Bahig Saliba
[redacted]
[redacted]
[redacted]
Email: medoverlook@protonmail.com

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Bahig Saliba,	Case No. CV-00738-PHX-SPL
Plaintiff,	
v.	**PLAINTIFF'S RESPONSE TO DEFENDANTS MOTION TO DISMISS THIRD AMENDED COMPLAINT**
American Airlines Inc., et al,	
Defendants,	

THIS COURT MUST DENY DEFENDANTS' MOTION

On July 5, 2022, this court issued Order of Recusal (Doc. 21) directing all future pleadings and papers submitted for filing shall bear the following complete case number: **CV-22-00738-PHX-SPL** addressing **Honorable Steven P. Logan.** Defendants motion to dismiss (Doc. 43) does not bear the correct case number or the correct judge. This court must deny Defendants' motion to dismiss for not being timely filed. In the event the court decides not to dismiss, Plaintiff presents his response to Defendants' motion. (Doc. 43)

THE LAW OF THE LAND

By the power of the People, conducting the business of the People, Congress enacted the Federal Aviation Act of 1958 (the Act). The Act is Public Policy. FAA rules and regulations are Public Policy. Authority granted to pilots to exercise is from and by the People under the Act. The

People did not authorize pilots to pass any authority granted to them to their employer. The law dictates pilots make their fitness for flight determination unincumbered and of their own free will and discretion. American Airlines and the Defendants purport to have authority dictating Public Policy to Plaintiff and that somehow this dispute falls under the RLA, not true. The FAA did not enforce masking, or any medical procedure and they cannot (*see footnote #1 page 4)* and under 49 U.S. Code § 114 (g)(2) the TSA may not supersede the FAA whether or not during a national emergency. The Defendants cannot produce any Public Policy to the contrary giving them authority to dictate or mandate any medical procedure (masking, vaccination or otherwise) to Plaintiff, only a phantom authority of their own creation. Such authority does not exist.

Sec. 104 of the Act recognizes and declares the Plaintiff's right. The Plaintiff chooses to exercise his right, and as such his pilot and medical certificates are a right and American, under contract, benefits from the Plaintiff's pilot and medical certificates and under the Act and as such they are the foundational terms of employment contract between the parties. The Act mandates American, as a carrier, use qualified pilots and co-pilots and any interference in pilot medicals by mandating medical procedures renders the pilot unqualified. American and the Defendants may not interfere in the People's business by mandating medical procedures.

DEFENDANTS' PREPOSTROUS ASSERTIONS

Defense counsel portrays Plaintiff an individual who does not follow rules, regulations, or instructions. To remedy these preposterous assertions, Plaintiff offers the following rebuttals.

Counsel for Defendants asserts Plaintiff was "offered to discuss…but Plaintiff did not respond." (Doc. 43 at 2) In the referenced email, giving the Plaintiff less than 5 hours to respond, defense counsel stated: "Please advise by close of business today if you intend to amend your complaint again. If we do not hear from you by 5PM MT, we will proceed with a motion to dismiss." Plaintiff complied by simply not responding.

Plaintiff is correct that he alone can make determinations over his fitness to pilot aircraft whether for American or his own, and American, for 24 years, has accepted his determination without question, that is the law. Any known deficiencies may be brought to the attention of authorities by any person. Regardless, it is the pilot who makes the determination he is fit, and as

counsel correctly admitted, (Doc. 43 at 8:14) it is up to the pilot to meet his obligation[1] under Public Policy. The Plaintiff is following Public Policy to the letter up to and including the mask exemption contained in paragraph F3 of the TSA Security Directives and 49 U.S. Code § 114 (g)(2) is precisely the reason F3 exists. In accordance with 14 CFR 61.53, the regulation vests authority in the person who "knows or has a reason to know of any medical condition" and the Plaintiff is under no obligation, to provide any proof of what a medical condition is. A pilot who is not ready to fly is not fit to fly, that is satisfactory under Public Policy.

