

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**JAMES C. STEPHENS, *et al.***

**Plaintiffs,**

**v.**

**US AIRWAYS GROUP, INC., *et al.*,**

**Defendants.**

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**DC:07-CV-1264 (RMC)**

**PLAINTIFFS' UNOPPOSED MOTION  
TO SUBSTITUTE CLASS REPRESENTATIVE**

TO THE HONORABLE ROSEMARY M. COLLYER UNITED STATES DISTRICT JUDGE:

On October 17, 2014, this Court certified a class in this case pursuant to Fed. R. Civ. P. 23(a). *See* Dkt. No. 8 at 1. Former US Airways Captains James C. Stephens and Richard Mahoney were appointed as class representatives. However, subsequent to the Court's ruling, Stephens and Mahoney have independently had developments in their personal lives that make it impossible for them to perform their responsibilities in this class action law suit. Each wishes to have another class member substituted as class representative in this action, as the position has become unduly burdensome for them due to the recent changes in their personal lives. Neither objects to the settlement, and this motion is wholly unrelated to the terms of the proposed settlement.

In response, Plaintiffs file this unopposed motion, respectfully requesting that this Court substitute former US Airways Captain John Davis as Class Representative in this matter.

**I. SUBSTITUTION OF THE CLASS REPRESENTATIVE IS APPROPRIATE**

Under Rule 23, the Court's class certification order may be amended at any time prior to a decision on the merits. Fed. R. Civ. P. 23(c)(1). Amending an order to substitute class representatives is, therefore, authorized by Rule 23(c)(1). *See Robinson v. Sheriff of Cook*

*County*, 167 F.3d 1155, 1158 (7th Cir. 1999); *Newberg on Class Actions* §2:8 (5th ed. 2014). “Once a class complaint is filed, but certainly following certification, Rule 23 is designed to assure that the rights of absent class members are not prejudiced by the voluntary actions of the representative plaintiff.” *Newberg on Class Actions* §2:17 (5th ed. 2014). Even in circumstances where a class representative’s claims have been lacking—for example, their claim has become moot—courts have permitted substitution of a new class representative. *In re Thornburgh*, 869 F.2d 1503, 1509–10 (D.C. Cir. 1989) (citing *Newberg on Class Actions*) (internal citations omitted). “Such action is especially appropriate where the events causing mootness have only individual rather than classwide impact.” *Id.*

Here, the class has been certified and the Class Representatives wish to step down for personal reasons which affect only them, rather than anything that affects the class as a whole. Therefore, substitution is appropriate if Davis otherwise meets the qualifications of a class representative.

## **II. CAPTAIN JOHN DAVIS IS QUALIFIED TO BE APPOINTED AS CLASS REPRESENTATIVE**

As noted above, on October 17, 2014, this Court certified the class in this case. The Certified Class was defined as:

All participants and/or beneficiaries of the Retirement Income Plan for Pilots of U.S. Air Inc., who, from February 28, 1997, to March 31, 2003, elected to receive a lump sum payment as a full or partial distribution of their retirement benefits, but who did not receive their lump sum payment on the first day of the month coinciding with or following their Normal Retirement Date (or alternatively, for early retirees, the date on which they elected to begin receiving their retirement income).

*See* Dkt. No. 83 at 1.

John Davis is similarly situated to both Stephens and Mahoney. He began employment at US Airways on July 29, 1968, and was employed as a Captain starting on December 1, 1983,

until his retirement on January 1, 2001. Upon retirement, he elected to receive his retirement benefits under the Pension Plan as a lump sum payment. Like the other members in the class, his payment was delayed, and his lump sum was not distributed until February 15, 2001, forty-five days later.

From July 1, 1993, to December 9, 2000, Davis also served as Chairman of the Local Executive Council 94 (Pittsburgh) of the Air Line Pilots Association. In this capacity, and subsequent to his chairmanship, Davis drafted two declarations for the Plaintiffs in this matter, and is otherwise familiar with the lawsuit and the issues that gave rise to the claims.

John Davis meets the requirement of a class representative contained in Federal Rule of Civil Procedure 23(a).

### **1. Typicality is Satisfied**

Rule 23(a)(3) requires that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). Here, Plaintiff John Davis asserts claims that are typical of those of the class. The named plaintiff, together with all class members, were US Airways pilots who elected to receive their pension benefits as a lump sum upon their retirement from US Airways. All of the class members, including Davis, assert the identical claim: that they are entitled to interest on their lump sum payment for the period between their benefit commencement date under the terms of the Plan and the date on which they actually received the lump sum payments.

### **2. Adequacy of Representation is Satisfied**

The proposed Class Representative and Class Counsel must “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). This adequacy requirement serves to uncover any conflicts of interest between the potential class representatives and those they seek

to represent. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 626 & n.20 (1997). Here, each of these components exceeds the requirement of adequacy. As indicated above, Davis has already been involved in this case and was very familiar with the lawsuit and the issues giving rise to the claims. Since he was contacted to be substituted as class representative, Davis has further informed himself of the matter as specifically related to the settlement. He has conveyed a willingness and ability to protect the interests of the class. In support of this motion, John Davis submits the statement attached as Exhibit 1.

### III. CONCLUSION

As noted above, neither of the current class representatives objects to the settlement. Each of the other factors required for class certification remain unchanged. For these reasons, and those discussed above, Plaintiffs respectfully request the class be re-certified and John Davis be substituted as Class Representative.

Dated: November 19, 2014

Respectfully Submitted

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Certificate of Service

I, Jacks C. Nickens, certify that on 19th day of November 2014, a copy of the foregoing document was served on the following counsel by electronic filing and U.S. Mail:

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