

1 **PATRICK J. SZYMANSKI** (*pro hac vice*)  
2 **PATRICK J. SZYMANSKI, PLLC**  
3 1900 L Street, NW, Ste 900  
4 Washington, DC 20036  
5 Telephone: (202) 721-6035  
6 [szymanski@msn.com](mailto:szymanski@msn.com)

7 **BRIAN J. O'DWYER** (*pro hac vice*)  
8 **GARY SILVERMAN** (*pro hac vice*)  
9 **JOY K. MELE** (*pro hac vice*)  
10 **O'DWYER & BERNSTIEN, LLP**  
11 52 Duane Street, 5th Floor  
12 New York, NY 10007  
13 Telephone: (212) 571-7100  
14 [bodwyer@odblaw.com](mailto:bodwyer@odblaw.com)  
15 [gsilverman@odblaw.com](mailto:gsilverman@odblaw.com)  
16 [jmele@odblaw.com](mailto:jmele@odblaw.com)

17 Attorneys for US Airline Pilots Association

18 **IN THE UNITED STATES DISTRICT COURT**  
19 **DISTRICT OF ARIZONA**

20 ADDINGTON et. al., )  
21 *Plaintiffs,* )  
22 v. )  
23 US AIRLINE PILOTS ASS'N, et. al, )  
24 *Defendants.* )

25 Case No.: 2:13-CV-00471-PGR  
26 **US AIRLINE PILOTS**  
27 **ASSOCIATION'S REPLY IN**  
28 **FURTHER SUPPORT OF**  
**MOTION FOR EXTENSION OF**  
**TIME TO FILE RESPONSE TO**  
**PLAINTIFFS' MOTION TO**  
**TRANSFER CASE AND TO**  
**ANSWER OR OTHERWISE**  
**MOVE WITH RESPECT TO THE**  
**COMPLAINT**

1 Defendant USAPA hereby submits this reply in further support of its motion for  
2 an extension of time until May 6, 2013 to answer or move with respect to the complaint  
3 and to file a response to Plaintiffs' motion to transfer this matter to Judges Silver or  
4 Wake.

5 **I. GOOD CAUSE EXISTS TO GRANT DEFENDANT'S MOTION**

6 "[R]equests for extensions of time made before the applicable deadline has passed  
7 should 'normally ... be granted in the absence of bad faith on the part of the party seeking  
8 relief or prejudice to the adverse party.'" *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d  
9 1253, 1259 (9th Cir. 2010) (citing 4B Charles Alan Wright & Arthur R. Miller, *Federal*  
10 *Practice and Procedure* § 1165 (3d ed. 2004)). "Rule 6(b) gives the court extensive  
11 flexibility to modify the fixed time periods found throughout the rules...." *Lujan v. Nat'l*  
12 *Wildlife Fed.*, 497 U.S. 871, 906 n. 7 (1990) (internal quotation marks and citation  
13 omitted). *See Perez-Denison v. Kaiser Found. Health Plan of the Nw.*, 868 F. Supp. 2d  
14 1065, 1079 (D. Or. 2012). USAPA has demonstrated good cause for an extension of time.

15  
16 In their Complaint, Plaintiffs challenge an agreement entered into by USAPA, the  
17 Allied Pilots Association (which represents the pilots at American Airlines), US Airways,  
18 and AMR Corporation, the parent of American Airlines ("the MOU"). The MOU  
19 explicitly and specifically maintains the status quo regarding seniority subject only to  
20 complete seniority integration following Bankruptcy Court approval of the Plan of  
21 Reorganization. The MOU was overwhelmingly ratified by the Phoenix based pilots, on  
22 whose behalf Plaintiffs purportedly bring this action. Nevertheless, in an effort to make  
23 an end-run around rulings by the Ninth Circuit and Chief Judge Silver that no DFR claim  
24 can be ripe until there is a collective bargaining agreement integrating pilot seniority,  
25 Plaintiffs now claim that the MOU somehow triggered the right to litigate its duty of fair  
26  
27  
28

