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14 Attorneys for Defendant US Airline Pilots Association

15 IN THE UNITED STATES DISTRICT COURT

16 DISTRICT OF ARIZONA

17 US Airways, Inc., a Delaware  
18 Corporation,

19 Plaintiff,

20 v.

21 Don Addington, an individual; John  
22 Bostic, an individual; Mark Burman,  
23 an individual; Afshin Iranpour, an  
24 individual; Roger Velez, an individual;  
25 and Steve Wargocki, an individual, on  
26 behalf of themselves and all other  
27 similarly-situated individuals,

28 and

US Airline Pilots Association, an  
unincorporated association,

Defendants.

) Case No.: 2:10-cv-01570-ROS

) **USAPA's Objections to US Airways and**  
) **West Pilot Class Proposed Class Notice**  
) **and Motion for Alternative Class Notice**

1 Defendant, US Airline Pilots Association (“USAPA”), hereby objects to the  
2 proposed form of class notice filed by Defendants US Airways, Inc. (“US Airways”) and  
3 the named class representatives for the defendants class of former America West pilots  
4 (the “West Pilot Class”) and moves for an order approving the alternative form of notice  
5 attached hereto as Exhibit A. A redlined version of the alternative notice comparing it to  
6 the US Airways/West Pilot Class proposed notice is attached hereto as Exhibit B.

### 7 INTRODUCTION

8 By order dated November 2, 2011, the Court certified the West Pilot Class under  
9 Rule 23(b)(1) and directed US Airways and the West Pilots to submit a proposed notice  
10 to class members. Doc. 125, at 10. On November 18, 2011, US Airways and the West  
11 Pilot Class filed their proposed form of notice. Doc. 128-1. On November 22, 2011, the  
12 parties submitted their Joint Proposed Case Management Plan, which indicated that  
13 USAPA would file any objections to the proposed form of notice by December 1, 2011.  
14 Doc. 130, at 24.

15 USAPA is the certified collective bargaining representative for all of the pilots of  
16 US Airways, including the West Pilots Class and has an interest in assuring that the  
17 notice provided in this matter is fair and accurate. USAPA has reviewed the proposed  
18 notice and respectfully submits that the proposed notice is inaccurate and incomplete in  
19 several respects, fails to afford appropriate opportunities to class members in accordance  
20 with Rule 23(d)(1)(B)(iii) and fails to provide adequate time for class members to  
21 exercise their rights. USAPA has prepared an alternative form of notice that addresses  
22 these concerns and respectfully requests the Court to approve the changes to the notice as  
23 set forth herein.

### 24 ARGUMENT

25 “Notice in a class suit must present a fair recital of the subject matter and  
26 proposed terms and give an opportunity to be heard to all class members.” *Marshall v.*  
27 *Holiday Magic, Inc.*, 550 F.2d 1173, 1177 (9th Cir. 1977), abrogated on other grounds,  
28 *Epstein v. MCA, Inc.*, 126 F.3d 1235 (9th Cir. 1997) (citing *Eisen v. Carlisle and*

1 *Jacquelin*, 417 U.S. 156 (1974)). *See Hoffmann-La Roche Inc. v. Sperling*, 493 U.S.  
2 165, 172 (1989) (“By monitoring preparation and distribution of the notice, a court can  
3 ensure that it is timely, accurate, and informative. Both the parties and the court benefit  
4 from settling disputes about the content of the notice before it is distributed.”).

5 USAPA submits that its proposed form of notice is more accurate and provides  
6 additional timely information about the issues in the lawsuit and the potential impact on  
7 the rights of the West Pilot Class. As set forth in the redlined version attached hereto as  
8 Exhibit B, USAPA’s proposed form of notice is more accurate because:

- 9 1. USAPA’s notice more faithfully tracks the allegations of the Complaint filed  
10 by US Airways:
  - 11 a. Compare Section 3, p. 2:25-p. 4:9 (description of relief sought) with  
12 Complaint, Doc. 1, at 22:4-27 (Prayer for Relief);
  - 13 b. Compare Section 4, (background of litigation) p. 7:2-9 with Complaint,  
14 Doc. 1, at 13:4-5 ¶ 35;
  - 15 c. Compare Section 4, p. 4:19-20 with Complaint, Doc. 1, at 1:10-11 ¶ 1;
  - 16 d. Compare Section 6 p. 8:12-14, 17-19 with Complaint, Doc. 1, at 22:4-  
17 27 (Prayer for Relief).
- 18 2. USAPA’s notice more accurately and fairly presents the facts and the positions  
19 of the parties:
  - 20 a. Compare Section 4 p. 5:17-20, 26-p. 6:1, 8-19 with USAPA’s  
21 statement, Doc. 130 at 7:9-21;
  - 22 b. Compare Section 4 p. 6:25- p. 7:1 with USAPA’s quotation of USAPA  
23 constitution at Doc. 130 at 7:14-18;
  - 24 c. *See* Section 4 pp. 4-7.
- 25 3. USAPA’s notice adds a section on the current posture of the litigation, Section  
26 5, pp. 7-8. This section informs class members that the Court has ruled the  
27 case can proceed as a class action and that a scheduling conference between the  
28 parties has been held. The section also informs class members that the named

1 class representatives have rejected USAPA's proposal to engage a nationally  
2 recognized mediator to mediate the underlying seniority dispute. The West  
3 Pilot representatives stated in the Joint Case Management Plan that "There is  
4 no point to mediating enforcement of an arbitration award." Doc. 130 at 23.  
5 USAPA submits that the named West Pilots' refusal to pursue mediation is a  
6 matter that should be fully disclosed to class members.

