

Exhibit "A" Jacob Declaration

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

10 Don ADDINGTON; John BOSTIC; Mark
11 BURMAN; Afshin IRANPOUR; Roger
12 VELEZ; and Steve WARGOCKI,

13 Plaintiffs,

14 vs.

15 US AIRLINE PILOTS ASSOCIATION,
16 US AIRWAYS, INC.,
Defendants,

Case No. 2:08-cv-1633-PHX-NVW
(Consolidated)

DECLARATION OF
NICHOLAS P. GRANATH, ESQ.
IN OPPOSITION TO
PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION
(Docket No. 120)

17 Don ADDINGTON; John BOSTIC; Mark
18 BURMAN; Afshin IRANPOUR; Roger
VELEZ; and Steve WARGOCKI,

19 Plaintiffs,

20 vs.

21 Steven H. BRADFORD, Paul J. DIORIO,
22 Robert., A. FREAR, Mark. W. KING,
23 Douglas L. MOWERY, and John A.
STEPHAN,

Defendants.

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

1 I, Nicholas Paul Granath, Esq., declare as follows:

2 1. I am attorney of record for defendant USAPA in this matter. I make this
3 Declaration of my own free will and based on my personal, first-hand knowledge, unless
4 otherwise specifically indicated. I submit this declaration in support of USAPA's response
5 in opposition to Plaintiffs' motion for class certification.

6 **Plaintiff Deposition Transcript Excerpts**

7 2. Depositions of all six of the named Plaintiffs and proposed class members
8 were taken in Phoenix, Arizona between the dates of January 27-29 by Lee Seham, Esq. I
9 have reviewed each named Plaintiffs' deposition transcript and attach, to this declaration,
10 true and correct copies of the relevant transcript pages supporting USAPA's response in
11 opposition to Plaintiffs' motion for class certification.

12 3. Attached and marked and labeled as **Exhibit A** are true and correct copies of
13 relevant pages from the deposition transcript of Plaintiff Donald Ray Addington.

14 4. Attached and marked and labeled as **Exhibit B** are true and correct copies of
15 relevant pages from the deposition transcript of Plaintiff John Alexander Bostic.

16 5. Attached and marked and labeled as **Exhibit C** are true and correct copies of
17 relevant pages from the deposition transcript of Plaintiff Mark Burman.

18 6. Attached and marked and labeled as **Exhibit D** are true and correct copies of
19 relevant pages from the deposition transcript of Plaintiff Afshin Iranpour-Mashak.

20 7. Attached and marked and labeled as **Exhibit E** are true and correct copies of
21 relevant pages from the deposition transcript of Plaintiff Steven P. Wargocki.

22 8. Attached and marked and labeled as **Exhibit F** are true and correct copies of
23 relevant pages from the deposition transcript of Plaintiff Roger Velez.

Leonidas, LLC

1
2 9. As set forth in USAPA’s memorandum in opposition to Plaintiffs’ motion for
3 class certification, depositions of named Plaintiffs and documentary evidence demonstrate
4 that Leonidas, LLC (“Leonidas”) developed the initial litigation strategy and exercises
5 ongoing control through its directors and aptly named litigation “control group.”

6 10. I have reviewed and am familiar with the documents produced by Plaintiffs in
7 response to USAPA’s class action discovery requests as well as documents produced by
8 Leonidas pursuant to USAPA’s Rule 45 subpoena duces tecum. Additionally, I have
9 reviewed and am familiar with the online publications contained on the Leonidas website –
10 www.armyofleonidas.com (alternate web address: www.cactuspilot.com). Attached to this
11 declaration are true and correct copies of relevant Leonidas related documents.

12 11. Attached and marked and labeled as **Exhibit G** is a true and correct copy of
13 the Leonidas “Capital Contribution Form.” Each named Plaintiff verified his familiarity with
14 this document, and Plaintiffs Addington and Bostic testified that they signed a copy of this
15 document. (Addington, 48:20-49:7; Bostic, 119:11-19; Burman, 61:6-18; Iranpour, 74:17-23;
16 Wargocki, 83:9-21; Velez, 51:24-52:4).

17 12. Attached and marked and labeled as **Exhibit H** is a true and correct copy of
18 the operating agreement of Leonidas, which was obtained in response to USAPA’s Rule 45
19 subpoena duces tecum.

20 13. Attached and marked and labeled as **Exhibit I** are true and correct copies of
21 engagement letters entered into between named Plaintiffs and Shughart, Thomson & Kilroy,
22 P.C. (“Shugart”) on or about December 23, 2008, that were obtained in response to
23 USAPA’s request for production of documents.

