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9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 DON ADDINGTON, *et al.*,

13 Plaintiffs,

14 vs.

15 US AIRLINE PILOTS ASSOCIATION, and
16 US AIRWAYS, INC.,

17 Defendants.

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

**JOINT CASE MANAGEMENT
REPORT**

18
19 Pursuant to the Court's Order of November 21, 2008, the parties met and
20 conferred on December 8, 2008 in Plaintiffs' counsel's office to develop this Case
21 Management Report, and submit the following:

22
23 Introductory note: The Court has ruled that US Airways is dismissed from this action.
24 Counsel for the remaining parties had a telephone conference on December 8, 2008 with
25 legal representatives of US Airways, including Robert Siegel, Esq., Rachel Janger, Esq.
26 and Sarah Asta, Esq. regarding the discovery requests served by Plaintiffs and by
27 USAPA on US Airways before December 8, 2008. US Airways has voluntarily agreed
28 to cooperate with counsel for Plaintiffs and for USAPA to respond to document requests

1 without the need for a subpoena, and to cooperate in scheduling depositions of US
2 Airways personnel without subpoena, reserving all objections and subject to the limits
3 and remedies provided by the applicable Federal Rules of Civil Procedure, including
4 Rule 45 relating to non-parties.

5
6 **1. The parties who attended:**

- 7 a. For Plaintiffs: Don Stevens, Kelly Flood, Andy Jacob, and Katie Brown
8 b. For US Airline Pilots Association: Nick Granath, Lucas Middlebrook,
9 Nick Enoch in person, and Lee Seham was available by telephone

10 **2. Plaintiffs' Statement of the case:** In light of the Court's ruling on pending
11 motions, including Plaintiff's Application for Preliminary Injunction, Plaintiffs state that
12 the Court's Order, dated November 20, 2008, specifically Section I, subsections B, C,
13 and D should be the Statement of the Case.

14 **Separate Statement by USAPA:**

15 The surviving claim asserts a violation of the duty of fair representation as
16 pled based on:

17 i) an alleged "failure to give due consideration" to named-plaintiffs'
18 interests by deciding "seniority policy without holding any sort of hearing
19 or procedure that afforded plaintiffs ... an opportunity to present arguments
20 and evidence in favor of their interests" and

21 ii) the claim that USAPA resorted to conduct that was "arbitrary, [for]
22 improper purpose, [or in] bad faith" by "using USAPA to evade ...
23 individual obligations to treat the Nicolau Award as binding and final" and
24 by promising to follow an "improperly derived seniority policy ... if
25 elected."

26 USAPA, however, denies these factual averments, and denies any legal
27 liability, and puts plaintiffs to their proof.

28 **3. Principal Factual and Legal Disputes:**

a. For Plaintiffs:

i. Whether USAPA was organized for improper purposes.

Plaintiffs contend that USAPA: (a) organized and established itself
without regard to the minority view for the purpose of using the power of

1 the East Pilot majority to adopt and impose a date-of-hire scheme in
2 disregard of an arbitrated compromise, and in disregard of the rights of the
3 West Pilots; (b) was used in an attempt by a majority of the employees in
4 a collective bargaining unit as the means to ignore the legitimate interests
5 and rights of a minority, resulting in a delay in adoption of a single
6 collective bargaining agreement, and damages to Plaintiffs; and (3)
7 followed through on the announced aim to ignore the rights and interests
8 of West Pilots by proposing a seniority list to US Airways that benefits
9 East Pilots without corresponding benefits for the West Pilots.

10 USAPA contends: See USAPA's contention (page 5)

11 ii. Whether USAPA, by effectively making the April, 2008, NMB
12 election a referendum on the Nicolau seniority list, caused the
13 seniority dispute to be decided without giving due consideration to
14 the interests of the West pilots.

15 Plaintiffs contend that prior to the NMB election USAPA proponents: (a)
16 were primarily motivated by a desire to win the votes of a majority of the
17 pilots; (b) expressly promised that if they won the April 2008 NMB
18 election, USAPA would not agree to implement the Nicolau seniority list;
19 and (c) renounced any good faith effort to reconcile the interests of both
20 pilot groups.

