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18 **UNITED STATES DISTRICT COURT**  
19 **FOR THE DISTRICT OF ARIZONA**

20 Don Addington, *et al.*;

21 Plaintiffs,

22 v.

23 US Airline Pilots Association and US  
24 Airways, Inc.,

25 Defendants.

Case No. 2:08-cv-01633-PHX-NVW

**US AIRWAYS' RESPONSE TO CASE  
MANAGEMENT REPORT**

26 US Airways, Inc. ("US Airways" or the "Company"), by and through its counsel  
27 undersigned, hereby files this Response to Case Management Report (Dkt. No. 109).  
28

1           The Case Management Report drafted by plaintiffs and USAPA indicates that,  
2 notwithstanding US Airways' dismissal from this case for lack of subject matter jurisdiction,  
3 plaintiffs intend to seek injunctive relief from this Court "that would preclude the *Company* from  
4 furloughing West Pilots out of the order established by the Nicolau seniority list ..." (Case  
5 Management Report at § 3.a.v. (emphasis added).) To that end, plaintiffs intend to seek  
6 documents and testimony from US Airways regarding this proposed remedy (*see* Case  
7 Management Report at § 10), and have already served US Airways with a substantial number of  
8 document requests -- 17 of which appear directed at discovering information related to their  
9 proposed injunctive relief precluding the furloughs. If plaintiffs are permitted to pursue this  
10 relief, the Company will be required to participate actively in the trial of plaintiffs' remaining  
11 claim against USAPA in order to protect US Airways' contractual rights to implement the  
12 furloughs and to respond to plaintiffs' representations regarding the harm their proposed  
13 injunctive relief would have on the Company.

14           Accordingly, US Airways believes it is appropriate and necessary to clarify as soon as  
15 possible whether plaintiffs will be permitted to seek as a remedy for *USAPA's* alleged breach of  
16 the duty of fair representation the *very same remedy* plaintiffs sought against US Airways in their  
17 dismissed claims-- an injunction prohibiting US Airways from furloughing pilots based on its  
18 existing seniority lists. US Airways respectfully requests that this be addressed at the Court's  
19 December 15, 2008 Scheduling Conference.

20           Plaintiffs' requested injunctive relief is inappropriate and inconsistent with the Court's  
21 November 20, 2008 Order (Dkt. No. 84) ("November 20 Order") because it seeks to interfere  
22 with US Airways' contractual right to furlough pilots pursuant to the terms of the Transition  
23 Agreement, subject to review by the Board of Adjustment. This very issue -- the propriety of US  
24 Airways' pilot furloughs -- is the subject of a grievance recently filed by plaintiffs seeking  
25 resolution of their now-dismissed claims against US Airways before the Board of Adjustment  
26 sitting with the sole neutral arbitrator. The parties are currently jointly scheduling the hearing on  
27 plaintiffs' claims.  
28

1 Notwithstanding the November 20 Order and the Board of Adjustment proceedings,  
2 plaintiffs assert that this Court still may issue an injunction prohibiting US Airways' furloughs as  
3 a remedy for *USAPA's* alleged statutory breach, so long as the injunction does not cause  
4 "significant hardship" to US Airways. (Case Management Report at § 3.a.v.) Such an injunction,  
5 however, would be an encroachment on US Airways' contractual right to conduct furloughs  
6 pursuant to the terms of the Transition Agreement. Indeed, the appropriate inquiry is not whether  
7 a prohibition of such furloughs would cause "significant hardship" to US Airways as plaintiffs  
8 suggest, but whether US Airways has the contractual right to furlough pilots under their separate  
9 seniority lists. That latter determination is, as this Court has ordered, for the exclusive  
10 jurisdiction of the Board of Adjustment. (November 20 Order at 7, 14.)

11 Additionally, US Airways is no longer a party to these proceedings other than for  
12 purposes of appeal,<sup>1</sup> and it is not an officer, agent, servant, employee, or attorney of the parties,  
13 nor is it in privity with the parties, and as such plaintiffs' requested injunctive relief binding US  
14 Airways is outside of the authority of this Court. *See* Fed. R. Civ. P. 65(d)(2); *see also* *Zepeda v.*  
15 *United States Immigration and Naturalization Serv.*, 753 F.2d 719, 727 (9th Cir. 1983) (a court  
16 "may not attempt to determine the rights of persons not before the court"); *Browning v.*  
17 *Woodford*, NO. 1:05-cv-00342-AWI-NEW (DLB) PC, 2007 U.S. Dist. LEXIS 34692 (E.D. Cal.  
18 May 10, 2007).<sup>2</sup>

19 Accordingly, because plaintiffs' requested injunctive remedy prohibiting US Airways'  
20 furloughs has broad implications regarding not only the scope of discovery, but, more  
21 importantly, on whether US Airways must actively participate in the trial of this matter to protect  
22 its contractual rights to furlough in a manner consistent with the Transition Agreement and have  
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24 <sup>1</sup> *See, e.g., Bennett v. Pippin*, 74 F.3d 578, 587 (5th Cir. 1996) (pending the entry of a Rule 54(b) final judgment, a  
25 dismissed defendant, while still a party in the sense that the plaintiff had no recourse to appeal, was not a party "in  
26 the sense that it had to request admissions, ask and answer interrogatories, notice and attend depositions, file motions,  
27 and otherwise litigate the case . . . . Such a construction of Rule 54(b), its plain awkwardness aside, would waste  
resources of the judiciary and the parties. A defendant is entitled to rely on a dismissal under Rule 12(b)(6) until  
notified otherwise, at which point it is entitled to a full and fair opportunity to assert the rights of a party.").

28 <sup>2</sup> Plaintiffs' requested injunctive relief also conflicts directly with this Court's prior finding that "no remedy lies  
against the company in this court, and complete relief may be granted against USAPA in its absence." (November 20  
Order at 17.)

1 those rights adjudicated by the System Board, US Airways respectfully requests that this Court  
2 address at the December 15, 2008 Scheduling Conference whether plaintiffs should be permitted  
3 to seek an injunction against US Airways' furloughs as a remedy for USAPA's alleged breach of  
4 the duty of fair representation.  
5

6 RESPECTFULLY SUBMITTED this 12th day of December 2008.  
7

8 US AIRWAYS, INC.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 12th day of December, 2008, I caused to be electronically transmitted the attached US Airways' Response to Case Management Report, to the Clerk's office using the CM/ECF System for filing.

I hereby certify that on the 12th day of December, 2008, I caused to be served the attached US Airways' Response to Case Management Report, by hand delivery on the following:

The Honorable Neil V. Wake  
District Court Judge  
401 W. Washington Street, SPC 52  
Phoenix, Arizona 85003

\_\_\_\_\_  
/s/ Rachel S. Janger

Rachel S. Janger