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

10 Don ADDINGTON; John BOSTIC; Mark  
BURMAN; Afshin IRANPOUR; Roger  
11 VELEZ; and Steve WARGOCKI,

12 Plaintiffs,

13 vs.

14 US AIRLINE PILOTS ASSOCIATION,  
US AIRWAYS, INC.,  
15 Defendants,

Case No. 2:08-cv-1633-PHX-NVW  
(Consolidated)

**DEFENDANT’S NOTICE OF  
CLARIFICATION OF EXHIBIT 329**

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

18 Plaintiffs,

19 vs.

20 Steven H. BRADFORD, Paul J. DIORIO,  
Robert A. FREAR, Mark. W. KING,  
21 Douglas L. MOWERY, and John A.  
STEPHAN,

22 Defendants.

Case No. 2:08-cv-1728-PHX-NVW

1 During oral argument held on July 7, 2009, the Court asked for clarification  
2 relating to select provisions of USAPA's seniority integration *proposal*. (Trial Exhibit  
3 329). Counsel for USAPA asked for the opportunity to confer with the USAPA Merger  
4 Committee and file this notice clarifying the select provisions. The Court granted that  
5 request. (7/7/09 Tr. at 69:15-20). USAPA counsel has conferred with the Merger  
6 Committee, and submits clarification relating to the following sections of its seniority  
7 integration proposal.

8 **A. Section VII -- Furloughs**

9 Section VII of the seniority integration proposal reads as follows:

10 Furlough and recall shall be accomplished on an integrated seniority list  
11 basis and shall supersede protected position provisions.

12 (Ex. 329 at 6). At the July 7 hearing, the Court explained its interpretation of this  
13 provision by stating, "I understand that to mean that the conditions and restrictions  
14 defenses have nothing to do with furloughs and recalls, period." (Tr. at 66:1-3). As  
15 USAPA counsel stated on the record, "furloughs would go in order of the attached  
16 seniority list" (*id.* at 5-6), but additional condition and restriction defenses *do* exist as  
17 related to furloughs and recalls.

18 First, Captain reduction ratios exist within the conditions and restrictions. (*See,*  
19 *e.g.*, Ex. 329 at §§ III (i)-(iii)). These reduction ratios allow the loss of Captain  
20 positions to be shared proportionally. In the event of a furlough, there would almost  
21 certainly be a loss of Captain positions. Therefore, given the larger number of East  
22

1 Captain positions, the effect of losing these Captain positions as a result of furloughs  
2 would be borne on a greater numerical basis by East pilots than by West pilots.

3 Second, pertaining to recall, USAPA's seniority integration proposal contains  
4 West pilot recapture rights from furlough and from protected position displacement that  
5 would allow West pilots to "bump" back into West protected positions previously held,  
6 possibly displacing more senior East pilots who had temporarily held those positions  
7 during a financial downturn. It is important to also clarify that the Merger Committee  
8 has confirmed that under the USAPA seniority proposal, the protected West positions  
9 would only be waived if a West pilot were to bid *and* be awarded a position in the East.

#### 10 **B. Section VIII – Catastrophic Reduction**

11 Section VIII of the USAPA seniority integration proposal reads as follows:

12 In the event of a reduction to 75% or less in the total number of combined  
13 former East and West pilot positions that existed on 1 June 2008  
14 (including new-hire pilots), notwithstanding all other provisions of these  
15 conditions, the Appendix A integrated seniority list shall govern in all  
16 seniority-related matters, including, but not limited to, promotion and  
17 demotion, choice of vacancies, filling of vacancies, assignment or  
18 reassignment due to expansion or reduction in schedules, retention in case  
19 of reduction in force, re-employment after release due to reduction in  
20 force and all conditions and restrictions herein immediately cease to be in  
21 force except, for the purposes of determining furlough, the former Empire  
22 pilots shall be governed by § 20.B of the Piedmont/ALPA Letter of  
Agreement dated February 12, 1986. If within 12 months of a  
catastrophic reduction, the total number of pilot positions increases to a  
level of 80% or greater of the total number of combined former East and  
West pilot positions that existed on 1 June 2008, all provisions of these  
conditions shall be reinstated immediately, however no displacements  
shall be permitted, notwithstanding all other provisions of these  
conditions.

1 (Ex. 329 at 7:242-260). The Court, at the July 7 hearing, opined of this provision that,  
2 “it appears to me that it is an absolute adoption of USAPA Seniority List for seniority  
3 purposes with no mitigation. And in event of 25 percent of loss, it's just gone, period.”  
4 (Tr. at 68:21-25). As USAPA counsel stated on the July 7 record, this provision must  
5 first be read in its entirety including the language from the final sentence relating to a  
6 return to reduced reduction of 20 percent or less, which would reinstate the conditions  
7 and restrictions. (Tr. at 69:5-10). There are also minimum fleet requirements currently  
8 in place that would preclude further furloughs of any significance.

9       Additionally and after conferral with the Merger Committee, it is important to  
10 clarify that with respect to Section VIII, there is no system flush. This means that there  
11 would not be a global re-bid on all pilot positions system-wide. All positions would be  
12 filled on an integrated list basis as they occur.

13       Finally, Exhibit 329 represents USAPA’s seniority integration *proposal*, and like  
14 any collective bargaining proposal, it is subject to change and variation during the  
15 course of negotiation. These provisions are not set in stone, and it is for this exact  
16 reason that the United States Supreme Court has consistently held that it is “the *final*  
17 *product* of the bargaining process [that] may constitute evidence of a breach of [the] duty  
18 [of fair representation]” *Air Line Pilots Ass’n v. O’Neill*, 499 U.S. 65, 78 (1991).

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1 Respectfully Submitted,

2 Dated: July 13, 2009

By: /s/ Lucas K. Middlebrook, Esq.

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**CERTIFICATE OF SERVICE**

This is to certify that on the date indicated herein below true and accurate copies of the foregoing documents and their attachments, *to wit*,

- DEFENDANT’S NOTICE OF CLARIFICATION OF EXHIBIT 329
- Certificate of Service

were electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all admitted counsel who have registered with the ECF system, including but not limited, to:

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Further, I certify that paper hard copies shall be provided to The Honorable Neil V. Wake, District Court Judge, 401 W. Washington Street, SPC 52, Phoenix, AZ 85003.

On July 13, 2009, by:

**/s/ Lucas K. Middlebrook, Esq.**