Defendant Devereux-Naumann scheduled an examination without cause during the Plaintiff's vacation and rescheduled the examination just before another vacation respectively. Plaintiff reported sick one day prior to the second examination. It is a preposterous assertion and inconceivable that anyone can "cancel" a no show after the fact. (Doc. 43 at 3) The Plaintiff notified Defendant Devereux-Naumann of the conflict after returning from his first vacation. It is also preposterous to assert that being sick is insubordination or refusal, there is no insubordination and Plaintiff asserts that Defendants are in violation of 49 U.S. Code § 42112, which states a carrier has a duty to "maintain[2] rates of pay" for pilots. On and since August 22, 2022, and for no legitimate reason, Defendant Devereux-Naumann placed Plaintiff on unpaid leave pending an investigation of the failure to appear for the examination in total disregard of the fact Plaintiff reported sick. In that notice, sick leave was not an issue, however in her Oct. 13, 2022, letter, 53 days later, she added possible sick abuse to her investigation. *See exhibit 1.* In retaliation and subversion of the facts, Defendant fabricated a nonexistent event.

Another assertion by the defense is that the Plaintiff "admits" the JCBA governs his employment (Doc. 43 at 3:14), no such thing. The Plaintiff asserts (Doc. 40 at 3) "Details such as rates of pay, work rules and work conditions, ***with the exception*** of his FAA issued medical Certificate and health-related decisions the Plaintiff elects to make, are then managed under a CBA, and in American Airlines case a JCBA." (In line with § 42112) Defense counsel then follows this false assertion by stating: "…this Court has found, any claim of breach of the JCBA is preempted by the RLA…" an implication that rights of the Plaintiff independent of the JCBA are preempted as well,

[1] That necessarily means American may not impose any medical treatment on Plaintiff.
[2] Maintain means 1. Cause or enable (a condition or a state of affairs) to continue, keep (something) at the same level or rate.

not true. The Supreme Court in *Norris v. Hawaiian* has ruled the RLA does not preempt Public Policy. What we have here, in an effort to convince the court, is a potpourri of nonsensical assertions by the defense.

BACKGROUND FACTS

Plaintiff's employer and Defendants are subject to overlapping legal requirements arising from federal law, federal aviation regulations, employment contract agreement, American's own policies and the JCBA. Plaintiff replies to Defendants' assertion of facts

Federal Mask Mandate and American's Mask Policy. American created and enforced a mask policy in violation of Public Policy. Executive Order 13998 intended compliance with applicable law. Defendants claimed consistency with the mask mandate in their policy and the TSA Security Directives (SD) but continued the enforcement of pilot masking despite the F3 exemption in the SD. Another preposterous assertion from the defense (Doc. 43 at 5) "The mask mandate stayed in place until … after the FAA stopped enforcement of the federal mask mandate." The FAA never enforced the federal mask mandate. The FAA administrator on Capitol Hill told the Senate Commerce, Science and Transportation Committee[3] that the Centers for Disease Control and Prevention will take the lead in mandating safety regulations and that the FAA will focus on "aviation safety." "Our space is aviation safety and their space is public health," he said, later adding that "these will not be regulatory mandates," referring to masks, and neither are vaccinations for pilots. *See Aeromedical Guide for AMEs[4] page 401, also see SAFO 20009[5].*

Joint Collective Bargaining Agreement. Defense counsel asserts the JCBA governs terms and conditions of employment for American's pilots. The Plaintiff asserted only certain terms and conditions are managed by the JCBA and again points to the fact that his FAA medical certificate is Public Policy and not subject to CBAs. In *Alaska Airlines v. Shurke*, the Ninth Circuit, sitting *en banc,* stated that the RLA preemption did not apply, because the employee's claim invoked a law applicable to all state workers-including those who are not covered by a CBA. Similarly in

[3] https://www.commerce.senate.gov/2020/6/examining-the-federal-aviation-administration-s-oversight-of-aircraft-certification

[4] https://www.faa.gov/about/office_org/headquarters_offices/avs/offices/aam/ame/guide/media/AME_GUIDE.pdf

[5] The contents of this document do not have the force and effect of law and are not meant to bind the public in any way.

this case and according to FAA statistics[6], there were 720605 pilots by the end of 2021 who are subject to Public Policy of maintaining a medical certificate of which only a fraction is subject to a CBA. The Defendants' argument that American, under Section 20 of the JCBA, has the authority to demand and conduct physical examination *at any time* is not true or persuasive. Section 20 of the JCBA simply prescribes the process of the examination. The authority to conduct such examination is derived in Sec.10 of the JCBA. Sec. 10 (7)(h) states: "The company shall retain the ability to initiate Sec. 20 examinations and/or investigate the possible abuse of sick leave for *cause.*" The Defendants do not have any reason for conducting any examinations and since April 22, 2022, have not provided the Plaintiff with any such reason as required by the JCBA Sec. 20 D (1). Sec. 10 is sick the leave agreement. *Also see exhibit 3.*

Plaintiff's First Section 21 Hearing. Defendants' statement "Plaintiff refused to comply with these rules" (Doc 43 at 5) wrongly concludes these rules are applicable to Plaintiff. The FAA did not make masking regulatory for the Plaintiff while on duty and in compliance with 49 U.S. Code 114 (g)(2), the TSA issued an exemption in Security Directive SD 1542-21-01 paragraph F3.

