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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. US AIRLINE PILOTS ASSOCIATION, and US AIRWAYS, INC., Defendants.	Case No. 2:08-cv-1633-NVW **MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFFS' APPLICATION FOR PRELIMINARY INJUNCTION**

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I. Introduction

This brief is submitted by the US Airline Pilots Association ("USAPA") in opposition to the Plaintiffs' Application for Preliminary Injunction. (Dkt. No. 12).[1] Pursuant to the Court's order dated October 24, 2008, USAPA's submission shall not repeat matters contained in the existing briefing except to the extent necessary to understand any further briefing.

While this brief focuses primarily on the balance of the hardships and merit-based arguments, it will also serve to put the Court on notice of a development that is dispositive of the jurisdictional issue. Specifically, USAPA and US Airways have agreed to allow the McIlvenna Grievance to be submitted for final adjudication to a single neutral arbitrator, thereby rendering moot Plaintiffs' argument that the futility exception applies to the otherwise exclusive jurisdiction of the System Board.

II. Applicable Legal Standard

Under traditional Ninth Circuit precedent a party moving for preliminary injunctive relief must demonstrate: "(1) a strong likelihood of success on the merits, (2) the possibility of irreparable injury to the plaintiff if preliminary relief is not granted, (3) a balance of hardships favoring the plaintiff, and (4) advancement of the public interest (in certain cases)." *Raich v. Gonzales*, 500 F.3d 850, 857 (9th Cir. 2007). Where a movant for injunctive relief has failed to demonstrate a showing of likelihood of success

[1] USAPA refers herein to the relevant filings by each document's docket number. Specific cites within each document are indicated by page and line numbers.

on the merits, he must demonstrate "that the balance of the hardships **tips sharply** in his favor." *Bernard v. Air Line Pilots Ass'n*, 873 F.2d 213, 217 (9th Cir. 1989) (emphasis supplied).

Conversely, if the balance of hardships does not favor the moving party, then the movant should be required to demonstrate a clear likelihood of success. *See Direx Israel, Ltd. v. Breakthrough Med. Corp.,* 952 F.2d 802, 808 (4th Cir. 1991) ("if 'the plight of the defendant [is] not substantially different from that of the plaintiffs,' that is, if there is no imbalance of hardship in favor of the plaintiff, then 'the probability of success begins to assume real significance,' and interim relief is more likely to require a clear showing of a likelihood of success."); *Scotts Co. v. United Indus. Corp.,* 315 F.3d 264, 271 (4th Cir. 2002); *Next Plateau Records v. ZYX Records,* 1992 U.S. Dist LEXIS 10066 at *17 (S.D.N.Y. 1992); *Acha v. Beame,* 438 F. Supp 70, 79 (S.D.N.Y. 1977); *Lombard v. Bd. of Educ. of City of New York,* 400 F. Supp. 1361, 1362 (E.D.N.Y. 1975); *Dellwood Foods v. Kraftco Corp*., 420 F. Supp. 424, 427-428 (S.D.N.Y. 1976) (injunction denied because the court found that "the balance of hardships is nearly equal" and the plaintiff did not demonstrate a likelihood of success on the merits).

III. Balance of the Hardships: Plaintiffs Concede that the Requested Relief Will Merely Shift the Same Alleged Hardship to a Different Group of Pilots

Plaintiffs admit both in their Preliminary Injunction Application and in their Supplemental Filing that if their request for preliminary injunction is granted, the

"hardships from the Company's need to furlough pilots should fall on the US Airways pilots." (Dkt. No. 12, 12:21-22; *see also* Dkt. No. 19, 3:3) (noting that if the injunction issues, "[c]areers of US Airways pilots will be disrupted."). Therefore, there can be no question that the balance of the hardships is equal at best, as Plaintiffs' request for a preliminary injunction seeks to shift the hardship of system-wide furloughs squarely on the shoulders of the more senior pre-merger US Airways pilots.

