experts. On March 8, 2019, this Court issued
9 an Order [Dkt. no. 157] relieving Mr. Katzenbach from his position as class counsel,
10 and vacating the trial date. On April 18, 2019 this Court appointed of Mssrs.
11 McGonigle and Braunstein as new class counsel, reset expert witness disclosure and
12 expert discovery deadlines, and directed the parties to meet and confer regarding
13 additional limited discovery. [Dkt. no. 162.] Those deadlines were then extended by
14 order dated May17, 2019 [docket no. 163.]
15
16

17 As detailed above, the parties have met and conferred in good faith, and
18 cooperated on a limited amount of informal discovery relevant to Plaintiffs’ damages.
19 While the parties continue to meet and confer regarding a few remaining discovery
20 issues, good progress has been made, and Plaintiffs expect to receive some additional
21 documents shortly.
22
23

24 **III. GOOD CAUSE EXISTS TO GRANT THE REQUESTED RELIEF**

25 Plaintiffs are fully aware that *ex parte* applications are solely for extraordinary
26 relief and are discouraged. However, given the extraordinary circumstance of the
27
28

1 abandonment of Plaintiffs' former counsel and the real need for additional but limited
2 discovery prior to the lapse of the upcoming expert witness deadlines, there is
3 insufficient time for Plaintiffs to make this request via a regularly noticed motion.
4

5 In *Mission Power Eng'g Co. v. Continental Casualty Co.*, 883 F. Supp 488, 492
6 (C.D. Cal. 1995), the court set forth a two-part test to determine whether a moving party
7 is entitled to *ex parte* relief: the moving party must show (1) that its "cause will be
8 irreparably prejudiced if the underlying motion is heard according to regular noticed
9 motion procedures"; and (2) that the moving party is "without fault in creating the crisis
10 that requires ex parte relief, or that the crisis occurred as a result of excusable neglect."
11 Both prongs are met here as Plaintiffs will be irreparably harmed should this request be
12 made on regular notice -- as there is insufficient time in which to have a motion heard
13 on regular notice prior to the expiration of the expert disclosure deadline. Furthermore,
14 no party is at fault: Plaintiffs' new counsel have been working diligently with their
15 expert in order to narrowly define the discovery needed, and have been working
16 diligently with Defendant's counsel to narrow the scope of discovery and to resolve
17 discovery disputes. However, such good faith efforts take time, and Plaintiffs did not
18 receive the first set of documents in response to their informal request until May 28,
19 2019, additional documents are yet to be received, and Plaintiffs may now need to seek
20 certain needed documents from non-party American Airlines. McGonigle Decl. at ¶4.
21 Plaintiffs' therefore believe a two-week extension of the current expert deadlines is
22 warranted, but Defendant's counsel has agreed to not oppose a one-week extension.
23
24
25
26
27
28

1 Good cause thus plainly exists to grant a one-week extension.

2 Indeed, a further extension of the expert discovery and reporting period is
 3 critically necessary to allow Plaintiffs and Class Counsel to adequately represent the
 4 interests of the absent class members, which representation is constitutionally mandated.
 5 *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 812, 105 S.Ct. 2965, 2974, 86
 6 L.Ed.2d 628, 642). Moreover, at the most basic level, the need for this extension stems
 7 from former Class Counsel's abandonment of the class. Attorney abandonment is a
 8 matter serious enough to warrant the granting of Rule 60 relieve after a final judgment.
 9 *Community Dental Servs. v. Tani*, 282 F.3d 1164, 1170 (9th Cir. 2002) *as amended on*
 10 *denial of reh'g and reh'g en banc* (Apr. 24, 2002). Surely, then, it warrants the minor
 11 extension of deadlines requested here.

12 IV. CONCLUSION

13 For all of the above-stated reasons, Plaintiffs respectfully request the Court
 14 execute the Stipulated Protective Order submitted with this ex parte application, and
 15 that an Order issue granting an extension of the current expert deadlines so that the new
 16 deadlines would be as follows:

- 17 • Deadline for expert witness disclosure: **June 30, 2019;**
- 18 • Deadline for designation of any supplemental and rebuttal experts:
 19 **August 5, 2019;**
- 20 • Completion of expert discovery: **August 26 2019.**

1 DATED: June 19, 2019

2
3 TIMOTHY D. MCGONIGLE PROF. CORP.