7 The West Pilots and US Airways' form of notice also fails to afford appropriate  
8 opportunities to class members as contemplated by Rule 23(d)(1)(B)(iii) of the Federal  
9 Rules of Civil Procedure and similarly fails to provide adequate time for class members  
10 to exercise their rights. Rule 23(d)(1)(B)(iii) of the Federal Rules of Civil Procedure  
11 provides:

12 (1) *In General*. In conducting an action under this rule, the court may issue  
13 orders that:

14 \*\*\*

15 (B) require--to protect class members and fairly conduct the action--giving  
16 appropriate notice to some or all class members of:

17 \*\*\*

18 (iii) the members' opportunity to signify whether they consider the  
19 representation fair and adequate, to intervene and present claims or  
20 defenses, or to otherwise come into the action;

21 The form of notice submitted by the West Pilots and US Airways fails to comport  
22 with the Rule because it does not provide an opportunity for class members to advise the  
23 Court of concerns they may have regarding the fairness and adequacy of the  
24 representation. The form notice submitted by the West Pilots and US Airways notifies  
25 class members only that they may intervene and that to do so they must hire a lawyer. In  
26 contrast, USAPA's form of notice provides an opportunity for class members to submit a  
27 statement advising the Court of class members' concerns without the requirement to  
28 engage an attorney and formally intervene in the action. In addition, the time frame  
provided by US Airways and the West Pilots to engage an attorney and intervene in the

1 action is unduly short. USAPA proposes that class members be afforded at least 45 days  
2 to exercise their options under the notice and provides specific instructions as to how and  
3 where such actions can be taken.

4 **CONCLUSION**

5 For the foregoing reasons, USAPA respectfully requests that the Court approve  
6 USAPA's proposed form of notice.

7  
8 Respectfully submitted this 1st day of December, 2011

9 **Martin & Bonnett, P.L.L.C.**

10  
11 By: s/Susan Martin  
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24 New York, NY 10007

25  
26  
27  
28  
Attorneys for US Airline Pilots Association

**CERTIFICATE OF SERVICE**

I hereby certify that on December 1, 2011, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

US Airways, Inc.  
Karen Gillen  
111 West Rio Salado Parkway  
Tempe, AZ 85281

Robert A. Siegel  
Chris A. Hollinger  
Ryan W. Rutledge  
400 South Hope Street, Suite 1500  
Los Angeles, CA 90071-2899

Attorneys for Plaintiff

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CityScape  
One East Washington St., Ste. 1200  
Phoenix, AZ 85004

Attorneys for West Pilot Class

s/Susan Martin

# EXHIBIT A

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**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. 2-10-cv-01570-PHX-ROS

**NOTICE OF PENDING CLASS ACTION**

**TO ALL PILOTS EMPLOYED BY US AIRWAYS IN SEPTEMBER 2008 WHO WERE ON THE AMERICA WEST SENIORITY LIST ON SEPTEMBER 20, 2005:**

**PLEASE TAKE NOTICE** that, as a pilot employed by US Airways in September 2008 who was on the America West seniority list on September 20, 2005, you are a member of the defendant class described in this Notice and may be affected by the litigation referenced in the above caption. This defendant class is being sued in a court action currently pending in the United States District Court for the District of Arizona, the Honorable Roslyn O. Silver, Chief Judge presiding. The action, which was brought by US Airways, seeks one of three alternative judicial declarations clarifying whether the defendant US Air Line Pilots Association (“USAPA”) may lawfully insist on a collective bargaining agreement that incorporates a non-Nicolau seniority list or – regardless of



1 whether defendant USAPA may lawfully insist on such an agreement – whether plaintiff  
2 US Airways could be liable for accepting such an agreement. The three alternative  
3 declarations at issue are discussed in more detail in Section 3, below.  
4

5 **1. Why this Notice is Being Sent to You.**

6 The United States District Court for the District of Arizona (the “Court”) has  
7 determined that the named defendants listed in the caption above – Don Addington, John  
8 Bostic, Mark Burman, Afshin Iranpour, Roger Velez, Steve Wargocki and if approved by  
9 the Court, the additional representatives: Michael J. Soha, Rodney Albert Brackin, and  
10 George Maliga, as well as any other individuals the Court may allow (the “Named West  
11 Pilots”) – will represent not only themselves but a class consisting of all pilots employed  
12 by US Airways in September 2008 who were on the America West seniority list on  
13 September 20, 2005 (the “West Pilot Class”). This Notice is being sent to you because  
14 available information indicates that you are member of the West Pilot Class and,  
15 accordingly, your rights may be affected by this litigation.  
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19 **2. Parties to the Lawsuit**

20 The Plaintiff in the lawsuit is US Airways. The Defendants in the Lawsuit are  
21 USAPA and the West Pilot Class.  
22

23 **3. Relief Sought**

24 US Airways seeks one of three alternative judicial declarations:

25 (i) USAPA is currently violating its duty under Section 2, First, of the Railway Labor  
26 Act “to exert every reasonable effort to make and maintain agreements concerning rates  
27 of pay, rules, and working conditions” by its continued insistence in current collective  
28

