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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

US Airways, Inc., a Delaware Corporation,

Plaintiff,

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. 2:10-cv-01570-PHX-ROS

DEFENDANT USAPA'S RESPONSE TO ADDINGTON DEFENDANTS' MOTION FOR EXPEDITED CONSIDERATION OF MOTION FOR CLASS CERTIFICATION

While rejecting as spurious the instant motion's rationale, including the claim of "evidence" from allegations made in other courts and especially the unfounded allegation that USAPA "seeks a precipitous completion of CBA negotiations" – USAPA *agrees* with the Addington defendants that the class-action motion, indeed this entire case, should proceed as expeditiously as the Court may allow. In fact, it is US Airways that has promised its own class action motion, but instead sat on its hands, not USAPA. USAPA would welcome this Court's attention to all pending motions and is eager to bring its own dispositive motion to allow this Court to enter judgment as soon as it may. In support USAPA respectfully states the following:

First, *USAPA has sought to expedite* the class-action issue, not to delay it. It did so by expressing it willingness to expedite class-action depositions.[1] The movant, the Addington defendants, ignored this offer despite the fact that in the dismissed litigation before Judge Wake the parties cooperated in exactly this fashion to expedite class action determination in that case. USAPA's offer still stands. Respectfully, the Addington defendants have thrown a rock in a proverbial glass house.

Second, the *company has dragged its feet* on the issue of class certification, and done just the opposite of what it has represented to this Court it would do, i.e. that it would bring its own motion for class certification. Thus, defendants' cavil would have better been made to the plaintiff. When the company first filed its declaratory judgment action in July 2010, it alleged in its Complaint that the seniority situation was "untenable." Moreover, in subsequent filings, the company argued that a "delay in resolving the issues presented by

[1] *See* Doc. No. 92, ECF p. 15, fn. 11 – stating USAPA was prepared on June 27th to conduct depositions on an "expedited and block basis".

this lawsuit will severely damage US Airways, which is why US Airways filed this action for a declaratory judgment." (Doc. No. 31 at 6:3-4). USAPA never accepted these arguments, but viewed the company's filing as nothing more than a delay tactic to avoid negotiation and continue the pilots' divide while the company reaped hundreds of millions of dollars in record profits. Unfortunately, the company's dilatory litigation tactics have not changed since inception of this lawsuit.

Shortly after the Court's Order was issued on USAPA's motion to dismiss, the Addington defendants filed a motion for class certification on June 10, 2011. On July 7, 2011, the company filed a statement in support of the Addington defendants' motion to certify advising the Court that, "US Airways will ***shortly*** file a motion of its own requesting certification of the West Pilot Class under Federal Rule of Civil Procedure 23(b)(1) and 23(b)(2)." (Doc. No. 96 at 2) (emphasis added). More than a month has now elapsed since US Airways promised the Court that it would "shortly" be filing its class certification motion, yet US Airways has failed to file any class certification papers.

This is, sadly, consistent with the company's tactics in the first *Addington* litigation before Judge Wake. There, the company chose not to seek resolution of this issue and instead decided to sit on the sidelines after moving for and receiving jurisdictional dismissal – a move that prompted this Court to refer to US Airways in this lawsuit as a "Johnny-come-lately." (Feb. 9, Transcript at p. 29). In addition, after being dismissed from the *Addington* litigation on the basis that the claims against the company were minor disputes subject to the exclusive jurisdiction of the System Board, the company failed to pursue a class action management grievance with the System Board that would have

addressed this issue as well. In light of these previous stall tactics employed by the company with respect to this issue, it is hard to understand the company's failed promise to "shortly" move for class certification to be anything other than a deliberate delay tactic on its part.

Third, the motion's factual assertion that "USAPA continues to dispute whether the West Pilots are proper parties" is not evidence that USAPA seeks to delay anything. Indeed, the core problem with the proposed class is that the Addington defendants are a subset of the West Pilots – an angry faction inside a large union. Were this Court to prematurely certify them in the name of expediting the case, the order would stand for the unwholesome notion that every intra-union dispute justifies a class action.

Fourth, the motion's contention that "two related litigations were filed in other districts during the pendency of this action" is true but not a fact that is helpful to this Court on any issue before it. This contention is made, apparently to suggest without stating it, that the intent to file suit in another district is significant. The Court has no need to examine the allegations in either suit, but surely it may conclude that keeping the litigation before *it* uncomplicated with other, subsequent litigation is not evidence of delay of this matter; if anything it is just the opposite.

Fifth, the contention that "USAPA seeks a precipitous completion of CBA negotiations before there can be a judgment in this action" is unsupported and nothing more than wild speculation. The Addington defendants now claim that the fact that a suit was filed by USAPA in New York and by the company in North Carolina somehow means that USAPA is pressuring the company to agree to a non-Nicolau CBA. This conveniently

ignores the fact that *nothing* in the remedy pled in the New York action would change *anything* with regard to the issue of what seniority integration term is negotiated. It also ignores the fact that the company's suit against USAPA in North Carolina, as pled, would also have no effect whatsoever on what kind of seniority integration term to be negotiated. Moreover, the claim that the "North Carolina *case* is evidence of illegal work actions..." merely elevates unproven allegations into evidence, an argument no court can responsibly accept.

Sixth, in response to the motion's legal argument, while USAPA reiterates that it has no objection whatsoever to this Court considering the class action motion and all pending motions as expeditiously as it can, USAPA does not accept that negotiations cannot proceed without judgment, let alone class certification. The Ninth Circuit has already addressed this issue and stated:

> Although we do not hold that a DFR claim based on a union's promotion of a policy is never ripe until that policy is effectuated, we conclude that, in this case, there is too much uncertainty standing in the way of effectuation of Plaintiffs' harm to warrant judicial intervention at this stage. *Cf. Sergeant v. Inlandboatmen's Union of the Pac.,* 346 F.3d 1196, 1200 (9th Cir.2003).

Addington v. US Airline Pilots Ass'n, 606 F.3d 1174, 1181 (9th Cir. 2010), *cert. denied*, __U.S. __, 131 S. Ct. 908 (2011). *See also Pease v. Production Workers Union of Chicago*, 386 F.3d 819, 823 (7th Cir. 2004) ("Federal labor law ensures that disputes of this kind are resolved by the affected parties over the bargaining table, or by arbitrators knowledgeable about the business, rather than in court."). Having found, over USAPA's objection, a justiciable controversy, this Court has now intervened. In so doing it has left the parties at the mercy of its schedule (even as this Court has increased burdens upon it,

which USAPA respectfully acknowledges). For this reason, USAPA joins in requesting an expedited treatment of not only the class action issue but all pending motions and the entire case.

Respectfully submitted:

Dated: August 12, 2011 By: ***/s/ Nicholas Granath***

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CERTIFICATE OF SERVICE

Case No. 2:10-CV-01570-PHX-ROS

I hereby certify that on this day of August 12, 2011, I electronically transmitted the foregoing document and all its attachments to the U.S District Court Clerk's Office using the ECF System for filing and transmittal.

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