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8  
9 **IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

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  
14 its successor after merger, US Airways,  
Inc., *on their own behalf and on behalf of*  
15 *all persons similarly situated,*  
Plaintiffs,

16 vs.

17 US AIRLINE PILOTS ASSOCIATION, an  
unincorporated association representing  
18 the pilots in the employment of  
US Airways Inc.; and US AIRWAYS, INC.,  
19 a Delaware corporation;

20 Defendants.

CASE NO. 2:08-CV-1633-NVW

**FIRST AMENDED COMPLAINT**

**HYBRID ACTION:  
(1) BREACH OF CBA; AND  
(2) BREACH OF DUTY OF FAIR  
REPRESENTATION**

**(Railway Labor Act; Class Action)**

**(Trial By Jury Demanded,  
pursuant to Rule 38)**

21 For their Complaint, Plaintiffs allege as follows:

22 **INTRODUCTION AND PARTIES**

23 1. In May 2005, two air carriers, America West Airlines, Inc. (“America  
24 West”) and US Airways, Inc., agreed to merge such that they would combine all or  
25 substantially all their assets. Defendant US Airways, Inc. is the successor to the  
26 two pre-merger air carriers.

27 2. Hereinafter, Plaintiffs use:  
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- a) “Merger” to refer to this merger event;
- 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 its 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 its 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” to refer, as individuals and as a group (unless otherwise indicated) to the entire group of pilots on both West CBA and East CBA seniority lists;
- i) “Separate Operations” to refer to that phase of the Merger where West Pilots can operate only the aircraft that were in the service of America West prior to the Merger or added thereafter (“West Airplanes”) and East Pilots can operate only the aircraft that were in the service of US Airways prior to the Merger or added thereafter (“East Airplanes”);

and

- j) “Integrated Operations” to refer to that phase of the Merger where West and East Pilots are placed onto a single seniority list and are not limited to operating either West Airplanes or East Airplanes.

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

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

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

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

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

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

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

15          10.      At all times relevant to this action, Defendant US Airways has:

- 16           a)      Engaged in interstate commerce in the industry of air  
17                    transportation; and  
18           b)      Been an employer in an industry affecting interstate  
19                    commerce.

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

23          12.      The National Mediation Board (“NMB”) certified USAPA as the  
24 collective bargaining representative of the pilots employed in the service of  
25 Defendant US Airways.

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## JURISDICTION AND VENUE

13. This Complaint asserts, on behalf of Plaintiffs and a class of West Pilots who are similarly situated:

- a) In Counts One and Two, minor grievances against Defendant US Airways; and
- b) In Count Three, a claim for breach of the duty of fair representation against Defendant USAPA.

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

15. This Court has jurisdiction over these claims pursuant to hybrid claim doctrine because the minor grievances, Counts One and Two, are inextricably linked to the breach of duty of fair representation claim, Count Three.

16. This Complaint was filed within six (6) months of the accrual of all claims.

17. This Court has federal question jurisdiction. 28 U.S.C. § 1331.

18. Venue is proper in the District of Arizona, pursuant to 28 U.S.C. § 1391(b), because:

- a) A substantial part of the events or omissions giving rise to the claims occurred in that judicial district; or were directed at affecting one or more Plaintiffs residing in that district; and/or
- b) The principal place of business of Defendant US Airways is situated in that judicial district.

## CLASS ACTION ALLEGATIONS

19. Plaintiffs bring this action, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on their own behalf and on behalf of all persons similarly situated.

20. The Plaintiff class (hereinafter, the “West Pilot Class”) is defined as:

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*Those US Airways pilots who appear on the West CBA seniority list, at the time of filing this Complaint.*

21. The putative West Pilot Class includes approximately 1800 members. Accordingly, the class is so numerous that joinder of all such persons is impracticable.

22. There exist common questions of law and fact affecting the putative West Pilot Class.

23. The standing of the named Plaintiffs to enjoy and protect the seniority rights established by the Nicolau List arise from their status as West Pilots and is, therefore, the same as that for any other West Pilot.