USAPA submits that the balance of hardships actually tips decisively **away** from the Plaintiffs. The relief sought by the Plaintiffs would work a manifest injustice by mandating that a thirty-seven year old pilot with only three years seniority retains his job, while a pilot fifty-six years of age with twenty years seniority will be left jobless. (Dkt. No. 38, Cleary Decl. ¶¶ 27-29). Such a result tips the balance of hardships sharply against the granting of preliminary injunctive relief. Putting more senior and economically vulnerable workers on the street does not serve the interests of equity, nor does it advance the public interest.[2]

IV. Likelihood of Success on the Merits

Pursuant to the Court's order, we shall not present here those jurisdictional arguments that have already been briefed by USAPA and US Airways, but merely identify them here for facility of reference:

[2] The United States Congress has found and declared that older workers are "disadvantaged in their efforts to … regain employment when displaced from jobs" and that "the incidence of … long-term employment with resultant deterioration of skill, morale, and employer acceptability is, relative to the younger ages, high among older

- Plaintiffs do not state a valid claim against USAPA for breach of the duty of fair representation and, therefore, have no grounds for asserting federal court jurisdiction on the basis of a hybrid claim. (Dkt. No. 36, 6:1-9:8; Dkt. No.47, 2:3-6:8).

- Plaintiffs have failed to plead and cannot demonstrate that resorting to the congressionally-mandated System Board of Adjustment would be futile. (Dkt. No. 30, 6:13-11:14; Dkt. No. 36, 10:14-12:12; Dkt. No. 47, 7:16-10:19; Dkt. No. 48).

- Plaintiffs' DFR claim is barred by the six month statute of limitations (Dkt. No. 36, 9:9-10:13; Dkt. No. 47, 6:9-15).

- Plaintiffs' DFR claim is not ripe for adjudication. (Dkt. No. 36, 12:13-13:16; Dkt No. 47, 6:9).

- Section 8 of the Norris-LaGuardia Act requires Plaintiffs to first exhaust RLA-mandated administrative remedies prior to seeking judicial relief. (Dkt. No. 36, 13:17-15:16; Dkt. No. 47, 11:5-14).

- The National Mediation Board has exclusive jurisdiction over airline representation disputes. (Dkt. No. 36, 15:17-16:22).

- Plaintiffs lack standing under the RLA. (Dkt. No. 36, 17:1-14; Dkt. No. 47, 10:20-11:4).

The arguments below are more oriented toward merit-based issues that have not been previously briefed by the parties.

a. The McIlvenna Grievance: Single Neutral Arbitrator

In response to the arguments contained within the motions to dismiss of USAPA and US Airways concerning the failure of Plaintiffs to properly plead futility necessary to establish subject-matter jurisdiction (Dkt Nos. 30 & 36), Plaintiffs argued in their

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workers; their numbers are great and growing and their employment problems grave…." Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621(a)(1) and (3).

responses to those motions that the elements of futility were satisfied and hybrid jurisdiction existed because:

> (1) USAPA has the power to keep a grievance from a neutral; (2) USAPA (and the Company) would keep a grievance from a neutral; and (3) USAPA would do so because of hostile motivation.

(Dkt. No. 44, 8:9-11, 11:7-9).

Plaintiffs' argument that USAPA *could* and USAPA and US Airways *would* prevent Plaintiffs from reaching a neutral arbitrator is based on Captain McIlvenna's grievance and his request that "a neutral arbitrator only hear [his] case." (Dkt. No. 44, 8:9-11, 9:21-10:4; *see also* Dkt. No. 37, Ex. A at 3). USAPA originally responded to Mr. McIlvenna's request and advised him that "the Association respectfully declines to waive its Board members." (Parrella Decl. ¶ 6). However, subsequently and upon further consideration, the USAPA Officers have advised the Chairman of the USAPA Board of Pilot Representatives Grievance Committee to notify Mr. McIlvenna that his grievance *will be presided over and decided by a single neutral arbitrator*. (*Id*. at ¶ 7) (emphasis supplied).[3] Therefore, according to Plaintiffs' own argument, even if USAPA was found to be hostile, such hostility would "not support futility because, despite the [alleged] hostility, the grievance [will now] be decided by a neutral arbitrator." (Dkt. No. 44, 14:1-2) (*citing Ritza v. Int'l Longshoremen's & Warehousemen's Union*, 837 F.2d 365, 370 (9th Cir. 1988) ("The district court's

