

PATRICK J. SZYMANSKI
(pro hac vice)
PATRICK J. SZYMANSKI, PLLC
1900 L Street, NW, Ste 900
Washington, DC 20036
Telephone: (202) 721-6035
szymanski@msn.com

SUSAN MARTIN (AZ#014226)
JENNIFER KROLL (AZ#019859)
MARTIN & BONNETT, P.L.L.C.
1850 N. Central Ave. Suite 2010
Phoenix, Arizona 85004
Telephone: (602) 240-6900
smartin@martinbonnett.com
jkroll@martinbonnett.com

BRIAN J. O'DWYER (pro hac vice)
GARY SILVERMAN (pro hac vice)
O'DWYER & BERNSTIEN, LLP
52 Duane Street, 5th Floor
New York, NY 10007
Telephone: (212) 571-7100
bodwyer@odblaw.com
gsilverman@odblaw.com

Attorneys for Defendant US Airline Pilots Association

IN THE 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-ROS

RESPONSE OF US AIRLINE PILOTS ASSOCIATION TO THE STATEMENT OF FACTS SUBMITTED BY THE WEST PILOT CLASS IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AND STATEMENT OF ADDITIONAL CONTROVERTING FACTS

1 Pursuant to L.R.Civ. 56.1(b), Defendant US Airline Pilots Association
2 (“USAPA”), by and through counsel undersigned, responds to the Statement of Facts in
3 Support of Motion for Summary Judgment submitted by the West Pilot Class (Doc. 151,
4 “WPC SOF”) and submits USAPA’s Statement of Additional Controverting Facts. This
5 response is supported by USAPA’s Statement of Facts (Doc. 153, “USAPA SOF”), the
6 Declarations and Exhibits submitted in support of USAPSOFF, the additional Declarations
7 and Exhibits submitted in support of the Statement of Additional Controverting Facts
8 (“USAPA ACF”) included below, USAPA’s separate Rule 56(d) Motion (“USAPA 56(d)
9 Mtn.”) and the record before this Court.

10 **RESPONSE WEST PILOT CLASS STATEMENT OF FACTS**

11 **WPC SOF ¶1:** In May 2005, two airlines, America West and US Airways, merged to
12 become a single airline known as US Airways (“the Airline”).
13

14 **RESPONSE:** Disputed in part because WPC SOF ¶1 is not entirely accurate. America
15 West and US Airways entered into an Agreement and Plan of Merger on May 19, 2005;
16 pursuant to that agreement the two airlines merged effective September 27, 2005; and the
17 merged operation was and is known as US Airways. USAPA SOF ¶¶1&36,

18 **WPC SOF ¶2:** At the time of the merger, US Airways had recently come out of
19 bankruptcy.

20 **RESPONSE:** USAPA objects and moves to strike WPC SOF ¶2 and the evidence cited
21 in support pursuant to L.R. Civ. 7.2(b) and 56.1(a) on the grounds that it is irrelevant that
22 US Airways was in bankruptcy at the time the merger with America West was
23 announced. If the Court rules that WPC SOF ¶2 is relevant, USAPA submits, on
24 information and belief, that at the time the merger was announced America West was
25 about to file its own petition for reorganization under the Bankruptcy Code and was able
26 to avoid that filing because of the merger. USAPA ACF ¶1; Second Mowrey Dec., at ¶9.
27 If WPC SOF ¶2 is deemed relevant, USAPA should be allowed to conduct discovery on
28 this additional controverting fact. USAPA Rule 56(d) Mtn, at p.8. In any event, and
without waiving USAPA’s objection, WPC SOF ¶2 is disputed in part because it is not

1 entirely accurate. US Airways Group and America West Holdings Corporation entered
2 into an Agreement and Plan of Merger dated May 19, 2005; US Airways was in
3 bankruptcy at that time; the Joint Plan ending US Airways Bankruptcy was entered on
4 September 16, 2005; and that the Merger was completed on September 27, 2005.
5 USAPA SOF ¶¶1&36; USAPA Ex. 3 (Transition Agreement); Findings of Fact,
6 Conclusions of Law And Order Under 11 U.S.C. §§ 1129(a) And (b) And Fed. R. Bankr.
7 P. 3020 Confirming the Joint Plan of Reorganization of Us Airways, Inc. and Its
8 Affiliated Debtors and Debtors-In-Possession, US Airways, Inc., Debtor, Case No. 04-
13819-SSM (Bankr. E.D. Va., Sept. 16, 2005).

9 **WPC SOF ¶3:** The Confirmed Plan for US Airway's Chapter 11 bankruptcy directed
10 the airline and ALPA to enter into a merger according to a contract referred to as the
11 Transition Agreement.

12 **RESPONSE:** USAPA objects that WPC SOF ¶3 selectively describes only one part of
13 the Confirmed Plan. USAPA avers that the Confirmed Plan was the result of an
14 agreement by America West and US Airways to merge, that the Transition Agreement
15 was negotiated by the airline parties with ALPA prior to submitting the Plan to the
16 Bankruptcy Court for approval, that the unexecuted Transition Agreement was in fact an
17 exhibit to the Plan, that the Plan was confirmed by the Bankruptcy Court on September
18 16, 2005, and that the Transition Agreement was executed on September 23, 2005.

