LEE SEHAM, Esq. *pro hac vice*
STANLEY J. SILVERSTONE, Esq. *pro hac vice*
LUCAS K. MIDDLEBROOK, Esq. *pro hac vice*
NICHOLAS P. GRANATH, Esq., *pro hac vice*
SEHAM, SEHAM, MELTZ & PETERSEN, LLP
445 Hamilton Avenue, Suite 1204
White Plains, NY 10601
Tel: 914 997-1346; Fax: 914 997-7125

STANLEY LUBIN, Esq., State Bar No. 003076
stan@lubinandenoch.com
LUBIN & ENOCH, PC
349 North 4th Avenue
Phoenix, AZ 85003-1505
Tel: 602 234-0008; Fax: 602 626 3586

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, US AIRWAYS, INC., Defendants,	Case No. 2:08-cv-1633-PHX-NVW (Consolidated) **DEFENDANT USAPA'S NOTICE OF MOTION, MOTION, AND MEMORANDUM TO COMPEL ANSWERS TO CLASS CERTIFICATION INTERROGATORIES**
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. 2:08-cv-1728-PHX-NVW

NOTICE

PLEASE TAKE NOTICE that Defendant US Airline Pilots Association ("USAPA" or "Defendant" or "Movant"), by and through its attorneys, Seham, Seham, Meltz & Petersen, LLP, will request and move without oral argument that this Court issue an order pursuant Rule 37 to compel responses to class certification Interrogatories.

MOTION

COMES NOW Defendant USAPA, pursuant to Fed. R. Civ. P. 37(a)(3)(B)(iii) and LRCiv 7.2(k) and 37.1, to request this Court to compel answers to select class certification Interrogatories, identified herein below, that were originally propounded on December 26, 2008, in "Defendant USAPA's First Class Action Interrogatories To Plaintiffs" and later as amended on January 19, 2009, in "Defendant USAPA's Revised First Class Action Interrogatories To Plaintiffs."

The grounds for this motion[1] are as follows:

First, Defendants propounded to Plaintiffs on December 26, 2008, "Defendant USAPA's First Class Action Interrogatories To Plaintiffs." (*See*, Granath Decl., **Exhibit 1**). Later, in response to the Court's Order (Dkt. No. 155 page 3:13) requiring "limited, focused and nondilatory" class certification discovery, on January 19, 2009, Movant propounded an amended and sharply de-scoped, "Defendant USAPA's Revised First Class Action Interrogatories To Plaintiffs." (*See*, Granath Decl., **Exhibit 2**).

Second, on January 26, 2009, Plaintiffs served Defendant with "Defendant

[1] USAPA reserves its right to file motions to compel with respect to Plaintiffs' responses to non-class action discovery.

USAPA's First Class Action Interrogatories To Plaintiffs (As Amended By USAPA) And Plaintiffs' Answers Thereto." (*See*, Granath Decl., **Exhibit 3**).

Third, pursuant to LRCiv 7.2(j), counsel for Defendant certifies that after personal consultation and sincere efforts to do so, counsel has been unable to satisfactorily resolve this discovery dispute. (*See*, Granath Decl. ¶ 8, **Exhibit 4**, and **Exhibit 5** detailing both written and telephonic efforts to resolve this discovery dispute by direct consultation with Plaintiffs.).

Fourth, Defendant's original class-certification Interrogatories totaled 24 numbered interrogatories. The Revised set of class-certification Interrogatories reduced this number to 7. This motion has been further narrowed to a selection of just 5 interrogatories: Nos. 15, 16, 20, 22, and 24 respectively. This narrowed selection reflects the most important of the interrogatories not yet voluntarily compiled with, as well as the Movant's intent to avoid unduly burdening this Court.

Fifth, pursuant to the format required by LRCiv 37.1, Defendant states that the following interrogatories are "evasive or incomplete" responses, for the reasons given below, and therefore "must be treated as failures to answer" within the meaning of Rule 37(a)(4) and subdivision (a):

Interrogatory No. 15

1) Interrogatory:

"a) Do you claim that the method for computation of damages is the same for every class member?"