[3] US Airways has agreed to proceed in this manner and Mr. McIlvenna was notified by letter dated October 28, 2008. (Parrella Decl. ¶ 7).

conclusion that any hostility … is cured by the availability of neutral arbitration was neither clearly erroneous nor incorrect as a matter of law.")).

b. Count One: Furlough Out of Order

The Plaintiffs' Complaint alleges three causes of action, the first of which is alleged against US Airways and is titled "Breach of CBA: Furlough Out of Order." (Complaint ¶¶ 73-87). USAPA agrees with the contract interpretation advocated by Plaintiffs' First Count, but maintains that this Court has no jurisdiction to adjudicate the merits of the resulting dispute with the Company.

Count One alleges that the Company's failure to furlough "all pilots on the New Hire Seniority List before it furloughs [pre-merger] West Pilots" is a "direct breach" of the Transition Agreement. (Complaint ¶ 83 (a) and (b)). Although the Complaint makes no reference to a specific section of the Transition Agreement, it is USAPA's position that Count One is solidly grounded on the plain terms of that document.

Section II.B.7 of the Transition Agreement provides that new pilots hired **"**during the Separate Operations**"** will be placed by their date of hire on a "third seniority list" and will be **"**junior to all pilots on the pilot seniority lists of America West and US Airways on the effective date of this Letter of Agreement…."[4] Section II. B.7 contains two key temporal references: "during the Separate Operations" and "on the effective date of this Letter of Agreement." USAPA interprets these temporal

[4] Complaint, Ex. B; Transition Agreement § II.B.7. (emphasis supplied).

references to signify that this third list is in effect *now* and that the list – with all its seniority implications – should govern during the period of Separate Operations. Therefore, it is USAPA's position that the plain terms of the Transition Agreement mandate that the Company is prohibited from furloughing any pre-merger West pilot while a pilot on the new-hire seniority list remains employed by the Carrier. (Dkt. No. 37, First Brennan Decl. ¶ 19, Ex. B.).

As briefly discussed in USAPA's original Motion to Dismiss[5], on August 29, 2008, USAPA initiated a grievance seeking the same relief the Plaintiffs seek pursuant to Count One. (*Id.*). The grievance documents filed by USAPA describe the matter as one of "urgency" and calls on the Company to "immediately cease and desist" from furloughing any pre-merger West pilots until *all* the pilots – East and West – have been furloughed from the New Hire List. (*Id.*). USAPA has also sought and obtained the accelerated processing of this grievance. (*Id.* at ¶ 21).

As previously briefed, it is USAPA's position that the System Board of Adjustment would have exclusive jurisdiction over this contractual dispute. (Dkt. No. 36, 10:14-12:1).

c. Count Two: Alleged Failure to Negotiate in Good Faith

Count Two alleges that the Company has breached the Transition Agreement "because it has not been negotiating with USAPA in good faith to institute Integrated

[5] USAPA Motion to Dismiss, Dkt. No. 36, 10:16-11:6.

Operations by adopting a single collective bargaining agreement that would implement the Nicolau List." (Complaint ¶ 91). Plaintiffs, with apparent inconsistency, have argued that the Company has violated an *implied contractual* obligation to negotiate in "good faith" toward a single CBA incorporating the Nicolau List, while at the same time arguing that the System Board lacks jurisdiction over such a contractual dispute because the remedy sought by Plaintiffs would "modify or supplement" the existing terms of the parties' agreement. (Dkt. No. 45, 17:14; Dkt. No. 44, 12:3-12). Plaintiffs seek, as a remedy, a court order that would compel the Company to implement the current furloughs in accordance with the Nicolau List. (Complaint ¶ 113 A(2)).

