LEE SEHAM, Esq. *pro hac vice*
NICHOLAS P. GRANATH, Esq., *pro hac vice*
LUCAS K. MIDDLEBROOK, Esq. *pro hac vice*
SEHAM, SEHAM, MELTZ & PETERSEN, LLP
445 Hamilton Avenue, Suite 1204
White Plains, NY 10601
Tel: 914 997-1346
Fax: 914 997-7125

STANLEY LUBIN, Esq., State Bar No. 003076
NICHOLAS ENOCH, Esq., State Bar No. 016473
LUBIN & ENOCH, PC
349 North 4th Avenue
Phoenix, AZ 85003-1505
Tel: 602 234-0008
Fax: 602 626 3586

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 IN OPPOSITION TO PLAINTIFF U.S. AIRWAYS' MOTION FOR CLASS CERTIFICATION

1) Summary.

Even if this Court were inclined to certify *some* class, the *proposed* class and representatives are not, under Rule 23, certifiable. There are two outstanding issues with both the Company and the Addington defendants' class certification motions[1]: first, the class as it is proposed is over-inclusive because it contains both junior as well as senior West pilots, yet both groups have naturally conflicting interests, and second, the nominated representatives consist of only, and can only fairly represent, junior West pilots, so are under-inclusive.

Hence, this latest class motion should be denied. As this Court has already observed, at best, what is appropriate are *sub-classes*. (Doc. No. 8, p. 2, fn. 2). This stems from the unavoidable fact of differences in the relative seniority of the proposed class. Because this Court is not asked – nor does it have jurisdiction – to re-try the *Addington* litigation (now a legal nullity), this matter is not simply about the Nicolau award. The ultimate issue now is declaring the *Company's* liability under the RLA in the context of ongoing bargaining over a seniority integration term following a corporate merger. Therefore, a class that might have been appropriate during the earlier *Addington* DFR litigation before Judge Wake (noting USAPA opposed this) is not *automatically* appropriate here (noting that neither the Company's nor the Addington defendants' class

[1] Unlike the Addington defendants, the Company has also moved to certify a defendant class of West pilots under Rule 23(b)(2) in addition to Rule 23(b)(1)(A). However, there is a notable abundance of case law ignored by the Company that holds that defendant classes may not be certified under Rule 23(b)(2). *See Leer v. Washington Education Ass'n*, 172 F.R.D. 439, 452 (W.D. Wash. 1997) (collecting and analyzing cases and explaining that "the courts that have carefully analyzed the issue have concluded that defendant classes may not be certified under (b)(2)").

motions have been supported by any evidence, nor has USAPA been afforded any discovery). This Court should be especially cautious to avoid being pulled into violating the law of this case, which remains set forth in *Addington v. US Airline Pilots Ass'n*, 606 F.3d 1174, 1181 (9th Cir. 2010), *cert. denied*, __U.S. __, 131 S. Ct. 908 (2011).[2]

2) Facts (Corrected).

At the threshold, we note that the facts alleged in the Company's motion are incorrect or incomplete, but in either case appear to so materially deviate from those facts found by the Ninth Circuit as to be suspect. Therefore, USAPA rejects them and urges those facts as set forth by USAPA in Doc. No. 88, ¶¶ 5-63, and as found by the Ninth Circuit in *Addington*.[3]

3) Defects With The Proposed Class Fail To Meet The Commonality And Typicality Elements Of Rule 23(a)(2) and (b)(3).

Two defects undermine the commonality and typicality elements: first, the proposed class is indisputably composed of all the senior as well as all the junior West pilots, hence it is over-inclusive for a case that has as its underlying rationale the resolution of seniority rights; second, there is no injury common to the entire proposed class, hence, in *Duke* terms, there can be no common "answer":

First, the proposed class is over inclusive because it has both junior and senior pilots. A Rule 23 class must be restricted to individuals who raise the same claims as the

---

[2] Pursuant to L.R. Civ. P. 7(d)(2), this brief incorporates by reference the following: Doc. Nos. 88, 92, 92.1, 92.2, and 104.

