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9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE DISTRICT OF ARIZONA**

11 Don ADDINGTON; John BOSTIC; Mark  
BURMAN; Afshin IRANPOUR; Roger  
12 VELEZ; and Steve WARGOCKI,

13 Plaintiffs,

14 vs.

15 US AIRLINE PILOTS ASSOCIATION,  
US AIRWAYS, INC.,  
16 Defendants,

Case No. 2:08-cv-1633-PHX-NVW  
(Consolidated)

**DECLARATION OF**  
**NICHOLAS P. GRANATH, ESQ.**  
**IN SUPPORT OF MOTION**  
**FOR EXTENSION OF TIME**

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

19 Plaintiffs,

20 vs.

21 Steven H. BRADFORD, Paul J. DIORIO,  
Robert., A. FREAR, Mark. W. KING,  
22 Douglas L. MOWERY, and John A.  
STEPHAN,  
23

Defendants.

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

1 I, Nicholas Paul Granath, Esq., declare as follows:

2 1. I am attorney of record for defendant USAPA in this matter as well as for  
3 all named defendants in the matter of Addington *et al* v. Bradford *et al*, Case No. 2:08-  
4 cv-01728-NVW. I make this Declaration of my own free will and based on my personal,  
5 first-hand knowledge, unless otherwise specifically indicated.

6 2. This Declaration is submitted in support of USAPA's motion for extension  
7 of time (first request) to serve and file its response to Plaintiffs' motion to certify a class.  
8

9 3. Pursuant to LRCiv 7.3(b), your Declarant conferred with counsel for  
10 Plaintiffs, Don Stevens, to ascertain Plaintiffs' position and to seek a stipulation.  
11 Plaintiffs declined to agree to an extension of time. Attached are true and correct copies  
12 of correspondence concerning this motion, marked and labeled as Exhibit A.

13 4. Attached are true and correct copies of extracts from the court reporter's  
14 transcript of the December 15, 2008 hearing, marked and labeled as Exhibit B.

15 5. Attached are true and correct copies of correspondence concerning class  
16 action discovery, marked and labeled as Exhibit C.

17 6. Based on information made known to me, USAPA maintains eight  
18 categories of "membership" or status, each which can be subdivided into categories of  
19 "good" or "bad" standing: 1) Member, 2) Applicant, 3) Apprentice, 4) Objector, 5)  
20 Challenger, 6) Non-Member, 7) Inactive Member, 8) Management.  
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Further your Declarant sayeth not.

Pursuant to 29 USC § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on: January 5, 2009

/s/ NICHOLAS PAUL GRANATH

**From:** Granath Nicholas P. <ngranath@visi.com>  
**Subject:** Request For Extension Of Time  
**Date:** January 4, 2009 7:02:20 PM CST  
**To:** Don Stevens <dstevens@stklaw.com>



[REDACTED]

Don

I am emailing to see if you will agree to move the deadline for filing USAPA's brief in response to Plaintiffs' class action motion. Recall that the current deadline is Jan. 16. Would you agree to move the deadline until Feb. 27, or, in the alternative, when class discovery including depositions are completed? (Of course, your deadline for a reply brief would move accordingly).

The reason for this request is that it is now certain that we will not have responses to our written class action discovery, or have completed depositions of the named Plaintiffs (i.e. class representatives), by Jan. 16. Contrary to Mr. Harper's representations in court, you have not made plaintiffs available for deposition until the end of January, and your Dec. 29 email says that you will "be objecting to [any] class discovery." That is a big problem, we feel, for us and for the Court. Without an extension we will have to oppose Plaintiffs' motion to certify the class on grounds, among others, that include the fact we were denied any meaningful discovery. The comments Judge Wake made on the 15th, and frankly, the case law, indicate that without discovery denial of certification is warranted if not required.