19 USAPA ACF ¶4; Findings of Fact, Conclusions of Law and Order Under 11 U.S.C. §§
20 1129(a) and (b) and Fed. R. Bankr. P. 3020 Confirming the Joint Plan of Reorganization
21 of Us Airways, Inc. and Its Affiliated Debtors and Debtors-In-Possession, US Airways,
22 Inc., Debtor, Case No. 04-13819-SSM (Bankr. E.D. Va. Sept. 16, 2005), Doc. 3193, Ex.
D; USAPA Ex. 3 (Transition Agreement).

23 **WPC SOF ¶4:** The America West pilots who were on the America West seniority list at
24 the time of the merger are generally referred to by the parties as the West Pilots.

25 **RESPONSE:** Not disputed. USAPA notes, however, that the pilots previously
26 employed by America West and those previously employed by US Airways are now part
27 of a single bargaining unit represented by USAPA and the terms term "West Pilots" and
28 "East Pilots" are meaningful only for the purposes of this litigation. USAPA SOF ¶33,

1 USAPA Exs. 1&25.

2 **WPC SOF ¶5:** The US Airways pilots who were on the US Airways seniority list at
3 that time are generally referred to by the Parties as the East Pilots.

4 **RESPONSE:** Not disputed. See Response to WPC SOF ¶4, above.

5 **WPC SOF ¶6:** From the time of the merger until April 2008, both pilot groups were
6 represented by one union: the Air Line Pilots Association (“ALPA”).

7 **RESPONSE:** Not disputed that prior to April 18, 2008, both pilots groups were
8 represented by ALPA. See USAPA SOF, ¶33; USAPA Exs. 1&25.

9 **WPC SOF ¶7:** Pursuant to ALPA’s constitution, an airline’s pilots are represented by a
10 Master Executive Council (“MEC”).

11 **RESPONSE:** USAPA objects because WPC SOF ¶7 does not state a relevant time
12 frame and is inaccurate and overbroad. Assuming WPC SOF ¶7 refers to the ALPA
13 Constitution in effect at the time of merger, it is inaccurate and overbroad. Article IV,
14 Section 2.C, of the ALPA Constitution submitted by the WPC states:

15 The Master Executive Council of an airline is empowered to make the final
16 decision on any problem or problems of the members of that airline, except
17 as provided elsewhere in the Constitution and By-Laws. . . . [N]othing in
18 this Section shall authorize any Master Executive Council to initiate any
19 action that is inconsistent with this Constitution and By-Laws or with the
20 best interests of the Association or the general membership.

21 The authority of an MEC on a particular subject at the time of the Merger therefore
22 cannot be understood without knowing what the subject is and what other parts of
23 APLA’s Constitution provide, and the WPC incudes only 36 of the 97 pages of the ALPA
24 Constitution in effect at the time of the Merger. As the index to the ALPA Constitution
25 (which is submitted by the WPC) shows, the WPC omits provisions governing the duties
26 and responsibilities of ALPA’s officers, local executive councils, executive board, board
27 of directors, president, vice presidents, executive vice presidents and executive
28 administrator, all of whom apparently have duties and responsibilities in connection with
the representation of the pilot members of ALPA. See Doc. 151-2 West Pilots App. 50-
53. In particular, the portion of the ALPA Constitution submitted by the West Pilot Class
omitted Article XVIII, Section 1, which provides that collective bargaining negotiations

1 cannot be commenced without the authorization of ALPA's President and that no
2 agreement of any kind is effective unless signed by APLA's President. USAPA ACF ¶5.
3 USAPA does not dispute that ALPA's constitution in effect prior to the merger created a
4 subordinate body called an MEC at each airline where the pilots were represented by
5 ALPA and that the MEC has certain authority under the ALPA Constitution with respect
6 to the pilot craft at the airline. Nevertheless, ALPA, not the MEC, was the certified
7 bargaining representative and retained final authority in accord with the ALPA
8 Constitution as in effect at the time and prior to April 18, 2008. In the event the Court
9 determines the ALPA constitution to be relevant, West Pilot Class should be required to
10 submit a complete copy of the constitution they cite in WPC SOF ¶7. Fed. R. Evid. 106.

11 **WPC SOF ¶8:** The US Airways MEC is referred to as "the East MEC" and the America
12 West MEC is referred to as "the West MEC."

13 **RESPONSE:** Disputed. There is no US Airways MEC nor is there any America West
14 MEC at the present time. Prior to April 18, 2008, the MECs were known as the America
15 West MEC and the US Airways MEC. USAPA SOF, ¶¶ 5,6.

16 **WPC SOF ¶9:** At the time of the merger, including pilots on furlough, there were about
17 5100 East Pilots and 1900 West Pilots.

18 **RESPONSE:** Disputed. At the time of the merger, there were 5,098 pilots on the US
19 Airways seniority list and 1,894 pilots on the America West Seniority list. USAPA SOF
20 ¶8; USAPA Ex. 5 (Nicolau Award), at pp. 6-7.