[3] In the past USAPA has had to correct the Company's continued misrepresentation of facts in briefing to stay this litigation, pending the Supreme Court's certiorari review of *Addington*. *See* Doc. Nos. 18 & 32.

representatives; if not then the class is over-inclusive, or too broad, and cannot be certified. *See e.g.*, *TV v. Smith-Green*, 267 F.R.D. 234 (N.D. Ind. 2010); *Cunningham Charter v. Learjet*, 258 F.R.D. 320 (S.D. Ill. 2009); *O'Neill v. Home Depot*, 243 F.R.D. 469 (S.D. Fla. 2006). Yet here it is undisputed that all West pilots, from the most junior to the most senior, are contained in the proposed class. Yet the Company's motion asserts that the "core" of its case is "the seniority-integration dispute." (Doc. No. 106, p. 11: 27). Indeed, the issue of seniority integration transcends any one proposal that USAPA could possible make, be it Nicolau or any other. Hence, this case is not about, and never was, *merely* the Nicolau proposal. It bears repeating, after years of litigation and multiple suits, there is no binding precedent finding that USAPA has a *duty* to implement the ALPA-generated Nicolau proposal. To the contrary, binding precedent in this Circuit has held that "USAPA is at least as *free to abandon* the Nicolau Award as was its predecessor ALPA." 606 F.3d at 1181, n.3 [emphasis added]. Moreover, any contention that the 2005 Transition Agreement somehow *contractually obligates* the parties to use of the Nicolau proposal divests this Court of subject matter jurisdiction as a matter of law. The Transition Agreement is a *collectively bargained* for agreement under the Railway Labor Act (RLA), and therefore any argument related to its interpretation or application is within the exclusive jurisdiction of an RLA-mandated System Board of Adjustment. (*See* Doc. No. 49 at 15-16).

Yet the Company ignores all of this. In so doing, it also ignores this Court's ruling dismissing the Addington cross-claim. (Doc. No. 85). Instead, the Company suggests that common questions include, "whether ... USAPA's insistence on a non-Nicolau seniority

list is motivated by hostility" or whether it has a "legitimate union purpose" (Doc. No. 106, p. 11-12). In other words, the *same* questions that were presented in the now-dismissed DFR trial before Judge Wake. These assertions should be a red flag to this Court; a red flag that it is being invited to re-try the *Addington* DFR case – despite the Ninth Circuit's ruling that the issue is unripe for adjudication. This Court cannot do so without violating the Ninth Circuit's ruling. Thus, *these* alleged common questions are not common at all.

The Company also claims a common question is the, "correct legal standard for assessing US Airways' potential liability to the West pilots." (Doc. No. 106, p. 12:2). If so, is this not common to each and every US Airways' pilot – both West and East? If yes, then the class is surely *under*-inclusive. The Court may find informative history is that when the Addington pilots first brought their DFR suit in September 2008, they concurrently filed an Arizona state lawsuit directed against a proposed defendant class of *all East pilots*. *See Addington v. Bradford*, 2008 U.S. Dist. LEXIS 111365, at *4, 08-CV-1728-PHX-NVW (D. Ariz. Nov. 21, 2008) ("plaintiff pilots ('West Pilots') brought this class action in state court against a defendant class of other pilots ('East Pilots') alleging breach of express and implied contracts …"). In other words, the Addington plaintiffs sought in concurrent actions to bind *all* pilots via class actions – both East and West. A stark difference from the two pending certification motions.