4
5 By: /s/ Timothy D. McGonigle
6 Timothy D. McGonigle

7
8 BRAUNSTEIN & BRAUNSTEIN, P.C.

9 By: /s/ George Braunstein
10 George Braunstein

11 Attorneys for Plaintiffs, American Airlines Flow-Thru Pilots
12 Coalition, Gregory R. Cordes, Dru Marquardt, Doug
13 Poulton, Stephan Robson and Philip Valente III, and the
14 Class
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Timothy D. McGonigle, Esq. (State Bar No. 115979)
TIMOTHY D. MCGONIGLE PROF. CORP.
1880 Century Park East, Suite 516
Los Angeles, California 90067
Telephone: (310) 478-7110
Facsimile: (888) 266-9410
tim@mcgoniglelaw.net

George G. Braunstein, Esq. (SBN 134602)
Clark Anthony Braunstein, Esq. (SBN 278023)
BRAUNSTEIN & BRAUNSTEIN, P.C.
11755 Wilshire Boulevard, Suite 2140
Los Angeles California 90025
Telephone: (310) 914-4999
george@braunsteinpc.com
clark@braunsteinpc.com

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

**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 DECLARATION OF TIMOTHY MCGONIGLE IN SUPPORT OF PLAINTIFFS' EX PARTE APPLICATION FOR EXTENSION OF EXPERT WITNESS DEADLINES [NO HEARING REQUESTED]
--	--

DECLARATION OF TIMOTHY MCGONIGLE

I, Timothy McGonicle, 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 for Extension of Expert Witness Deadlines. I have personal knowledge of the following matters, except to the extent otherwise indicated, and if called as a witness, I could and would competently testify to the truth thereof under oath.

2. Following this Court's Order of April 18, 2009 [dkt. # 162] resetting expert witness deadlines, and before and after this Court's Order of May 17, 2019 granting an initial extension of those deadlines, I and lawyers of my firm have been working diligently with Plaintiffs and Plaintiffs' damages expert, Kit Darby, to determine and narrowly define the documents and information most critically needed by Mr. Darby in order to perform his damages analysis for this case. Upon making that determination, I sent Defendant's counsel a list of informal damages-related discovery requests on April 26, 2019, seeking not a wide range of relevant documents, but rather, specific documents and data we believed existed and was readily accessible by Defendant.

3. After some meet and confer efforts, Defendant's counsel agreed to produce some of the requested documents and data by May 23, 2019, and in fact did produce such documents on May 28, 2019.

4. Although certain related discovery issues remain to be fully resolved, the parties have worked toward that end in good faith thus far, and continue to meet and confer regarding the few remaining issues. Additionally, APA has recently agreed to produce certain additional documents (expected within the next week, subject to a

1 stipulated protective order submitted concurrently herewith) and has referred Plaintiffs
 2 to American Airlines as a possible source for certain documents no longer maintained
 3 by APA.

4 5. In the context of our ongoing meet and confer efforts, by email dated June
 5 12, 2019, I asked counsel for Defendant, Daniel Rosenthal, if he would agree to an
 6 additional two-week extension of the deadline for our expert witness report. Mr.
 7 Rosenthal responded by email on June 13, 2019, stating that while he would not agree
 8 to the requested two-week extension, he would agree not to oppose a one-week
 9 extension of the deadline for our expert's report, to June 30, 2019, contingent on a
 10 corresponding extension of the deadline for responsive expert disclosures to August 5,
 11 2019, and an extension of the expert discovery cut-off to August 26, 2019. Plaintiffs'
 12 counsel is in agreement with that proposal.

13 6. I believe that the discovery that we only recently received and the
 14 discovery that we hope to receive shortly is critical in order to enable Plaintiffs'
 15 damages expert to perform the necessary damages analysis, and that the extra time
 16 requested here is important to allow Plaintiffs' damages expert adequate time to perform
 17 his analysis and prepare his expert report. I believe that a further extension of the
 18 expert discovery and reporting period is critically necessary to adequately represent the
 19 interests of the absent class members which representation is constitutionally mandated.

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

23 Dated this 19th day of June, 2019, at Los Angeles, California.

24
 25 

26
 27 By: Timothy D. McGonigle

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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-031235-RS

STIPULATED PROTECTIVE ORDER FOR
STANDARD LITIGATION

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of

1 Civil Procedure 26(c).

2 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
3 as their support staff).

