

1 LEE SEHAM, Esq. *pro hac vice*
STANLEY J. SILVERSTONE, Esq. *pro hac vice*
2 LUCAS K. MIDDLEBROOK, Esq. *pro hac vice*
SEHAM, SEHAM, MELTZ & PETERSEN, LLP
3 445 Hamilton Avenue, Suite 1204
White Plains, NY 10601
4 Tel: 914 997-1346
Fax: 914 997-7125

5 NICHOLAS PAUL GRANATH, Esq., *pro hac vice*
6 ngranath@ssmplaw.com
SEHAM, SEHAM, MELTZ & PETERSEN LLP
7 2915 Wayzata Blvd.
Minneapolis, MN 55405
8 Tel: 612 341-9080
9 Fax 612 341-9079

10 STANLEY LUBIN, Esq., State Bar No. 003076
stan@lubinandenoch.com
11 LUBIN & ENOCH, PC
349 North 4th Avenue
12 Phoenix, AZ 85003-1505
Tel: 602 234-0008
13 Fax: 602 626 3586

14
15 **IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

16 Don ADDINGTON; John BOSTIC; Mark
17 BURMAN; Afshin IRANPOUR; Roger
VELEZ; and Steve WARGOCKI,

18 Plaintiffs,

19 vs.

20
21 US AIRLINE PILOTS ASSOCIATION,
and
22 US AIRWAYS, INC.,

23 Defendants.

Case No. 2:08-cv-1633-NVW

**ANSWER AND JURY DEMAND
OF THE
US AIRLINE PILOTS ASSOCIATION
TO PLAINTIFFS'
FIRST AMENDED COMPLAINT**

1 The US Airlines Pilots Association answers Plaintiff's First Amended Complaint
2 of November 28, 2008 (Docket No. 86) as follows:
3

4 **RESPONSIVE PLEADINGS**

- 5 1. Admit.
- 6 2. a) Admit; b) Admit; c) Admit; d) Deny; e) Admit; f) Deny; g) Admit; h) Admit;
7 i) Deny and aver that the Transition Agreement defines the meaning of this
8 term; j) Deny and aver that the Transition Agreement defines the meaning of
9 this term.
- 10
- 11 3. Admit.
- 12 4. Admit.
- 13 5. Admit
- 14 6. Admit.
- 15 7. Admit.
- 16 8. Admit
- 17 9. Admit.
- 18 10. Admit.
- 19 11. Admit
- 20 12. Admit.
- 21 13. Admit, except deny that Plaintiffs are entitled to bring this action as a class
22 action.
23

- 1 14. Admit.
- 2 15. Deny.
- 3 16. Deny.
- 4 17. Deny.
- 5 18. Deny.
- 6 19. Deny.
- 7 20. Deny
- 8 21. Deny.
- 9 22. Deny
- 10 23. Deny
- 11 24. Deny and deny as to all subparts.
- 12 25. Deny and deny as to all subparts.
- 13 26. Deny.
- 14 27. Deny.
- 15 28. Deny.
- 16 29. Deny.
- 17 30. Deny.
- 18 31. Deny.
- 19 32. Admit.
- 20 33. Admit.

- 1 34. Deny.
- 2 35. a) Admit; b) Deny; c) Admit.
- 3 36. Admit.
- 4 37. Deny.
- 5 38. Admit.
- 6 39. Deny and deny as to all subparts.
- 7 40. Deny.
- 8 41. Deny and deny as to all subparts.
- 9 42. Deny.
- 10 43. Deny.
- 11 44. Deny and deny as to all subparts.
- 12 45. Admit.
- 13 46. Admit.
- 14 47. Deny.
- 15 48. Deny
- 16 49. Deny.
- 17 50. Deny, the document speaks for itself and the quotations are taken out of
- 18 context and therefore are misleading.
- 19 51. Deny.
- 20 52. Admit that document is attached, but deny the description of the document
- 21
- 22
- 23

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

contained in paragraph 51.

53. Deny.

54. Admit that document is attached, but deny the description of the document contained in paragraph 53.

55. Deny.

56. Deny.

57. Admit.

58. Deny and deny as to all subparts.

59. Deny.

60. Deny.

61. Deny.

62. Deny.

63. Deny.

64. Deny and deny as to all subparts.

65. Deny.

66. Deny, but admit that certain East Pilots formed USAPA.

67. a) Admit; b) Deny; c) Deny; d) Deny

68. Deny.

69. a) Admit; b) Deny; c) Deny; d) Deny.

70. Deny.

- 1 71. Admit.
- 2 72. Deny.
- 3 73. Admit.
- 4 74. Deny, except to admit that negotiations for a single collective bargaining
- 5 agreement began in June of 2008.
- 6
- 7 75. Deny.
- 8 76. Deny and deny as to all subparts.
- 9 77. Deny.
- 10 78. Deny.
- 11 79. Deny.
- 12 80. Deny, except to the extent that Defendant US Airways' failure to furlough
- 13 new-hire Pilots prior to furloughing pre-merger West Pilots may constitute a
- 14 breach of the Transition Agreement, which may have resulted in one or more
- 15 of the Plaintiffs being subject to furlough.
- 16
- 17 81. Deny, except to the extent that US Airways' failure to furlough new-hire Pilots
- 18 prior to furloughing pre-merger West Pilots may have constituted a breach of
- 19 the Transition Agreement, which may have resulted in one or more of the
- 20 Plaintiffs being demoted.
- 21
- 22 82. Deny.
- 23 83. Defendant USAPA repeats its responses to paragraphs 1-82 of the Complaint

1 as if fully set forth herein.

