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

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

12 Plaintiffs,

13 vs.

14 US AIRLINE PILOTS ASSOCIATION,  
US AIRWAYS, INC.,

15 Defendants,

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

**DEFENDANT USAPA'S  
OBJECTION TO PLAINTIFFS'  
PROPOSED VERDICT FORM**

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

18 Plaintiffs,

19 vs.

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

21 Defendants.  
22

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

1 Defendant objects to Plaintiffs' proposed verdict form on the following grounds:

2 First, this is a complex case. Plaintiffs' proposed verdict form is a general form  
3 whereas Defendant's is a special verdict form. A general form is not appropriate in  
4 complex cases. *Dinco. v. Dylex, Ltd.*, 111 F.3d 964, 969 (1<sup>st</sup> Cir. 1997) (special verdict  
5 form appropriate in complex cases). This case is complex factually and legally as  
6 illustrated by the complete disagreement over the statement of *any* common legal or fact  
7 issue, and all jury instructions on liability.

8 Second, a special verdict form is appropriate where, as here, the status of the  
9 applicable law is uncertain (because if the trial court is reversed on the law, sufficient  
10 special verdicts may render a new trial unnecessary). Here, Plaintiffs are proceeding on  
11 an untested theory of law that rests on nothing more, at its core, than *dictum*. They are  
12 doing so in a case that the same Circuit Court later clarified in a way, if not superceding  
13 the dictum, then contrary to Plaintiffs' theory, i.e. *Rakestraw* after *Air Wisconsin*.  
14 Moreover, no court has ever held date of hire unlawful, but that is what Plaintiffs ask  
15 this Court to do. In addition, this Court has observed that the *ripeness* issue remains  
16 open.

17 Third, a special verdict form is appropriate because this Court has bifurcated the  
18 proceedings and relegated the first phase to all fact-liability issues. If there is a second  
19 phase, a special verdict will be more helpful to the Court (or a reviewing court) than a  
20 general one.

21 Fourth, Defendant's form adequately reflects the issues that Plaintiffs' *actually*  
22

1 *pled*, if not the issue they now want to try, so there is no risk of confusion or prejudice  
2 (and Plaintiffs have not articulated how there could be). Defendant’s proposed special  
3 verdict form follows Plaintiffs’ Count III just as it was *pled*: as a duty of fair  
4 representation claim broken into two parts, a “failure to consider” category and a “bad  
5 faith category”. *Santos v. Posadas De Puerto Rico Associates, Inc.*, 452 F.3d 59, 65 (1<sup>st</sup>  
6 Cir. 2006) (special verdict should cover all factual issues); *Thomas ex rel. Smith v.*  
7 *Sheahan*, 556 F.Supp. 2d 861, 880 (N.D. Ill. 2008) (verdict forms satisfy this standard if  
8 they accurately, adequately and clearly state the relevant issues).

9 Fifth, a special verdict form is specifically permitted by Fed. R. Civ. P. 49(a).

10 Sixth, this Court has absolute discretion to use a special verdict as Defendant has  
11 proposed. *Mason v. Ford Motor Co. Inc.*, 307 F.3d 1271, 1274 (11<sup>th</sup> Cir. 2002).

1 Respectfully Submitted,

2 Dated: April 16, 2009

By: /s/ Nicholas P. Granath, Esq.

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1 **CERTIFICATE OF SERVICE**

2 This is to certify that on the date indicated herein below true and accurate copies  
3 of the foregoing documents and their attachments, *to wit*,

- 4 • Defendant USAPA's **DEFENDANT USAPA'S OBJECTION TO**  
5 **PLAINTIFFS' PROPOSED VERDICT FORM**
- 6 • Certificate of Service

7 were electronically filed with the Clerk of Court using the CM/ECF system, which  
8 will send notification of such filing to all admitted counsel who have registered with  
9 the ECF system, including but not limited, to:

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10 Further, I certify that paper hard copies shall be provided to The Honorable Neil  
11 V. Wake, District Court Judge, 401 W. Washington Street, SPC 52, Phoenix, AZ 85003.

12 On April 16, 2009, by:

13 */s/ Nicholas Paul Granath, Esq.*