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

10 Don ADDINGTON, *et al.*,  
11 *Plaintiffs,*  
12  
13 vs.  
14 US AIRLINE PILOTS ASSN., and  
US AIRWAYS, INC.,  
15 *Defendants.*

CONSOLIDATED CASES NO.  
2:08-CV-1633-PHX-NVW;  
2:08-CV-1728-PHX-NVW

**PLAINTIFFS' SUPPLEMENTAL  
MEMORANDUM IN SUPPORT OF TRIAL  
BRIEF ON REMEDY (DOC. 447)**

16 Don ADDINGTON, *et al.*,  
17 *Plaintiffs,*  
18 vs.  
19 Steven H. BRADFORD, *et al.*,  
20 *Defendants.*

21 In their *Trial Brief on Remedy* (doc. 447), Plaintiffs proposed relief—  
22 orders that would: (1) direct USAPA to negotiate a single CBA with the  
23 Nicolau Award; (2) direct USAPA to present that CBA for pilot ratification;  
24 (3) direct the Airline to furlough and recall according to the Nicolau list; and  
25 (4) enjoin USAPA from asserting a grievance if the Airline breaches the  
26 Transition Agreement in order to comply with the third order. Plaintiff have  
27 evidence to show that the third and fourth proposed orders are consistent  
28 with the principle that “equity regards that as done which ought to be done.”

1 Mr. Hemenway testified that the Airline ought to have been operating  
2 under a single CBA within 2-3 years of the Transition Agreement. (Tr. 884:8-  
3 19.) The furloughs that began in October 2008, therefore, ought to have  
4 occurred according to the Nicolau seniority list. The reason that did not  
5 happen was that the East Pilots refused to honor the Agreement. The third  
6 and fourth proposed orders endeavor to obtain that result.

7 The proposed orders work in tandem. The third order directs the Airline  
8 to take any additional furloughs from the East side and to offer any future  
9 recalls to West side. The fourth order shields the Airline from contract  
10 liability for complying with the third order. Plaintiffs' evidence demonstrates  
11 that the Airline can comply with the third order without undue hardship.

12 First, Brian Stockdell will testify that East flights can be distinguished  
13 from West flights by flight numbers. (East flight numbers are above 700.)  
14 Using flight numbers, he identified East flights on routes that begin and/or  
15 end in a West domicile city and he identified East flights on routes between  
16 western cities.

17 Second, Mr. Stockdell will testify that flights on routes that begin or end  
18 in a West domicile and routes between western cities can be part of West  
19 domicile pairings.<sup>1</sup> Because these flights are part of East domicile pairings  
20 but can be part of West domicile pairings, they are flexible and Plaintiffs  
21 refer to them as "Flex Flights."

22 Third, Mr. Stockdell will testify that there are 1 captain and 1 first officer  
23 positions (including line and reserve) per 64 hours per month.

24 Fourth, Mr. Stockdell will testify that East Pilots are flying 8,500 hours  
25 per month of Flex Flights. This 8,500 hours equates to 270 pilot positions.  
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27 <sup>1</sup> A "pairing" is a scheduled set of flights flown over a period of a few days  
28 that originates and terminates in the pilot's domicile. At present, pairing  
commonly take East Pilots into West territory and take West Pilots into East  
territory.

1 Because the Airline can assign Flex Flights to West domicile pairings, this  
2 means that it can shift 270 pilot positions to West Pilots.

3 The proposed third and fourth orders would work like this:

4 If the Airline were to reduce existing service on the West side, it would  
5 shift sufficient Flex Flights from East to West to keep the amount of West  
6 flying constant. Because this would reduce East flying, it would result in  
7 East furloughs, instead of West furloughs.

8 If the Airline were to expand service on the East side, it would shift  
9 sufficient Flex Flights from East to West to keep the amount of East flying  
10 constant. Because this would increase West flying, it would result in West  
11 recalls, instead of East recalls.

12 Plaintiffs' contend this evidence is sufficient for the Court, in effect, to  
13 order the Airline to show cause why it should not henceforth furlough and  
14 recall according to the Nicolau list.

15 Dated this 12th day of May, 2009.

16 **Polsinelli Shughart, P.C.**

17 */s/ Andrew S. Jacob*

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26 **CERTIFICATE OF SERVICE**

27 I hereby certify that on May 12, 2009, I electronically transmitted the  
28 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*