1 bargaining negotiations upon an integrated seniority list other than as reflected in the  
2 Nicolau Award, and (b) entry into a collective bargaining agreement between US  
3 Airways and USAPA which does not incorporate the Nicolau Award would constitute a  
4 breach of USAPA's duty of fair representation to the West Pilots in violation of the  
5 Railway Labor Act, and therefore US Airways is prohibited from accepting or  
6 implementing a non-Nicolau seniority list; *or, in the alternative,*

7  
8 (ii) entry into a collective bargaining agreement between US Airways and USAPA  
9 which does not incorporate the Nicolau Award would *not* constitute a breach of  
10 USAPA's duty of fair representation to the West Pilots in violation of the Railway Labor  
11 Act; and (b) USAPA would therefore *not* violate its duty under Section 2, First, of the  
12 Railway Labor Act "to exert every reasonable effort to make and maintain agreements  
13 concerning rates of pay, rules, and working conditions" if it continues to demand that US  
14 Airways agree to an integrated seniority list other than as reflected in the Nicolau Award,  
15 and therefore US Airways is *not* prohibited from accepting or implementing a non-  
16 Nicolau seniority list; *or, in the alternative,*

17  
18 (iii) regardless of whether it would constitute a breach of USAPA's duty of fair  
19 representation to the West Pilots or otherwise violate the Railway Labor Act for USAPA  
20 to insist upon or enter into a collective bargaining agreement that does not incorporate the  
21 Nicolau Award, US Airways would not be liable under the Railway Labor Act or  
22 otherwise if it were to enter into such a collective bargaining agreement.  
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26 **4. Background of the Litigation.**

27 US Airways seeks to obtain one of the three judicial declarations set out above to  
28

1 define the parties' respective rights and obligations stemming from a dispute between (i)  
2 the named individual defendants, individually and as representatives of the defendant  
3 West Pilot Class, and (ii) defendant USAPA, the labor union representing all US Airways  
4 pilots. The underlying dispute between the West Pilot Class and USAPA concerns the  
5 integration of two pilot seniority lists subsequent to an airline merger that occurred in  
6 2005. US Airways claims it has never taken any position on the merits of the seniority  
7 dispute.  
8

9  
10 The predecessor to the current US Airways, Inc. merged with America West  
11 Airlines, Inc. ("America West") in September 2005. Approximately 5,000 pilots, known  
12 as "East Pilots," were on the pre-merger US Airways seniority list. Approximately 1,900  
13 pilots, known as "West Pilots," were on the pre-merger America West seniority list. At  
14 the time of the merger, both airlines' pilot groups were represented by the Air Line Pilots  
15 Association ("ALPA") – the East Pilots through the US Airways Master Executive  
16 Council ("East MEC") and the West Pilots through the America West Master Executive  
17 Council ("West MEC"). Pursuant to ALPA's Merger Policy, if two ALPA-represented  
18 pilot groups in an airline merger could not agree on an integrated seniority list through  
19 direct negotiations or mediation, the next step was integration of the pre-merger seniority  
20 lists through an arbitration which the Named West Pilots contend was "final and  
21 binding." The East Pilots and West Pilots could not agree on an integrated seniority list,  
22 so – consistent with ALPA's Merger Policy and a September 23, 2005 Transition  
23 Agreement negotiated between ALPA, the East MEC, the West MEC, pre-merger US  
24 Airways, Inc., and America West Airlines, Inc. – the East Pilots and West Pilots  
25 participated in a seniority-integration arbitration before neutral arbitrator George Nicolau.  
26  
27  
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1 Arbitrator Nicolau rendered his decision in May 2007 (the “Nicolau Award”). The  
2 East Pilots perceived the Nicolau Award to be grossly unfair because, among other  
3 things, it would place probationary West Pilots with under two months seniority above  
4 East Pilots who had more than sixteen years of credited length of service. Subsequently,  
5 the East Pilots formed defendant USAPA. The East Pilots significantly outnumbered the  
6 West Pilots, and, following a representation election between USAPA and ALPA, the  
7 National Mediation Board (“NMB”) certified USAPA as the new collective bargaining  
8 representative for both the East Pilots and West Pilots. USAPA’s constitution states that  
9 one of USAPA’s objectives is “To maintain uniform principles of seniority based on date  
10 of hire and the perpetuation thereof, with reasonable conditions and restrictions to  
11 preserve each pilot’s un-merged career expectations.” Thereafter, USAPA and US  
12 Airways engaged in collective bargaining negotiations for a single labor contract, the  
13 predicate under the Transition Agreement for implementation of an integrated seniority  
14 list, but no agreement was (or has been) reached. During these negotiations USAPA  
15 proposed an integrated seniority list which the Named West Pilots contend is based on  
16 “date-of-hire” consistent with USAPA’s constitutional mandate and therefore is contrary  
17 to the Nicolau Award. USAPA contends that US Airways is required to bargain in good  
18 faith under the Railway Labor Act. USAPA also contends that as a newly certified  
19 bargaining representative, USAPA has the right to negotiate terms and conditions without  
20 regard to any pre-existing collective or other agreement and that its decision to advance a  
21 different proposal is reasonable, is not discriminatory and is made in good faith on behalf  
22 of all of the pilots. USAPA also contends that its current bargaining proposal includes  
23 significant “conditions and restrictions” that protect the pre-merger expectations of the  
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1 West Pilots and is substantially different from the proposal advanced by the US Airways  
2 MEC in the ALPA seniority integration proceeding.

