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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 RULE 12(b) MOTION TO DISMISS

Oral Argument Requested

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I. INTRODUCTION

Plaintiff US Airways, Inc. ("US Airways") is currently engaged with defendant US Airline Pilots Association ("USAPA") in collective bargaining negotiations being mediated by the National Mediation Board ("NMB") pursuant to the requirements of the Railway Labor Act ("RLA"). In these negotiations, US Airways must decide whether to accept or reject a demand made by USAPA regarding the pilot seniority list. This demand by USAPA: 1) is in conflict with a seniority arbitration award, which the defendant West Pilots contend is final and binding, 2) would require US Airways to withdraw its prior acceptance of that arbitration award, 3) would, according to the West Pilots, constitute a breach of USAPA's duty of fair representation ("DFR") to them, and 4) was previously found by this Court, after a nine-day jury trial, to be unsupported by any legitimate union objective and therefore a breach of USAPA's DFR (in a judgment reversed on ripeness grounds–not on the merits). If US Airways accepts USAPA's seniority demand, the West Pilots have made clear that they will sue US Airways for "facilitat[ing]" or "assist[ing]" USAPA's breach of DFR, and US Airways will thus be exposed to tens of millions of dollars in damages and invalidation of the collective bargaining agreement reached with USAPA. If US Airways rejects USAPA's demands, USAPA has made clear that it will initiate a work stoppage at its "earliest opportunity," exposing US Airways to hundreds of millions of dollars in lost revenue and customer goodwill.

US Airways thus faces a Hobson's choice. The only way for US Airways to avoid an inevitable lawsuit or work stoppage is for the Court to issue a declaratory judgment now–*before* US Airways is forced to accept or reject USAPA's seniority demand and suffer these financial and operational consequences.

USAPA has filed a motion to dismiss, principally relying on *Addington v. US Airline Pilots Association,* 606 F.3d 1174 (9th Cir. 2010), which held that the West Pilots' claim against USAPA for breach of DFR would become ripe only when there was a ratified collective bargaining agreement on the seniority issue. (Doc. No. 49.) But *Addington* does not control the issue of ripeness in the current action filed by US Airways.

Here, unlike in *Addington* where the West Pilots would only be harmed if US Airways accepted USAPA's seniority demands, US Airways faces substantial adverse consequences regardless of how it responds, and has asked for a declaratory judgment regarding those consequences. Such a claim is ripe even though a claim for current breach of the corresponding legal obligations is not ripe. Thus, USAPA's motion to dismiss under Rule 12(b)(1) based on ripeness should be denied.

USAPA's motion also makes Rule 12(b)(1) arguments based on the exclusive arbitral jurisdiction of the System Board of Adjustment, as well as arguments under Rule 12(b)(6) for failure to state a claim, Rule 12(b)(7) for failure to join a necessary party, and Rule 12(b)(3) for improper venue. For the reasons set forth below, those arguments cannot be supported and should be rejected as well.

II. STATEMENT OF FACTS

A. The Seniority Dispute.

The origins of this lawsuit date back to 2005, when US Airways merged with America West Airlines, Inc. ("America West") to form a single airline. (Compl. [Doc. No. 1] ¶ 26.) At the time, the pre-merger US Airways pilots (the "East Pilots") and the pre-merger America West pilots (the "West Pilots") were both represented by the Air Line Pilots Association ("ALPA"). (Mowrey Decl. [Doc. No. 39] ¶ 11.) In connection with the merger, the East Pilots, the West Pilots, and the merging companies agreed, in a collectively-bargained Transition Agreement, that the pilot workforces of the two airlines would be combined. (Compl. ¶ 28; Mowrey Decl. ¶ 14.) However, a dispute arose between the East and West Pilots as to their relative placement on an integrated pilot seniority list. (Compl. ¶ 26.)

The East Pilots and the West Pilots, represented by separate counsel, arbitrated their seniority dispute before a neutral arbitrator, George Nicolau. (*Id.* ¶ 28.) Although US Airways was not a party to that arbitration, it had agreed in the Transition Agreement to accept the resulting integrated seniority list so long as certain conditions were satisfied. (*Id.*) The arbitrator issued an award, referred to as the "Nicolau Award," in May 2007.

(*Id.*) According to ALPA's constitution, the results of the arbitration were to be "final and binding" as between the East Pilots and the West Pilots. (*Id.*) Pursuant to the Transition Agreement, ALPA presented the integrated seniority list based on the Nicolau Award, and US Airways was obligated to accept that seniority list. (*Id.*) US Airways did so in late 2007. (*Id.*)

B. The Formation Of USAPA.

In response to the Nicolau Award, the East Pilots formed a new labor union, USAPA, whose constitution expressly mandates a "date-of-hire" integrated seniority list and prohibits implementation of the Nicolau Award. (Compl. ¶ 29.) The East Pilots significantly outnumber the West Pilots and, as a result, USAPA won an election among all of the pilots and was certified as the labor union for both the East and West Pilots. (*Id.*) The West Pilots allege that USAPA was formed solely for the purpose of evading the obligation to bargain for the Nicolau Award in negotiations with US Airways. (Addington Defendants' Answer and Cross-Complaint ("Cross-Compl.") [Doc. No. 34] 21:16-26.) According to USAPA, the Nicolau Award, which directly conflicts with the "date-of-hire" seniority mandated by USAPA's Constitution, grants "super seniority to more junior West Pilots" at the expense of more senior East Pilots. (Compl. ¶ 29; Mowrey Decl. ¶ 16.) The West Pilots, by contrast, regard the Nicolau Award as "an equitable integration of the seniority lists," and regard "a date-of-hire seniority list as inequitable." (Cross-Compl. 2:13-17.)

C. The *Addington* Lawsuit.

In 2008, US Airways announced that it would be furloughing pilots. Some of the pilots to be furloughed were West Pilots, who would not have been subject to furlough if a single collective bargaining agreement ("CBA") incorporating the Nicolau Award were in place at the time. The West Pilots brought suit against USAPA in *Addington*, asserting a claim for breach of USAPA's DFR based on its refusal to adopt the Nicolau Award in its negotiations with US Airways for a single CBA that would be applicable to the combined pilot workforce. The West Pilots' claim survived a motion to dismiss, and eventually the

jury found that USAPA had violated its DFR because it "cast aside the result of an internal seniority arbitration solely to benefit the East Pilots at the expense of the West Pilots," and "failed to prove that any legitimate union objective motivated its acts." *See Addington*, 2009 U.S. Dist. LEXIS 61724 at *23-24. The district court further ruled that "USAPA will be ordered to negotiate in good faith for the implementation of the Nicolau Award, defending that award in negotiations and presenting it with the single new CBA to the pilots for ratification vote." *Id.* at *86.

