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

<p>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 its successor after merger, US Airways, 14 Inc., <i>on their own behalf and on behalf of all persons similarly situated,</i> 15 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.</p>	<p>CASE NO. 2:08-CV-1633-NVW</p> <p>SECOND AMENDED COMPLAINT</p> <p>HYBRID ACTION: (1) BREACH OF CBA; AND (2) BREACH OF DUTY OF FAIR REPRESENTATION</p> <p>(Railway Labor Act; Class Action)</p> <p>(Trial By Jury Demanded, pursuant to Rule 38)</p>
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21 For their Complaint, Plaintiffs allege as follows:

22 **INTRODUCTION AND PARTIES**

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

27 2. Hereinafter, Plaintiffs use:

- 1 a) “Merger” to refer to this merger event;
- 2 b) “US Airways” to refer to the pre-merger air carrier;
- 3 c) “Defendant US Airways” to refer to the post-merger air carrier;
- 4 d) “West CBA” to refer to the collective bargaining agreement
- 5 originally between America West and its pilots;
- 6 e) “West Pilots” to refer, as individuals and as a group (unless
- 7 otherwise indicated), to the pilots on the seniority list
- 8 incorporated into the West CBA.
- 9 f) “East CBA” to refer to the collective bargaining agreement
- 10 originally between US Airways and its pilots;
- 11 g) “East Pilots” to refer, as individuals and as a group (unless
- 12 otherwise indicated), to the pilots on the seniority list
- 13 incorporated into the East CBA;
- 14 h) “West and East Pilots” to refer, as individuals and as a group
- 15 (unless otherwise indicated) to the entire group of pilots on
- 16 both West CBA and East CBA seniority lists;
- 17 i) “Separate Operations” to refer to that phase of the Merger
- 18 where West Pilots can operate only the aircraft that were in
- 19 the service of America West prior to the Merger or added
- 20 thereafter (“West Airplanes”) and East Pilots can operate only
- 21 the aircraft that were in the service of US Airways prior to the
- 22 Merger or added thereafter (“East Airplanes”);

23 and

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

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.

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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
26 Pilots;

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- 1 e) West Pilots agreed, for the benefit of Defendant US Airways
2 and East Pilots, to waive some of the West CBA restrictions on
3 the seating capacity of aircraft using the company's marketing
4 identity that could be flown by Express Carriers;
- 5 f) West Pilots agreed, for the benefit of Defendant US Airways
6 and East Pilots, that Defendant US Airways could use East
7 Pilots to operate East Airplanes on certain flights that,
8 according to the Scope Provisions of the West CBA, Defendant
9 US Airways could fly only with West Pilots and West
10 Airplanes;
- 11 g) East Pilots and Defendant US Airways agreed, for the benefit
12 of West Pilots, that Defendant US Airways could use West
13 Pilots to fly West Airplanes on certain flights that, according to
14 the Scope Provisions of the East CBA, Defendant US Airways
15 could fly only with East Pilots and East Airplanes;
- 16 h) West Pilots agreed, for the benefit of Defendant US Airways
17 and East Pilots, to negotiate (in good faith) amendments to the
18 West CBA necessary to allow Integrated Operations of
19 Defendant US Airways using a single integrated seniority list
20 and a single CBA;
- 21 i) East Pilots agreed, for the benefit of West Pilots, to negotiate
22 (in good faith) amendments to the East CBA necessary to allow
23 Integrated Operations of Defendant US Airways using a single
24 integrated seniority list and a single CBA;
- 25 j) Defendant US Airways agreed, for the benefit of West Pilots,
26 to negotiate (in good faith) amendments to the West CBA and
27 to the East CBA necessary to allow Integrated Operations of
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1 Defendant US Airways using a single integrated seniority list
2 and a single CBA;

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

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

10 and

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

14 **ALPA Merger Policy**

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

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

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

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

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

26 50. *ALPA Merger Policy* stated, among other things:
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1 a) “The Award of the Arbitration Board shall be final and binding
2 on all parties to the arbitration;”

