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7 (480) 820-1421

8 Attorneys for Plaintiff

9 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**

10 **IN AND FOR THE COUNTY OF MARICOPA**

11 Edward T. Gannon, a single ) CASE NO. CV2006-092488  
12 male, )

13 Plaintiff, ) **MOTION FOR LEAVE TO FILE AN**  
14 ) **AMENDED COMPLAINT**

15 vs. )

16 PAULA WALKER and JOHN DOE )  
17 WALKER; SUE BURRIS and JOHN )  
18 DOE BURRIS; and BRIAN SHUNICK ) (Hon. Louis Araneta)  
19 and JANE DOE SHUNICK, )

20 Defendants. )  
21 )  
22 )

23 Plaintiff, by and through his undersigned counsel, moves the  
24 Court pursuant to Rule 15(a) of the Arizona Rules of Civil  
25 Procedure for leave to file a Second Amended Complaint, a copy of  
26 which is attached hereto as Exhibit "A". In support of this  
27 Motion, Plaintiff respectfully represents as follows:

28 1. Plaintiff is a commercial airline pilot employed by  
America West Airlines, now known as US Airways (collectively the  
"Airline"). Defendants are flight attendants employed by the  
Airline.

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1           2. Plaintiff's pending complaint involves allegations that  
2 Defendants, on a number of occasions, have uttered false and  
3 defamatory statements to the Federal Aviation Administration, to  
4 Airline management and to fellow Airline employees during the  
5 time period from 2003 to 2007. The defamatory comments  
6 principally involve Defendants' false statements, both orally and  
7 in writing, that Plaintiff attempted to depart the Calgary  
8 Airport with substantial ice on the aircraft's wings in violation  
9 of his duties and obligations as a licensed commercial airline  
10 pilot. The initial allegations resulted in the initiation of  
11 license revocation/enforcement proceedings by the Federal  
12 Aviation Administration. Those proceedings were ultimately  
13 dropped when it became clear the Defendants lied in their  
14 statements to the FAA.  
15

16           3. Plaintiff has also alleged Defendant Walker falsely  
17 stated to the Airline that Plaintiff harassed and/or threatened  
18 her.  
19

20           4. Approximately a week and half prior to the filing of  
21 this Motion, an article was published in the *Phoenix New Times*, a  
22 copy of which is attached as Exhibit "C" to the proposed Second  
23 Amended Complaint. In that article, statements and other  
24 information reasonable attributed to the Defendants, repeated  
25 their earlier false and defamatory statements they originally  
26 submitted to the Federal Aviation Administration. More  
27 particularly, Defendants again falsely stated Plaintiff attempted  
28

1 to depart the Calgary Airport with substantial ice on the  
2 aircraft's wings in violation of his duties and obligations as a  
3 licensed commercial airline pilot. The *New Times* article has  
4 been widely disseminated through the *New Times* internet website  
5 and has been referenced and quoted in many aviation-related  
6 websites based in the United States and abroad.  
7

8 5. The *New Times* article also contained a "link" to a  
9 website/blog believed to have been created by Defendants. That  
10 blog, known as "www.helpflightattendantcrew.blogspot.com,"  
11 contains an introductory "story" purportedly explaining the  
12 Defendants' position in this lawsuit. The "story," while  
13 technically accurate, nevertheless is actionable under a false  
14 light invasion of privacy cause of action.<sup>1</sup> More particularly,  
15 the Defendant's "story" is highly misleading and gives the false  
16 impression that Plaintiff endeavored to operate the aircraft in  
17 violation of his duties and responsibilities as a commercial  
18 airline pilot.<sup>2</sup> Moreover, the Blog appears to be designed to  
19 appeal to the aviation community in general and Airline employees  
20 in particular. Thus, the Defendants are endeavoring to  
21 disseminate their misleading diatribe to Plaintiff's fellow  
22 pilots and other Airline employees.  
23  
24  
25  
26

27 <sup>1</sup> See, Godbehere v. Phoenix Newspapers, Inc., 162 Ariz. 335, 783 P.2d 781  
(1989).

28 <sup>2</sup> This is the same aircraft and the same flight at issue in the defamation  
claims.

1           6. The proposed Second Amended Complaint therefore adds to  
2 the pending claims, new claims for defamation and false light  
3 invasion of privacy arising out of the very recent *New Times*  
4 article and Defendants' blog.

5           7. Pursuant to Rule 15(a), leave to amend shall be freely  
6 given when justice requires. In applying this provision, the  
7 appellate courts have consistently reiterated that leave to amend  
8 should only be denied where undue delay, dilatory action or undue  
9 prejudice may be involved and that amendments should be permitted  
10 to allow parties an opportunity to adjudicate the merits of  
11 claims. See, for example, Pargman v. Vickers, 208 Ariz. 573, 96  
12 P.3d 571 (App. 2004); Matter of Appeal in Maricopa County  
13 Juvenile Action No. JS-501904, 180 Ariz. 348, 884 P.2d 234 (App.  
14 1994).

15           8. Here, the circumstances giving rise to the new claims  
16 only occurred less than two (2) weeks prior to the filing of this  
17 Motion so, under any definition of timeliness, Plaintiff has  
18 swiftly sought the Court's intervention. Moreover, trial is not  
19 set in this action, discovery will not end for months, and  
20 absolutely no prejudice will befall the Defendants by granting  
21 Plaintiff leave to amend. Furthermore, the substance of the new  
22 claims is directly tied to the pending claims such that judicial  
23 economy will be furthered by all of these claims being heard and  
24 considered in a single case.  
25  
26  
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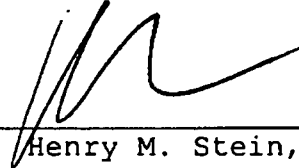
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WHEREFORE, Plaintiff respectfully requests that the Court enter its Order allowing Plaintiff leave to file his Second Amended Complaint in the form as attached hereto.

RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of February, 2009.

STEIN and STEIN, P.C.  
Attorneys at Law


By:   
Henry M. Stein, Attorney for Plaintiff

COPY of the foregoing delivered this 9<sup>th</sup> day of February, 2009, to:

Hon. Louis Araneta  
MARICOPA COUNTY SUPERIOR COURT  
222 E. Javelina Avenue  
Mesa, Arizona 85210

COPY of the foregoing delivered this same date to:

Michael W. Pearson, Esq.  
CURRY, PEARSON & WOOTEN, PLC  
814 W. Roosevelt  
Phoenix, Arizona 85007

  
Sharon Collins