If the Court determines that it is appropriate to evaluate the merits of Plaintiffs' Count Two breach of contract claim, we respectfully submit that the Court first observe that the language of Paragraph 91 of the Complaint tacitly concedes that, under the terms of the Transition Agreement, the implementation of any integrated seniority list would necessitate, as a prerequisite, the achievement of "Integrated Operations by adopting a single collective bargaining agreement." This concession is appropriate in view of the plain language of the Transition Agreement, which prohibits the implementation of the Nicolau List in the absence of full operational pilot integration, including the negotiation of a single collective bargaining agreement:

> US Airways Group, [America West Holdings Corporation], US Airways and America West (together, the "Airline Parties") intend that, following the consummation of the Merger Agreement, America West and US

> Airways *will continue to operate with two separate pilot workforces until the two pilot workforces are integrated* under the provisions herein…[6]
>
> * * *
>
> The pilot workforces of America West and US Airways *will remain separate and covered by their respective collective bargaining agreements* (the "Separate Operations") until Operational Pilot Integration as provided in Section VI.A.[7]
>
> * * *
>
> US Airways, America West and the Single Carrier *may not use an integrated seniority list prior to Operational Pilot Integration* as defined in Section VI.A below.[8]
>
> * * *
>
> Except as provided in paragraph B. below, the airline operations of America West and US Airways, with respect to pilots, shall be merged no later than twelve (12) months following the later of (i) completion of integrated pilot seniority list *and* (ii) negotiation of the Single Agreement provided that if by that date a single FAA operating certificate has not been issued, the airline operations, with respect to the pilots, will be merged effective with the first bid period following thirty (30) days after the issuance of such certificate.[9]

These Transition Agreement provisions are echoed by ALPA's own Merger and Fragmentation Policy, which allows *no exception* to the black and white rule that there can be no implementation of a single seniority list in the absence of a single collective bargaining agreement.

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[6] Complaint, Ex. B; Transition Agreement at 1. (emphasis supplied).

[7] *Id*. at § II.A (emphasis supplied).

[8] *Id*. at § IV.C (emphasis supplied).

[9] *Id*. at § VI.A (emphasis supplied).

> *In no event*, except by mutual agreement of all parties, will the company be given the right to use the merged seniority list prior to the successful conclusion of the merged working agreement.

(Complaint, Ex. C, p. 12, § N(2))(emphasis supplied). In short, both the Transition Agreement and ALPA Merger Policy flatly prohibit the injunctive remedies that the Plaintiffs now seek.

Putting to one side the indisputable absence of a single collective bargaining agreement, there is no basis for the allegation that US Airways has violated a contractually-based obligation to negotiate in good faith. First, even assuming there was an implied good faith obligation for the Company to refrain from revisiting the terms of the Nicolau list, there are no facts to support the allegation that this has occurred. USAPA passed its first seniority proposal to the Company on September 30, 2008 and has yet to receive a response from US Airways. (Mowrey Decl. at ¶ 8).

Second, and more importantly, the express language of the Transition Agreement, provides that its terms can be modified by the Union and the Company. (Complaint, Ex. B, Transition Agreement § XII(B)). Therefore, seniority remains an appropriate subject of bargaining under the specific terms of the Transition Agreement itself.

Third, as has already been briefed to this Court, even in the absence of such specific contractual language, the Railway Labor Act allows parties to re-visit and modify contractual seniority provisions even *after* these provisions have been implemented (Dkt. 36, 7:13-8:4; Dkt. No. 47, 3:7-6:8).

Fourth, the Plaintiffs have conceded the point that USAPA is permitted to re-visit seniority:

> Plaintiffs allege hostile discrimination without challenging either the merits of USAPA's seniority policies or whether USAPA can properly revisit seniority. … Rather, Plaintiffs allege that USAPA **improperly** revisited the seniority issue.

