

1 Bahig Saliba

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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Bahig Saliba,

Case No. CV-22-1025-PHX-DLR

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Plaintiff,

12

v.

PLAINTIFF’S RESPONSE TO

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Allied Pilots Association,

DEFENDANT’S MOTION TO

14

Defendant,

DISMISS

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PLAINTIFF IS NOT TIME BARRED

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Plaintiff applied and was denied APA membership, *See* Exhibit B, after which APA imposed a near complete communication blackout. During his entire 24 years with American Airlines (AA), plaintiff never needed the services of APA, received a few contract negotiations updates and now he relies on information received through other pilots for this response. The earliest the plaintiff learned of APA’s position on masking pilots was December 17, 2021, *See* Exhibit K. The plaintiff had no knowledge of APA’s position prior to December 17, 2021, and APA cannot provide evidence to the contrary. Plaintiff’s reference in the complaint was to documents Baskaran provided via email on December 23, 2021. *See* Exhibit C. Plaintiff filed suit within six months of learning of APA’s position

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1 and/or actions. In their MTD, defendants cite *IAM v. Aloha Airlines, Inc.*, the six-month
2 statute applies to disputes that implicate collective bargaining agreements and resolving
3 disputes thereof. Neither plaintiff’s FAA issued medical certificate, nor his health decisions
4 are negotiable items or determinant factors for pay rates, work rules or work conditions in
5 the JCBA. AA’s mask policy is not a negotiated item in the JCBA. *See* JCBA Exhibit.
6 Plaintiff’s claim is not time-barred.

7 **DEFENDANT’S IRRATIONAL STATEMENTS**

8 From their motion to dismiss. At 2 “...American adopted...consistent with federal
9 requirements...”, “...Flight Deck Face Mask Safety Exemption...” AA created their own
10 policy and later selectively aligned it with federal requirements which contain an exemption
11 not limited to the flight deck. *See* Exhibits G&L (exemption F3). At 2-3 “...and APA’s
12 experts support...” and “...you are in view of our passengers...” and “...if you can do so
13 without degrading the safety of flight...”. APA is not a Health Care Provider, nor does it
14 have the ability or statutory authority to conduct its own studies relating to masking of
15 pilots. APA does not have the authority to render such decision as a matter of law under
16 the Railway Labor Act (RLA). At 3,13, rewriting and omission of important aspects of
17 exemption F3 contained in the TSA Security Directive (SD). At 4,4 “...In Plaintiffs view,
18 FAR 61.53...the authority to refuse to wear a mask...”. FAR 61.53 imposes a duty on a
19 pilot to not create a deficiency and still operate aircraft as well as recognize such impending
20 deficiencies, it does not confer on the employer, who must comply with the same regulation,
21 any right to create deficiency inducing policies. History does not support the defendant’s
22 argument and neither does aviation law.

23 Plaintiff takes issue with APA’s adoption of American’s mask created policies that
24 run counter to the professional interests of pilots. Counsel for APA ignorance trivializes
25 FAR 61.53, the bedrock of aviation safety. The regulation has been on the books for many
26 decades and is not to be taken lightly. APA’s counsel preposterous statements run amok at
27 10-11,23 “...If Plaintiff believed he was unfit ...” and “...Alternatively, he could have
28 sought reasonable accommodation under the Americans with Disabilities Act...” or

1 “...Plaintiff’s interpretation of FAR 61.53...would lead to absurd and unworkable results.”
2 The results APA’s counsel desire have already been addressed in the SD F3 exemption.
3 Flight safety does not begin at the flight deck door and the FAA has spent great efforts in
4 promoting safety that cannot and should not be wiped out with a stroke of a pen. Plaintiff
5 is not alone in his interpretation and pilots across the country support his position. *See*
6 exhibit D. Pilots represented by APA, like any other pilots, have complied with FAR 61.53
7 for many decades, suddenly, APA “arbitrarily” and with “reckless disregard” for the rights
8 of the pilots, adopted a non-opposing position to the AA created mask policy in violation
9 of their mission statement. It is apparent that many of the pilots complained to APA about
10 the policy but instead of supporting the pilots, as Ferguson asserted in his public letter
11 addressing officials, *See* exhibit E, APA filed a presidential grievance only to address the
12 manner in which AA handled the “violators” and corralled pilots under Section 21 of the
13 JCBA. *See* Exhibit F.