Plaintiff's Written Advisory and Related Grievance. The written advisory is a document prepared by Defendant Raynor and contains false assertion the Plaintiff acknowledged American's mask policy. A review of the hearing transcript will show that Plaintiff consistently stated he was following the Federal Aviation Regulations and is familiar with American's mask policy. In no way did the Plaintiff acknowledge the validity of American's mask policy relating to him.

Fitness-For-Duty Examination and Additional Section 21 Hearing. The Defendants are bound by the JCBA. Plaintiff is still awaiting the written reason for Defendant's demand for a fitness for duty examination as required by the JCBA Sec. 20 D (1), 227 days to be exact. Sec. 20 D (1) does not need interpretation, a "look to" will suffice.

Alleged Contract with American. Defendants assert the Plaintiff pled in Doc. 1 at 5 his contract with America West Airlines is now the "JCBA that was struck between [American] and the APA." That assertion could not be farther from the truth. The exact words of the Plaintiff are: "The plaintiff's contract with AWA has been inherited and now lives in the halls of AA and is managed by the APA." Plaintiff has always asserted that certain terms are managed by the JCBA excluding his

[6] https://www.faa.gov/data_research/aviation_data_statistics/civil_airmen_statistics

FAA issued medical certificate. In *Norris v. Hawaiian Airlines, Inc.* 842 P.2d 634 (1992) at 245, 246, the Court concluded the RLA does not preempt Public Policy and as such this Court has subject matter jurisdiction. Defense counsel is stretching the truth in an attempt to circle back to the RLA and cites *McCray v. Marriott Hotel Services., Inc.* In McCray at 1010, the 9th Cir. applied the two-part test. Preemption applies when the claims are "founded directly on rights created by collective-bargaining agreements," as well as claims that are "substantially dependent on analysis of a collective-barraging agreement. A right created by the Act, as is the case here, is neither created by the JCBA nor subject to its interpretation.

LEGAL EMPLOYMENT CONTRACT AND VIOLATION THEREOF

Under Title IV of the Act, Air Carrier Economic Regulation, Compliance with Labor Legislation (k) (1), also 49 U.S. Code § 42112 "Every air carrier shall maintain rates of compensation, maximum hours, and other working conditions and relations of all of its pilots[7] and copilots who are engaged in (providing) interstate air transportation…" The Act imposes a pilot and copilot employment contract on the air carrier where a pilot medical certificate is central to the contract. Defense counsel is again using an illusory argument to persuade the Court that somehow an FAA issued medical certificate is not central to the terms of an employment contract between Plaintiff and Defendant American. Under (3) of Title IV of the Act and § 42112, "Nothing herein contained shall be construed as restricting the right of any such pilots or copilots…to obtain by collective bargaining higher rates of compensation or more favorable working conditions or relations." After securing the employment contract a pilot may collectively, through the agency (labor union), negotiate better rates of pay, work rules and working conditions. The Collective Bargaining Agreement (CBA) does not create an employment contract, nor can it include any terms that invade Public Policy. The only person who could have entered into an employment contract with Defendant American is the Plaintiff, thus the JCBA is not the employment contract, it is however a contract between American and the Allied Pilots Association (APA) and the Plaintiff under the Act agrees to the improved terms of his employment contract. The JCBA may

[7] Under 49 U.S. Code § 42112 (a) (2) "Pilot" means an employee who is-(A) responsible for manipulating or who manipulates the flight controls of an aircraft under way, including the landing and takeoff of an aircraft; and (B) **qualified** to serve as, and has in effect an airman certificate authorizing the employee to serve as, a pilot. Qualification is only complete when a pilot holds a valid FAA issued medical certificate.

not invade a pilot's rights under the law or preempt Public Policy. *See Norris v. Hawaiian Airlines Inc.* at 245,246.

