LEE SEHAM, Esq. *pro hac vice*
LUCAS K. MIDDLEBROOK, Esq. *pro hac vice*
NICHOLAS P. GRANATH, Esq., *pro hac vice*
STANLEY J. SILVERSTONE, Esq., *pro hac vice*
SEHAM, SEHAM, MELTZ & PETERSEN, LLP
445 Hamilton Avenue, Suite 1204
White Plains, NY 10601
Tel: 914 997-1346; Fax: 914 997-7125

NICHOLAS J. ENOCH, Esq., State Bar No. 016473
LUBIN & ENOCH, P.C.
349 North 4th Avenue
Phoenix, AZ 85003-1505
Tel: 602 234-0008; Fax: 602 626 3586

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Don ADDINGTON; John BOSTIC; Mark BURMAN; Afshin IRANPOUR; Roger VELEZ; and Steve WARGOCKI, Plaintiffs, vs. US AIRLINE PILOTS ASSOCIATION, US AIRWAYS, INC., Defendants,	Case No. 2:08-cv-1633-PHX-NVW (Consolidated) **DEFENDANT'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' RESERVED RULE 50 MOTION (DOC. # 446) ON ISSUE II. D.**
Don ADDINGTON; John BOSTIC; Mark BURMAN; Afshin IRANPOUR; Roger VELEZ; and Steve WARGOCKI, Plaintiffs, vs. Steven H. BRADFORD, Paul J. DIORIO, Robert A. FREAR, Mark. W. KING, Douglas L. MOWERY, and John A. STEPHAN, Defendants.	Case No. 2:08-cv-1728-PHX-NVW

I. BACKGROUND.

On May 7, 2008, after the evidence was closed, Plaintiffs filed their "Rule 50 Motion For Directed Verdict On Four Points Of Law" (Doc. # 446). Plaintiffs' fourth partial directed verdict request was this:

> "Revisiting the seniority dispute could not (and was not expected to) benefit the bargaining unit as a whole."

Plaintiffs' argument for this 4th ruling was presented in § II. D. (Doc. # 446).

On May 8, the Court reserved its ruling on Plaintiffs' motion for directed verdict. (Doc. # 449). With respect to Plaintiffs' § II. D. argument, the Court noted that it was "rather strongly disposed to deny that . . ." (Tr. 5/8/09 1813:17).

On May 13, the jury returned a verdict in favor of Plaintiffs. (Doc. # 460). To date, no judgment has been entered and no injunction has been ordered.

On May 18, despite a jury verdict in favor of Plaintiffs, the Court ordered that Defendant file a response confined to "issue II. D." of Plaintiffs' Rule 50 motion, by May 28. (Doc. # 468).

III. ARGUMENT.

1) Plaintiffs' Rule 50 Motion Is Mooted By The Jury Verdict.

It is within the discretion of a district court to reserve decision on a Rule 50 motion for judgment as a matter of law. *Marfia v. T.C. Ziraat Bankasi, New York Branch,* 147 F.3d 83, 87 (2d Cir. 1988). In fact, reserving ruling on Rule 50 motions made at the close of evidence and sending the case to the jury has been described as

"customary, and indeed recommended." *Oviedo v. Jones*, 2004 U.S. Dist. LEXIS 16773 at *3 (N.D. Ill. Aug. 20, 2004) (*citing Shaw v. Edward Hines Lumber Co.*, 249 F.2d 434, 437 (7th Cir. 1957)).

The Advisory Committee's Notes to the 1991 Amendments to the Federal Rules of Civil Procedure explained why reserving judgment on Rule 50 motions made at the close of evidence is, as *Oviedo* characterized, "customary and recommended."

> Often it appears to the court or to the moving party that a motion for judgment as a matter of law made at the close of the evidence should be reserved for a post-verdict decision. This is so because **a jury verdict for the moving party moots the issue** and because a preverdict ruling gambles that a reversal may result in a new trial that might have been avoided.

Fed. R. Civ. P. 50 Advisory Committee's Note (1991) (emphasis added). *See also Lyon Development Co. v. Business Men's Assurance Co. of America*, 76 F.3d 1118, 1122 (10th Cir. 1996) (Rule 50 "does not permit a party in whose favor the verdict was rendered to renew its motion because a jury verdict for the moving party moots the issue.").