On appeal, the Ninth Circuit did not reach the merits of the West Pilots' DFR claim against USAPA, but instead held that their claim was not ripe. 606 F.3d at 1177. The Ninth Circuit ruled that "[n]ot until the airline responds to the proposal, the parties complete negotiations, and the membership ratifies the CBA will *the West Pilots* actually be affected by USAPA's seniority proposal–whatever USAPA's final proposal ultimately is." *Id.* at 1180 (emphasis added). The Ninth Circuit also concluded that "withholding judicial consideration does not work a direct and immediate hardship on *the West Pilots*." *Id.* (emphasis added). The Ninth Circuit noted, however, that "[b]y deferring judicial intervention, we leave USAPA to bargain in good faith pursuant to its DFR, with the interests of all members–both East and West–in mind, under pain of *an unquestionably ripe DFR suit*, once a contract is ratified." *Id.* at 1180 n.1 (emphasis added).[1]

D. Events Following The Ninth Circuit's Decision In *Addington*.

US Airways remained neutral regarding the pilots' seniority dispute while the *Addington* case was being litigated. Because USAPA's seniority proposal was being challenged in litigation, US Airways did not respond to it. US Airways anticipated that the *Addington* case would provide clarification–one way or the other–regarding the legality of entering into an agreement with USAPA for a non-Nicolau seniority list. But,

[1] The West Pilots also asserted two claims against US Airways for breach of the Transition Agreement. *See Addington v. US Airline Pilots Ass'n*, 588 F. Supp. 2d 1051, 1063 (D. Ariz. 2008). The district court dismissed those claims because they fell within the exclusive arbitral jurisdiction of a System Board of Adjustment. *See Addington*, 606 F.3d at 1178. The West Pilots did not name US Airways as a co-defendant on their DFR claim against USAPA.

given the Ninth Circuit's ruling on ripeness, that clarification was not provided.

After the Ninth Circuit issued its opinion, USAPA and the West Pilots both declared victory, and each insisted that US Airways take its side in the seniority dispute– or face dire consequences. The West Pilots interpret the Ninth Circuit's opinion as merely postponing a decision on their DFR claim and authorizing them to sue USAPA and US Airways if agreement is reached on a non-Nicolau seniority list. (*See* Compl. ¶ 33.) They have admitted in representations to this Court that they "will" assert a claim against US Airways if it agrees to USAPA's seniority demands (Addington Pilots' Response In Opposition to USAPA's Motion To Drop The Addington Defendants [Doc. No. 48] at 9:16-23), and their counsel sent US Airways multiple letters threatening to sue US Airways under the RLA for, *inter alia*, "facilitat[ing]" or "assist[ing]" USAPA's breach of DFR if US Airways accepted USAPA's seniority demands. (Siegel Decl. ¶¶ 2-3; Exs. A & B.)

USAPA, on the other hand, interprets *Addington* as authorizing agreement to a non-Nicolau seniority list and as specifically allowing it to insist on a strict "date-of-hire" seniority list. In a signed letter to US Airways' CEO, USAPA's President declared that "[o]ur customers need to know as well that they can expect a legal work stoppage at our earliest opportunity, absent an industry standard contract" (Hemenway Decl. ¶ 18; Ex. A), and USAPA contends that date-of-hire principles are "standard" for seniority integration in merger situations. (*See* Motion at 19:17-19 (citing *Truck Drivers and Helpers, Local Union 568 v. NLRB*, 379 F.2d 137 (D.C. Cir. 1967), for the proposition that "date of hire is the standard by which all other methods of seniority integration are judged."))

US Airways is currently engaged in ongoing negotiations for a CBA with USAPA pursuant to Section 6 of the RLA. These negotiations are being mediated by the National Mediation Board, which has the unfettered authority to release the parties from negotiations as soon as it determines that agreement cannot be reached, and, following such a release (and a 30-day "cooling off" period), USAPA will be permitted to engage in a work stoppage. In the current negotiations, USAPA continues to insist on a non-Nicolau

seniority list: "Consistent with its constitutional objective, the current USAPA seniority integration proposal provides for a combined list based on date-of-hire, modified with [certain] conditions and restrictions." (Mowrey Decl. ¶ 20.) USAPA has unequivocally confirmed that it will never depart from a strict date-of-hire seniority list (*see id.* ¶ 33), and therefore it will never propose the Nicolau list.

To this point, US Airways has been able to remain neutral in the seniority dispute–which is fundamentally a dispute between two groups of pilots, and not a dispute between pilots and their employer. But US Airways has a duty under the RLA to respond to USAPA's seniority integration proposal as part of the current negotiations. Accordingly–given the continuing legal uncertainty and the express threats by the West Pilots and USAPA–US Airways brought this action to seek legal clarification before it takes a position in response to USAPA's proposal. US Airways seeks alternative declaratory judgments, in accordance with Federal Rule of Civil Procedure 8(d), establishing, *inter alia*, that: (i) entry into a CBA with a non-Nicolau seniority list would constitute a violation of USAPA's DFR and US Airways is therefore prohibited from implementing a non-Nicolau seniority list; (ii) entry into a CBA with a non-Nicolau seniority list would *not* constitute a violation of USAPA's DFR and US Airways is therefore *not* prohibited from implementing a non-Nicolau seniority list; and (iii) whether or not it would be a violation of USAPA's DFR, US Airways cannot be held liable to the West Pilots for agreeing to a CBA containing a non-Nicolau seniority list.

III. DISCUSSION

A. USAPA's Rule 12(b)(1) Motion Should Be Denied Because US Airways' Three Claims Are Ripe, And The Court Otherwise Has Federal-Question Subject-Matter Jurisdiction.