14 **NEW APA LEADERSHIP**

15 Since the filing of this complaint, APA conducted elections and a new president,
16 Captain Ed Sicher, took office on July 1, 2022. The new president put out a statement
17 outlining the APA mission. *See* exhibit A. Also, the new APA Board of Directors put out
18 an aeromedical update, *see* exhibit I, in which the trend for Long Term Disability for pilots
19 increased 300% year over year during 2021 and 2022. APA had negotiated a coercive
20 agreement with AA dated March 25, 2021, that incentivized health decisions made by
21 pilots. *See* exhibit H. APA delved into areas that are not statutorily authorized under the
22 RLA and crippled the grievance process by adopting a non-opposing position to AA’s mask
23 policy. By doing so, APA intentionally cast protections afforded to it by the Supreme Court
24 and the RLA and operated outside the range of reasonableness. Although not a member,
25 APA is obligated to promote, rather than impose by any means their political interest over
26 the individual and collective rights of the class and by extension the plaintiff. APA’s
27 adopted position served a political interest. *See* CB&L exhibit page 5, Article II, B & C. As
28 a matter of law, a pilot’s FAA issued medical certificate and the manner in which a pilot

1 maintains said certificate is a protected right that is not subject to negotiations under the
2 RLA.

3 **BEFORE & DURING THE JANUARY 6 HEARING**

4 As stated above, in 24 years the plaintiff never needed APA services and now he is
5 forced to learn the RLA at a rapid pace and rely on other sources for information. The
6 following is a summary of APA actions prior to and during the January 6, 2022, hearing.
7 *See* Emails Prior to Hearing and 01-06-22 Hearing exhibits. AA notified APA of the hearing
8 on Dec. 9, 2021. In a short phone conversation on Dec. 10, 2021, the plaintiff briefly
9 outlined his position and Baskaran explained the process to plaintiff. That same day,
10 plaintiff sent email detailing his position and the legal authority he relied on. After several
11 attempts the plaintiff was able to have the second conversation with Baskaran on Dec. 17
12 in which he was informed, for the first time, of APA's position regarding AA's mask policy
13 and was presented with the only defense that APA formulated. Plaintiff sent an email on
14 the same day to recap conversation. Email to APA Dec. 22, 2021, highlights the time
15 sensitive nature in developing a planned defense and that the plaintiff and APA's interests
16 should align. Plaintiff inquired about APA's line of defense.

17 Email to plaintiff Dec. 23, 2021, APA plays down the importance of "relevant
18 documents" and the term "including" for the defense under the JCBA Sec. 21.B.4. Baskaran
19 details and provides APA position documents referenced in the MTD. In an act of bad faith,
20 Baskaran lies about defense plan introduced by her on Dec. 17, 2021. Baskaran denies that
21 plaintiff interests align with APA's by citing case law and claims APA learned from AA
22 the plaintiff declined APA representation. When asked Baskaran never presented the
23 plaintiff with the AA source for the allegation.

24 Email to APA Dec. 25, 2021. Plaintiff clarifies he did not inform AA that he did not
25 wish APA representation, clarifies the law as he understood it and calls out Baskaran lie
26 regarding her first and only plan of defense ever presented. APA did not have a plan and
27 never intended on formulating one because they had already ceded pilot authority to AA.

1 In this email, the plaintiff clearly asks for the full representation of APA. The plaintiff made
2 his position clear and now he waits for APA’s defense plan so he can make a choice.

3 Email to plaintiff Dec. 29, 2021. Baskaran disregards the fact plaintiff asked for full
4 representation and never schedules a prep session to discuss legal arguments and theories.
5 She goes on to state that APA does not oppose AA mask policy “generally” and that APA
6 has never grieved AA policy. The meaning of “generally” in the dictionary is not absolute
7 and leaves wiggle room. APA was not willing to even entertain the plaintiff’s lawful
8 position, instead Baskaran offered FAA SAFO 20009 document as the foundation for their
9 position claiming the FAA disagrees with the plaintiff and that his position is not legally
10 sound. *See SAFO 20009 exhibit and exhibit J which contradict Baskaran assertion of FAA*
11 *position. SAFO 20009 document clearly states it does not “... have the force and effect of*
12 *law and are not meant to bind the public in any way...”* APA acted in bad faith and was not
13 truthful in adopting their legal position. APA’s position was arbitrary and not grounded in
14 any law. Baskaran was willing to carry on a discussion via email; however, even when
15 plaintiff asked for full APA representation, she never scheduled a prep session to develop
16 legal arguments and theories. APA imposes midnight Dec. 31, 2021, as a deadline for the
17 plaintiff to make a request he already made on Dec. 25, 2021, knowing full well that a
18 reschedule, if the parties are not ready, is negotiated in the JCBA Sec. 21. It is irrational to
19 impose a deadline after APA wasted eleven days by lack of communication with the
20 plaintiff. APA was dishonest and arbitrary in their dealings.