Doc. 40 exhibit "A" is evidence of the presence and acknowledgement of the requirement for a valid medical certificate in the possession of the Plaintiff. The defense counsel assertion (Doc. 43 at 8) "there is no language in these documents that allows Plaintiff an unfettered right to determine if he is medically sound to fly or to ignore American's policies such as vaccination and masking requirements" is countered by the very statement they admit to in the following sentence stating the Plaintiff has an obligation to the People and Public Policy to maintain a valid medical certificate. Any imposition by American of any medical procedure is an invasion and an encumbrance of Public Policy and a violation of the very term of the employment contract.

Defense counsel embarks on yet another preposterous and reckless assertion (Doc. 43 at 9) claiming 14 CFR § 61.53 does not state that a pilot has any say over what constitutes such a medical condition and that it does not preclude an airline from imposing additional requirements on a pilot. Their first assertion, other than it is factually wrong, would cripple the entire air transportation system in the United Sates. A pilot who has no say in what constitutes a medical condition could not possibly determine his fitness for duty and would require a physician's determination at all times. Of course, that would defeat Public Law 85-726, the Act, "to continue the Civil Aeronautics Board as an agency of the United States, to create a Federal Aviation Agency… to provide for the safe and *efficient* use of the airspace …" A practice of denying the fact that pilots are the ones who determine their fitness in accordance with Public Policy would create a gridlock of immense proportions. The second assertion that American is able to dictate additional requirements amounts to interference in Public Policy and violation of the term of the employment contract/agreement. Defendant Raynor admitted during the Jan. 6, 2022, hearing that American is unable to do so. The Defendants do not have and have not produced any law in existence giving the Defendants any authority dictating medical procedures under Public Policy or contractually. The FAA administrator informed congress that such medical procedures will not be regulatory policies. *Id* at 3. The FAA only offers guidance for pilots in their assessment of their fitness for flight and maintenance of their medical certificates in accordance with 14 CFR Part 67.

In the Aeronautical Information Manual chapter 8, available on the FAA.gov website[8] a "personal checklist" is provided which assists pilots in evaluating they are physically and mentally safe to fly and that is exactly how 720605 pilots determine their fitness.

Defense counsel casts a "wide net" asserting all of Plaintiff's "terms and conditions of employment" are, in fact governed by a legally valid contract - the JCBA. If that were true, (and it is not) it is an admission that a regulation or a Public Policy governing or regulating the Plaintiff's medical certificate is a term in a "contract", that it is contractual, in contradiction to their assertion a regulation is not a contract between Plaintiff and American. Doc. 43 at 9:6-7 The Plaintiff's pilot and medical certificates are contractual terms of the employment contract benefiting American, without either one there is no contract to provide air transportation.

This dispute does not fall squarely within the authority of the JCBA nor is preempted by the RLA. In *Alaska Airlines v. Schurke,* 9th Cir. No.13-35574, an *en banc* Supreme Court held that RLA and LMRA grievance and arbitration system must be used for claims arising under the CBA. *See Air Transp. Ass's,* 266 F.3d at 1076 (citing *Taylor*, 353 U.S. at 559-61). Minor disputes under the RLA – those disputes concerned with "duties and rights created or defined by" the collective bargaining agreement, *Norris,* 512 U.S. at 258 – "must be resolved only through the RLA mechanism." The Plaintiff's medical certification and health related decisions are Public Policy and rights under the Act, not a product of the JCBA and do not require the interpretation, application, or analysis of the JCBA. This Court cannot find anything in the JCBA that gives the Defendants any authority to dictate any medical procedure to Plaintiff. In an attempt to insert Public Policy in the JCBA, Defendants' counsel doubles down, creates a phantom provision in the JCBA and asserts that: "…Plaintiff's medical fitness to fly for American are, in fact, governed by Section 20 of the JCBA." This purported "fact" would single out the Plaintiff and leave the remaining 720604 pilots who carry a medical certificate to make that determination on their own and yet share the same airspace as the Plaintiff. Pure nonsense. Section 20 of the JCBA simply prescribes the process of the examination should it be necessary under the authority derived in Sec.10 of the JCBA. *Id* at 4. A simple "look to" the JCBA, as the 9th Cir. put it would suffice. Again, Sec. 10 of the JCBA is Sick Leave benefit terms of the agreement.