Federal courts have consistently applied this reasoning, and denied Rule 50 motions as moot after jury verdicts were returned in favor of the moving party. *EMI Music Marketing v. Avatar Records, Inc.*, 364 F. Supp. 2d 337, 342 (S.D.N.Y. 2005) ("a jury verdict for the moving party moots the issue raised in a motion for judgment as a matter of law"); *Kennedy v. McCarty*, 803 F. Supp. 1470, 1478 n.6 (S.D. Ind. 1992) ("The court ultimately dismissed the Motion for Directed Verdict as moot after the jury returned its Verdicts in favor of both Defendants."); *Kikalos v. United States of*

America, 2008 U.S. Dist. LEXIS 31100, at *2 (N.D. Ind. Apr. 11, 2008); *Bourbeau v. Pierce*, 2008 U.S. Dist. LEXIS 9783, at *4 (S.D. Ill. Feb. 11, 2008) (As a result of a jury verdict in favor of Defendants the court "denied as moot the balance of Defendants' Rule 50 motion"); *Oviedo*, 2004 U.S. Dist. LEXIS 16773, at **3-4.

Plaintiffs filed their Rule 50 motion at the close of evidence on May 7, 2009 (Doc. # 446), and this Court reserved ruling on that motion the following day (Doc. # 449). The jury returned a verdict in favor of Plaintiffs on May 13, 2009. (Doc. # 460). On this basis alone, consistent with the authorities set forth herein and as a result of the jury verdict in their favor, Plaintiffs' Rule 50 motion should now be denied as moot.

2) Plaintiffs' Motion Is Contrary To Established Law That Unions Are Always Free To Revisit Seniority, Even After An Arbitration "Settled" It.

Plaintiffs argue that there is something wrong with "starting" from the premise that date of hire benefits the bargaining unit. As a matter of law, this is twice flawed:

First, Plaintiffs' argument flies into the headwinds of decades of case law that reflect a key value of the labor movement in history: the establishment of seniority as an arbiter of benefits in the workplace. Unlike the Nicolau Award or any particular preferential scheme,[1] USAPA's constitutional objective and its proposal are grounded in the court-recognized gold-standard seniority principle of date of hire. *Laturner v. Burlington Northern, Inc.*, 501 F.2d 593, 599 (9th Cir. 1974); *Truck Drivers & Helpers, Local Union 568 v. National Labor Relations Board*, 379 F.2d 137, 143 n. 10 (D.C. Cir.

[1] Date of hire, like the rain, falls equally on all.

1967). No union has *ever* been held to violate its duty of fair representation by negotiating seniority integration on this basis. *Humphrey v. Moore*, 375 U.S. 335 (1964); *Winston v. Teamsters Local 89*, 93 F.3d 251 (6th Cir. 1996); *Rakestraw*, 981 F.2d 1524, 1533 (7th Cir. 1992), *cert. denied sub nom., Hammond v. Air Line Pilots*, 510 U.S. 861 (1993); *Borowiec v. Boilermakers Local 1570*, 889 F.2d 23 (1st Cir. 1989), *aff'g* 626 F. Supp. 296, 303 (D. Mass. 1986); *Ratkosky v. United Transp. Union*, 843 F.2d 869 (6th Cir. 1988*); Teamsters Local 42 v. NLRB*, 825 F.2d 608, 611-14 (1st Cir. 1987), *enforcing* 281 N.L.R.B. 974 (1986); *Baker v. Newspaper & Graphic Comm. Local 6*, 628 F.2d 156, 166-67 (D.C. Cir. 1980), *aff'g* 461 F. Supp. 109 (D.D.C. 1978); *King v. Space Carriers, Inc.*, 608 F.2d 283 (8th Cir. 1979); *Ekas v. Carling Nat'l Breweries, Inc.*, 602 F.2d 664, 668 (4th Cir. 1979), *cert. denied*, 444 U.S. 1017 (l980); *Bell V. IML Freight, Inc*., 589 F.2d 502 (10th Cir. 1979); *Walters v. Roadway Express, Inc*., 557 F.2d 521, 525 (5th Cir. 1977); *Morris v. Werner Continental, Inc*., 466 F.2d 1185, 1190 (6th Cir. 1972); *Price v. Teamsters*, 457 F.2d 605 (3d Cir. 1972); *Fuller v. Teamsters Local 107*, 428 F.2d 503 (3d Cir 1970); *Teamsters Local 568 v. NLRB*, 379 F.2d 137 (D.C. Cir. 1967); *In re ABF Freight Sys., Inc.*, 988 F. Supp. 556 (D. Md. 1997), *aff'd per curiam sub nom. Gorge v. Carey*, 166 F.3d 1209 (4th Cir. 1998).