1 14. Attached and marked and labeled as **Exhibit J** is a true and correct copy of a
2 publication dated January 25, 2009 that appeared on the publicly accessible section of the
3 Leonidas website. Plaintiffs' counsel stipulated to the authenticity of this document on the
4 record during the deposition of Plaintiff Iranpour. (Iranpour, 79:8-10). Plaintiff Bostic
5 testified that Eric Ferguson and/or Jeffrey Koontz typically author these publications.
6 (Bostic, 57:13-58:2).

7 15. Attached and marked and labeled as **Exhibit K** is a true and correct copy of an
8 announcement by Leonidas LLC produced under subpoena (Bate stamped LEO000047) that
9 declares that, "Leonidas LLC will soon begin legal proceedings against the US Airline Pilots
10 Association."

11 **Inadequacy of Plaintiffs' Counsel**

12 16. The litigation to date reflects numerous manifestations of Plaintiffs' counsel's
13 inadequate zeal and competence.

14 17. As observed by the Court, Plaintiffs' counsel failed to take any action until
15 October with respect to furloughs originally announced in June, 2008. (Dkt. 16: "The Court
16 has considered Plaintiff's Motion for Preliminary Injunction [doc. 12] but it does not state
17 the facts and circumstances from which urgency of a need for preliminary injunction can be
18 determined.").

19 18. Plaintiffs and their counsel failed, despite repeated invitations from USAPA's
20 counsel, to participate in an arbitration hearing for TA No. 9 held on January 8, 2009, which
21 will be dispositive of Plaintiffs' Count One claims. Attached and marked and labeled as
22 **Exhibit L** is a true and correct copy of letter dated December 19, 2008 from your Declarant
23 to Plaintiff's counsel warning that T.A. No. 9 "will be dispositive of the liability question ...

1 and Count One” and inviting Plaintiffs to participate “on the basis of full party status at the
2 January 8-9, 2009 hearing.” Certain named Plaintiffs testified that this communication
3 inviting Plaintiffs’ counsel to participate in TA-9 and warning that any decision could have a
4 preclusive effect on their Count I grievance was not brought to their attention by their
5 counsel. (Bostic, 23:10-24:5; Burman, 31:18-35:1).

6 19. Plaintiffs’ counsel was *offered an expedited arbitration date* for their Count I
7 grievance, but declined to take advantage of the early date. Instead, counsel accepted a date
8 more than four months later, in May. Attached and marked and labeled as **Exhibit M** are
9 true and correct copies of correspondence between your Declarant and Plaintiffs’ counsel
10 demonstrating Plaintiffs’ counsel’s decision not to accept the earlier arbitration date, and
11 with Arbitrator Bloch and the company demonstrating the Plaintiffs elected to take the late
12 May date to arbitrate:

- 13 • Including a letter by Plaintiffs’ counsel dated December 17, 2008 stating “*we cannot*
14 *commit to anything at this time*”;
- 15 • An email by your Declarant to Plaintiff’s dated December 29, 2008 asking if
16 Plaintiffs still intended to stay away from the then pending arbitration hearing;
- 17 • A reply email by Plaintiffs’ counsel later on December 29th affirming that Plaintiffs
18 would not participate: “*that is correct*”;
- 19 • An email by the company’s attorney to Arbitrator Bloch, dated December 11, 2008,
20 openly copied to Plaintiffs’ counsel, informing Plaintiffs of the need to schedule
21 Plaintiff’s grievance;
- 22 • Emails dated January 6 and 8 by Plaintiffs’ counsel agreeing to schedule Plaintiffs’
23 grievance on May 27-29, 2009: “*I think this should be fine.*”

20. At the December 15, 2008 hearing in this matter and in the dismissed Bradford
matter, counsel for Plaintiffs, Andrew Jacob, freely admitted to this Court that their filing of
the parallel Arizona state action was “*duplicative.*” (Tr. at p. 31, line 16). A true and correct
copy of the relevant pages of the December 15, 2008 hearing transcript is attached and

1 marked and labeled as **Exhibit N**.

2 21. Plaintiffs' counsel made an eleventh hour amendment to its federal complaint
3 to allege a class action in derogation of the named Plaintiffs' asserted interest in having an
4 accelerated trial. (Dkt. No. 130 "One week after the date for trial was set, Plaintiffs filed an
5 amended complaint (doc. # 86). The new complaint seeks to recast this case, originally
6 brought by six individuals, as a class action on behalf of approximately 1800 West Pilots.").