21 **WPC SOF ¶10:** At the time of the merger, all West Pilots were actively flying.

22 **RESPONSE:** Disputed. At the time of the merger, many of the 1,894 pilots on the
23 America West Seniority list were not actively flying. USAPA ACF ¶6; Second Mowrey
24 Declaration, ¶ 12.

25 **WPC SOF ¶11:** At the time of the merger, approximately 1700 East Pilots were on
26 furlough.

27 **RESPONSE:** Disputed. At the time of the merger, 1,691 of the 5,098 pilots then on the
28 US Airways seniority list were on furlough. Approximately 300 of the furloughed pilots
were recalled prior to May 1, 2007, when the Nicolau Award issued, and all pilots on
furlough were recalled as of late 2007. USAPA SOF ¶¶18&31.

1 **WPC SOF ¶12:** On September 23, 2005, ALPA and the two merging airlines entered
2 into the Transition Agreement ordered by the bankruptcy court.

3 **RESPONSE:** USAPA objects and moves to strike the words “ordered by the
4 bankruptcy court” as irrelevant and argumentative. The words selectively emphasize
5 only one part of the order entered by the Bankruptcy Court. As set for the in USAPA’s
6 Response to WPC SOF ¶¶2&3, USAPA states that the Confirmed Plan was the result of
7 an agreement by America West and US Airways to merge, that the Transition Agreement
8 was negotiated by the airline parties with ALPA prior to submitting the Plan to the
9 Bankruptcy Court for approval, that the unexecuted Transition Agreement was in fact an
10 exhibit to the Plan, that the Plan was confirmed by the Bankruptcy Court on September
11 16, 2005, and that the Transition Agreement was executed on September 23, 2005.

12 USAPA ACF ¶¶3,4; Findings of Fact, Conclusions of Law and Order Under 11 U.S.C. §§
13 1129(a) and (b) and Fed. R. Bankr. P. 3020 Confirming the Joint Plan of Reorganization
14 of Us Airways, Inc. and Its Affiliated Debtors and Debtors-In-Possession, US Airways,
15 Inc., Debtor, Case No. 04-13819-SSM (Bankr. E.D. Va. Sept. 16, 2005), Doc. 3193, Ex.
16 D; USAPA Ex. 3 (Transition Agreement).

17 **WPC SOF ¶13:** The chairman of each MEC signed the Transition Agreement,
18 witnessed by other union officials.

19 **RESPONSE:** Disputed to the extent that WPSOF ¶13 suggests that the signatures of the
20 MEC chairmen had any legal significance. Article XVIII, Section 1, of the ALPA
21 Constitution in effect at the time of the merger explicitly provides that no agreement of
22 any kind is effective unless signed by APLA’s President. USAPA SOF ¶14, USAPA
23 ACF ¶ 5; Second Mowrey Declaration, ¶11.

24 **WPC SOF ¶14:** The Transition Agreement provides that the pilot groups would
25 integrate their seniority lists according to defined procedures set out in detail in the
26 ALPA constitution and called “ALPA Merger Policy.”

27 **RESPONSE:** Disputed that ALPA Merger Policy was set forth in the ALPA
28 Constitution. The Merger Policy was a “Policy” adopted by the ALPA Executive Board.
It was not part of the ALPA Constitution and was not ratified or approved by either the
America West Pilots or the US Airways pilots. USAPA SOF ¶15, USAPA Ex. 4.

1 Moreover, the ALPA Merger Policy in effect at the time of the merger of America West
2 and US Airways differed significantly from that in effect prior to the merger and after the
3 merger, because, in particular and unlike the Merger Policy as in effect at the time of the
4 merger between America West and US Airways, both the Merger Policy previously in
5 effect and the Merger Policy later in effect both required seniority integration decisions to
6 accord significant weight to length of service. USAPA ACF ¶¶ 9-10.

7 **WPC SOF ¶15:** Pursuant to ALPA Merger Policy, the single integrated seniority list
8 would be created by two Merger Committees, appointed by each MEC and representing
9 one of the two pilot groups.

10 **RESPONSE:** USAPA objects that WPC SOF ¶15 does not state a relevant time frame.
11 Not disputed to the extent WPC SOF ¶15 is limited to the ALPA Merger Policy in effect
12 at the time of the merger between America West and US Airways.

13 **WPC SOF ¶16:** Pursuant to ALPA Merger Policy, the Merger Committees would
14 conduct arbitration if they were unable to agree on seniority integration.

15 **RESPONSE:** USAPA objects that WPC SOF ¶16 does not state a relevant time frame.
16 Not disputed to the extent WPC SOF ¶16 is limited to the ALPA Merger Policy in effect
17 at the time of the merger between America West and US Airways.

18 **WPC SOF ¶17:** ALPA Merger Policy allows an MEC to retain outside counsel to
19 advise it during the process of seniority integration.

20 **RESPONSE:** USAPA objects that WPC SOF ¶17 does not state a relevant time frame.
21 Not disputed to the extent WPC SOF ¶17 is limited to the ALPA Merger Policy in effect
22 at the time of the merger between America West and US Airways.

