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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Don ADDINGTON; John BOSTIC; Mark BURMAN; Afshin IRANPOUR; Roger VELEZ; and Steve WARGOCKI, Plaintiffs, vs. Steven H. BRADFORD, Paul J. DIORIO, Robert A. FREAR, Mark. W. KING, Douglas L. MOWERY, and John A. STEPHAN, Defendants.	Case No. _____ **VERIFIED NOTICE OF REMOVAL TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA BY DEFENDANTS BRADFORD, DIORIO, FREAR, KING MOWERY AND STEPHAN** [28 U.S.C. §§ 1331, 1441; LRCiv 3.7]

Named-defendants Bradford, Diorio, Frear, King, Mowery and Stephan ("Defendants") hereby give notice that this case is removed from the Superior Court of the State of Arizona for the County of Maricopa, to the United States District Court for the District of Arizona. Defendants remove this matter pursuant to 28 U.S.C. §§ 1331 and 1441(b) and Local Rule 3.7.

As and for their Notice of Removal, Defendants plead as follows:

1. Plaintiffs commenced this civil action on September 4, 2008, in the Superior Court of the State of Arizona for the County of Maricopa. The case was given the number CV2008-021384 and assigned to Judge Bethany Hicks.

2. On the same day, the named Plaintiffs also filed a federal action in the United States District Court for the District of Arizona, Case No. 2:08-cv-1633-NVW, against US Airways Inc. and the US Airline Pilots Association.[1]

3. The County of Maricopa is within the Phoenix District of the United States District Court for the District of Arizona.

4. True and correct copies of the Complaint, as well as complete copies of all pleadings and other documents filed in the state court proceeding, are hereby filed in this Court as Exhibit 1.

5. Defendants received a complete copy of the Complaint with its attachments on September 5, 2008 (and agreed to waive service on September 11, 2008).

6. Because this Notice of Removal is filed within thirty (30) days of receipt of the Complaint it is timely under 28 U.S.C. § 1446(b).

7. The residency of each and every named Plaintiff is the state of Arizona. (Complaint ¶¶ 3-6).

8. The residency of the individual named Defendants is as follows: Bradford – Pennsylvania; Diorio – Massachusetts; Frear – New York; King – Pennsylvania; Mowery – Florida; and Stephan – New Jersey.

9. All named Plaintiffs are formerly employees of America West Airlines Inc. and

[1] Counsel for Plaintiffs is the same in both actions filed simultaneously on September 4, 2008, and the Complaints are strikingly similar.

currently are active employees of US Airways, Inc. as a result of a corporate merger. (Complaint heading, ¶¶ 1-8).

10. All named Defendants are currently employees of US Airways, Inc. (Complaint, ¶¶ 10-21).

11. The employment relationship between US Airways, Inc. and all named Plaintiffs is governed by a collective bargaining agreement that is subject to the federal Railway Labor Act ("RLA"), 45 U.S.C. § 151 *et seq.* (Complaint, ¶ 58; Complaint, Exhibit A).

12. The employment relationship between US Airways, Inc. and all named Defendants is governed by a collective bargaining agreement that is subject to the RLA. (Complaint, ¶¶ 1(f), 46).

13. All "West [i.e. pre-merger America West Inc. employees] and East [i.e. per-merger US Airways Inc. employees] Pilots work under collective bargaining agreements that allocate a variety of rights to defined seniority lists." (Complaint ¶ 56).

14. US Airways, Inc. and America West Airlines Inc., together with the union that then represented the Pilots at both airlines (the Air Line Pilots Association, hereinafter "ALPA"), entered into a "Transition Agreement" on September 20, 2005 (Complaint ¶ 60) that states that it was "made and entered into in accordance with the provisions of the Railway Labor Act, as amended ..." (Complaint, Exhibit B, page 1).

15. By its express terms, the Transition Agreement modified existing collective bargaining agreements (Complaint ¶ 63), "established collective bargaining rights ...," and constituted a "Letter of Agreement" amending said labor contracts (Complaint, Exhibit B, § XII).

16. Plaintiffs' state action includes two counts: Count I, breach of contract, and

Count II, breach of implied contract. Both counts expressly and effectively plead breach of the same collective bargaining agreements and both necessarily require analysis, interpretation and application of existing collective bargaining agreements, as modified, that are in turn subject exclusively to federal statute, the RLA. Neither count relies on state law rights that are independent and non-negotiable from any rights established by the existing collective bargaining agreements.[2]

17. Therefore this action originally could have been filed in this Court under 28 U.S.C. § 1331 (federal question jurisdiction) because it includes, exclusively, claims arising under the laws of the United States that are preempted by federal law, the RLA, as well as the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 141 *et seq*.

