

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI

JOHN KRAKOWSKI, individually,)	
and on behalf of all others similarly situated,)	
)	
Plaintiffs,)	Cause No.:
)	
v.)	Division:
)	
ALLIED PILOTS ASSOCIATION,)	
Serve at:)	
14600 Trinity Boulevard, Suite 500)	
Fort Worth, TX 76155)	
)	
HOLD FOR SERVICE)	
)	
Defendant.)	

PETITION FOR INDIVIDUAL AND CLASS ACTION RELIEF

Plaintiff John Krakowski, individually and on behalf of all others similarly situated, for his petition against Allied Pilots Association (“APA”), for individual and class action relief pursuant to Missouri Rule of Civil Procedure 52.08, states:

Parties, Jurisdiction, and Venue

1. Plaintiff John Krakowski (“Krakowski”) is a resident of St. Louis County, Missouri.
2. Defendant APA is an unincorporated association and labor organization maintaining its headquarters in Texas. APA is the certified collective bargaining agent of approximately 15,000 American Airlines, Inc. (“American”) pilots.
3. Krakowski and all proposed Class members are American pilots represented by APA.

4. Jurisdiction is proper because APA conducts business throughout the state, and because it represents numerous members based at American's domicile in St. Louis, Missouri. Jurisdiction is also proper because APA committed tortious acts that damaged Plaintiff Krakowski and others in the state of Missouri.

5. Venue is proper in this county under Section 508.010, RSMo., because Krakowski resides in this county, and Krakowski and other Class members residing in this county were first injured in St. Louis County, Missouri.

6. Based upon the anticipated size of the Class and the amount in controversy for each member of the Class, the total sum owed to the Class alleged herein is less than \$5 million. Removal under the Class Action Fairness Act, 28 U.S.C. § 1332(d), would therefore be improper.

7. By his action, Plaintiff Krakowski seeks to recover from APA union dues that it has wrongfully collected from Plaintiff and the other Class members.

Factual Allegations

How APA collects dues from its members

8. APA, as the certified collective bargaining agent for all of the approximately 15,000 American pilots, is responsible for making and enforcing the collective bargaining agreements between its members and American.

9. As their certified collective bargaining agent, APA receives dues from its members. Non-APA members who work for American pay APA "agency fees." In this Petition, these payments are referred to collectively as "dues."

10. The amount of dues to be paid by each member is specifically set out in APA's Constitution and Bylaws:

Members shall pay dues at the rate of one percent (1%) on current monthly income. Dues at the rate in effect at the time any such payments are received by the member shall be collected on all **contractual pay**, including Variable Compensation, cash bonuses, and cash profit sharing.

APA Constitution and Bylaws, Article III, Section 6 (emphasis supplied). Non-members' agency fees are set at 0.85% of contractual pay.

11. Contractual pay is just that: pay that a pilot receives pursuant to his or her employment contract, i.e. the collective bargaining agreement between APA and American. The rationale behind this limitation is simple: APA may only collect dues on pilot income earned under the contracts that it is directly responsible for negotiating and implementing.

12. The vast majority of American pilots elect to have American withhold their dues from their contractual pay, and remit the dues to APA directly. This is called "dues check-off." The remaining pilots elect to receive an invoice and directly pay APA their dues each month.

American's goodwill profit sharing plan

13. In late 2016, American established a new profit sharing plan, called the American Airlines Group Inc. Global Profit Sharing Plan (the "Plan").

14. The Plan's purpose is to "reward eligible employees of American Airlines, Inc....for their efforts in helping achieve the strategic, financial, and operating objective of American Airlines Group Inc. ('AAG')", and to provide those employees "with an

opportunity to share in AAG's profits[.]” All American pilots were “Participating Employees” under the Plan.

15. The Plan was purely a goodwill gesture from American to its employees. It was not required or contemplated under any collective bargaining agreement, nor was it negotiated for by any bargaining agent, including APA.

