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

9 Don ADDINGTON, *et al.*,
 10 Plaintiffs,
 11 vs.
 12 US AIRLINE PILOTS ASSN., *et al.*,
 13 Defendants.

CASE NOS.
 2:08-CV-1633-PHX-NVW
 2:08-CV-1728-PHX-NVW
 (Consolidated)
**PLAINTIFFS' RENEWED MOTION IN
 LIMINE #7 (DOC #318) AND
 SUPPLEMENT RE LATE-DISCLOSED
 EXPERT AND EXHIBITS
 (DOC#384,385)**

14 Don ADDINGTON, *et al.*,
 15 Plaintiffs,
 16 vs.
 17 Steven H. BRADFORD, *et al.*,
 18 Defendants.

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 20 Plaintiffs filed Motion in Limine # 7 because USAPA first revealed several
 21 experts on April 1, 2009 without expert reports, and in violation of the disclosure
 22 requirements of Rule 26, FRCP. USAPA then urged the Court to allow Mr. Bob
 23 Davison to testify because his work was just a “compilation” of the same type as Mr.
 24 Brian Stockdell had prepared. The Court granted limited leave to USAPA to call Mr.
 25 Davison for a limited number of summary displays. The Court also granted leave to
 26 Plaintiffs to notice the deposition of Mr. Davison for Saturday, May 2, 2009.
 27 Plaintiffs filed the Notice of Deposition and notified the Court Reporter.
 28

1 At approximately 11:30 AM on Saturday May2, 2009, Mr. Brengle left a
2 voicemail with Plaintiffs' counsel Don Stevens that USAPA had decided not to call
3 Mr. Davison so the deposition would no longer be necessary. Mr. Brengle followed
4 with another voice message shortly after noon on May 1, 2009 unilaterally cancelling
5 the deposition without Plaintiffs' consent. An Affidavit on Non-Appearance will be
6 filed by the Court Reporter. Mr. Davison has not been called to testify in the trial
7 and in fact has appeared in the courtroom during trial, so he is precluded from
8 testifying at all.

9 Normally, this should be a non-issue, but in light of the history of this case,
10 additional mischief may be fairly anticipated. As one of its final witnesses, USAPA
11 will call Capt. Randy Mowrey, the principal architect of the Seniority Agreement at
12 issue in this case, who worked closely with Mr. Davison on the USAPA committee
13 responsible for the Seniority Agreement and the Conditions and Restrictions. It is
14 unknown whether USAPA will try to work Mr. Davison's work into Mr. Mowery's
15 testimony. This would be improper and highly prejudicial for one or more of the
16 following reasons:

- 17 1. The last minute disclosure of extensive spreadsheet displays
18 without an expert or other explanatory report is highly
19 prejudicial.
- 20 2. This information was attributed to the work of Mr. Davison, a
21 witness who has been withdrawn from USAPA's witness list
22 and cannot be called.
- 23 3. Plaintiffs had the right to depose Mr. Davison and USAPA
24 unilaterally cancelled the deposition, without consent, so any
25 work product done by Mr. Davison and incorporated into Mr.
26 Mowrey's analysis lacks foundation and is inadmissible.
- 27 4. Mr. Davison incorporated work from an excluded expert Rikk
28 Salamat, and the entire work product produced by USAPA
lacks foundation and accuracy.
5. The spreadsheet analysis by Mr. Davison and others is not a
compilation of voluminous documents but an analysis of
various factors, including comparison between a DOH list and

1 the Nicolau list, the “separate operations” list, and other
2 comparative facts. Foundation and personal knowledge will be
3 lacking for any of the documents prepared by Mr. Davison and
used by any USAPA witness.

4 6. USAPA claimed and excuse for late disclosure because the
5 computer exhibits and documents produced by USAPA on
6 April 1, 2009 were only prepared in final form immediately
7 before the deadline disclosure date (indeed, date information on
8 all of these documents shows the date of 3/31/2009). This is
disingenuous since the information has obviously been under
development for many months.

9 7. USAPA has known that it would use this material, or material
10 like it, to support its defense of the case. USAPA failed to
11 disclose this information in a timely way, despite numerous
12 discovery requests and the self-executing duty to disclose.
13 USAPA appears to have deliberately held back this information
until it was too late for Plaintiffs to explain or rebut, or to list
an expert who could do so.

14 8. Since the documents were prepared and produced long after
15 Mr. Mowrey did his work, they cannot form the basis for his
16 construction of the USAPA seniority list nor used, after the
fact, to explain, justify or validate Mr. Mowrey’s testimony.

17 This Renewed Motion is presented to avoid a long delay during trial and will
18 only be ripe if USAPA offers anything prepared by or derived from Mr. Davison’s
19 work. USAPA conduct is not consistent with its obligations under Rule 26 and
20 contrary to USAPA’s assertions in Court. Plaintiffs have demonstrated substantial
21 hardship and significant prejudice from USAPA’s gamesmanship on this issue, so the
22 appropriate remedy is bar the use of any of the Davison exhibits or derived from such
23 exhibits by any USAPA witness, including Capt. Randy Mowrey.
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26 For all of the foregoing reasons, Plaintiffs renew their Motion in Limine #7
27 (Doc 318) and the Supplement thereto (Doc 384, 385) and request that the Court
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preclude the use of this information, directly or indirectly by any remaining USAPA witness.

Respectfully submitted this 5th day of May, 2009.

POLSINELLI SHUGHART PC

By: /s/

Don Stevens

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CERTIFICATE OF SERVICE

I hereby certify that on May 5, 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.

s/ Don Stevens
