

1 Karen Gillen  
2 US Airways, Inc.  
3 111 West Rio Salado Parkway  
4 Tempe, AZ 85281  
5 State Bar No. 018008  
6 Facsimile: (480) 693-5932  
7 karen.gillen@usairways.com  
8 Telephone: (480) 693-0800

9 Robert A. Siegel (*pro hac vice*)  
10 Chris A. Hollinger (*pro hac vice*)  
11 Mark W. Robertson (*pro hac vice*)  
12 Ryan W. Rutledge (*pro hac vice*)  
13 O'Melveny & Myers LLP  
14 400 South Hope Street  
15 Los Angeles, CA 90071-2899  
16 Facsimile: (213) 430-6407  
17 rsiegel@omm.com  
18 rrutledge@omm.com  
19 Telephone: (213) 430-6000

20 Attorneys for Plaintiff  
21 US Airways, Inc.

22 **UNITED STATES DISTRICT COURT**  
23 **DISTRICT OF ARIZONA**

24 US Airways, Inc., a Delaware  
25 Corporation,  
26  
27 Plaintiff,

28 v.

Don Addington, an individual; John  
Bostic, an individual; Mark Burman, an  
individual; Afshin Iranpour, an  
individual; Roger Velez, an individual;  
and Steve Wargocki, an individual, on  
behalf of themselves and all other  
similarly-situated individuals,

and

US Airline Pilots Association, an  
unincorporated association,  
Defendants.

Case No. CV-10-1570-PHX-ROS

**PLAINTIFF US AIRWAYS, INC.'S  
OPPOSITION TO DEFENDANT  
USAPA'S EMERGENCY MOTION TO  
STAY ALL FURTHER PROCEEDINGS**

1 **I. INTRODUCTION**

2 US Airways filed this declaratory judgment action to bring to an end, *as promptly*  
3 *as possible*, a longstanding dispute over seniority integration that has prevented the  
4 completion of a new single collective bargaining agreement with the airline's pilots. That  
5 single agreement is critical to the success of US Airways because it finally will allow the  
6 combination of its pilots into a single, unified workforce after the merger of US Airways  
7 and America West Airlines, which was completed nearly *five years ago*. US Airways will  
8 gain important benefits by combining its pilot workforce, including improving morale and  
9 conserving management resources. That new single agreement is also important to US  
10 Airways and the pilots because it would provide for pay parity between the two groups  
11 and compensation increases for the first time since the merger.

12 But there can be no new single collective bargaining agreement until an integrated  
13 seniority list has been agreed or ordered. As stated in the Complaint, US Airways will not  
14 take sides in the seniority dispute. Indeed, US Airways is neutral regarding *which*  
15 seniority list is included in that new single agreement. However, US Airways  
16 unequivocally is not neutral about *when* the seniority dispute is settled. That needs to  
17 happen now. After five years of debate and litigation between the East Pilots and the  
18 West Pilots, US Airways has concluded that resolution of the seniority dispute can occur  
19 only after there is a ruling on the declaratory relief it seeks.

20 Defendant US Airline Pilots Association ("USAPA") moves to stay this action  
21 pending the possible filing of a petition for a writ of certiorari in a lawsuit between  
22 USAPA and the West Pilots, to which US Airways is not a party. US Airways opposes  
23 the motion because any stay will prejudice US Airways, regardless of what happens in the  
24 other lawsuit. US Airways has a current obligation under the Railway Labor Act ("RLA")  
25 to bargain with USAPA regarding a single collective bargaining agreement ("CBA") and  
26 the seniority issue. Indeed, negotiations already are underway. If this lawsuit is stayed,  
27 US Airways faces the risk that negotiations will conclude or US Airways will be  
28 compelled to take a position on the seniority dispute before it obtains any guidance from

1 this Court, which will subject US Airways to the harms this lawsuit was brought to  
2 prevent. Furthermore, if this lawsuit is stayed, the benefits US Airways would gain from  
3 completing negotiations for a single CBA will be delayed. These facts should weigh  
4 heavily in the Court's decision whether to grant a stay. Indeed, under the applicable  
5 three-part standard identified in USAPA's motion, which USAPA has misapplied to the  
6 facts presented here, a stay should be denied.