2) Response:

"Please see plaintiff's motion for class certification, filed December 29, 2008. Plaintiffs do not claim damages *per se*, but rather the equitable remedy of relief from or

disgorgement of dues and fees to USAPA for the time during which USAPA has breached its duty of fair representation. USAPA is in possession of the information required to calculate this for every class member. It is plaintiffs understanding that this information is in possession and/or control of the USAPA Dues Committee: Carl J. Clarke - Chairman, Darrel Webb, and John Mahlman."

3) Deficiency:

Incomplete or evasive answer because:

First, nothing in Plaintiffs' motion for class certification, filed December 29, 2008, answers this interrogatory, or even remotely contains any damage calculation, or any documents that would provide a basis to calculate damages. Consequently, reference to Plaintiffs' motion for class certification is no answer to this Interrogatory.

Second, Plaintiffs' Initial Disclosures similarly failed to disclose any calculations whatsoever (*See*, Granath Decl., **Exhibit 6**). Plaintiffs' refusal to answer Interrogatory 15 is in stark contrast to their promise made in their Initial Disclosures: "Plaintiffs' damages will continue to accrue and Plaintiffs will supplement their disclosure at the appropriate time." (*See*, Exhibit 6). Thus, USAPA and this Court are left in the dark as to whether Plaintiffs claim that the method for computation of damages is the same for every class member or not, or how they would calculate it. This, combined with the failure to provide a Trial Plan for trial of their class action, exacerbates the evasive answer here given (and makes Plaintiffs' motion to certify untenable).

Third, while Plaintiffs' objection makes the "equitable remedy of relief from or disgorgement of dues and fees" relevant, their objection is also proof that Plaintiffs have refused to answer this interrogatory directly or indirectly with any calculation of their

disgorgement remedy.[2]

Fourth, it is an inadequate answer to point to information or documents supposedly in Defendant's possession, both as a matter of fact and of law. As a matter of law, Rule 33(b)(1) requires that interrogatories "must be answered by the party to whom they are directed." And, the mere availability of documents (which are here offered to answer the interrogatory) is not a basis to refuse to answer discovery. *See*, *e.g.*, *Sabouri v. Ohio Bureau of Employment Services*, 2000 WL 1620915 (S.D. Ohio 2000) (fact that documents are available from another source, even a public one, is not, by itself, a valid basis for refusing to produce documents that are within the possession, custody, or control of the responding party).

In point of fact, USAPA has no calculation of damages nor is it aware of how such calculations should be made from dues or fees. Moreover, USAPA has no idea what *individual* putative class members might claim. Indeed, each named Plaintiff, in their respective deposition testimony, confirmed that calculation of the dues-related damages would involve an individualized assessment of each pilot's situation by admitting ignorance of the various categories of dues or fees payors, i.e. whether military service, disability, or apprenticeships affects calculation of dues or fees owed. (*e.g.* Addington 72:17, 73:23; Bostic 80:9, 80:17, 82:7; Burman 81:15, 85:1, 85:6; Iranpour 107:7,

---

[2] This remedy, though never pled, is nevertheless what Plaintiffs now *actually* pursue; therefore, to the extent that the Court will allow it, it is well within scope of discovery because it pertains directly to a claim. (*See*, The Advisory Committee Note to the 2000

107:14, 107:21,108:3; Wargocki 127:3, 127:8, 127:15; Velez 86:5, 86:13, , 86:18. 86:23).

Fifth, the answer to this interrogatory has special importance to the motion for class certification because it goes directly to the need for individual assessments of remedy. There are multiple categories of dues and fees obligations, status, and payors. For example, a pilot could be a fee payer who has objected – or not objected to the calculation of the agency fee amount; a member could be subject to many different deductions from their dues obligation – or not. Thus, it is utterly inadequate to apply a single category or status across the board to 1,800 individuals.

Sixth, any and all other objections not specifically and timely made in Plaintiffs' response to this interrogatory have been waived. Rule 33(b)(4) ("Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure"); *India Ruling, Inc. v. Get Miller Ruling Co.*, 237 F.R.D. 190, 194 (E.D. Wis. 2006) (each specific objection must be asserted or it is waved); *Essex Ins. Co. v. Neely*, 236 F.R.D. 287 (N.D. Va. 2006) (late filed objections deemed waived); *Nagele v. Electronic Data Systems Corporation*, 193 F.R.D. 94 (W.D.N.Y. 2000) (failure to object to interrogatory in excess of 25 results in waiver).

