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19 Attorneys for Plaintiff
20 US Airways, Inc.

21 **UNITED STATES DISTRICT COURT**
22 **DISTRICT OF ARIZONA**

23 US Airways, Inc., a Delaware
24 Corporation,

25 Plaintiff,

26 v.

27 Don Addington, an individual; John
28 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

**PLAINTIFF US AIRWAYS, INC.'S
RESPONSE TO DEFENDANT
USAPA'S PROPOSED CLASS NOTICE**

PRELIMINARY STATEMENT

1 Pursuant to this Court's Certification Order dated November 2, 2011 [Doc. No.
2 125], on November 18, 2011, US Airways filed a Proposed Class Notice [Doc. No. 128-1]
3 which had been approved by counsel for the West Pilot Class. This Proposed Class
4 Notice contained all of the elements which this Court has requested, including the impact
5 the case could have on the legal rights of the West Pilot Class and the potential for
6 conflict among class members. USAPA has now filed – without the Court's request or
7 authorization – Objections to the Proposed Class Notice, dated December 1, 2011 [Doc.
8 No. 135], along with its own proposed class notice. However, many of USAPA's
9 revisions are argumentative and appear to have been inserted for the purpose of
10 advocating USAPA's position. This is inappropriate, given that a class notice should be
11 accurate, fair, and *neutral*. Further, USAPA does not contend that the Proposed Class
12 Notice fails to comply with the instructions in the Certification Order.

13 Nonetheless, US Airways has reviewed USAPA's suggested revisions and drafted
14 a compromise version of the Proposed Class Notice. This document adopts USAPA's
15 changes to the extent that they do not detract from the accurate, fair, and neutral language
16 in the original Proposed Class Notice. For the reasons discussed herein, US Airways
17 requests that this revised Proposed Class Notice be approved by this Court.

ARGUMENT

18 It is well established that class notices must be accurate, fair, and neutral. *See*
19 *Weinberger v. Kendrick*, 698 F.2d 61, 70 (2d Cir. 1982); *Grunin v. International House of*
20 *Pancakes*, 513 F.2d 114, 122 (8th Cir. 1975). Accordingly, class notices should “contain
21 an adequate description of the proceedings written in objective, neutral terms, that, insofar
22 as possible, may be understood by the average absentee class member.” *In re Corrugated*
23 *Container Antitrust Litigation*, 611 F.2d 86, 88 (5th Cir. 1980) (quoting *In re Nissan*
24 *Motor Corp. Antitrust Litigation*, 552 F.2d 1088, 1104 (5th Cir. 1977)). Although US
25 Airways does not object to some of USAPA's changes, many of the suggested revisions
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27
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1 are not objective or neutral, but rather attempt to inject advocacy into the class notice.
2 These revisions are inappropriate and should be rejected.

3 With these concepts in mind, US Airways has drafted a compromise version of the
4 Class Notice. A clean copy of this version is attached hereto as Exhibit A, and a redlined
5 version showing changes made to USAPA's version is attached hereto as Exhibit B. US
6 Airways accepted and rejected certain changes for the following reasons:

- 7 1. **Page 1:20-22:**¹ The revised Proposed Class Notice accepts USAPA's edits discussing
8 where the action is pending, the identity of the judge, and US Airways' role as
9 plaintiff.
- 10 2. **Page 2:4-5:** Pursuant to the Civil Minutes dated December 1, 2011 [Doc. No. 137],
11 this Court accepted the three proposed additional representatives of the West Pilot
12 Class. Accordingly, the revised Proposed Class Notice eliminates the statement that
13 the three additional representatives are not yet approved.
- 14 3. **Page 2:11-13:** The revised Proposed Class Notice accepts USAPA's additions
15 identifying the various parties to the case.
- 16 4. **Pages 2:16-3:19:** US Airways has reinserted the language from its original Proposed
17 Class Notice regarding the nature of the relief sought. Although USAPA's Objections
18 allege that US Airways' proposed language is not consistent with the Complaint, in
19 reality this language is copied verbatim from Paragraph 35 of the Complaint. USAPA,
20 for reasons it does not explain, contends that the language from the Complaint's prayer
21 for relief should be used in this section of the Proposed Class Notice. US Airways
22 disagrees, and contends that the narrative discussion contained in Paragraph 35
23 provides more information, is less legalistic, and is drafted in a manner that may be
24 more easily "understood by the average absentee class member." *In re Corrugated*
25 *Container*, 611 F.2d at 88.