7 First, there is much more than a *fair possibility* that US Airways will suffer harm if  
8 a stay is granted. USAPA has made, and its Constitution and Bylaws mandate, seniority  
9 proposals favored by the East Pilots. But the West Pilots have threatened to sue US  
10 Airways if it accepts USAPA's proposals. Absent a declaratory judgment, US Airways  
11 faces, on the one hand, the possibility of a work stoppage following a release from  
12 negotiations if it does not accept USAPA's proposal, or, on the other hand, protracted  
13 litigation and possibly substantial liability and invalidation of a CBA that took years to  
14 negotiate if it does.

15 Second, USAPA has failed to make out a *clear case of hardship or inequity* in  
16 being required to go forward with the litigation. The only purported hardship USAPA  
17 identifies is the "time and expense" of litigation. (Motion 12:8-13:12.) Ninth Circuit  
18 authority makes clear that is not a sufficient hardship to merit a stay. *See Lockyer v.*  
19 *Mirant Corp.*, 398 F.3d 1098, 1112 (9th Cir. 2005) ("being required to defend a suit,  
20 without more, does not constitute a 'clear case of hardship or inequity.'").

21 Third, USAPA has failed to demonstrate that a stay would further *the orderly*  
22 *course of justice*. USAPA seeks a stay of this action based on another lawsuit that even  
23 USAPA characterizes as having only a "remote" possibility of affecting the outcome here.  
24 (Motion 12:18-20.) USAPA's rationale for a stay depends on a series of contingent and  
25 unlikely events, including the grant of certiorari by the Supreme Court. The improbability  
26 of any benefit from a stay weighs strongly against USAPA's motion. By contrast, if this  
27 case is stayed, US Airways will suffer the very harm this lawsuit was filed to prevent.  
28 Significantly, stays are disfavored in actions, such as this one, seeking declaratory relief.

1 As the Ninth Circuit has recognized, such actions require prompt resolution. *See Lockyer*,  
2 398 F.3d at 1110.

3 In this case, justice delayed is justice denied. US Airways needs a declaratory  
4 judgment while negotiations are ongoing. If this case is stayed until those negotiations  
5 end and US Airways is compelled to take a position on the seniority dispute, the Court  
6 will be powerless to grant US Airways effective relief. At that point, US Airways will  
7 already have faced the possibility of a work stoppage if it does not accept USAPA's  
8 proposal or possible liability and invalidation of the CBA if it does. After US Airways  
9 suffers one of those injuries, a declaratory judgment regarding what it should have done  
10 will be too late. Thus, the Court should deny USAPA's request for a stay.

## 11 **II. STATEMENT OF FACTS**

12 This action arises from a protracted seniority dispute between the pilots employed  
13 by US Airways, Inc. (the "East Pilots") and the pilots employed by America West  
14 Airlines, Inc. (the "West Pilots") prior to the merger of those two airlines in 2005.  
15 (Compl. ¶ 1.) Plaintiff US Airways is the air carrier formed by that merger. (*Id.*) US  
16 Airways has a current obligation under the RLA to negotiate for a collective bargaining  
17 agreement with defendant USAPA, the union that represents US Airways' pilots. (*Id.*)  
18 That obligation includes negotiating and taking a position on a seniority list, which creates  
19 great risks to US Airways if the pilots' seniority dispute is not resolved first.

20 US Airways will leave the defendants to describe their respective positions in  
21 greater detail, but the gist of the conflict is this: the West Pilots' position is that US  
22 Airways may only agree to the seniority list that resulted from arbitration between the two  
23 pilot groups (the "Nicolau Award"), while the East Pilots' position is that US Airways  
24 must agree to a different seniority award. US Airways has always been, and still is,  
25 neutral regarding how this seniority dispute should be resolved. (Compl. ¶ 1.)

26 In a prior lawsuit, *Addington v. US Airline Pilots Ass'n*, 606 F.3d 1174 (9th Cir.  
27 2010), the West Pilots (1) sued USAPA, claiming that USAPA breached its statutory duty  
28 of fair representation to the West Pilots by bargaining for a different seniority list than the

1 Nicolau Award; and (2) sued US Airways, claiming that US Airways breached a  
2 collective bargaining agreement by furloughing certain West Pilots.<sup>1</sup> US Airways  
3 successfully moved to dismiss the breach of collective bargaining agreement claims  
4 against it. The West Pilots' lawsuit proceeded against USAPA on their statutory claim.  
5 Following trial, the District Court entered judgment in favor of the West Pilots. USAPA  
6 appealed, and the Ninth Circuit reversed. The Ninth Circuit held that the West Pilots'  
7 claims against USAPA for breach of the duty of fair representation were not ripe.<sup>2</sup> The  
8 East Pilots and the West Pilots both interpret the Ninth Circuit's decision as supporting  
9 their side in the seniority dispute and have, as a result, made conflicting demands on US  
10 Airways to accept their respective positions.