3 US Airways commenced this action seeking one of the declarations set forth  
4 above. In filing its Complaint, US Airways noted that the recent decision by the United  
5 States Court of Appeals for the Ninth Circuit in *Addington v. US Airline Pilots Ass'n*, 606  
6 F.3d 1174 (9th Cir. 2010), held that potential claims for breach of the duty of fair  
7 representation by the West Pilots against USAPA, based on USAPA's position on  
8 seniority issues in its collective bargaining negotiations with US Airways, were not ripe  
9 for judicial determination until a collective bargaining agreement is ratified and becomes  
10 effective. The Ninth Circuit also noted that it is "at best, speculative that a single CBA  
11 incorporating the Nicolau Award would be ratified if presented to the union's  
12 membership." US Airways contends that even though it could not be determined  
13 whether USAPA will comply with its duty to fairly represent the membership of USAPA  
14 until a collective bargaining agreement becomes effective, the Ninth Circuit did not  
15 discuss the legal rights, constraints and obligations of US Airways in those collective  
16 bargaining negotiations and that US Airways is entitled to a declaration of its rights and  
17 obligations in this action.

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22 **5. Current Posture of the Litigation**

23 Following the filing of the Complaint, the West Pilots asserted a crossclaim  
24 against USAPA for breach of the duty of fair representation and USAPA moved to  
25 dismiss both the Complaint and the crossclaim. The Court denied USAPA's motion to  
26 dismiss the Complaint finding that US Airways' case could proceed because it is seeking  
27 guidance on what positions it may take at the bargaining table "at the present time." The  
28

1 Court granted USAPA's motion to dismiss the West Pilots crossclaim because it was not  
2 ripe finding that the crossclaim presented the identical claim that the Ninth Circuit Court  
3 of Appeals had dismissed. USAPA continues to maintain that the Court lacks jurisdiction  
4 over this matter.  
5

6 The Court has ruled that the case may proceed as a class action and has held a  
7 scheduling conference between the parties. At the scheduling conference and in its  
8 proposed plan for the scheduling of this case, USAPA has urged that the parties mediate  
9 the seniority dispute through the services of a mediator with a national reputation because  
10 it believes that an agreement among the interested parties is the only realistic way of  
11 finally resolving this matter and that all parties should be encouraged to engage in an  
12 open and realistic process to fashion an agreement. The Named West Pilots and their  
13 counsel have opposed mediation and insist on continuing this litigation contending that  
14 the Nicolau Award must be incorporated into a collective bargaining agreement.  
15  
16

17 **6. Potential Impact of the Litigation on Your Legal Rights.**

18 As a member of the defendant class, you will be legally bound by any future  
19 orders of this Court in this action. By way of example, but not of limitation, this means  
20 that you could be: 1) bound by a judgment that USAPA's entry into a collective  
21 bargaining agreement with US Airways that does not implement a seniority list consistent  
22 with the Nicolau Award **would** constitute a breach of its duty of fair representation to you  
23 as a West Pilot and therefore US Airways is prohibited from accepting or implementing a  
24 non-Nicolau seniority list; **–or–** 2) bound by a judgment that USAPA's entry into a  
25 collective bargaining agreement with US Airways that does not implement a seniority list  
26 consistent with the Nicolau Award **would not** constitute a breach of its duty of fair  
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1 representation to you as a West Pilot and therefore US Airways is *not* prohibited from  
2 accepting or implementing a non-Nicolau seniority list; ~~–or–~~ 3) bound by a judgment that  
3 US Airways would not be liable to you as a West Pilot if it were to enter a collective  
4 bargaining agreement with USAPA that did not implement a seniority list consistent with  
5 the Nicolau Award, regardless of whether USAPA’s entry into the agreement would  
6 violate its duty of fair representation.  
7

8 **7. Potential Conflicts of Interest.**

9  
10 This Court has determined that currently available evidence indicates that your  
11 rights will be adequately represented by the Named West Pilots, notwithstanding  
12 USAPA’s contentions that the interests of the junior and senior West Pilots may differ  
13 and that a conflict of interest may exist to the extent that some or all of the Named West  
14 Pilots may be affiliated with Leonidas, LLC. The Named West Pilots themselves dispute  
15 this allegation, and contend that they can and will adequately protect the interests of all  
16 members of the West Pilot Class.  
17

18 **8. Class Counsel.**

19  
20 The West Pilot Class is represented by the following court-appointed class  
21 counsel: Marty Harper, Kelly J. Flood, Andrew S. Jacob, and Katherine V. Brown, of  
22 Polsinelli Shughart, P.C. In the event you have any questions concerning this Notice, or  
23 the litigation generally, you may contact them at One East Washington Street, Suite 1200,  
24 Phoenix, Arizona, 85004, 602-650-2000.  
25

26 **9. What You Should Do in Response to This Notice.**

27  
28

1           Option One: If you are satisfied that your interests will be adequately represented  
2 by the Named West Pilots, you do not have to take any action at the present time. You  
3 will be advised of any final orders of this Court by a subsequent notice.  
4