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27
28 ¹ All page and line numbers refer to the redlined version of the revised Proposed Class Notice,
attached hereto as Exhibit B.

- 1 5. **Page 3:22:** US Airways’ original proposal had stated that this litigation would “define
2 its potential liability,” but USAPA has deleted this and replaced it with a statement
3 that the litigation would “define the parties’ respective rights and obligations.” US
4 Airways believes both are accurate and has included both in the revised Proposed
5 Class Notice.
- 6 6. **Page 3:26-27:** USAPA inserted new language stating that “US Airways *claims* it has
7 never taken any position on the merits of the seniority dispute” (emphasis added).
8 This language is adversarial, biased, and inappropriate, and also irrelevant to the main
9 purpose of the notice – which is to advise absentee class members of the potential
10 effect the case may have on their rights. Accordingly, US Airways has removed it
11 from the revised Proposed Class Notice.
- 12 7. **Pages 4:17-6:18:** USAPA has edited the existing “Background of the Litigation”
13 section and added an entirely new “Current Posture of the Litigation” section to the
14 Proposed Class Notice. These additions consist solely of argumentative language that
15 is designed to advance USAPA’s view of the issues of this case. For example,
16 USAPA explains why it believes the Nicolau Award is “grossly unfair,” defends the
17 USAPA constitution, and critiques the parties’ positions on mediation. These
18 additions are neither fair or neutral and have been removed from the revised Proposed
19 Class Notice. *Weinberger*, 698 F.2d at 70; *Grunin*, 513 F.2d at 122.
- 20 8. **Page 6:24-7:1:** USAPA has added additional detail regarding the effect a judicial
21 declaration would have, using language taken from the Complaint. US Airways has
22 no objection to these additions and they have been retained in the revised Proposed
23 Class Notice.
- 24 9. **Page 7:13-18:** USAPA has moved the “Class Counsel” section to an earlier place in
25 the document, which US Airways does not object to. This change has been retained in
26 the revised Proposed Class Notice.
- 27
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1 **10. Pages 7:24-8:15:**

- 2 a. USAPA has significantly altered this section. In its Objection, USAPA argues
3 that these edits are required by Federal Rule of Civil Procedure 23(d)(1)(B).
4 However, USAPA fails to note that Rule 23(d) pertains to general orders issued
5 during the course of “conducting class actions” – it does not pertain specifically
6 to the content of class notices. In fact, Rule 23(c)(2)(A) – which governs class
7 notices and which specifically notes that notices are optional in Rule 23(b)(1)
8 classes – contains none of the language that USAPA wishes to inject. US
9 Airways’ original Proposed Class Notice accurately stated that if an absentee
10 class member wishes to participate in the litigation or is otherwise concerned,
11 the appropriate action is to intervene. Further, the language USAPA inserted
12 into this section: is neither neutral nor fair; appears to be intended to further
13 USAPA’s argument regarding potential conflicts within the class; and does not
14 accurately describe how an absentee class member may intervene in the action.
15 The language also overly complicates the document, making it less
16 understandable from the perspective of “the average absentee class member.”
17 *In re Corrugated Container*, 611 F.2d at 88. Accordingly, US Airways has
18 rejected USAPA’s changes, with the following exception.
- 19 b. US Airways does not object to increasing the notice period from 30 days to 45
20 days, and the revised Proposed Class Notice has been edited accordingly.

21 **11. Page 8:26-9:1:** USAPA edited the final paragraph to add additional detail regarding
22 reasons an absentee class member might take action in response to the notice. These
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1 edits have all the same infirmities discussed in Item 10, *supra*. Accordingly, US
2 Airways has rejected USAPA's edits in this section.

3
4 Respectfully:

5 Dated: December 7, 2011.

O'Melveny & Myers LLP

6 By: /s/ Robert A. Siegel

7 Robert A. Siegel (*pro hac vice*)

8 Chris A. Hollinger (*pro hac vice*)

9 Ryan W. Rutledge (*pro hac vice*)

400 South Hope Street, Suite 1500

10 Los Angeles, CA 90071-2899

11 US Airways, Inc.

Karen Gillen, State Bar No. 018008

12 111 West Rio Salado Parkway

13 Tempe, AZ 85281

14 Attorneys for Plaintiff US Airways, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2011, the foregoing document was electronically transmitted to the United States District Court Clerk's Office using the CM/ECF System for filing and transmittal.

