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8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF MARICOPA**

10 DON ADDINGTON, JOHN BOSTIC, MARK
11 BURMAN, AFSHIN IRANPOUR, ROGER
12 VELEZ, and STEVE WARGOCKI, individual
residents of the State of Arizona, pilots
13 formerly employed by America West Airlines,
Inc., and presently employed by its successor
14 after merger, US Airways, Inc., *on their own*
15 *behalf and on behalf of all persons similarly*
situated;

16 Plaintiffs,

17 vs.

18 STEVEN H. BRADFORD, PAUL J. DIORIO,
19 ROBERT A. FREAR, MARK W. KING,
20 DOUGLAS L. MOWERY, and JOHN A.
21 STEPHAN, individuals residing outside
Arizona, pilots formerly employed by
22 US Airways, Inc., and presently employed by
its successor after merger using the same
23 name, *on their own behalf and on behalf of all*
24 *persons similarly situated;*

25 Defendants.

CASE NO. 2:08-CV-01728-NVW

FIRST AMENDED COMPLAINT

CLASS ACTION:

**PLAINTIFF AND DEFENDANT
CLASSES**

(Injunctive Relief)

1 For their Complaint, Plaintiffs allege as follows:

2 **OVERVIEW**

3 1. In May 2005, the air carriers America West and US Airways agreed to
4 merge such that they would combine all or substantially all their assets.

5 2. Hereinafter, Plaintiffs use:

6 a) “Merger” to refer to this merger event;

7 b) “the Company” to refer to the post-merger air carrier;

8 c) “US Airways” to refer to the pre-merger carrier;

9 d) “West CBA” to refer to the collective bargaining agreement between
10 America West and its pilots;

11 and

12 e) “East CBA” to refer to the collective bargaining agreement between
13 US Airways and its pilots.

14 **Parties**

15 3. Plaintiff DON ADDINGTON is a resident of the State of Arizona who was
16 on the West CBA seniority list on May 3, 2007.

17 4. Plaintiff JOHN BOSTIC is a resident of the State of Arizona who was on
18 the West CBA seniority list on May 3, 2007.

19 5. Plaintiff MARK BURMAN is a resident of the State of Arizona who was
20 on the West CBA seniority list on May 3, 2007.

21 6. Plaintiff AFSHIN IRANPOUR is a resident of the State of Arizona who
22 was on the West CBA seniority list on May 3, 2007.

23 7. Plaintiff ROGER VELEZ is a resident of the State of Arizona who was on
24 the West CBA seniority list on May 3, 2007.

25 8. Plaintiff STEVE WARGOCKI is a resident of the State of Arizona who
26 was on the West CBA seniority list on May 3, 2007.

1 18. A true and correct copy of ALPA Merger Policy was attached as Exhibit C
2 to the original Verified Complaint and is incorporated by reference here.

3 19. The common law contract established by these two documents is neither an
4 agreement between labor organizations subject to the Labor Management Relations Act,
5 29 U.S.C. §§ 185, *et seq.*, nor an agreement between an air carrier and its employees
6 subject to the Railway Labor Act, 45 U.S.C. §§ 151, *et seq.*

7 20. An arbitration, the “Nicolau Arbitration,” was conducted pursuant to this
8 contract.

9 21. The pilots involved in the Merger participated without objection in the
10 Nicolau Arbitration, either directly or through their chosen pilot representatives and
11 attorneys.

12 22. The Nicolau Arbitration was neither subject to federal labor law, nor
13 conducted by a federal agency or administrative body.

14 23. The award arising from the Nicolau Arbitration, the “Nicolau Award,”
15 created an integrated seniority list that defined the relative seniority rights of the pilots
16 involved in the Merger.

17 24. The pilots involved in the Merger accepted a common law contract
18 obligation to treat the Nicolau Award as “final and binding.”

19 25. The purpose of the common law contract underlying the Nicolau
20 Arbitration was to create an integrated seniority list that would be used by the Company
21 within one year of its creation.

22 26. The Company is headquartered in Tempe, Arizona.

23 27. The Company conducts a substantial portion of its operations in Arizona.

24 28. Defendants and other East Pilot Class members (defined below) did
25 foresee, reasonably should have foreseen, and/or intended that their common law contract
26 obligations related to the Nicolau Award would substantially impact Arizona activities.

1 29. Defendants’ and other East Pilot Class members’ failure to comply with
2 common law contract obligations related to the Nicolau Award did substantially impact
3 Arizona activities.

4 30. Defendants and other East Pilot Class members did foresee, reasonably
5 should have foreseen, and/or intended that their breach of common law contract
6 obligations related to the Nicolau Award would substantially impact Plaintiffs’ Arizona
7 activities.

8 31. Defendants’ and other East Pilot Class members’ failure to comply with
9 common law contract obligations related to the Nicolau Award did substantially impact
10 Plaintiffs’ Arizona activities.

11 32. This Court, therefore, has specific personal jurisdiction over Defendants
12 and the members of the East Pilot Class.

13 33. Venue is proper in this Court pursuant to A.R.S. § 12-401(1).

14 **CLASS ACTION ALLEGATIONS**

15 **Plaintiff Class**

16 34. Plaintiffs bring this action, pursuant to Rule 23(b)(2) of the Arizona Rules
17 of Civil Procedure, on their own behalf and on behalf of all persons similarly situated.

18 35. The Plaintiff class (“West Pilot Class”) is defined as “those pilots who were
19 on the *West* CBA seniority list on May 3, 2007.”

20 36. The West Pilot Class has approximately 1700 members. Accordingly, the
21 class is so numerous that joinder of all such persons is impracticable.

