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14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE DISTRICT OF ARIZONA**

16 Don ADDINGTON; John BOSTIC;
17 Mark Burman; Afshin IRANPOUR;
18 Roger VELEZ; and Steve WARGOCKI,
19 on behalf of themselves and all other
20 similarly-situated individuals,

21 *Plaintiffs,*

22 vs.

23 US AIRLINE PILOTS ASS'N, an
24 unincorporated association,

25 *Defendant.*

26 CASE NO. 2:08-CV-01633-PHX-NVW

27 CASE NO. 2:10-CV-01570-PHX-ROS

28 **PLAINTIFFS' MOTION TO TRANSFER
RELATED CASE, PURSUANT TO
LRCIV 42.1.**

19 Plaintiffs Don ADDINGTON; John BOSTIC; Mark Burman; Afshin IRANPOUR;
20 Roger VELEZ; and Steve WARGOCKI, on behalf of themselves and all other
21 similarly-situated individuals, file this motion to transfer related case *US Airways*
22 *v. Addington*, Case No. 2:10-cv-01570-PHX-ROS ("*US Airways*"), to this Court
23 pursuant to LRCiv 42.1. The Court should accept the transfer of *US Airways* because
24 it "(1) arise[s] from substantially the same transaction or event; (2) involve[s]
25 substantially the same parties . . . ; [and (3)] call[s] for determination of substantially
26 the same questions of law." *Id.* This Court has already expended substantial judicial
27 resources familiarizing himself with all the parties, issues and law that will be involved
28 in *US Airways*. If *US Airways* is not transferred to this Court, its resolution could entail

1 substantial unnecessary duplication of judicial effort. This motion is supported by the
2 Memorandum of Points and Authorities that follows.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. BACKGROUND**

5 The history of the underlying dispute is well known to the Court. It is recounted
6 for the record and for the benefit of Judge Silver, to whom *US Airways* was randomly
7 assigned.

8 US Airways and America West merged in 2005. The two pilot groups, referred
9 to as the West Pilots and East Pilots, agreed to integrate their respective seniority lists
10 to complete the integration of airline operations. Nearly five years later, they have not
11 done so. The pilots agreed to use binding arbitration conducted by George Nicolau to
12 determine a method of seniority integration. That result of that arbitration is referred to
13 as the Nicolau Award. After the arbitration was completed, the East Pilots objected to
14 the Nicolau Award and prevented its implementation. The subsequent events were as
15 follows:

16 [T]he Air Line Pilots Association (“ALPA”) was decertified and a new
17 union, the U.S. Airline Pilots Association (“USAPA”), certified precisely to
18 frustrate implementation of the Nicolau [Award] and to negotiate a CBA
19 with U.S. Airways that favors the East Pilots. As the district court found,
20 “USAPA’s sole objective in adopting and presenting its seniority proposal
21 to the Airline was to benefit East Pilots at the expense of West Pilots, rather
22 than to benefit the bargaining union as a whole.” Thus, “the terms of
23 USAPA’s seniority proposal are substantially less favorable to West Pilots
than the Nicolau Award” made through binding arbitration, an award that
“USAPA concedes that it will never bargain for.”

24 *Addington v. US Airline Pilots Ass’n*, 606 F.3d 1174, 1184-85 (9th Cir. 2010) (Bybee,
25 CJ, dissenting).

26 *Addington* was filed by the West Pilots on September 4, 2008, asserting breach
27 of the duty of fair representation (“DFR”) against USAPA for wrongfully refusing to
28 support implementation of the Nicolau Award. It went to trial on liability on April 28,

1 2009. A jury found that USAPA breached the DFR on the basis that its sole objective
2 for refusing to implement the Nicolau Award was to benefit East Pilots at the expense
3 of West Pilots, rather than to benefit the bargaining unit as a whole. Other motivations
4 that were advanced by USAPA, the jury found, were simply pretextual.

5 Following a bench trial on remedy, the Court ordered injunctive relief that
6 permanently enjoined and ordered USAPA to:

7 (1) “make all reasonable efforts to negotiate and implement a single [CBA] ...
8 that will implement the Nicolau Award seniority proposal ...”;

9 (2) “[m]ake all reasonable efforts to support and defend the ... Nicolau Award in
10 negotiations with US Airways”; and

11 (3) “[n]ot negotiate for separate collective bargaining agreements for the separate
12 pilot groups....”

13 USAPA appealed the injunction. The Ninth Circuit did not reach the merits of
14 the appeal because it held that the case was not ripe for injunctive relief, partly because
15 the district court “cannot fashion a[n] [injunctive] remedy that will alleviate Plaintiffs’
16 harm.” *Addington*, 606 F.3d at 1180. It explained that, “under the district court’s
17 injunction mandating USAPA to pursue the Nicolau Award, it is uncertain that the
18 West Pilots’ preferred seniority system ever would be effectuated.” *Id.* at 1181. The
19 Ninth Circuit stated, however, that it “[l]eft USAPA to bargain in good faith pursuant
20 to its DFR, with the interests of all members-both East and West in mind, under pain
21 of an unquestionably ripe DFR suit, once a contract is ratified.” *Id.* at 1180, n.1.

