

1 Marty Harper (#003416)
 2 mharper@polsinelli.com
 3 Kelly J. Flood (#019772)
 4 kflood@polsinelli.com
 5 Andrew S. Jacob (#22516)
 6 ajacob@polsinelli.com
 7 Katherine V. Brown (#26546)
 8 kvbrown@polsinelli.com
 9 **POLSINELLI SHUGHART, P.C.**
 Security Title Plaza
 3636 N. Central Ave., Suite 1200
 Phoenix, AZ 85012
 Phone: (602) 650-2000
 Fax: (602) 264-7033
Attorneys for Defendants Addington, et al

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

12
 13 US AIRWAYS, INC., a Delaware
 14 corporation, *et al.*,

15 *Plaintiff,*

16 vs.

17 Don ADDINGTON; John BOSTIC;
 18 Mark Burman; Afshin IRANPOUR;
 19 Roger VELE; and Steve
 20 WARGOCKI, on behalf of
 themselves and all other
 similarly-situated individuals,

21 and

22 US AIRLINE PILOTS ASS'N, an
 23 unincorporated association,

24 *Defendants.*

CASE NO. 2:10-cv-01570-PHX-ROS

**ADDINGTON PILOTS ANSWER
 AND CROSS-CLAIM**

25 Defendants Don ADDINGTON; John BOSTIC; Mark Burman;
 26 Afshin IRANPOUR; Roger VELE; and Steve WARGOCKI (the "Addington
 27 Pilots") on behalf of themselves and all other similarly-situated
 28

1 individuals, file their Answer and Cross-claim to the *Complaint for*
2 *Declaratory Relief*.

3 **ANSWER**

4 The Addington Pilots answer the allegations in the *Complaint for*
5 *Declaratory Relief* as follows:

6 **INTRODUCTION**

7 1. The Addington Pilots admit the allegations in Paragraph 1.

8 2. The Addington Pilots admit that the language quoted in
9 Paragraph 2 from *Addington v. US Airline Pilots Ass'n*, 606 F.3d 1174
10 (9th Cir. 2010), is accurate. To the extent that the remainder of
11 Paragraph 2 interprets that decision it is legal argument that does not
12 require a response.

13 3. The Addington Pilots deny that they regard the Nicolau Award
14 seniority list as “very favorable.” Rather, they regard it as an equitable
15 integration of the seniority lists and they regard the substitution of a
16 date-of-hire seniority list as inequitable. They otherwise admit the
17 allegations in Paragraph 3.

18 4. Based upon positions expressed by the Addington Pilots and
19 USAPA, the Addington Pilots believe that the allegations in Paragraph
20 4 reflect likely future events.

21 5. Because Paragraph 5 is legal argument, it is not necessary
22 that the Addington Pilots admit or deny same.

23 6. Because Paragraph 6 is legal argument, it is not necessary
24 that the Addington Pilots admit or deny same. The Addington Pilots,
25 however, agree that the underlying dispute is ripe.

26 **THE PARTIES**

27 7. The Addington Pilots admit the allegations in Paragraph 7.

28 8. The Addington Pilots admit the allegations in Paragraph 8.

1 9. The Addington Pilots admit the allegations in Paragraph 9.

2 10. The Addington Pilots admit the allegations in Paragraph 10.

3 11. The Addington Pilots admit the allegations in Paragraph 11.

4 12. The Addington Pilots admit the allegations in Paragraph 12.

5 13. The Addington Pilots admit the allegations in Paragraph 13.

6 14. The Addington Pilots admit the allegations in Paragraph 14.

7 **JURISDICTION AND VENUE**

8 15. The Addington Pilots admit the allegations in Paragraph 15.

9 16. The Addington Pilots admit the allegations in Paragraph 16.

10 17. The Addington Pilots admit the allegations in Paragraph 17.

11 18. The Addington Pilots admit the allegations in Paragraph 18.

12 19. The Addington Pilots admit the allegations in Paragraph 19.

13 20. The Addington Pilots admit the allegations in Paragraph 20.

14 21. The Addington Pilots admit the allegations in Paragraph 21.

15 22. The Addington Pilots admit the allegations in Paragraph 22.

16 23. The Addington Pilots admit the allegations in Paragraph 23.

17 24. The Addington Pilots deny that Paragraph 24 correctly states
18 a material question of law and fact common to the Addington Pilots or
19 the West Pilot Class.

20 25. The Addington Pilots admit the allegations in Paragraph 25.

21 **BACKGROUND AND FACTUAL ALLEGATIONS**

22 26. The Addington Pilots admit the allegations in Paragraph 26.

23 27. The Addington Pilots admit the allegations in Paragraph 27.

24 28. The Addington Pilots admit the allegations in Paragraph 28.

25 29. The Addington Pilots admit the allegations in Paragraph 29.

26 30. The Addington Pilots admit the allegations in Paragraph 30.

27 31. The Addington Pilots admit the factual allegations in
28 Paragraph 25. The Addington Pilots also admit that the language

1 quoted from *Addington v. US Airline Pilots Ass'n*, 606 F.3d 1174 (9th
2 Cir. 2010), is accurate. To the extent that the remainder of Paragraph
3 31 interprets that decision it is legal argument that does not require a
4 response.