22 37. The standing of the named Plaintiffs to enforce Defendants’ and other East
23 Pilot Class members’ individual common law contract obligations related to the Nicolau
24 Award arises from their status as represented participants in the Nicolau Arbitration.

25 38. The named Plaintiffs will fairly and adequately represent the interests of
26 other West Pilot Class members because:
27
28

1 a) They have moral and financial support from many West Pilot Class
2 members;

3 b) One or more Plaintiffs have suffered and/or are likely to suffer each
4 kind of injury suffered or about to be suffered by other West Pilot
5 Class members as a result of Defendants' and other East Pilot Class
6 members' breach of contract;

7 and

8 c) Plaintiffs each have a good understanding of the issues underlying
9 this litigation and have demonstrated a willingness to invest the
10 necessary time and efforts to fulfill their duties as representative
11 parties.

12 39. There are material questions of law and fact arising from this action that are
13 common to Plaintiffs and other West Pilot Class members. These include the following:

14 a) Whether Defendants and other East Pilot Class members have
15 individual common law contract obligations related to the Nicolau
16 Award;

17 b) Whether Plaintiffs and other West Pilot Class members have
18 standing to enforce these contract obligations;

19 c) Whether Defendants and other East Pilot Class members are in
20 breach of these contract obligations;

21 and

22 d) Whether the injunctive relief requested herein is an appropriate
23 remedy.

24 40. The claims raised herein are applicable to all West Pilot Class members
25 because they were all represented in the Nicolau Arbitration.

26 41. Plaintiffs have retained counsel experienced in class action litigation to
27 prosecute these claims.
28

1 49. Defendants and other East Pilot Class members acted in concert to evade
2 their individual common law contract obligations related to the Nicolau Award.

3 50. Because Defendants and other East Pilot Class members acted in concert
4 and because all material issues of law and fact are common to Defendants and other East
5 Pilot Class members, a single resolution of this dispute is the most judicially efficient
6 way to proceed.

7 51. Because Plaintiffs do not seek monetary damages in this action, there
8 would neither be injustice nor compromise of due process rights if the Court gives this
9 defendant class action treatment.

10 52. This action, therefore, is maintainable as a defendant class action because
11 the factors enumerated herein satisfy the requirements of Rule 23(a) and Rule 23(b)(2).

12 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

13 53. The common law contract at issue here established contractual rights and
14 obligations that ran among all the individual pilots employed by the two airlines at the
15 time of the Merger.

16 54. By entering into this common law contract, Plaintiffs and other West Pilot
17 Class members agreed, for the benefit of Defendants and other East Pilot Class members,
18 that an integrated seniority list would be created in accordance with ALPA Merger
19 Policy.

20 55. By entering into this common law contract, Defendants and other East Pilot
21 Class members agreed, for the benefit of Plaintiffs and other West Pilot Class members,
22 that an integrated seniority list would be created in accordance with ALPA Merger
23 Policy.

24 56. All pilots who participated in the Nicolau Arbitration (directly or through
25 chosen representatives and attorneys) agreed that it would be conducted according to
26 procedures and standards established in ALPA Merger Policy and according to more
27 specific rules and procedures agreed to by the parties that were set out in a document
28

1 entitled, “Ground Rules For The US Airways-America West Pilot Seniority Integration
2 Arbitration.”

3 57. A true and correct copy of the “Ground Rules” document was attached as
4 Exhibit D to the original Verified Complaint and is incorporated by reference here.

5 58. ALPA Merger Policy stated, among other things:

6 a) “The Award of the Arbitration Board shall be final and binding on
7 all parties to the arbitration;”

8 and

9 b) “The purpose of arbitration shall be to reach a fair and equitable
10 resolution consistent with ALPA policy.”

11 59. The pilots involved in the Merger conducted the Nicolau Arbitration
12 according to procedures and standards established in ALPA Merger Policy and the
13 Ground Rules.

14 60. In the Nicolau Arbitration, the pilots were aligned in two groups that
15 correspond to the West Pilot Class and East Pilot Class. The parties were referred to as
16 “the US Airways Pilot Merger Representatives and the America West Pilot Merger
17 Representatives.”

18 61. On or about May 3, 2007, Mr. Nicolau issued the Nicolau Award, formally
19 entitled “In The Matter Of The Seniority Integration Of The Pilots Of US Airways, Inc.
20 And The Pilots Of America West Airlines, Inc.”

21 62. A true and correct copy of the Nicolau Award was attached as Exhibit F to
22 the original Verified Complaint and is incorporated by reference here.

23 63. The Nicolau Award stated that the integrated seniority list established
24 therein was fair and equitable.

25 64. Individual West and East Pilots directly participated and/or were fully and
26 adequately represented in the Nicolau Arbitration.

1 operating using the integrated seniority list created by the Nicolau
2 Award;

3 and

4 c) granting such other relief that the Court deems necessary and proper.
5

6 Dated this 20th day of October, 2008.

7 SHUGHART THOMSON & KILROY, P.C.
8

9 */s/ Andrew S. Jacob*

10 By: _____

11 Andrew S. Jacob
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13 3636 N. Central Ave., Suite 1200
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15 *Attorneys for Plaintiffs*

14 **CERTIFICATE OF SERVICE**

15 I hereby certify that on October 20, 2008, I electronically transmitted the
16 foregoing document to the U.S. District Court Clerk's Office by using the CM/ECF
17 System for filing and transmittal of a Notice of Electronic Filing to the following
18 CM/ECF registrant(s):

17 Nicholas Paul Granath (ngranath@ssmplaw.com)
18 Lucas K Middlebrook (lmiddlebrook@ssmplaw.com)
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22 *s/ Andrew S. Jacob*
23 _____
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