(Dkt. No. 45, 9:23-24) (accusing USAPA of "mischaracterizing" the Plaintiffs' claims by suggesting that Plaintiffs argue against USAPA's right to re-visit the seniority issue). Plaintiffs' claims against USAPA are based, instead, on USAPA's alleged failure to consider "minority interests." (Dkt. No. 45, 7:17, 8:22; Complaint, ¶¶ 98-102). But, if the Plaintiffs concede that the Union is free to re-visit seniority, it cannot be that the Company is barred from responding. Indeed, the Company would violate the Railway Labor Act if it failed to respond to seniority-related bargaining proposals based on supposed obligations it had to third parties. *Barthelemy v. Air Line Pilots Ass'n*, 897 F.2d 999, 1007 (9th Cir. 1990) (*citing Virginian R.R. v. Fed'n*, 300 U.S. 515 (1937)) ("the RLA 'imposes the affirmative duty on the employer to treat only with the true representative, and hence the negative duty to treat no other.'").

Thus, Plaintiffs' request that this Court order implementation of the ALPA-created Nicolau list prior to negotiation of a single CBA would violate the express terms of the Transition Agreement, ALPA Merger Policy and USAPA's statutory right to negotiate new terms of employment as the certified representative of all US Airways pilots.

d. Count Three: Alleged Breach of Duty of Fair Representation

Count III alleges that USAPA has violated the duty of fair representation that it owes to the Plaintiffs. (Complaint ¶¶ 95-109).

USAPA has already briefed the argument as to why Plaintiffs do not state a valid claim against USAPA for breach of the duty of fair representation and, therefore, have no grounds for asserting federal court jurisdiction on the basis of a hybrid claim. (Dkt. No. 36, 6:1-9:8; Dkt. No.47, 2:3-6:8). In further response to Plaintiffs' allegations concerning USAPA's failure to consider the interests of West Pilots (Dkt. No. 45, 5:23-7:17), and in conformance with the Court's October 24th order (Dkt. No. 51) to identify any evidentiary issues that may arise at the October 29th hearing, USAPA submits herewith the Declaration of Randal E. Mowrey, which describes USAPA's current negotiation position on seniority integration and the consideration of West Pilot interests contained therein.

V. The Norris LaGuardia Act Restricts Issuance of Injunctive Relief

USAPA has previously briefed the Court with respect to jurisdictional issues arising from the Norris LaGuardia Act ("NLGA").[10] This section will provide the Court with supplementary briefing concerning the remedial limitations imposed by that Act.

Section 7 of the NLGA restricts the jurisdiction of the federal courts "to issue a temporary or permanent injunction in any case involving or growing out of a labor

[10] *See* USAPA Motion to Dismiss (Dkt. No. 36, 13:17-15:16); USAPA Reply (Dkt. No. 47, 11:5).

dispute." 29 U.S.C. § 107. This case grows out of a "labor dispute" within the meaning of the NLGA.[11] The "definition [of labor dispute] is extraordinarily broad, and the Supreme Court has so interpreted it." *Camping Constr. Co v. Dist. Counsel of Iron Workers*, 915 F.2d 1333 (9th Cir. 1990).[12]

This litigation arises out of a dispute by members of the pilot bargaining unit at US Airways regarding the negotiation of contractually created seniority, which undoubtedly concerns the "association or representation," 29 U.S.C. § 113(c), of US Airways pilots for purposes of negotiating the terms of their employment. Therefore, the "matrix" of the controversy – *i.e.*, the context within which this controversy has originated and developed – is the dispute between the former US Airways pilots and the former America West Pilots, over representation of the pilots in collective bargaining with the employer. As is evident from the face of the complaint, the dispute that resulted in this lawsuit thus has its origins in the employment relationship and as it meets the terms of NLGA § 113, it is therefore a "labor dispute" to which the jurisdictional restrictions of the NLGA apply.

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[11] *See* USAPA Motion to Dismiss (Dkt. No. 36, 14:20-23).

[12] In applying the Supreme Court's broad interpretation of the term "labor dispute," courts have rejected the contention that intra- and inter-union disputes do not constitute "labor disputes" for purposes of the NLGA. *See Bodecker v. Local Union No. P-46*, 640 F.2d 182, 185 (8th Cir. 1981) (holding that a suit by union members against their union and their employer seeking to enjoin implementation of an amendment to the collective bargaining agreement was a "labor dispute."); *International Ass'n of Machinists v. TVA*, 976 F. Supp. 1114 (M.D. Tenn. 1997) (inter-union suits are subject to NLA).