18. Alternatively, if either of Plaintiffs' state claims are found to form part of the same case or controversy as a claim over which this Court has original jurisdiction, then this Court may properly exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

19. Therefore, removal is proper pursuant to 28 U.S.C. § 1441.

I. FEDERAL QUESTION JURISDICTION EXISTS.

a. Minor Dispute Preemption Under The RLA.

20. As set forth above herein, this is a civil action over which the Court has original jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction). Accordingly, this entire action is one that may be removed to this Court by Defendants pursuant to 28 U.S.C. § 1441(b), which provides that, "[a]ny civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the

[2] Moreover, Defendants do not concede, and reserve the right to contest, that any of Plaintiffs' allegations constitute a cause of action under Arizona law.

United States shall be removable without regard to citizenship or residence of the parties."

21. This Court has original jurisdiction over this action because the RLA preempts both of the Plaintiffs' contract and implied contract claims that are aimed at dictating adoption of seniority proposals favored by Plaintiffs, that reference the collective bargaining agreement, and that require application, interpretation and analysis, of the terms, history, and past practice, of collective bargaining agreements and their modifications.

22. Where a federal cause of action preempts a state law cause of action, any complaint that comes within the scope of the federal cause of action necessarily "arises under" federal law. *Franchise Tax Board of California v. Construction Laborers, Vacation Trust for So. California*, 463 U.S. 1 (1983).

23. That a state complaint pleads only a state law claim on its face is immaterial and the Court may uphold removal "even though no federal question appears on the face of the complaint." *Gore v. Trans World Airlines*, 210 F.3d 944, 950 (8th Cir. 2000); *Schroeder v. Trans World Airlines*, 702 F.2d 189, 190 (9th Cir. 1983) (stating that the court will look at the complaint together with the notice of removal to determine whether the plaintiff intended to "avoid application of federal law and rel[y] solely on state law to articulate their claims.").

24. Congress enacted the Railway Labor Act to "promote stability in labor-management relations by providing a comprehensive framework for resolving labor disputes." *Espinal v. Northwest Airlines*, 90 F.3d 1452, 1456 (9th Cir. 1996) (*citing*, *Hawaiian Airlines, Inc. Norris*, 512 U.S. 246 (1994)). Congress has extended the RLA to cover airlines. 45 U.S.C. § 181.

25. The RLA establishes a mandatory arbitral mechanism for settling "minor disputes" that grow out of "grievances or out of the interpretation or application of agreements

covering rates of pay, rules or working conditions." *Id.* A state claim is a minor dispute if it involves facts "inextricably intertwined with the grievance machinery of the collective bargaining agreement and of the RLA." *Edelman v. Western Airlines*, 892 F.2d 839, 843 (9th Cir.1989) (*quoting, Magnuson v. Burlington Northern, Inc.*, 576 F.2d 1367, 1369 (9th Cir.), *cert. denied*, 439 U.S. 930, 99 S. Ct. 318, 58 L.Ed.2d 323 (1978)).

26. Adjustment Boards are mandatory under the RLA, 45 USC § 184, and have primary and exclusive jurisdiction over any minor disputes. *Union P.R. Co. v. Sheenan*, 439 U.S. 89, 99 (1978). Thus, under the Congressional regimen established by the RLA, disputes over collective bargaining agreements, or disputes that require interpretation or application of them, are to be resolved by labor arbitration before RLA-mandated Adjustment Boards.

27. Where claims are effectively based on a claimed violation of a collective bargaining agreement, or any of its amendments or modifications, they are preempted. *McCormick v. Aircraft Mechanics Fraternal Association*, 340 F.3d 642, 646 (8th Cir. 2003); *Pyles v. United Airlines*, 79 F.3d 1046, 1050 (11th Cir. 1996) (claim based on alleged breach of side letter to a collective bargaining agreement is preempted).