23 **WPC SOF ¶18:** ALPA Merger Policy states: “The purpose of arbitration shall be to
24 reach a fair and equitable resolution consistent with ALPA policy.”

25 **RESPONSE:** USAPA objects that WPC SOF ¶18 does not state a relevant time frame.
26 Not disputed that WPC SOF 18 accurately quotes one phrase from the ALPA Merger
27 Policy in effect at the time of the merger between America West and US Airways.

28 **WPC SOF ¶19:** ALPA Merger Policy states: “The Award of the Arbitration Board shall
be final and binding on all parties to the arbitration and shall be defended by ALPA.”

RESPONSE: USAPA objects that WPC SOF ¶19 does not state a relevant time frame.

1 Not disputed that WPC SOF 19 accurately quotes one phrase from the ALPA Merger
2 Policy in effect at the time of the merger between America West and US Airways.

3 **WPC SOF ¶20:** Pursuant to ALPA Merger Policy, each MEC appointed Merger
4 Representatives to its Merger Committee.

5 **RESPONSE:** USAPA objects that WPC SOF ¶20 does not state a relevant time frame.
6 Not disputed to the extent WPC SOF ¶20 is limited to the ALPA Merger Policy in effect
7 at the time of the merger between America West and US Airways.

8 **WPC SOF ¶21:** In accordance with the Transition Agreement and ALPA Merger
9 Policy, the two Merger Committees began negotiating the creation of a single integrated
10 seniority list in August 2005.

11 **RESPONSE:** Not disputed to the extent WPC SOF ¶21 is limited to the ALPA Merger
12 Policy in effect at the time of the merger between America West and US Airways.

13 **WPC SOF ¶22:** Both pilot groups hired independent outside counsel to represent their
14 interests and eventually proceeded to arbitration.

15 **RESPONSE:** Disputed in part because outside counsel were hired by the America West
16 MEC and the US Airways MEC. USAPA ACF ¶ 11.

17 **WPC SOF ¶23:** In the course of the Nicolau Arbitration, there were 18 days of hearings,
18 20 witnesses, and 14 volumes of exhibits.

19 **RESPONSE:** Not disputed.

20 **WPC SOF ¶24:** The two Merger Committees filed comprehensive post-hearing briefs.

21 **RESPONSE:** Not disputed.

22 **WPC SOF ¶25:** The East Merger Committee's position was that East Pilots were
23 entitled to seniority rights based upon their dates of hire, including East Pilots who were
24 on furlough at the time of the merger.

25 **RESPONSE:** Disputed. WPC SOF ¶25 is inaccurate. The position initially taken by the
26 US Airways Merger Committee was based on length of service, not date of hire, and
27 included a comprehensive set of conditions and restrictions. "Length of service"
28 measured the time each US Airways actually flew for US Airways and omitted any time
a pilot might have been on furlough. USAPA ACF ¶ 12; Second Mowrey Declaration,
¶18.

1 **WPC SOF ¶26:** The West Merger Committee’s position was that East Pilots who were
2 on furlough at the time of the merger should be placed below all West Pilots because all
3 West Pilots were actively working for America West at the time of the merger.

4 **RESPONSE:** Disputed that all pilots on the America West seniority list were “actively
5 working” for the reasons stated in response to WPC SOF ¶10, above. Not disputed that
6 the America West Merger Committee took the position that pre-merger US Airways
7 pilots who were on furlough at the time the merger was announced should be placed
8 below all pilots on the America West seniority list.

9 **WPC SOF ¶27:** And the West Merger Committee’s position was also that East Pilots
10 who were actively working for pre-merger US Airways at the time of the merger would
11 be merged with West Pilots into the seniority list taking into account career expectations
12 apart from date-of-hire.

13 **RESPONSE:** Disputed. WPSOF ¶27 is not accurate. The proposal by the America
14 West Merger Committee “urged a series of ratios” and was not based directly on “career
15 expectations.” USAPA Exhibit 5 (Nicolau Award), at p. 4.

16 **WPC SOF ¶28:** Both by the terms of the Transition Agreement and ALPA Merger
17 Policy, airlines play no role in seniority integration arbitration.

18 **RESPONSE:** Disputed in part. USAPA does not dispute that neither America West nor
19 US Airways was a party to the ALPA arbitration proceeding. The airline (here US
20 Airways) was, however, directly involved in the overall seniority integration process by
21 negotiating the transition agreement that included certain conditions and restrictions,
22 providing funding and information to the Merger Committees, deciding whether to accept
23 the result of the process and negotiating the consolidated collective bargaining agreement
24 which was a necessary precondition for any merged seniority list to go into effect.
25 USAPA SOF ¶¶17-18.

26 **WPC SOF ¶29:** By the terms of the Transition Agreement, the Airline agreed (subject
27 to predefined conditions that protected its economic interests) in advance to accept the
28 outcome of the arbitration as the final resolution of this seniority integration dispute.