Given the Hobson's choice it confronts, US Airways faces an indisputably "real and reasonable" apprehension of harm (either from litigation by the West Pilots or a work stoppage by USAPA), which makes its lawsuit for declaratory relief ripe. *See Societe de Conditionnement en Aluminium v. Hunter Eng'g Co., Inc.*, 655 F.2d 938, 944 (9th Cir. 1981). The ripeness of US Airways' lawsuit is unaffected by the facts that the West

Pilots' claims for breach of DFR are not yet ripe and that USAPA does not yet have an immediate right to engage in a work stoppage. The authorities recognize that where a plaintiff has a real and reasonable apprehension of harm, a declaratory judgment action can be ripe even when an action for breach of a corresponding legal or contractual obligation is not. US Airways is not required to respond to USAPA's seniority demands in order to have a ripe request for judicial clarification of its rights and obligations: "The rule that a [declaratory judgment] plaintiff must destroy a large building, bet the farm, or (as here) risk treble damages and the loss of 80 percent of its business before seeking a declaration of its actively contested legal rights finds no support in Article III." *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 134 (2007).

USAPA asserts that US Airways' suit for declaratory relief is an "end-run" around the Ninth Circuit's decision in *Addington*, and argues that this case is not ripe and should therefore be dismissed for lack of subject-matter jurisdiction under Rule 12(b)(1). (Motion 2:16-18.) *Addington*, however, did not consider the ripeness of US Airways' claims for declaratory relief or the harm that US Airways (which was not a party in *Addington*) will inevitably suffer if the Court withholds judicial relief.

1. <u>US Airways' "Real And Reasonable Apprehension" Of Harm Makes This Case Ripe For Decision</u>.

An action for declaratory judgment is ripe "if the plaintiff has a real and reasonable apprehension" of harm. *Societe de Conditionnement en Aluminium*, 655 F.2d at 944.[2] Here, US Airways has a present and existing obligation under the RLA to respond to USAPA's seniority demands in ongoing, federally-mediated negotiations–and, regardless of how it responds, US Airways faces a real and reasonable apprehension of harm from either the West Pilots or USAPA.

[2] The Supreme Court has more generally described the ripeness standard applicable to a declaratory judgment action as follows: "'Basically, the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.'" *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007) (quoting *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 273 (1941)).

On the one hand, US Airways has a "real and reasonable" apprehension of harm if it accepts USAPA's seniority demands because, as described *supra* (5:3-12), the West Pilots will then sue US Airways for, *inter alia*, facilitating or assisting USAPA's breach of its DFR. The risk of such a lawsuit is not idle speculation. The West Pilots have confirmed in filings with this Court that they will bring such a suit. Indeed, they previously sued USAPA for refusing to negotiate for the Nicolau Award, and a jury found that USAPA had breached its DFR. *Addington*, 606 F.3d at 1178. While the Ninth Circuit reversed on ripeness grounds, it noted that the West Pilots' DFR claim would be "unquestionably ripe" once a CBA was ratified. *Id.* at 1180 n.1.[3] The Nicolau Award resulted from an arbitration that the West Pilots consider to be "final and binding," and, as required by the Transition Agreement, US Airways accepted the Nicolau Award after it was presented by ALPA. The West Pilots consider that to be the end of the matter, and they will accept nothing less than implementation of the Nicolau Award. Thus, US Airways has a "real and reasonable" apprehension that if accepts *any* seniority proposal other than the Nicolau Award, the West Pilots will sue.

On the other hand, US Airways has a "real and reasonable" apprehension of harm if it rejects USAPA's seniority demands because, as described *supra* (5:13-21), USAPA has expressly stated that it will engage in a work stoppage at its "earliest opportunity" if it does not reach agreement on a CBA satisfactory to it.[4] USAPA has confirmed in its Motion to Dismiss that, consistent with its Constitutional mandate, the Nicolau Award

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[3] The West Pilots' assertion of breach of contract claims against US Airways in *Addington* lends credibility to their threats of further litigation. *See Teva Pharmaceuticals USA, Inc. v. Novartis Pharmaceuticals Corp.*, 482 F.3d 1330, 1344 (Fed. Cir. 2007) ("[R]elated litigation involving the same technology and the same parties is relevant in determining whether a justiciable declaratory judgment controversy exists.").

[4] USAPA argues that "the possibility of a strike is hardly imminent" because collective bargaining under the RLA can be "almost interminable." (Motion 12:18-13:14.) While no lawful strike can begin until after the National Mediation Board determines that an agreement cannot be reached, the Board can make that determination at any time. Speculation regarding when it might do so is beside the point. *See Ernst & Young v. Depositors Economic Protection Corp.*, 45 F.3d 530, 536 (1st Cir. 1995) ("ripeness is not defeated by the existence of a time delay"). What matters is that if US Airways rejects USAPA's seniority demand, the die will be cast.

will *never* be acceptable to it. Given these facts, US Airways has a "real and reasonable apprehension" that USAPA will engage in a work stoppage–a fact which USAPA's Motion to Dismiss does not deny. *See Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1556 (9th Cir. 1990) ("It is also relevant" to the question of the likelihood of being sued "that Hal Roach Studios has not indicated to Feiner & Co. that it will *not* institute an infringement action.") (emphasis in original).

Under these circumstances, a declaratory judgment regarding US Airways' legal rights, constraints and obligations in the seniority negotiations is necessary in order to avoid substantial hardship to US Airways. A work stoppage would force US Airways to cancel flights, and air travel would be disrupted throughout the country. This would cost US Airways hundreds of millions of dollars in lost revenue and customer goodwill (Compl. ¶ 34), and also would cause harm to the general public. *See generally CSX Transp., Inc. v. United Transp. Union*, 86 F.3d 346, 349 (4th Cir. 1996) ("The avoidance of strikes is crucial to the public interest in maintaining the nation's transportation system."). Conversely, if the West Pilots filed suit, US Airways would, at a minimum, be required to pay substantial sums in litigation costs and also could be forced to pay tens of millions of dollars in monetary damages and be subject to an injunction invalidating a CBA that had taken literally years to negotiate. (Compl. ¶ 34.) US Airways indisputably has a "real and reasonable apprehension" of these harms and, as such, its declaratory judgment action is ripe.

2. <u>The Ripeness Of US Airways' Claims For A Declaratory Judgment Is Not Governed By *Addington*</u>.

