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

Don Addington, *et. al.*,  
*Plaintiffs,*  
v.  
US Airline Pilots Association, *et. al.*,  
*Defendants.*

Case No.: CV-13-00471-PHX-ROS  
**US Airline Pilots Association's  
Motion to Include the Declaration  
of Gary Hummel in the Trial  
Record and Response to Plaintiffs'  
Notice of Status Regarding the  
Declaration of Gary Hummel**

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1 Defendant US Airline Pilots Association (“USAPA”) moves to include the  
2 annexed declaration of Gary Hummel dated October 30, 2013 (Exhibit “A” hereto) in the  
3 trial record herein and responds to Plaintiffs’ Notice of Status Regarding Declaration of  
4 Gary Hummel dated October 28, 2013 (Doc. 255). For the reasons set forth below,  
5 USAPA respectfully submits the Court should grant the motion to include the annexed  
6 declaration in the trial record.

7 First, and at the outset, the context in which the concept of submitting a  
8 declaration from Mr. Hummel should be borne in mind. As of Monday, October 21,  
9 2013, USAPA had concerns that Mr. Hummel was medically unable to testify by  
10 telephone on October 23, 2013. In a telephone call with Plaintiffs’ counsel on that date,  
11 Defendants proposed as an alternative that the hearing go forward on October 22<sup>nd</sup> and  
12 23<sup>rd</sup>, with a break during which the parties would conduct a videotaped examination and  
13 cross examination of Mr. Hummel in Pittsburgh, where Mr. Hummel resides. Defendants  
14 proposed that this take place two weeks after the hearing, i.e., the week of November 4,  
15 2013 and that the parties would return to Court to play the videotape and close the record.  
16 As USAPA proposed – which subsequent events have borne out -- that two-week  
17 interregnum would not have caused any significant delay in the Court’s determination of  
18 the matter given the post-trial briefing and summary judgment schedules that the Court  
19 has ordered.  
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21 Second, to the extent that Plaintiffs object to the declaration on the grounds they  
22 have questions for Mr. Hummel arising from the declaration (Doc. 255, p. 2), that  
23 opportunity would have been available under the proposal for a videotaped examination  
24 of Mr. Hummel that Plaintiffs rejected. Plaintiffs attempt to have it both ways – on the  
25 one hand rejecting the videotape examination that preserved their opportunity to cross-  
26 examine and then, on the other hand, opposing the declaration largely on the grounds that  
27 it failed to preserve this same opportunity. Having rejected the procedure that afforded  
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1 them the opportunity to ask questions, Plaintiffs should not be heard to complain that  
2 they are denied the very opportunity they spurned. To be sure, this contrariness merely  
3 reflects Plaintiffs' objective of gaining an unfair advantage over Defendants resulting  
4 from the exigency of Mr. Hummel's unforeseen and unexpected unavailability to testify  
5 at trial. It is a windfall to Plaintiffs the Court can and should rectify by allowing the  
6 declaration to be made part of the trial record.

7 Third, Plaintiffs' response fails to conform to the Court's ruling as well as their  
8 prior representations on this subject. As to the former, the Court specifically stated that  
9 USAPA could provide Plaintiffs with a declaration from President Hummel and the  
10 question was whether and the extent of Plaintiffs' need to question him. (Trial  
11 Transcript, October 23, 2013, p. 359-60). In their Notice of Status Regarding the  
12 Declaration of Gary Hummel (Doc. 255), Plaintiffs fail to identify any subject areas  
13 about which they want to question Mr. Hummel.  
14

15 As to the latter, Plaintiffs' prior representations, as set forth in email  
16 correspondence dated October 18, 2013 (attached as Exhibit "B" hereto), Plaintiffs  
17 identified certain subject matters that Captain Hummel could testify about as to which  
18 they would probably not have to inquire further provided the testimony was not  
19 inconsistent with his deposition. The subjects addressed in Mr. Hummel's declaration are  
20 consistent with his deposition testimony, including his appointments of West Pilots to  
21 various committees, the company's statements to the effect that the MOU would not  
22 address seniority except to provide for a process consistent with McCaskill-Bond, and the  
23 benefits of the MOU that were previously unattainable. The only significant exception is  
24 Mr. Hummel's response to the testimony of John Scherff, which touched upon matters  
25 not previously disclosed (alleged disparate treatment regarding communications allowed  
26 by the communications committee and the number of West Pilots who did not participate  
27 in the MOU ratification balloting) and Ken Holmes (regarding statements allegedly made  
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1 by Mr. Hummel at one of the road shows). Since these matters could not be anticipated,  
2 Mr. Hummel should be allowed to respond to same in his declaration.

3  
4 **CONCLUSION**

5 For all the foregoing reasons, USAPA respectfully requests that the Court accept  
6 the declaration of Gary Hummel as part of the trial record herein.

7 Respectfully submitted this 30<sup>th</sup> day of October 2013.

8  
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**CERTIFICATE OF SERVICE**

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I hereby certify that on October 30, 2013, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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