24. The named Plaintiffs will fairly and adequately represent the interests of the putative West Pilot Class because:

- a) They have moral and financial support from many West Pilots;
- b) One or more of them have suffered and/or are likely to suffer each kind of injuries suffered or about to be suffered by other West Pilots as a result of Defendant US Airways breach of its duties under the collective bargaining agreements described herein and as a result of Defendant USAPA's violations of the duty of fair representation described herein.

and

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

25. Material questions of law and fact arising from this action that are common to the Plaintiffs and other members of the putative West Pilot Class include the following:

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- a) Whether Plaintiffs and other West Pilots have individual standing to remedy the conduct complained of herein that impairs their enjoyment of the seniority rights established by the Nicolau List;
  - b) Whether Defendant US Airways is bound by a contract duty to furlough all pilots hired after September 20, 2005, before it furloughs any West Pilot who was on the West seniority list as of that date;
  - c) Whether Defendant US Airways is bound by a contract duty to furlough all East Pilots who were on furlough as of September 20, 2005, before it furloughs any West Pilot who was on the West seniority list as of that date;
  - d) Whether Defendant USAPA is in breach of the duty of fair representation that it owes to all West Pilots;
  - e) Whether Defendant US Airways owes money damages to all West Pilots who have lost wages or benefits as a consequence of being furloughed or demoted or missing promotions after April 18, 2008;
  - f) Whether Defendant USAPA owes money damages to all West Pilots who have lost wages or benefits as a consequence of being furloughed or demoted or missing promotions after April 18, 2008;
- and
- g) Whether the injunctive relief requested herein is an appropriate remedy.

26. The claims raised herein are applicable to all West Pilots because all West Pilots would have more favorable seniority rights under the Nicolau List

1 than they are presently receiving as a consequence of Defendants' and other East  
2 Pilots' actions in denigration of the Nicolau List.

3 27. Plaintiffs have retained counsel experienced in class action litigation  
4 to prosecute these claims.

5 28. This action is maintainable as a plaintiff class action because the  
6 factors enumerated herein satisfy the requirements of Rule 23(a) and Rule  
7 23(b)(1), (2) & (3).

## 8 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

### 9 **Collective Bargaining Agreements And Merger**

10 29. In December 2003, America West and the West Pilots entered into a  
11 written agreement defining the terms of the West CBA. Plaintiffs refer to that  
12 document as the "2004 CBA." The West CBA, as defined by the 2004 CBA, became  
13 effective in January, 2004, and was to become amendable in January 2007.

14 30. A true and correct copy of relevant pages from the 2004 CBA is  
15 attached to the *Verified Complaint* as Exhibit A.

16 31. The West CBA was defined by Letters of Agreement that, except as  
17 expressly noted herein, are not material to this dispute.

18 32. Defendant US Airways is the successor to America West's rights and  
19 obligations under the West CBA.

20 33. Defendant US Airways is the successor to US Airways' rights and  
21 obligations under the East CBA.

22 34. The wages, benefits and conditions of work required by the East CBA  
23 are substantially more favorable to Defendant US Airways than are the wages,  
24 benefits and conditions of work required by the West CBA.

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35. The 2004 CBA referred to:
- a) America West as the “Company;”
  - b) the West Pilots as the “Association;” and
  - c) the West CBA as the “Agreement.”
36. The 2004 CBA provided, *among other things*, as follows:

A. RECOGNITION

1. In accordance with Certification Number R-6213 issued by the National Mediation Board on October 26, 1993, the Company recognizes the Association [ALPA] as the collective bargaining representative of the flight deck crew members [Pilots] employed by the Company with the authority and obligation to represent them for the purposes of the Railway Labor Act, as amended.

and

B. SCOPE

This Agreement covers all revenue and all known and recurring miscellaneous flying performed by the Company. All flying covered by this Agreement shall be performed by Pilots whose names appear on the America West Airlines, Inc. Pilots’ System Seniority List.

F. SUCCESSORSHIP AND MERGERS

2. In the event of a complete merger between the Company and another air carrier (i.e., the combination of all or substantially all the assets of the two carriers) where the surviving carrier decides to integrate the pre-merger operations, the following procedures will apply: (1) if the Company is the surviving carrier, the Company will integrate the two Pilot groups in accordance with Association Merger Policy if both groups are represented by the Association, . . . and (2) if the Company is not the surviving carrier, the Company will make reasonable efforts to have the surviving carrier integrate the two pilot groups in the same manner as stated in (1) of this paragraph.

