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3 **IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

4 Don ADDINGTON; John BOSTIC; Mark
5 BURMAN; Afshin IRANPOUR; Roger
6 VELEZ; and Steve WARGOCKI,

7 Plaintiffs,

8 vs.

9 US AIRLINE PILOTS ASSOCIATION,
10 US AIRWAYS, INC.,
Defendants,

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

STIPULATED PROTECTIVE ORDER

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

14 Plaintiffs,

15 vs.

16 Steven H. BRADFORD, Paul J. DIORIO,
17 Robert., A. FREAR, Mark. W. KING,
18 Douglas L. MOWERY, and John A.
19 STEPHAN,

20 Defendants.

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

21 Documents, testimony, information, and other materials may be sought, produced,
22 or exhibited by and among the named parties and non-parties in this action. Certain
23 documents, testimony, information and other materials sought may relate but are not
limited to confidential and/or proprietary collective bargaining negotiation information,

1 business information, personnel information, trade secrets, and/or information subject to
2 a legally protected right of privacy. See Rule 26(c)(7), F.R.Civ.P; A.R.S. §44.401, et seq.

3 Additionally, USAPA and US Airways, Inc., entered into a Confidentiality
4 Agreement concerning their negotiations for a single collective bargaining agreement.
5 (See letter from E. Allen Hemenway to First Officer Stephen Bradford, dated June 23,
6 2008 , Re: Confidentiality Agreement Between US Airline Pilots Association and US
7 Airways, Inc., attached hereto as Exhibit A. (“Confidentiality Agreement”)) Certain
8 information sought in this action may fall under the protections of the Confidentiality
9 Agreement.
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11 In addition, for the purposes of this litigation, US Airways Inc. has proposed, and
12 USAPA has accepted, a “Stipulated Order Protecting Third Party US Airways, Inc.’s
13 Confidential Documents And Information.”
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15 The parties (defined as the named plaintiffs and defendant US Airline Pilots
16 Association) wish to engage in full and fair discovery in an efficient and economical
17 manner, and in that regard understand and agree that certain documents that may be
18 sought and obtained in discovery may or may not ultimately be submitted to the Court as
19 part of dispositive briefing, and/or submitted to a jury at trial.

20 As such, the parties agree to a stipulated protective order to apply to documents
21 that qualify as protected information under this Stipulated Protective Order. Consistent
22 with the policy of open access of courts to the public, documents initially designated
23 Confidential under this Order for purposes of discovery may later for purposes of

1 dispositive briefing or trial be undesignated by agreement of the parties or by order of the
2 Court, as provided herein. In the event that the parties cannot agree and/or the Court
3 declines, to un-designate a document, the parties will comply with the Court's rules for
4 filing and presenting evidence under seal.

5 On these bases,

6
7 IT IS ORDERED, on the consent of the parties through their respective attorneys,
8 that:

9 A. Confidential Materials are defined as follows: trade secrets and other
10 confidential, proprietary, or sensitive business, financial, and personal documents and
11 information that has not been made available to third parties without an understanding of
12 confidentiality, where the disclosure may cause competitive harm and/or invade privacy,
13 including documents and information meeting these criteria within the following
14 independent categories: (i) documents already covered by a Confidentiality Agreement;
15 (ii) documents that relate to USAPA's strategic decisions to prepare for negotiations with
16 US Airways toward a single collective bargaining agreement and whose disclosure could
17 adversely impact all pilots' bargaining position with US Airways, but only to the extent
18 such documents are internal to USAPA, not available to all pilots, not already disclosed
19 to the parties and/or the court, and/or are not stale; (iii) personal identifying, medical,
20 financial and/or otherwise sensitive information regarding any individual; and (iv) any
21 material deemed confidential by operation of the US Airways Inc. & USAPA "Stipulated
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1 Order Protecting Third Party US Airways, Inc.'s Confidential Documents And
2 Information.”

