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

12 DON ADDINGTON; JOHN BOSTIC;
13 MARK BURMAN; AFSHIN IRANPOUR;
14 ROGER VELEZ; and STEVE WARGOCKI;
individual residents of the State of Arizona,
15 formerly employed by America West
Airlines, Inc. and presently employed by its
16 successor after merger, US Airways, Inc.,
Plaintiffs,
17 vs.
18 US AIRLINE PILOTS ASSOCIATION, an
19 unincorporated association representing the
20 pilots in the employment of US Airways Inc.;
and US AIRWAYS, INC., a Delaware
21 corporation;
22 Defendants.

CASE NO. 2:08-CV-1633 NVW

**STIPULATED
STATEMENT OF FACTS
RE:
PLAINTIFF'S APPLICATION FOR
PRELIMINARY INJUNCTION**

23
24 The parties, through counsel, stipulate that the following uncontested facts may
25 be considered by the Court, without further proof, in connection with Plaintiffs'
26 Application for Preliminary Injunction, heard on October 29, 2008 and currently under
27 advisement.
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- 1. Terms :
 - a) “Merger” to refer to the merger event referred to in Paragraph 2, herein;
 - b) “US Airways” to refer to the pre-merger air carrier;
 - c) “Defendant US Airways” to refer to the post-merger air carrier;
 - d) “West CBA” to refer to the collective bargaining agreement originally between America West and the Air Line Pilots Association (ALPA) on behalf of the West Pilots.
 - e) “West Pilots” to refer, as individuals and as a group (unless otherwise indicated), to the pilots on the seniority list incorporated into the West CBA.
 - f) “East CBA” to refer to the collective bargaining agreement originally between US Airways and ALPA on behalf of the East pilots;
 - g) “East Pilots” to refer, as individuals and as a group (unless otherwise indicated), to the pilots on the seniority list incorporated into the East CBA;
 - h) “West and East Pilots” refers to the entire group of pilots on both West CBA and East CBA seniority lists, and individuals on those lists;
 - i) “Furloughed Pilots”: refers to those US Airways pilots who were on furlough and not actively flying for US Airways at the time of the merger.
 - j) “New Hire Pilots”: refers to those US Airways pilots who were not employed by, or on furlough from US Airways or America West at

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the time of the merger, and started employment with Defendant US Airways after the merger.

k) “Separate Operations” refers to those provisions defined in Section II.A of the Transition Agreement, including the provisions of Section II.B.

2. In May 2005, two air carriers, America West Airlines, Inc. (“America West”) and US Airways, Inc., agreed to merge such that they would combine all or substantially all their assets. Defendant US Airways, Inc. is obligated under the terms of the collective bargaining agreements governing pilots of the two pre-merger air carriers.

3. Plaintiff Don Addington is a resident of the State of Arizona, who at all times relevant to this Complaint has been a West Pilot.

4. Plaintiff John Bostic is a resident of the State of Arizona, who at all times relevant to this Complaint has been a West Pilot.

5. Plaintiff Mark Burman is a resident of the State of Arizona, who at all times relevant to this Complaint has been a West Pilot.

6. Plaintiff Afshin Iranpour is a resident of the State of Arizona, who at all times relevant to this Complaint has been a West Pilot.

7. Plaintiff Roger Velez is a resident of the State of Arizona, who at all times relevant to this Complaint has been a West Pilot.

8. Plaintiff Steve Wargocki is a resident of the State of Arizona, who at all times relevant to this Complaint has been a West Pilot.

9. Defendant US Airways is a Delaware corporation with its principal place of business in Tempe, Arizona.

1 10. At all times relevant to this action, Defendant US Airways has engaged in
2 interstate commerce in the industry of air transportation, and has been an employer in an
3 industry affecting interstate commerce.

4 11. Defendant US Airline Pilots Association (“USAPA”) is an unincorporated
5 association with a principal place of business in Charlotte, North Carolina.

6 12. The National Mediation Board (“NMB”) certified USAPA as the
7 collective bargaining representative of the pilots employed in the service of Defendant
8 US Airways on April 18, 2008.

9 13. These claims arise under the RLA, 45 U.S.C. § 151, *et seq.*

10 14. In December 2003, America West and the ALPA entered into a written
11 agreement defining the terms of the West CBA. Plaintiffs refer to that document as the
12 “2004 CBA.” The West CBA, as defined by the 2004 CBA, became effective in
13 January, 2004, and was to become amendable on December 31, 2006.

14 15. The 2004 CBA is attached here as Exhibit A.

15 16. The wages, benefits and conditions of work required by the East CBA are
16 different in some respects than the wages, benefits and conditions of work required by
17 the West CBA. On September 23, 2005, Defendant US Airways (as America West and
18 US Airways), and ALPA on behalf of West and East Pilots entered into the “*Transition*
19 *Agreement.*”

20 17. US Airways and America West and their respective holding companies,
21 through their designated agents and representatives were parties to the Transition
22 Agreement, and designated as the “Airline Parties.”

23 18. A true and correct copy of the *Transition Agreement* may be admitted into
24 evidence.

25 19. The terms of ALPA Merger Policy are set out in a document, entitled
26 “*Section 45 – Merger And Fragmentation Policy*” and dated August 10, 2005.

