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14 **IN THE UNITED STATES DISTRICT COURT**  
15 **FOR THE DISTRICT OF ARIZONA**

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

18 Plaintiffs,

19 vs.

20 US AIRLINE PILOTS ASSOCIATION,  
21 and  
22 US AIRWAYS, INC.,

23 Defendants.

Case No. 2:08-cv-1633-NVW

**US AIRLINE PILOTS ASSOCIATION'S  
NOTICE OF MOTION AND MOTION  
TO DISMISS OR, IN THE  
ALTERNATIVE, FOR SUMMARY  
JUDGMENT, UNDER RULES 12  
AND 56**

1                   **TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD**

2                   PLEASE TAKE NOTICE that on Wednesday, October 29, 2008, at 2:00 p.m.  
3 Pacific, or at any other date and time of the Court’s choosing, before the Honorable Neil  
4 V. Wake, United States District Judge, in the Sandra Day O'Connor U.S. Courthouse,  
5 401 W. Washington Street, SPC 52, Phoenix, AZ 85003, on the Fifth floor, in Courtroom  
6 504, Defendant US Airlines Pilots Association (“USAPA”) will move the Court,  
7 pursuant to Rules 12(b)(1) and 12(b)(6), and in the alternative Rule 56, of the Federal  
8 Rules of Civil Procedure, to dismiss Count III of Plaintiff’s (original) Complaint for  
9 alleged for breach of the duty of fair representation, or in the alternative for summary  
10 judgment in favor of USAPA.  
11

12                   **COMES NOW** the Defendant, US Airlines Pilots Association, and hereby  
13 respectfully moves the Court, pursuant to Rules 12(b)(1) and 12(b)(6), and in the  
14 alternative Rule 56, of the Federal Rules of Civil Procedure, to dismiss Count III of  
15 Plaintiff’s (original) Complaint for alleged breach of the duty of fair representation, or in  
16 the alternative for summary judgment in favor of USAPA, and in support of its motion  
17 USAPA states the following grounds:  
18

19                   1.       Plaintiffs’ Count III fails to state a claim, under Rule 12(b)6, or in the  
20 alternative fails to raise any genuine issue of material fact and USAPA is entitled to  
21 judgment as a matter of law under Rule 56, because:  
22

23                   a)       Plaintiffs’ do not state a facially valid claim against USAPA for breach of

1 the duty of fair representation.

2 b) Plaintiffs' DFR claim would nonetheless be barred by the six month statute  
3 of limitations.

4 2. Plaintiff's complaint should be dismissed for lack of federal subject matter  
5 jurisdiction under Rule 12(b)1, or in the alternative fails to raise any genuine issue of  
6 material fact and USAPA is entitled to judgment as a matter of law under Rule 56,  
7 because:

8 a) A failure to exhaust mandatory contractual procedures bars a hybrid DFR  
9 suit unless exhaustion would be futile.

10 b) Plaintiffs have failed to show that resort to the System Board would be  
11 futile.

12 c) Plaintiffs DFR claim is not ripe for adjudication.

13 d) Section 8 of the Norris-LaGuardia Act requires plaintiffs to first exhaust  
14 RLA mandated administrative remedies before seeking judicial relief.

15 e) The National Mediation Board has exclusive jurisdiction over airline  
16 representation disputes.

17 f) Plaintiffs lack standing to bring Count II.

18 3. The grounds, support and argument for this motion are set forth in greater  
19 detail in Defendant's separately filed "Memorandum Of Law In Support Of US Airline  
20 Pilots Association's Motion To Dismiss Or, In The Alternative, For Summary Judgment,  
21 Under Rules 12 and 56."  
22  
23

1 This motion is based on the pleadings and, if necessary, the undisputed material  
2 facts in the record, as well as such other evidence, facts, or materials as the Court may  
3 deem appropriate.

4 WHEREFORE, defendant USAPA respectfully moves that its motion to dismiss,  
5 or in the alternative for summary judgment, be GRANTED, and that Count III of the  
6 Complaint be dismissed with prejudice, or that summary judgment in favor of USAPA  
7 be ordered.  
8

9 Respectfully Submitted,

10 Dated: October 1, 2008

By:

/s/ Lee Seham

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