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7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**

9
10 DON ADDINGTON, *et al.*;
11 Plaintiffs,
12 vs.
13 US AIRLINE PILOTS ASSOCIATION, and
US AIRWAYS, INC.,
14 Defendants.

CASE NO. 2:08-CV-1633-NVW

SUPPLEMENT TO:

***APPLICATION FOR PRELIMINARY
INJUNCTION***

15
16 As requested by Order of the Court (doc. 16), Plaintiffs file this Supplement to
17 their *Application For Preliminary Injunction* (doc. 12) to demonstrate their urgent need
18 to have the Court hear and decide this Application before October 1, 2008. The
19 requested temporary injunctive relief, if issued before October 1, 2008, will prevent all of
20 the following from occurring:

- 21 (1) On **October 1, 2008**, furlough of forty-two (42) America West pilots out of
22 the seniority order, in violation of the collective bargaining agreement
23 (CBA);
24 (2) Beginning **October 1, 2008**, demotion of 138 America West captains (with
25 loss of pay and benefits);
26
27
28

1 (3) On **November 1, 2008**, furlough of fifty-four (54) America West pilots out
2 of seniority order;

3 (4) By early **December 2008**, cessation of furlough pay and benefits for the
4 first (October) group of furloughed pilots (and their families);¹

5 (5) By early **January 2009**, cessation of furlough pay and benefits for the
6 second (November) group of furloughed pilots;

7 and

8 (6) Between **December 2008 and April 2009**, furlough of sixty-four (64)
9 America West pilots out of seniority order.

10 Assuming that the injunction will cause the Company to furlough an equivalent
11 number of premerger US Airways pilots (in place of the premerger America West pilots)
12 the totality of the hardships will be less, the sooner the Court hears and decides the
13 Application. This is readily demonstrated by comparing the hardships that will occur if
14 the injunction issues after as opposed to before October 1, 2008.

15 If the injunction issues **after October 1, 2008**, the following hardships will occur:

16 (1) Careers of America West pilots will be disrupted before the injunction
17 issues;

18 (2) Careers of US Airways pilots will be disrupted after the injunction issues;

19 (3) The Company will make furlough pay to America West pilots before the
20 injunction issues;

21 (4) The Company will make furlough pay to US Airways pilots after the
22 injunction issues;

23 (5) The Company will adjust its scheduling before the injunction issues;

24 and

25 (6) The Company will readjust its schedule again after to injunction issues.

26
27 ¹ Given the status of the industry and the general recession, these pilots will not be
28 able to find comparable substitute employment.

1 In contrast, if the injunction issues **before October 1, 2008**, only the following
2 three hardships will occur:

- 3 (1) Careers of US Airways pilots will be disrupted;
- 4 (2) The Company will make furlough pay to US Airways pilots;
- 5 and
- 6 (3) The Company will adjust its scheduling once.

7 There will be **no** disruption to the careers of the America West pilots and the Company
8 will save making any furlough pay to America West pilots.

9 Finally, the Court should not be misled by USAPA’s multiple mischaracterizations
10 of the facts of this case. *See* USAPA’s *Mot. Of US Airline Pilots Assn. To Be Heard On*
11 *Plts.’ Application For Prelim. Inj.* (doc. 15).² The three more egregious
12 mischaracterizations are as follows.

13 First, USAPA mischaracterizes the relief sought by Plaintiffs. Plaintiffs originally
14 asked the Court to enjoin the Company from furloughing America West pilots “before it
15 has furloughed all East Pilots [US Airways pilots] junior to them on the Nicolau list.”
16 *Comp.* at ¶ 113(A)(2).³ In their Application, Plaintiffs ask the Court only to enjoin the
17 Company from furloughing premerger America West pilots ahead of the pilots placed at
18 the very bottom of the Nicolau list—those who were on furlough at the time of the
19 merger. It simply is not true, therefore, as USAPA suggests, that Plaintiffs seek broader
20 relief in their Application. *See* USAPA’s *Mot.* at ¶ 3.

21 Second, USAPA mischaracterizes the new-hire grievance that it reluctantly took
22 up in anticipation of this lawsuit. That grievance will only address the Company’s plans

23 ² Plaintiffs plan to respond separately to this Motion.

24 ³ As explained in Plaintiffs’ *Application For Preliminary Injunction*, the Nicolau
25 list: “(1) maintained relative seniority among the pilots from each side; (2) placed the 500
26 most senior US Airways pilots ahead of all America West pilots; (3) placed the 1,750 US
27 Airways Pilots on furlough status at the time of the merger at the bottom of the list; and
28 (4) filled the middle of the list with a proportionate blend of the America West pilots and
the remaining US Airways pilots.” *Id.* at 4:17-21.

1 to furlough America West pilots ahead of new-hire US Airways pilots. USAPA does not
2 plan to get any resolution on this grievance before at least the first ninety-six (96)
3 premerger America West pilots have been furloughed out of order. Moreover, there are
4 far too few new-hire pilots at issue to rely on this grievance to protect more than a
5 handful of America West pilots from being furloughed out of order.

6 Finally, USAPA falsely states that the Company could have to violate its contracts
7 if it were enjoined from furloughing America West pilots out of order. This is plainly not
8 true. It is not true, as USAPA asserts, that “[t]he Application seeks to compel the
9 Company to assign flights . . . in violation of contract language that provides, pending
10 operational integration, each pilot group will fly the aircraft previously operated by their
11 respective airlines.” USAPA’s *Mot.* at ¶ 2 (presumably referring to the argument at
12 *Application Prelim. Inj.* at 10:12-26).

13 Rather, the Application seeks relief that the Company can provide, while keeping
14 the America West pilots employed, without violating any contract obligations. It is true
15 that the contracts preclude America West pilots from flying airplanes that were operated
16 by US Airways before the merger. This, however, puts only a modest limit on the
17 opportunities for these pilots. America West pilots may crew aircraft operated by
18 America West prior to the merger **and** aircraft that were added to the Company’s fleet
19 after the merger. These additional aircraft include two (2) E190 aircraft added in 2006,
20 nine (9) E190 aircraft added in 2007, as well as fourteen (14) E190 and five (5) A321
21 aircraft that are being added this year.⁴

22 It is simply not true, therefore, that Plaintiffs seek relief that would interfere with
23 USAPA’s ability to enforce the contractual rights of its members.

24
25
26 ⁴ In addition, as explained in Plaintiffs’ Application, the Company can have
27 America West pilots fly any flight originating west of the Mississippi and any other flight
28 originating east of the Mississippi that was not scheduled or announced as of September
23, 2005.

1 In sum, the Company is about to furlough America West pilots out of order, with
2 the encouragement of a union that is overtly and improperly loyal to a majority faction
3 within the bargaining unit (the premerger US Airways pilots). As explained above, there
4 will be less totality of hardships if the Court enjoins these furloughs before October 1,
5 2008. Plaintiffs, therefore, respectfully ask the Court to hear their motion at the earliest
6 possible date.

7 Dated this 23d day of September, 2008.

8 SHUGHART THOMSON & KILROY, P.C.

9
10 */s/ Andrew S. Jacob*

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CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2008, 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 to the following CM/ECF registrant(s):

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I further certify that on September 23, 2008, I served a paper copy of the foregoing document by mail on the following, who is not a registered participant of the CM/ECF System:

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s/ Andrew S. Jacob