5 32. The Addington Pilots admit the allegations in Paragraph 32.

6 33. The Addington Pilots admit the allegations in Paragraph 33.

7 34. The Addington Pilots lack sufficient information to admit or
8 deny that “US Airways has never taken any position on the merits of
9 the seniority dispute” or that it has always been neutral and, therefore,
10 deny same. The Addington Pilots otherwise admit the allegations in
11 Paragraph 34.

12 35. The Addington Pilots admit the factual allegations in
13 Paragraph 35 and admit that US Airways is entitled to the first, (i),
14 element of requested declaratory relief but deny that US Airways is
15 entitled to the second and third, (ii) and (iii), elements of alternative
16 declaratory relief.

17 FIRST CLAIM FOR RELIEF

18 36. The Addington Pilots incorporate their answers to each and
19 every allegation contained in Paragraphs 1 through 35 as though set
20 forth fully herein.

21 37. The Addington Pilots admit the allegations in Paragraph 37.

22 38. The Addington Pilots admit the allegations in Paragraph 38.

23 39. The Addington Pilots admit the allegations in Paragraph 39.

24 40. The Addington Pilots admit the allegations in Paragraph 40.

25 41. The Addington Pilots admit the allegations in Paragraph 41.

26 42. The Addington Pilots admit the allegations in Paragraph 42.

27 43. The Addington Pilots admit the allegations in Paragraph 43.

28 44. The Addington Pilots admit the allegations in Paragraph 41.

1 58. The Addington Pilots **deny** the allegations in Paragraph 58
2 because it fails to accurately state the full scope of causes of action
3 they might assert against US Airways were it to agree to a seniority list
4 other than the Nicolau Award. In addition, the Addington Pilots lack
5 sufficient information to admit or deny that US Airways has been fully
6 neutral in their dispute with USAPA and, therefore, deny same.

7 59. The Addington Pilots **deny** that US Airways is entitled to the
8 declaratory judgment proposed in Paragraph 59.

9 60. The Addington Pilots admit the allegations in Paragraph 60 to
10 the extent that they apply to USAPA's breach of the duty of fair
11 representation. Otherwise, because the Addington Pilots deny the
12 foundation for the allegations in this paragraph, they deny same.

13 61. The Addington Pilots admit that US Airways seeks the relief
14 set out in Paragraph 61 and admit that US Airways does so for the
15 reasons set out therein. By making this admission, however, the
16 Addington Pilots do not admit that US Airways is entitled to any more
17 relief that is admitted in the preceding paragraphs of this Answer.

18 **PRAYER FOR RELIEF**

19 62. The Addington Pilots **admit** that, under the factual findings
20 made by the jury in *Addington v. US Airline Pilots Ass'n*, Case No. 08-
21 CV-01633, US Airways is entitled to the relief in Paragraph 1 of the
22 Prayer for Relief.

23 63. The Addington Pilots **deny** that, under the factual findings
24 made by the jury in *Addington v. US Airline Pilots Ass'n*, Case No. 08-
25 CV-01633, US Airways is entitled to the relief in Paragraph 2 of the
26 Prayer for Relief.

27 64. The Addington Pilots **deny** that, under the factual findings
28 made by the jury in *Addington v. US Airline Pilots Ass'n*, Case No. 08-

1 CV-01633, US Airways is entitled to the relief in Paragraph 3 of the
2 Prayer for Relief.

3 65. Paragraph 4 of the Prayer for Relief requires no response.

4 **CROSS-CLAIM AGAINST USAPA**

5 **Cross-defendant USAPA; Breach Duty of Fair Representation**

6 For their cross-claim against Cross-defendant USAPA, the
7 Addington Pilots allege as follows:

8 **INTRODUCTION AND PARTIES**

9 1. In May 2005, two air carriers, America West Airlines, Inc.
10 (“America West”) and US Airways, Inc. (“Pre-merger US Airways”),
11 agreed to merge such that they would combine all or substantially all
12 their assets. US Airways, Inc. is the successor to the two pre-merger
13 air carriers.

14 2. Hereinafter, the Addington Pilots use:

- 15 a) “Merger” to refer to this merger event;
16 b) “Pre-merger US Airways” to refer to the pre-merger air
17 carrier;
18 c) “US Airways” to refer to the post-merger air carrier;
19 d) “West CBA” to refer to the collective bargaining
20 agreement originally between America West and its
21 pilots;
22 e) “West Pilots” to refer, as individuals and as a group
23 (unless otherwise indicated), to the pilots on the
24 seniority list incorporated into the West CBA.
25 f) “East CBA” to refer to the collective bargaining
26 agreement originally between Pre-merger US Airways
27 and its pilots;
28

1 g) “East Pilots” to refer, as individuals and as a group
2 (unless otherwise indicated), to the pilots on the
3 seniority list incorporated into the East CBA;

4 h) “West and East Pilots” to refer, as individuals and as
5 a group (unless otherwise indicated) to the entire
6 group of pilots on both West CBA and East CBA
7 seniority lists;

8 i) “Separate Operations” to refer to that phase of the
9 Merger where West Pilots can operate only the aircraft
10 that were in the service of America West prior to the
11 Merger or added thereafter (“West Airplanes”) and
12 East Pilots can operate only the aircraft that were in
13 the service of Pre-merger US Airways prior to the
14 Merger or added thereafter (“East Airplanes”);

15 and

16 j) “Integrated Operations” to refer to that phase of the
17 Merger where West and East Pilots are placed onto a
18 single seniority list and are not limited to operating
19 either West Airplanes or East Airplanes.