21 Plaintiff email Dec. 30, 2021. Plaintiff asks for the law guiding APA’s position.
22 Attempts to clarify any conflict of interest. Disagrees with deadline. APA still does not have
23 a plan of defense as requested by the plaintiff. In a following email from Baskaran dated
24 Dec. 31, 2021, she still did not state if APA had a conflict of interest, only that APA will
25 not argue the plaintiff’s authority over his medical certificate. Again, the plaintiff asks, in
26 yet another email dated Dec. 31, 2021, for a plan of defense which was not forthcoming and
27 asked again on Jan. 3, 2022. On Jan. 3, 2022, Baskaran informed the plaintiff that she
28 interprets his emails as a declination of APA representation. On Jan. 5, 2022, the plaintiff

1 emailed captain Raynor at AA, in which he included Baskaran, to inform him that he
2 intended on rescheduling the hearing.

3 During the hearing, *see* 01-06-22 Hearing exhibit, although Baskaran was aware of
4 the desire of the plaintiff to reschedule on Dec. 5, 2021, and he made clear from the very
5 beginning the need to reschedule and again for a total of five times during the hearing,
6 Baskaran never interjected or supported the plaintiff in his request. The plaintiff later
7 learned that APA had filed a presidential grievance addressing the manner in which AA
8 conducted Sec. 21 processes. *See* exhibit F. APA, by omission, knowing the plaintiff is a
9 non-member who was denied membership by APA and placed in an information blackout
10 position, failed to inform him of critical information that may have altered the course of
11 events. APA, intentionally and in bad faith, was negligent and not forthcoming with
12 information affecting the outcome of the hearing. APA failed to protect the process.

13 **AFTER THE HEARING AND DURING THE FEB. 10, 2022, GRIEVANCE**

14 *See* Email Prior to Grievance and 2-10-22 Grievance exhibits. Email to Baskaran
15 dated Jan. 10, 2022, only after asking for the second time did APA provide AA
16 correspondence as requested. Email to Baskaran dated Jan. 18, 2022, plaintiff explains the
17 reason for expunging his record and instructs APA to grieve the hearing process. APA does
18 not grieve the JCBA violation, and as discussed above, did not even notify the plaintiff of
19 the existence of a presidential grievance filed in that regard. Baskaran suggests to plaintiff
20 skipping the initial grievance in favor of an appeal at the VP level. Plaintiff disagrees.
21 Grievance drafted and submitted to Director of Flight Captain Raynor. The phoenix
22 representatives Duncan and Ellis copied on the emails. Email from Baskaran dated Feb. 7,
23 2022, confirms the meeting for Feb. 10, 2022, and that plaintiff **will have APA**
24 **representation through his reps. David Duncan and Brian Ellis.** Email to Baskaran
25 dated Feb. 8, 2022, plaintiff confirming recording of meeting and representation and
26 whether and how he would hear from the reps. Baskaran responds that the meeting will not
27 be recorded and again confirms that the base reps. **will be on the call representing him**
28 and that she copied them for his reference. Plaintiff insists on recording the meeting and

1 again confirms the function of the reps. during the meeting. Baskaran later confirms there
2 will be a court reporter present and again confirms that the base reps. are familiar with the
3 grievance and will be there to assist, and that she would have them contact plaintiff after
4 their board meeting. Neither rep. contacted the plaintiff prior to the grievance hearing.