21 USAPA contends: See USAPA's contention (page 5)

22 iii. Whether USAPA breached its duty under the 2004 CBA and the
23 Transition Agreement to bargain for a single CBA that would
24 implement the Nicolau seniority list.

25 Plaintiffs contend that since being designated the bargaining
26 representative, USAPA: bargained only for a single CBA that would not
27 implement the Nicolau seniority list regardless that this would frustrate its
28 pre-existing obligation to the minority.

USAPA contends: See USAPA's contention (page 5)

iv. Whether USAPA constituted and operated its merger committees in
an arbitrary, discriminatory and/or in bad faith manner such that
USAPA failed to give due consideration to West Pilot interests.

Plaintiffs contend that USAPA failed to place any West Pilots on these
committees and failed to get West Pilot input for the committees.
Plaintiffs also contend that these committees formulated a date-of-hire
seniority policy without considering: (a) the impact of that policy on the
West Pilots; (b) the relative financial condition of each of the merging

1 airlines; or (c) that many East Pilots were on furlough status at the time of
2 the merger. Plaintiffs also contend that these committees formulated (and
3 USAPA accepted) a date-of-hire seniority proposal (and policy) that: (a) is
4 greatly more favorable to the East Pilots, including those East Pilots on
5 furlough at the time of the merger, than the Nicolau Award; (b) has
6 conditions and restrictions that neither eliminate nor counterbalance the
7 relative disadvantage the date-of-hire poses to the West Pilots; and (c)
8 discriminated against the West Pilots without a rational basis to find that
9 this discrimination promoted the aggregate welfare of the entire group of
10 represented pilots.

11 USAPA contends: See USAPA's contention (page 5)

12 v. Whether an injunction that would preclude the Company from
13 furloughing West Pilots out of the order established by the Nicolau
14 seniority list would impose significant hardships on the Company
15 against which US Airways expressly protected itself in the
16 Transition Agreement.

17 Plaintiffs contend that the Company did not protect itself from having to
18 furlough according to a seniority list. Plaintiffs also contend that under
19 the terms of the Transition Agreement US Airways retained enough
20 discretion to shift routes between West and East Operations that, without
21 significant hardship, it can take furloughs from the East side (if necessary
22 without following the East Pilot seniority order) while keeping West Pilots
23 employed.

24 USAPA contends: See USAPA's contention (page 5)

25 vi. Whether USAPA's wrongful acts proximately caused West Pilots to
26 be furloughed, be demoted and/or lose promotions, resulting in lost
27 wages and other benefits.

28 Plaintiffs contend that certain West Pilots were furloughed or demoted or
lost promotions because USAPA violated its duty of fair representation.
Plaintiffs also contend that these furloughs, demotions and lost
promotions caused the affected West Pilots to suffer loss of wages and
other benefits.

USAPA contends: See USAPA's contention (page 5)

vii. Whether it is necessary to address class certification prior to the
determination of that USAPA is in breach of the duty of fair
representation.

1 Plaintiffs contend that it is not necessary to determine class certification prior to
2 the determination that USAPA is in breach of the duty of fair representation.
3 Plaintiffs have individual standing to assert breach of the duty and absent parties
4 who might assert the same claim would be subject to claim preclusion. Should
5 USAPA want the potential benefit of *res judicata*, Plaintiffs would stipulate to
6 class certification.

7 USAPA contends: See USAPA's contention (page 5)

8 vii. Whether it is necessary to have a jury decide any factual issues prior to the
9 Court determining that USAPA is in breach of the duty of fair
10 representation.

11 Plaintiffs contend that it is not necessary to have a jury decide any factual issues
12 prior to the Court determining that USAPA is in breach of the duty of fair
13 representation. Although Plaintiffs seek money damages, injunctive relief is the
14 primary purpose of this litigation. There is no right to a jury where a monetary
15 award is incidental to injunctive relief. Plaintiffs do not object to a jury
16 determining factual issues related to dispute (vi), which concerns the extent of
17 USAPA's liability for damages to each named plaintiff and class member.