20 3. Cross-plaintiff Don Addington is a resident of the State of
21 Arizona, who at all times relevant to this cross-claim has been a West
22 Pilot.

23 4. Cross-plaintiff John Bostic is a resident of the State of
24 Arizona, who at all times relevant to this cross-claim has been a West
25 Pilot.

26 5. Cross-plaintiff Mark Burman is a resident of the State of
27 Arizona, who at all times relevant to this cross-claim has been a West
28 Pilot.

- 1 a) The district court vacated the judgment and
2 injunction in Case No. 08-CV-1633;
- 3 b) USAPA indicated in public statements that it intended
4 to demand that US Airways agree to implement a
5 date-of-hire seniority list in the CBA currently under
6 negotiation; and
- 7 c) US Airways filed a ripe declaratory judgment action
8 seeking a ruling on whether, by making such
9 demands, USAPA would be in breach of its duty of
10 fair representation.

11 16. This Cross-complaint, therefore, was filed within six (6)
12 months of the accrual of the Addington Pilots' claim.

13 17. This Court has federal question jurisdiction. 28 U.S.C.
14 § 1331.

15 18. Venue is proper in the District of Arizona, pursuant to 28
16 U.S.C. § 1391(b), because a substantial part of the events or omissions
17 giving rise to the claims were directed at affecting an Arizona entity,
18 US Airways and/one or more Cross-plaintiffs residing in Arizona.

19 CLASS ACTION ALLEGATIONS

20 19. Cross-plaintiffs bring this action, pursuant to Rule 23 of the
21 Federal Rules of Civil Procedure, on their own behalf and on behalf of
22 all persons similarly situated.

23 20. The Cross-plaintiff class (hereinafter, the "West Pilot Class") is
24 defined as:

25 *Those US Airways pilots who appear on the*
26 **West CBA** *seniority list, at the time of filing this*
27 *Complaint.*
28

1 21. The putative West Pilot Class includes approximately 1800
2 members. Accordingly, the class is so numerous that joinder of all
3 such persons is impracticable.

4 22. There exist common questions of law and fact affecting the
5 putative West Pilot Class.

6 23. The standing of the Addington Pilots to enjoy and protect the
7 seniority rights established by the Nicolau Award arise from their
8 status as West Pilots and is, therefore, the same as that for any other
9 West Pilot.

10 24. The Addington Pilots will fairly and adequately represent the
11 interests of the putative West Pilot Class because:

12 a) They have moral and financial support from many
13 West Pilots;

14 b) One or more of them have suffered and/or are likely
15 to suffer each kind of injuries suffered or about to be
16 suffered by other West Pilots as a result of furloughs
17 or lost promotion opportunities that resulted from
18 USAPA's violations of the duty of fair representation
19 described herein and the wrongful actions of others
20 with whom USAPA acted in concert;

21 and

22 c) They each have a good understanding of the issues
23 underlying this litigation and have demonstrated a
24 willingness to invest the necessary time and efforts to
25 fulfill their duties as representative parties.

26 25. Material questions of law and fact arising from this action
27 that are common to the Addington Pilots and other members of the
28 putative West Pilot Class include the following:

- 1 a) Whether the Addington Pilots and other West Pilots
2 have individual standing to remedy the conduct
3 complained of herein that impairs their enjoyment of
4 the seniority rights established by the Nicolau Award;
5 b) Whether there is an Article III case or controversy
6 arising from USAPA's refusal to bargain to implement
7 the Nicolau Award;
8 c) Whether there is prudential ripeness to a claim
9 arising from USAPA's refusal to bargain to implement
10 the Nicolau Award;
11 d) Whether USAPA is in breach of the duty of fair
12 representation for refusing to bargain to implement
13 the Nicolau Award;
14 e) Whether USAPA is in breach of the duty of fair
15 representation for repudiating its duty to bargain to
16 implement the Nicolau Award;
17 f) Whether USAPA is liable for damages incurred by
18 West Pilots who were either furloughed or who lost
19 promotion opportunities that resulted from USAPA's
20 violations of the duty of fair representation described
21 herein and the wrongful actions of others with whom
22 USAPA acted in concert;
23 and
24 g) Whether the injunctive relief requested herein is an
25 appropriate remedy.

26 26. The claims raised herein are applicable to all West Pilots
27 because they all have a right to fair union representation.
28

1 27. The claims raised herein are applicable to all West Pilots
2 because they all have an interest in their union adopt and promote an
3 arbitrated compromise of a seniority dispute that all had agreed would
4 be final and binding.

