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

10 Don ADDINGTON; John BOSTIC; Mark
11 BURMAN; Afshin IRANPOUR; Roger
VELEZ; and Steve WARGOCKI,

12 Plaintiffs,

13 vs.

14 US AIRLINE PILOTS ASSOCIATION,
15 US AIRWAYS, INC.,
16 Defendants,

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

19 Plaintiffs,

20 vs.

21 Steven H. BRADFORD, Paul J. DIORIO,
Robert., A. FREAR, Mark. W. KING,
22 Douglas L. MOWERY, and John A.
STEPHAN,

23 Defendants.

Case No. 2:08-cv-1633-PHX-NVW
(Consolidated)

**DECLARATION OF
MARK KING IN OPPOSITION
TO PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION**

Case No. 2:08-cv-1728-PHX-NVW

1 I, MARK KING, declare that the following is true and correct:

2
3 1. I am the Secretary-Treasurer of the US Airline Pilots Association (“USAPA” or the
4 “Association”).

5 2. This declaration is made in support of USAPA’s opposition to the plaintiffs’ motion for
6 class certification, and is based on my personal, first-hand knowledge, unless otherwise
7 specifically indicated.

8 3. My responsibilities as Secretary-Treasurer include maintaining the Association’s
9 membership records, including maintaining a record of the number of members under each
10 membership classification. I am also responsible for all funds of the Association, which
11 includes receiving all dues, fees, and special assessments levied by the Association, keeping
12 an individual record of all dues and assessments of each member, and enforcing the union
13 security clause (Section 29) of the Collective Bargaining Agreement (“CBA”).

14 4. The monetary relief sought by the Plaintiffs for the class they seek to represent is
15 significant. In effect, the Plaintiffs seek to deprive USAPA of almost one-third of the
16 revenue that it would be entitled to receive pursuant to Section 29 of the CBA. The annual
17 impact on USAPA would be approximately \$3,400,000. This income is typically derived
18 from withholdings from the wages of each pilot to whom Section 29 applies. In the context
19 of an action for restitution of dues and agency fees paid by West pilots, any damages
20 calculation would be highly individualized.

21 5. Based on my knowledge of proceedings that USAPA has instituted to enforce the union
22 security clause, and my knowledge of Article II of the USAPA Constitution (governing
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1 classes of membership and dues), the West pilot class which the plaintiffs seek to represent
2 is fractured into numerous and sometimes overlapping categories which (assuming liability
3 for restitution of dues and agency fees) would require damages calculation on an
4 individualized basis due to the broad range of legal issues, defenses, and financial
5 obligations that apply. These categories include:

6 (1) Members in good standing, who are entitled to all of the rights and
7 privileges of membership, and who have agreed to be bound by the USAPA
8 Constitution, including the requirement to pay membership dues and
9 assessments. There is no obligation under Section 29 of the CBA to become
10 a member of USAPA. Thus, members in good standing have voluntarily
11 elected to become members and thereby have voluntarily accepted a
12 contractual obligation pursuant to the USAPA Constitution to pay dues back
13 to the date of USAPA's certification on April 18, 2008. In exchange for the
14 members' voluntary contractual commitment, these members have received,
15 and continue to receive, the right to run for office, participate in elections,
16 participate in ratification votes, and to receive other membership benefits.
17 Therefore, any action for restitution of dues paid by members in good
18 standing is subject to a contractual defense under the USAPA Constitution
19 that the concerned individuals have voluntarily assumed their contractual
20 obligation and have received the benefit of the bargain. Calculations of
21 damages for such individuals would be affected by their varying income
22 levels and status changes as discussed further below.
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2 (2) Members in bad standing, who are not entitled to the rights and privileges
3 of membership, but who remain subject to the USAPA Constitution,
4 including the requirement to pay membership dues and assessments. These
5 individuals have also voluntarily applied for full membership with USAPA
6 and their respective applications have been accepted. They are considered in
7 bad standing because – despite their individual commitment to comply with
8 the contractual obligations contained in the USAPA Constitution – they have
9 breached these obligations by failing to pay dues that the Constitution
10 requires. Calculation of damages for such individuals would be affected by
11 the amount of dues that they have paid, their varying income levels, and
12 status changes as discussed further below.

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14 (3) Members in bad standing who have entered into settlement agreements
15 with USAPA, in which they have agreed to a reduction in their past agency
16 fee liability in exchange for the Association’s discontinuance of its
17 enforcement of Section 29 of the CBA. As described in category (2) above,
18 these are individuals who have voluntarily applied for full membership with
19 USAPA, been accepted as members by USAPA, and yet failed to comply
20 with their financial obligations. As distinguished from category (2),
21 however, these are individuals who have since been subjected to enforcement
22 proceedings under Section 29 of the CBA due to their failure to pay either
23 dues or agency fees as required under the CBA and who, as a result of these

1 enforcement proceedings, have agreed to pay a sum certain in order to avoid
2 termination of their employment. The individuals who entered into these
3 agreements were represented by an attorney who is experienced in the
4 Railway Labor Act. The relevant settlement agreements settled USAPA's
5 claims under the CBA, but do not satisfy USAPA's claims for dues under the
6 USAPA Constitution. Any claim for restitution by such individuals would
7 require analysis of the USAPA Constitution, Section 29 of the CBA, and the
8 individual settlement agreement. Calculation of damages for such
9 individuals would be affected by the amount of dues that they have paid, the
10 calculation of agency fees they may have paid (which may have been subject
11 to a 15 percent reduction) as well as their varying income levels, and status
12 changes as discussed further below.