28. Where resolution of a claim brought in court depends on the interpretation of, or is substantially dependent upon the analysis of the terms of a collective bargaining agreement, the RLA completely preempts the state law claim. *Andrews v. Louisville & Nashville Railroad*, 406 U.S. 320 (1972); *Hawaiian Airlines v. Norris*, 512 U.S. 246, 399 (1994); *Saridakis v. United Airlines*, 166 F.3d 1272, 1277-79 (9th Cir. 1999); *Perugini v. Safeway Stores, Inc.*, 935 F.2d 1083, 1088 (9th Cir. 1991); *Schroeder v. Trans World Airlines*, 702 F.2d 189, 191 (9th Cir. 1983) (in affirming removal, court held that, "the application of the RLA and the necessity of its interpretation establish the existence of a federal question as an essential element of

plaintiff's cause of action, providing the basis for removal").

29. Moreover, although it is not the case here, even where a state complaint does not expressly refer to a collective bargaining agreement, a plaintiff cannot avoid the exclusive jurisdiction of the RLA over minor disputes merely by "omitting any express reference in the complaint" to the labor contract. *Edelman v Western Airlines, Inc.*, 892 F.2d 839, 845 (9th Cir. 1991); *see also, Melanson v. United Airlines Inc.*, 931 F.2d 558 (9th Cir. 1991).

30. Those few RLA claims not preempted are confined to claims that vindicate state law rights that are: 1) independent; and 2) nonnegotiable such that they cannot be bargained away in a collective bargaining agreement. *Miller v. A T & T Network Sys.*, 850 F.2d 543, 545-47 (9th Cir. 1988) (no preemption if plaintiff seeks to pursue state-law claims that rest on "independent, nonnegotiable state-law rights"). *See also Valles v. Ivy Hill Corp*, 410 F.3d 1071, 1081 (9th Cir. 2005) (California's statutorily guaranteed meal periods are never subject to waiver by a collective bargaining agreement).

31. Under the RLA, covered employers and labor unions are bound to bargain over "rates of pay, rules, and working conditions." 45 U.S.C. § 152, First. The Supreme Court has stated that this term is to be interpreted broadly and with consideration for how the industry has bargained in the past. *Railroad Telegraphers v. Chicago & N.W.R.R.*, 362 U.S. 330, 338 (1960). Seniority and re-ordering of seniority are typical subjects of collective bargaining under the RLA. *Rakestraw v. United Air Lines*, 981 F.2d 1524, 1536 (7th Cir. 1992); *Hass v. Darigold Dairy Products Co.*, 751 F.2d 1096, 1099 (9th Cir. 1985) (noting that it "is quite well established in this Circuit that seniority rights are creations of the collective bargaining agreement..."). Indeed, the Supreme Court has said, "More than any other provision of the collective [bargaining] agreement . . . seniority affects the economic security of the individual

employee covered by its terms." *Franks v. Bowman Transportation Co.*, 424 U.S. 747, 766 (1976). Similarly, the establishment of Adjustment Boards in collective bargaining agreements is mandatory under the Act, but parties are free to define through collective bargaining arbitration and grievance procedure within the confines of the Act. 45 U.S.C. §184; *e.g. Wells v. Southern Airways*, 616 F.2d 107, 110 (5th Cir. 1980), *cert denied*, 449 U.S. 862 (1980).

32. Here, Plaintiffs' two claims are entirely dependent on the cited collective bargaining agreement and necessarily, then, require application, interpretation or analysis of them, concerning contract seniority and arbitration terms. Hence, Plaintiffs' claims are calculated to, or have the necessary and unavoidable effect of, evading the mandatory Adjustment Board established by the RLA that has exclusive jurisdiction over these alleged violations of collective bargaining agreement claims.

33. It is undisputed that the Transition Agreement is a modification of the collective bargaining agreement. (Complaint, ¶¶ 63, 64, 104, 105, 106, 107, and 116; Complaint, Exhibit B, § XII C).

34. Count I of II of Plaintiffs' state action sounds in breach of contract and expressly alleges breach of the "Transition Agreement." (Complaint, ¶¶ 110, 111, and 116).

35. Count II of II of Plaintiffs' state action sounds in breach of implied contract and specifically alleges that "the Transition Agreement ... has an implied covenant of good faith and fair dealing" (Complaint, ¶ 119) that imposes an obligation to "negotiate a single collective bargaining agreement." (Complaint, ¶ 120).

36. Further, Plaintiffs' state action specifically and expressly alleges that all "plaintiff's injuries" are a "direct and foreseeable result" of "defendants acting in concert, directly and through USAPA, [US Airline Pilots Association] [to] have caused and contributed

US Airways being in breach of the West CBA [collective bargaining agreement] as modified by the Transition Agreement." (Complaint, ¶ 104).

