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13 **UNITED STATES DISTRICT COURT**  
14 **DISTRICT OF ARIZONA**

15 US Airways, Inc., a Delaware  
16 Corporation,

17 Plaintiff,

18 v.

19 Don Addington, an individual; John  
20 Bostic, an individual; Mark Burman, an  
21 individual; Afshin Iranpour, an  
22 individual; Roger Velez, an individual;  
23 and Steve Wargocki, an individual, on  
24 behalf of themselves and all other  
25 similarly-situated individuals,

26 and

27 US Airline Pilots Association, an  
28 unincorporated association,

Defendants.

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

**MEMORANDUM OF LAW IN  
SUPPORT OF PLAINTIFF US  
AIRWAYS, INC.'S MOTION TO  
CORRECT JUDGMENT PURSUANT  
TO FEDERAL RULE OF CIVIL  
PROCEDURE 60(a)**

## INTRODUCTION

Pursuant to Rule 60(a) of the Federal Rules of Civil Procedure, plaintiff US Airways, Inc. (“US Airways”) moves the Court to correct the judgment in the above-referenced class action case. Correction of the judgment is necessary in order to conform to the technical requirements of Rule 23(c)(3) of the Federal Rules of Civil Procedure, which governs judgments in class actions.

On October 11, 2012, judgment was entered in this case. (*See* Doc. No. 194.) Although the Court had previously certified a class in this case pursuant to Federal Rule of Civil Procedure 23(b)(1) (*see* Doc. No. 125), and the case was maintained as a class action through the date of judgment, the judgment does not describe the class bound by the judgment, as required by Rule 23(c)(3).

## ARGUMENT

### **I. THE JUDGMENT IS NOT IN CONFORMANCE WITH THE REQUIREMENTS OF RULE 23(c)(3)**

Federal Rule of Civil Procedure 23(c)(3) provides that the judgment in a class action must, “for any class certified under Rule 23(b)(1) . . . , include and describe those whom the court finds to be class members.” Fed. R. Civ. P. 23(c)(3)(A); *see also Harmsen v. Smith*, 693 F.2d 932, 942 (9th Cir. 1982) (remanding to district court to enter judgment in accordance with Rule 23(c)(3) for a class certified under Rule 23(b)(3)). The Rules Advisory Committee Notes for Rule 23(c)(3) explain that “[t]he judgment in a class action maintained as such to the end will embrace the class,” and the judgment in a Rule 23(b)(1) class action should “‘describe[]’ the members of the class.” Adv. Comm. Note, 39 F.R.D. 69, 105 (Feb. 28, 1966) (quoting Fed. R. Civ. P. 23(c)(3)(A)).

Here, the judgment does not comply with Rule 23(c)(3), because it does not “include and describe those whom the court finds to be class members.” Fed. R. Civ. P. 23(c)(3)(A). Indeed, although the Court certified a class pursuant to Rule 23(b)(1)(A) (*see* Doc. No. 125), and maintained this case as a class action through the date of

1 judgment, there is nothing on the face of the judgment indicating that this case is a class  
2 action. (*See* Doc. No. 194.)

3 The exact requirements for a judgment to conform with Rule 23(c)(3) are not  
4 entirely clear.<sup>1</sup> At a minimum, the judgment in this case should describe the class by the  
5 class definition in the previously filed class notice. *See* Fed. R. Civ. P. 23(c)(3) &  
6 23(c)(3)(A); Adv. Comm. Note, 39 F.R.D. at 105. That definition is: “All pilots  
7 employed by US Airways in September 2008 who were on the America West seniority list  
8 on September 20, 2005.” (*See* Doc. Nos. 141-1, 165.) But given the ambiguous language  
9 and the paucity of case law addressing the requirements of Rule 23(c)(3)(A), the Court  
10 may also wish to include the list of class members who were sent the class notice. The  
11 Court ordered US Airways to distribute a revised class notice, a process that was  
12 completed on January 31, 2012. (*See* Doc. Nos. 141, 145, and 165.) If the Court wishes  
13 to append the list of class members to its judgment, US Airways can provide the names of  
14 the individuals who were mailed the class notice.