5 During the grievance meeting neither Duncan nor Ellis would represent the plaintiff
6 and Baskaran, even though claimed to be only the facilitator stepped in and disavowed any
7 representation. Baskaran and the two base reps. promised representation and on the day of
8 the grievance meeting refused to perform in accordance with their duty under the RLA.
9 APA for the second time deceived, mislead, misguided and ultimately denied the plaintiff
10 his rights under the JCBA. Plaintiff emailed both base reps. demanding an explanation on
11 Feb. 13, 2022, and again on Feb. 16, 2022, and neither responded. Baskaran responded on
12 behalf of the two reps. on Feb. 16, 2022, with an irrational explanation of events that took
13 place at the meeting. Plaintiff has to conclude that both reps. refused to represent the
14 plaintiff for the same reason APA denied him membership and toed the line of the union
15 political agenda. APA was intentionally dishonest and did not perform in accordance with
16 its contractual obligations.

17 **POST GRIEVANCE EVENTS**

18 *See* email post grievance exhibit. On Mar. 2, 2022, plaintiff moves to appeal the
19 grievance. Mar. 10, 2022, Baskaran sends a draft of the appeal letter. Plaintiff reviews the
20 letter, amends it and returns to Baskaran for filing. Baskaran files another document after
21 affixing plaintiff's electronic signature to it. Email Mar. 11, 2022, plaintiff demands the
22 document retracted and the correct document filed. When confronted, Baskaran gives an
23 incriminating excuse for filing the wrong document. Every step that APA took disadvantage
24 the plaintiff and this was not different. It is not a clerical error when a lawyer sends another
25 document when they cannot read a file. APA has shown a record a discriminatorily,
26 arbitrary behavior and bad faith. Still Baskaran insisted that the plaintiff never wished for
27 APA representation despite the Dec. 25, 2021, email in which plaintiff asks for full APA
28 representation. In Baskaran email dated Mar. 29, 2022, suddenly a reschedule of the appeal

1 is not an issue for APA, which is contrary to their behavior for the Sec. 21 hearing on Jan.
2 6, 2022, where they allowed AA to violate the JCBA at will. APA was serving a political
3 agenda in forcing the plaintiff to comply with AA mask policy at any cost.

4 In an email dated Mar. 29, 2022, at 7:03 PM, in the second paragraph of the email,
5 Baskaran advanced an APA argument that was in line with what captain Raynor attempted
6 to accomplish the day after the hearing on Jan. 6, 2022. Compl. at 22 line 4. Baskaran writes,
7 “APA can argue that since you agreed to comply at your Section 21 hearing and fully expect
8 to comply with the Company’s mask policy going forward for as long as it is in effect...”
9 The plaintiff responded by stating in a response email (underlined in the message above
10 Baskaran’s in the email in the exhibit) that “...I find the defense you offer on the eve of the
11 appeal self-incriminating and unacceptable” and “...On March 30th, 2022, I expect APA to
12 live up to their obligations under the RLA and the JCBA.” Baskaran advanced the argument
13 the plaintiff disagreed with during the appeal hearing, *see* 03-30-22 Appeal exhibits at 13,
14 even after stating in her email dated Mar. 30, 2022, at 8:25 AM that APA concludes the
15 plaintiff did not want APA to present a defense. Following the appeal and on Apr. 20, 2022,
16 AA imposed a Sec. 20 examination of the plaintiff. A move the plaintiff views as retaliatory
17 and emboldened by APA lack of JCBA enforcement. APA did not suggest filing a
18 grievance for the Sec.20 notification until Jul. 1, 2022, the day the new APA president took
19 office. *See* Kennedy email dated Jul. 1, 2022. Suddenly, APA was able to provide a plan
20 of defense and an explanation of their logic in formulating the plan. *See* Kennedy email
21 dated Jul. 19, 2022. It seemed like it was a complete reversal of APA’s approach to the
22 process. On May 27, 2022, APA advanced the plaintiff grievance to a pre-arbitration
23 conference. On Aug. 4, 2022, plaintiff sent an email to APA warning them not to proceed
24 to an arbitration for the reasons discussed below. *See* last email in post grievance exhibit.