Second, Plaintiffs claim that a "settled dispute" was reopened to the detriment of the bargaining unit, but this is wrong as a matter of law. The Nicolau Award did not and could not, as a matter of law under the RLA, create seniority rights that would interfere with a union's statutory right to bargain. Both ALPA (at some point) and

USAPA remained free to revisit the issue of seniority rights in contract negotiation – even in the face of a prior arbitration ruling. This would be the case whether the arbitration were a 'private' one internal to the union or between the company and the union. This is what courts have consistently held for decades:

Seniority rights do not vest beyond the collective bargaining agreement: *Hass v. Darigold Dairy Prod. Co.*, 751 F.2d 1096, 1099 (9th Cir. 1985); *Wightman v. Springfield Terminal Railway Co.*, 100 F.3d 228, 232 (1st Cir. 1996); *Rakestraw v. United Airlines, Inc.*, 981 F.2d 1524, 1535 (7th Cir. 1992); *United Food & Commercial Workers Int'l Union v. Gold Star Sausage Co.*, 897 F.2d 1022, 1026 (10th Cir. 1990); *Shamblin v. General Motors Corp.*, 743 F.2d 436, 438-39 (6th Cir. 1984); *Johnson v. Air Line Pilots Ass'n*, 650 F.2d 133, 136-37 (8th Cir. 1981); *Burchfield v. Steelworkers*, 577 F.2d 1018, 1020 (5th Cir. 1978); *Hiatt v. New York Cent. RR Co.*, 444 F.2d 1397 (2d Cir. 1971).

Unions are free to re-visit arbitrated seniority decisions, even where they agreed that they would be final and binding, where the union has a principled objection to the arbitration result. *Barton Brands, Ltd. v. NLRB*, 529 F.2d 793, 800 (7th Cir. 1976) (*citing Associated Transport, Inc.*, 185 N.L.R.B. 631 (1970)). This latter point is not a surprising one when considered in the context of contract enforcement. An individual employee or employees are free, for example, to bring grievances seeking to adjust their individual seniority and often do so for a variety of contract-based reasons (*e.g.*, an employee may have claim to restoration of seniority under a provision governing

employees who are promoted to management and then return to the unit at a later date). But the union is always free to re-write the 'rules' governing seniority. In this sense it is well said that arbitrations are merely part of the CBA. They may and do govern the terms of an extant CBA but they do not hinder the union and the company from bargaining changes to those terms. Indeed, the very theory of collective bargaining precludes individual bargaining. *See e.g., Railway & Steamship Clerks v. Florida E.C. Ry.*, 384 U.S. 238 (1966) (RLA prohibits a carrier from negotiating directly with employees over matters subject to collective bargaining).

Plaintiffs claim that USAPA (or the company) had a pre-existing legal obligation to implement the Nicolau List into a final CBA. This is a conclusion that is belied by the rights provided in Section XII.B and XII.E of the Transition Agreement, which enable the *company and union* to modify or terminate the Transition Agreement at any time. Furthermore, as discussed above, Plaintiffs' conclusion is one that can only be reached by turning settled labor law under the RLA on its head. On this basis alone the motion should be denied.

3) <u>Plaintiffs' Analysis Is Flawed: Sufficient Evidence Shows That The Entire Bargaining Unit Benefited Because Date Of Hire Is A Court-Approved 'Gold Standard' And Because USAPA's Modified Proposal Broke The Impasse And Promoted Solidarity – A Check-Point On The Way To Non-Seniority Benefits.</u>

<u>First</u>, as a threshold matter, it remains to be seen whether the injunctive relief to be issued by this Court will produce a benefit to the bargaining unit. Indeed, the injunctive relief as proposed by the Plaintiffs may likely have the effect of producing a

stalemate to the detriment of the entire bargaining unit.

