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7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF ARIZONA**

10 Don ADDINGTON, *et al.*,

11 Plaintiffs,

12 vs.

13 US AIRLINE PILOTS ASSN., *et al.*,

14 Defendants.

CASE NO. 2:08-CV-1633-PHX-NVW

(Consolidated)

**MOTION TO SUPPLEMENT
DISCLOSURE**

15 Don ADDINGTON, *et al.*,

16 Plaintiffs,

17 vs.

18 Steven H. BRADFORD, *et al.*,

19 Defendants.

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

20 Plaintiffs request leave of Court to supplement the Plaintiff's Exhibit
21 List for the Proposed Final Pretrial Order disclosed by Plaintiffs' counsel to
22 Defendants on April 1, 2009. This supplemental disclosure of documents is
23 necessary, in the interests of justice, to include documents that were
24 identified at, near, or after the time of the deadline to disclose all trial
25 documents by April 1, 2009, pursuant to the Court's Order Setting Final
26 Pretrial Conference (Order Setting Final Pretrial Conference 3:1-4 (March
27 13, 2009) (doc. 251).) This Motion is supported by the following
28 Memorandum of Points and Authorities that follows.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. **PLAINTIFFS REQUEST LEAVE OF COURT TO SUPPLEMENT EXHIBIT LIST**
3 **EXCHANGED ON APRIL 1, 2009.**

4 A. **Hemenway Documents**: Plaintiffs and Defendants deposed Allen
5 Hemenway, Vice President of Labor Relations for US Airways on April 3,
6 2009, after the exhibit disclosure deadline. At this deposition, Mr.
7 Hemenway produced two documents that had not been included in prior
8 documents disclosed by either US Airways or USAPA, even though repeated
9 requests were made to both parties for these documents. Both documents
10 were disclosed and a copy was provided to Defendant's counsel, Lee Seham.
11 Plaintiffs ask for leave of Court to include the document with Bates ranges
12 US Airways 0001761-62 (marked in Mr. Hemenway's deposition as "H-4") as
13 Exhibit 472, and a document marked US Airways 0001765 (marked at the
14 deposition as "H-5") as Exhibit 473.

15 B. **Versions of Seniority Proposal**: Pursuant to their discovery requests,
16 Plaintiffs first received a CD from USAPA in the late afternoon on March
17 31, 2009 that contained 17 drafts of versions of USAPA's Seniority Proposal
18 Conditions and Restrictions, documents that did not include Bates number
19 ranges. Plaintiffs have been unable to identify whether they had received
20 these documents in previous disclosures because USAPA provided no
21 identifying information for any version. Identifying data such as margin
22 notes were not included. Plaintiffs now ask the Court for leave to include
23 these documents s Exhibits # 474 – 490, because they first disclosed by
24 USAPA on the eve of the deadline, and not previously disclosed by USAPA,
25 either in disclosure or responses to discovery requests propounded by
26 USAPA.

27 C. **USAPA Road Show Videos**: Plaintiffs included Defendant's videos
28 of the USAPA Road Shows in Phoenix in the Exhibit List exchanged with

1 Defendant's counsel on April 1, 2009 as Exhibits 69-73, assuming these files
2 to be complete videos as the Defendant's counsel represented. Plaintiffs now
3 ask the Court for leave to include videos that were identified at the
4 Preliminary Injunction Hearing as Exhibit 64, which are Plaintiffs versions
5 of these videos taken at the USAPA Road Shows in Phoenix.

6 At the October 29, 2008 Preliminary Injunction hearing, Defendants
7 objected to Plaintiffs' introduction of videos that were of Road Shows of
8 USAPA in Phoenix, videos and transcripts of those videos that were
9 identified as Exhibit 64. Defendant's objected that these videos were clips of
10 full videos taken by West Pilots, and had been edited by West Pilots for
11 content.

12 During discovery, Plaintiffs learned that USAPA had hired a video
13 company to make a video record of the Road Show presentations, including
14 those that included Mr. Lee Seham. Plaintiff then served a discovery
15 request to USAPA to produce USAPA's full videos of these Road Shows in
16 the Plaintiffs' Request for Production in December, 2008. USAPA failed to
17 produce its videos. After repeated requests through correspondence with
18 Defendant's counsel throughout January and February, 2009, USAPA
19 finally produced their own DVDs of the Road Shows in mid-March. Plaintiffs
20 experienced some difficulty with reviewing the video files in the format
21 provided by USAPA. Plaintiffs sent the videos to an outside consultant to
22 change the format of the DVDs to a readable format.

23 Plaintiffs have now reviewed all of the videos produced by USAPA and
24 have identified they these videos are not the complete videos of the Road
25 Shows. The videos eliminated part of the presentation, including those
26 statements made during the introduction by USAPA Officers that Plaintiffs
27 identified in their exhibit transcripts at the December, 2008 hearing. Due
28 to the incompleteness of the USAPA videos, Plaintiffs ask the Court for

1 leave to include all of their versions of the USAPA Road Shows. These
2 videos would include the segments of the Road Shows that were either
3 edited from USAPA's versions or were portions of time during the Road
4 Shows that USAPA did not tape or include in their production. Plaintiffs
5 ask that these Exhibits be marked as Exhibits 491 – 508. The individuals
6 who filmed and edited these videos were Tania Bziukiewicz and Brice
7 LeCarre, will be called if needed, for foundation at trial.

8 Plaintiffs respectfully request that the Court allow Plaintiffs to
9 supplement their Exhibit List to include these documents and videos that
10 were disclosed near, at, or after the deadline to disclose all trial exhibits.

11
12 Dated this 9th day of April, 2009

13 POLSINELLI SHUGHART PC

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18 **CERTIFICATE OF SERVICE**

19 I hereby certify that on April 9, 2009, I electronically transmitted the
20 foregoing document to the U.S. District Court Clerk's Office by using the
21 CM/ECF System for filing and transmittal of a Notice of Electronic Filing.

22 I further certify that on April 9, 2009, I caused a paper courtesy copy
23 of the foregoing document and the Notice of Electronic Filing to be delivered
24 to the assigned Judge:

25
26
27
28
s/ *Katherine V. Brown*