Please let me know your response by noon your time, tomorrow (Monday Jan. 5). If we cannot reach a voluntary agreement, or I get no response, we will seek an extension from Judge Wake similar or longer to what I propose you voluntarily agree to now (it appears that Judge Wake may expect us to bring an issue of this nature to his attention prior to Jan. 16). Thanks,

Nick

-----  
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**PRIVILEGED AND CONFIDENTIAL INFORMATION**

This e-mail transmission is intended only for the use of the individual(s) herein named, and may contain confidential and/or legally privileged information from the sender. If you are

**From:** "Don Stevens" <dstevens@stklaw.com>  
**Subject:** **Request for Extension**  
**Date:** January 5, 2009 10:20:28 AM CST  
**To:** "Granath Nicholas P." <ngranath@visi.com>

---

Nick,

We will not agree to the extension you have requested. Given the limited scope of the class treatment we are seeking, and the short timeline we are still on, we disagree that USAPA needs either the scope of the discovery it has already requested or the extension of time to respond to the motion. It is difficult to understand what USAPA expects or is reasonably likely to learn in class discovery that will affect its position on the limited injunctive class we are seeking. USAPA will certainly oppose the motion to certify regardless of the grounds or discovery. It is not reasonable to argue that USAPA cannot file its response based on what is currently known to USAPA about the Plaintiffs.

I therefore propose that USAPA file its response to the motion as scheduled on January 16 and we will file our reply as scheduled by the Court. To address USAPA's concern about class discovery, we would agree that if USAPA learns anything that supports (or rebuts) USAPA's response re class certification, it would be able to file a supplemental response, if any, within 10 days after the last class rep deposition, and we will file a supplemental reply, if any, within 5 business days of receiving your supplemental response. The class discovery will be complete before the hearing on class certification, so I do not believe that USAPA can fairly argue any prejudice. The six-week delay you propose is not consistent with the Court's order that we move this case forward as efficiently as possible. The Court's order anticipated that some discovery would be simultaneous and overlapping. This is one of those situations.

Don

1 issue of jury trial, and that, unfortunately, may end up having  
2 to be a schedule for briefing a number of alternatives and,  
3 perhaps more urgently, the class certification motion. And  
4 this involves the plaintiffs making their choices as to which  
5 directions they want to go.

17:51:11

6 So Mr. Stevens -- now, by the way, on the motion to  
7 dismiss it's my intention to rule on that as quickly as I can.  
8 I'm in the middle of a two-week jury trial right now, so I'm  
9 not sure -- I will -- I hope to have a ruling out before the  
10 holidays.

17:51:26

11 MR. STEVENS: Excuse me, Your Honor.

12 THE COURT: Go ahead.

13 MR. HARPER: We're figuring out our resources.

14 THE COURT: I understand. And the reason you can't  
15 make up your mind is delay is your enemy, and Christmas is your  
16 friend.

17:51:58

17 MR. STEVENS: Your Honor, we would ask for 10 days  
18 which would put us right at Christmas, but Monday after or  
19 whenever, the 29th. I think the 29th. December 29th.

20 THE COURT: All right. And bearing in mind that  
21 that's in the middle of the holiday, and I -- absent  
22 extraordinary circumstances I generally don't make lawyers work  
23 that week, Mr. Seham, how quickly can you respond?

17:52:32

24 MR. SEHAM: We would propose Friday, January 9.

25 THE COURT: All right. That's fine.

17:53:06

1           So and then how about a week after that for your  
2 reply? All right. It is ordered that plaintiffs file whatever  
3 motions for class certification they wish by December 29, and  
4 that defendants respond by January 9. Plaintiffs may file any  
5 replies by January 16.

17:53:30

6           MR. STEVENS: Did Your Honor set a date for the jury  
7 trial?

8           THE COURT: We're going to talk about that right now.

9           MR. STEVENS: Apologize.

10          THE COURT: This is a little complicated.

17:53:41

11          MR. SEHAM: I'm sorry, Your Honor. I thought the  
12 motion we were just discussing was the jury issue.

13          THE COURT: That was the class certification motion.

14          MR. SEHAM: Class certification motion?

15          THE COURT: Yeah. Do you want to reconsider?

17:53:54

16          MR. SEHAM: There is a discovery issue.

17          THE COURT: There is. And I think one way to deal  
18 with that is if, in fact, the classes that the plaintiffs seek  
19 to certify fairly occasion discovery that you can't get done,  
20 then that will be a reason to give you that discovery and that  
21 will push this whole schedule off. At that point I would want  
22 you all to confer, and if need be, I will make the decision  
23 promptly that you -- discovery is appropriate.