Second, Plaintiffs' argument based on the law of germane expenses that stems from the law governing charges to non-members is not only out of left field, but is deeply flawed in that the *Ellis* and *United Food Workers* decisions do not "determine" what benefits a bargaining unit "for the purpose of DFR analysis."[2] Those cases do not say that and no cases that cite them say that. Actually there is no need to ignore controlling precedent as Plaintiffs do. What determines benefit to the bargaining unit has been clear for decades. The United States Supreme Court has made it clear in cases that apply the duty of fair representation. The standard is simply rationality subject to good faith *as determined by* the presumably elected union bargaining agent. Rather than *Ellis*, Plaintiffs should try: *Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953) ("wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents"); *Humphrey v. Moore*, 375 U.S. 335, 349 (1964) ("wide range of reasonableness"); *Air Line Pilots Ass'n v. O'Neill*, 499 U.S. 55, 67 (1991) (applying *Ford Motor* "wide range of reasonableness" to the "factual and legal landscape at the time of the unions actions" and specifically "including contract negotiation"); *Conkle v. Jeong*, 73 F.3d 909, 916 (9th Cir. 1995) (*citing Vaca*, 386 U.S. at 191) (holding that a union's decision is arbitrary if it lacks a rational basis);

[2] The issue of germane versus non-germane expenses will be arbitrated between USAPA and pilot dues objectors in a matter of months. Any indulgence by this Court of Plaintiffs' misguided attempt to analogize and apply the law of germane expenses in this matter runs the serious risk of interfering with that arbitration process.

Rakestraw, 981 F.2d at 1533. ("workers generally decide by majority vote where their interests lie.").

Third, Plaintiffs rely on a district court ruling later reversed by the 7th Circuit in *Rakestraw* (there were two cases reviewed; the "United" case concerning the strikers was reversed) for the proposition that preferring one group over another in allocating seniority is a 'zero sum' game. But this is misplaced. In the first instance, it bears repeating in any discussion about *Rakestraw* that the central holding in that case was that a union's duty of fair representation under the RLA does *not* block the union from adjusting seniority in a way known to favor some employees over others. *Id*. at 1525. And one need look no further than a few pages inside *Rakestraw* to see that in affirming the other district case reviewed, that the Seventh Circuit applied the familiar notion that date of hire is the gold standard. *Id*. at 1533. ("dovetailing [date of hire] ... serves the interests of labor *as a whole* ... the propriety of dovetailing, treating the two groups identically, follows directly.").[3]

But even putting *Rakestraw* aside for the sake of argument, seniority is *always* a "zero sum game." Hence that argument is a bright red herring because it does not change the analysis one bit. *See e.g., Ford Motor Co. v. Huffman*, 345 U.S. 330, 342 (1953) (reshuffling seniority rights to give veterans a preference upheld because the union was free to "promote the long-range social or economic welfare of those it

[3] Defendant sought to offer expert testimony to explain why, as *Rakestraw* described, date of hire serves the interests of labor *as a whole*, but the Court excluded that testimony in its entirety.

represents"). Indeed, the high court observed that:

> variations acceptable in the discretion of bargaining representatives, however, may well include differences based upon such matters as the unit within which seniority is to be computed, the privileges to which it shall relate, the nature of the work, the time at which it is done, the fitness, ability or age of the employees, their family responsibilities, injuries received in course of service, and time or labor devoted to related public service, whether civil or military, voluntary or involuntary.

Id. at 338. *See also Alvey v. General Electric*, 622 F.2d 1279, 1289 (7th Cir. 1980) (a union can lawfully follow the "dictates of the majority if they determined in good faith that the decision reflected a proper resolution of conflicting but legitimate interests").

Fourth, as explained above-herein (§ 2), Plaintiffs are wrong to claim that USAPA re-opened a seniority dispute that was "settled." Rather, all that was settled was a bargaining proposal for a predecessor union, ALPA.[4] After reasonably defending this proposal, in face of the impasse that was shown by the evidence[5], even ALPA was free to "re-open" for the reason that there are no vested seniority rights, and unions (and employers) have a right to adjust contract terms in bargaining, including seniority. Indeed, the *evidence* is that all of ALPA's efforts post-Nicolau were an

---

[4] Plaintiffs' Counsel admitted, in his opening statement, that the Nicolau Award was only ALPA's "bargaining proposal." (4/28/09 Tr. at 188:13-16). Plaintiffs' witness Russell Payne testified in a similar manner. (4/30/09 Tr. at 787:17-19).