1 representation claim.<sup>1</sup>

2       Complex issues regarding the merger between American Airlines and US Airways  
3 and the timing of events agreed to by all four parties to the MOU are raised by the relief  
4 sought by the Plaintiffs in this action. Plaintiffs' request for injunctive relief altering the  
5 MOU will unquestionably have an affect on the Plan of Reorganization which will be  
6 before the Bankruptcy Court in New York. The relief sought by Plaintiffs is inextricably  
7 intertwined with the successful emergence of American Airlines from bankruptcy under  
8 the Merger Agreement and the successful completion of the integration of the two  
9 airlines. The relief sought by Plaintiffs, the numerous letters including the threat made by  
10 Plaintiffs to enjoin the merger and the multiplicity of court filings here and in the  
11 Bankruptcy Court raise many issues that require research, consultation and motion  
12 practice. Plaintiffs' suggestion that USAPA should file an answer and then amend,  
13 thereby waiving its rights under Rule 12 and Rule 19, (Doc. 19 p. 7), is not in the best  
14 interests of the Court or the parties. It is also inconsistent with responsibilities that  
15 USAPA has to the pilots it represents.  
16

17       As stated in its motion for an extension of time, USAPA has been researching and  
18 investigating the issues involved together with its bankruptcy counsel. USAPA now  
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20       <sup>1</sup>Prior to commencement of this action, Defendant USAPA commenced an  
21 adversary proceeding in the Bankruptcy Court for the Southern District of New York  
22 where the American Airlines Chapter 11 reorganization is pending. USAPA did so  
23 following receipt of correspondence from Counsel for Plaintiffs threatening to take action  
24 to enjoin the merger. Plaintiffs' counsel Marty Harper stated:

23       I recently sent letters to Bob Siegel and Ed James stating that unless  
24       USAPA agrees that the Nicolau list will be integrated with the  
25       American list, the West Pilots will be forced to file a third round of  
26       litigation and seek an injunction of the merger process until we can get a  
27       court order directing that the only list that can be used is the Nicolau.  
28 Doc. 5-3, at page 21 of 27. Although Plaintiffs now attempt to retreat from their threats to  
enjoin the merger, they are boldly seeking relief modifying an agreement to be approved  
by the Bankruptcy Court in connection with the proceedings for approval of the Plan of  
Reorganization that includes the merger.

1 believes that this matter should properly be litigated in the Southern District of New  
2 York. Indeed that was the conclusion reached in *Krakowski v. American Airlines, Inc.*,  
3 No. 4:12-CV-00954-JAR p. 11 (E.D. Mo Mar. 4, 2013), where the court granted  
4 American's motion to transfer to the Bankruptcy Court a case that also alleged a breach  
5 of duty of fair representation brought by pilots who were challenging seniority integration  
6 and argued, like plaintiffs do here, that their union, the APA, breached its duty of fair  
7 representation.<sup>2</sup> After reviewing pending and prior proceedings in the Bankruptcy Court,  
8 the court found that any issues to be litigated were "best decided by the Bankruptcy Court  
9 in the context of the larger reorganization and consistent with its own prior orders." *Id.* p.  
10 11. As in *Krakowski*, the DFR claim here challenges an agreement entered into by  
11 American Airlines and will require approval by the Bankruptcy Court.  
12

13 As Plaintiffs acknowledge, a conference concerning USAPA's earlier filed  
14 adversary proceeding is scheduled in the Bankruptcy Court for April 3, 2013. Permitting  
15 that conference to proceed and allowing USAPA a reasonable time to prepare and file  
16 their motion to transfer this matter to the New York court to be heard in conjunction with  
17 the merger approval process and the earlier filed adversary proceeding<sup>3</sup> is an efficient use  
18 of judicial resources and will avoid duplicative litigation and inconsistent results.

19 In addition it also appears that Plaintiffs have failed to join indispensable parties.  
20 USAPA's counsel is also investigating and conferring regarding whether to file a motion  
21 pursuant to Fed. R. Civ. P. 19.  
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23 USAPA's motion to extend the time to answer and respond to the reassignment  
24 motion until May 6 also advised that the reasonable requested extension was appropriate  
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25 <sup>2</sup> In *Krakowski*, TWA pilots challenged the seniority integration after American  
26 Airlines acquired TWA.