18 USAPA contends:

19 1. USAPA respectfully disagrees with Plaintiffs' statement of the
20 issues herein above.

21 2. Further, USAPA submits that the principle issues in the case are
22 legal and have been set forth in USAPA's brief in support of its motion to dismiss
23 (Docket Nos. 36 and 47). Further, USAPA disagrees with Plaintiffs class action
24 contentions as set forth in its motion.

25 3. Moreover, because the Court's Order of November 20, 2008
26 (Docket No. 84) is unclear to USAPA, it intends to seek clarification of the
27 Court's view of what the fact issues to be tried are, at the December 15th hearing.
28 Notwithstanding any pending clarification from the Court, the factual issues for
trial are:

a) Has USAPA deliberately delayed negotiations for a single collective bargaining agreement? *If the answer is no, USAPA contends that there are no further fact issues because there is no DFR claim that is ripe for adjudication at this time [Nov. 20 Order; Docket No. 84 at page 13].*

b) Assuming this case is deemed ripe for adjudication, was USAPA's adoption of a seniority policy seeking to maintain uniform principles of

1 seniority based on date of hire and the perpetuation thereof, with
2 reasonable conditions and restrictions to preserve each pilot's un-merged
career expectations, a violation of USAPA's duty of fair representation?

3 c) If USAPA is liable for breach of its duty of fair representation, then did
4 the breach cause any named-plaintiff harm?

5 d) If USAPA is liable and if named-plaintiffs were harmed, then what
6 shall be the remedy?

7 **4. The jurisdictional basis for the case:** Plaintiffs' claims arise under the RLA, 45
8 U.S.C. § 151, *et seq.* Plaintiffs Complaint was filed within six (6) months of the accrual
9 of all claims. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331.
Venue is proper in the District of Arizona, pursuant to 28 U.S.C. § 1391(b).

10 **Separate Statement by USAPA:** It is respectfully submitted that the Court lacks
11 jurisdiction because the named-plaintiffs' claims are subject to the exclusive jurisdiction
12 of the Adjustment Board pursuant to the Railway Labor Act. USAPA further states that
there is no case or controversy and that, to the extent the plaintiffs' claims are ripe, these
claims are barred by the applicable limitations period.

13 **5. Parties not yet served:** None

14 **6. Additional parties to be added:** None

15 **7. Contemplated Motions and issues to be decided by the Motions**

16 a. For Plaintiffs:

17 i. Plaintiffs will serve a subpoena and, if necessary, file a motion to
18 compel production of documents prepared by USAPA's lead counsel Lee Seham and his
19 law firm regarding, but not limited to, his/their advice to organizers of USAPA for
20 avoiding the implementation of the Nicolau Integrated Seniority List and how to
21 organize USAPA and its constitution to favor East Pilots to the detriment of the West
Pilots;

22 ii. Plaintiffs expect to file a Motion in Limine barring or limiting the
23 proof to be offered by USAPA regarding conduct, documents or communications by
ALPA, AWAPPA, Leonidas, or any other person not a party to this action.

24 iii. Plaintiffs request that the Court set a hearing to obtain admissions
25 and stipulations about facts and documents, as authorized by Rule 16(2)(C) and (N) to
26 establish the basis for a judgment as a matter of law under Rule 50(a) FRCP or a
27 judgment on partial findings under Rule 52(c), FRCP. Plaintiffs submit that the Court
28 should find that there are no triable issues of fact about: (a) whether USAPA is legally
obligated to submit and defend the integrated seniority list established in binding
arbitration conducted by George Nicolau; (b) that USAPA was formed for the express

1 purpose of avoiding the binding application of the Nicolau Arbitration Award; and (c)
2 that USAPA breached its duty of fair representation by adopting a Constitution and
3 negotiating position that was based on a date of hire procedure that would deny the West
4 Pilots the benefits of the Nicolau Award.