17:54:16

24                 Actually, I'm not talking about -- there would be some  
25 discovery that would be appropriate, no matter what. So what

17:54:36

1 about that, Mr. Stevens? Is the schedule too tight?

2 MR. HARPER: If we go the injunctive route there is  
3 very little discovery, I think, that would be appropriate.

4 Even if we went the other route, I mean, we've been through

5 what is an appropriate level of discovery during the class  
17:55:00

6 certification motion, and I think it's either limited to our

7 expertise, which I think is probably not an issue, or the

8 ability of the class rep status, who will represent the class

9 and are their claims typical. And that should be self-evident

10 to the union that their claims are self-evident. So it doesn't  
17:55:21

11 seem to me to be a big issue to cause delay unless they just

12 want to cause delay.

→ 13 But if they want to go through the discovery with our

14 class reps, we will make them available between now and January

15 16 or January 9 as best we can.  
17:55:37

16 THE COURT: Mr. Seham.

17 MR. SEHAM: We would, at a minimum, want to discover

18 the named plaintiffs. And we have already presented to the

19 Court we think they are very atypical, in fact, that they were

20 deliberately selected for their atypicality, we do have  
17:55:56

21 concerns whether this law firm is --

22 THE COURT: The problem is, this really kind of looks

23 like a (b) (1) necessity class that even though there might be

24 some dissenters among the West Pilots, if the relief is

25 granted, it could be really hard to tailor it for some people  
17:56:17

1 not others.

→ 2 MR. HARPER: I'd like to address the discovery. If  
3 they want to take the depositions of the class reps, then let's  
4 sit down and come up with a schedule, get it done in a timely  
5 fashion in a way also that doesn't delay the discovery on the 17:56:33  
6 other parts of the case going towards the February 17 --

7 THE COURT: You have six plaintiffs, Mr. Harper?

8 MR. HARPER: Yes.

9 THE COURT: All right. We're looking at, at most --  
10 well, at that -- can you get that done by January 9? 17:56:46

11 MR. SEHAM: That's the six named plaintiffs? The  
12 answer is no, Your Honor, because we would like to have written  
13 discovery first. And there are apparently another four  
14 individuals behind this lawsuit that were referenced in the  
15 case management. So it sounds like there are at least 10 17:57:17  
16 people, and we would like written discovery first.

17 THE COURT: Well, this is an injunction case. And the  
18 Court has the authority and the responsibility to manage  
19 injunction cases in accordance with the needs of the case. And  
20 so in any case, for a permanent injunction, if the matter 17:57:33  
21 fairly calls for a prompt decision we truncate discovery and  
22 accelerate it to fit the needs of the case rather than allowing  
23 the case to be spun out on a schedule that is customary for  
24 cases that are not time urgent.

25 So I think the way to proceed here is not abstractly 17:57:57

1 but concretely, and that would mean the defendants giving you  
2 their discovery request and looking at seeing what you can give  
3 them. And if you have disputes about the propriety of the  
4 request, you need to try to work it out. And if you can't, you  
5 bring it to me. We haven't entered a case management order 17:58:22  
6 yet, but you all have seen my standard order on discovery  
7 disputes that I get almost all of them decided within 24 hours.  
8 But I require the lawyers to work hard at it before you come to  
9 me.

→ 10 So I think, Mr. Seham, I'm not going to foreclose, I'm 17:58:40  
11 not going to prejudge what discovery you need, but I'm going to  
12 set a schedule -- I think it needs to be a little more generous  
13 than this -- and direct you to get your discovery requests out  
14 promptly, next week. Preferably early next week. And if you  
15 all have disputes over what whether it's appropriate discovery 17:59:04  
16 in light of the urgent nature of this case, then you can bring  
17 it to me and I will decide it.