11 USAPA seeks a stay of this action pending resolution of a petition for a writ of  
12 certiorari by the West Pilots in *Addington*. The West Pilots have not yet filed such a  
13 petition. Based on the schedule for filing and opposing such a petition, and the Supreme  
14 Court's consideration thereof, a decision whether to grant certiorari likely would not be  
15 made for months. If certiorari is granted, resolution of that case would take much longer.

### 16 **III. DISCUSSION**

17 USAPA's motion is organized around a discussion of three competing interests that  
18 the courts consider, though USAPA misapplies those interests in the facts of this case: (1)  
19 the possible damage to US Airways (or others) that may result from the granting of a stay;  
20

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21 <sup>1</sup> In that lawsuit, USAPA advanced the position of the East Pilots, while the position of  
22 the West Pilots was advanced by Don Addington, John Bostic, Mark Burman, Afshin  
23 Iranpour, Roger Velez, and Steve Wargocki — the “Addington Defendants” in the current  
lawsuit brought by US Airways.

24 <sup>2</sup> The Ninth Circuit's decision in *Addington* did not address the ripeness issues presented  
25 in this case. *Addington* did not discuss any claim for declaratory judgment because the  
26 complaint in that case did not allege such a claim. *Addington* held that there was no  
27 *breach* of the duty of fair representation until USAPA entered into a CBA, but it did not  
28 consider whether the Court has jurisdiction to issue an advance declaratory judgment prior  
to a breach occurring. Indeed, *Addington* did not consider US Airways' rights and  
obligations at all because the Company was not a party to the appeal and had no  
opportunity to set forth the harm to it that justifies judicial relief in this action.

1 (2) the hardship or inequity that USAPA may suffer if required to go forward; and (3) the  
 2 orderly course of justice measured in terms of simplifying or complicating of issues,  
 3 proof, and questions of law which could be expected to result from a stay. (Motion 9:7-  
 4 14.) In discussing the first two factors, USAPA fails to cite any legal authority explaining  
 5 how the factors should be weighed. That authority makes clear that a stay should not be  
 6 granted if there is even a “fair possibility” of harm, which is the case here. The authority  
 7 also makes clear that the cost of litigation, which is the only purported hardship USAPA  
 8 identifies, is not a reason to stay a case. And, in discussing the third factor, USAPA omits  
 9 key authority contrary to its argument, which holds that stays are disfavored in cases, such  
 10 as this one, seeking declaratory relief. Once the authority is considered, it is clear that a  
 11 stay is not justified here.

12 **A. There Is Much More Than A “Fair Possibility” Of Damage To US**  
 13 **Airways If This Action For A Declaratory Judgment Is Stayed.**

14 USAPA shoulders a heavy burden to establish the absence of harm from a stay.  
 15 The Court’s initial consideration is whether “‘there is even a fair possibility that the stay  
 16 . . . will work damage to some one else.’” *Dependable Highway Express, Inc. v.*  
 17 *Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007) (quoting *Landis v. North*  
 18 *American Co.*, 299 U.S. 248, 255 (1936)); *Lockyer*, 398 F.3d at 1112 (same). USAPA  
 19 argues that there is “no possibility of damage” if a stay is granted, but USAPA’s  
 20 arguments are wrong. Indeed, USAPA ignores the injuries alleged in US Airways’  
 21 Complaint, which make clear that there is at least a “fair possibility” that US Airways  
 22 could be harmed.

23 **1. US Airways Faces Substantial Harm, Regardless Of What**  
 24 **Actions It Takes, Absent A Prompt Declaratory Judgment.**

25 USAPA begins its discussion of harm to US Airways by noting that US Airways  
 26 has “repeatedly professed its ‘neutral’ stance with respect to the pilot seniority issue.”  
 27 (Motion 10:8-10.) That misses the point. USAPA is correct that, as alleged in the  
 28 Complaint, US Airways is neutral as to *which* seniority list is included in a single

1 collective bargaining agreement. (Compl. ¶ 1.) US Airways is not neutral, however, as to  
2 *when* the seniority issue is resolved: the issue should be resolved now.

