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September 8, 2010

Exhibit C

VIA ELECTRONIC MAIL
AND FIRST CLASS MAIL

Andrew S. Jacob, Esq., ajacob@polsinelli.com
Polsinelli Shughart, P.C.
Security Title Plaza
3636 N. Central Avenue, Suite 1200
Phoenix, AZ 85012

Re: **RULE 11 MOTION**
US Airways Inc. v. Addington et al (CASE NO. 2:10-cv-01570-PHX-ROS)
Addington Pilots Answer And Cross Claim (Doc. No. 34), filed 09/07/10

Dear Counsel:

Please find enclosed and hereby served upon you, "Defendant USAPA's Rule 11 Motion For Sanctions Against The *Addington* Defendants For Failure To Withdraw Cross Claim." I can be reached directly by at my office at (612) 341-9080, or by email at ngranath@ssmplaw.com.

Sincerely,
Seham, Seham, Meltz, Petersen, LLP

/s/**Nicholas Paul Granath**



Nicholas Paul Granath, Esq.
Counsel, *Pro Hac Vice*, for Defendant USAPA

cc:
VIA ELECTRONIC MAIL
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Marty Harper Esq., mharper@polsinelli.com
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8
9 **UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

10 US AIRWAYS, INC.,

11 Plaintiff,

12 v.

13 DON ADDINGTON, JOHN BOSTIC,
MARK BURMAN, AFSHIN IRANPOUR,
14 ROGER VELEZ, and STEVE
WARGOCKI, and
US AIRLINE PILOTS ASSOCIATION,

15 Defendants.
16

Case No. 2:10-cv-1570-PHX-ROS

**DEFENDANT USAPA’S RULE 11
MOTION FOR SANCTIONS
AGAINST THE *ADDINGTON*
DEFENDANTS
FOR FAILURE TO WITHDRAW
CROSS CLAIM**

17
18 TO : ADDINGTON DEFENDANTS, ALL PARTIES, AND THEIR ATTORNEYS
OF RECORD.

19 Defendant, US Airline Pilots Association (“USAPA” or Defendant), moves
20 pursuant to Fed. R. Civ. P. 11(c)(2) for an order granting sanctions, including attorneys’
21 fees and costs, for the *Addington* Defendants’ failure to withdraw their Cross Claim
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1 against USAPA (Doc. No. 34), filed on September 7, 2010, in violation of Rules
2 11(b)(1), 11(b)(2), 11(b)(3), Local Rule 5.5(g), and 28 U.S.C. § 1927.

3 The grounds for this motion are as follows:

4 1. Violation of the law of the case and *res judicata*. The Cross Claim asserts
5 the very claim that the Ninth Circuit in *Addington v. US Airline Pilots Ass'n*, 606 F.3d
6 1174 (9th Cir. 2010) ("*Addington v. USAPA*") ordered the District Court to dismiss for
7 lack of ripeness, and which the District Court did dismiss for lack of subject matter
8 jurisdiction (*See* Case No. CV-08-1633-PHX-NVW (consolidated) at Doc. No. 650,
9 August 13, 2010). The Cross Claim is a mere cut-and-paste version of the Second
10 Amended Complaint in *Addington v. USAPA*(Doc. Nos. 611, 612, filed August 31,
11 2009). As a result of the Ninth Circuit's decision on June 4, 2010, ordering dismissal of
12 the entire case, the District Court issued an order on June 7, 2010 (Doc. No. 641),
13 which rendered the Second Amended Complaint moot. Then, after plaintiffs filed a
14 motion to "reconsider" asking for modification of the mandate to allow their damages
15 claim to proceed, the Ninth Circuit denied that motion as well. (Case: 09-16564;
16 07/08/2010; ID: 7397203; DktEntry: 51). A motion to stay the mandate was also denied
17 and the mandate issued on August 10, 2010, requiring dismissal of the entire case
18 without qualification or exception. Nothing has happened since to moot, vacate, or
19 diminish the mandate.

20 2. Bad faith attempt to pursue claims already dismissed.

