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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’S NOTICE & MOTION  
TO REDACT PLAINTIFFS’  
TRIAL EXHIBIT NO. 14.**

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

22 Defendants.

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

1 TO : PLAINTIFFS, AND ALL PARTIES, AND THEIR ATTORNEYS OF  
2 RECORD.

3 **NOTICE**

4 PLEASE TAKE NOTICE that Defendant US Airline Pilots Association  
5 (“USAPA”) will move this Court for an order requiring redaction of Plaintiffs’ Trial  
6 Exhibit No. 14 to be heard without oral argument, or if the Court sets oral argument  
7 then on a date and time set by the Court.

8 **MOTION**

9 COMES NOW Defendant USAPA to move this Court for an order requiring  
10 redaction of Plaintiffs’ Trial Exhibit No. 14.

11 In support of its motion USAPA states the following grounds:

12 First, this Court has denied Defendant’s motion in limine No. 21 seeking to  
13 exclude from jury trial Plaintiffs’ Trial Exhibit No. 14, after oral argument and  
14 submission of the exhibit in camera. (Doc. # 386). Notably, Defendant’s motion was  
15 predicated on the presence of attorney-client privilege communication in the exhibit in  
16 question, and the Court’s order did not find otherwise. Rather, the Court decided the  
17 motion “on the burden of proof” i.e. that Defendant had not shown reasonable efforts to  
18 avoid disclosure or that a wrongdoer published. But it is now certain that this exhibit  
19 could be shown to the jury.

20 Second, because Plaintiffs have stated on record their intentions, it is known that  
21 they will offer this exhibit for a single limited purpose, to wit, to read to the jury the  
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1 following language: “However, he cautioned, the language you use in setting up your  
2 new union and how you go about talking and writing about your solutions to this award  
3 can be used against you. You need to stress the positives of the new union and not dwell  
4 on the award. Don't give the other side a large body of evidence that the sole reason for  
5 the new union is to abrogate an arbitration, the Nicolau award, that in the opinions of  
6 most judges, should be allowed to stand due to no gross negligence or fraud.”  
7 (Transcript of Pretrial Conference, April 21, 2009, hereinafter “Tr.,” at 76:14 and 78:3,  
8 and Exhibit 14, all pages). Plaintiffs will offer this exhibit as evidence of what they  
9 claim was the ‘true purpose’ of the formation of USAPA, as well as evidence that there  
10 was advice to avoid making a record of the claimed true purpose.<sup>1</sup> See also, unredacted  
11 Trial Ex. No. 14 at page two of the Bradford letter, in the first paragraph, and on page  
12 four, i.e. the Bostic email, which cites to the specific language at issue, but nothing else.

13 Third, it is without question, therefore, that the remaining content of Trial  
14 Exhibit No. 14 is not part of Plaintiffs’ motion, or otherwise pertinent to plaintiffs’  
15 request, yet is wholly prejudicial in nature, lacking any relevance whatsoever to the sole  
16 issue in our case – the alleged violation of the duty of fair representation

17 Fourth, Plaintiffs have not asked the Court to publish this extra content to the  
18 jury; thus it must be redacted, because it is not relevant, was not argued to be relevant,  
19 and was not considered even worth mentioning to the court. Thus, the Court’s ruling  
20 did not extend to that additional language. In addition, the language is not otherwise

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21 <sup>1</sup> Noting, however, that Plaintiffs’ counsel concedes that: “I believe that we don't have an issue that it's  
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1 admissible as it is irrelevant, (FRE 402) and/or it would risk – indeed, it would  
2 absolutely result in – unfair prejudice to Defendant and total confusion to the jury (FRE  
3 403).

4 As stated above, the email by Bostic is nothing more than his interpretation and  
5 opinion of Bradford’s letter. But what Bostic thinks about the letter is not relevant (and  
6 his email is objectionable on other grounds as well, such as hearsay). Bostic’s emails  
7 should be removed from the exhibit. Such redaction allows Plaintiffs to offer this  
8 exhibit for the single reason they have given in oral argument for its inclusion, and upon  
9 which it must be assumed the court based its decision to deny the motion in limine

10 In addition, Bradford’s letter, too, should be redacted to purge from the jury’s  
11 view all but the sentence that counsel has stated they want to offer (attached hereto is an  
12 example of Trial Ex. 14 redacted).

13 WHEREFORE, Defendant USAPA respectfully requests that its motion be  
14 GRANTED.

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an improper purpose to form the union for purpose of abrogating the Award.” (Tr. 78:4).

1 Respectfully Submitted,

2 Dated: April 24, 2009

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

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*Attorneys for Defendant  
US Airline Pilots Association,  
And Witnesses, Stephen Bradford, Robert  
Davison, and Doug Mowery.*

**CERTIFICATE OF SERVICE**

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

- Defendant’s Notice & Motion To Redact Plaintiffs Trial Exhibit No. 14
- Certificate of Service

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

Marty Harper	Don Stevens	Andrew S. Jacob
MHarper@Polsinelli.com	DStevens@Polsinelli.com	AJacob@Polsinelli.com
Kelly J. Flood	Katie Brown	
KFlood@Polsinelli.com	KVBrown@Polsinelli.com	

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

On April 24, 2009, by:

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

**A Conversation with an Attorney**

KEEP THIS INFORMATION CONFIDENTIAL

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

However, he cautioned, the language you use in setting up your new union and how you go about talking and writing about your solutions to this award can be used against you. You need to stress he positives of the new union and not dwell on the award.

Don't give the other side a large body of evidence that the sole reason for the new union is to abrogate an arbitration, the Nicolau award, that in the opinions of most judges, should be allowed to stand due to no gross negligence or fraud.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

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