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

7 **Seniority Dispute And Nicolau Arbitration**

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

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

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

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

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

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

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

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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 76. Since becoming the certified labor representative, USAPA has
2 knowingly and intentionally done the following to Plaintiffs' detriment:

3 a) Re-affirmed USAPA Seniority Policy without making any effort
4 to give due consideration to West Pilot interests;

5 b) Caused Defendant US Airways to breach collective bargaining
6 duties owed to and established for the benefit of West Pilots;

7 c) Implemented USAPA Seniority Policy;

8 d) Promoted, encouraged and aided East Pilots to breach their
9 contract duties owed to and established for the benefit of West
10 Pilots;

11 e) Stated that any contract it would negotiate with Defendant
12 US Airways: "will not contain any reference to recent Nicolau
13 document [the Nicolau Award]";

14 and

15 f) Stated: "When the majority of member pilots in good standing
16 vote yes on our new agreement, then this document [the
17 Nicolau Award] dies on the shelf."

18 **Plaintiffs' Injuries**

19 77. As a direct and foreseeable result of actionable conduct alleged
20 herein, USAPA has caused and contributed to Defendant US Airways being in
21 breach of the West CBA as modified by the *Transition Agreement*.

22 78. As a direct and foreseeable result of actionable conduct alleged
23 herein, Defendant US Airways is in breach of the West CBA as modified by the
24 *Transition Agreement*.

25 79. As a consequence of Defendant US Airways' breach of the West CBA
26 as modified by the *Transition Agreement*, one or more Plaintiffs and other
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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.

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.

28

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.

Causation of Damages

120. Under the rules of ALPA governance, an airline's pilots are assigned to domiciles that correspond to the major cities out of which the airline flies.

121. Under the rules of ALPA governance, pilots assigned to an ALPA domicile are represented by a Local Executive Council ("LEC").

1 122. Under the rules of ALPA governance, the members of an LEC are
2 elected by the rank-and-file members assigned to that domicile.

3 123. Under the rules of ALPA governance, each airline's pilot bargaining
4 unit is represented by a Master Executive Council ("MEC").

5 124. Under the rules of ALPA governance, the members of the MEC are
6 taken from the members of the various LECs.

7 125. ALPA MECs serve as the coordinating council of the ALPA members
8 working in the service of a particular airline.

9 126. ALPA MECs establish committees and appoint committee chairmen
10 to conduct MEC activities.

11 127. ALPA MECs make decisions and take action on matters related to
12 the working conditions of the members of the bargaining unit.

13 128. The decisions and actions of an ALPA MEC are generally regarded to
14 be the decisions and actions of the ALPA members within the airline's pilot
15 bargaining unit.

16 129. Under the rules of ALPA governance, a MEC may neither make
17 decisions nor take actions that are inconsistent with the ALPA Constitution and
18 By-Laws or contrary to the best interests of ALPA or its nationwide membership.

19 130. Under the rules of ALPA governance, ALPA's nationwide
20 membership is governed on a national level through elected officers, an Executive
21 Council, a Board of Directors, and national level committees.

22 131. Under ALPA governance, US Airways had five LECs; its MEC is
23 referred to as the "East MEC."

24 132. Under ALPA governance, America West had two LECs; its MEC is
25 referred to as the "West MEC."

26 133. LEC 41, the US Airways Philadelphia (PHL) LEC, represented over
27 40 percent of the East Pilots.

28

1 134. From the spring of 2007 until early 2008, Eric Rowe was the elected
2 Captain Representative on LEC 41, was the Chairman of LEC 41, was a member
3 of the East MEC, and was a member of the ALPA Board of Directors.

4 135. From the spring of 2007 until early 2008, Dave Ciabattoni was the
5 elected First Officer Representative on LEC 41, was the Vice Chairman of LEC 41,
6 was a member of the East MEC, and was a member of the ALPA Board of
7 Directors.

8 136. From the spring of 2007 until early 2008, Jim Portale was the
9 Secretary/Treasurer of LEC 41.

10 137. From the spring of 2007 until early 2008, Tracy Parella was
11 appointed by the East MEC as the Chairman of the ALPA Grievance Committee
12 for US Airways pilots.