"The [NLGA] is an anti-injunction statute that prevents district courts from issuing 'any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in strict conformity with the provisions of this Act.'" *San Antonio Cmty. Hosp. v. Southern Cal. Dist. Council of Carpenters*, 125 F.3d 1230, 1234 (9th Cir. 1997) (*citing* 29 U.S.C. § 101). As a prerequisite for issuing any such injunction the court must, in the first place, "hear[] the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered…" 29 U.S.C. § 107.

NLGA § 7 also mandates that a hearing in support of a request for injunctive relief "shall be held after due and personal notice has been given, in such a manner as the court shall direct, to all known persons against whom relief is sought. . ." 29 U.S.C. § 107. Finally, pursuant to NLGA § 8, the plaintiffs are required to "prove" that they made "every reasonable effort to settle the dispute" prior to seeking injunctive relief. *San Antonio Cmty. Hosp.*, 125 F.3d at 1234 (*citing* 29 U.S.C. § 108).[13]

Once a plaintiff has provided testimony in open court in support of its request for injunctive relief, the Court must make findings of fact "[t]hat unlawful acts have been threatened and will be committed unless restrained or have been committed and will be

[13] *See* USAPA Motion to Dismiss (Dkt. No. 36, 14:12-15:16).

continued unless restrained." 29 U.S.C. § 107(a).[14] Most important, § 7 of the NLGA imposes the following limitation on the Court's authority to issue an injunction:

> [N]o injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof.

29 U.S.C. § 107(a).

Even assuming, *arguendo*, that Plaintiffs had complied with the NLGA procedural requirements set forth above, Section 104(f) of the NLGA would nonetheless restrict the issuance of injunctive relief in this matter. *See Camping Constr. Co*., 915 F.2d at 1341. (section 104 "sets forth a list of specific acts against which the federal courts may under no circumstances issue an injunction."). Section 104(f) of the NLGA provides in relevant part that:

> No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute . . . from . . . [a]ssembling peaceably to act or to organize to act in promotion of their interests in a labor dispute.

[14] The court must also make findings of fact "[t]hat the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection." 29 U.S.C. § 107(e). Other requirements of § 7 largely track the standard preliminary injunction inquiry regarding irreparable injury, the balance of harms, and the lack of an adequate remedy at law, *see* 29 U.S.C. § 107(b), (c), (d), but as to all of these elements the statute requires that the court make findings of fact based on testimony in open court.

29 U.S.C. § 104(f). This section of the NLGA has been interpreted to restrict the issuance of injunctions aimed at prohibiting collective bargaining negotiations. *Int'l Ass'n of Machinists and Aerospace Workers v. Tenn. Valley Auth.*, 976 F. Supp. 1114 (M.D. Tenn. 1997) (*citing Bodecker v. Local Union No. P-46*, 640 F.2d 182, 185-86 (8th Cir. 1981)).

The Plaintiffs' Preliminary Injunction Application effectively requests that this Court dictate collective bargaining between USAPA and US Airways and order US Airways to implement a bargaining proposal that was formulated by the internal policies of decertified union – namely the "Nicolau Award." The subject of the injunctive relief requested by Plaintiffs pertains directly to ongoing collective bargaining between US Airways and USAPA and seeks to prohibit the parties from "assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute" within the meaning of Section 104(f) of the NLGA. Therefore, under the mandate of the NLGA, the court is without jurisdiction to issue the injunctive relief requested by Plaintiffs.

VI. Conclusion

Based on the pleadings, evidence, arguments, record, and any argument, live testimony, or evidence to be presented in the hearing, USAPA respectfully submits that Plaintiffs' Application for Preliminary Injunctive relief should be denied.

Respectfully Submitted,

Dated: October 28, 2008
By: **/s/ *Lee Seham***

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CERTIFICATE OF SERVICE

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

- Memorandum Of Points And Authorities In Opposition To Plaintiffs' Application For Preliminary Injunction;
- Declaration of Randal E. Mowrey (With Exhibits);
- Certificate of Service

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

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