37. Further, Plaintiffs' state action specifically alleges that "as a consequence of [the] ... breach of the West CBA as modified by the Transition Agreement ..." Plaintiffs "and other similarly situated West Pilots have lost promotions and have lost other improvements in wages, benefits and working conditions" (Complaint, ¶ 105), and "will be furloughed" (Complaint, ¶ 106), and will "likely be demoted and lose improvements in wages ..." (Complaint, ¶ 107), and finally that Plaintiffs "will continue to accrue injuries" (Complaint, ¶ 108).

38. Because Plaintiffs' complaint effectively raises disputes over whether collective bargaining agreements were violated, and necessarily depends on application, interpretation or analysis of the same, Plaintiffs' claims are preempted by the RLA and are thus removable under 28 U.S.C. § 1441(b) to the United States District Court.

b. Preemption Under The Law Of Duty Of Fair Representation Under The RLA.

39. A union's duty of fair representation to its members arises from its status as the exclusive bargaining agent under the RLA. *See, Steele v. Louisville & Nashville R.R. Co.*, 323 U.S. 192, 204 (1944).

40. The duty of fair representation extends in scope to negotiating a collective bargaining agreement. *E.g., Bernard v. Airline Pilots*, 873 F.2d 213 (9th Cir. 1989) (union may breach duty of fair representation by failing to follow its own procedures in contract negotiations); *Bonilla v. Oakland Scavenger Co.*, 697 F.2d 1297 (9th Cir. 1992) (union may breach duty of fair representation by negotiating a 'shareholders preference').

41. The duty of fair representation also extends in scope to enforcement of existing

collective bargaining agreements including the conduct of arbitrations. *E.g., Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554 (1975); *Peterson v. Kennedy*, 771 F.2d 1244 (9th Cir. 1985) *cert. denied*, 475 U.S. 1122 (1986).

42. Allegations of a breach of the duty of fair representation owed by unions to members are actionable as federal claims under the RLA. *Air Line Pilots Ass'n v O'Neill*, 499 U.S. 65, 78 (1991); *Glover v. St. Louis-San Francisco Ry.*, 393 U.S. 324 (1969).

43. Duty of fair representation claims preempt state law claims and are removable to federal court. *Harper v. San Dieo Transit Corp.*, 764 F.2d 663, 666 (9th Cir. 1985); *see also, Thomas v. Letter Carriers*, 225 F.3d 1149 (10th Cir. 2000); *Herron v. Jupiter Transp. Co.*, 858 F.2d 332 (6th Cir. 1988).

44. State law claims by union-represented parties attacking the bargaining position of their union may in actuality be claims asserting a breach of the union's duty of fair representation. *Rakestraw v. United Airlines Inc.*, 981 F.2d 1524, 1530 (7th Cir. 1992) (alleged impropriety in implementing union merger policy and unfairness of resulting seniority list sounds in RLA duty of fair representation); *Air Wisconsin Pilots Prot. Comm. v. Sanderson*, 909 F.2d 213, 218 (7th Cir. 1990) ("if the plaintiffs thought the arbitration award invalid because [it was] rendered in violation of the union's constitution and merger policy statement, the way to raise the point was to challenge the award" in a breach of the duty of fair representation challenge).

45. Here, in addition to expressly asserting breach of contract based on violation of the Transition Agreement (Complaint, ¶ 116) that is admittedly part of the collective bargaining agreement(s) it modified, Plaintiffs allege that their claim goes to the breach of the "ALPA Merger Policy" (Complaint, ¶ 111). The "ALPA Merger Policy" is admittedly not a collective

bargaining agreement between employer and union (or modification of) but rather is a document unilaterally issued by ALPA.

46. Further, Plaintiffs' Complaint relies on other documents unilaterally issued by ALPA, or private agents employed by ALPA: "Ground Rules ..." (Complaint, ¶ 74), "Conditions and Restrictions" (Complaint, ¶ 76), and a private arbitration award, the Nicolau Award ("Complaint, ¶ 79).

47. Further, Plaintiffs' Complaint alleges "concerted action by a majority of East Pilots to breach their obligation to treat the Nicolau Award as final and binding." (Complaint, ¶ 89). In support of this allegation, Plaintiffs further allege various acts and statements that occurred in 2007 including, *inter alia*, the declaration that the "Nicolau Award will never see the light of day on the East" (Complaint, ¶ 91) and that "in the middle of 2007 ... East Pilots formed USAPA for the purpose of ... impeding US Airways' implementation of the Nicolau list" (Complaint, ¶ 96). Further, Plaintiffs allege that "US Airways and East Pilots have been negotiating a single collective bargaining agreement that would not implement the Nicolau list" (Complaint, ¶ 103).