21 3. Lack of subject matter jurisdiction, including the same grounds asserted in
22

1 the Rule 11 motion in *Addington v. USAPA* served on September 11, 2009, which is
2 incorporated into this motion (and attached hereto, as Ex. A), directed against the
3 Second Amended Complaint.

4 4. Failure to state a colorable claim as a matter of law or fact, including the
5 same grounds asserted in the Rule 11 motion in *Addington v. USAPA* served on
6 September 11, 2009, which is incorporated into this motion (and attached hereto, as Ex.
7 A), directed against the Second Amended Complaint.

8 5. Time barred, including the same grounds asserted in the Rule 11 motion
9 in *Addington v. USAPA* served on September 11, 2009, which is incorporated into this
10 motion (and attached hereto, as Ex. A), directed against the Second Amended
11 Complaint.

12 6. Preemption under the Railway Labor Act, including the same grounds
13 asserted in the Rule 11 motion in *Addington v. USAPA* served on September 11, 2009,
14 which is incorporated into this motion (and attached hereto, as Ex. A), directed against
15 the Second Amended Complaint.

16 7. The un-cured pleading is presented for an improper purpose, to harass and
17 to needlessly increase the cost of litigation in violation of Rule 11(b)(1). It presents a
18 dismissed claim that is not warranted by existing law, or by a nonfrivolous argument for
19 extending, modifying or reversing existing law, in violation of Rule 11(b)(2). It asserts
20 factual contentions without evidentiary support, or which will not after a reasonable
21 opportunity for further investigation or discovery have evidentiary support, in violation
22

1 of Rule 11(b)(3).

2 8. Pursuant to Rule 11(c)(2), this motion was served on counsel for the
3 Addington defendants on September 8, 2010. The *Addington* defendants have failed to
4 withdraw their Cross Claim within 21 days after service of the motion.

5 9. This motion will be filed with Defendant USAPA's Memorandum of Law
6 in Support of Rule 11 Motion for Failure to Withdraw Cross Claim.

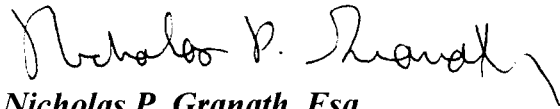
7 WHEREFORE, Defendant USAPA respectfully requests that its motion for
8 sanctions pursuant to Rule 11 be granted, and that USAPA be awarded its attorneys'
9 fees and costs arising from this motion, and for any other litigation cost incurred by
10 reason of having to defend against the Cross Claim in this action, and any other relief
11 that the Court deems warranted, including equitable and up to dismissal.

12 A proposed order is separately submitted.
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Respectfully Submitted,

Dated: September 8, 2010



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

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Exhibit A

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Re: **RULE 11 MOTION**

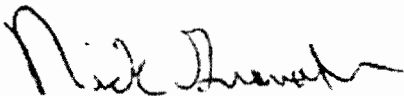
Addington, et. al. v. US Airline Pilots Ass'n, et. al. (08-cv-1633)
Second Amended Complaint, Docket Nos. 611, 612

Dear Counsel:

Please find enclosed and hereby served upon you, "Defendant USAPA's Rule 11 Motion For Sanctions For Failure To Withdraw Plaintiffs' Second Amended Complaint."

I can be reached directly by at my office at (612) 341-9080, or by email at ngranath@ssmplaw.com.

Sincerely,
Seham, Seham, Meltz, Petersen, LLP



Nick Granath
Counsel, *Pro Hac Vice*, for Defendant USAPA

cc:
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9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF ARIZONA**

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

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

13 Plaintiffs,

DEFENDANT USAPA'S
RULE 11
MOTION FOR SANCTIONS
FOR FAILURE TO WITHDRAW
PLAINTIFFS'
SECOND AMENDED COMPLAINT

14 vs.

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

Defendants.

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

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

19 Plaintiffs,

20 vs.

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

Defendants.

TO: Andrew S. Jacob, Esq., A.Jacob@Polsinelli.com, and to Polsinelli Shughart, P.C., admitted counsel for the Plaintiffs, Security Title Plaza, Suite 1200, Phoenix, AZ 85012, Tel. 602 650-2000, Fax. 602 264-7033, and to all its named represented parties in this matter.