Interrogatory No. 16

1) Interrogatory:
"What are the class representatives' responsibilities if:
a) Plaintiffs lose the claim?
b) Plaintiffs prevail on the claim?
c) Plaintiffs have incurred costs and out-of-pocket expenses and lose the claim?
d) Plaintiffs have incurred attorney's fees and lose the claim?

Amendment to Rule 26(b)(1): "The Committee intends that the parties and the court focus on the actual claims and offenses involved in the action.").

e) Has there been any agreement between Plaintiffs, their attorneys, and any other persons that would limit the amount of attorney fees or expenses he or she is to pay?"

2) Response:
"Objection: this requests speculation [sic] regarding future events and may invade the attorney-client privilege. Subject to and notwithstanding the subjection, Plaintiffs' responsibilities whether or not they prevail on their claims will be consistent with whatever the court orders in that regard, as anticipated by Plaintiffs motion for Class Certification. Additionally, in light of documents and information already disclosed, Defendants are already aware that the law firm representing them will not seek payment of fees from them."

3) Deficiency:

Incomplete or evasive answer because:

First, the objection that the interrogatory seeks "speculation regarding future events" is invalid: Plaintiffs' claim and class certification motion are not speculative but rather are pending at bar, and both are well within the scope of discovery. The adequacy of the class representatives and their counsel, including their financial resources, have been placed directly in issue by the motion to certify. *See*, *e.g.*, *In Ray re ML-Lee Acquisition Fund II, L.P. and ML-Lee Acquisition Fund (Retirement Accounts) II, L.P. Securities Litigation*, 149 F.R.D. 506, 509 (D. Del. 1993) ("the financial status of a proposed representative plaintiff is relevant to the determination of whether that plaintiff is capable of adequately representing the class"); *Elster v. Alexander*, 75 F.R.D. 503, 505 (N.D. Ga. 1976).

Second, the objection based on the attorney-client privilege is invalid because the interrogatory seeks information on qualifications, not communications (and certainly not legal advice) between class counsel and named Plaintiffs. Second, Rule 23(a) and Rule

23(c) in the context of Plaintiffs' pending motion to certify makes this interrogatory timely and directly relevant. Courts frequently have ruled, "discovery relating to the issue of whether a class action is appropriate needs to be undertaken before deciding whether to allow the action to proceed on a class basis." 7B Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice & Procedure*, § 1785.3 (3d ed. 2006); *See, e.g., In re Am. Med. Sys.*, 75 F.3d 1069, 1086 (6th Cir. 1996) (certification improper where defendant was not permitted, among other things, to "conduct any discovery on any of the plaintiffs"); *McLaughlin On Class Actions: Law and Practice*, Fourth Ed., Thomson & West (2007), § 3.7, p. 3-27 (*citing Kamm v. California City of Development Co*., 509 F.2d 205, 210 (9th Cir. 1975) (denial of discovery into issue of existence of class 'would be an abuse of discretion')).

Third, it is an incomplete or evasive answer to respond that Plaintiffs' duties will be "consistent with whatever the court orders." The Court is not responsible for answering interrogatories. Nor is there any off-the-shelf rule, standing order, etc. that the answer refers to, or could. Certainly the Court would not order duties responsive to all of the subparts of this interrogatory.

Fourth, the partial answer, i.e. "in light of documents and information already disclosed, Defendants are already aware that the law firm representing them will not seek payment of fees from them" – does not relieve Plaintiffs from answering the remainder of the interrogatory. *See e.g.*, *Tequila Centennela, S.A. de C.V. v. Bacarid & Co. Ltd*., 242 F.R.D. 1 (D.D.C. 2007); *Martinez v. Cornell Corrections of Texas, a Delaware Corp*., 377 F. Supp. 2d 1128 (D.N.M. 2005).

Fifth, any and all other objections not specifically and timely made in Plaintiffs' response to this interrogatory have been waived. Fed. R. Civ. P. 33(b)(4).

