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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.* )

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25 Case No.: 2:13-CV-00471-PGR  
26 **US AIRLINE PILOTS**  
27 **ASSOCIATION'S MOTION TO**  
28 **SET BRIEFING SCHEDULE ON**  
**PLAINTIFFS' MOTION FOR**  
**CLASS CERTIFICATION AND**  
**MOTION FOR PRELIMINARY**  
**INJUNCTION OR,**  
**ALTERNATIVELY, FOR**  
**EXTENSION OF TIME TO**  
**RESPOND TO PLAINTIFFS'**  
**MOTION FOR CLASS**  
**CERTIFICATION AND MOTION**  
**FOR PRELIMINARY**  
**INJUNCTION (First Request)**

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2 Defendant US Airline Pilots Association (“USAPA”) hereby moves this Court to  
3 set a briefing schedule on Plaintiffs’ Motion for Class Certification, Doc. 11, and Motion  
4 for a Preliminary Injunction, Doc. 13, after deciding Plaintiffs’ motion to transfer this  
5 matter to Judge Wake or Chief Judge Silver, Doc. 5, and after deciding USAPA’s  
6 forthcoming motion to dismiss the complaint and US Airways’ Motion to Dismiss for  
7 Lack of Subject Matter Jurisdiction, Doc. 28. Alternatively, USAPA moves for an  
8 extension of time to May 6, 2013 to respond to Plaintiffs’ Motion for Class Certification  
9 and Motion for Preliminary Injunction.  
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11 MEMORANDUM OF POINTS AND AUTHORITIES

12 BACKGROUND

13 On November 29, 2011, AMR Corporation and its subsidiaries, including  
14 American Airlines, (the “Debtors”) commenced a voluntary Chapter 11 case in the  
15 United States Bankruptcy Court for the Southern District of New York . (*In re AMR*  
16 *Corp.*, Case No. 11-15463). On February 13, 2013, the Debtors entered into an  
17 Agreement and Plan of Merger with US Airways, which provides, *inter alia*, that subject  
18 to and effective upon the confirmation and consummation of AMR’s Chapter 11 plan of  
19 reorganization, US Airways will become a wholly-owned subsidiary of AMR  
20 Corporation. On March 6, 2013 (prior to commencement of this action), after counsel for  
21 Plaintiffs sent letters threatening to seek an injunction of the merger process, USAPA  
22 filed an adversary proceeding in the Bankruptcy Court for the Southern District of New  
23 York alleging that the threat to “seek an injunction of the merger” violated the automatic  
24 stay provisions of the Bankruptcy Code. Later on March 6, 2013, Plaintiffs filed the  
25 instant action seeking to enjoin both USAPA and US Airways “from integrating the pilot  
26 operations in a manner that breaches Defendant USAPA’s duty of fair representation.”  
27 Complaint, at 1. On April 2, 2013, USAPA filed motions to transfer this matter to the  
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1 United States District Court for the Southern District of New York and to suspend  
2 briefing until the transfer motion was decided. Doc. 26. On April 3, 2013, both Plaintiffs  
3 and USAPA participated in a conference before the Bankruptcy Court for the United  
4 States District Court for the Southern District of New York. During that conference, the  
5 Plaintiffs in this action were admonished by the Bankruptcy Court not to interfere with  
6 the Bankruptcy proceedings and also agreed to enter into a stipulation agreeing not to  
7 interfere with those proceedings. Accordingly, and based on the conference with the  
8 Bankruptcy Court and Plaintiffs' agreement to enter into a stipulation, USAPA has  
9 withdrawn its motion to transfer venue to the Southern District of New York.

