

1 LEE SEHAM, Esq. *pro hac vice*
SEHAM, SEHAM, MELTZ & PETERSEN, LLP
2 445 Hamilton Avenue, Suite 1204
White Plains, NY 10601
3 Tel: 914 997-1346; Fax: 914 997-7125

4 NICHOLAS J. ENOCH, Esq., State Bar No. 016473
LUBIN & ENOCH, P.C.
5 349 North 4th Avenue
Phoenix, AZ 85003-1505
6 Tel: 602 234-0008; Fax: 602 626 3586

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

8 Don ADDINGTON; John BOSTIC; Mark
BURMAN; Afshin IRANPOUR; Roger
9 VELEZ; and Steve WARGOCKI,

10 Plaintiffs,

11 vs.

12 US AIRLINE PILOTS ASSOCIATION,
US AIRWAYS, INC.,
13 Defendants,

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

**DEFENDANT’S NOTICE AND
MOTION TO DISMISS THE
SECOND AMENDED COMPLAINT**

14 Don ADDINGTON; John BOSTIC; Mark
BURMAN; Afshin IRANPOUR; Roger
15 VELEZ; and Steve WARGOCKI,

16 Plaintiffs,

17 vs.

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

20 Defendants.

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

1 TO : PLAINTIFFS, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD.

2 **I. NOTICE.**

3 PLEASE TAKE NOTICE that Defendant US Airline Pilots Association (“USAPA” or
4 Defendant) will move this Court, before the Honorable Neil V. Wake, United States District
5 Judge, in the Sandra Day O'Connor U.S. Courthouse, 401 W. Washington Street, SPC 52,
6 Phoenix, AZ 85003, on the Fifth floor, in Courtroom 504, to be heard as soon as may be, with
7 or without oral argument, to dismiss Plaintiffs’ Second Amended Complaint, pursuant to Rule
8 12 of the Federal Rules of Civil Procedure, and on other stated grounds.

9 **II. MOTION.**

10 COMES NOW the Defendant to hereby move the Court, pursuant to Rule 12 of the
11 Federal Rules of Civil Procedure, and the Court’s order of August 20, 2009 (Doc. # 606)
12 allowing Defendant until October 23, 2009 to file any motion “challenging the Amended
13 Complaint” to dismiss Plaintiffs’ Second Amended Complaint dated August 31, 2009 (Doc.
14 Nos. 611, 611-1, and 612), and other stated grounds. Defendant hereby states the following
particular grounds in support of its motion to dismiss:

15 First, failure to state a claim cognizable as a matter of law, requiring dismissal under
16 Rule 12(b)(6).

17 Second, failure to state a claim that alleges sufficient facts to support an otherwise
18 cognizable legal claim, requiring dismissal under Rule 12(b)(6).

19 Third, failure to exhaust contractual remedies mandatory under the Railway Labor Act,
20 45 U.S.C. § 184, requiring dismissal under Rule 12(b). *Wyatt v. Terhne*, 315 F.3d 1108, 1109
21 (9th Cir. 2003) (motion to dismiss under Rule 12(b) proper for failure to exhaust administrative
22 remedies).

1 Fourth, lack of subject matter jurisdiction, requiring dismissal under Rule 12(b)(1).

2 Fifth, lack of personal jurisdiction, requiring dismissal under rule 12(b)(2).

3 Sixth, improper venue, requiring dismissal under Rule 12(b)(3).

4 Seventh, insufficient service, requiring dismissal under Rule 12(b)(5).

5 Eighth, inadequate notice failing to comply with Rule 8(a)(2) and Rule 15, requiring
6 dismissal for deprivation of due process.

7 Ninth, failure to join a party under Rule 19, requiring dismissal under Rule 12(b)(7).

8 In addition, this motion is supported by the following, which are hereby incorporated by
9 reference:

10 i) Defendant's "Notice and Motion For Rule 56 Summary Judgment On Plaintiffs'
11 Damages Claims" (Doc. Nos. 487, 488, 498, 490, 491, 512); and

12 ii) Defendant's "Motion For Leave To Supplement The Record In Support Of Its
13 Motion For Summary Judgment On Plaintiffs' Damages Claims" (Doc. # 540); and

14 iii) The Court's order granting motion to supplement (Doc. # 557); and

15 iv) Defendant's "Notice Of Objection To Post Trial Amendment Of The Complaint
16 Without Plaintiffs' Compliance With Rule 15 And LRCiv 15.1, And Notice And Motion For
17 Compliance" (Doc. # 573).

18 This motion is also based on the separately submitted Memorandum In Support Of
19 Defendant's Motion To Dismiss Second Amended Complaint, all pleadings, papers, and other
20 records on file, the record at trial, and any oral argument had.

1 **III. RELIEF REQUESTED.**

2 WHEREFORE, Defendant USAPA respectfully moves that its motion to dismiss be
3 granted, and that the Second Amended Complaint be dismissed with prejudice.

4 A proposed order is separately submitted.

5 Respectfully Submitted,

6 Dated: October 23, 2009

By: /s/ Nicholas P. Granath, Esq.

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8 Nicholas P. Granath, Esq. (*pro hac vice*)
ngranath@ssmplaw.com
9 SEHAM, SEHAM, MELTZ & PETERSEN, LLP
2915 Wayzata Blvd.
Minneapolis, MN 55405

10 Lee Seham, Esq. (*pro hac vice*)
11 Lucas K. Middlebrook, Esq. (*pro hac vice*)
Stanley J. Silverstone, Esq. (*pro hac vice*)
Theresa Murphy, Esq. (*pro hac vice*)
12 SEHAM, SEHAM, MELTZ & PETERSEN, LLP
445 Hamilton Avenue, Suite 1204
White Plains, NY 10601

13 Nicholas Enoch, Esq. State Bar No. 016473
14 nick@lubinandenoch.com
LUBIN & ENOCH, PC
349 North 4th Avenue

15 Phoenix, AZ 85003-1505

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17 *Attorneys for Defendant*
US Airline Pilots Association