Interrogatory No. 20

1) Interrogatory:
"Identify each agreement, contract, retainer or understanding, between any class representative and any attorneys representing the representative, that bears upon fees or disbursements to be received by such attorney?

a) Is it contingent upon a judgment in your favor?
b) If contingent, what is the percentage of the judgment that will constitute the fee?
c) Are the class representatives billed periodically for attorneys' fees?
d) Are the class representatives required to make payment for attorneys' fees prior to judgment?
e) How much have the class representatives paid in attorneys' fees to date?
f) How much have the class representatives not paid in attorneys' fees incurred to date?
g) How much in expenses and out of pocket costs have the class representatives paid to date?"

2) Response:
"Information responsive to this request was already disclosed."

3) Deficiency:

Incomplete or evasive answer because:

First, no supposedly responsive information is identified or referenced, either generally or for any subpart.

Second, no supposedly responsive information has been disclosed. (*See* separately filed "Defendant USAPA's Notice Of Motion, Motion, And Memorandum To Compel Responses To Class Certification Request For Documents" Docket No. __).

Third, any and all other objections not specifically and timely made in Plaintiffs' response to this interrogatory have now been waived. Fed. R. Civ. P. 33(b)(4).

Interrogatory No. 22

1) Interrogatory:
"What persons, associations, corporations, partnerships, or entities have or will contribute money, funding or in-kind services of any kind to the class or class action?

a) What is their address?
b) What is their phone number?
c) If they have legal counsel, who is that?"

2) Response:
"Information responsive to this request was already disclosed."

3) Deficiency:

Incomplete or evasive answer because:

First, no supposedly responsive information is identified or referenced, either generally or for any subpart.

Second, no supposedly responsive information has been disclosed. (*See* separately filed "Defendant USAPA's Notice Of Motion, Motion, And Memorandum To Compel Responses To Class Certification Request For Documents" Docket No. __).

Third, any and all other objections not specifically and timely made in Plaintiffs' response to this interrogatory have been waived. Fed. R. Civ. P. 33(b)(4).

Interrogatory No. 24

1) Interrogatory:
"If any counsel for named plaintiffs has communicated with any non-party class member whom counsel knew or now knows to be a member of the class he seeks to represent:

a) State whether the communication was oral or in writing or by email?
b) Identify the party who originated each communication?
c) State the date of each communication?
d) Identify each document that records, contains or refers to such communication?
e) Identify each person present during any oral communications?
f) State the subject matter of any oral communications?"

2) Response:
"Objection: this request asks for information protected by the attorney-client privilege and work product doctrines, in his [sic] otherwise impermissible as directed at putative class members and class counsel. *See, e.g*., *Dean v. Superior Court*, 84 Ariz. 104, 324 P.2d 764 (1958); *Brennan v. Midwestern Life Insurance Co*., 450 F.2d 999, 1005 (7th Cir. 1971); *Rogers v. Baxter International, Inc.*, 2007 WL 2908829 at * 1 (N.D. Ill. October 4 2007); *Clark v. Universal Builders, Inc*., 501 F.2d 324, 340 (7th Cir. 1974); *Baldwyn & Flynn v. National Safety Association*, 149 F.R.D. 598, 600 (ND Cal. 1993)."

3) Deficiency:

Incomplete or evasive answer because:

First, this interrogatory does not call for disclosure of the *contents* of any responsive communications or documents and certainly not legal advice. Rather it calls for identifying information to allow the *assessment* of any objection based on privilege or work product doctrine; therefore the privilege objection is premature.

Second, no privilege log has been produced by Plaintiffs either in response to class certification interrogatories or requests for documents, making the answer to this interrogatory all the more important. *See*, *See*, *DL v. District of Columbia*, __ F. Supp. 2d __ (D.D.C. 2008) (the obligation to describe the nature of the privileges met through a privilege log); *Weiss v. National Westminster Bank*, PLC, 242 F.R.D. 33 (E.D.N.Y. 2007) (failure to include sufficient information on the privilege log can result in waiver).

Third, as a general matter, the United States Supreme Court and several lower courts have held that "absent" class members as distinguished from class representatives are proper targets for discovery. *See*, *Phillips Petroleum Company v. Shutts*, 472 US 797, 810 n.2 (1985); *Brennan v. Midwestern United Life Insurance Company*, 450 F.2d 999, 1004 (7th Cir. 1971) ("... class members may be required" to submit to discovery); *See*

also, Manual For Complex Litigation (Fourth) § 21.142 (2004) (discovery from "unnamed class members" is permissible when such discovery would illuminate the nature of proof needed to establish the claims and defenses).

