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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 OF,  
AND RENEWED MOTION FOR,  
JUDGMENT AS A MATTER OF LAW,  
PURSUANT TO RULE 50(b)**

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 **I. NOTICE.**

3 PLEASE TAKE NOTICE that Defendant US Airline Pilots Association  
4 (“USAPA” or Defendant) will move this Court, to be heard without oral argument, for:

5 An order setting aside the verdict and granting Judgment As A Matter Of Law  
6 (“JMOL”), pursuant to Federal Rule of Civil Procedure (“FRCP”) 50(b), and  
7 *conditionally* ordering a new trial pursuant to Rule 50(c)(1), followed by an order for  
8 entry of judgment in Defendant’s favor.

9 This motion follows Defendant’s earlier two intra-trial, written motions pursuant  
10 to Rule 50(a). (*See*, Doc. # 418, Doc. # 445 and Doc. # 444).

11 A motion for new trial pursuant to Rule 59(a)(1)(A) in the *alternative* to this  
12 motion for JMOL shall be separately served and filed.

13 **II. MOTION.**

14 COMES NOW Defendant to move this Court as follows:

15 **1) Motion:**

16 For an order setting aside the verdict of the Jury returned on May 13, 2009 in  
17 favor of Plaintiffs (Doc. # 460), and granting to Defendant Judgment As A Matter Of  
18 Law pursuant to Rule 50(b), and *conditionally* granting a new trial pursuant to Rule  
19 50(c)(1), followed by an order for entry of judgment in favor of Defendant.  
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1 **2) Grounds And Support For Judgment As A Matter Of Law:**

2 Defendant hereby states the following particular grounds in support of its  
3 motion:

4 First, *lack of subject matter jurisdiction*. The duty of fair representation claim  
5 contained in Count III was never ripe because the claim was a substantive challenge to  
6 determine a contract term brought prior to the formation of any contract, contrary to  
7 controlling case law requiring a final product of bargaining as a prerequisite to suit.  
8 (*See*, Doc. # 418, Doc. # 445).

9 Second, *lack of any legally sufficient evidence* for the Jury to find for the  
10 Plaintiffs on Count III because of an absence of any evidence whatsoever to show that  
11 Defendant acted outside the wide range of reasonableness afforded to unions  
12 negotiating collective bargaining agreements as a matter of law, coupled with a  
13 complete lack of sufficient evidence showing *bad faith*, as that term is defined by  
14 controlling case law, to require intentionally misleading conduct. (*See*, Doc. # 444).

15 In support of its motion for judgment as a matter of law, Defendant relies on the  
16 following all of which are made part of this motion by reference or incorporation:

17 First, Defendant's two earlier motions for JMOL pursuant to Rule 50(a), the first  
18 on jurisdictional grounds (Doc. # 418 and # 445) and the second on insufficient  
19 evidence to prove a violation of the Duty of Fair Representation (hereinafter, "DFR")  
20 (Doc. # 444), both of which are incorporated by reference into this motion.

21 Second, "Defendant's Memorandum Of Law In Support Of Its Renewed Motion  
22

1 For Judgment As A Matter Of Law Pursuant To Rule 50” which is also incorporated by  
2 reference into this motion.

3 Third, this document, the supporting Declaration of Nicholas Paul Granath, Esq.,  
4 and its attachments, all the pleadings, papers, and other records on file, the record at  
5 trial, and any oral argument had.

6 **III. RELIEF REQUESTED.**

7 Defendant requests that this Court grant Defendant’s motion, issue an order  
8 setting aside the verdict for Plaintiffs, order judgment as a matter of law pursuant to  
9 Rule 50(b) in favor of Defendant, *conditionally* (pursuant to Rule 50(c)(1)) order a new  
10 trial, and thereafter order judgment in Defendant’s favor.

11 A proposed order is separately submitted.

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1 Respectfully Submitted,

2 Dated: July 9, 2009

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

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12 *Attorneys for Defendant*  
13 *US Airline Pilots Association*

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 OF, AND RENEWED MOTION FOR, JUDGMENT  
AS A MATTER OF LAW, PURSUANT TO RULE 50(b)
- 5 • Any supporting Declarations and their attachments
- 6 • Proposed Order
- 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:

Marty Harper	Don Stevens	Andrew S. Jacob
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Kelly J. Flood	Katie Brown	
KFlood@Polsinelli.com	KVBrown@Polsinelli.com	

11 Further, I certify that paper hard copies shall be provided to The Honorable Neil  
12 V. Wake, District Court Judge, 401 W. Washington Street, SPC 52, Phoenix, AZ 85003.

13 On July 9, 2009, by:

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

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