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*Attorney for Plaintiffs*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

KEVIN E. BYBEE, JOHN R. SCHOLZ,  
SALLY A. DILL, and VICTOR H.  
DRUMHELLER, as individuals and plan  
participants in The Continental Retirement  
Plan;

on behalf of themselves and all others  
similarly situated; and on behalf of The  
Continental Retirement Plan;

Plaintiffs,

vs.

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, a labor organization; JAMES  
HOFFA, in his official capacity as the General  
President of the International Brotherhood of  
Teamsters; PETER FINN, in his official  
capacity as the Principal Officer of Teamsters  
Local 856; CHRISTOPHER GRISWOLD, in  
his official capacity as the Principal Officer of  
Teamsters Local 986; PAUL STRIPLING, in  
his official capacity as Principal Officer of  
Teamsters Local 781; GEORGE MIRANDA,  
in his official capacity as Principal Officer of  
Teamsters Local 210; UNITED AIRLINES,  
INC., a Delaware corporation; UNITED  
AIRLINES HOLDINGS, INC., a Delaware  
corp.; the UNITED AIRLINES HOLDINGS'  
ADMINISTRATIVE COMMITTEE, named  
fiduciary of The Continental Retirement Plan.

Defendants.

Case No.: 3:18-cv-06632-JD

**PLAINTIFFS' MOTION FOR  
EXPEDITED AND LIMITED INITIAL  
JURISDICTIONAL DISCOVERY, FOR  
ENLARGING THE TIME FOR  
PLAINTIFFS' OPPOSITION TO THE  
DEFENDANTS' MOTIONS TO  
DISMISS, AND FOR SHORTENING  
THE TIME FOR HEARING.**

Hearing Date: February 4, 2021  
Hearing Time: 10:00 a.m.  
Hearing Place: Courtroom 11 (19th Floor)  
Judge: Hon. James Donato

1                   **NOTICE OF MOTION AND MOTION FOR EXPEDITED AND LIMITED**  
2   **JURISDICTIONAL DISCOVERY**

3                   TO ALL DEFENDANTS AND THEIR COUNSEL OF RECORD:

4  
5                   PLEASE TAKE NOTICE that before the Honorable James Donato of the United States  
6 District Court, 450 Golden Gate Avenue, San Francisco, CA 94102 in Courtroom 11, 19th Floor,  
7 February 4, 2021 at 10:00 a.m., Plaintiffs Kevin E. Bybee, John R. Scholz, Sally A. Dill, and  
8 Victor H. Drumheller hereby moves the Court for (1) an Order for Expedited Discovery, (2) an  
9 Order Enlarging Time to Oppose Defendants' Motion to Dismiss pursuant to Local rule 6-1(b),  
10 and (3) an Order Shortening Time for a Hearing on this Motion due to the exigent circumstances  
11 set forth below pursuant to Local Rule 6-1(b).  
12

13                   Plaintiffs' Motion is based upon the Memorandum of Points and Authorities herein, the  
14 accompanying Declaration of Jane C. Mariani In Support of Motion for Expedited Discovery,  
15 for Enlarging Time to Oppose Defendants' Motion to Dismiss, and for Shortening Time for  
16 Hearing this Motion and exhibits thereto, and any other evidence that may be presented at or  
17 before the hearing on the Motion.  
18

19                   Date: January 4, 2021

Respectfully submitted,

20  
21                   JANE C. MARIANI,  
Law Offices of Jane C. Mariani

22                   By:           /s/ Jane C. Mariani            
23                                   JANE C. MARIANI,  
24                                   Attorney for Plaintiffs  
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**PLAINTIFFS MEMORANDUM OF POINTS AND AUTHORITIES**  
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1 consideration and resolution of the Defendants' Motions, including submission of the non-  
2 moving party's substantive response to the Motions to Dismiss, until such time as the expedited  
3 and limited jurisdictional discovery process is completed. This Motion for Expedited and Limited  
4 Jurisdictional Discovery, and the accompanying Motion to Expand the Time for the Plaintiffs'  
5 Response, would accomplish leveling the playing field for the purpose, and provide the means  
6 recognized in the Federal Rules and by the courts to provide the Plaintiffs with the facts and  
7 information they need to respond to the Defendants' Motions on a fair and effective basis.  
8

