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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 EXCLUDE LATE SUBMITTED
EXHIBITS AUTHORED BY LAY
WITNESS BRIAN STOCKDELL**

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,
21 Douglas L. MOWERY, and John A.
STEPHAN,

22 Defendants.

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

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

2 **NOTICE**

3 PLEASE TAKE NOTICE that Defendant US Airline Pilots Association
4 (“USAPA”) will move this Court, to be heard without oral argument before the start of
5 trial on April 28, or if the Court sets oral argument, then as set by the Court, for an order
6 to exclude late submitted exhibits authored by lay witness Brian Stockdell.

7 **MOTION**

8 COMES NOW Defendant USAPA to move this Court for an order to exclude
9 late submitted exhibits authored by lay witness Brian Stockdell. In support of its
10 motion USAPA states the following grounds:

11 First, it was not possible for USAPA to bring a motion in limine to exclude the
12 subject exhibits by the April 14 deadline for motions in limine.

13 On the deadline to exchange all trial exhibits and to disclose all trial witnesses,
14 April 1, Plaintiffs listed Brian Stockdell on their list of “may” call witnesses. He was
15 listed as a “fact” witness. However, in subsequent amendments to their proposed Final
16 Pretrial Order For Jury Trial, Plaintiffs promoted Stockdell to a “will call” witness
17 (again, as a fact witness). Based on this, Defendant sought to depose Stockdell.
18 Ultimately, in the April 16 filing of the Proposed Final Pretrial Order For Jury Trial,
19 Plaintiffs listed Stockdell as a “will” call witness (Doc. # 356 at p. 36:3).

20 A date of April 20 was agreed to for deposition and Defendant noticed that date.

21 Prior to that, however, on April 15 – one day after motions in limine were due –
22

1 Plaintiffs sent Defendant documents that Stockdell would sponsor as his own. (Granath
2 Declaration, Attachment 1). *Neither document had, to date, been produced in*
3 *discovery; neither were listed as trial exhibits by the April 1 deadline.* The only
4 Stockdell document timely disclosed was the Stockdell Declaration. (*See*, Doc. # 356-2,
5 at page 6, i.e. Plaintiffs’ Trial Ex. No. 126). The Stockdell Declaration had a chart
6 attached – but it is not what Plaintiffs provided on April 15, i.e. the documents that are
7 the subject exhibits of this motion. On information and belief, the subject exhibits were
8 created only days before the deposition on trial.

9 Second, to avoid unfair prejudice, the Stockdell documents should be excluded
10 because the Stockdell documents are in essence the *mirror image of what Defendant*
11 *now seeks to offer in the Robert Davison documents.*

12 The Court reserved its ruling on the Davison’s exhibits, saying:

13 Defendant is directed to provide documents to Court and counsel from Mr.
14 Davison for review and the Court will reserve ruling on the remaining
15 issues in the Motion in Limine. If the Court will allow the evidence in,
16 Plaintiff may depose Mr. Davison on Saturday. Doc. # 375.

17 Plaintiffs had already deposed Mr. Davison, but in an effort to manufacture
18 prejudice, abandoned their opportunity to re-depose Mr. Davison on Saturday, despite
19 their declared intentions.

20 Taking Plaintiffs at their word, the Stockdell documents are submitted for
21 “illustrative purposes” only, just as Davison’s are. According to Plaintiffs, Stockdell’s
22 documents are: “very simple depictions of the seniority lists ... [that uses] ...

1 the USAPA seniority list and the Nicolau list ...” (Granath Dec., Att. 1). Yet Plaintiffs
2 have objected to the Davison documents while they seek the same “illustrative”
3 evidence through Stockdell. In fairness, either both should come in or both should stay
4 out.

5 Third, that Defendant is forced to bring this motion at this time is due to
6 Plaintiffs’ failure to disclose the Stockdell documents by April 1, or even by April 14, in
7 an apparent attempt to ambush Defendant at trial. And Plaintiffs only recently, on April
8 23, confirmed that Plaintiffs still intended to call Stockdell at trial and sponsor the
9 subject exhibits. (Granath Decl., Att. 2).

10 Fourth, this motion is timely and properly brought because it is understood that
11 the Court has cautioned the parties that in order to avoid disrupting the jury, matters to
12 be heard outside of the jury’s presence are to be, as much as possible, brought up
13 outside the jury’s attention:

14 I absolutely do not want to take jury time with disputes of counsel or
15 motions. If there are things that are going to come up, alert us ahead of time
16 so we can discuss it while the jury is not here before or after they are here.
(Pretrial conference, April 21 at Tr. 25:20).

17 WHEREFORE, Defendant USAPA respectfully requests that its motion be
18 granted.

1 Respectfully Submitted,

2 Dated: April 25, 2009

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

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

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’s Notice & Motion To USAPA’s Motion To Exclude Late Submitted
5 Exhibits Authored By Lay Witness Brian Stockdell
6 • Supporting Declaration and attachments
7 • Certificate of Service

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

11 Marty Harper	Don Stevens	Andrew S. Jacob
MHarper@Polsinelli.com	DStevens@Polsinelli.com	AJacob@Polsinelli.com
Kelly J. Flood	Katie Brown	
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12 Further, I certify that paper hard copies shall be provided to The Honorable Neil
13 V. Wake, District Court Judge, 401 W. Washington Street, SPC 52, Phoenix, AZ 85003.

14 On April 25, 2009, by:

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