3 A delay in resolving the issues presented by this lawsuit will severely damage US  
4 Airways, which is why US Airways filed this action for a declaratory judgment. In  
5 accordance with its obligations under Section 6 of the RLA, US Airways is currently  
6 engaged in ongoing negotiations for a collective bargaining agreement with USAPA. US  
7 Airways has a statutory duty to respond to USAPA’s seniority integration proposals  
8 during the course of those negotiations. The negotiations are being mediated by the  
9 National Mediation Board, which has the authority to release the parties from negotiations  
10 if and when it determines that its efforts are unsuccessful — which could occur if US  
11 Airways refuses to agree to USAPA’s seniority integration proposals. Following such a  
12 release, the union could engage in a work stoppage after a statutory cooling-off period.  
13 US Airways brought this action seeking a declaratory judgment before it responds to  
14 USAPA’s seniority integration proposals — as it is entitled to do under the Declaratory  
15 Judgment Act, 28 U.S.C. §§ 2201 & 2202.

16 Absent a prompt declaratory judgment, US Airways faces protracted negotiations  
17 regarding a single CBA without guidance as to its rights and obligations, which will  
18 require US Airways to make a Hobson’s choice. If US Airways rejects USAPA’s  
19 seniority proposals, USAPA could engage in a work stoppage that could expose “US  
20 Airways to hundreds of millions of dollars in lost revenue and customer goodwill.”  
21 (Compl. ¶ 4.) If US Airways accepts USAPA’s seniority proposals, the West Pilots have  
22 threatened to bring litigation against US Airways that could invalidate a CBA that took  
23 years to negotiate and expose “US Airways to potentially tens of millions of dollars in  
24 litigation costs and monetary damages.” (Compl. ¶ 4.) Because negotiations are currently  
25 ongoing, a lengthy stay of this lawsuit could prevent it from reaching judgment before  
26 those harms occur. Moreover, any stay of this lawsuit will delay negotiations and will  
27 continue to deprive US Airways of the benefits of a single CBA. This is an impossible  
28 situation for US Airways and creates more than a “fair possibility” of harm from a stay.

1 Although these potential damages are detailed in US Airways' Complaint, USAPA  
2 ignores those damages and relies on misdirection, pointing to statements made by US  
3 Airways executives dealing with other issues during "Earnings Calls" regarding the  
4 Company's quarterly financial results. For example, USAPA trumpets a statement that  
5 "there won't be a big positive financial synergy" from resolving the seniority dispute.  
6 (Motion 10:22-11:10.) US Airways has not alleged, however, that the harm it will suffer  
7 is delay in achieving big positive financial synergies.

8 US Airways has alleged, as discussed above, severe negative consequences if it and  
9 USAPA cannot reach agreement on a lawful, single CBA. (Compl. ¶ 4.) US Airways  
10 will gain important non-financial benefits by finally combining its pilot workforce,  
11 including improving morale and mending relations between opposing pilot groups and  
12 between the Company and its pilots. Also, separate operations consume enormous  
13 management resources. As US Airways' CEO explained, the delay in resolving the  
14 seniority dispute "makes it more difficult for management because we spend a lot of our  
15 time . . . trying very hard to make that work." (Granath Decl. ¶ 8, Ex. E at 9.) A stay will  
16 harm US Airways by prolonging the seniority dispute.

17 **2. USAPA's Remaining Attempts To Negate The Possibility Of**  
18 **Harm Miss The Point.**

19 USAPA asserts that "US Airways cannot be said to be suffering any harm during  
20 the pendency of the *Addington* appellate process, because just last week it reported a  
21 quarterly net profit of \$279 million." (Motion 10:17-20.) That is a *non sequitur*. The fact  
22 that US Airways had a quarterly profit does not mean it will not suffer harm, as discussed  
23 above, absent a declaratory judgment.