[5] The record is overflowing with uncontroverted testimony from Plaintiff and Defendant witnesses proving the existence of the impasse. (Kenneth Stravers: Tr. at 473:14-17; Mark Burman: Tr. at 509:13-14; Russell Payne: Tr. at 830:12-15, 18-23; Steve Wargocki: Tr. at 1329:21-23; Chesley Sullenberger: Tr. at 956:5-8; Jack Stephan: Tr. at 1016:10-11; Jeffrey Skiles: Tr. at 1361:25-1362:15; Scott Theuer: Tr. at 1382:9; Randall Mowrey: Tr. at 1587:20-21.).

attempt to modify the Nicolau Award in order to achieve labor solidarity; the idea that ALPA could have put the Nicolau Award, as contained in a single CBA, out for a successful ratification vote on the other hand is not based on evidence, rather it is pure speculation in spite of the evidence and stipulated facts.

Fifth, Plaintiffs do not challenge, or simply ignore, admitted evidence that USAPA acted consistently with its constitutional objective when it proposed date of hire with conditions and restrictions. Because it is uncontested that the objective and the proposal were grounded in date of hire or the dovetailing methodology, USAPA is entitled to rely on the plethora of cases rejecting DFR claims because date of hire is the 'gold standard.' (*See above*, herein, § 2). By definition, promoting a date of hire based seniority proposal was in the unit's best interest. Plaintiffs' claim to the contrary is wrong on the facts and on the law, neither of which are meaningfully addressed in their motion.

Sixth, Plaintiffs dispute it, but there can be no doubt that there is ample evidence in the record that both ALPA and USAPA faced an impasse created by the Nicolau Award. Under ALPA, both East and West were in a position to perpetually veto the other, thus creating an impasse.[6] The evidence from multiple witnesses described ALPA's extensive and unsuccessful mediatory efforts including the Rice Committee, the Blue Ribbon Committee, the Denver Summit and the Wye River Lockdown. The

---

[6] *See* Admitted Trial Exhibit 1092 at ADD0000703-704. (Captain John Prater: "This means that both sides have effective veto authority on any such agreement.").

point is that ALPA faced an impasse and USAPA inherited one.[7] But USAPA's formation created at least the potential to break the impasse because it would allow a unit-wide ratification and because USAPA proposed a solution that was potentially acceptable to the majority (because date of hire based) and potentially acceptable to the minority (because of conditions and restrictions and the opportunity to secure non-seniority benefits). In a word, USAPA made solidarity a possibility, and seeking solidarity benefits the whole unit. Under the particular facts, the company had expressed that increased benefits would accompany a new, single CBA, and the general fact, uncontested, is that a labor union's leverage with management at the bargaining table is only as strong as the solidarity of its members.

The benefit of solidarity to the bargaining unit *as a whole* was one of the important lessons taken from *Rakestraw*.

> Unions legitimately may try to advance the interests of labor at the expense of investors and consumers. Success in this endeavor requires concerted action. … Whatever undercuts concert among labor reduces the effective wage unions can secure. Managers try to undermine labor's position by divide-and-conquer tactics. … To say that the union acts in "bad faith" or "discriminatorily" when it attempts to shore up the solidarity of labor . . . is to curb an important tool by invoking a slogan.

Rakestraw, 981 F.2d at 1532-33. Plaintiffs argue that USAPA's actions "did nothing to strengthen the union's leverage with the Airline." (Doc. # 446 at 10:1). This argument ignores the value of solidarity, which is the foundation upon which a union's leverage is

---

[7] It is dishonest for Plaintiffs to deny outright or by implication that the majority of East pilots strongly rejected the Nicolau preference scheme because Plaintiffs *stipulated* to the contrary (Doc. # 417 at ¶ 17).

built. To accept this argument would, as *Rakestraw* warned, "curb an important [union] tool by invoking a slogan." 981 F.2d at 1533.

4) Plaintiffs' Motion Fails To State With Specificity Any Supporting Grounds Thereby Depriving Defendant Of Any Opportunity To Cure.

Rule 50(a)(2) requires that a movant must "specify the judgment sought and the law and the facts that entitle the movant to judgment."