10  
11 The day after filing the Complaint in this action, Plaintiffs filed a Motion to  
12 Transfer Case to Judge Wake or Judge Silver. Doc. 5. USAPA sought an extension of  
13 time until May 6, 2013 to respond to Plaintiffs' motion to transfer judge assignment and  
14 to respond to the Complaint. Doc. 9. USAPA intends to file a motion to dismiss this  
15 action. Following USAPA's request for an extension of time to respond to the Complaint,  
16 Plaintiffs filed a Motion for Class Certification, Doc. 11, and a Motion for a Preliminary  
17 Injunction, Doc. 13. Although USAPA requested until May 6, 2013 to respond to the  
18 motion to transfer judge assignment, USAPA agrees that this action should be reassigned  
19 Chief Judge Silver. Chief Judge Silver just recently presided over US Airways'  
20 declaratory judgment action against USAPA and the plaintiffs in this action. The  
21 declaratory judgment action and this action arise from substantially the same events,  
22 involve the same parties<sup>1</sup>, and involve determinations of the same questions of law,  
23 including the dispute between USAPA and the plaintiffs over seniority integration,  
24 whether the duty of fair representation claim is ripe, and, if so, whether USAPA's duty of  
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27 <sup>1</sup> The only difference in the parties is that there are three additional individual  
28 pilots named as plaintiffs in this action in addition to plaintiffs Addington, Bostic,  
Burman, Iranpour, Velez, and Wargocki, who were all named defendants in the  
declaratory judgment action.

1 fair representation requires it to implement the Nicolau Award, and whether US Airways  
2 can accept or implement a non-Nicolau seniority list. USAPA’s response to Plaintiffs’  
3 motion to transfer judge assignment is being filed simultaneously with this motion.

4 Plaintiffs have made multiple unsuccessful attempts alleging violations of  
5 USAPA’s duty of fair representation. Plaintiffs brought claims in this Court for breach of  
6 the duty of fair representation in 2008 against USAPA and against US Airways. 2:08-cv-  
7 01633-NVW. The claims against US Airways in that case were dismissed for lack of  
8 subject matter jurisdiction after US Airways moved to dismiss for similar reasons to the  
9 reasons that US Airways is now contending the claims here should be dismissed. See  
10 2:08-cv-01633-NVW, Doc. 84 pp. 14-18. See US Airways Motion to Dismiss for Lack  
11 of Subject Matter Jurisdiction filed April 4, 2013, Doc. 28. The Ninth Circuit Court of  
12 Appeals found in 2010 that the duty of fair representation claim was not ripe and  
13 remanded the case to the District Court with directions to vacate its judgment and dismiss  
14 the action. *Addington v. US Airline Pilots Ass’n*, 606 F.3d 1174 (9th Cir. 2010).<sup>2</sup> In July  
15 2010, shortly after the Ninth Circuit denied rehearing in the *Addington* case, US Airways  
16 filed the declaratory action. The Court dismissed Plaintiffs’ cross-claim seeking to  
17 relitigate the duty of fair representation claim. 2:10-cv-01570-ROS, Doc. 85 p. 9 (“Based  
18 on the Ninth Circuit’s ruling on the exact issue, this Court is required to dismiss the West  
19 Pilots’ Cross-Claim as not ripe.”) In October 2012, on cross-motions for summary  
20 judgment, Chief Judge Silver dismissed issued judgment in favor of USAPA, holding that  
21 USAPA is “free to pursue any seniority position it wishes during the collective  
22 bargaining” but noting that USAPA could face a duty of fair representation claim at the  
23 appropriate time in accord with *Addington*. 2:10-cv-01570-ROS, Doc. 193. US Airways  
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27 <sup>2</sup> The plaintiffs’ petition for rehearing and rehearing en banc was denied,  
28 *Addington v. US Airline Pilots Ass’n*, No. 09-16564, Dkt. Entry 51 (July 8, 2010), as was  
their petition for writ of certiorari to the United States Supreme Court. *Addington v. US  
Airline Pilots Ass’n*, 131 S. Ct. 908 (2011).

1 appealed the ruling and the appeal is pending in the Ninth Circuit. Plaintiffs opposed  
2 USAPA's motion to expedite the appeal.

3 USAPA believes that nothing has changed transforming this unripe case into a ripe  
4 one and is working on preparing a motion to dismiss to be filed by May 6, 2013, if the  
5 Court grants USAPA's pending request for an extension of time (Doc. 9).