24 USAPA also notes that US Airways was dismissed as a defendant in *Addington*.  
25 (Motion 10:10-13.) That is true but irrelevant. In *Addington*, the West Pilots sued US  
26 Airways for breach of a collective bargaining agreement based on US Airways' furlough  
27 of certain pilots. That claim was dismissed because the system board of adjustment has  
28 exclusive jurisdiction over claims for breach of a CBA and none of the judicially-

1 recognized exceptions was deemed applicable.<sup>3</sup> *Addington v. US Airline Pilots Ass’n*, 588  
2 F. Supp. 2d 1051, 1062-64 (D. Ariz. 2008); *see also Consol. Rail Corp. v. Ry. Labor*  
3 *Executives’ Ass’n*, 491 U.S. 299 (1989); *Ass’n of Flight Attendants v. Horizon Air Indus.,*  
4 *Inc.*, 280 F.3d 901, 904, 906 (9th Cir. 2002). But that claim has nothing to do with the  
5 issues presented in this case. The propriety of US Airways furloughing pilots in  
6 accordance with its existing, separate CBAs is a different issue than the propriety of US  
7 Airways reaching agreement on an integrated seniority list in a new single CBA. Here,  
8 US Airways seeks a declaratory judgment regarding US Airways’ *statutory* obligations  
9 and rights under the RLA in negotiating for an integrated seniority list, and not the  
10 resultion of a *contractual* dispute regarding the meaning of a CBA. This Court, not the  
11 system board of adjustment, has exclusive jurisdiction over the statutory claim. *See, e.g.,*  
12 *Price v. S. Pac. Transp. Co.*, 586 F.2d 750, 752 (9th Cir. 1978). USAPA is therefore  
13 wrong in arguing that US Airways’ positions on subject matter jurisdiction are somehow  
14 inconsistent.

15 Finally, USAPA asserts that “[i]t was not until after the Ninth Circuit issued its  
16 ruling . . . that US Airways felt it was somehow necessary to seek a declaratory  
17 judgment.” (Motion 10:10-16.) That is true, but it provides no support for USAPA’s  
18 motion to stay. While US Airways had hoped that *Addington* would resolve the seniority  
19 dispute one way or the other, the Ninth Circuit declined to do so. Thereafter, US Airways  
20 was compelled to file this action because USAPA and the West Pilots made conflicting  
21 demands and threats against US Airways resulting from their respective interpretations of  
22 the Ninth Circuit’s decision. USAPA reads *Addington* as authorizing an agreement to a  
23 non-Nicolau seniority list, as mandated by USAPA’s Constitution and Bylaws. (Compl.  
24 ¶ 32.) By contrast the West Pilots read *Addington* only as a ruling on ripeness and believe  
25 it authorizes a new lawsuit if agreement is reached on a non-Nicolau seniority list.

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26 <sup>3</sup> A system board of adjustment is an arbitration panel with a neutral arbitrator created by  
27 the CBA pursuant to the mandate of the RLA, with jurisdiction to resolve disputes  
28 regarding the interpretation or application of collective bargaining agreements. 45 U.S.C.  
§ 153, Second.

1 (Compl. ¶ 33.) As a result, the legal dispute continues — USAPA and the West Pilots  
2 have taken intransigent opposing positions regarding what seniority list can be included in  
3 the single CBA. And in the meantime, US Airways has a current obligation under the  
4 RLA to negotiate with USAPA regarding a collective bargaining agreement and the  
5 seniority issue. The timing of this action is dictated by US Airways’ need for prompt  
6 resolution of that dispute, following the Ninth Circuit’s opinion finding a lack of ripeness  
7 in *Addington* and the denial of *en banc* review.<sup>4</sup>

8 USAPA’s evidence therefore fails to satisfy its burden to show the absence of a  
9 “fair possibility” of damage to anyone by granting a stay.

10 **B. As A Matter Of Law, The Cost Of Litigation Does Not Constitute “A**  
11 **Clear Case Of Hardship Or Inequity” Sufficient To Justify A Stay.**

12 Ninth Circuit authority requires a party moving for a stay of proceedings to  
13 establish “a clear case of hardship or inequity.” *See, e.g., Lockyer*, 398 F.3d at 1112 (“the  
14 party seeking the stay ‘must make out a clear case of hardship or inequity.’”) (quoting  
15 *Landis*, 299 U.S. at 255). USAPA wholly fails to satisfy that burden. USAPA does not  
16 cite *any evidence* establishing any hardship or inequity that it would suffer if the case is  
17 not stayed. USAPA also does not cite *any authority* regarding what kinds of evidence  
18 would be sufficient to make such a showing.

19 The only purported hardship USAPA identifies in its Motion is the need “to  
20 allocate valuable time and resources toward prosecution and defense of this action.”

