

1 Karen Gillen
2 US Airways, Inc.
3 111 West Rio Salado Parkway
4 Tempe, AZ 85281
5 State Bar No. 018008
6 Facsimile: (480) 693-5932
7 karen.gillen@usairways.com
8 Telephone: (480) 693-0800

9 Robert A. Siegel (*pro hac vice*)
10 Chris A. Hollinger (*pro hac vice*)
11 Mark W. Robertson (*pro hac vice*)
12 Ryan W. Rutledge (*pro hac vice*)
13 O'Melveny & Myers LLP
14 400 South Hope Street
15 Los Angeles, CA 90071-2899
16 Facsimile: (213) 430-6407
17 rsiegel@omm.com; chollinger@omm.com
18 mrobertson@omm.com; rrutledge@omm.com
19 Telephone: (213) 430-6000

20 Attorneys for Plaintiff
21 US Airways, Inc.

22
23 **UNITED STATES DISTRICT COURT**
24 **DISTRICT OF ARIZONA**

25 US Airways, Inc., a Delaware
26 Corporation,

27 Plaintiff,

28 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**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	1
II. STATEMENT OF FACTS.....	2
III. DISCUSSION.....	3
A. Because The West Pilots Are Necessary Parties Under Rule 19, USAPA’s Motion To Drop Must Be Denied	3
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.....	6
IV. CONCLUSION	11

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

CASES

Addington v. US Airline Pilots Ass’n,
Case No. CV-08-1633-PHX-NVW; CV-08-1728-PHX-NVW 8, 10

Davenport v. Int’l Bhd. of Teamsters,
166 F.3d 356 (D.C. Cir. 1999) 8

Disabled Rights Action Committee v. Las Vegas Events, Inc.,
375 F.3d 861 (9th Cir. 2004) 4

Jones v. Trans World Airlines, Inc.,
495 F.2d 790 (2d Cir. 1974) 8

Kirkland v. Legion Ins. Co.,
343 F.3d 1135 (9th Cir. 2003) 3

League to Save Lake Tahoe v. Tahoe Regional Planning Agency,
558 F.2d 914 (9th Cir. 1977) 7

McCalden v. California Library Ass’n,
955 F.2d 1214 (9th Cir. 1990) 6

*Pan American World Airways, Inc. v. United States District Court for the
Central District of California*,
523 F.2d 1073 (9th Cir. 1975) 3

Soberay Mach. & Equip. Co. v. MRF Ltd., Inc.,
181 F.3d 759 (6th Cir. 1999) 3

Taylor v. Sturgell,
553 U.S. 880, 128 S. Ct. 2161 (2008) 5

Virginian Ry. Co. v. System Federation No. 40,
300 U.S. 515 (1937) 8

RULES

Fed. R. Civ. Proc. 8 6

Fed. R. Civ. Proc. 12 9

Fed. R. Civ. Proc. 19 3, 4, 5, 10

Fed. R. Civ. Proc. 19(a) 4

Fed. R. Civ. Proc. 19(a)(1) 4, 6

Fed. R. Civ. Proc. 19(a)(1)(A) 5

Fed. R. Civ. Proc. 20 passim

Fed. R. Civ. Proc. 20(a)(2) 7

Fed. R. Civ. Proc. 21 3, 8

1 **I. INTRODUCTION**

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

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

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

1 **II. STATEMENT OF FACTS**

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

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

21 US Airways’ Complaint seeks one of three alternative declaratory judgments. (*Id.*
22 ¶ 35.) In Count I, the requested declaration accords with the West Pilots’ position in the
23 seniority dispute and would hold that it would be a breach of USAPA’s DFR for USAPA
24 and US Airways to agree to a CBA containing a non-Nicolau seniority list. (*Id.* ¶¶ 36-44.)
25 In Count II, the requested declaration accords with USAPA’s position in the seniority
26 dispute and alternatively would hold that it would *not* be a breach of USAPA’s DFR for
27 USAPA and US Airways to agree to a CBA containing a non-Nicolau seniority list. (*Id.*
28 ¶¶ 45-52.) Finally, in Count III, the requested alternative declaration does not seek to

1 resolve the issue of USAPA’s DFR or other liability, but, in response to the West Pilots’
2 threats of litigation, would confirm that US Airways cannot be held liable to the West
3 Pilots for agreeing to USAPA’s demands for a non-Nicolau seniority list even if the same
4 is ultimately found to constitute a violation of USAPA’s DFR toward the West Pilots. (*Id.*
5 ¶¶ 53-61.)

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

8 **III. DISCUSSION**

9 Rule 21 of the Federal Rules of Civil Procedure states: “On motion or on its own,
10 the court may at any time, on just terms, add or drop a party.” Fed. R. Civ. Proc. 21. “By
11 itself, Rule 21 cannot furnish standards for the propriety of joinder, for it contains none.
12 Hence it must incorporate standards to be found elsewhere. The only standards for proper
13 joinder relevant to this case are Rules 19 and 20.” *Pan American World Airways, Inc. v.*
14 *United States District Court for the Central District of California*, 523 F.2d 1073, 1079
15 (9th Cir. 1975). USAPA’s motion fails to mention (let alone apply) the standards for
16 necessary and permissive joinder under Rules 19 and 20, which are central to the proper
17 analysis of a motion to drop under Rule 21. When these legal standards are applied to the
18 facts of this case, it becomes clear that USAPA’s motion should be denied.

19 **A. Because The West Pilots Are Necessary Parties Under Rule 19,** 20 **USAPA’s Motion To Drop Must Be Denied.**

21 The West Pilots are necessary parties under Rule 19, and, as a result, USAPA’s
22 motion to drop must be denied without regard to any other considerations. *See, e.g.,*
23 *Soberay Mach. & Equip. Co. v. MRF Ltd., Inc.*, 181 F.3d 759, 763 (6th Cir. 1999)
24 (Rule 21 permits dropping a party only “if that party’s presence in the action is not
25 required under Federal Rule of Civil Procedure 19, that is, the party to be dropped must
26 not be a necessary party.”); *Kirkland v. Legion Ins. Co.*, 343 F.3d 1135, 1142 (9th Cir.
27 2003) (Rule 21 “is viewed as a grant of ‘discretionary power [to the federal court] to
28

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

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

8 Here, the absence of the West Pilots would preclude the issuance of meaningful
9 relief to US Airways. The West Pilots have unequivocally threatened to sue US Airways
10 if US Airways accedes to USAPA’s demands regarding seniority integration of the pilots
11 on the theory that any CBA containing a non-Nicolau seniority list would constitute a
12 breach of USAPA’s DFR toward the West Pilots. (Compl. ¶ 33; Answer [Doc. No. 34]
13 ¶ 33; Addington Pilots’ Response In Opposition To USAPA’s Motion To Drop The
14 Addington Defendants [Doc. No. 48] at 9:16-23.) Count II of US Airways’ Complaint
15 thus seeks a judicial declaration that it would not be a breach of USAPA’s DFR for
16 USAPA and US Airways to agree to a non-Nicolau seniority list and Count III seeks a
17 judicial declaration that, even if it would be a breach of USAPA’s DFR, US Airways
18 cannot be held liable therefor. (Compl. ¶¶ 45-61.) USAPA *agrees* with the relief
19 requested in Count II, and, as to Count III, contends that there is no basis on which US
20 Airways could be held liable to the West Pilots even if a CBA containing a non-Nicolau
21 seniority list was ultimately found to constitute a violation of its DFR. (Memorandum Of
22 Law In Support Of Defendant USAPA’s Rule 12(b) Motion To Dismiss [Doc. No. 49]
23 at 15:14-19, 22:20-24:1.) The West Pilots, by contrast, *disagree* with the relief requested

24 ¹ Rule 19(a)(1) **requires** the joinder of a person if: “(A) in that person’s absence, the
25 court cannot accord complete relief among existing parties; or (B) that person claims an
26 interest relating to the subject of the action and is so situated that disposing of the action
27 in the person’s absence may: (i) as a practical matter impair or impede the person’s
28 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).

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

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

16 While USAPA asserts that “the presence of the *Addington* defendants is not
17 necessary for the relief that the Complaint seeks” (Motion 3:1-2), it does not even mention
18 Rule 19 or make any attempt to apply the Rule 19 standard governing necessary parties.
19 (See Motion 3:1-4:3.) Instead, USAPA addresses an entirely different question, i.e.,
20 whether “Counts I or II are necessary for resolution of Count III.” (*Id.* 3:6.) USAPA’s
21 argument, therefore, is not about whether the West Pilots are “necessary parties,” but
22

23
24 ² USAPA’s reply in response to the West Pilots’ opposition to its motion to drop
25 challenges at great length the merits of the West Pilots’ legal theory as to the
26 circumstances under which US Airways could be held liable for USAPA’s potential
27 breach of its DFR toward the West Pilots. (See Doc. No. 52 at 4:5-9:3.) The merits of the
28 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.

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

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

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

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

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

24
25 ³ USAPA also argues that the West Pilots are not necessary to the resolution of
26 Count I, which seeks a declaration in the alternative that it would be a breach of USAPA's
27 DFR for USAPA and US Airways to agree to a non-Nicolau seniority list. (*See* Motion
28 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.

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

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

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

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

1 (1937) (“When read in its context, it must be taken to prohibit the negotiation of labor
2 contracts, generally applicable to employees in the mechanical department, with any
3 representative other than respondent.”). It does not mean that a carrier cannot sue or be
4 sued by individual pilots or groups of them. It is clear that the West Pilots can sue US
5 Airways. *See, e.g., Jones v. Trans World Airlines, Inc.*, 495 F.2d 790, 798-99 (2d Cir.
6 1974) (“TWA is liable with the union, jointly and severally, for such damages, if any, as
7 the appellants may prove on remand.”); *Davenport v. Int’l Bhd. of Teamsters*, 166 F.3d
8 356, 364 (D.C. Cir. 1999). US Airways could not possibly be guilty of unlawfully
9 “treating” with the West Pilots by simply defending itself in such a lawsuit—and the result
10 must be the same where, as here, US Airways has filed suit against the West Pilots for a
11 declaratory judgment designed, in part, to prevent the West Pilots from suing US Airways
12 in the first place.

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

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

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

1 be effectively forced to face *two plaintiffs*, not just one.” (Motion 7:21-22 (emphasis in
2 original).) But even if USAPA were correct that the West Pilots should be considered a
3 plaintiff rather than a defendant in this action—notwithstanding the fact that the West
4 Pilots are the primary defendant on two of the three claims in US Airways’ Complaint⁴—it
5 cites no authority in support of its contention that facing “*two plaintiffs*” is unduly
6 prejudicial. Defendants are frequently compelled to litigate against multiple plaintiffs,
7 and that is not a reason to drop otherwise proper parties from a lawsuit.

8 USAPA concludes its motion by claiming prejudice from the timing of this action,
9 the choice of venue, and the failure to include the East Pilots as parties. (See Motion 8:4-
10 9:14.) None of those arguments has any bearing on the question of whether the West
11 Pilots should be dropped from this case, and, in any event, USAPA’s arguments are
12 meritless.

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

23
24 ⁴ Indeed, given USAPA’s apparent agreement with the merits of Counts II and III, as
25 expressed in its Rule 12 motion (Doc. No. 49 at 15:14-19, 22:20-24:1), the West Pilots are
26 likewise being opposed by two parties—US Airways and USAPA—on those claims.

27 ⁵ USAPA’s suggestion that “the Company gave up the opportunity to have [its
28 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.

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

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

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

24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

NB1:803520.4

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28