/s/ Robert A. Siegel

Robert A. Siegel

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

1. Why this Notice is Being Sent to You

The United States District Court for the District of Arizona (the “Court”) has determined

1 that the named defendants listed in the caption above – Don Addington, John Bostic, Mark
2 Burman, Afshin Iranpour, Roger Velez, Steve Wargocki, Michael J. Soha, Rodney Albert
3 Brackin, and George Maliga, as well as any other individuals the Court may allow (the “Named
4 West Pilots”) – will represent not only themselves but a class consisting of all pilots employed by
5 US Airways in September 2008 who were on the America West seniority list on September 20,
6 2005 (the “West Pilot Class”). This Notice is being sent to you because available information
7 indicates that you are member of the West Pilot Class and, accordingly, your rights may be
8 affected by this litigation.

9 **2. Parties to the Lawsuit**

10 The Plaintiff in the lawsuit is US Airways. The Defendants in the Lawsuit are USAPA
11 and the West Pilot Class.

12 **3. Relief Sought**

13 US Airways seeks one of three alternative judicial declarations:

14 (i) USAPA’s continued insistence on a collective bargaining agreement that does not
15 incorporate a seniority list consistent with the Nicolau Award as required by the
16 Transition Agreement violates its duty under Section 2, First, of the Railway Labor Act to
17 “exert every reasonable effort to make and maintain agreements concerning rates of pay,
18 rules, and working conditions..., in order to avoid any interruption to commerce or to the
19 operation of any carrier,” and entry into a collective bargaining agreement that does not
20 incorporate a seniority list consistent with the Nicolau Award as required by the
21 Transition Agreement constitutes a breach of USAPA’s duty of fair representation to the
22 West Pilots and therefore US Airways is prohibited from accepting or implementing a
23 non-Nicolau seniority list; *or, in the alternative,*

24 (ii) USAPA’s continued insistence on and/or entry into a collective bargaining
25 agreement which does not incorporate a seniority list consistent with the Nicolau Award
26 would not constitute a breach of USAPA’s obligations under Section 2, First, of the
27 Railway Labor Act and/or its duty of fair representation to the West Pilots and therefore
28

1 US Airways is not prohibited from accepting or implementing a non-Nicolau seniority
2 list; *or, in the alternative,*

3 (iii) Regardless of whether or not USAPA's insistence on and/or entry into a
4 collective bargaining agreement which does not incorporate a seniority list consistent with
5 the Nicolau Award would constitute a breach of USAPA's obligations under Section 2,
6 First, of the Railway Labor Act and/or its duty of fair representation to the West Pilots,
7 US Airways would not be liable to the West Pilots under the Railway Labor Act or
8 otherwise if it were to enter into a collective bargaining agreement with USAPA that did
9 not incorporate a seniority list consistent with the Nicolau Award.

10 **4. Background of the Litigation**

11 US Airways seeks to obtain one of the three judicial declarations set out above to define
12 its potential liability and the parties' respective rights and obligations stemming from a dispute
13 between (i) the named individual defendants, individually and as representatives of the defendant
14 West Pilot Class, and (ii) defendant USAPA, the labor union representing all US Airways pilots.
15 The underlying dispute between the West Pilot Class and USAPA concerns the integration of two
16 pilot seniority lists subsequent to an airline merger that occurred in 2005.

17 The predecessor to the current US Airways, Inc. merged with America West Airlines,
18 Inc. ("America West") in September 2005. Approximately 5,000 pilots, known as "East
19 Pilots," were on the pre-merger US Airways seniority list. Approximately 1,900 pilots,
20 known as "West Pilots," were on the pre-merger America West seniority list. At the time
21 of the merger, both airlines' pilot groups were represented by the Air Line Pilots
22 Association ("ALPA") – the East Pilots through the US Airways Master Executive
23 Council ("East MEC") and the West Pilots through the America West Master Executive
24 Council ("West MEC"). Pursuant to ALPA's Merger Policy, if two ALPA-represented
25 pilot groups in an airline merger could not agree on an integrated seniority list through
26 direct negotiations or mediation, the next step was integration of the pre-merger seniority
27 lists through an arbitration which the Named West Pilots contend was "final and
28 binding." The East Pilots and West Pilots could not agree on an integrated seniority list,

1 so – consistent with ALPA’s Merger Policy and a September 23, 2005 Transition
 2 Agreement negotiated between ALPA, the East MEC, the West MEC, pre-merger US
 3 Airways, Inc., and America West Airlines, Inc. – the East Pilots and West Pilots
 4 participated in a seniority-integration arbitration before neutral arbitrator George Nicolau.