9         Several very practical reasons also point in favor of the expedited and limited  
10 jurisdictional discovery approach the Plaintiffs are proposing, relating to serious deficiencies and  
11 irregularities in the way the Defendants have chosen to present their requests for dismissal. For  
12 example, by submitting two separate Rule 12 motions dealing with individual grounds for  
13 dismissal, Defendants may well have violated not only the spirit and letter of the "consolidation  
14 of defenses" requirement of Rule 12(g) but this Court's rule on a fifteen (15) page limit on  
15 motions before this Court. Breaking down the motion into its separate parts and submitting them  
16 as individual motions may have been seen by some as the only way to get all desired challenges  
17 before the Court in the comprehensive form the Defendants wanted. At a minimum Defendants'  
18 practices add further weight to the need and importance of permitting the expedited and limited  
19 jurisdictional discovery, as one means that would help even the playing field and make it possible  
20 for the Plaintiffs to respond to the numerous motions Defendants have filed on a fairer and more  
21 representative basis.  
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25         The problems with Defendants' Motions also weigh in support of the accompanying  
26 Motion to Expand Time for the Filing of Plaintiffs' Response to Defendants' Motions. Having  
27 had no forewarning Defendants would file a Rule 12(b)(2) motion for lack of personal  
28

1 jurisdiction, after receipt of the filing, Plaintiff's counsel conferred with Defendants' counsel in  
2 an effort to enter into a stipulation regarding expedited and limited jurisdictional discovery; the  
3 parties could not reach an agreement. Defendants' counsel stated Defendants oppose such  
4 discovery, largely objecting to Plaintiffs' request for limited 2-hour depositions of Defendants  
5 Miranda and Stripling. Defendants' counsel further stated Defendants oppose this motion. The  
6 timing of the hearing on this motion was also discussed. Plaintiffs proposed, and Defendants did  
7 not object, to hearing these matters on the currently scheduled hearing date for all Rule 12(b)  
8 motions before the Court in this action, February 4, 2021.  
9

10 **II. GOOD CAUSE EXISTS FOR EXPEDITED AND LIMITED JURISDICTIONAL**  
11 **DISCOVERY ON DEFENDANT'S CONTACTS WITH CALIFORNIA.**

12 **A. Relief to Conduct Expedited and Limited Jurisdictional Discovery is**  
13 **Necessary Because the Court Has Not Issued a Trial Schedule Order.**

14 Plaintiffs seek leave to conduct expedited and limited jurisdictional discovery in order  
15 for Plaintiffs to present additional evidence of Defendants' forum-related contacts in Plaintiffs'  
16 Opposition to Defendants' motion to dismiss, currently before the Court and filed on January 4,  
17 2021. Plaintiffs have filed Plaintiffs' Opposition concurrent with this motion in order to comply  
18 with the Court's briefing schedule; however, Plaintiffs do move the Court to extend the time to  
19 respond as detailed below if Plaintiffs' Motion for Expedited and Limited Jurisdictional  
20 Discovery is granted. Courts apply a "flexible good cause" standard to determine whether  
21 expedited discovery is warranted. Semitool v. Tokyo Electron America, Inc., 208 F.R.D. 273,  
22 275 (N.D. Cal. 2002) ("Good cause may be found where the need for expedited discovery, in  
23 consideration of the administration of justice, outweighs the prejudice to the responding party.")  
24 Although Plaintiffs believe the Defendants' contacts with California are sufficient for this Court  
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1 to exercise personal jurisdiction over Defendants, Plaintiffs are entitled to jurisdictional  
2 discovery to present a fuller factual record and to rebut Defendants' contrary assertions.

3 As explained above, anticipating the potential need for jurisdictional discovery, Plaintiffs  
4 attempted to secure Defendants' agreement to stipulate to such discovery before Plaintiffs filed  
5 this Motion and Plaintiffs' Opposition to Defendants' Motion to Dismiss for Lack of Personal  
6 Jurisdiction in order to limit the amount of discovery, proceed in an orderly and efficient fashion,  
7 and not waste the Court's time. As detailed above, Plaintiffs were unaware of any personal  
8 jurisdiction issue prior to receipt of the filed motion, Docket No. 96. Plaintiffs offered a  
9 reasonable briefing schedule to complete the limited and expedited discovery; however,  
10 Defendants declined and thus, Plaintiffs' efforts were unsuccessful. Mariani Decl.  
11

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13 **B. Jurisdictional Discovery Is Regularly Granted on an Expedited Basis to Allow**  
14 **Parties to Develop a Full Factual Record.**