5. Seniority shall govern all Pilots in case of promotion and demotion, retention in case of reduction in force, assignment or realignment due to expansion or reduction in schedules, reemployment after release due to reduction in schedules, reemployment after release due to reduction in force, and choice of vacancies, provided the Pilot can qualify and is able to assume the assignment.



Transition Agreement

37. On September 20, 2005, Defendant US Airways (as America West and US Airways), West and East Pilots entered into a multilateral contractual agreement entitled, the “*Transition Agreement*.”

38. A true and correct copy of the *Transition Agreement* is attached to the *Verified Complaint* as Exhibit B.

39. The *Transition Agreement* established contractual rights and obligations that ran, among other things:

- a) Among individual West Pilots and individual East Pilots;
- b) Between individual West Pilots and the East Pilot group;
- c) Between individual East Pilots and the West Pilot group;

and/or

- d) Between the West Pilot group and the East Pilot group.

40. The *Transition Agreement* added or changed certain terms of the West CBA and/or the East CBA.

41. The *Transition Agreement*, therefore, established collective bargaining rights and obligations that ran, among other things:

- a) Between Defendant US Airways and individual West and East Pilots;
- b) Between Defendant US Airways and the West Pilot Group;

and/or

- c) Between Defendant US Airways and the East Pilot Group.

42. All parties understood and intended that the rights and obligations arising in the *Transition Agreement* were part of a multiparty bargained-for exchange.

1           43. All parties understood and intended that the rights and obligations  
2 arising in the *Transition Agreement* were supported by valid consideration and  
3 would be legally enforceable by all beneficiaries.

4           44. The bargained for terms of the *Transition Agreement* included among  
5 other things:

6           a) West Pilots agreed, for the benefit of East Pilots, to waive  
7 Scope Provisions of the West CBA that required America West  
8 to operate airplanes in the service of America West under  
9 America West designator code and/or marketing identity;

10           b) West Pilots agreed, for the benefit of Defendant US Airways  
11 and East Pilots, that Defendant US Airways must provide all  
12 furloughed East Pilots an opportunity to be either recalled as  
13 East Pilots or hired as West Pilots before it could hire any new  
14 pilots;

15           c) Defendant US Airways and East Pilots agreed, for the benefit  
16 of West Pilots, that Defendant US Airways must place any  
17 pilots hired after the date of the *Transition Agreement* on a  
18 third seniority list entitled ‘New Hire Seniority List’ and that  
19 it must treat these pilots as junior to all pilots on the West  
20 Pilot seniority list during separate operations;

21           d) East Pilots and Defendant US Airways agreed, for the benefit  
22 of West Pilots, that if any West Pilot was furloughed during  
23 Separate Operations, Defendant US Airways could not hire  
24 any new pilots until it provided all furloughed West Pilots an  
25 opportunity to be either recalled as West Pilots or hired as East  
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- e) West Pilots agreed, for the benefit of Defendant US Airways and East Pilots, to waive some of the West CBA restrictions on the seating capacity of aircraft using the company's marketing identity that could be flown by Express Carriers;
- f) West Pilots agreed, for the benefit of Defendant US Airways and East Pilots, that Defendant US Airways could use East Pilots to operate East Airplanes on certain flights that, according to the Scope Provisions of the West CBA, Defendant US Airways could fly only with West Pilots and West Airplanes;
- g) East Pilots and Defendant US Airways agreed, for the benefit of West Pilots, that Defendant US Airways could use West Pilots to fly West Airplanes on certain flights that, according to the Scope Provisions of the East CBA, Defendant US Airways could fly only with East Pilots and East Airplanes;
- h) West Pilots agreed, for the benefit of Defendant US Airways and East Pilots, to negotiate (in good faith) amendments to the West CBA necessary to allow Integrated Operations of Defendant US Airways using a single integrated seniority list and a single CBA;
- i) East Pilots agreed, for the benefit of West Pilots, to negotiate (in good faith) amendments to the East CBA necessary to allow Integrated Operations of Defendant US Airways using a single integrated seniority list and a single CBA;
- j) Defendant US Airways agreed, for the benefit of West Pilots, to negotiate (in good faith) amendments to the West CBA and to the East CBA necessary to allow Integrated Operations of

