

1 Marty Harper (#003416)
 mharper@polsinelli.com
 2 Kelly J. Flood (#019772)
 kflood@polsinelli.com
 3 Andrew S. Jacob (#022516)
 ajacob@polsinelli.com
 4 **POLSINELLI SHUGHART PC**
 Security Title Plaza
 5 3636 N. Central Ave., Suite 1200
 Phoenix, AZ 85012
 6 Phone: (602) 650-2000
 Fax: (602) 264-7033
 7 *Attorneys for Plaintiffs*

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

10 Don ADDINGTON, *et al.*,
 11 Plaintiffs,

Case Nos.:
 2:08-CV-1633-PHX-NVW
 2:08-CV-1728-PHX-NVW
 (Consolidated)

12 vs.

13 US AIRLINE PILOTS ASSN., *et al.*,
 14 Defendants.

**PLAINTIFFS TRIAL BRIEF ON
 APPEALABILITY OF PERMANENT
 INJUNCTION WHILE DAMAGES
 CLAIMS ARE PENDING**

15 Don ADDINGTON, *et al.*,
 16 Plaintiffs,

17 vs.

18 Steven H. BRADFORD, *et al.*,
 19 Defendants.

20 The Court's anticipated permanent injunction will be immediately
 21 appealable regardless that the Court would withhold entering final
 22 judgment pending resolution of individual plaintiff damages claims. *See* 28
 23 U.S.C. § 1292(a)(1), which provides, in relevant part, as follows:

24 [T]he courts of appeals shall have jurisdiction of appeals from: (1)
 25 Interlocutory orders of the district courts of the United States ...
 26 granting, continuing, modifying, refusing or dissolving injunctions,
 27 or refusing to dissolve or modify injunctions, except where a direct
 review may be had in the Supreme Court;

28 U.S.C. § 1292(a)(1).

1 In *Bates v. United Parcel Service, Inc.*, 465 F.3d 1069 (9th Cir. 2006),
2 the court explained:

3 Section 1292(a)(1) also grants us jurisdiction to review the legal
4 and factual decisions made by the district court that underlie its
5 injunctive order where—as here—those issues are inextricably
6 bound up with the injunction. Such review is particularly
7 appropriate in cases like the present one, in which **the appeal is
taken from a permanent**, rather than preliminary, injunction and
the district court has completed its consideration of the liability
issue, **retaining jurisdiction only for an accounting of damages.**

8 *Id.* at 1075-76 (citations and quotation and alteration marks omitted,
9 emphasis added). In such matters, the scope of appellate “[j]urisdiction
10 extends to all matters inextricably bound up with the order from which
11 appeal is taken.” *Idaho Watersheds Project v. Hahn*, 307 F.3d 815, 824 (9th
12 Cir. 2002); *see also LaVine v. Blaine School Dist.*, 257 F.3d 981, 987 (9th
13 Cir. 2001) (same).

14 The present matter is analogous to *Bates* because the Court will retain
15 jurisdiction after a permanent injunction to resolve damages. Plaintiffs,
16 therefore, take the position that the Court’s anticipated permanent
17 injunction and those orders related thereto will be immediately appealable.

18 Dated this 14th day of May, 2009.

19 POLSINELLI SHUGHART PC

20 By: /s/
21 Andrew S. Jacob
22 Security Title Plaza
23 3636 N. Central Ave., Suite 1200
24 Phoenix, AZ 85012

25 **CERTIFICATE OF SERVICE**

26 I hereby certify that on May 14, 2009, I electronically transmitted the
27 foregoing document to the U.S. District Court Clerk’s Office by using the
28 CM/ECF System for filing and transmittal of a Notice of Electronic Filing to
the following CM/ECF registrant(s).

s/

Andrew S. Jacob