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

16 Don ADDINGTON; John BOSTIC; Mark  
BURMAN; Afshin IRANPOUR; Roger  
17 VELEZ; and Steve WARGOCKI,

18 Plaintiffs,

19 vs.

20 Steven H. BRADFORD, Paul J. DIORIO,  
Robert A. FREAR, Mark. W. KING,  
21 Douglas L. MOWERY, and John A.  
STEPHAN,  
22

23 Defendants.

Case No. 2:08-cv-1728-PHX-NVW

**DEFENDANTS' ANSWER  
AND JURY DEMAND  
TO PLAINTIFFS' FIRST AMENDED  
COMPLAINT**

1 Defendants Bradford, Diorio, Frear, King, Mowery and Stephan answer as  
2 follows:

3 **RESPONSIVE PLEADINGS**

- 4 1) Admit.  
5 2) a) Admit; b) Admit; c) Admit; d) Deny, except to admit that Plaintiffs use the term  
6 “West CBA” to refer to the document; e) Deny, except to admit that Plaintiffs use the  
7 term “East CBA” to refer to the document.  
8 3) Admit.  
9 4) Admit.  
10 5) Admit.  
11 6) Admit.  
12 7) Admit.  
13 8) Admit.  
14 9) Admit.  
15 10) Admit.  
16 11) Admit.  
17 12) Admit.  
18 13) Admit.  
19 14) Admit.  
20 15) Deny and refer all issues of law to the Court.  
21 16) Deny and deny all subparts and refer all issues of law to the Court.  
22 17) Admit that the document was attached to Plaintiffs’ original Verified Complaint as  
23

- 1 Exhibit B, but deny the description of the document contained in paragraph 16.
- 2 18) Admit that the document was attached to Plaintiffs' original Verified Complaint as
- 3 Exhibit C, but deny the description of the document contained in paragraph 16.
- 4 19) Deny and refer all issues of law to the Court.
- 5 20) Deny.
- 6 21) Deny.
- 7 22) Deny.
- 8 23) Deny.
- 9 24) Deny.
- 10 25) Deny.
- 11 26) Admit.
- 12 27) Admit.
- 13 28) Deny.
- 14 29) Deny.
- 15 30) Deny.
- 16 31) Deny.
- 17 32) Deny.
- 18 33) Deny.
- 19 34) Deny, except to admit that Plaintiffs commenced this action.
- 20 35) Deny and refer all issues of law to the Court.
- 21 36) Deny and refer all issues of law to the Court.
- 22 37) Deny and refer all issues of law to the Court.
- 23

- 1 38) Deny and deny as to all subparts.
- 2 39) Deny and deny as to all subparts and refer all issues of law to the Court.
- 3 40) Deny.
- 4 41) Lack knowledge or information sufficient to form a belief as to the truth of
- 5 averment.
- 6 42) Deny and refer all issues of law to the Court.
- 7 43) Deny.
- 8 44) Deny and refer all issues of law to the Court.
- 9 45) Deny and refer all issues of law to the Court.
- 10 46) Deny and refer all issues of law to the Court.
- 11 47) Deny and deny as to all subparts and refer all issues of law to the Court.
- 12 48) Deny.
- 13 49) Deny.
- 14 50) Deny.
- 15 51) Deny and refer all issues of law to the Court.
- 16 52) Deny and refer all issues of law to the Court.
- 17 53) Deny.
- 18 54) Deny.
- 19 55) Deny.
- 20 56) Deny.
- 21 57) Admit that the document was attached to Plaintiffs' original Verified Complaint as
- 22 Exhibit D, but deny the description of the document contained in paragraph 56.
- 23

1 58) Deny and deny as to all subparts, the document speaks for itself and the quotations  
2 are taken out of context and therefore misleading.

3 59) Deny.

4 60) Deny.

5 61) Admit.

6 62) Admit.

7 63) Deny.

8 64) Deny.

9 65) Deny.