[8] https://www.faa.gov/air_traffic/publications/atpubs/aim_html/index.html

MORE CASE LAW

In *Laughlin v. Riddle Aviation Co.* (5 Cir. 1953) 205 F.2d 948, the court permitted recovery by an airline pilot of wages at the higher rates prescribed by a decision of the National Labor Relations Board and adopted by the Civil Aeronautics Act on the ground that the plaintiff was obviously one of the persons for whose benefit[9] the statute was enacted, even though no civil remedy was specifically provided therein. The court stated: "Congress did not intend to create a mere illusory right, which would fail for lack of means to enforce it. The fact that the statute does not expressly provide a remedy is not fatal."

The Act was obviously enacted to "benefit" the Plaintiff. Here, § 42112 imposes contractual language on American Airlines. It states, "An air carrier shall – (1) maintain rates of compensation, maximum hours, and other working conditions and relations for its pilots and copilots who are providing interstate air transportation…" and in (d) the law clarifies that this section does not prevent pilots and copilots of a carrier from obtaining by collective bargaining *higher rates of compensation or more favorable working conditions.* As the Plaintiff asserted, there exists an employment contract between the parties separate from the JCBA and the JCBA is not exclusive in the employment relationship between the parties. It is clear the law establishes a working contract without abridging the right of pilots to negotiate *improvements* by collective bargaining. The Plaintiff executed an employment contract with American and improvements to certain terms of the contract, excluding the Plaintiff's FAA medical certificate and health decisions he makes, are then negotiated, or managed by the JCBA. Defense counsel asserts that Plaintiff "…fails to identify a legally viable contract, much less provide a copy of one…" In addition to the language § 42112, Plaintiff provided documents detailing the discussion of an agreement and more importantly the carrier's and his understanding it is the Plaintiff's responsibility to maintain a valid FAA medical certificate confirming it is a term of the agreement, and in more than one way established the presence of contractual language verbally and otherwise. The Plaintiff's medical certificate is a contractual term of the employment contract with Defendant American, and in addition to his obligations to the People, the agreement is affirmed and reaffirmed with every "fit-for-duty" statement the Plaintiff makes.

[9] Meaning of benefit is "an advantage" or "profit gained from something"

In the 5th Cir. words in *Laughlin v. Riddle Aviation Co.,* as long as *Marbury v. Madison*, it was said: "…It is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit, or action at law, whenever that right is invaded." And in *Peck v. Jenness*, it was recognized that "A legal right without a remedy would be an anomaly in law." In *De Lima v. Bidwell,* it was said: "If there be an admitted wrong, the courts will look far to supply an adequate remedy." And again in *T.P. Ry. Co. v. Rigsby* where the Federal Safety Appliance Act under which plaintiff there sued, contained no express provision conferring a right of action the court said: "A disregard of the command of the statute is a wrongful act, and where it results in damage to one of the class for whose especial benefit the statute was enacted, the right to recover damages from the party in default is implied." The implications and intendments of a statute are as effective as the express provisions. (Citations omitted) Defendants violated the Plaintiff employment contract.

PLAINTIFF EXTENDS AN INVITATION TO THE COURT

We are far removed from the year 1953, however; the decision of the 5th Cir. is as valid today as it was then. Plaintiff invites the Court to reevaluate the decision to dismiss Plaintiff's claim of aviation law violation. In *Laughlin v. Riddle Aviation Co.* (5th Cir. 1953) 205 F.2d 948, the Court said that "…Congress did not intend to create a mere illusory right, which would fail for lack of means to enforce it. The fact that the statute does not expressly provide a remedy is not fatal…" and "A disregard of the command of the statute is a wrongful act, and where it results in damage to one of the class for whose especial benefit the statute was enacted, the right to recover the damages from the party in default is implied…" and "…The implications and intendments of a statute are as effective as the express provisions…" and "…This principle is as applicable to action to enforce a statutory right as to any other form of action…"