Second, there simply is no common injury to the proposed class. The commonality element requires more than alleging that the class has suffered a violation of a common provision of law, or shares the same claim. It requires a showing that the class has "suffered the *same injury*." *Gen. Tel. Co. of Southwest v. Falcon*, 457 U.S. 147, 157 (1982)

[emphasis added]. A common contention of injury capable of classwide resolution is necessary, yet here that is a *legal impossibility*. The Ninth Circuit specifically held in *Addington* that there has been *no* "sufficiently concrete injury" to the West pilots as a group, and that there *may never be any injury*, "even if [the ultimate seniority proposal] is not the Nicolau Award." *Addington v. US Airline Pilots Ass'n*, 606 F.3d 1174, 1181 (9th Cir. 2010), *cert. denied*, __ U.S. __, 131 S. Ct. 908 (2011). Certification under Rule 23 requires more:

> What matters to class certification is not the raising of common 'questions' – even in droves – but rather the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation. *Dissimilarities within the proposed class* are what have the potential to impede the generation of common answers.

Wal-Mart Stores, Inc. v. Dukes, 564 U.S. __, 131 S. Ct. 2541, 2551 (2011) [emphasis added] (*citing Nagareda*, Class Certification in the Age of Aggregate Proof, 84 N.Y. U.L. Rev. 97, 132 (2009)). *See also Bacon v. Honda of Am. Mfg., Inc*., 370 F.3d 565 (6th Cir. 2004) (denying certification in an employment case where class member affected differently by complained of acts therefore lacked commonality). Where there is no common injury, there can be no commonality. *See e.g.*, *Insolia v. Philip Morris Inc*., 186 F.R.D. 535 (W.D. Wis. 1998) (no commonality over common claims that smoking is harmful where the issue was whether the class members have been harmed); *Doe v. Unified School Dist*., 240 F.R.D. 673 (D. Kan. 2007) (commonality not satisfied where there was no evidence that potential class members suffered an actual or threatened injury).

Here, however, there is no injury to West pilots at all and it is at best speculative that there ever will be.

And, it is interesting that in its footnote (No. 5 in Doc. No. 106, p. 17) the Company freely admits that any seniority-related injury to the West Pilots is exactly that: "entirely speculative." Interesting because the law of this case is crystal clear: until ratification of a new contract, no West pilot can ever possibly suffer any seniority-injury. Hence, the West pilots do not presently have any ripe claim based on any seniority proposal put forward, or not put forward by their union. In corresponding fashion, whether the *Company* hypothetically accepts one or another seniority proposal cannot inflict injury. In effect, then, the present motion asks this Court to pretend that West pilots of varying seniority, both junior and senior, who have yet to suffer any cognizable injury to their seniority – and may never – can somehow constitute a class with common seniority issues. They cannot.

4) Even If The Proposed Class Could Be Certified, The Adequate Class Representative Element Of Rule 23(a)(4) Is Not Satisfied Because Only Junior West Pilots Are Nominated And In Fact In Control.

Even if this Court finds a proposed class is certifiable, the proposed representatives are not because they are inadequate to satisfy Rule 23(a)(4). Although "a court must be wary of a defendant's efforts to defeat representation of a class [on] grounds of inadequacy when the effect may be to eliminate any class representation," *Kline v. Wolf*, 702 F.2d 400, 402-03 (2d Cir. 1983), courts should nevertheless "carefully scrutinize the adequacy of representation in all class actions." *Eisen v. Carlisle & Jacquelin*, 391 F.2d 555, 562 (2d Cir. 1968). A court has a "continuing duty at all stages of the litigation to stringently examine the adequacy of class representatives and their counsel." *Robin v. Doctors Officenters Corp.*, 123 F.R.D. 579, 580 (N.D. Ill. 1994). "The adequacy inquiry under Rule 23(a)(4) seeks to uncover conflicts of interest between named parties and the class

they seek to represent." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997). A conflict of interest disqualifies proposed class representatives. *Epifano v. Boardroom Business Prods., Inc*., 130 F.R.D. 295, 300 (S.D.N.Y. 1990) (where defendants have claims for contribution against potential class representatives, their interests might conflict with those of the class). *See also Bieneman v. City of Chicago*, 864 F.2d 463 (7th Cir. 1988) (affirming denial of class certification where some class members derived benefits from challenged action while others were allegedly harmed).