13 138. From the spring of 2007 until early 2008, Doug Mowery was
14 appointed by the East MEC as the Chairman of the ALPA Negotiating Committee
15 for US Airways pilots.

16 139. From the spring of 2007 through April 17, 2008, Mike Cleary was
17 appointed by the East MEC as the Vice Chairman of the ALPA Grievance
18 Committee for US Airways pilots and as a member of the US Airways System
19 Board of Adjustment.

20 140. From the middle of 2007 through April 17, 2008, members of the East
21 MEC and chairmen of East MEC committees supported USAPA in the NMB
22 representational election.

23 141. From the middle of 2007 through April 17, 2008, members of the East
24 MEC and chairmen of East MEC committees assisted and promoted the formation
25 and operation of USAPA, including participating in drafting USAPA documents.

26 142. From the middle of 2007 through April 17, 2008, members of the East
27 MEC, chairmen of East MEC committees, and members of East LECs solicited
28

1 support among members of the US Airways pilot bargaining unit for USAPA's
2 efforts to be elected their bargaining representative.

3 143. On or around August 10, 2007, individuals forming and promoting
4 USAPA circulated written material among East Pilots advocating that East Pilots
5 should prevent completion of the negotiations of a single CBA in order to prevent
6 implementation of the Nicolau Award.

7 144. On or around August 15, 2007, a majority of the members of the East
8 MEC voted to withdraw the East MEC members on the Joint Negotiating
9 Committee.

10 145. In compliance with this August 15, 2007, vote, the East members on
11 the Joint Negotiating Committee stopped participating in the committee's
12 activities and did not attend any subsequent scheduled negotiation sessions.

13 146. On March 3, 2008, the members of the ALPA Executive Council
14 voted to put LEC 41 into an emergency trusteeship in response to evidence that
15 Eric Rowe, Dave Ciabattoni, and Jim Portale, were supporting USAPA in the
16 NMB representation election.

17 147. On March 28, 2008, the ALPA Executive Council held a Special
18 Meeting to decide whether to continue the trusteeship of LEC 41.

19 148. At the March 28, 2008, Special Meeting, the ALPA Executive Council
20 received further evidence that Eric Rowe, Dave Ciabattoni, and Jim Portale were
21 intentionally supporting USAPA in the NMB representation election and had done
22 so to obtain leverage to delay or prevent Operational Pilot Integration using the
23 Nicolau Award.

24 149. At the March 28, 2008, Special Meeting, the ALPA Executive Board
25 unanimously passed a resolution finding that members of LEC 41 were improperly
26 supporting USAPA in the NMB representation election. This resolution continued
27 the trusteeship of LEC 41.

28

1 150. From mid 2007 until April 17, 2008, a substantial number of pilots
2 with leadership positions in the East MEC and/or the East LECs participated in
3 the design and implementation of plans to prevent Operational Pilot Integration
4 using the Nicolau Award; after April 17, 2008, many of these pilots accepted
5 leadership positions in USAPA and/or continued to participate in the design and
6 implementation of plans to prevent Operational Pilot Integration using the
7 Nicolau Award.

8 151. From mid 2007 until April 17, 2008, a substantial number of East
9 rank-and-file pilots participated in the design and implementation of plans to
10 prevent Operational Pilot Integration using the Nicolau Award; after April 17,
11 2008, many of these pilots accepted leadership positions in USAPA and/or
12 continued as rank-and-file members to participate in the design and
13 implementation of plans to prevent Operational Pilot Integration using the
14 Nicolau Award.

15 152. Participation in the design and implementation of plans to prevent
16 Operational Pilot Integration using the Nicolau Award by representatives and
17 officers of the East MEC and East LECs and by East Pilot rank-and-file members
18 (collectively “East Wrongdoers”) was wrongful because it was motivated by bad
19 faith and was contrary to obligations established under the rules of ALPA
20 governance.

21 153. Had there been no wrongful actions by East Wrongdoers, Operational
22 Pilot Integration using the Nicolau Award would have occurred before October,
23 2008.