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Defendant US Airways using a single integrated seniority list and a single CBA;

k) West Pilots agreed, for the benefit of Defendant US Airways and East Pilots, that the single integrated seniority list referred to above would be created in accordance with ALPA Merger Policy;

l) East Pilots agreed, for the benefit of West Pilots, that the single integrated seniority list referred to above would be created in accordance with ALPA Merger Policy;

and

m) Defendant US Airways agreed, for the benefit of West Pilots, that the single integrated seniority list referred to above would be created in accordance with ALPA Merger Policy.

**ALPA Merger Policy**

45. The terms of ALPA Merger Policy are set out in a document, entitled “*Section 45 – Merger And Fragmentation Policy*” and dated August 10, 2005. Hereinafter, Plaintiffs refer to this document as “*ALPA Merger Policy*.”

46. A true and correct copy of *ALPA Merger Policy* is attached to the *Verified Complaint* as Exhibit C.

47. Pursuant to ALPA Merger Policy, West and East Pilots attempted to create a single integrated seniority list through mediation.

48. West and East Pilots could not create a single integrated seniority list through mediation.

49. Pursuant to ALPA Merger Policy, West and East Pilots proceeded to create a single integrated seniority list through binding arbitration.

50. *ALPA Merger Policy* stated, among other things:

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

and

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

**Seniority Dispute And Nicolau Arbitration**

51. West and East Pilots proceeded to create a single integrated seniority list in arbitration conducted according to rules and procedures set out in a document entitled “*Ground Rules For The US Airways-America West Pilot Seniority Integration Arbitration.*”

52. A true and correct copy of this document is attached to the *Verified Complaint* as Exhibit D.

53. West and East Pilots agreed that the single integrated seniority list should comport with standards set out in another document entitled “*Conditions and Restrictions.*”

54. A true and correct copy of this document is attached to the *Verified Complaint* as Exhibit E.

55. West and East Pilots established a Board of Arbitration chaired by George Nicolau (the “Nicolau Arbitration”).

56. On or about May 3, 2007, the Nicolau Arbitration issued its award (the “Nicolau Award”), creating a single integrated seniority list (the “Nicolau List”).

57. A true and correct copy of the Nicolau Award, entitled, “*In The Matter Of The Seniority Integration Of The Pilots Of US Airways, Inc. And The Pilots Of America West Airlines, Inc.*”, is attached to the *Verified Complaint* as Exhibit F.

1 58. The Nicolau Arbitration established, with finality, that the Nicolau  
2 List was:

- 3 a) Fair and equitable;
- 4 b) Consistent with *ALPA Merger Policy*; and
- 5 c) Consistent with the *Conditions And Restrictions*.

6 Standing

7 59. Individual West and East Pilots were fully and adequately  
8 represented in the Nicolau Arbitration by their respective Master Executive  
9 Councils (“MECs”).

10 60. West Pilots were represented by the America West MEC.

11 61. East Pilots represented by the US Airways MEC.

12 62. Because individual West and East Pilots were fully and adequately  
13 represented in the Nicolau Arbitration they have standing as parties to the  
14 Nicolau Arbitration.

15 63. Because individual West and East Pilots have standing as parties to  
16 the Nicolau Arbitration they are bound to treat the Nicolau List as final, binding,  
17 fair and equitable.

18 64. Because West and East Pilots have standing as parties to the Nicolau  
19 Arbitration they may, as individuals or as groups:

- 20 a) Assert *res judicata* or issue preclusion against West and East  
21 Pilots as individuals or as groups;
- 22 b) Be subject to *res judicata* or issue preclusion asserted by West  
23 and East Pilots as individuals or as groups;
- 24 c) Enforce obligations established by the Nicolau Award against  
25 West and East Pilots as individuals or as groups;

26 and/or

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1 d) Be required to perform obligations required by the Nicolau  
2 Award by West and East Pilots as individuals or as groups.

