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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Don Addington; John Bostic; Mark)  
Burman; Afshin Iranpour; Roger Velez;)  
Steve Wargoeki,

Plaintiffs,

vs.

US Airline Pilots Association; US)  
Airways, Inc.,

Defendants.

No. CV 08-1633-PHX-NVW  
(consolidated)

**ORDER**

Don Addington; John Bostic; Mark)  
Burman; Afshin Iranpour; Roger Velez;)  
Steve Wargoeki, et al.,

Plaintiffs,

vs.

Steven Bradford; Paul Diorio; Robert)  
Frear; Mark King; Douglas Mowery; John)  
Stephan, et al.,

Defendants.

CV08-1728-PHX-NVW

Before the Court is Defendant USAPA's Motion for Extension of Time (doc. # 131), seeking to extend the deadline for USAPA's response to the Plaintiff West Pilots' Motion for Class Certification (doc. # 120). In its motion, USAPA asks that the deadline be extended

1 to allow for appropriate discovery. For reasons given below, the motion will be granted, and  
2 the deadline extended to February 17, 2009.<sup>1</sup>

3 **I. The Necessity for Additional Discovery**

4 Additional discovery is necessary to reasoned argument and decision-making on the  
5 certification issue in this case. The West Pilots seek certification under Fed. R. Civ. P.  
6 23(b)(2), asserting that the predominant relief they seek is injunctive in nature. However,  
7 their motion for certification is not limited to injunctive relief. It also includes claims for  
8 monetary relief arising out of USAPA's allegedly wrongful collection of dues. As the Court  
9 understands the West Pilots' Motion for Class Certification, certification is not sought on  
10 damages claims relating to the plaintiffs' lost wages and other economic harm.

11 A request for a Rule 23(b)(2) injunction class may militate in favor of an expedited  
12 certification ruling. *See 3 Newberg on Class Actions* § 7:2 (cited by West Pilots); Rule  
13 23(c)(1)(A). At the same time, it remains uncertain whether Rule 23(b)(2) certification can  
14 encompass the West Pilots' monetary claims as "incidental" to the injunctive relief. The  
15 West Pilots' dues claims are framed as restitutionary, but even equitable monetary awards  
16 weigh against injunction-class certification. *Dukes v. Wal-Mart, Inc.*, 509 F.3d 1168, 1187-88  
17 (9th Cir. 2007).

18 Rule 23(b)(2) certification is precluded if monetary claims "predominate over their  
19 claims for injunctive and declaratory relief." *Dukes*, 509 F.3d at 1188. Put another way,  
20 certification may not be appropriate at this stage if individualized issues predominate over  
21 questions common to the class, rendering the case unmanageable. *See Robinson v.*  
22 *Metro-North Commuter R.R.*, 267 F.3d 147, 163-64 (2d Cir. 2001) (holding that an ad hoc  
23 determination of case manageability should govern the question whether damages are  
24 incidental to a Rule 23(b)(2) claim). *But see Dukes*, 509 F.3d at 1190-93 (noting a range of  
25 possible approaches to managing incidental damages claims for the largest of all class

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26  
27 <sup>1</sup> USAPA sought a longer extension and an indefinite extension contingent upon the  
28 completion of specific discovery tasks. This order does not grant either of these forms of relief.

1 certifications). It may be that the facts warrant no certification, limited certification, or full  
2 certification, subject as always to possible future withdrawal. *See Allison v. Citgo Petroleum*  
3 *Corp.*, 151 F.3d 402, 420-22 (5th Cir. 1998) (recognizing possibility of reserving judgment  
4 on class certification for some, but not all, claims); Rule 23(c)(1)(C) (allowing future  
5 modification of certification order). The current state of the record is not sufficient for the  
6 Court to address these important questions, and the original response deadline of January 16,  
7 2009, did not give USAPA enough time to develop the record relating to dues payments as  
8 needed for their opposition. USAPA's motion for an extension will therefore be granted.

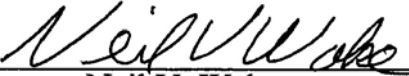
9 This preliminary scheduling order is made without prejudice as to any future damages  
10 issues to be decided, including without limitation those that may arise at the certification,  
11 liability, and remedial phases of this case or other cases.

## 12 II. Discovery Planning

13 Accordingly, USAPA will be granted time to complete limited, focused, and non-  
14 dilatory discovery. It should be noted, however, that the interrogatories submitted as an  
15 attachment to USAPA's reply (doc. # 143-2) do not meet this standard. They are overbroad  
16 and would forestall efficient resolution of the certification question. The parties will  
17 therefore be ordered to confer about a schedule conducive to completing appropriate  
18 discovery within the allotted time.

19 IT IS THEREFORE ORDERED that Defendant USAPA's Motion for Extension of  
20 Time (doc. # 131) is granted. The deadline for Defendant USAPA's Response to Plaintiffs'  
21 Motion for Class Certification is extended to February 17, 2009. The parties will confer  
22 forthwith to arrange for discovery to take place within the time allotted. This order amends  
23 the Court's order of December 15, 2008 (Docket No. 116).

24 DATED this 14<sup>th</sup> day of January, 2009.

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Neil V. Wake  
United States District Judge