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14 (4) Members in bad standing whose Section 29 dispute is determined by a
15 single neutral arbitrator as provided for under the CBA. Individuals in this
16 category have voluntarily applied for USAPA membership, have had their
17 membership accepted, but have violated both the USAPA Constitution and
18 the CBA by failing to pay either dues or agency fees. With respect to their
19 Section 29 obligation, the CBA provides that either USAPA or such
20 individuals may submit the relevant dispute to arbitration. There is currently
21 a West pilot in this category whose case is currently scheduled to be heard
22 before Arbitrator Helen Witt on April 1, 2009. Arbitrator Witt could order
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1 the termination of the West pilot, determine that the West pilot has no
2 Section 29 financial obligation, or order a remedy that falls somewhere in
3 between. The calculation of damages of pilots who fall in this category
4 would be influenced by all of the factors discussed above and, in addition,
5 the relevant arbitral decision and the extent to which any remedial portion of
6 that arbitral decision has been complied with.

7
8 (5) Non-members, who are not entitled to the rights and privileges of
9 membership, but who are contractually obligated to pay a monthly agency
10 fee to the Association pursuant to Section 29 of the CBA, and who have not
11 objected to paying agency fees relating to the Association's non-germane
12 activities. Such non-members pay agency fees equal to the amount of full
13 membership dues. As non-members, such individuals may have statutory or
14 CBA-based defenses that they would not have as members who have
15 voluntarily agreed to comply with the USAPA Constitution. Nevertheless, as
16 non-objectors, they have arguably waived any right to have their agency fee
17 obligation reduced by the percentage of USAPA's non-germane expenditures
18 as discussed further below. Calculation of damages for such individuals
19 would be affected by the amount of agency fees that they have paid as well
20 as their varying income levels, and status changes as discussed further below.
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1 (6) Non-members, who are contractually obligated to pay agency fees to the
2 Association, and who have filed timely objections to paying fees relating to
3 the Association's activities that are not germane to its collective bargaining
4 function. These non-members are known as "objectors." Significantly, the
5 Plaintiffs have lumped together dues and agency fees as if they are identical.
6 In fact, there are significant legal and financial differences. The USAPA
7 Constitution requires members to pay full dues; however, this constitutional
8 obligation only arises by virtue of a pilot's voluntary decision to join the
9 Association. By contrast, Section 29 of the CBA applies to both USAPA
10 members and non-members, subject to a variety of contractual and statutory
11 limitations. Under Section 29, a pilot may fulfill his/her financial obligation
12 to the Association by paying either dues or agency fees. Objectors are those
13 non-members who have filed a timely objection and are entitled to pay a
14 reduced agency fee that is generally based on dues with a percentage
15 reduction based on the percentage of expenses which the Association spends
16 on activities which are considered "non-germane" to the union's collective
17 bargaining function, such as political lobbying. Disputes over the
18 appropriate percentage reduction are generally subject to arbitration pursuant
19 to the Association's published policy. Thus, damages relevant to a non-
20 member dues objector would be affected by a variety of factors including
21 whether he/she objected, the timing of his/her objection, the level of non-
22 germane activity, and any arbitration decision relating to these issues.
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3 (7) Non-member dues objectors who have challenged the Association's
4 calculation of the percentage of Association expenses determined to be
5 germane to collective bargaining. Individuals who fall in this category have
6 effectively demanded access to a neutral arbitrator to determine the
7 appropriate reduction in their agency fee obligation, which in turn is based on
8 a determination of germane versus non-germane union expenditures. Thus,
9 with respect to damages that might be applicable to this category of pilots, all
10 the considerations discussed in the paragraph above apply with the additional
11 consideration that these pilots have elected to submit their monetary dispute
12 to a neutral arbitrator.

13
14 (8) Apprentice members who are not required to assume any financial
15 obligation until becoming eligible for active membership. This status
16 consideration could potentially apply to various members of the Plaintiffs'
17 class, unless the Plaintiffs are excluding recently hired West pilots from
18 representation.

19
20 (9) Inactive members, including pilots on furlough, medical or personal leave
21 of absence, or military leave of absence. These several status categories are
22 potentially applicable in varying degrees to all of the categories discussed in
23 paragraphs 1-7 above. In each case, these status issues could impact on the