27 <sup>3</sup> See Doc. 19 p. 7. See *US Airline Pilots Ass'n v. Leonidas, LLC*, Case No. 13-  
28 1282 (Bkrptcy S.D.N.Y.).

1 because of scheduling conflicts affecting USAPA's lead counsel. Although Plaintiffs  
2 claim that USAPA's counsel's assertion is somehow insufficient, it is Plaintiffs who note  
3 that counsel for USAPA must be available and appear by conference call in Bankruptcy  
4 Court on April 3, 2013 (the day before the answer in this case would be due unless  
5 extended as requested by Defendant USAPA's motion) with respect to the adversary  
6 proceeding that was filed on March 6, 2013. Each of these grounds set forth by USAPA  
7 in its request for an extension of time provide legally sufficient good cause. *See Jenkins*  
8 *v. Commonwealth Land Title Ins. Co.*, 95 F.3d 791, 795 (9th Cir. 1996) (finding no abuse  
9 of discretion in granting request for extension where lead counsel had other deadlines and  
10 had not had an opportunity to discuss the matter with her client and to review her client's  
11 files on the matter); *United States v. Bd. of County Com'rs of County of Dona Ana, New*  
12 *Mexico*, CIV. 08-0501 JB/WPL, 2010 WL 965607 (D.N.M. Feb. 18, 2010) ("Showing  
13 good cause is not a particularly demanding requirement."); *United States v. Portillo-*  
14 *Quezada*, Nos. 03-20051, 08-2295, 2010 WL 396309, at \*1 (D.Kan. Jan. 27, 2010)  
15 (finding good cause where attorney argued only that he "needs additional time to contact  
16 a witness for the Government at the trial of this case who may recant or change her  
17 testimony in material respects. Completion of research and drafting of the memorandum  
18 in support is also needed.").

## 20 **II. USAPA HAS ACTED IN GOOD FAITH**

21 Contrary to Plaintiffs' unsupported arguments, this application has been made in good  
22 faith. USAPA has acted in good faith both in this Court proceeding and in its duty to  
23 fairly represent all of the US Airways pilots in the forthcoming merger with the much  
24 larger American Airlines. Delays of 30 days or more to respond to complaints are  
25 routinely granted as professional courtesies in this District. USAPA's counsel has been  
26 actively and vigorously representing the pilots in connection with the upcoming merger.  
27 It has filed an adversary proceeding in the Bankruptcy Court and its counsel is sorting  
28

1 through numerous issues that require extensive specialized legal expertise and substantial  
2 consultation with its client.

3 Plaintiffs' assertion of bad faith is based entirely on their meritless arguments on the  
4 substance of their claim that USAPA somehow breached the duty of fair representation.  
5 Despite extensive and vigorous attempts by Plaintiffs to assert that USAPA violated its  
6 duty of fair representation, both the Ninth Circuit Court of Appeals and Chief Judge  
7 Silver dismissed the DFR claims as not ripe. *Addington v. US Airline Pilots Ass'n*, 606  
8 F.3d 1174 (9th Cir. 2010)<sup>4</sup>; 2:10-cv-01570-ROS, Doc. 193 (holding that USAPA is "free  
9 to pursue any seniority position it wishes during the collective bargaining" but noting that  
10 USAPA could face a duty of fair representation claim at the appropriate time in accord  
11 with *Addington*). In our view, this case is in all respects the same as the case that was  
12 presented to Judge Silver and nothing has changed that would transform this unripe case  
13 into a ripe one.  
14

15 The unreasonableness of Plaintiffs' refusal to grant the brief extension of time  
16 requested by USAPA, a professional courtesy routinely requested and provided in this  
17 District, is also demonstrated by Plaintiffs' attempt to argue bad faith by resurrecting a  
18 defense raised five years ago in the vacated proceeding. Doc. 19 pp. 6-7.<sup>5</sup> USAPA has  
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20 <sup>4</sup> The plaintiffs' petition for rehearing and rehearing en banc was denied,  
21 *Addington v. US Airline Pilots Ass'n*, No. 09-16564, Dkt. Entry 51 (July 8, 2010), as was  
22 their petition for writ of certiorari to the United States Supreme Court. *Addington v. US  
23 Airline Pilots Ass'n*, 131 S. Ct. 908 (2011).