The "one ***class*** for whose especial ***benefit*** the statute was enacted" points at the Plaintiff. In *Laughlin v. Riddle Aviation Co.,* the Court saw a benefit in the higher rates of pay for the plaintiff. This Court must see the benefit in the statute intended for the Plaintiff in what the statute vests in him. The Plaintiff is a member of a class, the 720605 pilots who possess FAA pilot and medical certificates who have a right to traverse the navigable airspace of the United States. The enacted statute is intended to benefit the Plaintiff, or according to the dictionary, ***advantage*** the Plaintiff. Under 14 CFR § 91.3 (a), the Plaintiff, a pilot in command (PIC) of American's aircraft,

is assigned direct responsibility and final authority as to, the operation of that aircraft. The responsibility and authority vested in the PIC is a benefit and duty. It is to the advantage of the Plaintiff that all the rules and regulations are followed by Defendants. When rules and regulations are violated, it is not only to the disadvantage of the Plaintiff but also to his detriment in the execution of his duties under the Act. The entire focus of the Federal Aviation Act comes to clarity at that one moment where lives are in the balance, and where the Plaintiff renders a decision resulting in the safe outcome to life and property. As the Plaintiff asserted, deviations from the rules and regulations the Plaintiff listed in Doc 1 and 40, a decision that was strictly American's considering the FAA did not enforce or make any medical treatment a regulatory requirement, placed the Plaintiff at a great disadvantage and usurped Public Policy and the rule of law.

The Act dictates that carriers must use qualified pilots. A qualified pilot is a pilot who holds the appropriate pilot certification and a valid medical certificate. Invading the authority granted by the People with regard to medical certification incumbers the decision-making process and renders a pilot unqualified to operate aircraft. Mandating medical treatments by American deprives the pilot sound reasoning and legitimate authority under § 61.53 and renders him unqualified. Under mandatory medical treatment a pilot is no longer rendering his own personal assessment of his readiness to operate aircraft under the Act. This is a gross violation of the law and a severe compromise of safety. The invasion of pilot and copilot authority under the Act is a matter of national security and must be considered as such. The Plaintiff urges the Court to accept the invitation and reevaluate its ruling in dismissing the Plaintiff's claim of aviation law violation for lack of private right of action.

HOSTILE WORK ENVIORNMENT

Plaintiff clearly identified the protected class he belongs to in an email transmitted on April 14, 2022, which included the settlement contract agreement between the Plaintiff and America West Airlines. *See Doc. 40 exhibit D.* The Plaintiff also directly asked all the recipients of that email, including Montgomery, to act. An investigation of the Plaintiff's claim was never initiated and to date American has not contacted the Plaintiff to inquire about his claim.

The Plaintiff identified a motive for every one of the Defendants moves and discrimination based on Plaintiff's national origin, being the reason for targeting the Plaintiff cannot be precluded.

The historical fact that the EEOC found the airline discriminated against the Plaintiff based on his national origin lends credible bases for similar activity by the Defendants. The Plaintiff claimed the Spokane Airport Police offered the Defendants their report of the incident on Dec. 6, 2021, in which they identify the Plaintiff as Middle Eastern and there is no reason not to believe that, for their investigation, the Defendants are in possession of that report. It is in dual purpose the Defendants are disguising their discrimination under cover of disciplinary action under provisions of the JCBA.

On April 27, 2022, Plaintiff filed his complaint with the EEOC and on Nov. 30, 2022, the EEOC issued a "Notice of Right to Sue" letter to Plaintiff. The letter states the EEOC determination does not certify the respondent is in compliance with the statutes and that it does not mean the claims have no merit. *See exhibit 2.* The Plaintiff has exhausted the process.

The hostile work environment and the pervasive and continuing behavior and/or policies that impede the Plaintiff's ability to perform his job because of the level of hostility and discomfort did not go unnoticed by the union representing the pilots, the Allied Pilots Association (APA). In an email to the Plaintiff detailing their position which he believes was also conveyed to American, APA lawyer Tricia E. Kennedy stated the obvious: "APA understands that the company has not explained its bases for sending you to a Section 20 evaluation….APA asserts that AA's failure to do so is very telling and supports the position that AA is weaponizing Section 20 (and Section 21) against you and retaliating against you. It appears AA is punishing you for disagreeing with its position on masking and using contractual provisions (Section 20 and Section 21) in an attempt to conceal the punishment. Instead, AA should stop the Section 20 and Section 21 process and return you to the line." *See exhibit 3.*

Plaintiff has identified to Defendants his belonging to a protected class on April 14, 2022, made clear their conduct is unwelcome, and as evidenced by his suspension without pay by Defendant Devereux-Naumann for a fabricated reason and in violation of § 42112 (b)(1), Defendants created an abusive work environment. The Court must deny Defendants' motion to dismiss the hostile work environment claim.