3 **Duty Of Fair Representation**

4 65. In or about the middle of 2007, certain East Pilots made a failed  
5 attempt to vacate the Nicolau Award in the Superior Court of the District of  
6 Columbia.

7 66. Soon thereafter, certain East Pilots formed Defendant USAPA.

8 67. These East Pilots formed USAPA, for the purposes of:

9 a) Becoming the certified labor representative of West and East  
10 Pilots in place of the Airline Pilots Association, International;

11 b) Evading East Pilots' personal and group obligations to treat  
12 the Nicolau List as final, binding, fair and equitable;

13 c) Impeding Defendant US Airways' implementation of the  
14 Nicolau List;

15 and

16 d) Impeding Defendant US Airways' institution of Integrated  
17 Operations.

18 68. In the course of this campaign, USAPA formulated a date-of-hire  
19 based seniority policy ("USAPA Seniority Policy"), that was inconsistent with the  
20 rationale of the Nicolau Award.

21 69. USAPA knew and intended that USAPA Seniority Policy:

22 a) Was inconsistent with the rationale of the Nicolau Award;

23 b) Would require an integrated seniority list that would be  
24 substantially more favorable to the East Pilots than the  
25 Nicolau List;

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1           c)     Would require an integrated seniority list that would be  
2                   substantially less favorable to the West Pilots than the Nicolau  
3                   List;

4           and

5           d)     Was contrary to and inconsistent with its members' personal  
6                   obligations to treat the Nicolau Award and Nicolau List as  
7                   final, binding, fair and equitable.

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

11           71.    USAPA campaigned to become the certified labor representative of  
12                  the West and East Pilots.

13           72.    With the knowledge set out in ¶ 69(a)-(d), and the knowledge that it  
14                  could win the representation contest just with the votes of East Pilots, USAPA  
15                  promised the East Pilots that if it were elected the labor representative it would  
16                  follow USAPA Seniority Policy.

17           73.    On or about April 18, 2008, USAPA became the certified labor  
18                  representative.

19           74.    Upon information and belief, since June 2008, Defendant US Airways  
20                  and USAPA have been negotiating one or more collective bargaining agreements  
21                  to replace the West CBA and the East CBA.

22           75.    In negotiating one or more collective bargaining agreements to  
23                  replace the West CBA and the East CBA, Plaintiffs are informed and, therefore,  
24                  allege that Defendant US Airways and USAPA intend to: (a) **not** implement  
25                  integrated operations and/or (b) **not** adopt the Nicolau List.

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1 similarly situated West Pilots have lost promotions and have lost other  
2 improvements in wages, benefits and working conditions.

3 80. As a consequence of Defendant US Airways' breach of the West CBA  
4 as modified by the *Transition Agreement*, one or more Plaintiffs and other  
5 similarly situated West Pilots will likely be furloughed.

6 81. As a consequence of Defendant US Airways' breach of the West CBA  
7 as modified by the *Transition Agreement*, one or more Plaintiffs and other  
8 similarly situated West Pilots will likely be demoted and lose improvements in  
9 wages, benefits and working conditions.

10 82. One or more Plaintiffs and other similarly situated West Pilots will  
11 continue to accrue injuries until USAPA and Defendant US Airways implement a  
12 single CBA that applies the Nicolau List.

### 13 CAUSES OF ACTION

#### 14 COUNT ONE (DEFENDANT US AIRWAYS)

#### 15 Breach of CBA: Furlough Out Of Order

16 83. Plaintiffs re-allege each and every allegation set forth above as if fully  
17 set forth herein.

18 84. According to West CBA terms found in the *Transition Agreement*,  
19 Defendant US Airways must place all pilots newly hired since the effective date of  
20 the *Transition Agreement* on a third seniority list entitled "New Hire Seniority  
21 List."

22 85. According to West CBA terms found in the *Transition Agreement*,  
23 Defendant US Airways must furlough all pilots on the New Hire Seniority List  
24 before it can furlough any West Pilot.

25 86. Since the effective date of the *Transition Agreement*, Defendant  
26 US Airways has hired approximately 100 new pilots to work as East Pilots.

