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

9 Don ADDINGTON, *et al.*,
10 Plaintiffs,
11 vs.
12 US AIRLINE PILOTS ASSN., *et al.*,
13 Defendants.

CASE NOS.
2:08-CV-1633-PHX-NVW
2:08-CV-1728-PHX-NVW
(Consolidated)
**PLAINTIFFS' RESPONSE TO
DEFENDANT'S "LETTER TO THE
COURT" (DOC. 402)**

14 Don ADDINGTON, *et al.*,
15 Plaintiffs,
16 vs.
17 Steven H. BRADFORD, *et al.*,
18 Defendants.

19
20 Plaintiffs file this *Response to Defendant's "Letter To The Court"*
21 (doc. 402) demonstrating that Defendant failed—yet again—to make a
22 credible challenge to jurisdiction.

23 Because Plaintiffs do not plan to prove that USAPA intentionally
24 delayed CBA negotiations, it wrongly argues that Plaintiffs abandoned
25 “the factual allegations upon which the Court denied Defendant’s Motion
26 to Dismiss on jurisdictional grounds.” (Doc. 402.) In fact, the Court made
27 no reference whatsoever to intentional delay where it found that it had
28 subject matter jurisdiction:

1 The Plaintiff West Pilots allege that the East Pilots have
2 manipulated union procedures for their sole benefit. They
3 formed a union whose constituted purpose was to impose a date-
4 of-hire scheme on the minority membership in disregard of an
5 arbitrated compromise both sides agreed to and deemed fair in
6 advance. The Plaintiff West Pilots allege that USAPA has
7 followed through on that aim without any corresponding benefit
8 to the pilots as a whole. In light of these principles and the
9 cases cited above, the Plaintiff West Pilots have stated a claim
10 for breach of the duty of fair representation.

11 *Addington v. USAPA*, 588 F. Supp. 2d 1051, 1061 (D. Ariz. 2008).

12 Moreover, the Court was correct; this claim is, in fact, ripe. *See*
13 *Bertulli v. Independent Assn. of Continental Pilots*, 242 F.3d 290, 295
14 (5th Cir. 2001). The *Bertulli*, court held that the right to fair
15 representation is a “procedural right[] protected by statute, the loss of
16 which is itself an injury without any requirement of a showing of further
17 injury.” *Id.* Plaintiffs here claim loss of a the same right. Their claim,
18 therefore, is ripe. This Court has jurisdiction.

19 Respectfully submitted, this 27th day of April, 2009.

20 POLSINELLI SHUGHART PC

21 By: /s/

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27 CERTIFICATE OF SERVICE

28 I hereby certify that on April 27, 2009, 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.

s/ *Andrew S. Jacob*