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

11 Don Addington, et al.,

12 Plaintiffs,

13 vs.

14 US Airline Pilots Ass'n, et al.,

15 Defendants.
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Case No. 2:13-cv-00471-ROS

**NOTICE OF STATUS REGARDING
DECLARATION OF GARY HUMMEL**

18 On Wednesday, October 23, 2013, the Court ordered that Defendant US Airline
19 Pilots Ass'n ("USAPA") provide Plaintiffs with an affidavit of Captain Gary Hummel's
20 testimony by Thursday, October 24, 2013 and that if Plaintiffs "would have many
21 questions to ask him based upon what he would testify to...then his testimony will not be
22 considered by the Court." Plaintiffs later agreed to allow USAPA until Friday, October
23 25, 2013 to provide such an affidavit. After close of business on Friday, October 25,
24 2013, Plaintiffs received a thirteen (13) page declaration from USAPA, purporting to be
25 the testimony that Captain Hummel would have provided during the two-day hearing on
26 this matter. Among other things, Captain Hummel purports to provide detailed rebuttal
27 testimony of the live witnesses offered by Plaintiffs. USAPA does not explain how
28 Captain Hummel, who it claimed on Wednesday, October 23, was not well enough to

1 participate in even a one to two hour phone call, but by Friday was well enough to review,
2 in detail, and analyze over 400 pages of live testimony. In this proposed declaration,
3 Captain Hummel also purports to provide detailed discussions of meetings that were asked
4 about during the course of his deposition, which he did not recall at the time.

5 Not surprisingly, Plaintiffs would have many questions to ask Captain Hummel
6 based on this declaration and therefore have declined to agree that it be submitted to the
7 Court as part of the record in this matter. Although USAPA has offered to make Captain
8 Hummel available for a deposition at some point in the future, given the expedited
9 briefing schedule that the Court has set, this offer is not practicable. Finally, Plaintiffs
10 request that the Court issue an order finding that this declaration cannot be used by
11 USAPA in support of its Motion for Summary Judgment.

12 RESPECTFULLY SUBMITTED this 28th day of October, 2013.

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14 POLSINELLI, PC

15 By: /s/ Jennifer J. Axel
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CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2013, 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 on all parties to this case who are registered participants of the CM/ECF System.

By: /s/ Jennifer J. Axel

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