Addington is the lynchpin of USAPA's ripeness argument, but it is not controlling here because it did not consider the harms to US Airways, which was not a party on appeal, and did not consider the ripeness of claims for declaratory relief. In *Addington*, the Ninth Circuit held that the West Pilots' claims for injunctive relief and damages for *breach* of USAPA's DFR were not ripe because, until a CBA was ratified, there were "contingencies that could prevent effectuation of USAPA's proposal and the

accompanying injury." 606 F.3d at 1179. US Airways, however, faces injuries that are not dependent on those contingencies. Unlike the West Pilots, US Airways has a present and existing obligation under the RLA to respond to USAPA's seniority proposal in the ongoing, federally-mediated negotiations–and, regardless of how it responds, US Airways will suffer inevitable and severe consequences unless the Court issues declaratory relief. Nothing in the Ninth Circuit's holding in *Addington* suggests that declaratory relief is unavailable under such circumstances.

In fact, Ninth Circuit precedent makes clear that the Declaratory Judgment Act "permits actual controversies to be settled before they ripen into violations of law or a breach of contractual duty." *United Food & Commercial Workers Local Union Nos. 137, etc. v. Food Employers Council, Inc.*, 827 F.2d 519, 524 (9th Cir. 1987) (citation and internal quotation marks omitted). As long as a party faces a real and reasonable apprehension of harm, it may seek a declaratory judgment, given that "all declaratory judgments will be in some sense hypothetical." *Nat'l Basketball Ass'n v. SDC Basketball Club, Inc.*, 815 F.2d 562, 566 n.2 (9th Cir. 1987) ("*NBA*"); *see also GTE Directories Publishing Corp. v. Trimen America, Inc.*, 67 F.3d 1563, 1569 (11th Cir. 1995) ("It is clear that in some instances a declaratory judgment is proper even though there are future contingencies that will determine whether a controversy ever actually becomes real.").

In *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118 (2007), for example, MedImmune sought a declaratory judgment as to the validity of a patent infringement lawsuit that potentially could be filed against it by Genentech. Genentech's patent infringement lawsuit was not ripe at the time because MedImmune was paying royalties to Genentech for use of the patent: "the continuation of royalty payments makes what would otherwise be an imminent threat [of lawsuit] *at least remote, if not nonexistent*." *Id.* at 128 (emphasis added). Even though Genentech's patent infringement lawsuit was not ripe, the Supreme Court held that a declaratory judgment action regarding the validity of that lawsuit was ripe because MedImmune "was not required, insofar as Article III is concerned, to break or terminate its 1997 license agreement before seeking a declaratory

judgment in federal court that the underlying patent is invalid, unenforceable, or not infringed." *Id.* at 137. "The rule that a [declaratory judgment] plaintiff must destroy a large building, bet the farm, or (as here) risk treble damages and the loss of 80 percent of its business before seeking a declaration of its actively contested legal rights finds no support in Article III." *Id.* at 134.

The Ninth Circuit reached a similar conclusion in *NBA*. In that case, the Clippers justified their move from San Diego to Los Angeles, over the objections of the National Basketball Association ("NBA"), by asserting that it would be an antitrust violation for the NBA to impose any fine or sanction on them. When the NBA filed its declaratory judgment action, the Clippers' antitrust claim was unripe because the NBA had not yet imposed any fine or sanction. The Clippers argued that the declaratory judgment action was unripe for the same reason, but the Ninth Circuit disagreed: the Clippers' argument "would force the NBA to impose a fine or sanction on the Clippers before an action [for declaratory judgment] could accrue. This is the type of Damoclean threat that the Declaratory Judgment Act is designed to avoid." 815 F.2d at 566.

The result should be the same here. The Ninth Circuit's decision in *Addington* makes clear that the West Pilots will have "an unquestionably ripe DFR suit, once a contract is ratified," 606 F.3d at 1180 n.1, and the West Pilots have confirmed that they will bring such a suit against US Airways and USAPA if US Airways agrees to USAPA's seniority demands. *MedImmune* and *NBA* indicate that the issue of USAPA's DFR may thus be decided in a declaratory judgment action before a CBA is ratified and the West Pilots' claim for breach becomes ripe (or USAPA has the right to engage in a work stoppage) in order to allow US Airways to avoid taking any action that would give rise to a ripe suit against it. That is what US Airways seeks in Counts I and II of the Complaint, namely, alternative declaratory judgments regarding whether it would (or would not) constitute a breach of USAPA's DFR to enter into a CBA that does not incorporate the Nicolau Award. (Compl. ¶¶ 39, 48.)

In short, US Airways' acquiescence in, or rejection of, USAPA's demands for a

non-Nicolau seniority list as part of a single CBA is akin to what the Supreme Court described in *MedImmune* as destroying a building, betting the farm, or risking damages and the loss of business, or what the Ninth Circuit described in *NBA* as the type of Damoclean threat that the Declaratory Judgment Act is designed to avoid–it is the very act which will expose US Airways to inevitable harm. *MedImmune* and *NBA* allow US Airways' declaratory judgment claims to be resolved now, so that US Airways can avoid taking any action that would give rise to a ripe suit against it for breaching its obligations under the RLA.

3. USAPA's Other Arguments Against Ripeness Are Unpersuasive.

USAPA argues that the declaratory judgments requested by US Airways are unnecessary because, according to USAPA, the West Pilots would not prevail in their lawsuit. (*See* Motion 11:3-4 (stating that US Airways' request for a declaratory judgment that it cannot be held liable to the West Pilots "seems hardly necessary.")) But, of course, that is not a reason to dismiss US Airways' claim for declaratory relief; it is a reason for the Court to issue a declaratory judgment as requested in Counts II or III of the Complaint. The ripeness of a claim for a declaratory judgment does not depend on the question of who will prevail in threatened litigation, but only requires that the declaratory judgment plaintiff have a "real and reasonable apprehension" that "it would *be the subject of* [a legal] action." *See Hal Roach Studios, Inc.*, 896 F.2d at 1556 (emphasis added). Indeed, in the usual case, the declaratory judgment plaintiff seeks to establish that a threatened lawsuit would lack merit. In both *MedImmune* and *NBA*, for example, the declaratory judgment plaintiffs sought to establish that threatened lawsuits against them (which were not ripe at the time) would fail. US Airways' Complaint is no different. US Airways does not believe it can be held liable to the West Pilots, *see Rakestraw v. United Airlines, Inc.*, 765 F. Supp. 474, 493-94 (N.D. Ill. 1991), *aff'd in part and rev'd in part*, 981 F.2d 1524 (7th Cir. 1992), but it has a ripe claim for a declaratory judgment to that effect before the West Pilots' claim against it becomes ripe.[5]

[5] The fact that USAPA agrees with US Airways on this point does not lessen the

USAPA also argues that US Airways might be able to avoid or mitigate some of the harms from a work stoppage or lawsuit if it agrees to an indemnification provision under which "USAPA could agree to assume the risk of damages arising from a particular seniority integration proposal," or to "deferred operational integration" to "allow the opportunity to determine if pilots approved the integration proposal and postpone the accrual of any damages until any subsequent litigation could be resolved." (Motion 7:11-12 & 7:17-19.) US Airways' acceptance or rejection of such hypothetical proposals is irrelevant to the ripeness of its claims for declaratory relief. *Cf. MedImmune*, 549 U.S. at 130 (holding that the Declaratory Judgment Act provides jurisdiction in "situations in which the plaintiff's self-avoidance of imminent injury is coerced by threatened enforcement action").