2 84. Deny, except to admit that the Transition Agreement provides that all Pilots
3 newly hired since the effective date of the Transition Agreement are placed on
4 a third seniority list entitled "New Hire Seniority List."

5
6 85. Deny, except to admit that it is USAPA's position that, under the Transition
7 Agreement, Defendant US Airways must furlough all pilots on the New Hire
8 Seniority List before it can furlough any pre-merger West Pilot.

9 86. Deny.

10 87. Deny.

11 88. Deny.

12 89. Admit.

13
14 90. Lack knowledge or information sufficient to form a belief as to the truth of
15 averment.

16 91. Deny.

17 92. Deny.

18 93. Deny, except to admit that Defendant US Airways is in breach of the
19 Transition Agreement to the extent that it furloughs pre-merger West Pilots
20 prior to furloughing new-hire Pilots.

21
22 94. Admit.

23 95. Admit.

- 1 96. Lack knowledge or information sufficient to form a belief as to the truth of
2 averment.
- 3 97. Lack knowledge or information sufficient to form a belief as to the truth of
4 averment.
- 5
6 98. Defendant USAPA repeats its responses to paragraphs 1-97 of the Complaint
7 as if fully set forth herein.
- 8 99. Deny.
- 9 100. Deny.
- 10 101. Deny.
- 11 102. Deny
- 12 103. Deny.
- 13 104. Deny.
- 14
15 105. Defendant USAPA repeats its responses to paragraphs 1-104 of the Complaint
16 as if fully set forth herein.
- 17 106. Admit.
- 18 107. Deny and refer all issues of law to the Court.
- 19 108. Deny and refer all issues of law to the Court.
- 20
21 109. Deny.
- 22 110. Deny.
- 23 111. Deny.

1 112. Deny.

2 113. Deny and refer all issues of law to the Court.

3 114. Deny and refer all issues of law to the Court.

4 115. Deny.

5 116. Deny and refer all issues of law to the Court.

6 117. Deny.

7 118. Deny.

8 119. Deny.

9 120. Deny on the grounds that Plaintiffs have not suffered any injuries.

10 121. Deny.

11 122. Deny.

12 123. Deny and deny all subparts included in the following "WHEREFORE"
13 paragraphs.

14
15
16 **AFFIRMATIVE DEFENSES**

17 124. This Court lacks subject matter jurisdiction.

18 125. Plaintiff's Complaint fails to state any cause of action for which relief may be
19 granted.

20 126. Plaintiffs lack standing.

21 127. Plaintiff's claims are time barred in whole or in part by statutes of limitations.

22 128. Plaintiffs have failed to exhaust contractual remedies required under the
23

1 Railway Labor Act, 45 USC § 151 *et seq.*, depriving this court of jurisdiction.

2 129. Plaintiff have failed to exhaust contractual remedies required under the Norris-
3 LaGuardia Act, 29 USC § 101 *et seq.*, depriving this court of jurisdiction.

4 130. Plaintiffs have failed to mitigate their damages.

5 131. Plaintiffs' claims are not ripe for adjudication.

6 132. Plaintiffs have failed to join a necessary party.

7 133. Plaintiffs are not entitled to plead class action.

8 134. Plaintiffs' class action does not meet the standards for certification.

9 135. Defendant asserts, on information and belief, that discovery may uncover
10 facts supportive of additional affirmative defenses, and, therefore, allege the
11 following affirmative defenses: statutes of fraud, laches, waiver, and estoppel.
12
13

14 **RELIEF**

15 WHEREFORE, Defendant US Airline Pilots Association requests the following:

- 16 1. Dismissal of the plaintiffs' complaint with prejudice.
17 2. The award of reasonable costs and fees.
18 3. Such other relief as the Court may deem just, proper and appropriate.
19

20 **JURY DEMAND**

21 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Defendant, the US
22 Airline Pilots Association, hereby makes a jury demand for all issues triable of right by a
23 jury in the above-cited matter.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

Dated: December 1, 2008

By: ATTORNEYS FOR DEFENDANT
US AIRLINE PILOTS ASSOCIATION

/s/ Lee Seham

Lee Seham, Esq. (*pro hac vice*)
lseham@ssmplaw.com
Stanley J. Silverstone, Esq. (*pro hac vice*)
ssilverstone@ssmplaw.com
Lucas K. Middlebrook, Esq. (*pro hac vice*)
lmiddlebrook@ssmplaw.com
SEHAM, SEHAM, MELTZ & PETERSEN, LLP
445 Hamilton Avenue, Suite 1204
White Plains, NY 10601
Tel: (914) 997-1346
Fax: (914) 997-7125

Nicholas P. Granath, Esq. (*pro hac vice*)
ngranath@ssmplaw.com
SEHAM, SEHAM, MELTZ & PETERSEN, LLP
2915 Wayzata Blvd.
Minneapolis, MN 55405
Tel 612 341-9080
Fax: 612 341-9079

Stanley Lubin, Esq. State Bar No. 003076
stan@lubinandenoch.com
LUBIN & ENOCH, PC
349 North 4th Avenue
Phoenix, AZ 85003-1505
Tel: 602 234-0008
Fax: 602 626 3586