3 B. Designation and Non-Disclosure

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5 1. The named parties may designate documents, information, and/or testimony
6 regardless of form or forum, that they, in good faith, believe contain confidential and/or
7 proprietary collective bargaining negotiation information, business information,
8 personnel information, trade secrets, and/or information subject to a legally protected
9 right of privacy (hereinafter collectively “Information”) as “Confidential” Information.
10 This may include papers, tapes, documents, discovery responses, computer images,
11 disks, diskettes and other tangible things produced by any party or obtained from any
12 third party, through subpoena or otherwise, that relates to this action; transcripts of
13 depositions herein and exhibits thereto and copies, extracts, databases and complete or
14 partial summaries or indexes prepared from such papers, documents or things.
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16 2. Information produced by the parties which is or has been marked or identified as
17 “Confidential” shall not be disclosed, discussed with, or used by anyone except:

18 (a) Attorneys of record for the parties, including partners and associates in any
19 law firm appearing of record in this action;

20 (b) Employees of any law firm appearing of record in this action including
21 paralegals and secretaries who are actively engaged in the within litigation;
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1 (c) Independent experts retained by any party for purposes of assisting the parties
2 and their attorneys in the preparation and presentation of the claims or
3 defenses in this case;

4 (d) Any person who has prepared or assisted in the preparation of any particular
5 document produced by the parties;

6 (e) Persons to whom copies of the documents were addressed or delivered;

7 (f) The named parties to this action and their officers, agents or regular
8 employees;

9 (g) The Court, court reporters, witnesses or others present at depositions held in
10 this matter and at trial as directed by the Court;

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13 3. Documents previously produced in this matter may now be designated as
14 “Confidential” by way of a letter from the counsel for the party who produced those
15 documents. Any such letter shall be provided within ten (10) business days of the entry
16 of this Protective Order. However, to the extent any such documents previously
17 produced have already been presented in or to the Court, any such after-the-fact
18 designation must be supported by good cause, including an explanation of any alleged
19 prejudice that would result if the designation is not made.

20
21 4. Documents, information or material designated “Confidential” shall not be used
22 for any purpose other than for the conduct of the above titled action. Any person or
23 entity that obtains access to discovery materials (or the contents thereof) designated

1 “Confidential” and produced in this matter shall not make copies, duplicates, extracts,
2 summaries or descriptions of the discovery materials or information or any portion
3 thereof except in connection with the conduct of this action. Any such copies,
4 duplicates, extracts, summaries or descriptions of documents that have been designated
5 “Confidential” shall also be treated as “Confidential” documents and/or Information, and
6 shall be subject to all the terms and conditions of this Order.
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8 5. With the exception of those persons covered by paragraphs 2(a), (b), and (g), any
9 person to whom Information covered by this Protective Order is desired to be shown or
10 given (and who falls within the categories of people to whom the Information may be
11 shown under paragraph 2) shall first be given a copy of this Protective Order by that
12 Receiving Party’s attorney and be required to read it, be bound by its terms and shall
13 execute the attestation attached hereto as Exhibit A. All signed attestations shall be
14 maintained by counsel for the Receiving Party and shall be available to counsel for the
15 Producing Party in the event there is a good faith belief that there may have been a
16 violation of this Order.
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18 6. Each person to whom disclosure of Information is made pursuant to the terms of
19 this Protective Order shall subject him/herself to the jurisdiction of this Court for the
20 purpose of contempt or other proceedings in the event of any violation of this Protective
21 Order.
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1 C. Dispute Regarding Designation:

2 If a party who receives a document designated as “Confidential” (the “Receiving
3 Party”) disputes the specific designation, the Receiving Party shall advise counsel for the
4 Party who produced the document (the “Producing Party”) in writing of the objection.
5 Within seven (7) days after receipt of such objection, the Producing Party will set forth in
6 writing his/her/its basis for the designation. If the dispute cannot be resolved, the
7 Receiving Party may apply to the Court for a modification of the classification of the
8 document. All documents designated “Confidential” shall remain so designated until
9 counsel re-designates them or the Court resolves the issue
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11 D. Return of Documents:

12 Upon completion of this litigation, all documents and Information produced by a
13 party pursuant to this Protective Order and marked “Confidential” shall be returned to the
14 attorneys for the Producing Party, or, upon consent of the parties, shall be destroyed (and
15 certified by affidavit as having been destroyed) by the Receiving Party within sixty (60)
16 days of the filing of the Stipulation of Dismissal or the filing of any other Order or
17 pleading finally dismissing the case, except in the case of any appeal, whereby the sixty
18 (60) days will run from the final Order on appeal. It is the duty of the attorneys for
19 Receiving Party to ensure that all documents are in fact destroyed and/or returned within
20 the relevant time frame.
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1 E. No Waiver:

2 No party shall be deemed by the entry of this Protective Order to have waived any
3 objection to the production of any document or Information on any grounds or to have
4 waived any other right, defense or objection that may otherwise be interposed in this
5 action. Nothing in this Protective Order, nor the production of Information in the action,
6 shall be deemed a waiver of any privilege with respect thereto in any other action or
7 proceeding, or a waiver of any privilege applicable to any Information other than the
8 specific Information so produced in these actions, or of the right of any party to this
9 action, or any other action, to oppose production of any Information. In the event of any
10 inadvertent disclosure of any “Confidential” Information, all parties reserve all rights that
11 they may have as a matter of law with respect to such inadvertent disclosure.
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13 F. Inadvertent Production:

14 Inadvertent production of privileged or arguably privileged information shall not be
15 deemed to be either (a) a general waiver of the attorney-client privilege, the work product
16 doctrine or any other privilege; or (b) a specific waiver of any such privilege with regard
17 to the documents or Information being produced or the testimony being given. Notice of
18 any claim of privilege as to any document or Information claimed to have been disclosed
19 inadvertently shall be given promptly after the discovery of that inadvertent disclosure.
20 Should the parties be unable to agree upon the return of such documents and information
21 because of a good faith argument that no privilege is applicable, the party asserting the
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1 privilege shall have the burden of establishing the privilege or work product protection
2 upon Motion to the Court.

3 G.Right to Seek Amendments:
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5 Nothing in this Protective Order shall be deemed to prevent any Party from seeking
6 amendments hereto to restrict the rights of access and use of documents and the
7 Information referred to herein, or to allow access to persons not included within the terms
8 of this Protective Order. Nothing contained herein shall preclude a Producing Party from
9 using or disseminating its own "Confidential" Information.
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11 H. The US Airways Stipulated Protective Order:
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13 USAPA shall not be required to violate any term of the "Stipulated Order Protecting
14 Third Party US Airways, Inc.'s Confidential Documents And Information" and shall be
15 held harmless by reason of compliance. The same shall be and is incorporated by
16 reference into this Order.
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Dated: _____

SEHAM, SEHAM, MELTZ & PETERSEN, LLP
Lee Seham
Nicholas P. Granath
Lucas K. Middlebrook

LUBIN & ENOCH, PC
Stanley Lubin

By: _____

Attorneys for Defendant,
US Airline Pilots Association

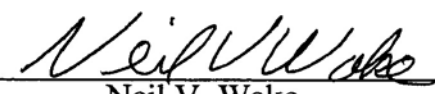
Dated: _____

SHUGHART THOMSON & KILROY, P.C.
Marty Harper
Kelly J. Flood
Andrew S. Jacob

By: _____

Attorneys for Plaintiffs

So Ordered this 15th day of January, 2009



Neil V. Wake
United States District Judge

1 **EXHIBIT A**

2 **CONFIDENTIALITY ATTESTATION**

3 I hereby attest to my understanding that documents and/or Information, as that term is
4 defined, designated "Confidential" may be provided to me pursuant to the terms, conditions and
5 restriction of a Protective Order entered in the case of *Don Addington, et. al. v. US Airline Pilots*
6 *Association, et. al.*, United States District Court for the District of Arizona, Case No., 2:08-cv-
1633-NVW-PHX, that I have been given a copy of the Protective Order, and have had its
7 meaning and effect explained to me by the attorneys providing me with such information and
8 documents, and that I hereby agree to be bound by its terms.

9 I further agree that I shall not disclose to others, except in accordance with the Protective
10 Order, such information or documents, and that such Information or documents shall be used
11 only for the purpose of the *Don Addington, et. al. v. US Airline Pilots Association, et. al.*, United
12 States District Court for the District of Arizona, Case No., 2:08-cv-1633-NVW-PHX, legal
13 proceeding in which the documents were produced.

14 I further agree and attest to my understanding that my obligation to honor the
15 confidentiality of such Information or documents will continue even after the termination of this
16 legal proceeding.

17 I further agree and attest to my understanding that, in the event that I fail to abide by the
18 terms of the Protective Order, I may be subject to sanctions, including sanctions by way of
19 contempt of court. I agree to subject myself to the jurisdiction of the United States District Court
20 for the District of Arizona, for the purpose of contempt or other proceedings in the event of any
21 violation of the Protective Order.

22 Dated: _____

23 _____
Printed Name of Affiant

Signature of Affiant