16. American sent a letter to APA's president asking APA to agree to the Plan. In that letter, American stated “the terms and conditions set forth in the Profit Sharing Plan shall apply and shall govern the participation of employees represented by APA.”

17. On October 20, 2016, APA signed the letter and the Plan went into effect. To the best of Plaintiff's knowledge, this letter is the only involvement APA had in executing the Plan. APA played no part in negotiating the Plan or any of its terms.

18. The Plan is not part of any collective bargaining agreement between APA and American. In fact, the Plan expressly distinguishes itself from any collective bargaining agreement:

In no event shall the terms of this Plan be deemed incorporated into any collective bargaining, works council or similar agreement and nothing herein shall be deemed to amend, modify or otherwise alter any collective bargaining, works council or similar agreement.

19. Since the Plan is clearly separate from any collective bargaining agreement, any distributions made to any American pilot under it are not “contractual pay.” Therefore, APA is not entitled to collect or receive any dues resulting from payouts made pursuant to the Plan. However, APA has done exactly that.

American mistakenly remits distributions from the Plan to APA;
APA improperly retains them

20. On or about March 10, 2017, American made its first distribution under the Plan.

21. Despite the Plan's clear distinction from contractual pay, APA decided that it was entitled to dues from the Plan's distributions.

22. For the pilots who elect to have American withhold their dues payments and remit them directly to APA through dues check-off, American mistakenly withheld one percent of each pilot's distribution under the Plan and remitted it to APA. APA accepted and retained those funds. This group of pilots includes Plaintiff Krakowski.

23. For the pilots who elect to receive an invoice of their dues charges, each pilot's March invoice from APA demanded a payment of one percent of the pilot's distribution from the Plan. On Plaintiffs' information and belief, many American pilots have paid APA the full amount of dues requested, including the improperly-requested "dues" payment from the Plan distribution.

24. APA knew or should have known that it was not entitled to retain, demand, or collect any dues from any income distributed pursuant to the Plan. APA did not negotiate or implement any part of the Plan, and should not be entitled to reap any benefits from it.

25. Furthermore, APA had actual notice that it had improperly retained and demanded those dues. On March 31, 2017, Plaintiff Krakowski demanded return of his and all other American pilots' dues from the Plan. APA did not respond or oblige.

26. On Plaintiffs' information and belief, APA has collected or retained approximately \$1 million in "dues" from the Plan.

Class Action Allegations

27. Krakowski brings his claims both individually and as representative of the proposed Class under Rule 52.08.

28. The proposed Class is defined as follows:

All American Airlines, Inc. pilots who have paid APA dues, either in the form of member dues or non-member agency fees, from distributions received under the American Airlines Group Inc. Global Profit Sharing Plan.

29. The proposed Class is so numerous that joinder of all members is impracticable. APA represents approximately 15,000 American pilots, and those pilots are scattered throughout the country.

30. The most important questions of law and fact raised by this case are common to all of the members of the proposed Class. The important common factual issues include:

- (a) Is APA entitled to dues from distributions made pursuant to the Plan?
- (b) Do distributions made pursuant to the Plan meet the requirements of "contractual pay" under APA's Constitution and Bylaws?
- (c) Did American withhold and then remit to APA one percent of the American pilots' distributions made under the Plan from the pilots who elect to have his or her dues payments withheld by American?
- (d) Did APA demand and then receive dues payments on distributions made under the Plan from American pilots who elect to have APA bill him or her their dues directly?

- (e) Did APA know that it was not entitled to receive any dues from distributions made under the Plan and if so, did it continue to retain, demand, and collect dues from distributions made under the Plan once it had such knowledge?
- (f) Was APA put on notice that it was not entitled to receive any dues from distributions made under the Plan and if so, did it continue to retain, demand, and collect dues from distributions made under the Plan once it was notified?