RESPONSE: Disputed to the extent that WPC SOF ¶29 ignores the exact terms of the
Transition Agreement which are stated in the Agreement at Section IV.A. USAPA

1 Exhibit 3, IV.A.

2 **WPC SOF ¶30:** The Nicolau Arbitration [sic] issued its award (the “Nicolau Award”)
3 on or about May 1, 2007.

4 **RESPONSE:** Not disputed that the ALPA Board of Arbitration issued its decision on
5 May 1, 2007.

6 **WPC SOF ¶31:** The Nicolau Award placed about 500 senior East Pilots at the top of the
7 list because America West was not operating the wide-body international aircraft
8 generally flow [sic] by those at the top of the US Airways list before the merger.

9 **RESPONSE:** Disputed. This is a mischaracterization rather than an accurate statement
10 of the terms of the decision. In fact, as set forth in USAPA’s Statement of Facts and in
11 the decision itself, the Board of Arbitration determined that the two seniority lists should
12 be merged into an “Integrated System Seniority List” (1) by reserving the first active 423
13 positions (“equal to the number of Captains and First Officers flying the A330 and B767
14 International” aircraft, i.e., “wide bodies”) to the most senior US Airways pilots, (2) by
15 integrating B757 Captains, A320/B737 Captains, B757 First Officers and A320/B737
16 First Officers from US Airways and America West by ratio starting at position 424
17 (immediately below the reserved wide-bodied US Airways captains and first officers) and
18 extending down through Pilot Colello (position 4770), and (3) by placing all US Airways
19 pilots who were listed as furloughed as of the date the merger was announced in seniority
20 order, including Pilot Colello below the most junior America West pilot as of the date of
21 the merger (positions 4770 (Colello) through 6520). USAPA SOF ¶18, USAPA Ex. 5
22 (Nicolau Award), at pp. 33-36.

23 **WPC SOF ¶32:** The Nicolau Award placed the approximately 1700 East Pilots who
24 were furloughed at the time of the merger at the bottom of the list.

25 **RESPONSE:** Disputed for the reasons stated in the Response to WPC SOF ¶¶11&31,
26 above. Approximately 300 previously furlough US Airways pilots had been recalled by
27 the time the Nicolau Award was issued, many more were flying for US Airways
28 subsidiary Mid-Atlantic Airlines, and all US Airways pilots on furloughed at the time of
the merger was announced were recalled by the end of 2007. USAPA does not dispute
that US Airways pilots who were on furlough at the time the merger was announced were

1 placed at the bottom of the list below probationary America West pilots and despite the
2 fact that many had fifteen years or more of service. USAPA SOF ¶¶18&21.

3 **WPC SOF ¶33:** The Nicolau Award blended the remainder of the East Pilot list with the
4 West Pilot list according to relative positions on the separate seniority lists.

5 **RESPONSE:** Disputed for the reasons stated in the Response to WPC SOF ¶31, above.

6 **WPC SOF ¶34:** On December 20, 2007, the Airline accepted the Nicolau Award.

7 **RESPONSE:** Disputed in part. Not disputed that ALPA tendered the Nicolau list to US
8 Airways on December 19, 2007, and that US Airways accepted the list on December 20,
9 2007. The Nicolau list was tendered even though the US Airways MEC had asked ALPA
10 to set aside the Award, had filed suit to vacate the Award and had asked ALPA not to
11 submit the list to US Airways and even though USAPA had filed an application with the
12 National Mediation Board seeking to replace ALPA as the exclusive bargaining
13 representative of the consolidated pilot craft at US Airways. USAPA SOF ¶¶29&32;
14 USAPA ACF ¶ 13; Second Mowrey Declaration ¶ 8; USAPA Exhibit 24. When it
15 accepted the list, US Airways advised, “Of course, the list cannot be implemented
16 without a single labor agreement covering all of our pilots.” (Doc. 151-2 West Pilots
17 App. 130)

18 **WPC SOF ¶35:** Soon after Mr. Nicolau announced his decision, the East MEC appealed
19 to ALPA’s Executive Committee to overturn the Nicolau arbitration.

20 **RESPONSE:** Not disputed that the US Airways MEC demanded that ALPA’s Executive
21 Council reject the decision because it violated ALPA Merger Policy. USAPA SOF ¶21,
22 USAPA Ex. 6.

23 **WPC SOF ¶36:** In a letter dated October 1, 2007, John Prater the President of ALPA
24 wrote to Jack Stephan the Chairman of the East MEC, “[T]he Executive Council has
25 determined that there is no ground under ALPA Merger Policy to set aside the seniority
26 award, the MEC should also adopt a resolution recognizing that the award is to be
27 included in the single agreement to be negotiated under the Transition Agreement and
28 Merger Policy. . .” and “adopt a resolution . . . reversing all prior efforts to bar or
precondition the continuation of joint negotiations.”