5 Arbitrator Nicolau rendered his decision in May 2007 (the “Nicolau Award”). The
 6 East Pilots perceived the Nicolau Award to be far less favorable to them as a group than
 7 the “date-of- hire” integrated seniority list they had sought from Arbitrator Nicolau.
 8 Subsequently, the East Pilots formed defendant USAPA. The East Pilots significantly
 9 outnumbered the West Pilots, and, following a representation election between USAPA
 10 and ALPA, the National Mediation Board (“NMB”) certified USAPA as the new
 11 collective bargaining representative for both the East Pilots and West Pilots. USAPA’s
 12 constitution expressly mandates a “date-of-hire” seniority list and prohibits
 13 implementation of the Nicolau Award. Thereafter, USAPA and US Airways engaged in
 14 collective bargaining negotiations for a single labor contract, the predicate under the
 15 Transition Agreement for implementation of an integrated seniority list, but no agreement
 16 was (or has been) reached. During these negotiations USAPA proposed an integrated
 17 seniority list which the Named West Pilots contend is based on “date-of-hire” consistent
 18 with USAPA’s constitutional mandate and therefore is contrary to the Nicolau Award.

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

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

1 prohibited from accepting or implementing a non-Nicolau seniority list; ~~or~~ 3) bound by a
2 judgment that US Airways would not be liable to you as a West Pilot if it were to enter a
3 collective bargaining agreement with USAPA that did not implement a seniority list consistent
4 with the Nicolau Award, regardless of whether USAPA's entry into the agreement would violate
5 its duty of fair representation.

6 **6. Potential Conflicts of Interest**

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

13 **7. Class Counsel**

14 The West Pilot Class is represented by the following court-appointed class counsel:
15 Marty Harper, Kelly J. Flood, Andrew S. Jacob, and Katherine V. Brown, of Polsinelli Shughart,
16 P.C. In the event you have any questions concerning this Notice, or the litigation generally, you
17 may contact them at One East Washington Street, Suite 1200, Phoenix, Arizona, 85004, 602-650-
18 2000.

19 **8. What You Should Do in Response to This Notice**

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

23 Option Two: If you are not satisfied that your interests will be adequately represented by
24 the persons described above, you have a right to request leave of court to intervene as a defendant
25 in this action and to present any defenses you might have. In the event you desire to intervene,
26 you should retain your own attorney. Any request to intervene in this action must be filed with
27 the Clerk of this Court within forty-five (45) days of receipt of this Notice.
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The Clerk of the Court is not allowed to give you any legal advice on this matter or to provide any additional information on the underlying facts and arguments of this case other than what is set forth in this Notice. The pleadings and other papers filed in this action are available for inspection at the offices of the Clerk of the Court. These documents are also available at <https://ecf.azd.uscourts.gov/>. (Depending on the specific document, there may be a nominal fee imposed for accessing documents through this website.)

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

As indicated above, this Notice does not require any action on your part at the present time unless you wish to intervene; however, please consider the contents of this Notice carefully, because you will be legally bound by future orders of this Court.

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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

US Airways, Inc., a Delaware Corporation,
Plaintiff,

Case No. 2-10-cv-01570-PHX-ROS

**PROPOSED NOTICE OF PENDING
CLASS ACTION**

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.