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1           87.    Since the effective date of the *Transition Agreement*, the active roster  
2 of West pilots has decreased by 118 pilots, from 1894 to 1776.

3           88.    Since the effective date of the *Transition Agreement*, the active roster  
4 of East pilots has increased by 239 pilots, from 3407 to 3646.

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

7           90.    Upon information and belief, Defendant US Airways plans, as part of  
8 the 300, to furlough 175 West Pilots.

9           91.    Upon information and belief, Defendant US Airways has scheduled  
10 57 West Pilots to be furloughed on October 1, 2008.

11          92.    Upon information and belief, Defendant US Airways has scheduled  
12 an additional 54 West Pilots to be furloughed on November 1, 2008.

13          93.    Upon information and belief, Defendant US Airways is in direct  
14 breach of West CBA terms found in the *Transition Agreement* because it:

15               a)    Does not plan to furlough all pilots on the New Hire Seniority  
16                       List before it furloughs West Pilots on October 1, 2008;

17           and

18               b)    Does not plan to furlough all pilots on the New Hire Seniority  
19                       List before it furloughs West Pilots on November 1, 2008.

20          94.    Defendant US Airways has scheduled one or more Plaintiffs to be  
21 furloughed on October 1, 2008.

22          95.    Defendant US Airways has scheduled one or more Plaintiffs to be  
23 furloughed on November 1, 2008.

24          96.    One or more Plaintiffs, and other West Pilots similarly situated,  
25 would likely have been promoted were it not for the West Pilot furloughs planned  
26 by Defendant US Airways.

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1           97. One or more Plaintiffs, and other West Pilots similarly situated, will  
2 likely suffer a demotion and/or loss of wages, benefits and favorable working  
3 conditions because of the West Pilot furloughs planned by Defendant US Airways.

4   COUNT TWO (DEFENDANT US AIRWAYS)  
5   **Breach of CBA): Failure To Negotiate In Good Faith**

6           98. Plaintiffs re-allege each and every allegation set forth above as if fully  
7 set forth herein.

8           99. In November 2007, Defendant US Airways accepted the Nicolau List,  
9 as required by the *Transition Agreement*.

10           100. According to West CBA terms found in the *Transition Agreement*,  
11 after Defendant US Airways accepted the Nicolau List, it was obliged to negotiate  
12 with USAPA in good faith to institute Integrated Operations by adopting a single  
13 collective bargaining agreement that would implement the Nicolau List.

14           101. Since April 18, 2008, Plaintiffs are informed and, therefore, allege  
15 that Defendant US Airways has been in breach of the West CBA terms found in  
16 the *Transition Agreement* because it has not been negotiating with USAPA in good  
17 faith to institute Integrated Operations by adopting a single collective bargaining  
18 agreement that would implement the Nicolau List.

19           102. One or more Plaintiffs, and other West Pilots similarly situated, have  
20 not been promoted because Defendant US Airways has not been negotiating with  
21 USAPA in good faith to institute Integrated Operations by adopting a single  
22 collective bargaining agreement that would implement the Nicolau List.

23           103. One or more Plaintiffs, and other West Pilots similarly situated, will  
24 likely suffer a demotion and/or loss of wages, benefits and favorable working  
25 conditions because Defendant US Airways has not been negotiating with USAPA  
26 in good faith to institute Integrated Operations by adopting a single collective  
27 bargaining agreement that would implement the Nicolau List.

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1           104. One or more Plaintiffs, and other West Pilots similarly situated, will  
2 be furloughed because Defendant US Airways has not been negotiating with  
3 USAPA in good faith to institute Integrated Operations by adopting a single  
4 collective bargaining agreement that would implement the Nicolau List.

5                                   COUNT THREE (USAPA)  
6                                   **Breach Of Duty Of Fair Representation**

7           105. Plaintiffs re-allege each and every allegation set forth above as if fully  
8 set forth herein.

9           106. Since April 18, 2008, Defendant USAPA has owed Plaintiffs and all  
10 other West Pilots a duty of fair representation.

11           107. The duty of fair representation requires that USAPA give due  
12 consideration to West Pilot interests and to not harm those interests through  
13 conduct that is arbitrary, improper, or undertaken in bad faith.