24 <sup>5</sup> We move to strike all references in the papers submitted by Plaintiffs to any of  
25 the decisions issued by Judge Wake in *Addington I*. The Ninth Circuit remanded that case  
26 with directions to vacate. The direction to vacate "effectively annuls or sets aside the  
27 lower court's decision for *all purposes*" and "the appealed from judgment or order"  
28 should be treated "as if [it] never occurred." C. Goelz & M. Watts, *Rutter's California  
Practice Guide: Federal Ninth Circuit Civil Appellate Practice* § 10:231 (emphasis in  
original), *citing State of Calif. Dept. of Social Servs. v. Thompson*, 321 F3d 835, 847 (9th  
Cir. 2003). Indeed, in refusing to accept transfer of the action ultimately decided by  
Judge Silver, Judge Wake himself said, "[T]he substantive rulings in *Addington* have

1 demonstrated good faith at all times.

2 **III. THERE IS NO PREJUDICE TO PLAINTIFFS**

3 Plaintiffs' claim of prejudice by this brief delay is completely belied by their  
4 opposition to USAPA's request to expedite the pending appeal of Chief Judge Silver's  
5 ruling in the Ninth Circuit. *See US Airways v. Addington et. al.*, No. 13-15000, ECF No.  
6 8-1 (9th Cir.) (filed March 5, 2013). The approval of the reorganization, even if it is  
7 accomplished in September or October (at the very earliest) is still many months  
8 following the date USAPA requested to respond to the motion to reassign this case to a  
9 different judge and to answer or otherwise respond to the Complaint. Plaintiffs have  
10 made no showing that they would be prejudiced.

11 **CONCLUSION**

12 For the foregoing reasons and the reasons set forth in its motion, Defendant  
13 USAPA respectfully requests that its motion for an extension of time be granted.  
14

15 Respectfully submitted his 29<sup>th</sup> day of March, 2013.

16 **Martin & Bonnett, P.L.L.C.**

17 By: s/ Susan Martin  
18 Susan Martin  
19 Jennifer L. Kroll  
20 Martin & Bonnett  
21 1850 N. Central Ave., Suite 2010  
22 Phoenix, AZ 85004

23 Patrick J. Szymanski (*pro hac vice*)  
24 Patrick J. Szymanski, PLLC  
25 1900 L Street, NW, Suite 900  
26 Washington, DC 20036

27 Brian J. O'Dwyer (*pro hac vice*)  
28 Gary Silverman (*pro hac vice*)

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27 been vacated pursuant to mandate" and the case before Chief Judge Silver "would now  
28 write on [a] clean slate[]." *Addington*, 2:08-cv-01633-NVW, Doc. 666, at 4. The attempt  
by Plaintiffs to inject any of Judge Wake's rulings into this case is completely improper.

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Joy K. Mele (*pro hac vice*)  
O'Dwyer & Bernstein, LLP  
52 Duane Street, 5th Floor  
New York, NY 10007

Attorneys for US Airline Pilots Association

**CERTIFICATE OF SERVICE**

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I hereby certify that on March 29, 2013, I 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:

Marty Harper  
Andrew S. Jacob  
Jennifer Axel  
Polsinelli & Shughart, PC  
CityScape  
One East Washington St., Ste. 1200  
Phoenix, AZ 85004

Attorneys for Plaintiffs

US Airways, Inc.  
Karen Gillen  
111 West Rio Salado Parkway  
Tempe, AZ 85281

Robert A. Siegel  
Chris A. Hollinger  
400 South Hope Street, Suite 1500  
Los Angeles, CA 90071-2899

Attorneys for US Airways, Inc.

s/T. Mahabir