22 The Ninth Circuit denied the West Pilots’ petition for rehearing *en banc*. On July
23 14, 2010, the West Pilots filed a motion to stay the mandate while they petitioned for
24 certiorari. USAPA immediately filed an opposition making clear its intention to push
25 US Airways to accept a date-of-hire seniority list as soon as the mandate issues. The
26 motion to stay is still pending before the Ninth Circuit.

27 While USAPA appealed, negotiation of a new CBA faltered. Now with a
28 mandate vacating the injunction on the horizon, USAPA has announced its intention to

1 demand US Airways accept a date-of-hire seniority list. On July 26, 2010, US Airways
2 filed *US Airways*, a declaratory action seeking a ruling as to whether “USAPA’s
3 continued insistence on and/or entry into a collective bargaining agreement which does
4 not incorporate the Nicolau Award” is or is not a breach of USAPA’s duties under the
5 Railway Labor Act, and, if it is, whether US Airways would incur liability to West
6 Pilots if it were to agree to a CBA that did not use the Nicolau Award. A copy of the
7 Complaint is attached hereto.

8 II. LEGAL ARGUMENT

9 A. Standard of Decision

10 Pursuant to the Local Rules for the District of Arizona,

11 Any party may file a motion to transfer the case . . . to a single Judge
12 whenever two or more cases are pending before different Judges and . . .
13 such cases: (1) arise from substantially the same transaction or event; (2)
14 involve substantially the same parties or property; . . . (4) call for
15 determination of substantially the same questions of law; or (5) for any
16 other reason would entail substantial duplication of labor if heard by
17 different Judges.

18 LRCiv 42.1(a).

19 The standard for transfer pursuant to LRCiv 42.1 is similar to the standard
20 for consolidation under Rule 42(a) of the Federal Rules of Civil Procedure
21 and district courts have broad discretion in determining whether to grant
22 such motions. By its terms, LRCiv 42.1(a)(1) does not require that each of
23 its subsections be shown before a transfer is proper thereunder.

24 *Gagan v. Estate of Sharar*, 2008 WL 2810978, *2 (D. Ariz. 2008) (citations omitted);
25 *Parra v. Bashas’ Inc.*, 2009 WL 1024615, *5 (D. Ariz. 2009) (same). “The purpose of
26 assigning related cases to the same judge is to promote judicial efficiency and to avoid
27 the necessity of a new judge learning a complex factual scenario from the beginning.”
28 *See In re Marshall*, 291 B.R. 855, 859 (Bankr. C.D. Cal. 2003).

29 B. LRCiv 42.1 supports accepting the transfer of *US Airways*.

30 Four subsections of LRCiv 42.1 apply here. *First*, *Addington* and *US Airways*
31 “arise from substantially the same transaction or events” because both arise from the
32 2005 merger and the integration of the pilot seniority lists. *Second*, both cases “involve

1 substantially the same parties” because, until US Airways was dismissed from the
2 *Addington* litigation, the same parties participated in both matters. Indeed, even after it
3 was dismissed as a party, US Airways closely observed the trial to protect its interests.
4 *Third*, both cases involve the “determination of substantially the same questions of
5 law” because both involve nuances of USAPA’s duty of fair representation in regard
6 to seniority integration and the ripeness of claims related thereto.

7 Finally, there would surely be “substantial duplication of effort” if *US Airways*
8 were not transferred to this Court. That well over 600 items were filed and that it was
9 necessary for the Court to draft a detailed 53 page *Findings of Fact and Conclusions of*
10 *Law* (doc. # 593) shows that the Court expended considerable effort on *Addington* and
11 that a judge new to this subject would have to expend much of that effort again if *US*
12 *Airways* were not transferred to this Court.

13 III. CONCLUSION

14 By filing its declaratory action, US Airways, in effect, rejoined *Addington* to
15 protect its interest. Rather than formally interplead in *Addington*, however, it filed a
16 new action. Surely, the most sensible course is to transfer *US Airways* to this Court.
17 Such transfer is well within the discretion provided by LRCiv 42.1. Plaintiffs,
18 therefore, respectfully, ask the Court to accept *US Airways* in transfer.

19 Dated this 27th day of July, 2010.

20 POLSINELLI SHUGHART, PC

21 By /s/ Andrew S. Jacob

22 Marty Harper

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28 CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of July 2010, I electronically transmitted the foregoing document to the U.S. District Court Clerk’s Office by using the ECF System for filing and transmittal.

By /s/ Andrew S. Jacob