14                                   FAILURE TO GIVE DUE CONSIDERATION

15           108. The duty of fair representation required USAPA to give due  
16 consideration to the interests of the West Pilots when deciding USAPA Seniority  
17 Policy.

18           109. USAPA decided its seniority policy without holding any sort of  
19 hearing or procedure that afforded Plaintiffs and other West Pilots an opportunity  
20 to present arguments and evidence in favor of their interests.

21           110. USAPA, therefore, breached its duty of fair representation.

22           111. Because USAPA failed to give due consideration to West Pilot  
23 interests, it has a seniority policy that caused Defendant US Airways to breach its  
24 collective bargaining agreement with West Pilots.

25           112. Because USAPA is causing Defendant US Airways to breach its  
26 collective bargaining agreement with West Pilots, it has caused Plaintiffs and  
27 other West Pilots the injuries alleged in Counts One and Two.

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ARBITRARY, IMPROPER PURPOSE, BAD FAITH

113. The duty of fair representation precluded USAPA from acting arbitrarily, for improper purpose, or in bad faith.

114. A labor union acts arbitrarily, for improper purpose, and/or in bad faith if its majority members use the union to evade contract obligations that would otherwise constrain them as individuals.

115. USAPA acted arbitrarily, for improper purpose, and/or in bad faith because the East Pilot majority is using USAPA to evade their individual obligations to treat the Nicolau Award as binding and final.

116. A labor union acts arbitrarily, for improper purpose, and/or in bad faith if it promises to commit a breach of its duty of fair representation owed to a minority of the represented workers in order to secure the votes and/or support of the majority of the represented workers.

117. USAPA acted arbitrarily, for improper purpose, and/or in bad faith because it promised to follow its improperly derived seniority policy if elected the representative.

118. By acting arbitrarily, for improper purpose and/or in bad faith, USAPA caused Defendant US Airways to breach its collective bargaining agreement with West Pilots.

119. Because USAPA caused Defendant US Airways to breach its collective bargaining agreement with West Pilots, it caused Plaintiffs and other West Pilots the injuries alleged in Counts One and Two.

**REMEDY SOUGHT**

120. The injuries that have accrued to date to Plaintiffs can be remedied with money damages.

1           211. Other West Pilots similarly situated do not have a fully adequate  
2 remedy at law because it would be exceedingly impractical for each such individual  
3 to prove up his or her damages.

4           212. The West Pilots do not have an adequate remedy at law for future  
5 damages that will accrue until Defendant US Airways and USAPA comply with  
6 their contract and representation duties because there are too many factors  
7 affecting any calculation of their likely damages to make such calculation  
8 practical.

9           213. Plaintiffs, therefore, are entitled to injunctive relief in addition to  
10 money damages.

11           WHEREFORE, the Plaintiffs seek the following relief:

12           A. A preliminary injunction directed against Defendants, ORDERING  
13 that:

- 14           (1) Defendant US Airways shall not furlough any West Pilot before it has  
15 furloughed all pilots on the New Hire Seniority List;
- 16           (2) Defendant US Airways shall not furlough any West Pilot before it has  
17 furloughed all East Pilots junior to them on the Nicolau List;
- 18           (3) Defendants shall not amend the West CBA without the approval of  
19 the Court unless such amendment is ratified by a majority of the  
20 West Pilots.

21           B. A permanent injunction ORDERING Defendants to negotiate and  
22 implement a single collective bargaining agreement that fully implements the  
23 Nicolau List;

24           C. That judgment be entered against Defendants, jointly and severally,  
25 for sufficient damages to compensate Plaintiffs for the value of lost wages and  
26 benefits caused by the injuries alleged herein;

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D. That judgment be entered against USAPA awarding Plaintiffs their costs and reasonable attorneys' fees incurred prosecuting the breach of duty of fair representation claim on the basis of common benefit doctrine; and

E. That Plaintiffs be granted such other relief that the Court deems necessary and proper.

Dated this 28th day of November, 2008.

SHUGHART THOMSON & KILROY, P.C.

/s/

By: \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 28, 2008, I electronically transmitted the foregoing document to the U.S. District Court Clerk's Office by using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing.

*s/ Andrew S. Jacob*

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