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12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF ARIZONA**

14 US AIRWAYS, INC., a Delaware
15 corporation, *et al.*,

16 *Plaintiff,*

17 vs.

18 Don ADDINGTON; John BOSTIC;
19 Mark BURMAN; Afshin
20 IRANPOUR; Roger VELEZ; and
21 Steve WARGOCKI, on behalf of
22 themselves and all other
23 similarly-situated individuals,

24 and

25 US AIRLINE PILOTS ASS'N, an
26 unincorporated association,

27 *Defendants.*

CASE NO.

2:10-cv-01570-PHX-ROS

**ADDINGTON DEFENDANTS' NOTICE
OF RELATED ACTIONS AND
MOTION FOR EXPEDITED
CONSIDERATION OF MOTION FOR
CLASS CERTIFICATION [Doc. 91]**

28 Plaintiffs Don ADDINGTON, John BOSTIC, Mark BURMAN, Afshin
IRANPOUR, Roger VELEZ; and Steve WARGOCKI (the "Addington
Pilots"), file this *Notice of Related Actions and Motion for Expedited
Consideration of Motion for Class Certification [Doc. 91]*. This motion is
supported by the *Memorandum of Points and Authorities* that follows.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. BACKGROUND

3 A. USAPA continues to dispute whether the West Pilots
4 are proper parties.

5 US Airways filed this declaratory action on July 26, 2010, to
6 determine whether it would be liable to the former America West Pilots
7 (“West Pilots”) if (in the future) it were to negotiate and implement with
8 Defendant US Airline Pilots Association (“USAPA”) a collective
9 bargaining agreement (“CBA”) that did not incorporate the integrated
10 seniority list created in an arbitration proceeding known as the Nicolau
11 Arbitration. Such a CBA is referred to as a “Non-Nicolau CBA.” US
12 Airways pleaded this as a defendant class action with six named class
13 representatives (the “Addington Defendants”). On June 1, 2011, this
14 Court held that the West Pilots are “necessary parties” to this action
15 because “the relief US Airways seeks cannot be granted in their
16 absence.” Doc. 85 at 9:9 to 9:10.

17 Ignoring this Court’s June 1 Order, on June 14, 2011, USAPA
18 filed a counterclaim, Doc. 88, against US Airways that seeks to litigate
19 this matter without the West Pilots. US Airways moved to dismiss
20 USAPA’s counterclaim on that basis. Doc. 98. USAPA responded that
21 that the West Pilots should be bound to the outcome of their
22 counterclaim even though they are not parties to that claim. Doc. 99 at
23 1:13 to 1:16. US Airways filed its reply on August 4, 2011, arguing
24 that the West Pilots must be defendants to USAPA’s counterclaim.
25 Doc. 102 at 3:11 to 3:12.

26 On June 24, 2011, the Addington Defendants filed an Amended
27 Motion for Class Certification (amended to incorporate the newly
28 announced *Dukes* decision). Doc. 91. USAPA filed a response opposing

1 class certification. Doc. 92. The Addington Defendants filed their reply
2 on July 7, 2011. Doc. 95. That same day, US Airways filed a statement
3 supporting the motion for class certification. Doc. 96.

4 **B. Two related litigations were filed in other districts**
5 **during the pendency of this action.**

6 Strife over the negotiation of the CBA needed to integrate Airline
7 operations continues to mount six years after the merger. On May 27,
8 2011, USAPA filed *U.S. Airline Pilots Association v. US Airways, Inc.*,
9 11-cv-2579, in the U.S. District Court, Eastern District of New York. In
10 this action, USAPA seeks, *inter alia*, to enjoin US Airways from what it
11 alleges is a failure to conduct CBA negotiations in good faith.

12 On July 29, 2011, US Airways filed *US Airways v. US Airline Pilots*
13 *Association*, 11-cv-00371, in the U.S. District Court, Western District
14 of North Carolina (Charlotte). In this action, US Airways seeks to
15 enjoin USAPA and its officers and members “from engaging in an
16 ongoing unlawful pilot slowdown campaign.” A copy of this Complaint
17 is attached hereto as Exhibit “A.”

18 US Airways attributes all the pilot misconduct alleged in its
19 complaint to the East Pilots, the pilots who worked for the former US
20 Airways prior to the 2005 merger with America West. *See id.* at ¶ 82 (
21 “[D]ata demonstrates that the East pilots have been engaged in a
22 concerted effort to alter the status quo and illegally slow down the
23 operation, and the West pilots have not altered their behavior.”).

24 **C. USAPA seeks a precipitous completion of CBA**
25 **negotiations before there can be judgment in this action.**

26 Both the New York and North Carolina actions are evidence of
27 USAPA’s efforts to pressure US Airways to agree to a Non-Nicolau CBA
28 before there can be a judgment in this litigation. The New York case

1 directly seeks an injunction to exert such pressure. The North Carolina
2 case is evidence of illegal work actions being used to exert such
3 pressure. This Court should rightly take affront at these efforts.

4 **II. LEGAL ARGUMENT**

5 “Under Fed. R. Civ. P. 23(c)(1), a class must be certified as soon as
6 practicable after commencement of the action. . . .” *Blackie v. Barrack*,
7 524 F.2d 891, 897 (9th Cir. 1975); *see Eisen v. Carlisle & Jacquelin*,
8 417 U.S. 156, 177-78 (1974) (same). “[M]otions to certify are filed, on
9 average, within three to four months after the filing of an action, and
10 the motions are ruled upon, on average, within three to eight months.”
11 *Armstrong v. Martin Marietta Corp.*, 138 F.3d 1374, 1389 (11th Cir.
12 1998) (en banc). This month starts the second year of this litigation.
13 Based on the forgoing, it is time to address class certification.

14 No only is it time to address class certification but, overall, this
15 action merits expedited consideration to the extent permitted by the
16 Court’s busy docket. The impact of the underlying seniority dispute is
17 affecting the public’s convenience. That can only worsen until CBA
18 negotiations are completed. CBA negotiations cannot be completed
19 until there is judgment in this case on the merits. There can be no
20 judgment before there is class certification. Notwithstanding the
21 Court’s heavy workload, *see Gen. Or. No. 11-02* (D. Ariz. Feb. 1, 2011),
22 therefore, the Addington Defendants respectfully ask this Court to
23 provide expedited consideration of their motion for class certification

24 **III. CONCLUSION**

25 For the reasons provided above, the Addington Defendants
26 respectfully ask the Court to provide expedited consideration of their
27 motion for class certification, Doc. 91, filed on June 24, 2011.

1 Dated this 5th day of August, 2011.

2 **POLSINELLI SHUGHART, PC**

3 */s/ Andrew S. Jacob*

4 By _____

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13 **CERTIFICATE OF SERVICE**

14 I hereby certify that on this 5th day of August 2011, I
15 electronically transmitted the foregoing document to the U.S. District
16 Court Clerk’s Office by using the ECF System for filing and
17 transmittal.

18 */s/Andrew S. Jacob*

19 By _____