Here, the "claims" of the proposed representatives have been dismissed. (Doc. # 85). But, tellingly, before dismissal they were merely the claims of the *junior*-most West pilots, i.e. those who financially support this litigation (through Leonidas, LLC) because the Nicolau award is, in effect, a special quota that elevates them over their senior colleagues.[4]

---

[4] Leonidas, LLC ("Leonidas") is an Arizona Company that finances and controls the litigation decisions of the Addington pilots. The Polsinelli law firm bills Leonidas directly (Granath Decl., Ex. A); Leonidas also engages in political activities outside of any litigation. In fact, political mailings by Leonidas sent to East pilots this year were connected to three pilots, two of whom are members of Leonidas and one a former management pilot, being placed on administrative leave by the Company when it became apparent that confidential East pilot SSN numbers maintained by the Company were disclosed to Leonidas. (Granath Decl., Ex. B). Leonidas is currently funding representation of the three pilots placed on administrative leave as a result of this issue, at least in part. (Granath Decl., Ex. C). The six proposed class representatives are all members of Leonidas. (Granath Decl., Ex. D). Yet class reps are expected to avoid "extraneous influences" that can create a conflict with their fiduciary duties. *See Kamean v. Local 363, Int'l Bhd. of Teamsters*, 109 F.R.D. 391, 395 (S.D.N.Y. 1986) (denying class certification noting that representatives must "… not possess other, potentially conflicting interests that could impair the faithful performance of their duties); *United Indep. Flight Officers, Inc. v. United Air Lines, Inc.*, 572 F. Supp. 1494, 1500 (N.D. Ill. 1983), *aff'd* 756 F.2d 1274 (7th Cir. 1985) (representatives inadequate based, in part, on their involvement with "UIFO, a labor organization that is at least somewhat antagonistic to ALPA, the collective bargaining representative of United pilots, members of the putative class").

Yes, senior West pilots are affected by whether the old ALPA-generated Nicolau proposal is dictated to USAPA as its bargaining proposal, but then so are East pilots too. Yet it is only the junior West pilot faction that materially gains – making their Nicolau-or-nothing claim merely of the *Hardcastle* type. *See Hardcastle v. W. Greyhound Lines*, 303 F.2d 182, 185 (9th Cir. 1962) ("a seniority system in a collective bargaining agreement that favors one group more than another does not in itself constitute a breach of the union's duty [of fair representation]"). *See also Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953) (without more, merely alleging that a union's conduct favored one group over another does not constitute a breach of the duty of fair representation); *Merritt v. IAM Dist. 143*, 613 F.3d 609, 620-21 (6th Cir. 2010); *Ratkosky v. United Transp. Union*, 843 F.2d 869, 876 (6th Cir. 1988).

Yet the proposed representatives are all, or predominantly, junior members of the proposed class and effectively have, to date, represented only the junior West pilots' interests. Not only can they not adequately represent senior West pilots, they *conflict* with senior interests. Just such a similar conflict as this led to a finding of inadequacy and denial of certification in the DFR class action context.

> Contrary to plaintiffs' assertions, we believe that differences among United pilots concerning their economic interests with regard to benefit plans represents a substantial conflict going to the subject matter of the litigation, thus rendering class certification inappropriate.