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

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

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

11 **2. Parties to the Lawsuit**

12 The Plaintiff in the lawsuit is US Airways. The Defendants in the Lawsuit are USAPA
13 and the West Pilot Class.

14 **3. Relief Sought**

15 US Airways seeks one of three alternative judicial declarations:

16 (i) ~~USAPA is currently violating~~ USAPA’s continued insistence on a collective
17 bargaining agreement that does not incorporate a seniority list consistent with the Nicolau
18 Award as required by the Transition Agreement violates its duty under Section 2, First, of
19 the Railway Labor Act “to “exert every reasonable effort to make and maintain
20 agreements concerning rates of pay, rules, and working conditions” ~~by its continued~~
21 ~~insistence....~~ in current collective bargaining negotiations upon an integrated seniority list other
22 ~~than as reflected in~~ order to avoid any interruption to commerce or to the ~~Nicolau~~
23 ~~Award,~~ operation of any carrier.” and (b) ~~entry into a collective bargaining agreement~~
24 ~~between US Airways and USAPA which~~ that does not incorporate a seniority list consistent
25 with the Nicolau Award ~~would constitute~~ as required by the Transition Agreement
26 constitutes a breach of USAPA’s duty of fair representation to the West Pilots ~~in violation~~
27 ~~of the Railway Labor Act~~; and therefore US Airways is prohibited from accepting or
28 implementing a non-Nicolau seniority list; *or, in the alternative,*

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

11 (iii) ~~Regardless of whether it would constitute a breach of USAPA's duty of fair~~
 12 ~~representation to the West Pilots or otherwise violate the Railway Labor Act for USAPA to insist~~
 13 ~~upon or enter~~ not USAPA's insistence on and/or entry into a collective bargaining
 14 agreement ~~that~~ which does not incorporate ~~the Nicolau Award~~ a seniority list consistent with
 15 the Nicolau Award would constitute a breach of USAPA's obligations under Section 2,
 16 First, of the Railway Labor Act and/or its duty of fair representation to the West Pilots,
 17 US Airways would not be liable to the West Pilots under the Railway Labor Act or
 18 otherwise if it were to enter into ~~such~~ a collective bargaining agreement with USAPA that
 19 did not incorporate a seniority list consistent with the Nicolau Award.

20 **4. Background of the Litigation**

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

28 The predecessor to the current US Airways, Inc. merged with America West Airlines,

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

16 Arbitrator Nicolau rendered his decision in May 2007 (the “Nicolau Award”). The
 17 East Pilots perceived the Nicolau Award to be ~~grossly unfair because, among other things, it~~
 18 ~~would place probationary West Pilots with under two months seniority above East Pilots who had~~
 19 ~~more than sixteen years of credited length of service.~~ far less favorable to them as a group than
 20 the “date-of- hire” integrated seniority list they had sought from Arbitrator Nicolau.

21 Subsequently, the East Pilots formed defendant USAPA. The East Pilots significantly
 22 outnumbered the West Pilots, and, following a representation election between USAPA
 23 and ALPA, the National Mediation Board (“NMB”) certified USAPA as the new
 24 collective bargaining representative for both the East Pilots and West Pilots. USAPA’s
 25 constitution ~~states that one~~ expressly mandates a “date-of- ~~USAPA’s objectives is “To~~
 26 ~~maintain uniform principles of -hire”~~ seniority based on date of hire list and prohibits
 27 implementation of the ~~perpetuation thereof, with reasonable conditions and restrictions to~~
 28 ~~preserve each pilot’s un-merged career expectations.”~~ Nicolau Award. Thereafter, USAPA

1 and US Airways engaged in collective bargaining negotiations for a single labor contract,
2 the predicate under the Transition Agreement for implementation of an integrated
3 seniority list, but no agreement was (or has been) reached. During these negotiations
4 USAPA proposed an integrated seniority list which the Named West Pilots contend is
5 based on “date-of-hire” consistent with USAPA’s constitutional mandate and therefore is
6 contrary to the Nicolau Award. ~~USAPA contends that US Airways is required to bargain in
7 good faith under the Railway Labor Act. USAPA also contends that as a newly certified
8 bargaining representative, USAPA has the right to negotiate terms and conditions without regard
9 to any pre-existing collective or other agreement and that its decision to advance a different
10 proposal is reasonable, is not discriminatory and is made in good faith on behalf of all of the
11 pilots. USAPA also contends that its current bargaining proposal includes significant “conditions
12 and restrictions” that protect the pre-merger expectations of the West Pilots and is substantially
13 different from the proposal advanced by the US Airways MEC in the ALPA seniority integration
14 proceeding.~~

