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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)

**REPLY TO DEFENDANT'S
RESPONSE/MOTION TO STRIKE TO
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 demonstrated good cause for requesting leave of Court to
21 supplement the Plaintiff's Exhibit List for the Proposed Final Pretrial Order
22 disclosed by Plaintiffs' counsel to Defendants on April 1, 2009. Defendants
23 cannot claim any prejudice because the documents that Plaintiffs seek to
24 add are either (a) documents that were always under USAPA's control and
25 about which they had actual and constructive knowledge, or (b) they were
26 documents that were disclosed to USAPA in October 2008. In the interests
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1 of justice, the Court should grant the Motion to Supplement Disclosure as to
2 the following categories of information.

3 **A. Hemenway Documents:** Contrary to USAPA's Response, Plaintiffs
4 did attempt to obtain these documents in many different ways. These
5 documents were requested in various letters Plaintiffs sent to USAPA
6 Counsel requesting detailed supplementation. They were requested during
7 the deposition of USAPA Grievance Chairman, Tracy Parella. They were
8 made in a request for these documents from US Airways, which was delayed
9 in part because USAPA failed to timely sign the Protective Order that US
10 Airways insisted on before producing documents. There was one document,
11 the July 7, 2008 letter from Mr. Bradford which was produced by USAPA a
12 few days before the April 1, 2009 deadline that was overlooked because of a
13 staffing issue.

14 In fairness, USAPA and US Airways large volumes of documents and
15 CDs of documents to Plaintiffs in the week before the April 1, 2009 exchange
16 date. The failure to disclose a letter from USAPA's former president Mr.
17 Bradford is not prejudicial and should be excused. Plaintiffs have been
18 diligent in seeking this information and for a variety of reasons, those
19 documents were not available at the time of the April 1, 2009 deadline for
20 exchange.

21 In addition, deposition of Allen Hemenway was noticed by USAPA on
22 April 3, 2009. USAPA had disclosed the Hemenway July 10, 2008 letter
23 some time ago. USAPA did not disclose the July 7, 2008 letter from Mr.
24 Bradford to US Airways to which Mr. Hemenway responded until just a few
25 days before the deadline. Equally important, USAPA never disclosed the
26 subsequent letter from Mr. Bradford accepting the settlement offer. In
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1 short, the documents Plaintiffs listed are USAPA documents, or documents
2 within their control and that should have been produced long ago.

3 During Mr. Hemenway's deposition, he was asked about his letter and
4 attempted to locate those documents. Plaintiffs were entitled to attend the
5 deposition and to ask questions, regardless of who noticed the deposition.
6 Given that Plaintiffs made timely requests for these documents from
7 USAPA and from the Company, and the fact that these documents were
8 always in USAPA's control, there is no prejudice to USAPA if the Court
9 allows these documents to be included as Exhibit #472 and #473.

10 **B. Versions of Seniority Proposal:** Pursuant to their discovery requests,
11 Plaintiffs first received a CD from USAPA in the late afternoon on March
12 31, 2009 that contained 17 drafts of versions of the Conditions and
13 Restrictions incorporated into USAPA's Seniority Proposal. There is no
14 prejudice to Defendant if the Court allows these documents to be included as
15 Exhibits # 474 – 490 as these documents were produced by USAPA and
16 were always in USAPA's control. Well before April 1, 2009, Plaintiff had
17 made several requests for the versions of the C&Rs, and USAPA made good
18 faith promises to produce them, but did not produce these documents until
19 the day before the April 1, 2009 deadline. These documents are relevant to
20 whether USAPA considered the West Pilots interests during the formation
21 of the Conditions and Restrictions. Plaintiffs have been prejudiced by this
22 late disclosure of the Conditions and Restrictions, so the Court should allow
23 these documents to be included in Plaintiffs' trial exhibits to avoid the
24 prejudice resulting from USAPA's late disclosure of this relevant
25 information.

26 **C. USAPA Road Show Videos:** There is no prejudice to USAPA by
27 allowing Plaintiffs to list the Road Show video clips taken by one or more
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1 West Pilots, as first disclosed by Plaintiffs on October 29, 2008. At the time
2 of the hearing, Defendant objected to the clips as excerpts that had been
3 modified or edited and were incomplete. In response, Plaintiffs repeatedly
4 made requests to USAPA produce its own original videos taken by a third
5 party video company hired by USAPA, so that the full and unedited videos
6 could be used to extract appropriate clips of relevant testimony and
7 admissions. In reliance on the good faith production by USAPA, Plaintiffs
8 did not list the video clips taken by West Pilots so the “best evidence” in the
9 forms of the USAPA videos could be used. Like other discovery responses,
10 and despite numerous requests for USAPA’s disclosure, the videos were not
11 produced until shortly before the deadline.

12 Then when Plaintiffs examined the USAPA videos, Plaintiffs
13 discovered for the first time that the video taken by West Pilots was
14 strangely not on the video produced by USAPA. Since USAPA has not
15 provided full and unedited copy that contain the videos Plaintiffs took of the
16 Road Shows, Plaintiffs should be permitted to introduce the clips that
17 USAPA’s videos conveniently omit. In fact, because USAPA has not or
18 cannot produce the original and unedited video, or does not have it,
19 Plaintiffs should be permitted to use these clips as the best evidence, for
20 purposes of completeness. Under these circumstances, Plaintiff did not have
21 a reasonable or fair opportunity to discover that the USAPA videos were not
22 complete, so there is no prejudice if the Court allows Plaintiffs to include
23 these documents as Exhibits # 491 – 508.

24 For good cause shown, Plaintiffs respectfully request that the Court
25 allow Plaintiffs to supplement their Exhibit List to include these documents
26 and videos.

27 Dated this 14th day of April, 2009

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CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2009, I electronically transmitted the foregoing document to the U.S. District Court Clerk's Office by using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing.

I further certify that on April 14, 2009, I caused a paper courtesy copy of the foregoing document and the Notice of Electronic Filing to be delivered to the assigned Judge:

s/ *Katherine V. Brown*