Fourth, Plaintiffs cited a handful of cases to substantiate their objection to giving any answer whatsoever to this interrogatory, but not one supports their objection:

- *Dean v. Superior Court*, 84 Ariz. 104, 324 P.2d 764 (1958): this is an Arizona state case construing a state version of Rule 34 that existed several decades ago, and has nothing to do with the scope of the attorney-client privilege in the context of a class action, state or federal, or with discovery of communications with putative class members. *Dean* is no basis to object to Interrogatory No. 24.

- *Brennan v. Midwestern Life Insurance Co*., 450 F.2d 999, 1005 (7th Cir. 1971): this case concerned the narrow issue of discovery of existing albeit absent class members – not putative members – that did not respond to a notice following certification. But even in that circumstance, the *Brennan* court expressly *upheld* discovery of the class members holding: "...absent members of a class who receive notice of the pendency of the class suit may be subjected to the party discovery procedures permitted under the Federal Rules." *Brennan* is no basis to object to Interrogatory No. 24.

- *Rogers v. Baxter International, Inc.*, 2007 WL 2908829 at * 1 (N.D. Ill. Oct. 4, 2007): Like the *Brennan* case, the *Rogers* case is distinguishable because it concerns discovery directed to a certified class, not putative class members. In *Rogers*, specific interrogatories having nothing to do with interrogatory No. 24 at issue in this motion but rather concerning issues unique to ERISA, were rejected by the court. But the *Rogers* court, like the *Brennan* court, specifically notes that even in the case of a certified class, "discovery from absent class members may be allowed ..." *Rogers* is no basis to object to Interrogatory No. 24.

- *Clark v. Universal Builders, Inc*., 501 F.2d 324, 340 (7th Cir. 1974): This case reversed on appeal a directed verdict on substantive law grounds and remanded for trial. It contains only a passing reference to a discovery issue arising in the context of post-class certification. Again, the principle that discovery including interrogatories and depositions of "absent class members" is appropriate was reaffirmed in *Clark*, provided there is no "stratagem to diminish class membership." There is no contention by Plaintiffs here that Interrogatory No. 24 is a stratagem for diminishing the class, or that it might have that effect. Thus, *Clark*, too, is no basis to object to Interrogatory No. 24.

- *Baldwyn & Flynn v. National Safety Association*, 149 F.R.D. 598, 600 (N.D. Cal. 1993): In *Baldwyn* a district court denied a motion to *depose up to one-third or one half* of the unnamed members of a yet to be certified class. But Interrogatory No. 24 is not a deposition notice. Interrogatory No. 24 is rather limited in scope and directed not at putative class members but at the "named plaintiffs" counsels' communication; it does not compare with the scope or the issues in *Baldwyn* even remotely. Answering interrogatory No. 24 does not require any contact or communication with putative class members. Moreover, the *Baldwyn* court expressly noted that a court "may find that pre-certification discovery is needed" (*Id. citing*, *Folding Cartons, Inc. v. American Can Co.*, 79 F.R.D. 698, 700 (D. Ill. 1978); *Kamm v. California City Development Co*., 509 F.2d 205, 209 (9th Cir. 1975); *Doninger v. Pacific Northwest Bell, Inc.*, 564 F.2d 1304, 1312 (9th Cir. 1977). Thus, *Baldwyn* is also no basis to object to Interrogatory No. 24

Fifth, communications between class counsel and *putative* class members are not normally protected by the attorney-client privilege. *See e.g.*, *In re McKesson HBOC, Inc.,* 126 F. Supp. 2d 1239, 1245 (N.D. Cal. 2000) ("While lead counsel owes a generalized duty to unnamed class members, the existence of such a fiduciary duty does not create an inviolate attorney-client relationship with each and every member of the putative class. Taken to an extreme, lead plaintiff's logic suggests that putative class members are forever walled off from any effort at solicitation, a proposition that seems unsupportable."); *Rahman vs. Smith & Wollensky Restraunt Group*, 2007 U.S. Dist. LEXIS 37632 (S.D.N.Y. 2007) ("[w]hile lead counsel owes a generalized duty to unnamed class members [prior to certification], the existence of such a fiduciary duty does not create an inviolate attorney-client relationship with each and every member of the putative class") (*citing In re McKesson HBOC, Inc. Securities Litigation, 126 F. Supp. 2d 1239, 1245 (N.D. Cal. 2000)*); *Morisky v. Public Service Electric*, 19 F.R.D. 419, 424 (D.N. J. 2000) ("... appears to assert a representational relationship based on its projection that this litigation will proceed as a class action ... Even if certified as a class,