5 28. The Addington Pilots have retained counsel experienced in
6 class action litigation to prosecute these claims.

7 29. This action is maintainable as a plaintiff class action because
8 the factors enumerated herein satisfy the requirements of Rule 23(a)
9 and Rule 23(b)(1), (2) & (3).

10 **FACTUAL ALLEGATIONS**

11 **Collective Bargaining Agreements and Merger**

12 30. In December 2003, America West and the West Pilots entered
13 into a written agreement defining the terms of the West CBA. The
14 Addington Pilots refer to that document as the "2004 CBA." The West
15 CBA, as defined by the 2004 CBA, became effective in January, 2004,
16 and was to become amendable in January 2007.

17 31. A true and correct copy of relevant pages from the 2004 CBA
18 is attached to this Cross-complaint as Exhibit A.

19 32. The West CBA was also defined by Letters of Agreement that,
20 except as expressly noted herein, are not material to this dispute.

21 33. US Airways is the successor to America West's rights and
22 obligations under the West CBA.

23 34. US Airways is the successor to Pre-merger US Airways' rights
24 and obligations under the East CBA.

25 35. The wages, benefits and conditions of work required by the
26 East CBA are substantially more favorable to US Airways than are the
27 wages, benefits and conditions of work required by the West CBA.

28 36. The 2004 CBA referred to:

- 1 a) America West as the “Company;”
- 2 b) the West Pilots as the “Association;” and
- 3 c) the West CBA as the “Agreement.”

4 37. The 2004 CBA provided, among other things, as follows:

5 A. RECOGNITION

6 1. In accordance with Certification Number R-
7 6213 issued by the National Mediation Board on
8 October 26, 1993, the Company recognizes the
9 Association [ALPA] as the collective bargaining
10 representative of the flight deck crew members
11 [Pilots] employed by the Company with the
12 authority and obligation to represent them for
13 the purposes of the Railway Labor Act, as
14 amended.

15 and

16 B. SCOPE

17 This Agreement covers all revenue and all
18 known and recurring miscellaneous flying
19 performed by the Company. All flying covered
20 by this Agreement shall be performed by Pilots
21 whose names appear on the America West
22 Airlines, Inc. Pilots’ System Seniority List.

23 F. SUCCESSORSHIP AND MERGERS

24 2. In the event of a complete merger between the
25 Company and another air carrier (i.e., the
26 combination of all or substantially all the assets of
27 the two carriers) where the surviving carrier decides
28 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

1 after release due to reduction in schedules,
2 reemployment after release due to reduction in force,
3 and choice of vacancies, provided the Pilot can qualify
and is able to assume the assignment.

4 **Transition Agreement**

5 38. On September 20, 2005, US Airways (as America West and
6 Pre-merger US Airways), West Pilots, and East Pilots entered into a
7 multilateral contractual agreement entitled, the "Transition
8 Agreement."

9 39. A true and correct copy of the Transition Agreement is
10 attached to this Cross-complaint as Exhibit B.

11 40. The Transition Agreement established contractual rights and
12 obligations that ran, among other things:

- 13 a) Among individual West Pilots and individual East
14 Pilots;
- 15 b) Between individual West Pilots and the East Pilot
16 group;
- 17 c) Between individual East Pilots and the West Pilot
18 group; and/or
- 19 d) Between the West Pilot group and the East Pilot
20 group.

21 41. The Transition Agreement added or changed certain terms of
22 the West CBA and/or the East CBA.

23 42. The Transition Agreement, therefore, established collective
24 bargaining rights and obligations that ran, among other things:

- 25 a) Between US Airways and individual West and East
26 Pilots;
- 27 b) Between US Airways and the West Pilot Group;
28 and/or

1 c) Between US Airways and the East Pilot Group.

2 43. All parties understood and intended that the rights and
3 obligations arising in the Transition Agreement were part of a
4 multiparty bargained-for exchange.

5 44. All parties understood and intended that the rights and
6 obligations arising in the Transition Agreement were supported by
7 valid consideration and would be legally enforceable by all
8 beneficiaries.

9 45. The bargained for terms of the Transition Agreement included
10 among other things:

11 a) West Pilots agreed, for the benefit of East Pilots, to
12 waive Scope Provisions of the West CBA that required
13 America West to operate airplanes in the service of
14 America West under America West designator code
15 and/or marketing identity;

16 b) West Pilots agreed, for the benefit of US Airways and
17 East Pilots, that US Airways must provide all
18 furloughed East Pilots an opportunity to be either
19 recalled as East Pilots or hired as West Pilots before it
20 could hire any new pilots;

21 c) US Airways and East Pilots agreed, for the benefit of
22 West Pilots, that US Airways must place any pilots
23 hired after the date of the Transition Agreement on a
24 third seniority list entitled "New Hire Seniority List"
25 and that it must treat these pilots as junior to all
26 pilots on the West Pilot seniority list when its
27 operations are integrated;