31. Important common legal questions include:

- (a) Do the facts alleged state a cause of action against APA for conversion?
- (b) Do the facts alleged state a cause of action against APA for breach of fiduciary duty?
- (c) Do the facts alleged state a cause of action against APA for unjust enrichment?
- (d) Are Class members entitled to damages from APA in the amount of dues collected from the Plan's distributions?
- (e) If APA should assert any generally applicable affirmative defenses, does such defense have merit?
- (f) Is APA a fiduciary to the proposed Class?

32. Plaintiff Krakowski's claim is typical of the claims of the members of the proposed Class.

33. Plaintiff Krakowski understand his duties to the proposed Class, and will fairly and adequately represent and protect the interests of the Class.

34. Plaintiff has retained Jacobson Press & Fields P.C. ("JPF") to represent him and the absent members of the proposed Class. JPF's lawyers include lawyers with extensive experience in class actions and complex litigation, including cases

representing classes of pilots in suits against their union. These lawyers have successfully brought and concluded class actions in the past, and have tried class action cases to verdict and final judgment.

Count 1-Conversion

35. Plaintiff restates and incorporates by reference all preceding allegations. This claim is brought by Plaintiff Krakowski individually and as proposed representative of the Class.

36. Plaintiff and the absent Class members were entitled to possession of the full amount of distributions made pursuant to the Plan.

37. APA was not authorized to take or retain possession of any amount of distributions made pursuant to the Plan. Distributions made pursuant to the Plan are not “contractual pay” under the meaning of APA’s Constitution and Bylaws, and therefore APA is not authorized to collect, demand, or retain any dues resulting from those distributions.

38. American mistakenly withheld one percent of thousands of pilots’ distributions from the Plan and remitted it to APA. APA did not redistribute those improperly-received funds to the pilots. Furthermore, APA demanded and then collected dues payments from other pilots. APA retained, demanded, and collected those funds despite having actual knowledge that it was unauthorized to collect any dues from Plan distributions. By retaining, demanding, and collecting those funds, APA exercised unauthorized control of Plaintiff’s and absent class members’ property.

39. When APA retained and collected part of Plaintiff's and absent class members' distributions from the Plan, it deprived Plaintiff and absent class members of their rights to possession of those funds.

40. Plaintiff and each member of the proposed Class were thereby damaged.

41. APA's action as alleged were in reckless disregard of the rights of Plaintiff and the putative Class, justifying an award of punitive damages.

WHEREFORE, Plaintiff Krakowski, individually and on behalf of the proposed Class, request that the court enter judgment in his favor and against APA for actual damages in an amount to be proven at trial, in excess of \$25,000, and for punitive damages in an amount sufficient to punish APA and deter it and others from engaging in similar misconduct in the future, in a collective amount less than \$5 million, and such further relief as may be just and proper under the circumstances.

Count 2-Unjust Enrichment

42. Plaintiff restates and incorporates by reference all preceding allegations. This claim is brought by Plaintiff Krakowski individually and as proposed representative of the Class.

43. Plaintiff and absent Class members conferred a benefit on APA when APA received one percent of Plaintiff and absent Class members' distributions from the Plan, either when American mistakenly withheld and remitted those funds to APA, or when APA demanded and then collected "dues" payments from absent Class members directly.

44. APA appreciated that benefit by retaining and refusing to redistribute those funds.

45. APA accepted and retained those funds under inequitable and unjust circumstances. APA has no legal entitlement to any dues payments resulting from distributions made pursuant to the Plan, as distributions from the Plan are not “contractual pay” pursuant to APA’s Constitution and Bylaws. APA knew or should have known that it was not entitled to those funds, and was put on actual notice that it was not entitled to those funds no later than March 31, 2017.

46. As a result, Plaintiff and absent Class members were damaged.

WHEREFORE, Plaintiff Krakowski, individually and on behalf of the proposed Class, request that the court enter judgment in his favor and against APA for an amount to be proven at trial, in excess of \$25,000, and such further relief as may be just and proper under the circumstances.

Respectfully Submitted,

JACOBSON PRESS & FIELDS P.C.

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