48. As a result of these specific allegations, Plaintiffs' claims are reasonably construed as alleging that there arose a duty to take steps to ensure the implementation through bargaining of the Nicolau Award that was breached starting sometime in 2007.

49. Plaintiffs' state claims, therefore, may be properly re-characterized as merely "artful" pleading that in reality raises preempted duty of fair representation claims. *See, BIW Deceived v. Marine & Shipbuilding Workers Local S6*, 132 F.3d 824, 832 (1st Cir. 1997) ("the artful pleading doctrine permits a district court to re-characterize a putative state-law claim as a federal claim when a review of the complaint, taken in context, reveals a colorable federal

question within a field in which state law is completely preempted).[3]

50. Because Plaintiffs' claims could amount to RLA duty of fair representation claims masquerading as state contract claims, they are alternatively preempted by the RLA and thus removable under 28 U.S.C. § 1441(b) to the United States District Court.

c. Preemption Of National Mediation Board Exclusive Jurisdiction Under The RLA.

51. Alternatively, this action may also be removed to this Court pursuant to 28 U.S.C. § 1441(b) because it arises under §§ 152, 154, 155, 156 and 183 of the RLA.

52. Under the RLA, the federal National Mediation Board ("NMB") has long been held to have exclusive jurisdiction over employee representational disputes. 45 U.S.C. § 152, Ninth; *Switchmen's Union v. NMB*, 320 U.S. 297 (1943). This includes the duty to investigate representation disputes, hold elections, and certify collective bargaining representatives for crafts or classes of employees.

53. In addition, Congress created the NMB to administer the RLA and assigned to it the duty to mediate "major" disputes involving the formation of collective bargaining agreements (i.e. bargaining over contracts as opposed to enforcement of them) between unions and carriers. 45 U.S.C. §§ 155, 160. *See, Local 808, Bldg Maintenance, Serv., & R.R. Workers v. National Mediation Bd.*, 888 F.2d 1428, 1431-34 (D.C. Cir. 1989) ("Local 808"); *see also, American Train Dispatchers Dep't v. Fort Smith R.R. Co.*, 121 F.3d 267, 268 (7th Cir. 1997). Courts have long recognized the preeminent and exclusive role of the NMB in resolving labor-

[3] The RLA has been held to completely preempt state law claims by: *BIW Deceived v. Marine & Shipbuilding Workers Local S6*, 132 F.3d 824, 831 (1st Cir. 1997); *Graf v. Elgin, Joliet & E. Ry. Co.*, 790 F.2d 1341, 1344 (7th Cir. 1986); *Richardson v. United Steelworkers of Am.*, 864 F.2d 1162, 1165 (5th Cir. 1989); *Deford v. Soo Line R.R. Co.*, 867 F.2d 1080, 1085 (8th Cir. 1989); *but see, Sullivan v. Am. Airlines, Inc.*, 424 F.3d 267, 277 (2nd Cir. 2005); *Roddy v. Grand Trunk W.R. Inc.*, 395 F.3d 318, 326 (6th Cir. 2005); *Geddes v. Am. Airlines, Inc.*, 321 F.2d 1349, 1357 (11th Cir. 2003). In the Ninth Circuit there is a split of authority. *Holman v. Laulo-Rowe Agency*, 994 F.2d 666, fn. 4 (9th Cir. 1993).

management disputes in the railroad and airline industries. For example, stating that courts "have only an 'extraordinarily limited' authority to review decisions of the Board," the DC Circuit has held that, "absent a showing of patent official bad faith," courts did not have jurisdiction to interfere with the NMB's process. *Id.,* 888 F.2d at 1433-34; *Horizon Air Industries, Inc. v. National Mediation Bd.*, 232 F.3d 1126, 1132 (9th Cir. 2000).

54. Plaintiffs' state action, however, specifically alleges that Plaintiffs are entitled to a Court order requiring named Defendants, and all unnamed Defendants, to adopt certain contract seniority terms, as dictated by Plaintiffs, in ongoing negotiation of a collective bargaining agreement. (Complaint, ¶ A 1, 2).