25 LEGAL ARGUMENT

26 APA dereliction of duty and failure to represent the plaintiff fairly spanned more
27 than mere arbitrary, discriminatory and bad faith behavior. APA operated outside the
28 statutory authority mandated under the RLA and cast aside protections and the powers of

1 the grievance process. In short APA went rogue. It is law, APA is not a health care
2 organization. APA does not have the authority to create or agree to any policy AA creates
3 that forces a pilot to wear a mask even if they desired to negotiate such practice. (Reason
4 APA disguised it as a minor dispute) APA’s reasoning for not supporting the plaintiff
5 argument is legally flawed and is counter to the interests of AA pilots. All AA pilots must
6 have a valid FAA medical certificate to operate aircraft commercially and privately. With
7 the increasing complaints of pilots for mask wearing, indication of their opposition to the
8 practice, and the treatment they received from AA, APA filed the presidential grievance on
9 Oct. 1, 2020, improperly declaring a minor dispute. APA did not simply make a judgment
10 error, it actively promoted and expended energy promoting their position. Therefore, by
11 unlawfully adopting a non-opposing position to AA mask policy APA placed itself and the
12 interests of the pilots it represents, including the plaintiff’s, in what is termed in aviation
13 “the coffin’s corner” for which there is no escape, the reason APA never presented a defense
14 strategy to the plaintiff in the first place.

15 APA traded a major dispute under the RLA for a minor one. Whether AA can legally
16 create such a policy is immaterial, forcing a change in working conditions is a major dispute
17 under the RLA. Congress’ purpose in passing the RLA was to promote stability in labor-
18 management relations by providing a comprehensive framework for resolving labor
19 disputes. *Atchinson, T. & S. F. R. Co. v. Buell*, 480 U.S. 557, 562 (1987); see also 45 U.S.C.
20 § 151a. To realize this goal, the RLA establishes a mandatory arbitral mechanism for “the
21 prompt and orderly settlement” of two classes of disputes. 45 U.S.C. §151a. The first class,
22 those concerning “rates of pay, rules or working conditions,” *ibid.*, are deemed “major”
23 disputes. Major disputes relate to “the formation of collective [bargaining] agreements or
24 efforts to secure them.” *Conrail*, 491 U.S., at 302, quoting *Elgin, J. & E. R. Co. v. Burley.*,
25 U.S. 711, 723 (1945). The second class of disputes, known as “minor” disputes, “gro[w]
26 out of grievances or out of interpretation or application of agreements covering rates of pay,
27 rules, or working conditions.” 45 U.S.C. § 151a. Minor disputes involve “controversies over
28 the meaning of an existing collective bargaining agreement in a particular fact situation.”
29 *Trainmen v. Chicago R. & I. R. Co.*, 353 U.S. 30, 33 (1957). Thus, “major disputes seek to

1 create contractual rights, minor disputes to enforce them.” *Conrail*, 491 U.S., at 302, citing
2 *Burley*, 325 U.S., at 723. Here APA, not being a health care organization and without
3 authority to impose or negotiate a masking work rule, which is a major dispute, filed a
4 presidential grievance for a minor dispute on Oct. 1, 2020. *See* exhibit F. On Jan. 23, 2021,
5 APA president Ferguson put out a message to the pilot group claiming a pending major
6 dispute with AA, *see* exhibit N, which was then followed by a LOA dated Mar. 25, 2021,
7 *see* exhibit H, in which, even if it claimed to be a pilot’s decision to accept the vaccination,
8 was partly coercive in nature and counter to the mission and statutory authority of APA.
9 *See* exhibit A. APA continues the practice of deception. APA filed the presidential
10 grievance knowing it is beyond the reach of the arbitral mechanism. The adjustment boards
11 charged with administration of the minor-dispute provisions have understood these
12 provisions as pertaining only to disputes invoking contractual based rights. *See, e.g.*, NRAB
13 Fourth Div. Award No. 4548 (1987) (function of the National Rail Adjustment Board
14 (Board) is to decide disputes in accordance with the controlling CBA); NRAB Third Div.
15 Award No. 24348 (1983) (issues not related to the interpretation or application of contracts
16 are outside the Board’s authority); NRAB Third Div. Award No. 19790 (1973) (“[T]his
17 Board lacks jurisdiction to enforce rights created by State or Federal Statutes and is limited
18 to questions arising out of interpretation and application of Railway Labor Agreements”);
19 *Northwest Airlines/Airline Pilots Assn., Int’l System Bd. Of Adjustment*, decision of June
20 28, 1972, p. 13 (“[B]oth the traditional role of the arbitrator and admonitions of the courts
21 require the Board to refrain from attempting to construe any of the provisions of the
22 [RLA]”) Similarly, APA advanced the plaintiff grievance to a Pre-Arbitration Conference
23 (PAC) knowing that, in addition to the fact that the mask policy is not a negotiated item in
24 the JCBA, there is no mechanism that can address the matter, for it is beyond an arbitrator’s
25 reach to address a right bestowed on the plaintiff by a federal agency. APA, lacking a lawful
26 pathway deceptively corralled the plaintiff, and all of AA pilots, into a dead-end process,
27 Sec. 21 of the JCBA. APA never had a plan of defense for the plaintiff and never intended
28 on providing one. APA evaded providing a defense plan to the plaintiff by using trickery,