5           Option Two: If you are not satisfied that your interests will be adequately  
6 represented by the persons described above, you have a right: 1) to advise the parties and  
7 the Court that you do not consider the representation by the Named West Pilots and their  
8 counsel to be fair and adequate; 2) to request leave of court to intervene as a defendant in  
9 this action and to present any defenses you might have, and/or 3) to otherwise request to  
10 come into the action or file an appearance *pro se* or by an attorney that you have retained  
11 in order to receive notice of the proceedings in this case. In the event you desire to  
12 advise the Court that you are not satisfied that your interests will be adequately  
13 represented by the persons described above or in the event you wish to intervene or  
14 otherwise request to come into this action, you or your attorney should file your  
15 statement or your request with the Clerk of this Court on or before \_\_\_\_\_,  
16 2012 [forty-five (45) days following mailing the Notice] at the following address:  
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19  
20                           Re: *US Airways v. Addington et. al.*, No. 2:10-cv-01570-ROS  
21                           United States District Court for the District of Arizona  
22                           Sandra Day O'Connor U.S. Courthouse, Suite 624  
23                           401 W. Washington St., SPC 59  
24                           Phoenix, Arizona 85003-2158

25 You or your attorney should also send a copy of anything you file with the Court to the  
26 following counsel for the parties:

27 Robert A. Siegel  
28 O'Melveny & Myers LLP  
400 South Hope Street  
Los Angeles, CA 90071-  
2899

Marty Harper  
Polsinelli Shughart, PC  
One East Washington St.,  
Suite 1200

Susan Martin  
Martin & Bonnett, PLLC  
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[smartin@martinbonnett.com](mailto:smartin@martinbonnett.com)

3 Attorneys for Plaintiff  
4 US Airways, Inc.

Attorneys for West Pilot  
Class

Attorneys for USAPA

5  
6 The Clerk of the Court is not allowed to give you any legal advice on this matter  
7 or to provide any additional information on the underlying facts and arguments of this  
8 case other than what is set forth in this Notice. The pleadings and other papers filed in  
9 this action are available for inspection at the offices of the Clerk of the Court. These  
10 documents are also available at <https://ecf.azd.uscourts.gov/> . (Depending on the specific  
11 document, there may be a nominal fee imposed for accessing documents through this  
12 website.)  
13

14  
15 This Notice is not an expression of any opinion by the Court as to the merits of the  
16 claims or defenses asserted by any party in this litigation.

17 **As indicated above, this Notice does not require any action on your part at**  
18 **the present time unless you wish to notify the Court that that you are not satisfied**  
19 **that your interests will be adequately represented by the persons described above or**  
20 **in the event you wish to intervene or otherwise request to come into this action;**  
21 **however, please consider the contents of this Notice carefully, because you will be**  
22 **legally bound by future orders of this Court.**  
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# EXHIBIT B

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**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. 2-10-cv-01570-PHX-ROS

~~PROPOSED~~

**NOTICE OF PENDING  
CLASS ACTION**

**TO ALL PILOTS EMPLOYED BY US AIRWAYS IN SEPTEMBER 2008 WHO WERE ON THE AMERICA WEST SENIORITY LIST ON SEPTEMBER 20, 2005:**

**PLEASE TAKE NOTICE** that, as a pilot employed by US Airways in September 2008 who was on the America West seniority list on September 20, 2005, you are a member of the defendant class described in this Notice and may be affected by the litigation referenced in the above caption. This defendant class is being sued in a court action ~~seeking~~ currently pending in the United States District Court for the District of Arizona, the Honorable Roslyn O. Silver, Chief Judge presiding. The action, which was brought by US Airways, seeks one of three alternative judicial declarations clarifying whether the defendant US Air Line Pilots Association (“USAPA”) may lawfully insist on a collective bargaining agreement that incorporates a non-Nicolau seniority list or –

1 regardless of whether defendant USAPA may lawfully insist on such an agreement –  
2 whether plaintiff US Airways could be liable for accepting such an agreement. The three  
3 alternative declarations at issue are discussed in more detail in Section 23, below.  
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5 **1. Why this Notice is Being Sent to You.**

6 The United States District Court for the District of Arizona (the “Court”) has  
7 determined that the named defendants listed in the caption above – Don Addington, John  
8 Bostic, Mark Burman, Afshin Iranpour, Roger Velez, Steve Wargocki, and if approved  
9 by the Court, the additional representatives: Michael J. Soha, Rodney Albert Brackin, and  
10 George Maliga, as well as any other individuals the Court may allow (the “Named West  
11 Pilots”) – will represent not only themselves but a class consisting of all pilots employed  
12 by US Airways in September 2008 who were on the America West seniority list on  
13 September 20, 2005 (the “West Pilot Class”). This Notice is being sent to you because  
14 available information indicates that you are member of the West Pilot Class and,  
15 accordingly, your rights may be affected by this litigation.  
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19 **2. Parties to the Lawsuit**

20 The Plaintiff in the lawsuit is US Airways. The Defendants in the Lawsuit are  
21 USAPA and the West Pilot Class.  
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23 **3. Relief Sought**