DEFENDANT LONG

Once more Defendants' counsel claims untrue assertions made by the Plaintiff. (Doc. 43 at 12:21) The Plaintiff initiated the discussion about vaccinations, but it was Defendant Long who initiated the mask discussion and asked Plaintiff if mask compliance is a problem for him. Additionally, Plaintiff alleged it was Defendant Long who directed former chief pilot Ken Wood on Dec. 6, 2021, to issue a directive to Plaintiff enforcing masking under pains of insubordination and possible termination but, in contradiction to actions followed by Raynor and Long, Ken refused to do so and subsequently was removed from any active involvement in this matter.

Enforcing a company policy that invades rights and obligations under Public Policy is a violation of the duties of a corporate officer. American Airlines Standards of Business Conduct[10] state: "Team members who violate the law or the Standards may also expose themselves to substantial civil damages, criminal fines, and prison terms. We may also face substantial fines and penalties and may incur damage to our reputation and standing in the community. If your conduct as a representative of our company does not comply with the law or with the Standards, there can be serious consequences for both you and American." Citing a passage from *Powder Horn Nursery, Inc. v. Plant Lab., Inc.* by counsel (Doc. 43 at 13) does not prove Defendant Long's argument for it is his duty to follow the rule of law and his actions are outside the scope of his duties. Defendant Long's activity is a derogation of the rule of law, a law he should be very familiar with as an FAA certificated pilot who holds a medical certificate. In contradiction, Defendant Long willfully and purposefully invaded and violated Plaintiff's right, under Public Policy and in violation of contractual terms by enforcing masking and vaccination under threat of termination.

It is not hypothetical that Defendant Long created contacts with many other forum states, he did so by accepting his position at the airline, and in this case, he directed his activity at Arizona. In addition, it is not the number of contacts but the significance that matters, a single act is sufficient. This Court already found it has personal jurisdiction over Defendant Raynor (Doc. 32 at 7) and if the difference between Raynor and Long is the physical presence, Plaintiff points to

[10] https://www.aa.com/content/images/customer-service/about-us/corporate-governance/standards-of-business-conduct-for-employees.pdf

Federal Rule of Civil Procedure 43(a) which permits testimony by videoconferencing "[f]or good cause in compelling circumstances and with appropriate safeguards," if Court rules allow for videoconferencing then it must find videoconferencing by Long acceptable as presence in the forum. It is not within Defendant Long's scope or duties as a senior vice president of flight operations to violate Public Policy and there is nothing benign about his activity relating to masking and vaccination of pilots. It is in the interest of the American pilots based in Arizona and Arizona that this Court exercises personal jurisdiction over Defendant Long.

VIOLATION OF 42 U.S.C. § 1983

In this Court's opinion "…A private employer's disciplinary proceedings against its employee are certainly not a traditional and exclusive government function…" (Doc 32 at 11). While that may be true in the normal course of business, it is not true in this case. American did not conduct the disciplinary action on its own accord or for a lawful reason. (Montgomery declaration) Whether the police at the Spokane airport knew the Plaintiff is exempt or not is immaterial, it was their belief they were applying a State law to the Plaintiff and were determined to force him to comply that morning and every time he would transit the airport terminal. They did not "merely" notify American, that would necessarily end with Tony, the American gate agent on duty Dec. 6, 2022, which was not a normal course of action according to their training manual, no more normal than notifying American if the Plaintiff was out of uniform or without his flight bag but went further and engaged higher levels at American and specifically the Plaintiff's supervisor and American corporate security personnel. There is nothing normal with this type of activity and it must be viewed for what it is, an endowment by police for American to continue the violation of the Plaintiff's right under the Act. The Defendants reciprocated in kind knowing full well they are in violation of Public Policy[11].

Plaintiff identifies the benefit the Spokane police received. The Defendants engaged in and continued the violation perpetuated by the State of Washington. The State benefited from utilizing a private business practice to enforce the masking of the Plaintiff in violation of his constitutional and Public Policy rights. The Plaintiff presented the benefit received by both the police and

[11] Defendant Raynor admitted American's intent for Plaintiff to wear a mask in public during the hearing on Jan. 6, 2022.