→ 18 Let's push this back. Let's set the defendant's  
19 response for January 16 and the reply for January 23rd,  
20 recognizing that if it turns out the defendants really do have 17:59:28  
21 legitimate needs for more discovery then you can get to them on  
22 that schedule, that I will give that account when you bring it  
23 before me.

24 MR. SEHAM: I'm sorry. January 16 for their motion?

25 THE COURT: No. December 29 for their motion; January 17:59:44

1 16 for your response; and January 23rd for their reply on the  
2 class certifications.

3 And as I said, I can't absolute guarantee it, but I am  
4 hoping to have a ruling on the motion to dismiss before you  
5 would finalize that motion concerning class certification. 17:59:59

6 Now, as to the jury trial issue, who wants to go  
7 first? I have an idea. First of all, I don't think I'm going  
8 to require the briefing that until after you filed your motion  
9 for class certification so the other side can see where you are  
10 choosing to do battle. 18:00:25

11 MR. STEVENS: Fine.

12 THE COURT: And then perhaps they should file the  
13 motion, first brief. Do you want to do that, Mr. Seham? You  
14 file the first brief?

15 MR. SEHAM: That would be fine, Your Honor. 18:00:34

16 THE COURT: So you will have that in hand on December  
17 29. So how quickly can you -- you have already done research  
18 on it. So --

19 MR. SEHAM: We have looked at a treatise.

20 THE COURT: Is January 9 doable? That's 12 days. 18:00:53

21 Well, it's not really 12 days. It's a week when you consider  
22 the days I'm not charging.

23 MR. SEHAM: I just want to be clear because there has  
24 been some confusion. This is for the jury trial?

25 THE COURT: Yes. 18:01:05

**SEHAM, SEHAM, MELTZ & PETERSEN, LLP**

ATTORNEYS AT LAW

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December 29, 2008

Don Stevens, Esq.  
Shughart Thomson & Kilroy, P.C.  
Security Title Plaza  
3636 N. Central Avenue, Suite 1200  
Phoenix, AZ 85012  
Tel. 602 650 2000  
dstevens@stklaw.com

Re: Addington v. Bradford  
Case No. CV-08-1728-PHX-NVW (consolidated with CV-08-1633-PHX-NVW)

- Ref. 1) Email(s) w/ letter(s), Stevens to Granath, 26 & 28 Dec 08  
2) Email, 23 Dec. 08 6:58:28 PM CST, Granath to Stevens  
3) Teleconference, 23 Dec. 08, noon CST (Granath, Middlebrook & Stevens, Brown)  
4) Email w/letter, Granath to Stevens, 19 Dec. 08 sent 5:35:43 PM CST  
5) Email, Stevens to Granath, 19 Dec. 08 received 11:13:29 AM CST  
6) Email w/ subpoena, Flood to Granath, 17 Dec. 08 received 5:14:53 PM CST

Dear Don:

Thank you for your letter following our teleconference last Tuesday. (Ref. 1). Because your letter goes beyond mere confirmation to include contentions, I must respond, but for convenience I will use each of your numbered paragraphs:

1. You have confirmed instructions to cease efforts to serve the referenced subpoena on USAPA attorney Lee Seham. This will confirm that in the absence of a Court ruling allowing it, if this discontinued effort is resumed then USAPA's response will include filing an emergency protective order and seeking sanctions (because the subpoena sought to circumvent Judge Wake and sought to force disclosure of privileged information). As to the remainder of your paragraph 1, I respectfully disagree with both your factual and legal contentions and USAPA reserves all rights and argument therewith.

2. Perhaps I misunderstand you but if you meant to state or imply that USAPA conferred about *not* obeying any Court order then, for the record, that is not accurate. In addition, the schedule for briefing is stated in Docket No. 116. I also note for the record that your email (Ref. 5) stated, "We are prepared to discuss the jury issues that might survive motions, and perhaps avoid the necessity for your having to file your motion by January 16, 2009." However, in our

teleconference (Ref. 3) you indicated that you did not want to discuss this subject. That is your prerogative, of course, but I simply note that we were prepared to discuss it.