55. Plaintiffs' state action, therefore, is calculated to, or necessarily does, invade the NMB's jurisdiction under the RLA by seeking, in effect, first, to overturn an NMB-conducted election of employees to choose their own bargaining representative (i.e. USAPA, a union that does not necessarily ascribe to Plaintiffs' bargaining desiderata) and, second, by seeking to dictate table positions in ongoing collective bargaining.

56. Because Plaintiffs' claims could amount to RLA statutory claims masquerading as state contract claims, they are alternatively preempted by the RLA and are removable under 28 U.S.C. § 1441(b) to the United States District Court.

d. Preemption Under The LMRA.

57. Alternatively, this action may also be removed to this Court pursuant to the provisions of 28 U.S.C. § 1441(b) because it arises under § 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 141 *et seq.*

58. The LMRA under § *301* provides: "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce

as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." Although the language of § *301* is limited to "[s]uits for violation of contracts," the Supreme Court has expanded § *301* preemption to include cases the resolution of which "is substantially dependent upon analysis of the terms of [a collective bargaining agreement]." *Allis-Chalmers v. Lueck, 471 U.S. 202, 220, 105 S. Ct. 1904, 85 L. Ed. 2d 206 (1985).*

59. Claims which require the Court to interpret the terms of a collective bargaining agreement or whose claims are substantially dependent on the collective bargaining agreement, are completely preempted by § 301 of the LMRA. *Id. at 220*; *see, Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 8 (2003); *United Steelworkers of America v. Rawson*, 495 US 202, 220 (1985) (state claim preempted because it was substantially dependent on analysis of collective bargaining agreement); *Aguilera v. Pirelli Armstrong Tire Corp.*, 223 F.3d 1010, 1016 (9th cir. 2000) (state contract claim preempted where it required interpretation of collective bargaining agreement).

60. State law claims preempted by § 301 are considered to arise under federal law, thus providing the federal courts with subject matter jurisdiction. *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 23 (1983) (state claims preempted under § 301 "is purely a creature of federal law").

61. Because Plaintiffs' complaint necessarily depends on the interpretation of collective bargaining agreements, their claims are alternatively preempted by the LMRA and removable under 28 U.S.C. § 1441(b) to the Unites States District Court.

II. SUPPLEMENTAL JURISDICTION EXISTS.

62. Alternatively, if either of Plaintiffs' state claims are found to form part of the same case or controversy as a claim over which this Court has original jurisdiction, then this Court may properly exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

III. THE OTHER PREREQUISITES FOR REMOVAL HAVE BEEN SATISFIED.

63. As set forth above herein, this Notice of Removal is filed within thirty (30) days of receipt of the Complaint upon Defendants Bradford, Diorio, Frear, and King.

64. Defendants will promptly serve Plaintiff with this Notice of Removal and will promptly file a copy of this Notice of Removal with the clerk of the state court in which the action is pending, as required by 28 U.S.C. § 1446(d), as well as comply with Local Rule 3.7.

65. The prerequisites for removal under 28 U.S.C. § 1441 have been met.

66. Venue is proper in this district pursuant to 28 U.S.C. § 1441(a) because the District Court for the Arizona District is the judicial district embracing the place where the state case is pending.[4]

67. All represented named Defendants agree to remove, therefore all named-Defendants are unanimous in seeking removal.

68. Defendants have good and sufficient defenses to this action and do not waive any defenses, jurisdictional or otherwise, by the filing of this Notice.

69. Because this Court has original jurisdiction under 28 U.S.C. § 1331 (federal question), removal of this action is proper pursuant to 28 U.S.C. § 1441.

70. If any questions arise as to the propriety of the removal action, Defendants request the opportunity to present a brief and oral argument in support of their position that this case is removable.

71. Defendants request that this case be assigned to the Honorable Neil V. Wake, who has been assigned to the related and pending matter of Case No. 2:08-cv-1633-NVW.

WHEREFORE, Defendants, desiring to remove this case to the United States District Court for the District of Arizona, pray that the filing of this Notice of Removal shall effect the removal of the action to this Court.

[4] Defendants do not concede that Plaintiffs have established personal jurisdiction .

Respectfully Submitted,

Dated: September 19, 2008
By: **s/Stanley Lubin**

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CERTIFICATE OF SERVICE

This is to certify that on this date indicated herein below, a true and accurate copy of the foregoing pleading, Notice of Removal, Certificate of Service, Civil Cover Sheet, Supplemental Cover Sheet, was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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