24 US Airways seeks one of three alternative judicial declarations:

25 (i) USAPA’s continued insistence on a collective bargaining agreement that does not  
26 incorporate a seniority list consistent with the Nicolau Award as required by the  
27 Transition Agreement violates USAPA is currently violating its duty under Section 2,  
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1 First, of the Railway Labor Act “to ~~“exert every reasonable effort to make and maintain~~  
2 ~~agreements concerning rates of pay, rules, and working conditions”~~, by its continued  
3 insistence in order to avoid any interruption to commerce or to the operation of any  
4 carrier,” current collective bargaining negotiations upon an integrated seniority list other  
5 than as reflected in the Nicolau Award, and (b) entry into a collective bargaining  
6 agreement ~~that~~ between US Airways and USAPA which does not incorporate ~~a seniority~~  
7 ~~list consistent with~~ the Nicolau Award ~~as required by the Transition Agreement~~  
8 ~~constitutes~~ would constitute a breach of USAPA’s duty of fair representation to the West  
9 Pilots in violation of the Railway Labor Act, and therefore US Airways is prohibited  
10 from accepting or implementing a non-Nicolau seniority list; ***or, in the alternative,***  
11 (ii) USAPA’s ~~continued insistence on and/or~~ entry into a collective bargaining  
12 agreement between US Airways and USAPA which does not incorporate ~~a seniority list~~  
13 ~~consistent with~~ the Nicolau Award would ***not*** constitute a breach of USAPA’s ~~obligations~~  
14 duty of fair representation to the West Pilots in violation of the Railway Labor Act; and  
15 (b) USAPA would therefore ***not*** violate its duty under Section 2, First, of the Railway  
16 Labor Act ~~and/or its duty of fair representation to the West Pilots~~ “to exert every  
17 reasonable effort to make and maintain agreements concerning rates of pay, rules, and  
18 working conditions” if it continues to demand that US Airways agree to an integrated  
19 seniority list other than as reflected in the Nicolau Award, and therefore US Airways is  
20 ***not*** prohibited from accepting or implementing a non-Nicolau seniority list; ***or, in the***  
21 ***alternative,***  
22 (iii) ~~Regardless~~ regardless of whether ~~or not~~ USAPA’s insistence on and/or entry into a  
23 collective bargaining agreement which does not incorporate a seniority list consistent  
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1 ~~with the Nicolau Award~~ it would constitute a breach of USAPA's ~~obligations under~~  
2 ~~Section 2, First, of the Railway Labor Act and/or its~~ duty of fair representation to the  
3 West Pilots or otherwise violate the Railway Labor Act for USAPA to insist upon or  
4 enter into a collective bargaining agreement that does not incorporate the Nicolau Award,  
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6 US Airways would not be liable ~~to the West Pilots~~ under the Railway Labor Act or  
7 otherwise if it were to enter into such a collective bargaining agreement ~~with USAPA that~~  
8 ~~did not incorporate a seniority list consistent with the Nicolau Award.~~

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10 **34. Background of the Litigation.**

11 US Airways seeks to obtain one of the three judicial declarations set out above to  
12 define ~~its potential liability~~ the parties' respective rights and obligations stemming from a  
13 dispute between (i) the named individual defendants, individually and as representatives  
14 of the defendant West Pilot Class, and (ii) defendant USAPA, the labor union  
15 representing all US Airways pilots. The underlying dispute between the West Pilot Class  
16 and USAPA concerns the integration of two pilot seniority lists subsequent to an airline  
17 merger that occurred in 2005. US Airways claims it has never taken any position on the  
18 merits of the seniority dispute.

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21 The predecessor to the current US Airways, Inc. merged with America West  
22 Airlines, Inc. ("America West") in September 2005. Approximately 5,000 pilots, known  
23 as "East Pilots," were on the pre-merger US Airways seniority list. Approximately 1,900  
24 pilots, known as "West Pilots," were on the pre-merger America West seniority list. At  
25 the time of the merger, both airlines' pilot groups were represented by the Air Line Pilots  
26 Association ("ALPA") – the East Pilots through the US Airways Master Executive  
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1 Council (“East MEC”) and the West Pilots through the America West Master Executive  
2 Council (“West MEC”). Pursuant to ALPA’s Merger Policy, if two ALPA-represented  
3 pilot groups in an airline merger could not agree on an integrated seniority list  
4 through direct negotiations or mediation, the next step was integration of the pre-merger  
5 seniority lists through an arbitration which the Named West Pilots contend was “final and  
6 binding.” The East Pilots and West Pilots could not agree on an integrated seniority list,  
7 so – consistent with ALPA’s Merger Policy and a September 23, 2005 Transition  
8 Agreement negotiated between ALPA, the East MEC, the West MEC, pre-merger US  
9 Airways, Inc., and America West Airlines, Inc. – the East Pilots and West Pilots  
10 participated in a seniority-integration arbitration before neutral arbitrator George Nicolau.  
11

12 Arbitrator Nicolau rendered his decision in May 2007 (the “Nicolau Award”). The  
13 East Pilots perceived the Nicolau Award to be ~~far less favorable to them as a group than~~  
14 ~~the “date of hire” integrated seniority list they had sought from Arbitrator~~  
15 ~~Nicolau grossly unfair because, among other things, it would place probationary West~~  
16 ~~Pilots with under two months seniority above East Pilots who had more than sixteen~~  
17 ~~years of credited length of service.~~ Subsequently, the East Pilots formed defendant  
18 USAPA. The East Pilots significantly outnumbered the West Pilots, and, following a  
19 representation election between USAPA and ALPA, the National Mediation Board  
20 (“NMB”) certified USAPA as the new collective bargaining representative for both the  
21 East Pilots and West Pilots. USAPA’s constitution ~~expressly mandates a “date states that~~  
22 ~~one of hire”~~ USAPA’s objectives is “To maintain uniform principles of seniority  
23 list based on date of hire and ~~prohibits implementation of the Nicolau~~  
24 ~~Award perpetuation thereof, with reasonable conditions and restrictions to preserve each~~

