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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

12 Don Addington; et al.,  
13 Plaintiffs,

14 vs.

15 US Airline Pilots Ass'n, et al.,  
16 Defendants.

No. CV-13-00471-PHX-ROS

**RULE 65(a)(2) MOTION TO  
CONSOLIDATE THE  
PRELIMINARY INJUNCTION  
HEARING WITH TRIAL ON THE  
MERITS**

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18 Plaintiffs Addington, *et al.*, (the "West Pilots") move for the Court to consolidate  
19 the preliminary injunction hearing, set for May 14, 2013, with trial on the merits. This  
20 motion is supported by the Memorandum of Points and authorities that follows.

21 Dated this 8th day of May, 2013.

22 **POLSINELLI PC**

23 */s/ Andrew S. Jacob*

24 By \_\_\_\_\_

25 Marty Harper

26 Andrew S. Jacob

27 Jennifer Axel

28 *Attorneys for Plaintiffs*

**MEMORANDUM OF POINTS AND AUTHORITIES**

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2 Plaintiff West Pilots' claims are (1) that Defendant US Airline Pilots Association  
3 ("USAPA") breached its duty of fair representation ("DFR") by making a contract, the  
4 Memorandum of Understanding ("MOU"), that abandons the Nicolau Award without a  
5 legitimate purpose; and (2) that Defendant US Airways ("Airways") shares liability with  
6 USAPA because it agreed to abandon the Nicolau Award, knowing this was a DFR  
7 breach for USAPA. The West Pilots have a pending motion for a preliminary injunction  
8 that would compel USAPA and Airways to use the Nicolau Award in the process of  
9 integrating seniority with the American Airlines ("American") pilots. (Doc. 13.) A  
10 hearing is set on that motion for May 14, 2013.

11 In support of their motion for preliminary injunction, the West Pilots submitted a  
12 detailed Separate Statement of Facts (Doc. 14) that is supported by an extensive appendix  
13 of evidence (Docs. 14-1, 14-2, 14-3). In their responses to the West Pilots' motion,  
14 neither Defendant challenged a fact that is material to the West Pilots' claims. (Docs. 48,  
15 49.) Neither submitted evidence that, even when taken in the light most favorable to  
16 opposing one of the West Pilots' claims, contradicts any fact material to that claim.  
17 Rather, both Defendants opposed the merits of the West Pilots' claims on issues of law,  
18 applying undisputed facts.

19 As a general rule, "the absence of a showing that material factual issues exist during  
20 an unconsolidated hearing on a preliminary injunction motion does not justify what in  
21 effect is a sua sponte summary judgment unless the adverse party has been given notice  
22 and an opportunity to oppose the entry of judgment." Wright & A. Miller, *Fed. Prac. &*  
23 *Proc.* § 2950. But, "if it is clear that consolidation did not detrimentally affect the  
24 litigants, as, for example, when the parties in fact presented their entire cases and no  
25 evidence of significance would be forthcoming at trial, then the trial court's consolidation  
26 will not be considered to have been improper." *Id.*

27 Given that the parties have been litigating these issues for nearly five full years and  
28 that their points of contention have always been focused on issues of law, not fact, there

1 is little basis by which USAPA or Airways can argue that they would be prejudiced by  
2 the sua sponte entry of summary judgment if, indeed, the Court finds the absence of a  
3 showing of material factual issues here. In conclusion, therefore, the West Pilots ask the  
4 Court to consolidate the trial on the merits with the preliminary injunction hearing and  
5 enter summary judgment in their favor if the Court makes such a finding.<sup>1</sup>

6 Dated this 8th day of May, 2013.

7 **POLSINELLI PC**

8 */s/ Andrew S. Jacob*

9 By \_\_\_\_\_

10 Marty Harper

11 Andrew S. Jacob

12 Jennifer Axel

13 *Attorneys for Plaintiffs*

14 **CERTIFICATE OF SERVICE**

15 I hereby certify that on this 8th day of May 2013, I electronically transmitted the  
16 foregoing document to the U.S. District Court Clerk's Office by using the ECF System  
17 for filing and transmittal.

18 */s/ Andrew S. Jacob*

19 By \_\_\_\_\_

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<sup>1</sup> The West Pilots remind the Court that prior to entering final judgment it should  
address class certification.