RESPONSE: USAPA objects and moves to strike pursuant to L.R. Civ. 7.2(b) and

1 56.1(a) WPC SOF ¶36 and the letter relied upon by West Pilots for this statement, . (Doc.
2 151-1 West Pilots App. 134-135), because WPC SOF ¶36 and the letter are hearsay,
3 immaterial and irrelevant. The opinion of the president of a union that was decertified is
4 not relevant to the outcome of the issues in this litigation. USAPA also objects and moves
5 to strike pursuant to L.R. Civ. 7.2(b) and 56.1(a) the phrase “there is no ground under
6 ALPA Merger Policy to set aside the seniority award” as argumentative and asserting a
7 legal conclusion, not a statement of material fact. Subject to and without waiving
8 USAPA’s objections, USAPA does not dispute that WPC SOF ¶36 accurately quotes a
9 portion of the October 1, 2007, letter.

10 **WPC SOF ¶37:** ALPA’s president also stated that it was “time for the [East] MEC to
11 comply with its representational and legal obligations under the Constitution & Bylaws,
12 ALPA Merger Policy, the Transition Agreement, and implementing resolutions of the
13 Executive Council” and “adopt a resolution . . . reversing all prior efforts to bar or
14 precondition the continuation of joint negotiations.”

15 **RESPONSE:** USAPA objects and moves to strike pursuant to L.R. Civ. 7.2(b) and
16 56.1(a) WPC SOF ¶37 and the letter relied upon by West Pilots for this statement, (Doc.
17 151-1 West Pilots App. 134-135), because WPC SOF ¶37 and the letter are hearsay,
18 immaterial and irrelevant. The opinion of the president of a union that was decertified is
19 not relevant to the outcome of the issues in this litigation. USAPA also objects and moves
20 to strike pursuant to L.R. Civ. 7.2(b) and 56.1(a) because WPC SOF ¶37 is argumentative
21 and asserts a legal conclusion that ALPA’s US Airways MEC had any legal obligation to
22 comply with a decision that violated ALPA Merger Policy and not a statement of material
23 fact. Subject to and without waiving USAPA’s objections, USAPA does not dispute that
24 WPC SOF ¶37 accurately quotes a portion of the October 1, 2007, letter.

25 **WPC SOF ¶38:** On October 19, 2007, John Prater wrote to Jack Stephan stating “The
26 Executive Council has directed that the Nicolau award be submitted and defended. While
27 input from both MECs is welcome, the office of the President will comply with the
28 Executive Council's determinations and submit the award in a way that is consistent with
the negotiating timeline outlined and in accordance with ALPA’s past practice.”

RESPONSE: USAPA objects and moves to strike both WPC SOF ¶38 and the October

1 19, 2007, letter from John Prater to Jack Stephan pursuant to L.R. Civ. 7.2(b) and 56.1(a),
2 (Doc. 151-1 West Pilots App. 134-135), because WPC SOF ¶38 and the letter are
3 hearsay, immaterial and irrelevant. The opinion of the president of a union that was
4 decertified is not relevant to the outcome of the issues in this litigation. Subject to and
5 without waiving USAPA's objections, USAPA does not dispute that WPC SOF ¶38
6 accurately quotes a portion of the October 19, 2007, letter.

7 **WPC SOF ¶39:** On June 6, 2007, the East MEC filed an action in the D.C. District
8 Court seeking to vacate the Nicolau arbitration.

9 **RESPONSE:** Disputed that there is anything called the "D.C. District Court" or that suit
10 was filed on June 6, 2007. Not disputed that, on June 26, 2007, the US Airways MEC
11 filed a complaint against the America West MEC in the Superior Court for the District of
12 Columbia to vacate the Nicolau Award because the Award violated ALPA Merger
13 Policy, in part, by giving "windfalls (unwarranted and unexpected benefits) to the pilots
14 of America West at the expense of US Airways pilots, thereby permanently depriving US
15 Airways pilots of their career expectations, while affording gains in career promotion to
16 America West pilots which they could not have achieved absent the Award." USAPA
17 SOF ¶23, USAPA Ex. 8 (Complaint by US Airways MEC v. America West MEC).

18 **WPC SOF ¶40:** On May 7, 2008, shortly after USAPA was elected to be the bargaining
19 representative, the parties to the D.C. litigation jointly had the matter dismissed.

20 **RESPONSE:** Disputed to the extent that ¶40 purports to suggest that the action was
21 dismissed for any reason other than the fact that after USAPA was certified by the NMB
22 in April 2008 the two parties to the action—the US Airways MEC and the America West
23 MEC—ceased to exist and ALPA's constitution, bylaws and Merger Policy were no
24 longer applicable or relevant because USAPA was free to negotiate unconstrained by the
25 policies of the previous bargaining representative. USAPA SOF ¶34, USAPA Ex. 10
26 (Joint Stipulation of Dismissal).

27 **WPC SOF ¶41:** On May 16, 2007, East Pilot Stephen Bradford wrote an email letter to
28 the ALPA Executive Board announcing his intent to leave ALPA.