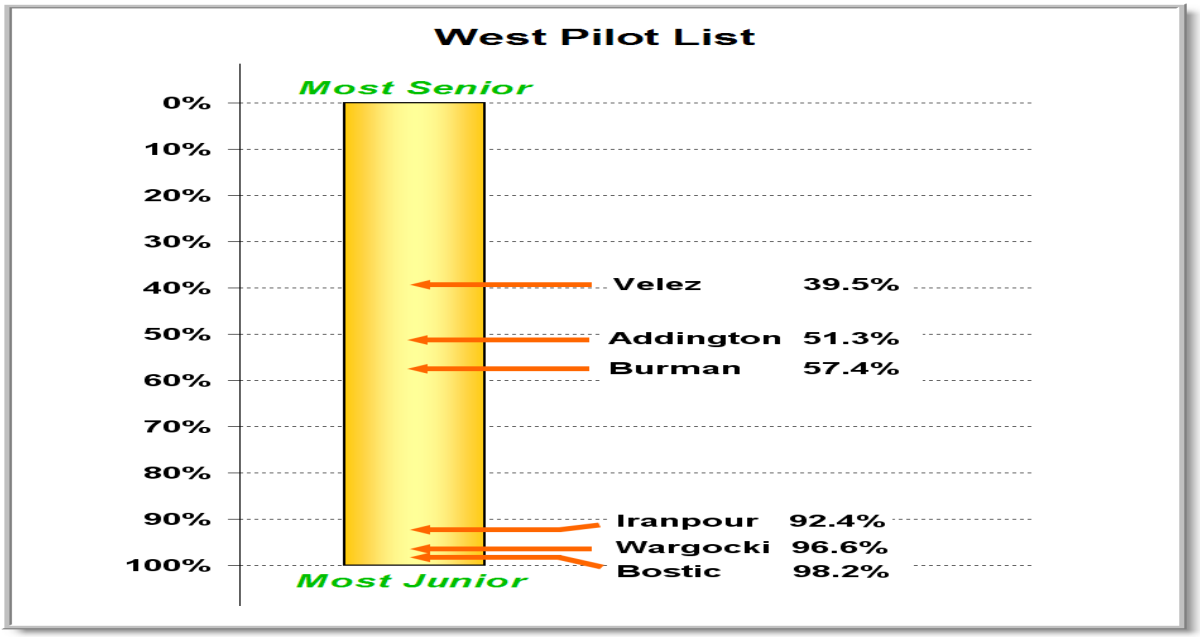
United Indep. Flight Officers, Inc. v. United Air Lines, Inc., 572 F. Supp. 1494, 1500 (N.D. Ill. 1983), *aff'd* 756 F.2d 1274 (7th Cir. 1985) (*citing Sperry Rand Corp. v. Larson*, 554 F.2d 868, 874 (8th Cir. 1977)). The six pilots now proposed by the Company as class representatives are the same representatives as last time proposed (albeit without new

discovery). They suffer from the same problem as they always have: they are representative only of the junior-end of the class – and they were hand picked for the purposes unique to the last lawsuit, not this one.[5] The named six West pilots were 'cherry-picked' at the outset of the earlier *Addington* litigation to address the exigency of the moment at the inception of *that* lawsuit, namely to meet the consequences of US Airways' June 12, 2008 announced pilot furloughs. Indeed, this Court recognized in its June 1 Order that the named litigants and class representatives in *Addington* were, "actually a subset of West Pilots..." (Doc. # 85 at 2, n. 2).[6] Hence they are not representative of any meaningful *class-wide* generality about seniority that can be posited for the West pilots as a whole class today:

---

[5] In addition, it is undisputed that two are not even actively employed pilots that for unknown reasons (absent evidence or discovery) *declined recall* to work as pilots for US Airways. Yet representatives must be members of the class, not *ex*-members. *Bailey v. Patterson,* 369 U.S. 31 (1962); *See e.g.*, *De Rossa v. Massachusetts Bay*, 694 F. Supp. 2d 87 (D. Mass. 2010) (former employee inadequate representative in class of employees).

[6] Rule 23(c)(4) gives the court ample power to, "treat common things in common and to distinguish the distinguishable." *Jenkins v. United States Gas Corp*., 400 F.2d 28, 35 (5th Cir. 1968). A formal motion for sub-class is not necessary; a court may act on its own initiative. *Wright, Miller & Kane*, Federal Practice and Procedure: Civil 3d § 1790 (*citing Robinson v. Gillespie*, 219 F.R.D. 179 (D.C. Kan. 2003); *In re Copley Pharmaceutical, Inc*., 158 F.R.D. 485 (D.C. Wyo. 1994)).