1 pilot’s un-merged career expectations.” Thereafter, USAPA and US Airways engaged in  
2 collective bargaining negotiations for a single labor contract, the predicate under the  
3 Transition Agreement for implementation of an integrated seniority list, but no agreement  
4 was (or has been) reached. During these negotiations USAPA proposed an integrated  
5 seniority list which the Named West Pilots contend is based on “date-of-hire” consistent  
6 with USAPA’s constitutional mandate and therefore is contrary to the Nicolau Award.  
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8 USAPA contends that US Airways is required to bargain in good faith under the Railway  
9 Labor Act. USAPA also contends that as a newly certified bargaining representative,  
10 USAPA has the right to negotiate terms and conditions without regard to any pre-existing  
11 collective or other agreement and that its decision to advance a different proposal is  
12 reasonable, is not discriminatory and is made in good faith on behalf of all of the pilots.  
13 USAPA also contends that its current bargaining proposal includes significant  
14 “conditions and restrictions” that protect the pre-merger expectations of the West Pilots  
15 and is substantially different from the proposal advanced by the US Airways MEC in the  
16 ALPA seniority integration proceeding.  
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18 US Airways commenced this action seeking one of the declarations set forth  
19 above. In filing its Complaint, US Airways noted that the recent decision by the United  
20 States Court of Appeals for the Ninth Circuit in *Addington v. US Airline Pilots Ass’n*, 606  
21 F.3d 1174 (9th Cir. 2010), held that potential claims for breach of the duty of fair  
22 representation by the West Pilots against USAPA, based on USAPA’s position on  
23 seniority issues in its collective bargaining negotiations with US Airways, were not ripe  
24 for judicial determination until a collective bargaining agreement is ratified and becomes  
25 effective. The Ninth Circuit also noted that it is “at best, speculative that a single CBA  
26 effective. The Ninth Circuit also noted that it is “at best, speculative that a single CBA  
27 effective. The Ninth Circuit also noted that it is “at best, speculative that a single CBA  
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1 incorporating the Nicolau Award would be ratified if presented to the union's  
2 membership.” US Airways contends that even though it could not be determined  
3 whether USAPA will comply with its duty to fairly represent the membership of USAPA  
4 until a collective bargaining agreement becomes effective, the Ninth Circuit did not  
5 discuss the legal rights, constraints and obligations of US Airways in those collective  
6 bargaining negotiations and that US Airways is entitled to a declaration of its rights and  
7 obligations in this action.

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10 **5. Current Posture of the Litigation**

11 Following the filing of the Complaint, the West Pilots asserted a crossclaim  
12 against USAPA for breach of the duty of fair representation and USAPA moved to  
13 dismiss both the Complaint and the crossclaim. The Court denied USAPA’s motion to  
14 dismiss the Complaint finding that US Airways’ case could proceed because it is seeking  
15 guidance on what positions it may take at the bargaining table “at the present time.” The  
16 Court granted USAPA’s motion to dismiss the West Pilots crossclaim because it was not  
17 ripe finding that the crossclaim presented the identical claim that the Ninth Circuit Court  
18 of Appeals had dismissed. USAPA continues to maintain that the Court lacks jurisdiction  
19 over this matter.

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22 The Court has ruled that the case may proceed as a class action and has held a  
23 scheduling conference between the parties. At the scheduling conference and in its  
24 proposed plan for the scheduling of this case, USAPA has urged that the parties mediate  
25 the seniority dispute through the services of a mediator with a national reputation because  
26 it believes that an agreement among the interested parties is the only realistic way of  
27 finally resolving this matter and that all parties should be encouraged to engage in an  
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1 open and realistic process to fashion an agreement. The Named West Pilots and their  
2 counsel have opposed mediation and insist on continuing this litigation contending that  
3 the Nicolau Award must be incorporated into a collective bargaining agreement.

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5 **6. Potential Impact of the Litigation on Your Legal Rights.**

6 As a member of the defendant class, you will be legally bound by any future  
7 orders of this Court in this action. By way of example, but not of limitation, this means  
8 that you could be: 1) bound by a judgment that USAPA's entry into a collective  
9 bargaining agreement with US Airways that does not implement a seniority list consistent  
10 with the Nicolau Award *would* constitute a breach of its duty of fair representation to you  
11 as a West Pilot and therefore US Airways is prohibited from accepting or implementing a  
12 non-Nicolau seniority list; ~~–or–~~ 2) bound by a judgment that USAPA's entry into a  
13 collective bargaining agreement with US Airways that does not implement a seniority list  
14 consistent with the Nicolau Award *would not* constitute a breach of its duty of fair  
15 representation to you as a West Pilot and therefore US Airways is *not* prohibited from  
16 accepting or implementing a non-Nicolau seniority list; ~~–or–~~ 3) bound by a judgment that  
17 US Airways would not be liable to you as a West Pilot if it were to enter a collective  
18 bargaining agreement with USAPA that did not implement a seniority list consistent with  
19 the Nicolau Award, regardless of whether USAPA's entry into the agreement would  
20 violate its duty of fair representation.

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24 **57. Potential Conflicts of Interest.**

25 This Court has determined that currently available evidence indicates that your  
26 rights will be adequately represented by the Named West Pilots, notwithstanding  
27 USAPA's contentions that the interests of the junior and senior West Pilots may differ  
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1 and that a conflict of interest may exist to the extent that some or all of the Named West  
2 Pilots may be affiliated with Leonidas, LLC. The Named West Pilots themselves dispute  
3 this allegation, and contend that they can and will adequately protect the interests of all  
4 members of the West Pilot Class.

6 **68. Class Counsel.**

7 The West Pilot Class is represented by the following court-appointed class  
8 counsel: Marty Harper, Kelly J. Flood, Andrew S. Jacob, and Katherine V. Brown, of  
9 Polsinelli Shughart, P.C. In the event you have any questions concerning this Notice, or  
10 the litigation generally, you may contact them at One East Washington Street, Suite 1200,  
11 Phoenix, Arizona, 85004, 602-650-2000.

13 **9. What You Should Do in Response to This Notice.**

14 Option One: If you are satisfied that your interests will be adequately represented  
15 by the Named West Pilots, you do not have to take any action at the present time. You  
16 will be advised of any final orders of this Court by a subsequent notice.

18 Option Two: If you are not satisfied that your interests will be adequately  
19 represented by the persons described above, you have a right: 1) to advise the parties and  
20 the Court that you do not consider the representation by the Named West Pilots and their  
21 counsel to be fair and adequate; 2) to request leave of court to intervene as a defendant in  
22 this action and to present any defenses you might have. ~~In the event you desire to~~  
23 ~~intervene, you should retain your own attorney. Any request to intervene in this action~~  
24 ~~must be filed with the Clerk of this Court within thirty (30) days of receipt of this Notice,~~  
25 and/or 3) to otherwise request to come into the action or file an appearance *pro se* or by  
26 an attorney that you have retained in order to receive notice of the proceedings in this  
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1 case. In the event you desire to advise the Court that you are not satisfied that your  
2 interests will be adequately represented by the persons described above or in the event  
3 you wish to intervene or otherwise request to come into this action, you or your attorney  
4 should file your statement or your request with the Clerk of this Court on or before  
5 \_\_\_\_\_, 2012 [forty-five (45) days following mailing the Notice] at the  
6 following address:

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8 7  
9 Re: US Airways v. Addington et. al., No. 2:10-cv-01570-ROS  
10 United States District Court for the District of Arizona  
11 Sandra Day O'Connor U.S. Courthouse, Suite 624  
12 401 W. Washington St., SPC 59  
13 Phoenix, Arizona 85003-2158

14 You or your attorney should also send a copy of anything you file with the Court to the  
15 following counsel for the parties:

16 Robert A. Siegel  
17 O'Melveny & Myers LLP  
18 400 South Hope Street  
19 Los Angeles, CA 90071-  
20 2899  
21 rsiegel@omm.com

22 Marty Harper  
23 Polsinelli Shughart, PC  
24 One East Washington St.,  
25 Suite 1200  
26 Phoenix, AZ 85004  
27 mharper@polsinelli.com

28 Susan Martin  
Martin & Bonnett, PLLC  
1850 N. Central Ave.  
Suite 2010  
Phoenix, AZ 85004  
smartin@martinbonnett.com

Attorneys for Plaintiff  
US Airways, Inc.

Attorneys for West Pilot  
Class

Attorneys for USAPA

~~**Class Counsel**~~

~~The West Pilot Class is represented by the following court appointed class  
counsel: Marty Harper, Kelly J. Flood, Andrew S. Jacob, and Katherine V. Brown, of  
Polsinelli Shughart, P.C. In the event you have any questions concerning this Notice, or~~

1 ~~the litigation generally, you may contact them at One East Washington Street, Suite 1200,~~  
2 ~~Phoenix, Arizona, 85004, 602-650-2000.~~

3  
4 The Clerk of the Court is not allowed to give you any legal advice on this matter  
5 or to provide any additional information on the underlying facts and arguments of this  
6 case other than what is set forth in this Notice. The pleadings and other papers filed in  
7 this action are available for inspection at the offices of the Clerk of the Court. These  
8 documents are also available at <https://ecf.azd.uscourts.gov/> . (Depending on the specific  
9 document, there may be a nominal fee imposed for accessing documents through this  
10 website.)

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12 This Notice is not an expression of any opinion by the Court as to the merits of the  
13 claims or defenses asserted by any party in this litigation.

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15 **As indicated above, this Notice does not require any action on your part at**  
16 **the present time unless you wish to ~~intervene~~ notify the Court that that you are not**  
17 **satisfied that your interests will be adequately represented by the persons described**  
18 **above or in the event you wish to intervene or otherwise request to come into this**  
19 **action**; however, please consider the contents of this Notice carefully, because you  
20 **will be legally bound by future orders of this Court.**  
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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

US Airways, Inc., a Delaware Corporation,	)	Case No.: 2:10-cv-01570-ROS
	)	
Plaintiff,	)	
v.	)	<b>Order on USAPA’s Motion for</b>
	)	<b>Alternative Class Notice</b>
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.	)	
	)	

The Court having considered USAPA’s Motion for Alternative Class Notice and for good cause shown,

IT IS HEREBY ORDERED that USAPA’s alternative class notice is approved.