1 delay tactics and deceptive practices to frustrate and lock him into a grievance process with
2 a dead end. APA has breached and failed its duty of fair representation of the plaintiff.

3 PRIVATE RIGHT OF ACTION

4 In a response letter to the plaintiff's inquiry seeking clarification and action, the FAA Chief
5 Medical Officer Susan E. Northrop, MD, did not provide the plaintiff with any study or
6 guidance related to any investigation of the deficiencies mask wearing creates that the FAA
7 has conducted. *See* exhibit M. The language in the FAA response does not create or
8 interpret regulation and leaves the plaintiff seeking remedy. A follow up letter to then FAA
9 administrator Steven Dickson yielded no results either. Furthermore, his successor did not
10 take any action in that regard. *See* exhibit M. The plaintiff just received a response from
11 the Office of the Chief Counsel for the FAA dated Aug. 29, 2022, almost eight months after
12 his inquiry regarding the interpretation of FAR 61.53, *see* exhibit M. The regulation simply
13 means what it says and leaves up to the pilot to make that determination, neither AA nor
14 APA can step into that position. The plaintiff made his concerns publicly known to the
15 agency charged with aviation safety and received no substantive response. The FAA is
16 silent on the issue, is not a health agency and in seeking remedy, the plaintiff resorts to
17 court. *See* exhibit J. The plaintiff asserts an implied private right of action and argues the
18 following factors for consideration in favor of determining the existence of an implied
19 private right of action under the Federal Aviation Act of 1958 (The ACT). 1) Regulations
20 prohibiting certain acts. The Federal Aviation Regulations (FARs) contain many
21 prohibitions, of most importance in this case is 14 CFR §§ 61.53, 91.11, prohibition on
22 operations during medical deficiency and interference. 2) Identifying a particular group that
23 The Act is intended to benefit, pilots. Denying the plaintiff, the right and obligation of
24 complying with the regulations on the job denies him the benefit of The Act. 3) The ACT
25 confers a right on the plaintiff. The ACT specifically directs an FAA aeromedical examiner
26 to issue a medical certificate to the pilot applicant. "Once a pilot meets the requirements of
27 a medical certificate, he *must* be issued such certificate and cannot be denied." (2022

1 Aeromedical Guide for AMEs P.13)¹ The process confers an enforceable right upon the
2 plaintiff, a right enjoyed privately and commercially. 4) The conduct of the defendants was
3 intentional considering they must comply with the same Federal Aviation Regulations
4 (FARs) under The Act. 5) Remediless. Central to this case is the pilot’s FAA issued
5 medical certificate and as discussed above, The FAA leaves the plaintiff remediless. 7) A
6 remedy prohibiting interference that permits the plaintiff compliance with the regulations
7 of The Act comport with the intent of The Act. 8) The court will not infringe on the
8 legislative or create law. 9) Enforcement provisions already exist in the FARs. Congress
9 never envisioned an employer imposing medical deficiencies and a pilot union supporting
10 such imposition. AA and APA cannot have it both ways, impose a deficiency and expect a
11 fit for duty signature under penalty of law. Considering the above discussion, the plaintiff
12 asks the court to find an implied private right of action and deny the defendants motion to
13 dismiss for lack of private right of action.

14 STATE ACTOR

15 The Federal Aviation Act of 1958 (The Act) bestows on the plaintiff a secured and
16 enforceable right to obtain an FAA issued medical certificate required to operate aircraft
17 privately and commercially. As discussed above, if the applicant meets the requirements
18 for the issuance of a medical certificate, a certificate must be issued under The Act.