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21 <sup>4</sup> USAPA also briefly discusses the absence of harm to the Addington Defendants. US  
22 Airways will leave the Addington Defendants to respond to that argument. US Airways  
23 does note that, at the conclusion of its discussion, USAPA argues that the lack of injury to  
24 the Addington Defendants “is the law of the case.” (Motion 12:6-7.) Although USAPA  
25 cites no authority regarding the law of the case doctrine, it is clear that the doctrine cannot  
26 preclude US Airways from establishing the harm to it. *See Eichman v. Fotomat Corp.*,  
27 880 F.2d 149 (9th Cir. 1989) (“law of the case” doctrine applies to “subsequent  
28 proceedings in the same case” or another case “involving the same parties.”). US Airways  
was not a party to the prior appeal, and the Ninth Circuit has neither considered nor  
decided whether there is any harm to US Airways. *See U.S. ex rel. Lujan v. Hughes*  
*Aircraft Co.*, 243 F.3d 1181, 1186 (9th Cir. 2001) (“The [law of the case] doctrine does  
not apply to issues not addressed by the appellate court.”).

1 (Motion 12:21-23.) Ninth Circuit authority is clear, however, that the expense of  
 2 litigation is not a sufficient hardship to justify a stay. *See Lockyer*, 398 F.3d at 1112 (“To  
 3 be sure, if the stay is vacated [defendant] must proceed toward trial in the suit in the  
 4 district court, but being required to defend a suit, without more, does not constitute a  
 5 ‘clear case of hardship or inequity’ within the meaning of *Landis*.”); *Dependable Highway*  
 6 *Express*, 498 F.3d at 1065 (“[Defendant] has failed to establish a sufficient case of  
 7 hardship: as the *Lockyer* court noted, ‘being required to defend a suit [if the stay is  
 8 vacated], does not constitute a “clear case of hardship or inequity” within the meaning of  
 9 *Landis*.”).

10 Thus, the Ninth Circuit has made clear that the expense of litigation is not a  
 11 hardship justifying a stay. Even if it were, however, it would not support a stay here.  
 12 USAPA itself characterizes the chances of *Addington* affecting this litigation as a mere  
 13 “possibility, even if remote.” (Motion 12:19-20.) USAPA further contends “[i]t is likely  
 14 that the Supreme Court will deny the request for certiorari,” and it seeks a stay only “in  
 15 the off-chance that the Supreme Court decides to grant certiorari.” (Motion 13:1-3.) In  
 16 other words, even USAPA believes it will be required to incur the expense of litigation  
 17 sooner or later. There is nothing to be gained by staying that expense until some  
 18 indefinite time in the future.

19 Balancing the possibility of harm to US Airways if a stay is granted against the  
 20 alleged hardship to USAPA if a stay is denied confirms that USAPA’s motion should be  
 21 rejected.

22 **C. Staying This Action Would Not Further The Orderly Course Of**  
 23 **Justice; This Is A Clear Case In Which “Justice Delayed Is Justice**  
 24 **Denied.”**

25 **1. USAPA’s “Judicial Efficiency” Argument Piles Speculative**  
 26 **Outcomes On Improbable Events To Seek A Stay Of A Live**  
 27 **Dispute Based On The “Off-Chance” That This Suit Could Be**  
 28 **Impacted By *Addington*.**

USAPA seeks a stay of this action pending resolution of *Addington*. But because  
*Addington* was resolved solely on ripeness grounds, nothing in the Ninth Circuit’s

1 decision in *Addington* directly affects this case. US Airways was not a party to the appeal  
2 in *Addington*, and the Ninth Circuit did not consider whether a claim by US Airways’ for  
3 a declaratory judgment (in advance of any breach of any legal obligation by US Airways  
4 in the negotiating process) was ripe. The Ninth Circuit’s Opinion, therefore, does not  
5 affect this lawsuit.

6 USAPA seeks a stay of this action pending the filing of a petition for a writ of  
7 certiorari and a decision on that petition by the Supreme Court. USAPA claims that the  
8 length of the stay will likely be “relatively short” because the Supreme Court likely will  
9 deny any petition for certiorari. (Motion 13:1-2.) That argument misses the mark. Given  
10 the length of time it will take to resolve this lawsuit, any stay will make it difficult for US  
11 Airways to obtain a declaratory judgment in time for it to matter. Negotiations for a  
12 single CBA are ongoing now, and they could end — and US Airways could be compelled  
13 to take a position in the seniority dispute — before this case reaches judgment even if the  
14 case is stayed only until certiorari is denied. Moreover, US Airways will continue to be  
15 deprived of the benefits of a single CBA during that period of delay. Worse, in the case of  
16 a “relatively short” stay, there is no benefit to be gained: the denial of certiorari will have  
17 no effect on this case.

