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14 **IN THE UNITED STATES DISTRICT COURT**
15 **DISTRICT OF ARIZONA**

16 Don Addington, *et. al.*,

Case No.: CV-13-00471-PHX-ROS

17)
18 *Plaintiffs,*)

**CERTIFICATION REGARDING
COMPLIANCE WITH
SCHEDULING ORDER AND
JOINT STATEMENT**

19 v.)

**REGARDING DISCOVERY
DISPUTES CONCERNING
DEFENDANT'S RESPONSE TO
PLAINTIFFS' REQUEST FOR
PRODUCTION OF DOCUMENTS
AND ANSWERS TO
INTERROGATORIES**

20 US Airline Pilots Association, *et. al.*,)

21)
22 *Defendants.*)
23)
24)

25
26 Pursuant to ¶¶ F and J of the Scheduling Order dated August 16, 2013 (Doc. 160),
27 and LR Civ. 7.2(j), the undersigned counsel confirm that they consulted and made sincere
28 efforts to resolve all discovery issues.

1 **Defendant’s Statement:** Defendant’s Request for Production and Interrogatories
2 sought discovery pertaining to Claim III, a claim for damages comprised of attorneys’
3 fees (including for prior litigations), which is distinct from an award of fees to a
4 prevailing party. At Plaintiffs’ request, the Court consolidated the preliminary injunction
5 hearing with trial on the merits. Plaintiffs are refusing to produce records or answer
6 interrogatories relating to Claim III. These requests do not seek privileged information. *In*
7 *re Osterhoudt*, 722 F.2d 591, 593 (9th Cir. 1983). This information also pertains to
8 whether named plaintiffs are appropriate class representatives. Defendants are prejudiced
9 both with respect to effective depositions of Plaintiffs’ witnesses scheduled for the week
10 of August 26-29, 2013 and with respect to the trial on the merits. Defendant is also
11 prejudiced to the extent that Plaintiffs are belatedly requesting bifurcated discovery.
12 Defendant will be compelled to undertake duplicate discovery (including duplicative
13 document, written discovery and depositions) if discovery is bifurcated. Plaintiffs should
14 be compelled to comply with the demands.

15 **Plaintiffs’ Statement:**

16 Plaintiffs do not make a “stand alone” claim for fees as an element of damages.
17 *See Carolina Power & Light Co. v. Dynege Mktg. & Trade*, 415 F.3d 354, 360 (4th Cir.
18 2005) (“A ‘stand-alone’ claim for attorneys fees is one that can be brought as an
19 independent claim. . . .”). But out of an abundance of caution, Plaintiffs provided notice
20 in their pleadings that they would be seeking a fee award as prevailing party pursuant to
21 the common benefit doctrine. Such a “claim” for fees is made by motion to be filed no
22 later than 14 days after the entry of judgment for Plaintiffs. Fed. R. Civ. P. 54 (d)(2)(A)
23 & (B). Until Plaintiffs file that motion they have not waived the right to keep the status of
24 their litigation expenses confidential. *Osterhoudt* does not apply because it addressed
25 discovery of fees paid outside of an ongoing civil litigation. Finally, neither the Court in
26 *Addington I* nor this Court in *Addington II* doubted that Plaintiffs were adequate
27 representatives. USAPA fails to explain this discovery into Plaintiffs finances could
28 possibly show otherwise.

1 Respectfully submitted this 23rd day of August 2013.

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

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I hereby certify that on August 23, 2013, I faxed a copy of the foregoing to the Court and electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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