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1 20. A true and correct copy of *ALPA Merger Policy* is attached here as
2 Exhibit C.

3 21. Pursuant to ALPA Merger Policy, in October 2006, the US Airways MEC
4 and the America West MEC referred their dispute to mediation and arbitration.

5 22. Mediation of the dispute was not successful.

6 23. Arbitration was conducted by an Arbitration Board chaired by George
7 Nicolau.

8 24. The ALPA West and East MEC's through their appointed representatives
9 agreed to rules and procedures set out in a document entitled "*Ground Rules For The*
10 *US Airways-America West Pilot Seniority Integration Arbitration.*" A true and correct
11 copy of this document may be admitted into evidence.

12 25. The East and West ALPA MEC merger representatives agreed that the
13 document entitled "*Conditions and Restrictions*" would apply to the arbitration. A true
14 and correct copy of this document may be admitted into evidence.

15 26. The East and West ALPA MEC merger representatives submitted their
16 dispute to a Board of Arbitration chaired by George Nicolau (the "Nicolau
17 Arbitration"). The decision of Arbitrator George Nicolau was issued in May 2007.

18 27. A true and correct copy of the Nicolau Award, entitled, "*In The Matter Of*
19 *The Seniority Integration Of The Pilots Of US Airways, Inc. And The Pilots Of America*
20 *West Airlines, Inc.*", may be admitted into evidence.

21 28. The West ALPA MEC was represented in the Nicolau Arbitration by
22 merger representatives appointed by the West ALPA MEC.

23 29. The East ALPA MEC was represented in the Nicolau Arbitration by
24 merger representatives appointed by the East ALPA MEC.

25 30. The Nicolau Award has not been set aside, vacated, or modified by any
26 court of competent jurisdiction.

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1 31. Between the effective date of the merger and September 1, 2008,
2 Defendant US Airways has hired approximately 87 “New Hire” pilots to work as East
3 Pilots.

4 32. Between the effective date of the merger and September 1, 2008, the
5 active roster of West Pilots has decreased.

6 33. Between the effective date of the merger and September 1, 2008, the
7 active roster of East Pilots has increased.

8 34. Between the effective date of the merger and September 1, 2008, the
9 increase in the active roster of East Pilots includes both “New Hire Pilots” and
10 “Furloughed Pilots.”

11 35. On or about June 12, 2008, Defendant US Airways announced plans to
12 furlough approximately 300 pilots by April 2009.

13 36. US Airways plans, as part of the 300, to furlough 140 West Pilots (not
14 including New Hire Pilots).

15 37. On October 1, 2008, US Airways furloughed approximately 43 West
16 Pilots assigned to fly West aircraft.

17 38. On October 1, 2008, US Airways furloughed approximately 14 New Hire
18 Pilots assigned to fly West aircraft.

19 39. US Airways has scheduled an additional 53 West Pilots to be furloughed
20 on November 1, 2008.

21 40. In the current reduction in force, West Pilots have been or will be
22 furloughed before the furlough of East Pilots who had been on furlough status at the
23 time of the merger but were recalled by Defendant US Airways after the merger.

24 41. US Airways furloughed Plaintiff John Bostic on October 1, 2008.

25 42. US Airways will furlough Steve Wargocki on November 1, 2008.

26 43. In December 2007, Defendant US Airways accepted the Nicolau List.
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1 44. Since acceptance of the Nicolau List, Defendant US Airways has not yet
2 integrated operations by negotiating and obtaining ratification of a single collective
3 bargaining agreement that would implement an integrated seniority list.

4 45. Certain East Pilots formed Defendant USAPA.

5 46. USAPA has submitted a proposal for a date-of-hire based seniority policy,
6 including conditions and restrictions, to US Airways.

7 47. In early 2008, the National Mediation Board (“NMB”) determined that the
8 West and East Pilots constituted a single craft for purposes of labor representation.

9 48. USAPA campaigned to become the certified labor representative of the
10 West and East Pilots.

11 49. The East operation has a greater number than the West operation.

12 50. During the election campaign, USAPA promised that if it were elected the
13 labor representative it would follow USAPA’s Constitution.

14 51. On or about April 18, 2008, USAPA became the certified labor
15 representative.

16 52. USAPA has submitted a proposal to US Airways for a seniority list
17 including conditions and restrictions. In the parties’ negotiating sessions, US Airways
18 has not yet responded to or discussed the USAPA seniority proposal.

19 53. USAPA has not incorporated, included or adopted the integrated seniority
20 list established by the Nicolau Award in any proposal to US Airways.

21 CERTIFICATION

22 I, Don Stevens, certify that I have personally conferred with Defendant US
23 Airways, through its counsel Tom Jerman, Esq. and Rachel Janger, Esq. and with
24 Defendant USAPA, through its counsel Lee Seham, Esq. and Lucas K. Middlebrook,
25 Esq. to reach agreement on the foregoing Stipulated Facts. Counsel for each Defendant
26 has authorized the undersigned to file the foregoing with the Court as an agreed upon
27 Stipulation of Facts.

1 Dated this 3rd day of November, 2008.

2 SHUGHART THOMSON & KILROY, P.C.

3 /s/ ***Don Stevens***

4 Copy filed electronically on
5 November 3, 2008

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8 *Attorneys for Plaintiffs*

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