3. Unless I misunderstand you, and for the record, I cannot agree that the Court has ordered Plaintiffs' to file "class certification pleadings" or scheduled that, because that is not our reading of the Court's order or intent. The Court's order in Docket No. 116 is clear, together with the comments of the Court on December 15.

4. We have checked the availability of those five persons you indicated for deposition in Charlotte the week of January 19-23. Please see Attachment A: USAPA Proposed Deposition Schedule. I request that we continue to confer about this before you issue any Deposition Notices.

5. Thank you for your offer to extend the time to respond to Plaintiffs' first written discovery requests. This will confirm we accept your offer: we will serve responses and objections on Friday, January 9th.

In addition, I repeat what I said in the 26(f) conference, and again in our conference call on December 23,<sup>rd</sup> which is that a general protective order will need to be in place for USAPA to produce any documents (the need results not only to protect use of USAPA confidential information but because well before this case USAPA and the Company executed confidentially agreements). Recall that I proposed a Stipulated Protective Order (SPO) prior to our 26(f) conference on December 8.<sup>th</sup> This was rejected without counter. The only specific objection then stated was that the proposed SPO restricted discussion with your clients. To satisfy that objection I have attached a revised SPO: please see Attachment B: USAPA Proposed Stipulated Protective Order (see the addition of sub-paragraph (e) at the end of ¶ 3). In addition, I assume the focus of the Diorio deposition would be negotiations. If that is the case, we must have a SPO in place before examination (and we may also need a sign-off from the Company because we have signed agreements with them). I look forward to your response.

6. To my recollection, we have not to date discussed Plaintiffs taking a Rule 30(b)(6) deposition, at least for the time frame of the week of January 19-23. The areas that you propose to examine will of course have an impact on what person USAPA chooses to designate as the deponent. Therefore, please confirm that the following areas, as stated in your December 19<sup>th</sup> email (Ref. 5), are the particular and exclusive areas of the planned 30(b)(6) examination:

- (a) The pilots or other volunteers described in the October 2007 website piece entitled "Who is USAPA?"
- (b) The persons responsible for answers to the FAQ's in October 2007 USAPA website (as well as all current information put into website communications)
- (c) The pilots or other volunteers who were responsible for the organization and certification of USAPA

Upon your confirmation, I will then check availability.

*Offices: New York · Minneapolis · Houston · Seattle*

N. P. Granath, Esq.

December 29, 2008

Page 3

7. As I indicated in the 26(f) conference, and again in our teleconference on the 23<sup>rd</sup>, any delay in the schedule, complications, or cost that results from disqualification of Lee Seham is attributable to the Plaintiffs' continued attempts to make him a witness and to breach the attorney client privilege. It remains our position that this tactic is not warranted in fact or law, and indeed, may expose you and your clients to sanctions. Beyond that, I have nothing to add or detract from what Mr. Seham stated on the record to the Court on December 15.

→ Finally, please state the availability for deposition of all named plaintiffs for the week of January 5-9, 2009. We would agree to confine these deposition to the issues related to class certification provided that the depositions would be continued to resume on a later date to cover the remaining non-class subjects. Thank you. ←

Sincerely,

Seham, Seham, Meltz, Petersen, LLP



Nicholas Paul Granath, Esq., *Pro Hac Vice*  
Counsel for USAPA

w/Encl.

- 1) Attachment A: USAPA Proposed Deposition Schedule
- 2) Attachment B: USAPA Proposed Stipulated Protective Order

cc via email:

Plaintiffs' Counsel  
Defendants' Counsel

*Offices: New York · Minneapolis · Houston · Seattle*

**From:** "Don Stevens" <dstevens@stklaw.com>  
**Subject:** **Response to Granath to Stevens 12/29**  
**Date:** December 29, 2008 10:39:20 AM CST  
**To:** "Granath Nicholas P." <ngranath@visi.com>  
▶ 1 Attachment, 11.1 KB

Nick,

Thanks for your letter and comments. We disagree with your position, but I don't think further comment or argument from me is needed.