USAPA's hypothetical indemnification provision would not diminish the threat of suit by the West Pilots. US Airways would still have to expend considerable resources to defend the lawsuit, even if USAPA had the obligation and financial wherewithal to pay all the monetary damages, and there would still be the possibility that a court could invalidate a CBA which had taken years to negotiate. *See generally Bernard v. Air Line Pilots Ass'n, Int'l*, 873 F.2d 213 (9th Cir. 1989) (affirming injunction setting aside negotiated CBA provision that violated union's DFR). USAPA's delayed-integration scheme similarly would not diminish the threat of suit by the West Pilots. More remarkably, USAPA's proposal, and a related suggestion to altogether forego a single CBA (*see* Motion 8:5-11), would further delay or eliminate the integration of US Airways' pilot

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West Pilots' threat of litigation. There are reported decisions recognizing the West Pilots' legal theories, which makes plausible the West Pilots' promise to pursue such claims and subjects US Airways to a real and reasonable apprehension of litigation. *See, e.g., Jones v. Trans World Airlines, Inc.*, 495 F.2d 790, 798-99 (2d Cir. 1974) ("TWA shares the IAM's responsibility for the injury suffered by the appellant employees. It was the immediate cause of their injury. It displaced their names downward on the seniority roster. It participated in the negotiation of a seniority agreement that resulted in laying off four passenger relations agents in violation of seniority rights accrued under the pre-1970 contracts. . . . 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).

workforce, thereby costing US Airways tens of millions of dollars–while US Airways would have to immediately start paying increased wages and benefits under a new CBA.[6]

USAPA argues further that US Airways suffers "zero harm" from the delay in reaching agreement on a single CBA, and that US Airways' allegations of harm are "simply unbelievable given the Company's posting last quarter of its second highest . . . profit since the merger." (Motion 12:8-17 & 12:20-21.) USAPA's argument is a *non sequitur*. Regardless of whether it posted a profit last quarter, and regardless of the net financial benefit or detriment from the absence of a single CBA and integrated pilot workforce, US Airways has a "real and reasonable apprehension" of substantial harm from a work stoppage or litigation absent the requested declaratory relief.[7]

Finally, the authorities USAPA cites in its Motion are distinguishable. USAPA cites *North American Airlines, Inc. v. International Bhd. of Teamsters*, 2005 U.S. Dist. LEXIS 4385 at *43 (S.D.N.Y. 2005), for the proposition that "[i]n the context of an ongoing labor negotiation[,] [i]t is particularly inappropriate to have courts opine on the legality of certain proposals by a party to the dispute." (Motion 10:18-11:2.) The court's statement, however, arose out of very different factual circumstances from the instant

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[6] USAPA's Motion cites an earnings call in which US Airways' CEO stated that integrating the pilot workforce would have a ***net*** negative effect on US Airways' financial situation, but USAPA omits the critical details. Specifically, US Airways stated that it would save approximately $10 million per year in administrative costs as a result of a single CBA, but that it would pay more than that in increased wages. (*See* July 30, 2010 Granath Decl. Ex. D [Doc. No. 19-4] at 9.)

[7] US Airways disputes USAPA's factual assertion that US Airways is suffering no harm from the absence of a single CBA and integrated pilot work force. Indeed, the evidence cited by USAPA does not support its sweeping assertions. US Airways also disputes USAPA's assertion that a member of its Board of Directors informed a USAPA official that US Airways "was intentionally dragging out negotiations in order to 'preserve cash.'" (Motion 12:10-13.) The statement in USAPA's brief is not an accurate description of the cited declaration, which states only that the US Airways director allegedly "told me, ***in so many words***, that slowing the pace of contract negotiations" was an example of US Airways' response to its cash crisis in April 2010. (Davis Decl. [Doc. No. 41] ¶ 3 (emphasis added).) In any event, the assertion that US Airways has intentionally delayed the negotiations is not true. (*See* Hemenway Decl. ¶¶ 5-17.) US Airways does not believe that any of these factual disputes are material to the ripeness of its claims for declaratory relief. However, if the Court were to determine that these facts are material, it would be necessary to conduct discovery and an evidentiary hearing on these matters.

case. There, a carrier sought a declaratory judgment as to the legality under the RLA of unilateral changes in the terms and conditions of employment of union-represented employees but, at the time it filed its complaint, the carrier "had not adopted a full roster of unilateral changes as a final and fixed position." *Id*. at *36. The court held that "The abstract question of [the carrier's] 'right' to adopt unilateral changes is not ripe for consideration in the absence of [the carrier] adopting any particular such changes." *Id*. at *3. Here, however, it is undisputed that, while the ancillary details of its seniority proposal may change, USAPA's demand for a non-Nicolau seniority list *will not.* (Mowrey Decl. ¶ 33.) The ultimate integrated seniority list will either be based on the Nicolau award (as the West Pilots insist) or it will not (as USAPA insists). There is nothing speculative about that.