15 In the Ninth Circuit "discovery should ordinarily be granted where pertinent facts bearing  
16 on the question of jurisdiction are controverted or where a more satisfactory showing of the facts  
17 is necessary." Laub v. U.S. Dep't of the Interior, 342 F.3d 1080, 1093 (9th Cir. 2003) (quoting  
18 Butcher's Union Local No. 498 v. SDC Inv., Inc., 788 F.2d 535, 540 (9th Cir. 1986). The Ninth  
19 Circuit has repeatedly held that discovery normally should be permitted to allow plaintiffs the  
20 opportunity to develop the factual record regarding the issue of jurisdiction. Harris Rutsky &  
21 Co. Ins. Services, Inc. v. Bell & Clements Ltd., 328 F.3d 1122, 1135 (9th Cir. 2003) ("a remand  
22 will be necessary to allow [plaintiff] the opportunity to develop the record and make a prima  
23 facie showing of jurisdictional facts"); Chan v. Society Expeditions, Inc., 39 F.3d 1398, 1406  
24 (9th Cir. 1994) (remanding to district court for jurisdictional discovery due to insufficient factual  
25 record regarding personal jurisdiction).  
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1 "[I]n granting [jurisdictional] discovery, the trial court is vested with broad discretion."  
2 Data Disc, Inc. v. Systems Tech. Assocs., Inc., 557 F.2d 1280,1285 n.1 (9th Cir. 1977). The  
3 Ninth Circuit recognizes a "Defendant must meet the relatively high burden of establishing that  
4 'it is clear that further discovery would not demonstrate facts sufficient to constitute a basis for  
5 jurisdiction.'" Orchid Biosciences, Inc. v. St. Louis University, 198 F.R.D. 670, 674-75 (S.D.  
6 Cal. 2001) (quoting Wells Fargo & Co. v. Wells Fargo Express Co., 556 F.2d 406, 430 n.24 (9th  
7 Cir. 1977)); *see also* Focht v. Sol Melia S.A., 2010 WL 3155826 at \*2 (N.D. Cal. 2010) ("[T]he  
8 fact that the Ninth Circuit has adopted a prima facie standard for deciding the merits of the  
9 jurisdiction issue indicates that a lesser showing is required in order for plaintiff to obtain  
10 jurisdictional discovery in the first place."). Calix Networks, Inc. v. Wi-LAN Inc., 2010 WL  
11 3515759 at \*4 (N.D. Cal. 2010) ("plaintiff need not make out a prima facie case of personal  
12 jurisdiction before it can obtain jurisdiction discovery."); Internet Archive v. Shell, 2006 WL  
13 1348559 (N.D. Cal. 2006) (granting motion for expedited jurisdictional discovery). Here, the  
14 Defendants directed union activities be conducted and carried out in California and did conduct  
15 such activities themselves in California; however, Defendants have offered declaration testimony  
16 Defendants have had no contacts with California whatsoever. SAC ¶¶ 417-431; Def. Decl.

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20 **C. Jurisdictional Discovery Is Warranted Here.**

21 Defendants are unable to meet the "high burden" needed to deny jurisdictional discovery.  
22 Plaintiffs have alleged claim against Defendants under ERISA which permits nationwide service  
23 of process and therefore, any contacts Defendants have with the United States would permit the  
24 Court to exercise jurisdiction over these Defendants. Defendants freely admit sufficient contacts  
25 with the United States, i.e., Defendants reside and have offices in the United States. Miranda  
26 Decl.; Stripling Decl. Alternatively, Plaintiffs only seek expedited and limited discovery to build  
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1 a fuller factual record evidencing sufficient contacts exist between Defendants Miranda and  
2 Stripling and California and to rebut contrary assertions made in the Defendants' motion to  
3 dismiss and Defendants' declarations stating Defendants have had no contacts with California  
4 whatsoever. These reasons clearly work in favor of jurisdictional discovery. *See, e.g., Harris*  
5 *Rutsky*, 328 F.3d at 1135; *Data Disc*, 557 F.2d at 1285 n.1; *Wells Fargo*, 556 F.2d at 430 n.24.  
6

7 Additionally, there are several elements of the Defendants' Motions to Dismiss that raise  
8 factual issues requiring expedited and limited jurisdictional discovery to supplement Plaintiffs'  
9 factual record whether simply as a matter of fair play in responding to the motions under the  
10 jurisdictional discovery standards applied under each of the Rule 12 (b) or a matter of enforcing  
11 the rules for Initial Disclosures. "It is now clear that federal courts have the power to order, at  
12 their discretion, the discovery of facts necessary to ascertain their competency to entertain the  
13 merits." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978).  
14