10 66) Deny.

11 67) Deny.

12 68) Deny.

13 69) Deny.

14 70) Deny.

15 71) Deny.

16 72) Deny.

17 73) Deny.

18 74) Deny

19 75) Defendants repeat their responses to paragraphs 1-74 of the Complaint as if fully set  
20 forth herein.

21 76) Deny.

22 77) Deny.

1 78) Deny.

2 79) Deny.

3 80) Deny.

4 81) Defendants repeat their responses to paragraphs 1-80 of the Complaint as if fully set  
5 forth herein.

6 82) Deny and refer all issues of law to the Court.

7 83) Deny.

8 84) Deny.

9 85) Deny.

10 86) Deny.

11 87) Deny.

12 88) Deny and deny all subparts, except to admit that Plaintiffs seek the remedies listed  
13 in this paragraph.  
14

15  
16 **AFFIRMATIVE DEFENSES**

17 89) This Court lacks subject matter jurisdiction.

18 90) Plaintiffs' Complaint fails to state any cause of action for which relief may be  
19 granted.

20 91) Plaintiffs lack standing.

21 92) Plaintiffs' claims are time barred in whole or in part by statutes of limitations.

22 93) Plaintiffs have failed to exhaust contractual remedies required under the Railway  
23 Labor Act, 45 USC § 151 *et seq.*, depriving this court of jurisdiction.

1 94) Plaintiff have failed to exhaust contractual remedies required under the Norris-  
2 LaGuardia Act, 29 USC § 101 *et seq.*, depriving this court of jurisdiction.

3 95) Plaintiffs have failed to mitigate their damages.

4 96) Plaintiffs' claims are not ripe for adjudication.

5 97) Plaintiffs have failed to join a necessary party.

6 98) Defendants assert, on information and belief, that discovery may uncover facts  
7 supportive of additional affirmative defenses, and, therefore, allege the following  
8 affirmative defenses: statutes of fraud, laches, waiver, and estoppel.

9 99) Plaintiffs fail to qualify for class certification under Fed. R. Civ. P. 23.  
10

11  
12 **RELIEF**

13 WHEREFORE, Defendants Bradford, Diorio, Frear, King, Mowery and Stephan  
14 requests the following:

- 15 1. Dismissal of the Plaintiffs' complaint with prejudice.
- 16 2. The award of reasonable costs and fees.
- 17 3. Such other relief as the Court may deem just, proper and appropriate  
18

19 **JURY DEMAND**

20 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Defendants  
21 Bradford, Diorio, Frear, King, Mowery and Stephan hereby make a jury demand for all  
22 issues triable of right by a jury in the above-cited matter.  
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Date: December 12, 2008 By: /s/Lee Seham

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ATTORNEYS FOR THE DEFENDANTS



1 **CERTIFICATE OF SERVICE**

2 This is to certify that on the date indicated herein below a true and accurate copy of  
3 the foregoing pleadings, *to wit*,

- 4 • Defendants’ Answer and Jury Demand to Plaintiffs’ First Amended Complaint  
5 • Certificate of Service

6 were electronically filed with the Clerk of Court using the CM/ECF system, which will  
7 send notification of such filing to the following:

8 Marty Harper  
9 [mharper@stklaw.com](mailto:mharper@stklaw.com)

Kelly J. Flood  
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13 Security Title Plaza, Suite 1200  
14 Phoenix, AZ 85012  
15 Tel. 602 650-2000  
16 Fax. 602 264-7033

17 And further that paper hard copies were provided to The Honorable Neil V. Wake, District  
18 Court Judge, 401 W. Washington Street, SPC 52, Phoenix, AZ 85003.

19 On: December 12, 2008, by:

20 /s/ Lucas K. Middlebrook

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10 Attorneys for Defendants: Steven H. Bradford, Paul J. Diorio, Robert A. Frear, Mark. W.  
11 King, Douglas L. Mowery, and John A. Stephan.  
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