RESPONSE: USAPA objects and moves to strike both WPC SOF ¶41 and Mr.
Bradford's email, (Doc. 151-1 West Pilots App. 141-142), pursuant to L.R. Civ. 7.2(b)

1 and 56.1(a) on the grounds that they are irrelevant, immaterial, do not include any
2 competent evidence bearing on the issue before the Court and, in any event, WPC SOF
3 ¶41 misrepresents Mr. Bradford's email.¹ WPC SOF ¶41 and several of the following
4 paragraphs in the WPC SOF statement of facts (WPC SOF ¶¶42-44) appear to be offered
5 to show that the pilots voting for USAPA in the secret ballot election conducted by the
6 NMB did so solely out of animus for the former America West pilots. In any event, Mr.
7 Bradford's individual actions and statements have no bearing on this case or its facts and
8 the statement is taken out of context grossly distorting what Pilot Bradford wrote. The
9 full email, taken as a whole and fairly read, shows that Mr. Bradford principally objected
10 to the Company's pursuit of consolidation and its effects on pilots, who were simply
11 trying to hold on to what they had earned, and to the ALPA Merger Policy, which he
12 stated was "ill formed, deviates from over 60 years prior practice and produces bizarre
13 and unfair awards in arbitration" Mr. Bradford's mention of leaving ALPA is a
14 minor part of the email, and the full text of the email makes clear that it was Mr.
15 Bradford's dissatisfaction with ALPA's representation and ALPA's Merger Policy that

16 ¹ USAPA objects and moves to strike not just WPC SOF ¶41 but also ¶¶42-61 and part
17 of ¶62 and the evidence offered to support these fact statements pursuant to L.R. Civ.
18 7.2(b) and 56.1(a) on the grounds that they are irrelevant and immaterial because they are
19 apparently offered to support the contention of the West Pilot Class that the pilots who
20 voted for USAPA and against ALPA in the secret ballot election conducted by the
21 National Mediation Board did so for the sole reason that they opposed the Nicolau
22 Award. There were other significant issues in the campaign including that ALPA agreed
23 to three separate sets of concessions without negotiating any snap-back provision
24 restoring pay and benefits in the event US Airways later became profitable (as it did), that
25 ALPA agreed to allow US Airways to terminate the pension plan covering the US
26 Airways pilots without any adequate compensation, substitute or snap-back, that the
27 ALPA Constitution allowed the ALPA executive board to take several important actions
28 affecting working conditions without any requirement of ratification by the pilots who are
affected, and that ALPA had changed its Merger Policy to eliminate specific reference to
length of service. While USAPA acknowledges that the Nicolau Award was a significant
issue in the campaign and that likely many pilots voted against ALPA and for USAPA
because of this issue, it simply is not possible to reach any reliable conclusion on how the
pilots voted in the secret ballot election let alone to conclude that all of the pilots who
voted against ALPA and for USAPA did so because of the Nicolau Award. For these
reasons, all of these facts statements (¶¶41-61 and part of ¶62) and the supporting
evidence should be stricken.

1 prompted him to argue for a change in bargaining representative. As to the Nicolau
2 Award, Mr. Bradford closed the email by suggesting ways by which the broken ALPA
3 Merger Policy might have been fixed and at the same time allowing the Nicolau Award
4 to stand.

5 **WPC SOF ¶42:** In this email, Mr. Bradford stated that he did not want to leave ALPA
6 but that the Nicolau Award left him little choice.

7 **RESPONSE:** USAPA objects and moves to strike both WPC SOF ¶42 and Mr.
8 Bradford's email, (Doc. 151-1 West Pilots App. 141-142), pursuant to L.R. Civ. 7.2(b)
9 and 56.1(a) on the grounds that they are irrelevant, immaterial, do not include any
10 competent evidence bearing on the issue before the Court and, in any event, WPC SOF
11 ¶42 misrepresents Mr. Bradford's email. See USAPA's Response to WPC SOF ¶41 &
12 n.1, above. Subject to and without waiving USAPA's objections, USAPA disputes WPC
13 SOF ¶42 for the reasons stated in Response to WPC SOF ¶41, above.

14 **WPC SOF ¶43:** In this email, Mr. Bradford stated that it was necessary for East Pilots
15 to replace ALPA so that they could "write our own merger policy into our bylaws" and
16 "just to protect what little we have left."

17 **RESPONSE:** USAPA objects and moves to strike WPC SOF ¶43 and Mr. Bradford's
18 email, (Doc. 151-1 West Pilots App. 141-142), pursuant to L.R. Civ. 7.2(b) and 56.1(a)
19 and disputes WPSOF ¶43 for the reasons stated in USAPA's Response to WPC SOF ¶41
20 & n.1, above. Subject to and without waiving USAPA's objections, USAPA does not
21 dispute that WPC SOF ¶43 accurately quotes two phrases from Mr. Bradford's email.

22 **WPC SOF ¶44:** In this email, Mr. Bradford stated that the East Pilots' majority status in
23 a new union would enable them "to protect what they [the East Pilots] have left."

24 **RESPONSE:** USAPA objects and moves to strike both WPC SOF ¶44 and Mr.
25 Bradford's email, (Doc. 151-1 West Pilots App. 141-142), pursuant to L.R. Civ. 7.2(b)
26 and 56.1(a) and disputes WPC SOF ¶44 for the reasons stated in USAPA's Response to
27 WPC SOF ¶41 & n.1, above. Subject to and without waiving USAPA's objections,
28 USAPA does not dispute that WPSOF ¶44 accurately quotes one phrase from Mr.
Bradford's email.