'class members are really neither parties to the litigation nor clients of plaintiffs' counsel.'" (*citing Penk v. Oregon State Bd. of Higher Ed., 99 F.R.D. 511, 516 (D. Or. 1983*)); *Valone v. CAN Financial Corp*., 2002 U.S. Dist. LEXIS 4655 (N.D. Ill. 2002) ("Defendants' motion to compel plaintiffs to supplement their responses to defendants' interrogatories and document request is granted. If those who returned questionnaires were putative class members, no privilege would have attached") (*citing In re McKesson HBOC, Inc., 126 F. Supp. 2d 1239, 1245 (N.D. Cal. 2000)*; *Penk v. Oregon State Board of Education, 99 F.R.D. 511, 516 (D. Or. 1983*)). *See also Atari v. Superior Court, 166 Cal. App. 3d 867, 212 Cal. Rptr. 773 (Cal. 1985)*.

Sixth, even if the privilege were applicable, Plaintiffs have made no attempt to show that they have any existing clients in the pool of potential, putative class members, nor have they made any attempt to show they can meet the prerequisites to assert the privilege. In order to invoke the attorney-client privilege, Plaintiffs must establish the following elements:

1) The asserted holder of the privilege is or sought to become a client;

2) The person to whom the communication was made (a) is a member of the bar of a court, or his subordinate and (b) in connection with the communication is acting as a lawyer;

(3) The communication relates to a fact of which the attorney was informed (a) by his client (b) without the presence of strangers (c) for the purpose of serving primarily either (i) an opinion on law or (ii) legal service or (iii) assistance in some legal proceeding, and not (d) for the purpose of committing a crime or tort; and

(4) The privilege has been claimed and not waived by the client.

*U.S. v. Impastato, 2007 U.S. Dist. LEXIS 63454 at *5, 2007 WL 2463310, at * 2 (E.D. La. Aug. 23, 2007) (citing U.S. v. Kelly,* 569 F.2d 928, 938 (5th Cir. 1978)).

Plaintiffs have not even made the attempt and because Plaintiffs refuse to disclose the identity of any client save for the six named Plaintiffs, this Court is entitled to presume for the purposes of this motion that there are no other clients for Plaintiffs to claim the privilege over in order to evade discovery.

WHEREFORE, Defendant USAPA respectfully requests that its motion to compel complete and non-evasive answers pursuant to Rule 37 be GRANTED.

Respectfully Submitted,

Dated: February 16, 2009 By:

/s/ *Nicholas Paul Granath, Esq.*

Nicholas P. Granath, Esq. (*pro hac vice*)
ngranath@ssmplaw.com
SEHAM, SEHAM, MELTZ & PETERSEN
2915 Wayzata Blvd.
Minneapolis, MN 55405
Tel 612 341-9080; Fax: 612 341-9079

Lee Seham, Esq. (*pro hac vice*)
lseham@ssmplaw.com
Stanley J. Silverstone, Esq. (*pro hac vice*)
ssilverstone@ssmplaw.com
Lucas K. Middlebrook, Esq. (*pro hac vice*)
lmiddlebrook@ssmplaw.com
SEHAM, SEHAM, MELTZ & PETERSEN
445 Hamilton Avenue, Suite 1204
White Plains, NY 10601
Tel: (914) 997-1346; Fax: (914) 997-7125

Stanley Lubin, Esq. State Bar No. 003076
stan@lubinandenoch.com
LUBIN & ENOCH, PC
349 North 4th Avenue
Phoenix, AZ 85003-1505
Tel: 602 234-0008; Fax: 602 626 3586

ATTORNEYS FOR DEFENDANT USAPA