15 ~~US Airways commenced this action seeking one of the declarations set forth above. In
16 filing its Complaint, US Airways noted that the recent decision by the United States Court of
17 Appeals for the Ninth Circuit in *Addington v. US Airline Pilots Ass’n*, 606 F.3d 1174 (9th Cir.
18 2010), held that potential claims for breach of the duty of fair representation by the West Pilots
19 against USAPA, based on USAPA’s position on seniority issues in its collective bargaining
20 negotiations with US Airways, were not ripe for judicial determination until a collective
21 bargaining agreement is ratified and becomes effective. The Ninth Circuit also noted that it is “at
22 best, speculative that a single CBA incorporating the Nicolau Award would be ratified if
23 presented to the union’s membership.” US Airways contends that even though it could not be
24 determined whether USAPA will comply with its duty to fairly represent the membership of
25 USAPA until a collective bargaining agreement becomes effective, the Ninth Circuit did not
26 discuss the legal rights, constraints and obligations of US Airways in those collective bargaining
27 negotiations and that US Airways is entitled to a declaration of its rights and obligations in this
28 action.~~

1 ~~5. Current Posture of the Litigation~~

2 Following the filing of the Complaint, the West Pilots asserted a crossclaim against
 3 USAPA for breach of the duty of fair representation and USAPA moved to dismiss both the
 4 Complaint and the crossclaim. The Court denied USAPA's motion to dismiss the Complaint
 5 finding that US Airways' case could proceed because it is seeking guidance on what positions it
 6 may take at the bargaining table "at the present time." The Court granted USAPA's motion to
 7 dismiss the West Pilots crossclaim because it was not ripe finding that the crossclaim presented
 8 the identical claim that the Ninth Circuit Court of Appeals had dismissed. USAPA continues to
 9 maintain that the Court lacks jurisdiction over this matter.

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

19 ~~6.5. Potential Impact of the Litigation on Your Legal Rights~~

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

1 prohibited from accepting or implementing a non-Nicolau seniority list; ~~–or–~~ 3) bound by a
2 judgment that US Airways would not be liable to you as a West Pilot if it were to enter a
3 collective bargaining agreement with USAPA that did not implement a seniority list consistent
4 with the Nicolau Award, regardless of whether USAPA’s entry into the agreement would violate
5 its duty of fair representation.

6 ~~7~~. Potential Conflicts of Interest

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

13 ~~8~~. Class Counsel

14 The West Pilot Class is represented by the following court-appointed class counsel:
15 Marty Harper, Kelly J. Flood, Andrew S. Jacob, and Katherine V. Brown, of Polsinelli Shughart,
16 P.C. In the event you have any questions concerning this Notice, or the litigation generally, you
17 may contact them at One East Washington Street, Suite 1200, Phoenix, Arizona, 85004, 602-650-
18 2000.

19 ~~9~~. What You Should Do in Response to This Notice

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

23 Option Two: If you are not satisfied that your interests will be adequately represented by
24 the persons described above, you have a right: ~~1) to advise the parties and the Court that you do~~
25 ~~not consider the representation by the Named West Pilots and their counsel to be fair and~~
26 ~~adequate; 2) to request leave of court to intervene as a defendant in this action and to present any~~
27 ~~defenses you might have, and/or 3) to otherwise request to come into the action or file an~~
28 ~~appearance pro se or by an attorney that you have retained in order to receive notice of the~~

~~proceedings in this case.~~ In the event you desire to ~~advise the Court that you are not satisfied that your interests will be adequately represented by the persons described above or in the event you wish to intervene or otherwise request to come into this action, you or your attorney,~~ you should file/retain your ~~statement or your own attorney.~~ Any request to intervene in this action must be filed with the Clerk of this Court ~~on or before _____, 2012 [within~~ forty-five (45) days ~~following mailing the~~ of receipt of this Notice] ~~at the following address:~~

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

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

~~Robert A. Siegel
O'Melveny & Myers LLP
400 South Hope Street
Los Angeles, CA 90071-2899
rsiegel@omm.com~~

~~Marty Harper
Polsinelli Shughart, PC
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~~Susan Martin
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Suite 2010
Phoenix, AZ 85004
smartin@martinbonnett.com~~

~~Attorneys for Plaintiff
US Airways, Inc.~~

~~Attorneys for West Pilot Class~~

~~Attorneys for USAPA~~

* * * * *

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

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

As indicated above, this Notice does not require any action on your part at the present time unless you wish to ~~notify the Court that that you are not satisfied that your interests will be adequately represented by the persons described above or in the event you~~

1 ~~wish to intervene or otherwise request to come into this action~~intervene; however, please
2 consider the contents of this Notice carefully, because you will be legally bound by future
3 orders of this Court.

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