4 iv. Plaintiffs anticipate the need to obtain an Order from the Court
5 requiring US Airways to respond appropriately to Rule 45 subpoenas. The letter from
6 counsel for US Airways describes the nature of the discovery dispute. A similar letter
7 was sent to USAPA regarding USAPA's separate document request to US Airways. Both
8 letters will be filed as separate exhibits to this Case Management Report.

7 b. For US Airline Pilots Association:

8 i. A possible motion to consolidate, after transfer, Breeger v. US
9 Airline Pilots Association et al, 3:08-cv-00490-RJC-CH with this case.

10 ii. A Motion to Continue is pending. Plaintiffs filed their opposition
11 on December 5, 2008 (hearing on December 15). The issue to be decided is whether to
12 continue the trial date and set trial for a time later than February 17, 2008.

13 iii. A Motion to Consolidate is pending. The issue to be decided is
14 whether to consolidate this action with the Plaintiffs' removed state action (Case No.
15 2:08-cv-1728-PHX-NVW)

16 iv. A Motion to Modify the Court's Order Setting Rule 16 Case
17 Management Conference, if necessary, to allow for dispositive motions. The issue to be
18 decided is whether the parties will be allowed summary judgment (the Court's Order of
19 November 20 stated USAPA's motion for summary judgment was premature; Docket
20 No. 84, page 2, line 2).

21 v. Motion for Summary Judgment. The issue expected is whether
22 there is any dispute that USAPA has not been deliberately delaying bargaining for a
23 single CBA, and that USAPA is entitled to judgment as a matter of law because Count
24 III is not ripe for adjudication. Other bases for summary judgment are expected to arise
25 based on discovery.

26 vi. A motion to deny class action certification and/or strike pleadings.
27 The issue to be decided is whether the Court should certify, under Rule 23, the class of
28 plaintiffs alleged in named-plaintiffs' First Amended Complaint.

29 vii. Absent a Stipulated Protective Order, a motion pursuant to Rule
30 26(c) for a Protective Order is intended by USAPA. The issue to be decided whether
31 USAPA is entitled to protect from discovery, pursuant to Rule 26 (c)(A), attorney client
32 privileged communications and work product presently sought by Plaintiffs in their First
33 Request For Documents (and other issues depending on the scope of an agreed to
34 Stipulated Protective Order).

1 viii. Absent a Stipulated Protective Order (one was proposed in the 26f
2 conference but not accepted), a motion pursuant to Rule 26(c) for a Protective Order is
3 intended by USAPA. The issue to be decided whether USAPA is entitled to protect
4 from discovery, pursuant to Rule 26 (c), confidential or secret bargaining data or
5 strategy (it is noted that USAPA's bargaining Committee was required by the company
6 to sign confidentiality agreements) sought by Plaintiffs in their First Request For
7 Documents (and other issues depending on the scope of an agreed to Stipulated
8 Protective Order). Also, it is noted that USAPA Bargaining Committee members were
9 required to execute a Confidentiality Order with the company.

10 ix. A motion in limine is intended. The intended issues would be
11 whether to restrict admission of various evidence offered by Plaintiffs made
12 inadmissible under the Fed.R.Evd.

13 x. A motion to grant jury instructions is intended. The issue would be
14 whether to adopt USAPA's proposed jury instructions.

15 **8. Status of related cases pending before other courts or other judges:**

16 (a) The arbitration of issues raised by Counts I and II of Plaintiffs' Complaint
17 is pending. USAPA separately states, as further developed in its motion for
18 reconsideration, that there is substantial potential for inconsistent decisions between the
19 System Board in the referenced arbitration and the Court in this matter. The arbitration
20 for T.A. No. 9 is scheduled for January 8, 9, 2009.