We will be filing the Motion for Class certification today and our position on the jury issues will be discussed. I was not unwilling to discuss the topic, but in light of our position, I did not think that there was anything further I could offer.

Regarding the depositions, thank you for the proposed schedule. My staff reminded me that Monday the 19th is the federal MLK holiday and many places are closed. I am checking on availability of a law office and court reporter. Otherwise, can we move them one day?

→ I expect that in view of our position on class certification, we will be objecting to class discovery, so perhaps we should plan a meet and confer. ←

→ In light of the upcoming holiday and the inability to meet and prepare witnesses, we will not be able to agree to class depositions in less than one week starting January 5. My suggestion is the week of the 26th. Perhaps we can discuss this as well after you get our Motion for Class Certification. ←

Don

	<p><b>Don Stevens</b> <i>Attorney At Law</i></p>
<p><a href="http://www.stklaw.com">http://www.stklaw.com</a></p>	<p><b>Shughart Thomson &amp; Kilroy</b> 3636 North Central Avenue Suite 1200 Phoenix, AZ 85012 tel: 602-650-2089 fax: 602-926-8604 <a href="mailto:dstevens@stklaw.com">dstevens@stklaw.com</a></p>

 Please consider the environment before printing this email

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**From:** "Granath Nicholas P." <ngranath@visi.com>  
**Subject:** class cert motion  
**Date:** December 30, 2008 10:10:56 AM CST  
**To:** Don Stevens <dstevens@stklaw.com>



[REDACTED]

Don

When I received your email yesterday (herein below) we had not yet been served with Plaintiffs' class action certification motion.

Now that we have, FYI please note the following:

→ 1, Re our discovery of the class action, our position remains that discovery is allowed, has been ordered, and is ← certainly necessary. Therefore, to clarify, our written requests to date remain outstanding and we will need to depose the class representatives;

2, The cert motion at page 1, line 24, recites that it is based on accompanying declarations of Marty, Kelly and Andy. We were not served, however, with Kelly' or Andy's declarations.

thanks,

Nick

-----  
Nicholas P. Granath, Esq.

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Nick,

**From:** "Don Stevens" <dstevens@stklaw.com>  
**Subject:** **Plaintiff Depo Availability Week 1/27**  
**Date:** December 31, 2008 6:00:23 PM CST  
**To:** "Granath Nicholas P." <ngranath@visi.com>  
**Cc:** "Kelly Flood" <kflood@stklaw.com>

---

Nick,

→ We can make the following plaintiffs available in Phoenix for deposition, based on current ← availability:

Afshin Iranpour 28 or 29.

Mark Burman 28 - 30

Roger Velez 29 or 30

John Bostic Anytime

Don Addington- has to check

Steve Wargocki: Currently in training in Florida and has to check

**From:** Granath Nicholas P. <ngranath@visi.com>  
**Subject:** **Depos of Plaintiffs**  
**Date:** January 2, 2009 11:39:12 AM CST  
**To:** Don Stevens <dstevens@stklaw.com>  
**Cc:** Flood Kelly <kflood@stklaw.com>



[REDACTED]

Don cc Kelly

→ Getting back to you on your Dec 31 email offering depositions dates (herein, below): Although this schedule ← will preclude us from taking depositions in time for our response on the class action motion due Jan. 16, nevertheless if these are the earliest dates, then yes, we would like to schedule these on 28-29-30 Jan. as you have offered.

I will leave it to you to set up the order, Don, so that should make scheduling easier. If possible, we would like to take all six named plaintiffs in one 'go.' To do that we are willing to use Sat and Sun as well.

I will hold off issuing any deposition notices until I hear back from you. Thank you for your cooperation.

Nick

-----  
Nicholas P. Granath, Esq.

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Nick,

We can make the following plaintiffs available in Phoenix for deposition, based on current availability: