Karen Gillen
US Airways, Inc.
111 West Rio Salado Parkway
Tempe, AZ 85281
State Bar No. 018008
Facsimile: (480) 693-5932
karen.gillen@usairways.com
Telephone: (480) 693-0800

Robert A. Siegel (*pro hac vice*)
Chris A. Hollinger (*pro hac vice*)
Mark W. Robertson (*pro hac vice*)
Ryan W. Rutledge (*pro hac vice*)
O'Melveny & Myers LLP
400 South Hope Street
Los Angeles, CA 90071-2899
Facsimile: (213) 430-6407
rsiegel@omm.com; chollinger@omm.com
mrobertson@omm.com; rrutledge@omm.com
Telephone: (213) 430-6000

Attorneys for Plaintiff
US Airways, Inc.

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

US Airways, Inc., a Delaware Corporation,

Plaintiff,

v.

Don Addington, an individual; John Bostic, an individual; Mark Burman, an individual; Afshin Iranpour, an individual; Roger Velez, an individual; and Steve Wargocki, an individual, on behalf of themselves and all other similarly-situated individuals,

and

US Airline Pilots Association, an unincorporated association,

Defendants.

Case No. CV-10-1570-PHX-ROS

PLAINTIFF US AIRWAYS, INC.'S OPPOSITION TO DEFENDANT USAPA'S MOTION TO DROP THE *ADDINGTON* DEFENDANTS

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I. INTRODUCTION

Plaintiff US Airways, Inc.'s ("US Airways") pilots are embroiled in a dispute regarding the relative seniority of two groups–the East Pilots and the West Pilots. US Airways is neutral as to how the underlying seniority dispute is ultimately resolved. The union which represents US Airways' pilots, defendant US Airline Pilots Association ("USAPA"), is inalterably committed to pursuing a seniority list that is perceived to be generally more favorable to the East Pilots, and will ultimately have the right to engage in a work stoppage if US Airways does not agree to its demands. The West Pilots, on the other hand, have unequivocally threatened to sue US Airways if it agrees to USAPA's seniority proposal.

Caught in the middle, US Airways brought this lawsuit for a declaratory judgment to establish, once and for all, its rights and obligations vis-a-vis USAPA and the West Pilots. That cannot happen if the West Pilots are dropped from this suit. Unless the West Pilots are bound as parties, they will not be barred by the judgment from pursuing their threatened claims against US Airways–and US Airways will be deprived of the effective relief it seeks in this action.

Under the governing law applicable to a motion under Rule 21, which incorporates the rules of necessary and permissive joinder, USAPA's motion should be denied. The West Pilots are a necessary party under Rule 19 because their absence would preclude issuance of complete relief to US Airways. Thus, as a matter of law, the West Pilots cannot be dropped from this lawsuit. Moreover, even if the West Pilots were not a necessary party, they are a permissive party under Rule 20. The West Pilots and USAPA are both combatants in the same seniority dispute, involving the same factual and legal issues, and their respective rights and obligations relative to the seniority dispute can and should be resolved in a single action. None of USAPA's claims of "prejudice" from the West Pilots' inclusion in this case warrant severance of this action into two lawsuits.

II. STATEMENT OF FACTS

US Airways brought this lawsuit against defendants Don Addington, John Bostic, Mark Burman, Afshin Iranpour, Roger Velez, and Steve Wargocki (the "Addington Defendants"), and against defendant USAPA, the union which currently represents all of US Airways' pilots. (Compl. [Doc. No. 1] ¶¶ 8-14.) US Airways sued the Addington Defendants as representatives of a class of all "West Pilots." (*Id.* ¶ 19.)

This action arises from a seniority-integration dispute between two groups of pilots following the 2005 merger of US Airways, Inc. and America West Airlines, Inc. (*Id.* ¶ 26.) That dispute involves the relative placement of the pilots on an integrated seniority list that would be implemented as part of a single collective bargaining agreement ("CBA") applicable to the combined flight operations of the post-merger carrier. (*Id.*) The West Pilots, who were employed by the pre-merger America West Airlines, Inc., contend that USAPA has an obligation to implement a seniority list that arose from an arbitration before Arbitrator George Nicolau (the "Nicolau Award"), and that it would be a breach of USAPA's duty of fair representation ("DFR") under the Railway Labor Act (the "RLA") for USAPA to enter into a CBA with US Airways which contains a non-Nicolau seniority list. (*Id.* ¶¶ 28 & 30.) USAPA, on the other hand, is inalterably opposed to implementation of the Nicolau Award. (*Id.* ¶ 32.) The West Pilots have repeatedly and unequivocally threatened to sue US Airways if it accedes to USAPA's demands for a non-Nicolau seniority list. (*Id.* ¶ 33.)

US Airways' Complaint seeks one of three alternative declaratory judgments. (*Id.* ¶ 35.) In Count I, the requested declaration accords with the West Pilots' position in the seniority dispute and would hold that it would be a breach of USAPA's DFR for USAPA and US Airways to agree to a CBA containing a non-Nicolau seniority list. (*Id.* ¶¶ 36-44.) In Count II, the requested declaration accords with USAPA's position in the seniority dispute and alternatively would hold that it would *not* be a breach of USAPA's DFR for USAPA and US Airways to agree to a CBA containing a non-Nicolau seniority list. (*Id.* ¶¶ 45-52.) Finally, in Count III, the requested alternative declaration does not seek to

resolve the issue of USAPA's DFR or other liability, but, in response to the West Pilots' threats of litigation, would confirm that US Airways cannot be held liable to the West Pilots for agreeing to USAPA's demands for a non-Nicolau seniority list even if the same is ultimately found to constitute a violation of USAPA's DFR toward the West Pilots. (*Id.* ¶¶ 53-61.)

By the instant motion (Doc. No. 35), USAPA seeks to have the Court resolve this lawsuit without the participation of the West Pilots.

III. DISCUSSION

Rule 21 of the Federal Rules of Civil Procedure states: "On motion or on its own, the court may at any time, on just terms, add or drop a party." Fed. R. Civ. Proc. 21. "By itself, Rule 21 cannot furnish standards for the propriety of joinder, for it contains none. Hence it must incorporate standards to be found elsewhere. The only standards for proper joinder relevant to this case are Rules 19 and 20." *Pan American World Airways, Inc. v. United States District Court for the Central District of California*, 523 F.2d 1073, 1079 (9th Cir. 1975). USAPA's motion fails to mention (let alone apply) the standards for necessary and permissive joinder under Rules 19 and 20, which are central to the proper analysis of a motion to drop under Rule 21. When these legal standards are applied to the facts of this case, it becomes clear that USAPA's motion should be denied.

A. Because The West Pilots Are Necessary Parties Under Rule 19, USAPA's Motion To Drop Must Be Denied.

The West Pilots are necessary parties under Rule 19, and, as a result, USAPA's motion to drop must be denied without regard to any other considerations. *See, e.g.*, *Soberay Mach. & Equip. Co. v. MRF Ltd., Inc.*, 181 F.3d 759, 763 (6th Cir. 1999) (Rule 21 permits dropping a party only "if that party's presence in the action is not required under Federal Rule of Civil Procedure 19, that is, the party to be dropped must not be a necessary party."); *Kirkland v. Legion Ins. Co.*, 343 F.3d 1135, 1142 (9th Cir. 2003) (Rule 21 "is viewed as a grant of 'discretionary power [to the federal court] to

perfect its diversity jurisdiction by dropping a nondiverse party provided the nondiverse party is not indispensable to the action under Rule 19.'") (alteration in original).

Under Rule 19(a),[1] a party is a necessary party if, *inter alia*, "complete relief cannot be granted in its absence." *Disabled Rights Action Committee v. Las Vegas Events, Inc.*, 375 F.3d 861, 879 (9th Cir. 2004). "In conducting the Rule 19(a)(1) analysis, the court asks whether the absence of the party would preclude the district court from fashioning meaningful relief as between the parties." *Id.*

Here, the absence of the West Pilots would preclude the issuance of meaningful relief to US Airways. The West Pilots have unequivocally threatened to sue US Airways if US Airways accedes to USAPA's demands regarding seniority integration of the pilots on the theory that any CBA containing a non-Nicolau seniority list would constitute a breach of USAPA's DFR toward the West Pilots. (Compl. ¶ 33; Answer [Doc. No. 34] ¶ 33; Addington Pilots' Response In Opposition To USAPA's Motion To Drop The Addington Defendants [Doc. No. 48] at 9:16-23.) Count II of US Airways' Complaint thus seeks a judicial declaration that it would not be a breach of USAPA's DFR for USAPA and US Airways to agree to a non-Nicolau seniority list and Count III seeks a judicial declaration that, even if it would be a breach of USAPA's DFR, US Airways cannot be held liable therefor. (Compl. ¶¶ 45-61.) USAPA *agrees* with the relief requested in Count II, and, as to Count III, contends that there is no basis on which US Airways could be held liable to the West Pilots even if a CBA containing a non-Nicolau seniority list was ultimately found to constitute a violation of its DFR. (Memorandum Of Law In Support Of Defendant USAPA's Rule 12(b) Motion To Dismiss [Doc. No. 49] at 15:14-19, 22:20-24:1.) The West Pilots, by contrast, *disagree* with the relief requested

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[1] Rule 19(a)(1) ***requires*** the joinder of a person if: "(A) in that person's absence, the court cannot accord complete relief among existing parties; or (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may: (i) as a practical matter impair or impede the person's ability to protect the interest; or (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest." Fed. R. Civ. Proc. 19(a)(1).

in Counts II and III. (Answer ¶¶ 48, 56.) For these two claims, the West Pilots have been properly named as the direct defendant because it is their previously-asserted legal position (and their related threat of litigation) that is the subject of the claims–by definition, principles of necessary joinder are satisfied for Counts II and III.[2]

Count I, on the other hand, seeks an alternative declaration that, as the West Pilots contend, it would be a breach of USAPA's DFR for USAPA and US Airways to agree to a CBA containing a non-Nicolau seniority list. This Court cannot adjudicate the validity of the West Pilots' position regarding USAPA's DFR liability–which is the predicate for US Airways' alleged potential liability to the West Pilots and a source of substantial legal uncertainty surrounding US Airways' bargaining obligations under the Railway Labor Act vis-a-vis USAPA–if the West Pilots are not parties to this action. *See, e.g., Taylor v. Sturgell*, 553 U.S. 880, 128 S. Ct. 2161, 2166-67 (2008) ("'one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party.'"). Pursuant to Rule 19(a)(1)(A), the West Pilots are a necessary party and, as a result, they cannot be dropped from this lawsuit.

While USAPA asserts that "the presence of the *Addington* defendants is not necessary for the relief that the Complaint seeks" (Motion 3:1-2), it does not even mention Rule 19 or make any attempt to apply the Rule 19 standard governing necessary parties. (*See* Motion 3:1-4:3.) Instead, USAPA addresses an entirely different question, i.e., whether "Counts I or II are necessary for resolution of Count III." (*Id.* 3:6.) USAPA's argument, therefore, is not about whether the West Pilots are "necessary parties," but

[2] USAPA's reply in response to the West Pilots' opposition to its motion to drop challenges at great length the merits of the West Pilots' legal theory as to the circumstances under which US Airways could be held liable for USAPA's potential breach of its DFR toward the West Pilots. (*See* Doc. No. 52 at 4:5-9:3.) The merits of the West Pilots' potential claim against US Airways are irrelevant to the instant motion. The critical fact is that the West Pilots have unequivocally threatened to sue US Airways if it agrees to USAPA's seniority demands, and, in that context, the West Pilots are a necessary party with respect to Counts II and III of US Airways' Complaint.

rather about which Counts in US Airways' Complaint are "necessary claims." This argument has no bearing on the question of which parties are necessary to this action.

The inter-relationship among the claims asserted by US Airways is an obvious consequence of the fact that each of the three Counts in the Complaint is pled in the alternative. That does not make any of the claims improper. Under Rule 8, US Airways has the right to plead claims in the alternative. *See, e.g., McCalden v. California Library Ass'n*, 955 F.2d 1214, 1219 (9th Cir. 1990). Moreover, even if resolution of Counts I and II could be rendered moot by the outcome of Count III, the West Pilots still are indisputably a necessary party for Count III. USAPA does not offer any support for dropping a party from a lawsuit simply because the party is not a necessary defendant for one of the claims.[3]

In short, USAPA offers no argument as to how this case could effectively be resolved, and how US Airways could be provided with complete and meaningful relief, without the participation of the West Pilots. Accordingly, the West Pilots are a necessary party under Rule 19(a)(1) and USAPA's motion to drop must therefore be denied.

B. Even If The West Pilots Are Not A Necessary Party, They Are A Permissive Party Under Rule 20 And USAPA's Motion To Drop Should Be Denied Because USAPA Has Failed To Demonstrate Prejudice From The West Pilots' Inclusion In This Action.

Even if the West Pilots are not a necessary party, they have been properly joined as a defendant in this action because they are a "permissive party." Rule 20 *permits* joinder of defendants if: "(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all

[3] USAPA also argues that the West Pilots are not necessary to the resolution of Count I, which seeks a declaration in the alternative that it would be a breach of USAPA's DFR for USAPA and US Airways to agree to a non-Nicolau seniority list. (*See* Motion 3:22-4:1.) As discussed above, USAPA is wrong. (*See supra* at 5:5-15.) In any event, even if the West Pilots are not a necessary party for Count I, that does not change the fact that they are a necessary party for Counts II and III.

defendants will arise in the action." Fed. R. Civ. Proc. 20(a)(2). "[P]ermissive joinder is to be construed liberally in order to promote trial convenience and to expedite the final determination of disputes, thereby preventing multiple lawsuits." *League to Save Lake Tahoe v. Tahoe Regional Planning Agency*, 558 F.2d 914, 917 (9th Cir. 1977).

Here, US Airways' alternative claims against USAPA and the West Pilots (Counts I and II, respectively) indisputably arise out of the same transaction or occurrence and involve a common question of law or fact–the West Pilots have therefore been properly joined under Rule 20. In Count I, US Airways alleges that it would violate USAPA's DFR to the West Pilots to enter into a CBA with a non-Nicolau seniority list–a position USAPA disputes (Compl. ¶¶ 36-44), and, in Count II, US Airways alleges in the alternative that it would not violate USAPA's DFR to enter into a CBA with a non-Nicolau seniority list–a position the West Pilots dispute. (*Id.* ¶¶ 45-52.) Those claims arise out of the same transaction or occurrence: USAPA's intractable demand that US Airways agree to a non-Nicolau seniority list and the West Pilots' threatened litigation if US Airways does so. Both claims also involve a common question of law or fact: whether it would be a breach of USAPA's DFR to enter into a CBA with a non-Nicolau seniority list.

USAPA does not dispute that US Airways' claims against USAPA and the West Pilots arise out of the same transaction or occurrence, or that they present common questions of law or fact–indeed, USAPA's motion does not discuss the Rule 20 standard at all. Instead, USAPA argues that the *Addington* defendants are misjoined because "[i]t is a violation of the RLA for an employer to treat with any party except the certified bargaining representative." (Motion 4:9-10.) USAPA's argument is a non-sequitur. A carrier's obligation under Section 2, Ninth, of the RLA to "treat" with the certified union has nothing to do with joinder of parties in civil-court lawsuits.

Section 2, Ninth, means that, with respect to the terms and conditions of employment for union-represented employees, the carrier may only negotiate with the union. *See generally Virginian Ry. Co. v. System Federation No. 40*, 300 U.S. 515, 549

(1937) ("When read in its context, it must be taken to prohibit the negotiation of labor contracts, generally applicable to employees in the mechanical department, with any representative other than respondent."). It does not mean that a carrier cannot sue or be sued by individual pilots or groups of them. It is clear that the West Pilots can sue US Airways. *See, e.g, Jones v. Trans World Airlines, Inc.*, 495 F.2d 790, 798-99 (2d Cir. 1974) ("TWA is liable with the union, jointly and severally, for such damages, if any, as the appellants may prove on remand."); *Davenport v. Int'l Bhd. of Teamsters*, 166 F.3d 356, 364 (D.C. Cir. 1999). US Airways could not possibly be guilty of unlawfully "treating" with the West Pilots by simply defending itself in such a lawsuit–and the result must be the same where, as here, US Airways has filed suit against the West Pilots for a declaratory judgment designed, in part, to prevent the West Pilots from suing US Airways in the first place.

In addition to asserting, incorrectly, that the West Pilots have been misjoined, USAPA argues that the presence of the *Addington* defendants is "inappropriate, problematic, and prejudicial to USAPA." (Motion 7:1-2.) Even if this Court has the authority under Rule 21 to drop a defendant who has been permissibly joined under Rule 20, USAPA's discussion of prejudice and fairness misses the mark.

On the one hand, USAPA argues that the West Pilots will not be prejudiced by being dropped from this action because they are pursuing litigation against USAPA in a separate matter, *Addington v. US Airline Pilots Ass'n*, Case No. CV-08-1633-PHX-NVW; CV-08-1728-PHX-NVW. (*See* Motion 7:3-8.) That is beside the point. In this lawsuit, US Airways seeks a declaration as to *its* rights and obligations vis-à-vis USAPA and the West Pilots. Those issues were not and are not presented in *Addington*. The presence of the West Pilots is necessary for the Court to provide US Airways with complete and meaningful relief in this action, and, without regard to any impact on the West Pilots, *US Airways* will suffer prejudice if they are dropped from this case.

On the other hand, USAPA argues that it would be prejudiced if the West Pilots remain in this action because, "without dropping the *Addington* defendants, USAPA will

be effectively forced to face *two plaintiffs*, not just one." (Motion 7:21-22 (emphasis in original).) But even if USAPA were correct that the West Pilots should be considered a plaintiff rather than a defendant in this action–notwithstanding the fact that the West Pilots are the primary defendant on two of the three claims in US Airways' Complaint[4]–it cites no authority in support of its contention that facing "*two plaintiffs*" is unduly prejudicial. Defendants are frequently compelled to litigate against multiple plaintiffs, and that is not a reason to drop otherwise proper parties from a lawsuit.

USAPA concludes its motion by claiming prejudice from the timing of this action, the choice of venue, and the failure to include the East Pilots as parties. (*See* Motion 8:4-9:14.) None of those arguments has any bearing on the question of whether the West Pilots should be dropped from this case, and, in any event, USAPA's arguments are meritless.

First, USAPA argues that US Airways should have filed this action sooner–even though, in its Rule 12 motion, USAPA argues that this action is not ripe. (Doc. No. 49 at 2:20-8:10.) USAPA's arguments cannot be reconciled, and both are wrong. The issues on which US Airways seeks declaratory relief in this case, e.g., whether it can be held liable for agreeing with USAPA to a non-Nicolau seniority list, could not have been resolved in a labor arbitration, which is limited to adjudication of alleged violations of the CBA (and not the RLA).[5] US Airways has a right to bring this action now, and its decision to do so has no bearing on the question of whether the West Pilots should be dropped as parties.

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[4] Indeed, given USAPA's apparent agreement with the merits of Counts II and III, as expressed in its Rule 12 motion (Doc. No. 49 at 15:14-19, 22:20-24:1), the West Pilots are likewise being opposed by two parties–US Airways and USAPA–on those claims.

[5] USAPA's suggestion that "the Company gave up the opportunity to have [its claims against the West Pilots] heard in the forum the [*Addington*] Court directed – in a labor arbitration" is frivolous. (*See* Motion 8:7-15.) The West Pilots withdrew their grievance. (Granath Decl. [Doc. No. 33] at ¶ 4, Ex. I.) US Airways could not compel the West Pilots to pursue their grievance to arbitration, and thus it "gave up" nothing.

Second, USAPA argues that the choice of venue is prejudicial. (*See* Motion 8:16-23.) That is an argument better suited to a motion to change venue than a motion to drop parties. Nonetheless, venue is proper in this District because: (i) most of the defendants are Arizona residents (and, as such, were subject to service of process here); (ii) defendant USAPA transacts business in Phoenix and is susceptible to suit in this Court despite not being an Arizona resident; (iii) plaintiff US Airways is located in Arizona; (iv) most of the significant underlying events took place in Arizona; and (v) the *Addington* case was litigated here. The fact that the District of Arizona may be a venue favored by the West Pilots, because they chose this forum for their own lawsuit in *Addington*, does not mean that venue is improper in this case–especially when the case will remain in the District of Arizona even if the West Pilots are dropped.

Third, USAPA suggests that if the West Pilots are named as parties, then the East Pilots should be added as well, and also asserts that "[t]he only rationale for the Company's inclusion of one group and the exclusion of the other is to stack the deck." (Motion 9:13-14.) USAPA ignores one critical fact. US Airways has named the West Pilots as a defendant because the declarations it seeks relate to the validity of a potential lawsuit against US Airways *by the West Pilots*. While a few East Pilots may have sued USAPA over seniority-related issues, they have not threatened to sue US Airways and there is thus no reason for US Airways to sue them for declaratory relief.

In sum, the West Pilots are at least a permissive party under Rule 20 (i.e., assuming they are not a necessary party under Rule 19). USAPA has failed to demonstrate any prejudice from the West Pilots' inclusion in this action, and its motion to drop should therefore be denied.

IV. CONCLUSION

For all of the foregoing reasons, US Airways respectfully requests that the Court deny USAPA's Motion to Drop the *Addington* Defendants.

Dated: October 21, 2010

O'Melveny & Myers LLP

By: Robert A. Siegel
Robert A. Siegel (*pro hac vice*)
Chris A. Hollinger (*pro hac vice*)
Mark W. Robertson (*pro hac vice*)
Ryan W. Rutledge (*pro hac vice*)
400 South Hope Street, Suite 1500
Los Angeles, CA 90071-2899

US Airways, Inc.
Karen Gillen, State Bar No. 018008
111 West Rio Salado Parkway
Tempe, AZ 85281

Attorneys for Plaintiff US Airways, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2010, the foregoing document was electronically transmitted to the United States District Court Clerk's Office using the CM/ECF System for filing and transmittal.

/s/ Robert A. Siegel
Robert A. Siegel