21 (b) USAPA filed a multi-count action in United States District Court in North
22 Carolina, 3:08-cv-00246 MR CH entitled US Airline Pilot Association v. AWAPPA et.
23 al. That case is on appeal to the Fourth Circuit and it is Plaintiffs' position that it is not
24 directly related to Plaintiffs' remaining claims in this action. It is USAPA's position that
25 this litigation is directly related to Plaintiffs' claims that they have been excluded from
26 USAPA's deliberative process.

27 c) Addington vs. Bradford, 2:08-cv-1728-PHX-NVW, United States District
28 Court For the District of Arizona, Judge N. Wake. This Court is familiar with the action
and this case is related by common or overlapping claims, common parties and common
counsel. The status is that this Court has denied Plaintiff's motion to remand, and
USAPA's motion to consolidate is and its motion to dismiss is pending.

 d) Breeger v. US Airline Pilots Association et al, 3:08-cv-00490-RJC-CH,
US District Court for the Western District of North Carolina, Judge R. Conrad. The
case is related because Plaintiffs, who are US Airways employed "East" pilots, demand
remedies related to current bargaining positions related to seniority integration that
would be inconsistent with the remedies sought by the Plaintiffs in this case. The status
of this case is that Defendants have not yet answered or brought a Rule 12 motion.

9. The parties submitted Rule 26(a) disclosures as follows

- 1 a. Plaintiffs: December 3, 2008
- 2 b. US Airline Pilots Association: December 5, 2008

3 **10. Necessary discovery**

4 a. For Plaintiffs: Witnesses 1-12 are witnesses who are believed to have
5 discoverable information regarding the pending DFR claims of Plaintiffs.
6 Witnesses 13-18 are listed as having information relating to Plaintiff's
7 proposed remedy in the event that liability is established, but may also
8 have relevant information regarding the acts of US Airways in making
9 changes to routes, pairing, equipment, and other cost saving measures and
10 the analysis of the impact on West Pilots. If the Court adopts Plaintiffs
11 suggestion that the trial should be separated into three parts: liability,
12 remedy and damages, then only a portion of this deposition list would be
13 necessary for the first phase. The parties are cooperating in scheduling
14 times and places for discovery following the December 15, 2008 Case
15 Management Conference.

16 i. Depositions:

- 17 (1) Steve Bradford
- 18 (2) Scott Theuer
- 19 (3) Mark King
- 20 (4) Jack Stephan
- 21 (5) Randy Mowrey
- 22 (6) Doug Mowery
- 23 (7) Kim Allen Snider
- 24 (8) Kevin Berry
- 25 (9) Tracy Parella
- 26 (10) Dennis Brennan
- 27 (11) Arnie Gentile
- 28 (12) Bob Kirsh
- (13) Eric Rowe
- (14) Dave Ciabattoni

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(15) Donn Butkovic

Plaintiffs would reserve the right to call employees of US Airways to establish the facts needed to resolve the remedy issues, including:

(16) Lyle Hogg (VP Flight Operations)

(17) Kara Gin (VP, Financial Planning)

(18) Al Hemenway (VP Labor Relations)

(19) Andrew Nocella (Senior VP, Marketing and Planning)

(20) Mike Finn (Managing Director – Crew Resources)

(21) Diane Burke (Pilot Scheduling)

ii. Document Discovery:

(1) Interrogatories to USAPA

(2) Request for Production to USAPA

(3) Requests for Admissions to USAPA

(4) Request for Production to US Airways: Plaintiffs seek to discover information relevant to determining the extent that possible injunctive remedies for USAPA's violation of its duty of fair representation would:

(a) have adverse economic impact on US Airways;

(b) be inconsistent with US Airways' existing contract obligations;

(c) be inconsistent with US Airways' current operations; and/or

(d) impose hardships on US Airways over and above that it agreed to accept (expressly or implicitly) in the Transition Agreement and by its post-merger conduct.

US Airways' Position: US Airways has been dismissed from this action. US Airways has voluntarily agreed to cooperate with counsel for Plaintiffs and for USAPA to respond to document requests without the need for a subpoena, reserving all objections and subject to the limits and remedies provided by the applicable Federal Rules of Civil Procedure, including Rule 45 relating to non-parties.

