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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 REPLY  
TO PLAINTIFFS’ RESPONSE  
TO DEFENDANT’S 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,  
21 Douglas L. MOWERY, and John A.  
STEPHAN,

22 Defendants.

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

1 In reply to Plaintiffs' response brief (Doc. # 400) to Defendant's motion (Doc. #  
2 394), to redact Plaintiffs' Trial Ex. No. 14, Defendant submits the following points:

3 First, Plaintiffs' claim that Trial Ex. No. 14 demonstrates that Bradford had  
4 improper intentions, knew such intention was improper, and planned to hide his  
5 intentions is nothing but spurious. Plaintiffs *admit* that in the exhibit "Mr. Bradford  
6 reports he was advised." A report of advice to do an act or not is not evidence of  
7 anything other than the advice. It does not show that the advice was followed. It  
8 certainly does not show the mindset of the person receiving the advice. Hence, it does  
9 not show intent.

10 And regardless, it is of no legal consequence that Bradford received this advice.  
11 Bradford is not on trial for a DFR – the Defendant is. This Court threw out Plaintiffs'  
12 state suit against Bradford.

13 Second, it is no argument to include irrelevant statements in order to provide  
14 "context" for the allegedly relevant statement. There is no argument from Plaintiffs  
15 here that the redacted statements are relevant. Plaintiffs do not say that the redacted  
16 statements are necessary to explain what is left unredacted. Mere "context" could be  
17 the color of the paper, or perhaps the size of the font. Hence, Plaintiffs tacitly concede  
18 that what is proposed to be redacted is not relevant to the statement they seek to offer.  
19 The statement they seek to offer can stand on its own, and this is apparent. There is no  
20 conceivable prejudice to Plaintiffs by redacting this exhibit.

21 Third, the right to "everyman's evidence" is misplaced. There is no right by the  
22

1 “public” or by Plaintiffs to evidence that is not relevant (FRE 402). There is no right,  
2 either, to relevant evidence whose probative value is substantially outweighed by unfair  
3 prejudice or confusion of the issues (FRE 403).

4 Fourth, Plaintiffs fail to offer any argument in response to the prejudice and  
5 confusion that admission of the unredacted document would surely cause.

6 Fifth, Plaintiffs’ argument that, “[I]n general, only confidential or privileged  
7 material can be considered for redaction” gets both the facts and the law wrong. In the  
8 first instance, Trial Exhibit No. 14 is expressly labeled with:

9 **“A Conversation with an Attorney**  
10 **KEEP THIS INFORMATION CONFIDENTIAL”**

11 So, as a matter of fact, this document is at least confidential on its face. In fact, it is  
12 privileged too. This Court allowed the exhibit to come in because it found that the  
13 privilege was not preserved, not that there was no privilege. Consequently, according to  
14 the few cases that Plaintiffs cite, theirs must be taken as an argument *for* redaction of  
15 “confidential” information, not against it.

16 And, in the second instance, the cases Plaintiffs cite in no way stand for the  
17 proposition Plaintiffs suggest but fail to openly declare, i.e. that there must first be a  
18 finding that material is confidential and privileged before information can be redacted.

19 In *Skinner v. Uphoff*, 2005 WL 4089333, at \*4 (D. Wyo. Sept. 27, 2005) the  
20 Court did not hold or even cite any case for the proposition that Plaintiffs advance. The  
21 *Skinner* court merely fashioned a remedy specific to the facts in that case. It did not  
22 confine its redaction order to only confidential or privileged information. The quote

1 Plaintiffs cite makes this clear once the full context is given:

2 Accordingly, the Court has formulated the following standard, or system,  
3 to govern the production, dissemination, and distribution of documents by  
4 Defendants and Plaintiffs' counsel. From this date forward, Defendants  
5 shall redact all confidential and privileged information from documents  
6 which Plaintiffs' counsel is entitled to review or receive. Defendants shall  
7 only redact information which is confidential or privileged pursuant to  
8 state and federal law. Defendants may also redact any information which,  
9 under the reasonable person standard, would identify any inmates who  
10 have cooperated, are cooperating, or will cooperate with prison officials.  
11 This provision of the system is necessary to protect the safety of the  
12 cooperating inmates and further the investigation process. Defendants will  
13 not, however, redact information simply because it reflects negatively  
14 upon the WDOC or the WSP.

9 And *United States v. De La Jara*, 973 F.2d 746 (9th Cir. 1992), is a criminal case  
10 which concerned admission of a letter by an attorney to his client over a suppression  
11 motion in the context of the fraud exception to the attorney-client privilege – but not  
12 redaction. Redaction is not even mentioned.

13 And *Weil v. Investment/Indicators, Research and Management, Inc.*, 647 F.2d  
14 18, 23 -24 (9th Cir. 1981) concerned dismissal of a Securities Act claim – not redaction.  
15 *Weil* does not even discuss redaction.

16 In sum, it stands to reason that the Court has the *implied* authority to redact, in  
17 part, any exhibit that it has the *express* authority to order excluded in whole under the  
18 Federal Rules of Evidence, 402 and 403. It should do so here in order to keep out  
19 irrelevant, unfairly prejudicial and confusing statements.

1 Respectfully Submitted,

2 Dated: April 27, 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.*

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 Reply To Plaintiffs' Response To Defendant's Motion To Redact  
5 Plaintiffs' Trial Exhibit No. 14
- 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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Kelly J. Flood	Katie Brown	
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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 27, 2009, by:

13 */s/ Lucas K. Middlebrook, Esq.*