4 2.4 Designating Party: a Party or Non-Party that designates information or items that it
5 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

6 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium
7 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
8 transcripts, and tangible things), that are produced or generated in disclosures or responses to
9 discovery in this matter.

10 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
11 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
12 consultant in this action.

13 2.7 House Counsel: attorneys who are employees of a party to this action. House
14 Counsel does not include Outside Counsel of Record or any other outside counsel.

15 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
16 entity not named as a Party to this action.

17 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action
18 but are retained to represent or advise a party to this action and have appeared in this action on
19 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

20 2.10 Party: any party to this action, including all of its officers, directors, employees,
21 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

22 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
23 Material in this action.

24 2.12 Professional Vendors: persons or entities that provide litigation support services
25 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
26 storing, or retrieving data in any form or medium) and their employees and subcontractors.

27 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
28

1 “CONFIDENTIAL.”

2 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
3 Producing Party.

4 3. SCOPE

5 The protections conferred by this Stipulation and Order cover not only Protected Material (as
6 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
7 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
8 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
9 However, the protections conferred by this Stipulation and Order do not cover the following
10 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
11 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
12 publication not involving a violation of this Order, including becoming part of the public record
13 through trial or otherwise; and (b) any information known to the Receiving Party prior to the
14 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
15 information lawfully and under no obligation of confidentiality to the Designating Party.

16 4. DURATION

17 Even after final disposition of this litigation, the confidentiality obligations imposed by this
18 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
19 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
20 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
21 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the
22 time limits for filing any motions or applications for extension of time pursuant to applicable law.

23 5. DESIGNATING PROTECTED MATERIAL

24 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
25 Non-Party that designates information or items for protection under this Order must take care to
26 limit any such designation to specific material that qualifies under the appropriate standards. The
27 Designating Party must designate for protection only those parts of material, documents, items, or

oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to each page that contains protected material or, for native digital files, otherwise clearly designate the files with the label "CONFIDENTIAL." If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

A Party or Non-Party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the

specified documents, the Producing Party must affix the “CONFIDENTIAL” legend to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must

recite that the challenge to confidentiality is being made in accordance with this specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first or establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely manner.

6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention, the parties shall follow the discovery dispute resolution procedure set forth Section 2 of the Case Management Scheduling Order, Docket No. 31 in the above-captioned case, subject to modification by the procedures required by any Magistrate Judge who may be assigned by the Court to resolve discovery disputes. The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous designations or challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Designating Party or the Challenging Party to sanctions. All parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only, or in either of the two related cases (Case numbers 17-cv-01160-RS and 18-cv-03682-RS) for prosecuting, defending, or attempting to settle this litigation or either of the two related cases. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of

1 section 13 below (FINAL DISPOSITION).

2 Protected Material must be stored and maintained by a Receiving Party at a location and in a
3 secure manner that ensures that access is limited to the persons authorized under this Order.

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by
5 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
6 information or item designated “CONFIDENTIAL” only to:

7 (a) the Receiving Party’s Outside Counsel of Record in this action or either of the two
8 related actions identified above, as well as employees of said Outside Counsel of Record to whom it
9 is reasonably necessary to disclose the information for this litigation or either of the two related
10 actions identified above and who have signed the “Acknowledgment and Agreement to Be Bound”
11 that is attached hereto as Exhibit A;

12 (b) the officers, directors, and employees (including House Counsel) of the Receiving
13 Party or, if Plaintiffs are the Receiving Party, the named plaintiffs, to whom disclosure is reasonably
14 necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be
15 Bound” (Exhibit A);

16 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
17 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement
18 to Be Bound” (Exhibit A);

19 (d) the court and its personnel;

20 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and
21 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
22 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
24 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
25 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
26 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
27 bound by the court reporter and may not be disclosed to anyone except as permitted under this

1 Stipulated Protective Order.

2 (g) the author or recipient of a document containing the information or a custodian or
3 other person who otherwise possessed or knew the information.

4 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
5 LITIGATION

6 If a Party is served with a subpoena or a court order issued in other litigation that compels
7 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party
8 must:

9 (a) promptly notify in writing the Designating Party. Such notification shall include a
10 copy of the subpoena or court order;

11 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
12 other litigation that some or all of the material covered by the subpoena or order is subject to this
13 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

14 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
15 Designating Party whose Protected Material may be affected.