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b. For US Airline Pilots Association

i. Depositions:

1. Don Addington
2. John Bostic
3. Mark Burman
4. Afshin Iranpour
5. Roger Velez
6. Steve Wargoeki
7. John McIlvenna
8. Mitch Vasin
9. Frank Helton
10. Mark Krebs
11. Eric Ferguson
12. Ray Burkett
13. Brian Stockdell
14. John Bostic
15. Kenneth Stravers
16. Plaintiffs' expert (if any)
17. Any and all witnesses identified and set forth in Plaintiffs' Rule 26 Initial Disclosures or in response to USAPA's discovery demands.
18. Additional class action deponents including:
 - a) putative class representatives
 - b) non-representative class members
 - c) class counsel.

1 ii. Document Discovery:

2 (1) Interrogatories to Plaintiffs

3 (2) Request for Production of Documents to Plaintiffs

4 (3) Request for Admissions to Plaintiffs

5 (4) Request for Production of Documents to US Airways or
6 subpoena for documents

7 (5) Third-party discovery.

8 (6) Additional discovery to challenge class action certification.

9 **11. Proposed deadlines:**

10 a. Plaintiff: Completion of fact discovery on liability claims and defenses
11 regarding USAPA: January 31, 2009

12 Separate Statement by USAPA:

13 *Without continuance:* February 6, 2009

14 *If continued:* May 1, 2009

15 b. Plaintiff: Simultaneous Disclosure of expert testimony re liability: January
16 16, 2009.

17 Separate Statement by USAPA:

18 *If continued:* For Plaintiffs by March 1, 2009, for Defendants by
19 April 1, 2009.

20 c. Plaintiff: Completion of expert depositions re liability: February 6, 2009

21 Separate Statement by USAPA:

22 *If continued:* May 1, 2009 for both parties.

23 d. Plaintiff: Date by which to complete good faith settlement talks: January
24 15, 2009

25 Separate Statement by USAPA:

26 *Without continuance:* December 31, 2008

27 *If continued:* January 31, 2009

1 e. Plaintiff: Discovery on remedies, if any, to be determined following the
2 trial on liability

3 Separate Statement by USAPA:

4 *Without continuance:* within 90 days of a verdict.

5 *If continued:* within 90 days of a verdict.

6 f. Plaintiff: Discovery on damages, if any, to be determined following the
7 trial on liability within 180 days of verdict.

8 Separate Statement by USAPA:

9 *If continued:* within 180 days of a verdict.

10 **12. Estimated length of trial and suggestions for shortening trial**

11 a. Plaintiff estimates that the trial on liability for the DFR liability claims
12 against USAPA, assuming no preliminary rulings by the Court or Rule 16
13 stipulations or findings, will take approximately five to seven days,
14 including direct and cross examination of Plaintiffs and representatives of
15 Defendant.

16 b. In order to shorten the trial, Plaintiff proposes that the Court bifurcate the
17 remaining issues of liability and remedy, as authorized by Rule 16 (c)(13),
18 by determining liability, if any, of USAPA in the first trial before February
19 15, 2009, followed by a separate trial to the Court before March 30, 2009
20 on the remedies to be ordered, with proposals from all parties, including
21 US Airways, for the form of Permanent Injunction to be entered by the
22 Court, followed by a damages hearing before June 1, 2009.

23 c. US Airline Pilots Association: Trial should be *trifurcated*: 2-5 days on the
24 threshold issue of ripeness (i.e. has USAPA been bargaining in earnest to
25 get a single CBA); 2-5 days on any remaining liability issues; 2-5 days on
26 the remedy.

27 **13. Stipulation to undisputed facts and foundation of documents, reserving
28 relevance objections:**

29 a. The parties entered into a stipulated statement of facts on November 3,
30 2008 and filed it with the court as Docket No. 77.