6 ARGUMENT

7 I. USAPA'S MOTION WITH RESPECT TO THE COMPLAINT SHOULD BE  
8 DECIDED PRIOR TO BRIEFING ON PLAINTIFFS' OTHER MOTIONS

9 USAPA moves for an order suspending the briefing on Plaintiffs' class  
10 certification motion and Plaintiffs' motion for a preliminary injunction until after the  
11 Court's ruling on Plaintiffs' motion to transfer judge assignment and after ruling on  
12 USAPA's motion with respect to the Complaint. USAPA respectfully submits that for  
13 purposes of judicial economy and conservation of judicial resources, it is appropriate for  
14 the Court to decide the pending motion to transfer judge assignment and then for the  
15 judge that ultimately presides over the case to rule on US Airways' Motion to Dismiss for  
16 Lack of Subject Matter Jurisdiction and USAPA's forthcoming motion with respect to the  
17 Complaint prior to setting a briefing schedule for Plaintiffs' class certification and  
18 preliminary injunction motions. If the Court dismisses this action, no further briefing  
19 will be required and there is no reason for USAPA to respond to the motion for class  
20 certification and the motion for preliminary injunction or for the Court to decide those  
21 matters. There is no prejudice to Plaintiffs from such an order. Plaintiffs' motion for  
22 class certification is premature given that no discovery has been conducted. As to their  
23 motion for preliminary injunction, the seniority provisions currently in effect for all US  
24 Airways pilots remain at status quo and will continue in that posture unless and until the  
25 Plan of Reorganization is finally approved by the Bankruptcy Court, an event that even  
26 Plaintiffs acknowledge is at least six months from now.  
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1 II. ALTERNATIVELY, USAPA REQUESTS UNTIL MAY 6, 2013 TO FILE  
2 RESPONSES TO PLAINTIFFS' CLASS CERTIFICATION MOTION AND  
3 PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION<sup>3</sup>

4 Alternatively, if the Court determines that the class certification and preliminary  
5 injunction motions should be briefed before the ruling on the motion to transfer judge  
6 assignment and before any motions with respect to Plaintiffs' complaint have been  
7 decided, USAPA requests that the Court grant an extension of time of approximately  
8 three weeks, until May 6, 2013 for USAPA to file responses to those motions. USAPA  
9 requests this extension because USAPA had significant involvement in the pending  
10 Bankruptcy Court matters and is now faced with responding to the Complaint and two  
11 additional substantive motions. USAPA participated in the conference call on April 3,  
12 2013 in the Bankruptcy Court. USAPA's lead counsel also has had and continues to have  
13 extensive client meetings in various locations around the country in the past several  
14 weeks and in the next several weeks to deal with this litigation as well as other matters  
15 involved in the merger between US Airways and American Airlines, which was approved  
16 by the Bankruptcy Court on March 27, 2013. USAPA's counsel also has numerous  
17 briefing deadlines in other cases, including several deadlines related to multiple summary  
18 judgment motions and discovery in other cases that must be completed within the same  
19 time frame.

20 The requested extension, together with USAPA's pending request for an extension of  
21 time to May 6, 2013 to respond to the Complaint if granted (Doc. 9), would make the  
22 responses to all motions as well as any motions with respect to the Complaint due on the  
23 same day. The extension will not result in any harm or improper delay. USAPA asked  
24 Plaintiffs if they would consent to this extension. Plaintiffs' counsel stated that they were  
25 unable to consent.

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27 <sup>3</sup> USAPA's response to Plaintiffs' motion for class certification is due April 11,  
28 2013. The response to Plaintiffs' motion for a preliminary injunction is due April 12,  
2013.

1 CONCLUSION

2 For all the foregoing reasons, USAPA respectfully requests that the Court issue an  
3 order that a briefing schedule (if necessary) on Plaintiffs' Motion for Class Certification  
4 and Motion for Preliminary Injunction be set following a ruling on Plaintiffs' motion to  
5 transfer judge assignment and on USAPA's motions with respect to the Complaint.  
6 Alternatively, USAPA respectfully requests that the Court grant USAPA until May 6,  
7 2013 to file responses to the motion for class certification and the motion for a  
8 preliminary injunction.  
9

10 Respectfully submitted this 5<sup>th</sup> day of April, 2013.

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 5, 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:

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s/T. Mahabir



1 Plaintiffs' Motion for a Preliminary Injunction, Doc. 13, unless and until the Court directs  
2 the parties to file such responses and a reply following the Court's ruling on the motions  
3 to dismiss the complaint.

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[Alternatively: IT IS HEREBY ORDERED that the motion is granted and that Defendant  
USAPA shall have until May 6, 2013 to file a response to Plaintiffs' Motion for Class  
Certification, Doc. 11, and Plaintiffs' Motion for a Preliminary Injunction, Doc. 13.]