As the above chart demonstrates, three of the proposed representatives – Iranpour, Wargocki and Bostic – are *extremely* junior first officers in the lowest tenth percentile of seniority at 92.4, 96.6, and 98.2 percent respectively. (*See* Davison Decl. ¶ 6 at Doc. No. 92-1). This is because they were selected based on their then immediate vulnerability to the Company's planned furlough of 175 West pilots back in 2008. That is a contingency that has no relevance to the instant action in 2011 nor is there any claim to the contrary. The remaining three proposed class representatives – Velez, Addington, and Burman – are also junior pilots whose seniority was 39.5, 51.3, and 57.4 percent respectively. (Doc. No. 92-1, ¶ 7). They too were selected due to their vulnerability to immediate demotion or lost promotion resulting from the furlough. The most that can be said for the proposed class representatives is that they are representative of some percentile of the most junior of all the West pilots.[7]

[7] The Company attempts to argue that the Addington pilots represent a "broad spectrum of seniority" (Doc. No. 106 at 17) but have offered no evidence whatsoever to refute the

Moreover, the atypicality of the proposed representatives has actually *increased* since the time when they were cherry-picked back in 2008. Both Bostic and Wargocki, as the Company admits (Doc. No. 106, p. 14:2), are currently on furlough. Without any evidence to support its conclusion, the Company argues that having two of the six proposed representatives on furlough "enhances adequacy since some absent class members are also on furlough." (Doc. No. 106 at 14). However, there has been *no evidence* submitted to this Court to demonstrate the *current* adequacy of these furloughed representatives. Fundamental questions such as whether they are currently involved in this litigation, or are employed, or why did they decline recall to US Airways, or whether their current employment detracts from their ability to discharge their fiduciary obligations as class representatives – all remain unanswered.[8] Hence, the Company merely offers self-serving speculation in support of its motion – yet another red flag. *See e.g.*, *Ameritech v. CWA*, 220 F.3d 814, *cert. denied*, 531 U.S. 1127 (2000) (defendant classes warrant closer scrutiny of proposed representatives).

Moreover, the real-world litigation interest of these furloughed pilots sharply diverges from that of the remainder of the actively employed West pilot group. This is so

---

statistical analysis submitted by USAPA demonstrating that the *entire* top 40% of the former America West pilot group is left completely unrepresented by the six proposed class representatives. (Doc. No. 92-1, ¶¶ 5-10).

[8] Not one declaration in the name of any of the proposed class representatives (or absent class members) has been submitted in support of either the Company or Addington defendants' certification motions. Thus there is *no evidence* demonstrating that the proposed class representatives are *presently* monitoring and actively participating in the case at bar. Instead, the Company relies on class certification motions filed in the dismissed *Addington* matter or in deposition testimony taken of the proposed representatives in January 2009 – *almost three years ago*. (*See* Doc. No. 107). This constitutes an admission by omission that the movants' burden is unmet.

because of the bump/displace prohibition contained in the Transition Agreement would prevent them from obtaining any immediate benefit from implementation of the Nicolau list in any case. (Trans. Agmt. § IV.A.2).

The senior forty percent of the West pilot group clearly has divergent interests from the proposed representatives who cannot be representative of *that* percentile. In fact, this group of West pilots actually risks being *prejudiced* by the proposed representatives' stubborn insistence upon a Nicolau-proposal-or-nothing dictate.[9] These senior West captains simply do not face imminent loss of employment (or even of their captaincies). Moreover, under USAPA's current seniority integration proposal, the West captains' Phoenix-based positions are in fact secured both against more senior East pilots and the more senior pilots of future merger partners. (Doc. No. ¶ 92-1). Furthermore, under USAPA's current seniority proposal, senior West captains would gain immediate access to coveted East wide-body flying, which they do not have under current separate operations and would not have if Nicolau were implemented and ratified as part of any single collective bargaining agreement. These are all examples of unique senior West pilot interests that remain wholly unrepresented by presentation of the current proposed class representatives.