- 1 d) East Pilots and US Airways agreed, for the benefit of
2 West Pilots, that if any West Pilot was furloughed
3 during Separate Operations, US Airways could not
4 hire any new pilots until it provided all furloughed
5 West Pilots an opportunity to be either recalled as
6 West Pilots or hired as East Pilots;
- 7 e) West Pilots agreed, for the benefit of US Airways and
8 East Pilots, to waive some of the West CBA
9 restrictions on the seating capacity of aircraft using
10 the company's marketing identity that could be flown
11 by Express Carriers;
- 12 f) West Pilots agreed, for the benefit of US Airways and
13 East Pilots, that US Airways could use East Pilots to
14 operate East Airplanes on certain flights that,
15 according to the Scope Provisions of the West CBA,
16 US Airways could fly only with West Pilots and West
17 Airplanes;
- 18 g) East Pilots and US Airways agreed, for the benefit of
19 West Pilots, that US Airways could use West Pilots to
20 fly West Airplanes on certain flights that, according to
21 the Scope Provisions of the East CBA, US Airways
22 could fly only with East Pilots and East Airplanes;
- 23 h) West Pilots agreed, for the benefit of US Airways and
24 East Pilots, to negotiate (in good faith) amendments to
25 the West CBA necessary to allow Integrated
26 Operations of US Airways using a single integrated
27 seniority list and a single CBA;
28

- 1 i) East Pilots agreed, for the benefit of West Pilots, to
2 negotiate (in good faith) amendments to the East CBA
3 necessary to allow Integrated Operations of US
4 Airways using a single integrated seniority list and a
5 single CBA;
- 6 j) US Airways agreed, for the benefit of West Pilots, to
7 negotiate (in good faith) amendments to the West CBA
8 and to the East CBA necessary to allow Integrated
9 Operations of US Airways using a single integrated
10 seniority list and a single CBA;
- 11 k) West Pilots agreed, for the benefit of US Airways and
12 East Pilots, that the single integrated seniority list
13 referred to above would be created in accordance with
14 ALPA Merger Policy;
- 15 l) East Pilots agreed, for the benefit of West Pilots, that
16 the single integrated seniority list referred to above
17 would be created in accordance with ALPA Merger
18 Policy; and
- 19 m) US Airways agreed, for the benefit of West Pilots, that
20 the single integrated seniority list referred to above
21 would be created in accordance with ALPA Merger
22 Policy.

23 **ALPA Merger Policy**

24 46. The terms of ALPA Merger Policy are set out in a document,
25 entitled "Section 45 – Merger And Fragmentation Policy" and dated
26 August 10, 2005. Hereinafter, the Addington Pilots refer to this
27 document as "ALPA Merger Policy."
28

1 47. A true and correct copy of ALPA Merger Policy is attached to
2 the Cross-complaint as Exhibit C.

3 48. Pursuant to ALPA Merger Policy, West and East Pilots
4 attempted to create a single integrated seniority list through
5 mediation.

6 49. West and East Pilots could not create a single integrated
7 seniority list through mediation.

8 50. Pursuant to ALPA Merger Policy, West and East Pilots
9 proceeded to create a single integrated seniority list through binding
10 arbitration.

11 51. ALPA Merger Policy stated, among other things:

- 12 a) "The Award of the Arbitration Board shall be final and
13 binding on all parties to the arbitration;" and
14 b) "The purpose of arbitration shall be to reach a fair
15 and equitable resolution consistent with ALPA policy."

16 **Seniority Dispute and Nicolau Arbitration**

17 52. West and East Pilots proceeded to create a single integrated
18 seniority list in arbitration conducted according to rules and
19 procedures set out in a document entitled "Ground Rules For The
20 US Airways-America West Pilot Seniority Integration Arbitration."

21 53. A true and correct copy of this document is attached to the
22 Cross-complaint as Exhibit D.

23 54. West and East Pilots agreed that the single integrated
24 seniority list should comport with standards set out in another
25 document entitled "Conditions and Restrictions."

26 55. A true and correct copy of this document is attached to the
27 Cross-complaint as Exhibit E.

28

1 56. West and East Pilots established a Board of Arbitration
2 chaired by George Nicolau (the “Nicolau Arbitration”).

3 57. On or about May 3, 2007, the Nicolau Arbitration issued its
4 award (the “Nicolau Award”), creating a single integrated seniority list.

5 58. A true and correct copy of the Nicolau Award, entitled, “In The
6 Matter Of The Seniority Integration Of The Pilots Of US Airways, Inc.
7 And The Pilots Of America West Airlines, Inc.,” is attached to the
8 Cross-complaint as Exhibit F.

9 59. The Nicolau Arbitration established, with finality, that the
10 Nicolau Award was:

- 11 a) Fair and equitable;
- 12 b) Consistent with ALPA Merger Policy; and
- 13 c) Consistent with the Conditions And Restrictions.

14 **Standing**

15 60. Individual West and East Pilots were fully and adequately
16 represented in the Nicolau Arbitration by their respective Master
17 Executive Councils (“MECs”).

18 61. West Pilots were represented by the America West MEC.

19 62. East Pilots represented by the US Airways MEC.

20 63. Because individual West and East Pilots were fully and
21 adequately represented in the Nicolau Arbitration they have standing
22 as parties to the Nicolau Arbitration.