19 Executive Order 13998 contained the following in Sec. 2 (b) “*Consultation*. In
20 implementing this section, the heads of agencies shall consult, as appropriate, with
21 interested parties...industry and union representatives from the transportation sector...” and
22 (d) “*Preemption*. To the extent permitted by applicable law ...this section does not preempt
23 State, local...laws...” and Sec.4 “*Support for State, local, tribal and Territorial*
24 *Authorities*...identify and inform agencies of options to incentivize, support, and encourage
25 widespread mask wearing...” Statements made by APA indicate APA was very active in

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

1 using it's leverage on the federal and state level to promote the use of masking of pilots and
2 others. As airline pilots do, the plaintiff traversed the country operating out of airports
3 controlled and operated by States, Counties or local government. In the plaintiff's case, the
4 incident at the Spokane International Airport on Dec. 6, 2021, formed the genesis of the
5 case. APA was clear in supporting AA following the incident on Dec. 6, 2021. As discussed
6 above, APA supported AA masking policy of pilots at every airport terminal throughout the
7 country, used their leverage to promote masking of pilots and manipulated the RLA for
8 political reasons. APA used their unique position to achieve goals set out by governmental
9 institutions and to deny and/or impede the plaintiff in the exercise of his rights and
10 obligations under the Federal Aviation Regulations.

11 To establish a claim under Section 1983, a plaintiff must plead a deprivation of a
12 right secured by the Constitution and the laws of the United States that was committed by
13 a person acting under color of state law. *Machon v. Pennsylvania Dept. of Public Welfare*,
14 847 F. Supp.2d 734 (E.D.Pa.2012). Where a plaintiff lodges a Section 1983 claim against
15 a private party (as opposed to a governmental entity), the defendant can be held liable where
16 he is "fairly said to be a state actor." *Pugh v. Downs*, 641 F. Supp.2d 468, 472 (E.D.Pa.
17 2009). *See also Lugar v. Edmondson Oil Co.* 457 U.S. 922, 937, 102 S.Ct. 2744, 73 L.Ed.2d
18 482 (1982) (stating that our cases have insisted that conduct allegedly causing deprivation
19 of federal rights be fairly attributable to the state). A private party can be "fairly said to be
20 a state actor" for purposes of Section 1983 under four tests. First, under the "close nexus"
21 test a private party can be fairly said to be a state actor where "there is a sufficiently close
22 nexus between the state and the challenged action of the [private] entity so that the action
23 of the latter may fairly be treated as that of the state itself." *Blum v. Yaretsky*, 457 U.S. 991,
24 1004, 102 S.Ct. 2777, 73 L.Ed.2d 534 (1982) (holding state responsible for private decision
25 where it has exercised coercive power or has provided such significant encouragement,
26 either overt or covert, that the choice must be deemed that of the state). APA has petitioned
27 and won an election to represent the pilots of AA and by being the sole representative of
28 the pilots it yields great power. By law its duty is limited to securing a collective bargaining
29 agreement establishing rates of pay, work rules and working conditions. APA however,

1 morphed over the years into an organization encompassing many aspects of a pilot's
2 professional life. The one thing APA can never be is a health care organization that dictates,
3 in concert with state and local authorities covertly or overtly, conditions affecting a pilot's
4 medical certificate. That is exactly what APA did by simply supporting policies adopted by
5 state and local institutions through consultation, as indicated by the executive order, that
6 enforced masking on pilots in compliance with executive order 13998 and specifically at
7 the Spokane International Airport. *See* MTD at 1, 8. (defendant asserts the mask mandate
8 is applicable to pilots notwithstanding the existence of an exemption) (plaintiff does not
9 have knowledge of where and when consultations took place) APA had and still has the
10 power to protect a pilot's medical certificate but it abdicated and ceded authority in favor
11 of a political agenda.

12 Second, under the "symbiotic relationship" test a private party can be fairly said to
13 be a state actor where "the state has so far insinuated itself into a position of
14 interdependence" with the private party that "it must be recognized as a joint participant in
15 the challenged activity." *Burton v. Wilmington Parking Auth.*, 365 U.S. 715, 725,81 S.Ct.
16 856,6 L.Ed.2d 45 (1961) (holding privately owned restaurant's refusal to serve an African
17 American customer constituted state action where the restaurant leased space from the
18 parking garage owned by the state agency). Because of the cooperative nature between AA
19 and APA in forcing pilots to wear a mask, the two parties must be viewed as one. APA did
20 not oppose masking of pilots and never grieved the AA mask policy. The "symbiotic
21 relationship" between AA and the Spokane police, *see* Compl. at 18, must be viewed as a
22 relationship between AA, APA and the Spokane police. In favor of an on-time departure,
23 an interest shared by AA and APA as stated in exhibit C, the police released the plaintiff
24 after approximately 15 minutes detention, which leads us into the third test.