24 154. If Operational Pilot Integration using the Nicolau Award had
25 occurred before October, 2008, Plaintiffs Wargocki, Bostic and Iranpour and other
26 members of the West Pilot Class would not have been furloughed.

27
28

1 155. If Operational Pilot Integration using the Nicolau Award had
2 occurred before October, 2008, Plaintiffs Addington, Burman, and Velez and other
3 members of the West Plot Class would not have been demoted from, or lost an
4 opportunity for promotion to, Captain.

5 **Joint Liability**

6 156. A union acts in concert with wrongful acting members of the
7 bargaining unit (and their representatives) if the union breaches its duty of fair
8 representation with knowledge and intention to further the same goals that
9 motivates those members of the bargaining unit (and their representatives) to act
10 wrongfully.

11 157. USAPA, when adopting and promoting its date-of-hire seniority
12 scheme, breached its duty of fair representation with the intention of furthering
13 the goal of preventing Operational Pilot Integration using the Nicolau Award.
14 USAPA, therefore, acted in concert with the East Wrongdoers.

15 158. A successor union breaching its duty of fair representation acts in
16 concert with members of the bargaining unit (and their representatives) to the
17 same extent that the predecessor union would have acted in concert had it not
18 been succeeded and had it made the same breach of the duty of fair representation.

19 159. ALPA would have acted in concert with the East Wrongdoers had it
20 not been succeeded by USAPA and had it adopted and promoted USAPA's date-of-
21 hire seniority scheme with USAPA's bad faith intention of furthering the goal of
22 preventing Operational Pilot Integration using the Nicolau Award. USAPA,
23 therefore, acted in concert with the East Wrongdoers.

24 160. A union is jointly liable for harm caused by members of the
25 bargaining unit (and their representatives) when the union, acting in concert with
26 those members (and their representatives), breaches its duty of fair
27 representation.
28

1 161. USAPA, therefore, is jointly liable for the harm caused by the East
2 Wrongdoers' efforts to prevent Operational Pilot Integration using the Nicolau
3 Award.

4 REMEDY SOUGHT

5 162. The tangible injuries caused by USAPA's breach of the duty of fair
6 representation that have accrued to date to Plaintiffs and other West Pilots
7 similarly situated can be remedied with money damages, while the intangible
8 injuries caused by USAPA's breach of the duty of fair representation can not.

9 163. Plaintiffs and other West Pilots similarly situated do not have a fully
10 adequate remedy at law because USAPA is likely incapable of fully satisfying all
11 damages that will arise if it is not enjoined from further breaches of its duty of fair
12 representation.

13 164. Plaintiffs, therefore, are entitled to injunctive relief in addition to
14 money damages.

15 WHEREFORE, Plaintiffs seek the following relief:

16 A. A preliminary injunction directed against Defendants, ORDERING
17 that:

18 (1) Defendant US Airways shall not furlough any West Pilot before it has
19 furloughed all pilots on the New Hire Seniority List;

20 (2) Defendant US Airways shall not furlough any West Pilot before it has
21 furloughed all East Pilots junior to them on the Nicolau List;

22 (3) Defendants shall not amend the West CBA without the approval of
23 the Court unless such amendment is ratified by a majority of the
24 West Pilots.

25 B. A permanent injunction ORDERING Defendants to negotiate and
26 implement a single collective bargaining agreement that fully implements the
27 Nicolau List;

28

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

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

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

9 Dated this 31st day of August, 2009.

10 POLSINELLI SHUGHART, P.C.

11 /s/

12 By: _____

13 Marty Harper

14 Kelly Flood

15 Andrew S. Jacob

16 Security Title Plaza

17 3636 N. Central Ave., Suite 1200

18 Phoenix, AZ 85012

19 *Attorneys for Plaintiffs*

20 **CERTIFICATE OF SERVICE**

21 I hereby certify that on August 31, 2008, I electronically transmitted the
22 foregoing document to the U.S. District Court Clerk's Office by using the CM/ECF
23 System for filing and transmittal of a Notice of Electronic Filing.

24 *s/ Andrew S. Jacob*

25 _____

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