23 64. Because individual West and East Pilots have standing as
24 parties to the Nicolau Arbitration they are bound to treat the Nicolau
25 Award as final, binding, fair and equitable.

26 65. Because West and East Pilots have standing as parties to the
27 Nicolau Arbitration they may, as individuals or as groups:
28

- 1 a) Assert *res judicata* or issue preclusion against West
- 2 and East Pilots as individuals or as groups;
- 3 b) Be subject to *res judicata* or issue preclusion asserted
- 4 by West and East Pilots as individuals or as groups;
- 5 c) Enforce obligations established by the Nicolau Award
- 6 against West and East Pilots as individuals or as
- 7 groups; and/or
- 8 d) Be required to perform obligations required by the
- 9 Nicolau Award by West and East Pilots as individuals
- 10 or as groups.

11 **Duty of Fair Representation**

12 66. In or about the middle of 2007, certain East Pilots made a
13 failed attempt to vacate the Nicolau Award in the Superior Court of the
14 District of Columbia.

15 67. Soon thereafter, certain East Pilots formed USAPA.

16 68. These East Pilots formed USAPA, for the purposes of:

- 17 a) Becoming the certified labor representative of West
- 18 and East Pilots in place of the Airline Pilots
- 19 Association, International;
- 20 b) Evading East Pilots' personal and group obligations to
- 21 treat the Nicolau Award as final, binding, fair and
- 22 equitable;
- 23 c) Impeding US Airways' implementation of the Nicolau
- 24 Award; and
- 25 d) Impeding US Airways' institution of Integrated
- 26 Operations.

1 69. In the course of this campaign, USAPA formulated a date-of-
2 hire based seniority policy (“USAPA Seniority Policy”) that was
3 inconsistent with the rationale of the Nicolau Award.

4 70. USAPA knew and intended that USAPA Seniority Policy:

- 5 a) Was inconsistent with the rationale of the Nicolau
6 Award;
- 7 b) Would require a date-of-hire integrated seniority list
8 that would be substantially more favorable to the
9 East Pilots than the Nicolau Award;
- 10 c) Would require a date-of-hire integrated seniority list
11 that would be substantially less favorable to the West
12 Pilots than the Nicolau Award; and
- 13 d) Was contrary to and inconsistent with its members’
14 personal obligations to treat the Nicolau Award and
15 Nicolau Award as final, binding, fair and equitable.

16 71. In early 2008, the National Mediation Board (“NMB”)
17 determined that the West and East Pilots constituted a single craft for
18 purposes of labor representation.

19 72. USAPA campaigned to become the certified labor
20 representative of the West and East Pilots.

21 73. With the knowledge set out in ¶ 70(a)-(d), and the knowledge
22 that it could win the representation contest just with the votes of East
23 Pilots, USAPA promised the East Pilots that if it were elected the labor
24 representative it would follow USAPA Seniority Policy.

25 74. On or about April 18, 2008, USAPA became the certified labor
26 representative.

1 75. Since June 2008, US Airways and USAPA have been
2 negotiating one or more collective bargaining agreements to replace the
3 West CBA and the East CBA.

4 76. In negotiating one or more collective bargaining agreements to
5 replace the West CBA and the East CBA, USAPA intends to: (a) not
6 implement integrated operations and/or (b) not adopt the Nicolau
7 Award.

8 77. Since becoming the certified labor representative, USAPA has
9 knowingly and intentionally done the following to the Addington Pilots'
10 detriment:

- 11 a) Re-affirmed USAPA Seniority Policy without making
12 any effort to give due consideration to West Pilot
13 interests;
- 14 b) Taken steps to implement USAPA Seniority Policy;
- 15 c) Promoted, encouraged and aided East Pilots to breach
16 duties owed to and established for the benefit of West
17 Pilots;
- 18 d) Stated that any contract it would negotiate with
19 US Airways: "will not contain any reference to recent
20 Nicolau document [the Nicolau Award]"; and
- 21 e) Stated: "When the majority of member pilots in good
22 standing vote yes on our new agreement, then this
23 document [the Nicolau Award] dies on the shelf."

24 **The Addington Pilots' Injuries**

25 78. As a consequence of USAPA's breach of the duty of fair
26 representation and the wrongful actions of those with whom it acted in
27 concert, one or more of the Addington Pilots and other similarly
28

1 situated West Pilots have lost promotions and have lost other
2 improvements in wages, benefits and working conditions.

3 79. As a consequence of USAPA's breach of the duty of fair
4 representation and the wrongful actions of those with whom it acted in
5 concert, one or more of the Addington Pilots and other similarly
6 situated West Pilots have been furloughed.

7 80. As a consequence of USAPA's breach of the duty of fair
8 representation and the wrongful actions of those with whom it acted in
9 concert, one or more of the Addington Pilots and other similarly
10 situated West Pilots have been demoted and lost improvements in
11 wages, benefits and working conditions.

12 81. One or more of the Addington Pilots and other similarly
13 situated West Pilots will continue to accrue injuries until USAPA and
14 Defendant US Airways implement a single CBA that applies the
15 Nicolau Award.