18 Indeed, even under USAPA’s logic, *Addington* will have no impact on this case  
19 unless three highly improbable, contingent future events occur:

20 First, the Supreme Court must grant certiorari in *Addington*. No petition for  
21 certiorari has yet been filed. Even if the West Pilots file such a petition, USAPA believes  
22 “[i]t is likely that the Supreme Court will deny the request for certiorari.” (Motion 13:1.)  
23 Thus, USAPA seeks a stay that most “likely” will not serve any purpose.

24 Second, the Supreme Court must reverse *Addington*’s holding that the dispute was  
25 not ripe and either address, or remand to the Ninth Circuit to address, the underlying claim  
26 of breach of the duty of fair representation. It is unlikely that the Supreme Court would  
27 address that issue in the first instance, and USAPA itself acknowledges that the possibility  
28

1 “of a remand requiring the Ninth Circuit to address the arguments on the merits” is  
2 “remote.” (Motion 12:19-20.)

3 Third, the Ninth Circuit must issue a new Opinion resolving the question whether  
4 USAPA and US Airways may negotiate for and agree to a non-Nicolau seniority list. It is,  
5 however, entirely speculative to say whether the Ninth Circuit would or would not issue  
6 such a decision, particularly given that US Airways is not even a party in *Addington*.

7 Moreover, in the very unlikely event that *Addington* has any effect at all on this  
8 case, it is certain that no such effect will occur until several years from now because it  
9 would take that long for completion of those three highly improbable, contingent future  
10 events. That, too, is fatal to USAPA’s motion for a stay. As the Ninth Circuit has  
11 explained, “[a] stay should not be granted unless it appears likely the other proceedings  
12 will be concluded within a reasonable time in relation to the urgency of the claims  
13 presented to the court.” *Leyva v. Certified Grocers of California*, 593 F.2d 857, 864 (9th  
14 Cir. 1979). The courts “balance the length of the stay against the strength of the  
15 justification given for it.” *Yong v. INS*, 208 F.3d 1116, 1119 (9th Cir. 2000). USAPA  
16 attempts to justify a lengthy stay based on the admittedly “remote” possibility of  
17 *Addington* affecting the outcome in this case. That justification is not good enough to  
18 deny US Airways prompt resolution of its time-sensitive claims for declaratory relief.

19 Absent prompt declaratory relief, US Airways will be compelled to bargain with  
20 USAPA regarding seniority as a part of its obligation to negotiate for a CBA, but it will be  
21 deprived of the guidance it needs regarding how the seniority dispute should be resolved.  
22 It is not the potential for a decision in *Addington* that could render this lawsuit moot, but  
23 merely the passage of time. That, however, is true for any declaratory judgment action —  
24 wait long enough, and a suit for an advance determination of a party’s obligations will  
25 turn into a suit for breach of those obligations. That is the risk US Airways faces here if  
26 USAPA’s motion for a stay is granted. Delaying this action will deny US Airways any  
27 effective relief, regardless of whether the East or West Pilots prevail in *Addington*. Thus,  
28 USAPA’s motion for a stay should be denied.

1                   **2. Contrary To USAPA’s Argument, The Fact That This Action**  
2                   **Seeks A Declaratory Judgment Militates Against, Not In Favor**  
3                   **Of, A Stay.**

4                   The Ninth Circuit has made clear that stays are disfavored in actions seeking  
5                   declaratory or injunctive relief. *See Lockyer*, 398 F.3d at 1110 (vacating stay and  
6                   distinguishing a decision, in which a stay was affirmed, where the plaintiff “sought only  
7                   damages. It alleged no continuing harm and sought no injunctive or declaratory relief.”).  
8                   The reason for this rule is clear. In actions seeking only damages, the only harm in  
9                   staying the action is delay in the recovery of damages — an injury that can be remedied  
10                  through an award of interest. An action for declaratory or injunctive relief, however,  
11                  seeks to prevent *future* harm. *See id.* at 1112 (holding that unlike plaintiffs “who sought  
12                  only damages for past harm, [plaintiff] seeks injunctive relief against ongoing and future  
13                  harm.”); *see also Ayotte v. Am. Econ. Ins. Co.*, 2010 U.S. Dist. LEXIS 34144 at \*5-6 (D.  
14                  Mont. 2010) (courts more appropriately enter stay orders where a party seeks only  
15                  damages, does not allege continuing harm, and does not seek injunctive or declaratory  
16                  relief since a stay would result only in delay in monetary recovery.”); *Melendres v.*  
17                  *Maricopa County*, 2009 U.S. Dist. LEXIS 75364 at \*6 (D. Ariz. 2009) (“fact that  
18                  Plaintiffs here seek injunctive relief against ongoing and future harm further counsels  
19                  against a stay.”).