The present situation is thus analogous to *NBA*, where the NBA had not imposed (or even proposed) any specific sanction against the Clippers at the time it filed its action seeking a declaratory judgment that it had the right to impose sanctions consistent with the antitrust laws. *See* 815 F.2d at 566. Even though the NBA had not adopted a "final and fixed position" on sanctions (which is what the district court required in *North American Airlines*), the Ninth Circuit held that the NBA's claim for declaratory relief was ripe. *Compare Addington*, 606 F.3d at 1180-81 (noting importance of USAPA's "final proposal" for purposes of analyzing the ripeness of the West Pilots' claims for *breach* of DFR).[8]

[8] USAPA's remaining decisions on this point are likewise distinguishable. *Helco Prod. Co., Inc. v. McNutt*, 137 F.2d 681 (D.C. Cir. 1943), and *Hyatt Int'l Corp. v. Coco*, 302 F.3d 707, 711-12 (7th Cir. 2002), both dealt with the question of whether a fear of a lawsuit was sufficient to create a ripe claim for declaratory relief. *Helco* held that such fears were unreasonable where no lawsuit was threatened, and *Hyatt* considered (though it did not decide) whether it was unduly speculative that a lawsuit would be brought in the specific circumstances presented there. Those decisions have no application in this case, where the West Pilots have previously filed suit against USAPA for breach of DFR and have confirmed that they will assert claims against US Airways as well if it agrees to USAPA's seniority demands.

4. US Airways' Request In Count I For A Declaratory Judgment Regarding USAPA's Bargaining Duties Under The RLA Is Ripe.

USAPA's Rule 12(b)(1) motion should be denied as to Count I of the Complaint, even if US Airways' request for declaratory relief regarding USAPA's breach of DFR is not ripe, because, unlike *Addington*, Count I also raises issues regarding USAPA's bargaining obligations under Section 2, First, of the RLA. Section 2, First, requires carriers and unions to "exert every reasonable effort to make and maintain agreements" regarding rates of pay, rules and working conditions. 45 U.S.C. § 152 (First). In other words, it requires the parties to bargain in good faith. It is well-settled that a claim under Section 2, First, can be asserted while collective bargaining negotiations are ongoing. *See, e.g., Air Line Pilots Ass'n Int'l v. Transamerica Airlines, Inc.*, 817 F.2d 510, 513-14 (9th Cir. 1987) (federal court has jurisdiction over bad-faith bargaining claim, even if the parties are contemporaneously engaged in mediation under the auspices of the NMB). In Count I, US Airways alleges, *inter alia*, that, under the circumstances of this case, USAPA's continued insistence on a non-Nicolau seniority list would violate its duty under Section 2, First. (*See* Compl. ¶¶ 38-40.) That dispute could not be more ripe.

5. Count I Of US Airways' Complaint Does Not Raise A "Minor Dispute."

USAPA makes one Rule 12(b)(1) argument not based on ripeness: namely, that Count I of US Airways' Complaint raises a "minor dispute" within the exclusive jurisdiction of the System Board of Adjustment because the Complaint asserts that one of the alleged facts, among many, relevant to USAPA's alleged violation of Section 2, First, of the RLA is that USAPA's continued insistence on a date-of-hire seniority list "is not in accord with the requirements of the Transition Agreement." (Motion 9:2-6.) USAPA is wrong.

US Airways is not seeking a declaratory judgment that USAPA is violating the Transition Agreement. US Airways is seeking a declaratory judgment that USAPA is violating its statutory obligation under Section 2, First, of the RLA to "exert every

reasonable effort to make and maintain agreements." That is a question of an alleged statutory violation over which a board of adjustment has no jurisdiction. *See Fennessy v. Southwest Airlines*, 91 F.3d 1359, 1364 (9th Cir. 1996) ("the Board of Adjustment has no jurisdiction over the statutory claim."). While some of the facts alleged in support of Count I implicate or relate to the Transition Agreement (*see, e.g.*, Compl. ¶ 40),[9] this Court's jurisdiction to adjudicate an alleged violation of a federal statute is not defeated by incidental "references" to a CBA. *See, e.g., Carmona v. Southwest Airlines Co.*, 536 F.3d 344, 349-50 (5th Cir. 2008) (holding that court had jurisdiction "[e]ven though a court would have to *refer* to the CBA," where "interpretation of the CBA" was not required to resolve the claim) (emphasis in original). Rather, a claim presents a "minor dispute" within the exclusive jurisdiction of the Board of Adjustment only if the claim is dependent on an interpretation of the CBA. *Id.* That is not the case here. Even if USAPA has the contractual right under the Transition Agreement to abandon the "final and binding" Nicolau Award after it was presented to and accepted by US Airways (as required by the Transition Agreement), that does not mean USAPA's alleged conduct in this case could never constitute a violation of Section 2, First.

B. USAPA's Rule 12(b)(6) Motion Should Be Denied Because US Airways Adequately Alleges Alternative Claims For Declaratory Judgments Which Can And Should Be Issued By This Court.

1. US Airways Adequately Alleges A Claim For Declaratory Judgment Regarding USAPA's Duties Under Section 2, First, Of The RLA.

The crux of USAPA's challenge to US Airways' request in Count I for a declaratory judgment under Section 2, First, of the RLA is that hard bargaining is not bad-faith bargaining. (Motion 18:9-19:8.) That is true as far as it goes. But US Airways' claim is not based solely on the fact that USAPA will not modify its position on the seniority issue. It is based on USAPA's knowledge of the following alleged facts: "the seniority arbitration before Arbitrator Nicolau was conducted between the East Pilots and

[9] The factual allegations in support of the Section 2, First, component of Count I of US Airways' Complaint are described in more detail in Section III.B.1, *infra*.

West Pilots, represented by their own counsel, as a 'final and binding' arbitration under the ALPA constitution; the Transition Agreement signed by the East Pilots, the West Pilots, ALPA, and pre-merger US Airways, Inc. and America West Airlines, Inc. required ALPA to present and US Airways to accept the Nicolau Award; such tendering and acceptance of the Nicolau Award has occurred in accordance with the terms of the Transition Agreement; and the West Pilots, through counsel, continue to assert that they are not being fairly represented by USAPA and, as set forth in Paragraph 33, have advised that they will initiate litigation once again if agreement is reached between USAPA and US Airways on an integrated seniority list that does not incorporate the Nicolau Award." (Compl. ¶ 40.)

These alleged facts support a conclusion that USAPA has abandoned a previously-negotiated solution to the seniority-integration issue, and in its place has chosen a course that will lead to further litigation by the West Pilots, the possibility of liability for US Airways, delay in negotiating a single CBA, and potential invalidation of that CBA once ratified. In these unique circumstances,[10] US Airways has adequately alleged a claim seeking a declaratory judgment that USAPA's continued insistence on a non-Nicolau seniority list would constitute a failure to "exert every reasonable effort to make and maintain agreements" in violation of Section 2, First, of the RLA.

Accordingly, USAPA's Rule 12(b)(6) motion should be denied.[11]

2. <u>US Airways Adequately Alleges Claims For Declaratory Judgment Regarding The Validity Of A Potential Claim By The West Pilots For Breach Of USAPA's DFR</u>.

In its Rule 12(b)(6) motion, USAPA argues that US Airways has not stated a claim

[10] USAPA cites various cases to the effect that a date-of-hire seniority proposal is facially valid (*see* Motion 19:9-22), but none involve situations where there was a prior finding (vacated or not) that the union's motivation in making a proposal lacked "any legitimate union objective." (*See Addington v. US Airline Pilots Ass'n*, 2009 U.S. Dist. LEXIS 61724 at *23-24 (D. Ariz. July 17, 2009); Compl. ¶ 30.)

[11] Although US Airways has an obligation under the RLA to respond to USAPA's bargaining proposals, seeking a declaratory judgment before it does so in no way constitutes "unclean hands" (Motion 20:7-15)–particularly where, as here, US Airways is seeking to obtain judicial clarification of its rights and obligations for the purpose of making such a response.

"for Violation of the Duty of Fair Representation." (Motion 20:16.) Once again, USAPA is wrong.

Count I of the Complaint alleges that entry into a CBA which does not incorporate the Nicolau Award would constitute a breach of USAPA's DFR to the West Pilots, and "therefore US Airways is prohibited from accepting or implementing a non-Nicolau seniority list." (S*ee* Compl. ¶ 39.) And, in the alternative, Count II of the Complaint alleges that entry into a CBA which does not incorporate the Nicolau Award would *not* be a breach of USAPA's DFR to the West Pilots, and therefore US Airways is *not* prohibited from accepting or implementing a non-Nicolau seniority list. (*Id.* ¶ 48.)

The West Pilots have, during the trial in *Addington*, previously presented facts in support of the DFR claim alleged in Count I of the Complaint. Those facts are summarized in paragraphs 30 and 40 of the Complaint (alleging, *inter alia*, that the court in *Addington*, after a jury trial, concluded that USAPA "'cast aside the result of an internal seniority arbitration solely to benefit East Pilots at the expense of West Pilots,'" and "'failed to prove that any legitimate union objective motivated its acts.'"). (Compl. ¶ 30 (quoting *Addington*, 2009 U.S. Dist. LEXIS 61724 at *23-24).) While that court decision has since been reversed on ripeness grounds, the Complaint allegations are sufficient to state a claim in this lawsuit. Moreover, as discussed in detail above, a party may assert a claim for declaratory judgment before there has been a ripened violation of a duty. *See, e.g., MedImmune*, 549 U.S. at 134.

USAPA also argues that the West Pilots' threatened litigation against USAPA is "doomed" because the Ninth Circuit decision in *Addington* allegedly "left no room to doubt that the mere fact that Nicolau is not included in a new contract would not, per se, state a DFR claim." (Motion 22:5-19.) *Addington*, however, expressly declined to decide that "thorny question." 606 F.3d at 1181 n.3.

Finally, USAPA argues that even if USAPA is liable to the West Pilots, US Airways cannot be held liable. (Motion 22:20-24:1.) That is precisely the declaratory judgment sought in Count III of the Complaint. Absent such a declaratory judgment,

however, US Airways remains subject to the West Pilots' suit. And, in light of the prior findings by a court that USAPA "failed to prove that any legitimate union objective motivated its acts," US Airways has a real and reasonable apprehension of such a suit if it were to agree to USAPA's seniority demands. (*See* cases discussed in footnote 5, *supra*.)

3. None Of The "Prudential Concerns" That Lead Courts To Abstain From Issuing Declaratory Judgments Is Present In This Case.

USAPA notes that the Court has discretion to decline to entertain an otherwise-ripe action under the Declaratory Judgment Act, but fails to discuss the factors that govern the exercise of that discretion. "The *Brillhart* factors remain the philosophic touchstone for the district court. The district court should avoid needless determination of state law issues; it should discourage litigants from filing declaratory actions as a means of forum shopping; and it should avoid duplicative litigation." *Gov't Emps. Ins. Co. v. Dizol*, 133 F.3d 1220, 1225 (9th Cir. 1998) (citing *Brillhart v. Excess Ins. Co. of America*, 316 U.S. 491 (1942)). None of those factors is present here.

US Airways seeks a declaratory judgment regarding its rights and obligations, and the validity of potential claims by the West Pilots, under the RLA. This case does not raise any concerns about determinations of state law–needless or otherwise. The other two *Brillhart* factors involve declaratory judgment actions filed in anticipation of, or in response to, the filing of an underlying coercive action. *See Dizol*, 133 F.3d at 1225 ("federal courts should generally decline to entertain reactive declaratory actions."); *IBM Corp. v. Bajorek*, 191 F.3d 1033, 1037 (9th Cir. 1999) (discussing "whether a district court must exercise its discretion to dismiss a declaratory judgment action, even though earlier filed, where the substantive action anticipated by the declaratory judgment action is pending."). Those concerns are not present in this case because the West Pilots' claims for breach of USAPA's DFR are not ripe and because there is no pending action in which the West Pilots seek to hold US Airways liable for agreeing to USAPA's seniority proposal. Since none of the *Brillhart* factors justifies dismissal, the Court should retain jurisdiction over this case. USAPA's arguments to the contrary are unpersuasive.

First, USAPA argues, incorrectly, that *Addington* is a related pending case better suited to decide the issues raised in US Airways' Complaint. (Motion 14:4-19.) US Airways is not a party in *Addington*, and, thus, that case cannot determine US Airways' rights and obligations. At any rate, final judgment has been issued in the *Addington* case. As discussed in greater detail in US Airways' opposition to USAPA's motion to stay (Doc. No. 31), the filing of a petition for a writ of certiorari in *Addington* does not even justify a stay of this action–let alone a dismissal.

Second, USAPA argues that this action should be dismissed because it would "serve no useful purpose." (Motion 14:20-16:6.) This action, however, would serve a very useful purpose: to prevent US Airways from suffering substantial harm, real and reasonably apprehended, from either a work stoppage or a lawsuit by the West Pilots. USAPA argues that Counts I and II are not useful because they revisit the Ninth Circuit's decision in *Addington*. (Motion 15:5-19.) But *Addington's* holding was limited to the ripeness of the West Pilots' claims against USAPA for breach of DFR. It did not consider US Airways' rights and obligations–on the merits or otherwise.

Third, USAPA notes that the parties "have yet to bargain over seniority." (Motion 16:7-22.) All "bargain[ing]" means in this context, however, is that US Airways either accepts or rejects USAPA's proposal for a non-Nicolau seniority list–there is nothing else for US Airways to negotiate. No amount of bargaining will change the facts, as confirmed in USAPA's Motion to Dismiss, that USAPA is inalterably opposed to implementation of the Nicolau Award, that USAPA's Constitution prohibits any seniority list that is not strictly based on date-of-hire, and that the West Pilots will sue US Airways if it agrees to any non-Nicolau seniority list. US Airways brought this suit precisely to seek judicial clarification regarding its rights and obligations under the RLA with respect to its response to USAPA's seniority proposal.

Fourth, USAPA asserts in cursory fashion that Count I of the Complaint constitutes a violation of various provisions of the RLA. None of USAPA's arguments has merit. Seeking a declaratory judgment regarding the lawfulness of USAPA's

seniority proposal does not: (i) "effectively retaliate[]" against the pilots' decision to unionize; (ii) violate US Airways' duty to "treat" only with USAPA; or (iii) interfere with internal union governance. (Motion 17:1-14.) US Airways does not challenge the pilots' decision to be represented by USAPA; it merely seeks clarification regarding the lawfulness of one of USAPA's bargaining proposals in the context of indisputably-unique circumstances. US Airways is not "treating," i.e., bargaining, with the West Pilots by litigating this case. *See generally Virginian Ry. Co. v. System Federation No. 40*, 300 U.S. 515, 549 (1937); US Airways, Inc.'s Opposition To Defendant USAPA's Motion To Drop The *Addington* Defendants (Doc. No. 60) at 7:18-8:12 (responding to USAPA's argument in greater detail). And, this case has nothing to do with USAPA's internal union governance; it is based entirely on USAPA's seniority proposal and threatened legal action by the West Pilots if US Airways were to agree to that proposal.

Finally, declaratory relief would not impermissibly "dictat[e] a substantive term of a collective bargaining agreement." (Motion 17:7-9.) *H. K. Porter Co., Inc. v. NLRB*, 397 U.S. 99, 108 (1970), on which USAPA relies, stands for the unremarkable proposition that it is not bad-faith bargaining to insist on one's proposals and, therefore, the parties cannot be compelled to reach an agreement. The dues check-off proposal at issue in that case, however, was indisputably lawful. Nothing in *H. K. Porter* suggests that a party can similarly insist on an unlawful proposal, or that a party cannot be forbidden from doing so. To the contrary, the court's power to adjudicate claims alleging a breach of a union's DFR necessarily and permissibly can limit the range of terms to which the parties may agree. *See, e.g., Bernard*, 873 F.2d 213 (affirming injunction setting aside negotiated provision that violated union's statutory DFR, and ordering the parties to agree to another term).

C. USAPA's Rule 12(b)(7) Motion Should Be Denied Because The East Pilots Are Not Necessary Parties.

USAPA has filed a Rule 21 motion claiming the West Pilots are improper parties (Doc. No. 35), but argues here that if the West Pilots are proper parties, then the East

Pilots must be necessary parties. (Motion 25:22.) USAPA is wrong on both counts. The West Pilots are necessary parties, but the East Pilots are not.

Before dismissing a case pursuant to Rule 12(b)(7) , "a court must determine whether an absent party should be joined as a 'necessary party'" under Rule 19. *Virginia Surety Co. v. Northrop Grumman Corp.*, 144 F.3d 1243, 1247 (9th Cir. 1998) (citation omitted); *see also Disabled Rights Action Committee v. Las Vegas Events, Inc.*, 375 F.3d 861, 879 (9th Cir. 2004) (discussing Rule 19 requirements).

The East Pilots are not necessary parties. US Airways seeks three alternative declaratory judgments regarding the validity of *the West Pilots'* claims for breach of DFR against USAPA and US Airways. (Compl. ¶ 35.) The East Pilots have not threatened to sue US Airways. Moreover, it is clear the West Pilots can pursue their claims without suing the East Pilots–just like they did in the previous *Addington* litigation, where the East Pilots were not a party. USAPA notes that, in separate litigation, the East Pilots have sued USAPA and ALPA. (Motion 24:6-14.) As USAPA's own argument indicates, however, the two sets of claims have proceeded separately for years–with the West Pilots' claims heard in *Addington* and the East Pilots' claims heard in *Breeger* and *Naugler*. USAPA suggests no reason why they should be combined now, and its Rule 12(b)(7) motion should therefore be denied.

D. USAPA's Rule 12(b)(3) Motion Should Be Denied Because Venue In The District Of Arizona Is Proper.

USAPA moves to dismiss US Airways' Complaint for improper venue pursuant to Rule 12(b)(3). "Rule 12(b)(3) is limited to the defense of *improper* venue. A motion under Rule 12(b) cannot be utilized to seek transfer to a more convenient forum under 28 USC § 1404(a) or dismissal under forum non conveniens." Schwarzer, Tashima, & Wagstaffe, Fed. Civ. Proc. Before Trial § 9:131 (The Rutter Guide). Thus, USAPA's argument that the District of Columbia "would be a more appropriate venue" is wide of the mark. (Motion 25:6-18.) Because Arizona is a proper venue, USAPA's motion must be denied.

Venue in federal-question cases is governed by 28 U.S.C. § 1391(b). If the requirements of Section 1391(b) are met, then venue is proper. As relevant here, Section 1391(b) authorizes venue in any district in which a "substantial part of the events or omissions" on which the claim is based occurred. The West Pilots' threats of litigation against US Airways were made in this District. (*See* Siegel Decl. ¶¶ 2-3; Exs. A & B.) The West Pilots' prior litigation against US Airways and USAPA was pursued in this District. US Airways and the named West Pilots all reside in this District. Thus, Arizona is clearly a proper venue for this dispute.

IV. CONCLUSION

For all of the foregoing reasons, plaintiff US Airways respectfully requests that USAPA's Rule 12 motion be denied in its entirety.

Dated: October 21, 2010.

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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
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