16 82. Since April 18, 2008, Defendant USAPA has owed the
17 Addington Pilots and all other West Pilots a duty of fair representation.

18 83. The duty of fair representation requires that USAPA give due
19 consideration to West Pilot interests and to not harm those interests
20 through conduct that is arbitrary, improper, or undertaken in bad
21 faith.

22 84. The duty of fair representation required USAPA to give due
23 consideration to the interests of the West Pilots when deciding USAPA
24 Seniority Policy.

25 85. The duty of fair representation precluded USAPA from casting
26 aside the Nicolau Award solely to benefit East Pilots at the expense of
27 West Pilots.

28

1 86. The duty of fair representation precluded USAPA from casting
2 aside the Nicolau Award without having a legitimate union objective
3 motivating its actions.

4 87. USAPA adopted and promoted its date-of-hire seniority list for
5 no reason other than to favor the East Pilots at the expense of the West
6 Pilots.

7 88. USAPA adopted and promoted its date-of-hire seniority list
8 without holding any sort of hearing or procedure that afforded the
9 Addington Pilots and other West Pilots an opportunity to present
10 arguments and evidence in favor of their interests.

11 89. USAPA, therefore, breached its duty of fair representation.

12 **Causation by Others Wrongfully Acting in Concert**

13 90. Under ALPA governance, an airline's pilots are assigned to
14 domiciles that corresponded to the cities out of which the pilots
15 generally fly.

16 91. Pre-merger US Airways had five such domiciles (PHL, CLT,
17 LGA, PIT, DCA) and America West had two (PHX, LAS).

18 92. ALPA domiciles are represented by a Local Executive Council
19 ("LEC") whose members were elected by the rank-and-file members of
20 that domicile.

21 93. Under ALPA governance, Council 41, the Philadelphia (PHL)
22 LEC, represented over 40 percent of the East Pilots.

23 94. Under ALPA governance, the bargaining unit of an airline is
24 represented by a Master Executive Council ("MEC") whose members
25 are taken from the airline's LECs.

26 95. The MECs serve as the "coordinating Council of the
27 membership on that airline."
28

1 96. The MECs are “empowered to make the final decision on any
2 problem or problems of the members of that airline” and the “decisions
3 of the Master Executive Council shall be considered as the decisions of
4 the members of the airline.”

5 97. The MECs may not initiate any action that is inconsistent
6 with the ALPA Constitution and By-Laws or act contrary to the best
7 interests of the Association or the general membership.

8 98. Eric Rowe was the Chairman and Captain Representative of
9 PHL Local Council 41, a member of the East MEC, and a member of
10 the ALPA Board of Directors during summer 2007 and through
11 February 2008.

12 99. Dave Ciabatonni was the Vice Chairman and First Officer
13 Representative of PHL Local Council 41, a member of the East MEC,
14 and a member of the ALPA Board of Directors during summer 2007
15 and through February 2008.

16 100. Jim Portale was the Secretary/Treasurer of PHL Local Council
17 41 during summer 2007 and through February 2008.

18 101. The MECs establish committees and appoint committee
19 chairmen as may be necessary for conducting MEC business.

20 102. During summer 2007 and through April 17, 2008, Tracy
21 Parella was the Chairman of the ALPA Grievance Committee for US
22 Airways appointed by the East MEC.

23 103. During summer 2007 and through February 2008, Doug
24 Mowery was the Chairman of the ALPA Negotiating Committee for US
25 Airways appointed by the East MEC

26 104. During summer 2007 and through April 17, 2008, Mike
27 Cleary was the Vice Chairman of the ALPA Grievance Committee and
28

1 was a member of the Pre-merger US Airways System Board of
2 Adjustment.

3 105. During the last half of 2007 through April 17, 2008, members
4 of ALPA's East MEC and Chairmen of East MEC Committees
5 supported USAPA in the representational election.

6 106. During the last half of 2007 through April 17, 2008, members
7 of ALPA's East MEC and Chairmen of East MEC Committees assisted
8 in the formation of USAPA and drafted USAPA documents.

9 107. During the last half of 2007 through April 17, 2008, members
10 of ALPA's East MEC and Chairmen of East MEC Committees solicited
11 support for USAPA in the representational election.

12 108. On or around August 10, 2007, individuals forming USAPA
13 circulated campaign material saying that USAPA needed to "keep the
14 contract open" and not allow completion of negotiations towards a
15 single CBA.

16 109. On or around August 15, 2007, the East MEC voted to
17 withdraw the East MEC Negotiating Committee members from the
18 Joint Negotiating Committee.

19 110. The members of the ALPA East MEC Negotiating Committee
20 never returned to the negotiations for a single CBA after August 15,
21 2008 and failed to show up for scheduled negotiation sessions.

22 111. On March 3, 2008, the ALPA Executive Council voted to put
23 the PHL Local Council 41 into an emergency trusteeship because of
24 evidence that PHL Local Council 41 officers, Eric Rowe, Dave
25 Ciabattoni, and Jim Portale, were supporting USAPA during the NMB
26 representation election while officers and status representatives of
27 ALPA.