15 Here, Defendant Miranda's and Defendant Stripling's motion to dismiss assert a number  
16 of facts Plaintiffs need to contest and evidence that is uniquely within Defendants' custody, and  
17 therefore, expedited and limited jurisdictional discovery should be allowed. Permitting Plaintiffs  
18 to take limited depositions of Defendants would lead to admissible evidence related to  
19 Defendants contacts with California. Permitting discovery of communications made between  
20 both Defendants and their subordinate officers regarding the role California was to play in  
21 deciding the merits of grievances before them is also a justifiable reason to permit jurisdiction  
22 discovery. Moreover, deferral of consideration of Defendants' motion until a more complete  
23 factual necessary investigation can be conducted would be fair. To rule on the jurisdictional  
24 issues based only upon the Defendants' claims and factual offerings would amount to a ruling on  
25 the merits without providing the non-moving party with the means to respond to the moving  
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1 parties' claims and proffered evidence. *See Data Disc.* Plaintiffs alleged the few facts known to  
2 them; however, it is highly likely there are emails, letters, and other communications that are not  
3 reflected in the Defendants highly selective and self-serving presentation of the facts. For  
4 example, Defendant Miranda's business agent Vincent Graziano, an officer within Defendant  
5 Miranda' supervision and control, made statements to the effect that a decision had been made to  
6 have California handle and deal with Plaintiff Drumheller's grievance. This is significant because  
7 it indicates or suggests that Defendant Miranda may have purposefully availed himself of the  
8 benefits of California for resolving Plaintiff Drumheller's grievance and communicated those  
9 decisions to business agent Graziano. Only jurisdictional discovery can obtain the full facts on  
10 these contacts since the information is exclusively within Defendant Miranda's knowledge,  
11 custody, and control. Similarly, Defendant Stripling permitted Nick Manicone to send Plaintiff  
12 Dill a letter stating Plaintiff Dill's grievance was handled in California. This is significant  
13 because it indicates a voluntary purposeful avilment of benefits and protections of California.  
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17 Finally, the true scope of Defendants' duties, positions, and roles within the international  
18 union structure is completely unknown to Plaintiffs. Defendant Miranda has at least one  
19 governing role as Airline Division Advisory Board Chairman; however, because the union as a  
20 matter of organizational culture is extremely secretive and non-transparent, Plaintiffs have no  
21 way of determining with any certitude, without the benefit of jurisdictional discovery, that  
22 Defendant Miranda has substantially more contacts with California, enough so to make the  
23 exercise of personal jurisdiction over him warranted and constitutional. To rule solely on the  
24 very limited, self-serving material provided by the Defendants on this issue would not serve the  
25 interests of justice or meet due process standards.  
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1           **1. Plaintiffs' Jurisdictional Discovery Requests Are Narrowly Tailored and**  
2           **Will Provide Further Evidence Permitting the Court's Exercise of Personal**  
3           **Jurisdiction Over Defendants.**

4           The expedited and limited discovery sought by Plaintiffs will provide additional evidence  
5 of Defendants' contacts with California and Defendants breaches of fiduciary duty under the  
6 RLA, the LMRDA and ERISA. It is likely that this jurisdictional discovery will reveal additional  
7 California contacts by the Defendants that the Defendants failed to disclose in the Defendants'  
8 motion to dismiss. Plaintiffs, with this motion, have attached a proposed narrowly tailored  
9 discovery plan, seeking leave to take limited depositions of Defendants Miranda and Stripling  
10 and of Vincent Graziano and Michael Pecoraro, assistants to Defendants Miranda and Stripling  
11 respectively. This discovery is necessary because Plaintiffs have not commenced full discovery  
12 because the Court has not issued a Case Management Trial Schedule Order permitting Plaintiffs  
13 to proceed with discovery. Plaintiffs have ferreted out some relevant factual allegations from the  
14 public record and from Plaintiffs' personal experiences; however, Defendants now tell a different  
15 story. This information is essentially to establishing Plaintiffs' theory Defendants Miranda and  
16 Stripling not only breached duties owed to Plaintiffs but that Defendants Miranda and Stripling  
17 continue to exert such power and control over these matters. Plaintiffs need to test the veracity  
18 of Defendants' statements in Defendants' motions to dismiss and therefore, Plaintiffs' motion for  
19 leave to propound this discovery on a limited and expedited basis should be granted.  
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22           **III. GOOD CAUSE EXISTS TO ENLARGE THE TIME TO OPPOSE DEFENDANTS'**  
23           **MOTION TO DISMISS UNTIL EXPEDITED AND LIMITED JURISDICTIONAL**  
24           **DISCOVERY IS COLLECTED AND COMPLETED.**