25 Under the third "joint action" test a private party can be fairly said to be a state actor
26 where a private party is a "willful participant in joint action with the State or its agents."
27 *Lugar*, 457 U.S. at 941, 102 S.Ct. 2744 (1982) Here, APA, not having the authority and not
28 being a health care provider, willfully deviated from its charter and mission and participated
29 in plaintiff punishment that originated at the Spokane airport.

1 Fourth, under the “public function” test a private party can be fairly said to be a state
2 actor where the private party has been “delegated...a power traditionally exclusively
3 reserved to the State.” *Terry v. Adams*, 345 U.S. 461, 468-470, 73 S.Ct. 809, 97 L.Ed. 1152
4 (1953) (state action found where private actor administered election of public official). By
5 its nature APA, has been delegated authority traditionally exclusive to state or federal courts
6 in resolving disputes arising out of employment rates of pay, work rules or work conditions.
7 By winning an election, APA became the sole representative of AA pilots and held the
8 exclusive power to resolve disputes through a mechanism set up under the RLA. Although
9 the RLA is enacted under federal law, it preempts certain actions related to CBAs in State
10 courts. As discussed above, APA abused their position and delved into areas outside their
11 statutory authority by supporting state action, i.e., the Spokane police action, and is
12 attempting to lock the plaintiff under the auspices of the RLA to prevent him reaching court.
13 APA must be declared a state actor for the purpose of 42 U.S. Code § 1983 and further, in
14 coordination with AA, has willfully subjected the plaintiff to deprivation under color of law
15 of protected rights under the Federal Aviation Act of 1958, namely the free exercise of
16 health decisions the plaintiff makes in maintaining his FAA issued medical certificate. The
17 plaintiff asks the court to deny defendant’s motion to dismiss for lack of action taken color
18 of state law.

19 **IN CONCLUSION**

20 APA is a union operating under the RLA. APA denied the plaintiff membership and
21 imposed an information blackout upon him. As a matter of law, APA is not a health care
22 organization and does not have the statutory authority to dictate, negotiate or agree to any
23 AA policy creating a deficiency affecting a pilot’s FAA issued medical certificate.
24 Notwithstanding the law, APA operated beyond the range of reasonableness, supported and
25 promoted policies of masking pilots, deployed deceptive practices and manipulated the
26 RLA, made decisions not supported by law and deprived the plaintiff fair representation in
27 favor of a political agenda. Furthermore, APA acted in concert with AA and the state of
28 Washington to punish the plaintiff by employing a process reserved for resolving disputes

1 over rights created by the JCBA. For the foregoing reasons, the plaintiff asks the court to
2 deny the defendant's motion to dismiss.

3

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5 Dated this 30th day of August 2022.

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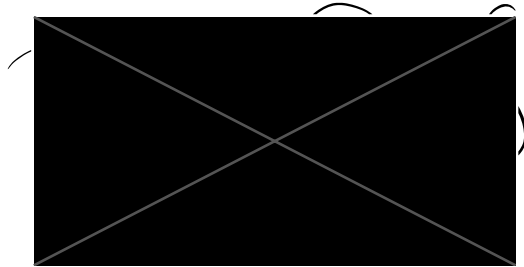
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Bahig Saliba

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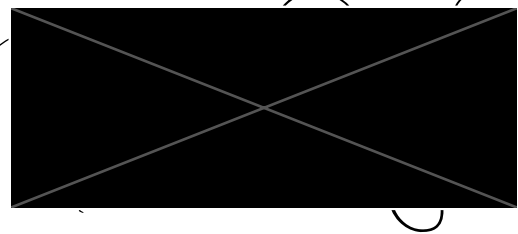
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CERTIFICATE OF SERVICE

I hereby certify that on this day August 30th, 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:

| | |
|----------------------------------------------------------|--------------------------------------------------------------------|
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