1 112. On March 28, 2008, the ALPA Executive Board held a Special
2 Meeting to determine if the emergency trusteeship of PHL Local
3 Council 41 would continue.

4 113. At the Special Meeting of the ALPA Executive Board, former
5 East MEC members admitted to using USAPA as leverage against the
6 West Pilots.

7 114. At the Special Meeting of the ALPA Executive Board, the
8 Executive Board passed a resolution unanimously determining that
9 the emergency trusteeship would continue because PHL Local Council
10 41 members were charged with supporting USAPA and not supporting
11 ALPA.

12 115. Many pilots with positions of leadership in the ALPA East
13 MEC, pilots who were part of the design to prevent implementation of
14 the Nicolau Award, now have leadership positions in USAPA.

15 116. Wrongful actions by the East Pilot rank-and-file and
16 representatives and officers of the East Pilot LECs and MEC
17 (collectively the "East Wrongdoers") prevented joint negotiation of a
18 single CBA and thereby prevented timely Operational Pilot Integration
19 using the Nicolau Award.

20 117. Had there been no wrongful actions by the East Wrongdoers,
21 Operational Pilot Integration using the Nicolau Award would have been
22 fully completed before October 2008.

23 118. If US Airways had Operational Pilot Integration using the
24 Nicolau Award before October 2008 Plaintiffs Wargocki, Bostic and
25 Iranour and other members of the West Pilot Class would not have
26 been furloughed.

27 119. If US Airways had Operational Pilot Integration using the
28 Nicolau Award before October 2008 Plaintiffs Addington, Burman, and

1 Velez and other members of the West Plot Class would not have been
2 demoted from, or lost an opportunity for promotion to, Captain.

3 **Joint Liability from Action in Concert**

4 120.The injuries to the Addington Pilots and other members of the
5 West class arising from furloughs, demotions from Captain and missed
6 opportunity for promotion to Captain were caused by the wrongful
7 actions of the East Wrongdoers.

8 121.A union with knowledge that others have taken actions that
9 would constitute a breach of the duty of fair representation if
10 knowingly taken by the union is deemed to have acted in concert with
11 those others when it breaches the duty of fair representation with the
12 intention of furthering the goals motivating those others.

13 122.When a union is deemed the successor to a predecessor
14 union, it is deemed to have acted in concert with others to the same
15 extent that the predecessor would have been deemed to have acted in
16 concert with those others.

17 123.A union is jointly liable for harm caused by others when the
18 union, acting in concert with those others, breaches its duty of fair
19 representation.

20 124.USAPA, when adopting and promoting its date-of-hire
21 seniority scheme, acted in concert with the East Wrongdoers, when
22 they prevented Operational Pilot Integration using the Nicolau Award.

23 125.USAPA is, therefore, jointly liable for the harm caused to the
24 Addington Pilots.

25 **Remedy**

26 126.The injuries that have accrued to date to the Addington Pilots
27 from furloughs and lost promotions can be remedied with money
28 damages.

1 127. Other members of the West Pilot class do not have a fully
2 adequate remedy at law because it would be exceedingly impractical
3 for each such individual to prove up his or her personal damages.

4 128. The Addington Pilots and other members of the West Pilot
5 class do not have an adequate remedy at law for damages that will
6 accrue in the future unless USAPA is enjoined from further breach of
7 its duty of fair representation because too many factors affect such
8 damages to make calculation practical.

9 129. The Addington Pilots and other members of the West Pilot
10 class, therefore, are entitled to injunctive relief.

11 **WHEREFORE**, the Addington Pilots seek the following relief:

12 A. A permanent injunction directed ordering USAPA to:

- 13 1. Make all reasonable efforts to negotiate and
14 implement a single CBA that will implement the
15 Nicolau Award;
16 2. Make all reasonable efforts to support and defend the
17 Nicolau Award in negotiations with US Airways;

18 and

- 19 3. Not negotiate for separate collective bargaining
20 agreements.

21 B. That judgment be entered against USAPA for sufficient
22 damages to compensate the Addington Plaintiffs for the value of lost
23 wages and benefits caused by the injuries alleged herein;

24 C. That judgment be entered against USAPA awarding the
25 Addington Pilots their costs and reasonable attorneys' fees incurred
26 prosecuting this breach of duty of fair representation claim on the
27 basis of common benefit doctrine; and
28

1 D. That the Court grant the Addington Pilots and other members
2 of the West Pilot Class such other relief that it deems necessary and
3 proper.

4 Dated this 7th day of September, 2010.

5 POLSINELLI SHUGHART, PC

6
7 By /s/ Andrew S. Jacob

8 Marty Harper
9 Kelly J. Flood
10 Andrew S. Jacob
11 Katherine V. Brown
12 3636 N. Central Ave., Suite 1200
13 Phoenix, AZ 85012
14 *Attorneys for Plaintiffs*

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of September 2010, I electronically transmitted the foregoing document to the U.S. District Court Clerk's Office by using the ECF System for filing and transmittal.

By /s/ Andrew S. Jacob