The rule that fact and legal grounds be *specifically* stated is important to allow the non-movant the opportunity to correct any deficiency in evidence. *Canny v. Dr. Pepper/Seven-Up Bottling Group*, 439 F.3d 894, 901 (8th Cir. 2003) ("articulation for the grounds of judgment as a matter of law affords the non-moving party the opportunity to cure the defects which may preclude the jury from considering his case"); *Duro-Last, Inc. Custom Seal, Inc.*, 321 F.3d 1098 (Fed. Cir. 2003); *Morrison Knudsen Corp. v. Fireman's Fund Ins. Co.*, 175 F.3d 1221 (10th Cir. 1999) (interests of justice require that non-moving party be apprised of need to supplement their proof at time of pre-verdict Rule 50 motion).

Rule 50's specificity proviso is mandatory. *P.R. Chunk, Inc. v. Martin, Marietta Materials, Inc.*, 170 Fed. Appx. 288 (4th Cir. 2006); *Karam v. Sagemark Consulting, Inc.*, 383 F.3d 421 (6th Cir. 2004).

And a failure to state the specific grounds relied upon is in itself a sufficient basis for denial of the motion. *Wallace v. City of San Diego*, 479 F.3d 615 (9th Cir. 2007); *Gierlinger v. Gleason*, 160 F.3d 858 (2d Cir. 1998); *Guest House Motor Innn. Inc. v.*

Duke, 384 F.2d 927 (5th Cir. 1967).

Moreover, the Ninth Circuit has held that under Rule 50 a District Court must apprise parties of the deficiencies in their proof and give them the opportunity to present further evidence on the dispositive facts before granting judgment as a matter of law against them. *Waters v. Young*, 100 F.2d 1437, 1442 (9th Cir. 1996). Compliance with the rule in *Waters* is mandatory. *Id*. at 1442.

Here Plaintiffs' motion identifies *no* specific factual grounds whatsoever. The argument is simply predicated on a bad analogy from inapplicable case law. The two cases Plaintiffs cite for their analogy argument, *Ellis v. Brotherhood of Railway, Airline and Steamship Clerks*, 466 U.S. 435 (1984) and *United Food and Commercial Workers Union, Local 1036 v. NLRB*, 307 F.3d 760 (9th Cir. 2002), have *absolutely nothing* to do with the duty of fair representation, nothing to do with the law of bargaining under the RLA, and nothing to do with seniority rights. They apprise Defendant of no specific legal grounds, let alone any factual ones. Plaintiffs' motion is devoid of any discussion of the evidence and in particular ignores the overwhelming evidence of an impasse. Apart from the foregoing arguments, on this basis alone Plaintiffs' motion should be denied.

IV. RELIEF REQUESTED.

Defendant respectfully requests, for the reasons set forth herein, that Plaintiffs' Rule 50 Motion (Doc. # 446) be denied.

Respectfully Submitted,

Dated: May 28, 2009

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

Nicholas P. Granath, Esq. (*pro hac vice*)
ngranath@ssmplaw.com
SEHAM, SEHAM, MELTZ & PETERSEN, LLP
2915 Wayzata Blvd.
Minneapolis, MN 55405

Lee Seham, Esq. (*pro hac vice*)
Lucas K. Middlebrook, Esq. (*pro hac vice*)
Stanley J. Silverstone, Esq. (*pro hac vice*)
Theresa Murphy, Esq. (*pro hac vice*)
SEHAM, SEHAM, MELTZ & PETERSEN, LLP
445 Hamilton Avenue, Suite 1204
White Plains, NY 10601

Nicholas Enoch, Esq. State Bar No. 016473
stan@lubinandenoch.com
LUBIN & ENOCH, PC
349 North 4th Avenue
Phoenix, AZ 85003-1505

Attorneys for Defendant
US Airline Pilots Association

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 Memorandum Of Law Opposition To Plaintiffs' Reserved Rule 50 Motion (Doc. # 446) On Issue II. D. (and any attachments thereto)
- 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 MHarper@Polsinelli.com	Don Stevens DStevens@Polsinelli.com	Andrew S. Jacob AJacob@Polsinelli.com
Kelly J. Flood KFlood@Polsinelli.com	Katie Brown 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 May 28, 2009, by:

/s/ Nicholas Paul Granath, Esq.