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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'
SECOND AMENDED COMPLAINT
AND JURY DEMAND**

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

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 contained in paragraph 51.
- 2 53. Deny.
- 3 54. Admit that document is attached, but deny the description of the document
- 4 contained in paragraph 53.
- 5
- 6 55. Deny.
- 7 56. Deny.
- 8 57. Admit.
- 9 58. Deny and deny as to all subparts.
- 10 59. Deny.
- 11 60. Deny.
- 12 61. Deny.
- 13 62. Deny.
- 14 63. Deny.
- 15 64. Deny and deny as to all subparts.
- 16 65. Deny.
- 17 66. Deny, but admit that certain East Pilots formed USAPA.
- 18
- 19 67. a) Admit; b) Deny; c) Deny; d) Deny
- 20
- 21 68. Deny.
- 22 69. a) Admit; b) Deny; c) Deny; d) Deny.
- 23 70. Deny.

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- 71. Admit.
- 72. Deny.
- 73. Admit.
- 74. Deny, except to admit that negotiations for a single collective bargaining agreement began in June of 2008.
- 75. Deny.
- 76. Deny and deny as to all subparts.
- 77. Deny.
- 78. Deny.
- 79. Deny.
- 80. Deny, except to the extent that Defendant US Airways' failure to furlough new-hire Pilots prior to furloughing pre-merger West Pilots may constitute a breach of the Transition Agreement, which may have resulted in one or more of the Plaintiffs being subject to furlough.
- 81. Deny, except to the extent that US Airways' failure to furlough new-hire Pilots prior to furloughing pre-merger West Pilots may have constituted a breach of the Transition Agreement, which may have resulted in one or more of the Plaintiffs being demoted.
- 82. Deny.
- 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.

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96. Lack knowledge or information sufficient to form a belief as to the truth of averment.

97. Lack knowledge or information sufficient to form a belief as to the truth of averment.

98. Defendant USAPA repeats its responses to paragraphs 1-97 of the Complaint as if fully set forth herein.

99. Deny.

100. Deny.

101. Deny.

102. Deny

103. Deny.

104. Deny.

105. Defendant USAPA repeats its responses to paragraphs 1-104 of the Complaint as if fully set forth herein.

106. Admit.

107. Deny and refer all issues of law to the Court.

108. Deny and refer all issues of law to the Court.

109. Deny.

110. Deny.

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. Lack knowledge or information sufficient to form a belief as to the truth of
- 10
11 averment.
- 12 121. Lack knowledge or information sufficient to form a belief as to the truth of
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14 averment.
- 15 122. Lack knowledge or information sufficient to form a belief as to the truth of
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17 averment.
- 18 123. Lack knowledge or information sufficient to form a belief as to the truth of
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20 averment.
- 21 124. Lack knowledge or information sufficient to form a belief as to the truth of
- 22
23 averment.

- 1 126. Lack knowledge or information sufficient to form a belief as to the truth of
2 averment.
- 3 127. Lack knowledge or information sufficient to form a belief as to the truth of
4 averment.
- 5 128. Deny
- 6 129. Lack knowledge or information sufficient to form a belief as to the truth of
7 averment.
- 8 130. Lack knowledge or information sufficient to form a belief as to the truth of
9 averment.
- 10 131. Lack knowledge or information sufficient to form a belief as to the truth of
11 averment.
- 12 132. Lack knowledge or information sufficient to form a belief as to the truth of
13 averment.
- 14 133. Lack knowledge or information sufficient to form a belief as to the truth of
15 averment.
- 16 134. Lack knowledge or information sufficient to form a belief as to the truth of
17 averment.
- 18 135. Lack knowledge or information sufficient to form a belief as to the truth of
19 averment.
- 20 136. Lack knowledge or information sufficient to form a belief as to the truth of
21 averment.
- 22 137. Lack knowledge or information sufficient to form a belief as to the truth of
23 averment.

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avermment.

137. Lack knowledge or information sufficient to form a belief as to the truth of
avermment.

138. Lack knowledge or information sufficient to form a belief as to the truth of
avermment.

139. Deny.

140. Deny.

141. Deny.

142. Deny.

143. Deny.

144. Lack knowledge or information sufficient to form a belief as to the truth of
avermment.

145. Lack knowledge or information sufficient to form a belief as to the truth of
avermment.

146. Deny.

147. Lack knowledge or information sufficient to form a belief as to the truth of
avermment.

148. Deny.

149. Deny.

150. Deny.

1 151. Deny.

2 152. Deny.

3 153. Deny.

4 154. Deny.

5 155. Deny.

6 156. Deny and refer all issues of law to the Court.

7 157. Deny.

8 158. Deny and refer all issues of law to the Court.

9 159. Deny.

10 160. Deny and refer all issues of law to the Court.