31 Plaintiffs' Separate Statement: Plaintiffs respectfully submit that the Stipulated
32 Statement of Facts in Docket 77 includes two erroneous terms which are not accurately
33 stated. Specifically, Items 24, 25, 26, 27, 298 and 29 include the descriptor "MEC"
34 which Plaintiffs submit is not consistent with the language of the ALPA Merger Policy ,

1 Section D3, that the MEC appoints the Merger Committee and thereafter, the Merger
2 Committee, not the MEC "...shall have complete and full authority to act for and on
3 behalf of the flight deck crew members of their respective airlines for the purpose of
4 concluding a single flight deck crew seniority list, which shall not be subject to
5 ratification." Plaintiff submits that the document itself is the best evidence of the
6 accuracy of the terms used in the stipulated fact.

7 USAPA Separately Contends: That the Stipulated Statement of Facts is accurate,
8 and that no basis exist to alter that document, particularly given that Plaintiffs took the
9 lead in drafting and filing the Stipulation with the Court.

- 10 b. The parties are committed to arriving at a list of exhibits for trial that will
11 not be subject to objection based on authenticity and will submit such a
12 list prior to trial or at a Rule 16 conference established for that purpose.

13 **14. Proposed deadline for Joint Final Pretrial Statement, Joint Final Pretrial**
14 **Conference, and proposed trial dates earlier than February 17, 2009:**

- 15 a. Plaintiffs propose that the deadline for the Joint Pretrial Statement be 10
16 days before trial.

17 Separate Statement by USAPA:

18 *If continued:* 10 days before trial.

- 19 b. Plaintiffs propose that the Joint Final Pretrial Conference be set on
20 February 9, 2009 for two (2) hours;

21 Separate Statement by USAPA:

22 *If continued:* 5 days before trial

- 23 c. Plaintiffs propose a trial date, to the Court, on February 17, 2009 for 5
24 trial days

25 Separate Statement by USAPA:

26 *Without continuance:* February 17-19 on ripeness; to be scheduled
27 on remaining liability issues; to be scheduled on remedy.

28 *If continued:* June 1, 2009 for 3 days on ripeness; to be scheduled
on remaining liability issues; to be scheduled on remedy.

1 **15. Other proposals for just, speedy, and inexpensive resolution of the case**

2 a. For Plaintiffs: in light of the extensive briefing by both parties, the Court's
3 rulings in this case, and the substantial number of undisputed facts and exhibits, the
4 Court should shorten the trial by (1) obtaining admissions and stipulations pursuant to
5 Rule 16(2)(C), (2) order presentation of evidence that might form the basis for a
6 judgment as a matter of law under Rule 50(a) FRCP or a judgment on partial findings
7 under Rule 52(C), FRCP, or (3) entering its Preliminary Findings of Fact and
8 Conclusions of Law, as provided in Rule 52, FRCP, for those matters that the Court
9 determines have been established by the uncontested facts, or specifying those facts and
10 issues that the Court needs to hear further evidence on with respect to any claim or
11 defense.

12 b. For US Airline Pilots Association USAPA respectfully submits that Rule
13 52 does not allow for an entry of findings until "after the close of evidence" in trial,
14 (52(a)(1), however USAPA suggests that the Court may now adopt the Stipulation of the
15 parties (Docket No. 77) as undisputed facts and this will promote judicial economy.
16 Moreover, USAPA is has demanded trial by jury on all issues triable by jury, and
17 USAPA is entitled to a jury trial.

18 16. Discovery Limitations. The parties agree to abide by the standard orders of the
19 Court regarding discovery, including:

20 Depositions in this case shall normally be conducted within four hours but in any
21 case be limited to seven hours each. Depositions shall be noticed only after counsel
22 have conferred over scheduling having made all reasonable attempts to avoid
23 inconvenience for deponents and attorneys, consistent with Court ordered deadlines.
24 Depositions shall be held either in Phoenix, AZ or Charlotte, NC

25 Paper hard copies of electronically stored information may be produced in lieu of
26 electronically stored information.