20                  USAPA cites two decisions standing for the proposition that the exercise of  
21                  jurisdiction over a declaratory judgment action is discretionary and that the Court has  
22                  discretion to stay or dismiss such an action. (Motion 14:5-11, citing *Public Affairs*  
23                  *Associates v. Rickover*, 369 U.S. 111, 112 (1962); *Wilton v. Seven Falls Co.*, 515 U.S.  
24                  277, 288 (1995).)<sup>5</sup> The existence of such discretion, however, does not answer the  
25                  question of how the Court should exercise its discretion in a particular case. The exercise

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26                  <sup>5</sup> The Ninth Circuit has explained, however, that “[w]e review a district court’s stay order  
27                  for abuse of discretion, but this standard is ‘somewhat less deferential’ than the abuse of  
28                  discretion standard used in other contexts.” *Lockyer*, 398 F.3d at 1105 (quoting *Yong*,  
208 F.3d at 1119).

1 of the Court’s discretion is guided by the three factors discussed above, which militate  
2 against any stay.

3 USAPA also cites *McGraw-Edison Co. v. Preformed Line Products Co.*, 362 F.2d  
4 339, 343 (9th Cir. 1966) for the proposition that a stay or dismissal is appropriate ““where  
5 [the declaratory action] is being sought merely to determine issues which are involved in a  
6 case already pending.”” (Motion 14:11-14.) But USAPA leaves out the full quote, which  
7 states that “jurisdiction is not to be declined merely . . . because of the pendency of  
8 another suit, if the controversy between the parties is such that it will not necessarily be  
9 determined therein.” *McGraw-Edison*, 362 F.2d at 342-43 (quoting *Yellow Cab. Co. v.*  
10 *City of Chicago*, 186 F.2d 946, 950-51 (7th Cir. 1951)). As discussed above, *Addington*  
11 will “not necessarily” — and, in fact, almost certainly will not — resolve the issues  
12 presented by this lawsuit.

#### 13 **IV. CONCLUSION**

14 US Airways is currently engaged in negotiations and needs to know what its legal  
15 rights and obligations are now. US Airways suffers continuing harm from a delay in  
16 resolving the seniority dispute between the East and West Pilots, which a stay will only  
17 exacerbate. Moreover, if the Court stays this action and forces US Airways to wait until  
18 those negotiations are over to obtain guidance, US Airways will be denied any effective  
19 relief. A declaration of US Airways’ rights after it is forced to take sides in the seniority  
20 dispute will come too late — regardless of what might happen in *Addington*, which even  
21 USAPA admits is unlikely to have any effect here. Thus, US Airways respectfully  
22 requests that USAPA’s motion for a stay be denied.

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Dated: August 16, 2010

O'Melveny & Myers LLP

By: Robert A. Siegel  
Robert A. Siegel (*pro hac vice*)  
Chris A. Hollinger (*pro hac vice*)  
Mark W. Robertson (*pro hac vice*)  
Ryan W. Rutledge (*pro hac vice*)  
400 South Hope Street, Suite 1500  
Los Angeles, CA 90071-2899

US Airways, Inc.  
Karen Gillen, State Bar No. 018008  
111 West Rio Salado Parkway  
Tempe, AZ 85281

Attorneys for Plaintiff US Airways, Inc.

NB1:802449.3

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**CERTIFICATE OF SERVICE**

**Plaintiff US Airways, Inc.’s Opposition to  
Defendant USAPA’s Emergency Motion to Stay All Further Proceedings.**

I hereby certify that on August 16, 2010, I electronically transmitted the foregoing document to the United States District Court Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing.

\_\_\_\_\_  
/s/ Ryan Rutledge  
Ryan Rutledge