7 22. Plaintiffs' counsel introduced demands for class-wide damages in its class
8 certification motion, including introduction without seeking leave to amend their complaint,
9 of a new dues-related cause of action (Dkt. No. 120), which subverts the named-plaintiffs'
10 asserted interest in having an accelerated non-jury trial, despite specific warnings from the
11 Court of such a result (Tr. p. 21, line 10: " But as I said, it appears to me depending what the
12 plaintiffs seek and whether it's granted, it may also completely preclude a swift adjudication
13 for the case.").

14 23. Plaintiffs' counsel filed a stipulated statement of facts (Dkt. No. 77) without
15 adequate prior review which, according to counsel, has prejudiced its clients' position
16 (Docket No. 109, Joint Case Management Report, page 13, line 26). A true and correct copy
17 of correspondence from Plaintiffs' counsel to USAPA counsel dated November 5, 2008,
18 demonstrating their belief that their own filing prejudiced their clients' position is attached
19 and marked and labeled as **Exhibit O**.

20 24. On January 7, 2009, Plaintiffs' counsel served a third party subpoena *duces*
21 *tecum* on the Air Line Pilots Association without first providing notice to the parties in this
22 action as is required under Fed. R. Civ. P. 45(b)(1). Your Declarant advised Plaintiffs'
23 counsel of their violation of the rules in this respect. Thereafter, Plaintiffs' counsel admitted

1 they had not provided proper notice as required by Rule 45. Plaintiffs’ counsel agreed to
2 withdraw the subpoena and re-issue it with the proper notice. Attached and marked and
3 labeled as **Exhibit P** are true and correct copies of correspondence between your Declarant
4 and Plaintiffs’ counsel demonstrating Plaintiffs’ counsel’s improper service of this third
5 party subpoena duces tecum including:

- 6 • Letter dated January 12, 2009, from your Declarant to Plaintiffs counsel objecting to
7 Plaintiff’s *ex parte* discovery in violation of Rule 45;
- 8 • Email from counsel for Plaintiffs dated January 19, 2009, stating “... *You were right. I
9 was wrong. I will fix it ...*”

10 25. With respect to the newly added dues-related remedies, Shugart is acting in
11 conflict between the interests of Plaintiffs and Leonidas, their client who is funding this
12 litigation. In a December 28, 2008 publication, Leonidas stated that they “have always been
13 advocates of joining USAPA and paying dues as well...” The other major organization
14 purporting to represent the distinct interests of West pilots – the America West Pilots
15 Protective Association – also currently advocates that West pilots pay dues and become
16 USAPA members in good standing. Attached and marked and labeled as **Exhibit Q** is a true
17 and correct copy of this December 28, 2008 Leonidas publication.

18 26. Leonidas emphatically reaffirmed this directive in a January 11, 2009
19 publication stating: “We have already made our position pretty clear as to the payment of
20 dues and membership in USAPA, however, we will reiterate our position once again: we
21 recommend that you join, pay dues, and be members in good standing.” Attached and
22 marked and labeled as **Exhibit R** is a true and correct copy of this January 11, 2009 Leonidas
23 publication. Thus, Shugart is not only undermining the policy of a current client, through
pursuit of the dues-related relief, Plaintiffs and their counsel are undermining a central policy

1 of the two major pilot-controlled organizations founded to promote West pilot interests.

2 27. Plaintiffs and their counsel purport to have now *abandon* any damage claims
3 for wages or any money damages beyond dues and fees disgorgement, whatsoever. (Docket
4 No. 161, page 2: “USAPA has no Seventh Amendment right to a jury here because this
5 action seeks only a judgment recognizing equitable rights and granting equitable remedies.”).
6 Plaintiffs admit under oath that they are not surprised that putative class members now feel
7 abandon. (Iranpour 80:17; Wargocki 86:13, “... it doesn’t surprise me, not necessarily”)

8 **Plaintiffs’ Obstruction Of Discovery**

9 28. In addition to having forced USAPA to bring a motion to obtain *any* class
10 certification discovery whatsoever, and then compounding this obstruction by refusing to
11 voluntarily extend the time to answer the certification motion, Plaintiffs counsel have
12 continued to obstruct, frustrate, or deny discovery in the following ways:

13 29. By hiding their clients’ identity in order to obscure Leonidas LLC’s and other
14 individuals’ role in initiating, managing and controlling this putative class action. In the
15 26(f) conference Plaintiffs’ counsel Andrew Jacobs stated that they represented “*ten clients*”
16 but when asked to identify the ten beyond the six named plaintiffs, Jacobs and all Plaintiffs’
17 counsels then present (Stevens, Flood, Brown) refused to do so. Subsequently, to date,
18 Plaintiffs counsel have continued to refuse to identify their ten clients, and pointedly
19 Leonidas’ role, despite these several express requests to do so:
20

- 21 i) Class action Interrogatories and Requests for Production dated January 26, 2009,
which did not disclose the ten clients or Leonidas LLC true role;
- 22 ii) Letter dated January 29, 2009, by your Declarant asking explicitly: “Who are the
23 unnamed clients (i.e. the 4 of the 10 indicated by Mr. Jacob in the 26(f) conference)?
Who are the actual class representatives controlling this litigation?” which was never
answered;

1 iii) Verbal request made by your Declarant in a teleconference on February 11, 2009
2 with Plaintiffs attorneys, Jacob, Stevens, Brown and Flood, to disclose the identity of
3 all their clients in this action, to which Mr. Jacob's responded "*I just pulled those
4 numbers [ten] out of the air*".

5 30. By objecting *as a party* to third-party written discovery: Plaintiffs counsel
6 objected to a subpoena *decus tecum* served on Leonidas LLC in violation of Rule 45(c)(2)(B)
7 which requires that the "person commanded to produce" may serve objections. *See, McCabe v.*
8 *Ernst & Young, LLP*, 221 F.R.D. 423 (D.N.J. 2004); *McCoy v. Southwest Airlines Co., Inc.*,
9 211 F.R.D. 381, 384 (C.D. Cal. 2002) (only the non-party can prevent disclosure by
10 objection; the party to whom the subpoenaed records pertain cannot simply object) *Moon v.*
11 *SCP Pool Corp.*, 232 F.R.D. 633, 636 (C.D. Cal. 2005) (only non-parties may serve
12 objections; parties must contest a subpoena by a motion to quash or modify).

13 31. By providing inadequate responses to written interrogatories and requests for
14 production of documents to the named Plaintiffs for the purpose of class action discovery,
15 necessitating motions to compel.

16 32. By failing to cooperate in scheduling of deposition: Defendant served
17 subpoenas for deposition testimony on Leonidas LLC Directors Ferguson and Koontz on or
18 about January 29, 2009. Then on January 30th Plaintiffs' counsel Flood sent an email
19 requesting to reschedule the depositions due to the deponents' personal issues. Your
20 Declarant complied with his request by email, and requested a scheduling conference. A
21 subsequent teleconference with your Declarant and Plaintiffs' counsel Harper and Stevens
22 was held on February 2nd to discuss scheduling for the Ferguson and Koontz depositions, as
23 well as other depositions of persons that named Plaintiffs identified under oath as part of a
24 "control group" conducting legal strategy and directing Plaintiffs' counsel. Harper and

1 Stevens then represented that they would endeavor to schedule the subpoenaed depositions
2 and others; in exchange your Declarant agreed not to seek a motion to extend the time to file
3 USAPA’s brief opposing class certification. However, subsequently, on February 11, in
4 another teleconference over discovery issues with your Declarant and USAPA attorney
5 Stanley Silverstone, Plaintiffs *for the first time* disclosed that they opposed the “scope” of the
6 depositions they had previously agreed to schedule. They further represented that their
7 objection to “scope” could preclude the taking of some, albeit unidentified depositions,
8 altogether. When your Declarant attempted to clarify whether Plaintiffs would proceed to
9 schedule these depositions or not, the answers given were ambiguous and unclear. So, a
10 follow-up email by your Declarant on February 12 asked counsel to confirm that they would
11 still schedule the depositions. Later that same day, Stevens replied by email refusing to
12 confirm that Plaintiffs would cooperate in scheduling the depositions and – just as they
13 Plaintiffs did at the start of class discovery – openly declared their refusal to cooperate: “*We*
14 *oppose USAPA’s position that such discovery is warranted or permitted.*” (a true copy of the
15 February 12, 2009 email exchange is attached and marked an labeled as **Exhibit S**)
16

17 Further your Declarant sayeth not.

18 Pursuant to 29 USC § 1746, I declare under penalty of perjury that the foregoing is
19 true and correct.

20 Executed on: February 16, 2009

/s/ NICHOLAS PAUL GRANATH