16 If the Designating Party timely seeks a protective order, the Party served with the subpoena
17 or court order shall not produce any information designated in this action as “CONFIDENTIAL”
18 before a determination by the court from which the subpoena or order issued, unless the Party has
19 obtained the Designating Party’s permission. The Designating Party shall bear the burden and
20 expense of seeking protection in that court of its confidential material – and nothing in these
21 provisions should be construed as authorizing or encouraging a Receiving Party in this action to
22 disobey a lawful directive from another court.

23 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
24 LITIGATION

25 (a) The terms of this Order are applicable to information produced by a Non-Party in this
26 action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in
27 connection with this litigation is protected by the remedies and relief provided by this Order.

Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED

1 MATERIAL

2 The inadvertent or unintentional production of material that is subject to a claim of privilege
3 or other protection shall not be deemed a waiver in whole or in part of a party's claim of such
4 privilege or protection.

5 (a) When a Producing Party gives notice to Receiving Parties that certain inadvertently
6 produced material is subject to a claim of privilege or work product protection, the Receiving Parties
7 promptly shall return to the Producing Party that material and all copies or reproductions thereof,
8 shall destroy all notes or other work product reflecting the contents of such material, and shall delete
9 such material from any litigation-support or other database.

10 (b) When a Producing Party gives notice to Receiving Parties that certain inadvertently
11 produced material is subject to a claim of confidentiality protection, the Receiving Party shall treat
12 that material and all copies or reproductions thereof as confidential and shall make all reasonable
13 efforts to retrieve all copies, if any, of such material disclosed to persons other than those authorized
14 in this Order and to prevent further use or disclosure of confidential information contained therein by
15 such persons.

16 (c) Nothing herein shall alter a party's obligations under Federal Rule of Civil Procedure
17 26(b)(5)(A) and (B).

18 (d) Any disputes as to materials covered by this section shall be resolved as provided
19 in Section 6 of this Order.

20 12. MISCELLANEOUS

21 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
22 its modification by the court in the future.

23 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
24 no Party waives any right it otherwise would have to object to disclosing or producing any
25 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
26 Party waives any right to object on any ground to use in evidence of any of the material covered by
27 this Protective Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the information in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

13. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: June 19, 2019 /s/ Timothy D. McGonigle
Attorneys for Plaintiff

DATED: June 19, 2019 /s/ Daniel Rosenthal
Attorneys for Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: _____
United States District/Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of American Airlines Flow-Thru Pilots Coalition v. Allied Pilots Association, Case No. 3:15-cv-03125 RS. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

Timothy D. McGonigle, Esq. (State Bar No. 115979)
TIMOTHY D. MCGONIGLE PROF. CORP.
1880 Century Park East, Suite 516
Los Angeles, California 90067
Telephone: (310) 478-7110
Facsimile: (888) 266-9410
tim@mcgoniglelaw.net

George G. Braunstein, Esq. (SBN 134602)
Clark Anthony Braunstein, Esq. (SBN 278023)
BRAUNSTEIN & BRAUNSTEIN, P.C.
11755 Wilshire Boulevard, Suite 2140
Los Angeles California 90025
Telephone: (310) 914-4999
george@braunsteinpc.com
clark@braunsteinpc.com

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

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

1 Upon consideration of the Ex Parte Application for an Extension of Expert
2 Witness Deadlines brought by Plaintiffs, American Airlines Flow-Thru Pilots
3 Coalition, Gregory R. Cordes, Dru Marquardt, Doug Poulton, Stephan Robson
4 and Philip Valente III and the Class (collectively, “Plaintiffs”), all papers filed in
5 connection with the Application, the Court’s records and files of this case and
6 oral argument as deemed necessary, and for good cause shown, the Court hereby
7 orders as follows:
8

- 9
- 10 1. Plaintiffs’ Ex Parte Application is GRANTED;
 - 11 2. The new deadline for expert witness disclosure shall be: **June 30, 2019;**
 - 12 3. The new deadline for designation of any supplemental and rebuttal
13 experts shall be: **August 5, 2019;**
 - 14 4. The new deadline for completion of expert discovery shall be: **August**
15 **26, 2019;**

16 IT IS SO ORDERED.

17 Dated: _____, 2019

18
19
20
21
22 _____
23 HON. RICHARD SEEBORG
24 UNITED STATES DISTRICT JUDGE
25
26
27
28