27 The limitations set forth in this paragraph may be altered by mutual agreement of the
28 parties, but will not result in an extension of the discovery deadlines.

17. Discovery Disputes.: The parties agree to abide by the standard orders of the Court
regarding discovery, including:

a. The parties shall not file written motions to compel discovery without leave
of court. Except during a deposition, if a discovery dispute arises and cannot be
resolved despite sincere efforts to resolve the matter through personal consultation (in
person or by telephone), the parties shall jointly file (1) a brief written summary of the
dispute, not to exceed one page, with explanation of the position taken by each party
and (2) a joint written certification that the counsel or the parties have attempted to

1 resolve the matter through personal consultation and sincere effort as required by
2 LRCiv 7.2(j) and have reached an impasse. If the opposing party has refused to
3 personally consult, the party seeking relief shall describe the efforts made to obtain
4 personal consultation. Counsel or the parties may then telephone the court to obtain a
5 time for a telephone conference, and the court may enter appropriate orders on the basis
6 of the telephone conference. The court may order written briefing if it does not resolve
7 the dispute during the telephone conference. Any briefing ordered by the court shall
8 also comply with LRCiv 7.2(j).

9
10 b. If a discovery dispute arises in the course of a deposition and requires an
11 immediate ruling of the Court, the parties shall jointly telephone the Court to request a
12 telephone conference regarding the dispute. Plaintiffs suggest that an early assignment
13 of a Magistrate to hear such discovery disputes might also assist the Court.

14 c. Absent extraordinary circumstances, the court will not entertain fact
15 discovery disputes after the deadline for completion of fact discovery and will not
16 entertain expert discovery disputes after the deadline for completion of expert
17 discovery. Delay in presenting discovery disputes for resolution is not a basis for
18 extending discovery deadlines.

19
20 18. Deadline for Filing Dispositive Motions: The parties agree to abide by the standard
21 orders of the Court regarding filing dispositive motions, including:

22 a. Dispositive motions shall be filed no later than fourteen calendar days
23 before trial. Such motions must comply in all respects with the Federal Rules of Civil
24 Procedure and the Local Rules.

25 b. No party or parties represented by the same counsel shall file more than
26 one motion for summary judgment under Rule 56 of the Federal Rules of Civil
27 Procedure unless by leave of the court.

28 c. Failure to respond to a motion within the time periods provided in
LRCiv 7.2 will be deemed a consent to the denial or granting of the motion and the
court may dispose of the motion summarily pursuant to LRCiv 7.2(i).

d. A party desiring oral argument shall place the words "Oral Argument
Requested" immediately below the title of the motion pursuant to LRCiv 7.2(f). The
court will issue a minute entry order scheduling oral argument as it deems appropriate.

19. Deadline for Engaging in Good Faith Settlement Talks: The parties agree to abide
by the standard orders of the Court regarding settlement, including:

Pursuant to Rule 26, all parties and their counsel shall meet in person and

1 engage in good faith settlement talks no later than (as set herein above). Upon
2 completion of such settlement talks, and in no event later than five working days after
3 the deadline set forth in the preceding sentence, the parties shall file with the court a
4 joint Report on Settlement Talks executed by or on behalf of all counsel. The report
5 shall inform the court that good faith settlement talks have been held and shall report on
6 the outcome of such talks. The parties shall promptly notify the court at any time when
7 settlement is reached during the course of this litigation.

8 The court will set a settlement conference before a magistrate judge upon request
9 of all parties. The parties are encouraged to discuss settlement at all times during the
10 pendency of the litigation. The court will not, however, extend the case processing
11 deadlines because the parties wish to avoid litigation expense if and when they elect to
12 pursue settlement efforts, including a settlement conference before a magistrate judge.
13 The parties should plan their settlement efforts accordingly.

14 Dated this 12 day of December, 2008

15 For Plaintiffs

16 By: *Don Stevens*

17 For Defendant USAPA

18 By: /s/ Lee Seham, Esq.