15 The judgment in this case should be corrected to conform to Rule 23(c)(3) in order  
16 to ensure that it has the binding effect on the class that the Court intended. *See, e.g.*,  
17 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1789 (3d ed.  
18 2010) (“The obvious implication of Rule 23(c)(3) is that anyone *properly listed in the*  
19 *judgment* should be bound by it absent some special reason for not doing so.”) (emphasis  
20 added).

## 21 **II. RULE 60(a) PERMITS CORRECTION OF THE JUDGMENT**

22 Judgments that do not conform to the technical requirements of Rule 23(c)(3) can  
23 be corrected pursuant to Federal Rule of Civil Procedure 60(a). Rule 60(a) provides that  
24 “[t]he court may correct a clerical mistake or a mistake arising from oversight or omission

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26 <sup>1</sup> Rule 23(c)(3)(A) states that a judgment in a class action must “for any class  
27 certified under Rule 23(b)(1) or (b)(2), include and describe those whom the court finds to  
28 be class members.” The case law has not adequately clarified what it means to “include  
and describe,” although the Advisory Committee Notes indicate that the judgment must  
“describe[] the members of the class, but need not specify the individual members.”  
Adv. Comm. Note, 39 F.R.D at 105.

1 whenever one is found in a judgment, order, or other part of the record.” Fed. R. Civ.  
2 P. 60(a). Rule 60(a) further provides that “[t]he court may do so on motion or on its own,  
3 with or without notice.” *Id.* Relief under Rule 60(a) is appropriate when the requested  
4 corrections are necessary to implement the result intended by the Court. *Kokomo Tube*  
5 *Co. v. Dayton Equip. Servs. Co.*, 123 F.3d 616, 623 (7th Cir. 1997).

6 Where, as here, a judgment in a case that has been maintained as a class action  
7 does not conform to the requirements of Rule 23(c)(3), Rule 60(a) can be used to correct  
8 this clerical oversight. *Vaughter v. E. Air Lines, Inc.*, 817 F.2d 685, 689 (11th Cir. 1987)  
9 (“[W]here the parties have operated under the understanding that a suit is being  
10 maintained as a class action, the failure of the district court to designate in the judgment  
11 the class thereby bound may be deemed an oversight or omission subject to correction  
12 pursuant to Rule 60(a)”); *Newman v. Prior*, 518 F.2d 97, 101 (4th Cir. 1975) (remanding  
13 case to district court to amend judgment pursuant to Rule 60(a) where judgment did not  
14 conform to Rule 23(c)(3)), *overruled on other grounds by Newcome v. Esrey*,  
15 862 F.2d 1099 (4th Cir. 1988); *see also Young v. Katz*, 447 F.2d 431, 435 (5th Cir. 1971)  
16 (describing judgment’s nonconformance with Rule 23(c)(3) as an “inadvertence,” and  
17 remanding case “for the correction of the[se] omissions”); *Wright & Miller, supra*, § 1789  
18 (noting that the failure to comply with Rule 23(c)(3) at the time the judgment is entered  
19 “is not a fatal error . . . and the case can be remanded to remedy the defect”).

20 The Court’s intent here was clear – to have its judgment bind the West Pilots class.  
21 (*See, e.g.*, Doc. No. 193 at 1 n.1 (“The West Pilot Defendants are Don Addington, John  
22 Bostic, Mark Burman, Afshin Iranpour, Roger Velez, and Steve Wargocki, on behalf of  
23 themselves and the certified West Pilot Class.”).) Accordingly, it is appropriate for the  
24 judgment to be corrected pursuant to Rule 60(a) to conform to the technical requirements  
25 for class-action judgments.

## 26 CONCLUSION

27 For the foregoing reasons, US Airways respectfully requests that the Court grant its  
28 motion under Rule 60(a).

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Dated: October 18, 2012

O'Melveny & Myers LLP

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 18, 2012, the foregoing document was electronically transmitted to the United States District Court Clerk's Office using the CM/ECF System for filing and transmittal.

/s/ Robert A. Siegel  
Robert A. Siegel

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