American in Doc. 1 at 10,11 and 12 in which he quoted the following from government documents, "…Within both documents exists question number Q-GA17, which asks the following: "**Are there any requirements related to mandating masks inside airports associated with airport rescue grants?**" and "…Failure to comply with this special condition may result in the ***suspension of payments or termination of the grant***, consistent with CFR §§ 200.339 and 200.340…" Therefore, forcing the Plaintiff to wear a mask while on duty benefited the State immensely, to the tune of 23,012,421.00[12] and by the police forcing the Plaintiff to wear a mask while on duty also benefited the Defendants immensely, it accomplishes what Defendant Raynor stated to Plaintiff regarding a leadership position during the hearing on Jan. 6, 2022. (Doc. 1 at 20:20) American benefited greatly by police actions. In accordance with TSA SD 1542-21-01(02), police were directed to ask the person to wear a mask and if they refused, would escort them out of the terminal. The police chose to allow the Plaintiff to continue by which American benefited with an on-time departure and they later communicated with American to continue their effort of enforcement to their benefit under the CARES Act. This Court must consider the totality of the events and the legality of the Defendants actions when considering the benefit received by the Spokane airport police. The Court must not compartmentalize the actions taken but must paint a clear picture of the reason for what actually occurred. Police power was passed on to American and American conducted without a lawful foundation their disciplinary action forcing the Plaintiff to accomplish what police began in the airport terminal. Defendants coordinated and notified police of their action. *See Hearing exhibit.* There was a symbiotic relation between the State and the Defendants in which both benefited. There was more than a mere notification by the police, there was encouragement to carry out enforcement of the mask against Plaintiff. *See Doc. 38 exhibit G.* Defendants and police created a close nexus and punishment of Plaintiff was interrupted by a mere three-hour flight from Spokane to Dallas. This court must find the Defendants subject to § 1983 violation under color of law.

[12] https://www.faa.gov/airports/cares_act/ and https://www.faa.gov/airport/crrsaa/
https://www.faa.gov/sites/faa.gov/files/airports/special_programs/covid-19-airports/ACRGP-Allocations-20210219.pdf
https://www.faa.gov/sites/faa.gov/files/airports/crrsaa/Updated-ACRGP-Allocations-20210817.pdf

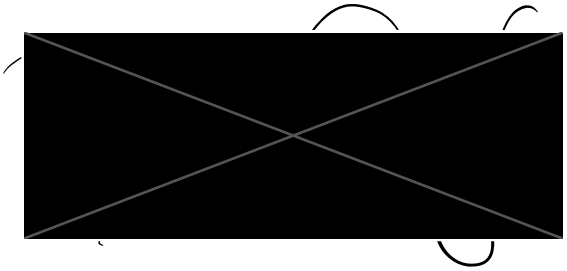
NOTICE OF AFFIDAVIT SERVED ON DEFENDANTS

On Feb. 16 and 24, 2022, Plaintiff served Defendants Long and Raynor respectively, among others who are listed in the document, with a notice of affidavit. Neither defendant has responded rebutting any of the Plaintiff's points. Both Defendants have given the Plaintiff their tacit agreement with every point in the Notice of Affidavit. *See exhibit 4.*

IN CONCLUSION

For all the above reasons the Plaintiff respectfully asks the Court to deny the Defendants motion to dismiss the listed causes of action.

Dated this 8th day of December 2022.



Bahig Saliba

[redacted]

Email: medoverlook@protonmail.com

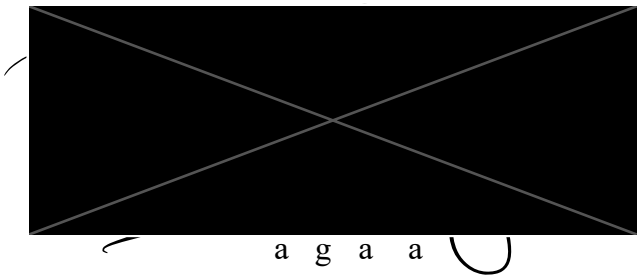
CERTIFICATE OF SERVICE

I hereby certify that on this day December 8, 2022, I electronically transmitted the forgoing with the Clerk of the court using the CM/ECF system for filing, with copies submitted electronically to the following recipient:

Lisa Anne Smith (AZ #16762)
Deconcini McdonaldYetwin &Lacy, P.C.
2525 East Broadway Blvd., Suite 200.
Tucson, AZ 85716-5300
520-322-5000
LASMITH@DMYL.COM

Molly Gable (WSBA # 47023)
Seyfarth Shaw LLP
999 Third Ave. Suite 4700
Seattle, WA 98104-4041
206-946-4910
mgabel@seyfarth.com

Nicholas Gillard-Byers (WSBA # 45707)
Ngillard-byers@seyfarth.com



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