[9] The failure to date to even consider the possibility of settlement falls markedly short of satisfying their duty, as class representatives, to "use wise judgment in negotiating and approving a fair settlement at the right time." *Norman v. ARCS Equities Corp.*, 72 F.R.D. 502, 506 (S.D.N.Y 1976). *See also Kamean v. Local 363, Int'l Bhd. of Teamsters*, 109 F.R.D. 391, 395-96 (S.D.N.Y. 1986).

5) Conclusion.

For the reasons set forth herein and in USAPA's opposition to the Addington defendants' motion for class certification (Doc. No. 92), USAPA asks this Court to deny the motion – or in the alternative, grant expedited class-discovery, noting that class-discovery, heretofore denied USAPA, would at least probe changes in status since Judge Wake's certification order, and new matters effecting credibility. *Cohen v. Beneficial Indus. Loan Corp*., 337 U.S. 541, 549 (1949) (class representative is a fiduciary, and interests of the class are "dependent upon his diligence, wisdom and integrity"); *Kaplan v. Pomerantz*, 132 F.R.D. 504, 510 (N.D. Ill. 1990) ("[a] plaintiff with credibility problems ... does have interests antagonistic to the class.").

USAPA is not opposed to the prompt resolution of the class certification issue and, indeed, the entire action. Yet it cannot acquiesce to the Company's request, and that of the Addington defendants, to effectively rubber stamp a class action based merely on the fact that a class was certified (over USAPA's objection) once before, in a dismissed case, now a legal nullity. Rule 23 requires more, a "rigorous analysis" based on facts that exist in this case, at the present time.[10]

---

[10] Before certifying a class, a trial court "must determine" by conducting a "rigorous analysis" whether the party seeking certification has met the prerequisites of Rule 23. Rule 23(c)(1)(A); *Valentino v. Carter-Wallace, Inc*., 97 F.3d 1227, 1233 (9th Cir. 1996). The party seeking class certification "bears the burden of demonstrating that he has met each of the four requirements of Rule 23(a) and at least one of the requirements of Rule 23(b)." *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001), *amended*, 273 F.3d 1266 (9th Cir. 2001). "Failure to carry the burden on any Rule 23 requirement precludes certifying a class action." *Leuthold v. Destination America, Inc.*, 224 F.R.D. 462, 469 (N.D. Cal. 2004) (*citing Burkhalter Travel Agency v. MacFarms Int'l, Inc.*, 141 F.R.D. 144, 152 (N.D. Cal. 1991)).

Respectfully submitted:

Dated: September 1, 2011
By: ***/s/ Nicholas Granath***

Nicholas P. Granath, Esq. (*pro hac vice*)
ngranath@ssmplaw.com
SEHAM, SEHAM, MELTZ & PETERSEN, LLP
2915 Wayzata Blvd.
Minneapolis, MN 55405
Tel. 612 341-9080; Fax 612 341-9079

Lee Seham, Esq. (*pro hac vice*)
Lucas K. Middlebrook, Esq. (*pro hac vice*)
SEHAM, SEHAM, MELTZ & PETERSEN, LLP
445 Hamilton Avenue, Suite 1204
White Plains, NY 10601
Tel. (914) 997-1346; Fax (914) 997-7125

Nicholas J. Enoch, State Bar No. 016473
nick@lubinandenoch.com
Lubin & Enoch, P.C.
349 North 4th Avenue
Phoenix, AZ 85003-1505

CERTIFICATE OF SERVICE

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

I hereby certify that on this day of September 1, 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.***