11 161. Deny and refer all issues of law to the Court.

12 162. Deny.

13 163. Deny.

14 164. Deny and deny all subparts included in the following “WHEREFORE”
15 paragraphs.

16
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18 **AFFIRMATIVE DEFENSES**

19 165. This Court lacks subject matter jurisdiction.

20 166. Plaintiff’s Complaint fails to state any cause of action for which relief may be
21 granted.
22

23 167. Plaintiffs lack standing.

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

2 169. Plaintiffs have failed to exhaust contractual remedies required under the
3 Railway Labor Act, 45 USC § 151 *et seq.*, depriving this court of jurisdiction.

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

6 171. Plaintiffs have failed to mitigate their damages.

7 172. Plaintiffs' claims are not ripe for adjudication.

8 173. Plaintiffs have failed to join a necessary party.

9 174. Plaintiffs are not entitled to plead class action.

10 175. Plaintiffs' class action does not meet the standards for certification.

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

14 177. All paragraphs 120 though 164 and 165c contained in the Second Amended
15 Complaint, in addition to the above affirmative defenses, fail to state a claim on
16 facts pled and as a matter of law.

17 178. All paragraphs 120 though 164 and 165c contained in the Second Amended
18 Complaint, in addition to the above affirmative defenses, are time barred in
19 whole or in part by statutes of limitations.

20 179. All paragraphs 120 though 164 and 165c contained in the Second Amended
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23

1 Complaint, in addition to the above affirmative defenses, are barred because
2 the court lacks subject matter jurisdiction.

3 180. All paragraphs 120 through 164 and 165c contained in the Second Amended
4 Complaint, in addition to the above affirmative defenses, are barred because
5 plaintiffs lack standing.
6

7 181. All paragraphs 120 through 164 and 165c contained in the Second Amended
8 Complaint, in addition to the above affirmative defenses, are barred by
9 plaintiffs failure to exhaust contractual remedies under the Railway Labor Act,
10 45 USC § 151 *et seq*, which deprives this court of jurisdiction.

11 182. All paragraphs 120 through 164 and 165c contained in the Second Amended
12 Complaint, in addition to the above affirmative defenses, are barred by
13 plaintiffs' failure to mitigate damages.
14

15 183. All paragraphs 120 through 164 and 165c contained in the Second Amended
16 Complaint, in addition to the above affirmative defenses, are barred because
17 plaintiffs have failed to join necessary parties.

18 184. All paragraphs 120 through 164 and 165c contained in the Second Amended
19 Complaint, in addition to the above affirmative defenses, are barred because
20 plaintiffs are not entitled to plead class action and expressly waived class
21 action status for damage claims.
22

23 185. All paragraphs 120 through 164 and 165c contained in the Second Amended

1 Complaint, in addition to the above affirmative defenses, are barred by failure
2 to comply with the procedural requirements of Fed. R. Civ. P. 15.

3 186. All paragraphs 120 through 164 and 165c contained in the Second Amended
4 Complaint, in addition to the above affirmative defenses, are barred under Fed.
5 R. Civ. P. 15 by reason of futility of the proposed amendment, bad faith, undue
6 delay, and unfair prejudice.
7

8 187. All paragraphs 120 through 164 and 165c contained in the Second Amended
9 Complaint, in addition to the above affirmative defenses, is subject to a motion
10 to dismiss pursuant to the Court's order (Doc. # 606) of August 20, 2009.

11 188. In regards to paragraphs 120 through 164 and 165c contained in the Second
12 Amended Complaint, Defendant asserts, on information and belief, that
13 discovery may uncover facts supportive of additional affirmative defenses,
14 and, therefore, allege the following affirmative defenses: statutes of fraud,
15 laches, waiver, and estoppel.
16

17 **RELIEF**

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

- 19
- 20 1. Dismissal of the plaintiffs' complaint with prejudice.
 - 21 2. The award of reasonable costs and fees.
 - 22 3. Such other relief as the Court may deem just, proper and appropriate.
- 23

JURY DEMAND

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

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2 Dated: September 18, 2009

By: ATTORNEYS FOR DEFENDANT
US AIRLINE PILOTS ASSOCIATION

3
4 /s/ Nicholas Granath

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17 Fax: 602 626 3586

1 **CERTIFICATE OF SERVICE**

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

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

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

7 Marty Harper	Don Stevens	Andrew S. Jacob
MHarper@Polsinelli.com	DStevens@Polsinelli.com	AJacob@Polsinelli.com
8 Kelly J. Flood	Katie Brown	
KFlood@Polsinelli.com	KVBrown@Polsinelli.com	

9 Further, I certify that the same was emailed to Marty Harper MHarper@Polsinelli.com on this
10 date.

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

13 On September 18, 2009, by:

14 **/s/ Nicholas Paul Granath, Esq.**