COMES NOW Defendant USAPA to move this Court, pursuant to Fed. R. Civ. P. 11(c)(2), for an order granting sanctions, including attorneys fees and costs, pursuant to Rule 11(c)(4) and 28 U.S.C. § 1927, for Plaintiffs' failure to withdraw Plaintiffs' "Second Amended Complaint" of August 31, 2009 (Doc. Nos. 611 and 612), in violation of Rules 11(b)(1), 11(b)(2), 11(b)(3), Local Rule 5.5(g), and 28 U.S.C. § 1927.

The grounds for this motion are:

1. The specific conduct that violates Rule 11(b)(1), 11(b)(2), 11(b)(3), LR 5.5(g) and 28 U.S.C. § 1927 is Plaintiffs' Second Amended Complaint of August 31, 2009 (Doc. Nos. 611 and 612), ¶¶ 120 thru 163 and ¶ 164 collectively, un-cured by the subsequent failure to timely withdraw after notice and reasonable opportunity to respond were provided by service of this motion on September 11, 2009, pursuant to Rule 11(c)(2).

2. The un-cured pleading is presented for an improper purpose, to harass and to needlessly increase the cost of litigation in violation of Rule 11(b)(1). It presents a damages claim that is not warranted by existing law, or by a nonfrivolous argument for extending, modifying or reversing existing law, in violation of Rule 11(b)(2). And it asserts factual contentions without evidentiary support, or which will not after a reasonable opportunity for further investigation or discovery have evidentiary support, in violation of Rule 11(b)(3).

3. The specific grounds include:
 - a. The Second Amended Complaint fails to state a claim as a matter of law or fact;
 - b. The Second Amended Complaint is time barred;
 - c. The Court lacks subject matter jurisdiction;
 - d. The Second Amended Complaint is preempted by the Railway Labor Act and the mandatory dispute resolution procedures applicable to collective bargaining;
 - d. The Second Amended Complaint violates Rule 15, substantively and procedurally;
 - e. The Second Amended Complaint is a bad faith attempt to pursue claims already dismissed.

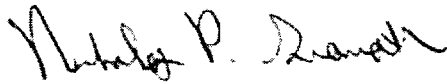
4. The argument for this motion will be separately stated in "Defendant USAPA's Memorandum Of Points and Authorities In Support Of Its Motion For Rule 11 Sanctions For Failure To Withdraw Plaintiffs' Second Amended Complaint," which is incorporated by reference in this motion.

5. In addition, this motion will be based on the aforesaid Memorandum, the pleadings, the undisputed material facts in the record, the argument of counsel, and such other evidence, facts, or materials as the Court may deem appropriate.

WHEREFORE, Defendant USAPA respectfully moves that its motion for sanctions pursuant to Rule 11 be GRANTED pursuant to a separately to be submitted proposed Order, and that Defendant be awarded attorneys fees and costs arising from this motion and from any other litigation, trial or appeal defense incurred by reason of defending against the Second Amended Complaint.

Dated: September 11, 2009

By:



/s/ Nicholas P. Granath, Esq.

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ATTORNEYS FOR DEFENDANT
US AIRLINE PILOTS ASSOCIATION

CERTIFICATE OF SERVICE

This is to certify that:

On the date indicated herein below, true and accurate copies of the:

“DEFENDANT USAPA’S RULE 11 MOTION FOR SANCTIONS AGAINST THE *ADDINGTON* DEFENDANTS FOR FAILURE TO WITHDRAW CROSS CLAIM” with cover letter

Were served upon:

Andrew S. Jacob, Esq.
Mary Harper, Esq.
Polsinelli Shughart, P.C.
Security Title Plaza, Suite 1200
Phoenix, AZ 85012, Tel. 602 650-2000

By means of electronic mail and first class US mail, postage pre-paid to:

Andrew S. Jacob, Esq., AJacob@Polsinelli.com

Marty Harper Esq., MHarper@Polsinelli.com

On September 8, 2010, by:



/s/ Nicholas Paul Granath, Esq.

Nicholas Paul Granath, Esq.