25           Plaintiffs' Opposition to Defendants' two Rule 12(b) motions have been filed concurrently  
26 with this motion. For the reasons stated above, Plaintiffs hereby move the Court for relief from  
27 the current briefing schedule on these motions until all expedited discovery has been collected  
28

1 and completed. Defendants' Reply briefs are due on January 11, 2021. Under Local Rule 6-1(b),  
2 Plaintiffs request the Court grant Plaintiffs an extension of time to oppose Defendants' two Rule  
3 12(b) motions until 14 days after all the jurisdictional discovery described above has been  
4 collected. This would be a fair and equitable result because the information needed by Plaintiffs  
5 is controlled and held by the Defendants and all efforts to date to secure even the most simplistic  
6 of information, for example, the relevant final, fully executed collective bargaining agreement at  
7 issue in this action have failed. Failure to enlarge the briefing schedule on Defendants' motions  
8 would seriously prejudice Plaintiffs. Plaintiffs would be forced to oppose Defendants' motions  
9 without the benefit of even initial disclosure document evidence Plaintiffs requested almost two  
10 years ago and still have not fully received. Without the benefit of collecting additional evidence  
11 to rebut the Defendants' claims, Plaintiffs would be prejudiced.  
12

13  
14 Plaintiffs request the Court adopt the following briefing and hearing schedule for  
15 Defendants' motion to dismiss: (1) Plaintiffs' Opposition briefs resubmitted 14-days after the  
16 jurisdictional discovery deadline has been complied with by Defendants; (2) Defendants' Reply  
17 brief due - 7 days after Plaintiffs' Opposition brief filed; and (3) Hearing scheduled 10-days after  
18 briefing concluded.  
19

#### 20 **IV. GOOD CAUSE EXISTS FOR SHORTENING TIME TO HEAR THIS MOTION.**

21 Because of the exigent circumstances set forth above, Plaintiffs move the Court under  
22 Local Rule 6-1(b) for an Order Shortening Time to hear Plaintiffs' Motion. Local Rule 7-2(a)  
23 requires motions to be noticed no fewer than 35-days from the filing date. However, Plaintiffs  
24 have concurred with Defendants counsel and Defendants counsel does not oppose hearing this  
25 motion on February 4, 2021, the current hearing date of all Rule 12(b) motions before the Court.  
26 Therefore, under Local Rule 6-1(b), Plaintiffs request the Court grant Plaintiffs request for an  
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1 Order Shortening Time so that this Motion can be heard on February 4, 2021, or as soon as it is  
2 convenient for the Court. Pursuant to Local Rule 6-3(a), the accompanying declaration satisfies  
3 the requirements for an Order for Shortening Time. Mariani Decl. Finally, Plaintiffs request the  
4 Court adopt the following briefing and hearing schedule for this motion: (1) Defendants  
5 Response or Opposition brief due - January 19, 2021; (2) Plaintiffs' Reply brief due - January 26,  
6 2021; and (3) Hearing on these matters set for February 4, 2021.

8 **V. PROPOSED DISCOVERY PLAN**

9 Exhibit A is Plaintiffs' proposed discovery plan for expedited and limited jurisdictional  
10 discovery, carefully tailored to the specific needs and issues presented by Defendants' Motions  
11 for Plaintiffs to address the allegations and documentary material in each motion, information  
12 within Defendants' custody.

14 **VI. CONCLUSION**

15 Good cause exists to warrant expedited and limited jurisdictional discovery for permitting  
16 discovery without a Trial Schedule Order in place in order for Plaintiffs to collect and incorporate  
17 jurisdictional discovery in Plaintiffs' Opposition to Defendants' pending motions to dismiss.  
18 Good cause also exists for enlarging Plaintiffs' deadline to file its opposition despite Plaintiffs'  
19 having submitted an opposition as required by the January 4, 2021 deadline and good cause exists  
20 for the Court to adopt Plaintiffs' proposed briefing schedule for shortening the time and for the  
21 expedited and limited jurisdictional discovery plan attached as Exhibit A to this Motion.

24 Date: January 4, 2021

Respectfully submitted,

26 JANE C. MARIANI,  
Law Offices of Jane C. Mariani

27 By: \_\_\_\_\_  
28 JANE C. MARIANI,  
*Attorney for Plaintiffs*