WPC SOF ¶45: In June 2007, Mr. Bradford and other East Pilots formed a committee to

1 explore whether by forming and certifying a new union with a different seniority
2 objective they could prevent implementation of the Nicolau Award.

3 **RESPONSE:** USAPA objects and moves to strike WPC SOF ¶45 and the evidence cited
4 in support, (Doc. 151-2 West Pilots App. 264), pursuant to L.R. Civ. 7.2(b) and 56.1(a)
5 on the grounds that it is irrelevant, immaterial, does not include any competent evidence
6 bearing on the issue before the Court, is not supported by any admissible evidence in the
7 record and misrepresents the testimony it cites. See USAPA’s Response to WPC SOF
8 ¶41 & n.1, above. Although Pilot Bradford’s deposition is cited as support for the
9 contentions in WPC SOF ¶45, in actuality the only fact it supports is that there was a
10 committee of volunteers² who used a website called “AAApilots4fairness.com” to post
11 comments. Nothing in the deposition pages and lines cited supports the contention that
12 the committee was comprised of “East Pilots,” nor that the purpose of the committee was
13 “to explore whether by forming and certifying a new union with a different seniority
14 objective they could prevent implementation of the Nicolau Award” as alleged in WPC
15 SOF ¶45.

16 **WPC SOF ¶46:** On June 9, 2007, this committee received advice from a lawyer to take
17 care with “the language you use in setting up your new union” and not to “give the other
18 side a large body of evidence that the sole reason for the new union is to abrogate an
19 arbitration, the Nicolau award, that in the opinions of most judges, should be allowed to
20 stand due to no gross negligence or fraud.”

21 **RESPONSE:** USAPA objects and moves to strike both WPC SOF ¶46 and the evidence
22 cited in support pursuant, (Doc. 151-1 West Pilots App. 143-144; Doc. 151-2 West Pilots
23 App. 264, 271), to L.R. Civ. 7.2(b) and 56.1(a) on the grounds that it is irrelevant,
24 hearsay, immaterial, does not include any competent evidence bearing on the issue
25 before the Court and misrepresents the testimony it cites.

26 ² Mr. Bradford testified there was no formal structure to this committee, “[i]f he posted
27 on the board and called himself a committee member, he became a committee member.
28 It was a committee of the whole.” Bradford Dep, p. 159, ll 19-22.

1 See USAPA's Response to WPC SOF ¶41 & n.1, above. The source of this statement is
2 inadmissible double hearsay contained in an anonymous memorandum purporting to be
3 authored by an unnamed "aaapilots4fairness.com committee member." The
4 memorandum itself has not been attested to by any competent witness through an
5 affidavit or declaration to this Court. Moreover, it contains hearsay statements attributed
6 to an attorney with whom the writer allegedly consulted that the West Pilots submit as
7 competent fact. The other cites purporting to support WPSOF ¶46 are equally inapposite.
8 The references to Mr. Bradford's deposition merely establish that Mr. Bradford was a
9 member of a committee of volunteers who posted on the AAAPilots4fairness.com site
10 and that Mr. Bradford was among individuals who interviewed attorneys.

11 **WPC SOF ¶47:** On June 14, 2007, this group met with another law firm to inquire
12 whether "formation of a new bargaining agent" could prevent implementation of the
13 Nicolau Award. In a report of this meeting, Mr. Bradford and these other East Pilots
14 explained how they would use a new union (USAPA) to evade what they would argue
15 was ALPA's obligation to honor the Nicolau arbitration.

16 **RESPONSE:** USAPA objects and moves to strike both ¶47 and the evidence cited in
17 support, (Doc. 151-1 West Pilots App. 147-150, Doc. 151-2 West Pilots App. 268),
18 pursuant to L.R. Civ. 7.2(b) and 56.1(a) on the grounds that it is irrelevant, immaterial,
19 does not include any competent evidence bearing on the issue before the Court, hearsay,
20 not supported by any admissible evidence in the record and misrepresents the testimony it
21 cites. See USAPA's Response to WPC SOF ¶41 & n.1, above. There is nothing in the
22 document referred to that supports the contention that members of the committee of
23 volunteers met with attorneys to "to inquire whether 'formation of a new bargaining
24 agent' could prevent implementation of the Nicolau Award." The full text and context of
25 the memorandum shows the author was more concerned with the ALPA Merger Policy
26 and its impact on future mergers, including a merger of an ALPA and non-ALPA carrier.
27 Equally without support and specious are the contentions "[i]n a report of this meeting,
28

1 Mr. Bradford and these other East Pilots explained how they would use a new union
2 (USAPA) to evade what they would argue was ALPA's obligation to honor the Nicolau
3 arbitration." First, while Mr. Bradford admitted he authored the document, there is no
4 support cited for the contention that any other individuals—let alone East Pilots—were
5 involved in the creation of the document or ratified the contents authored by Mr.
6 Bradford in any respect. Second, a fair reading of the memorandum belies the contention
7 the author "explained how they would use a new union (USAPA) to evade . . . ALPA's
8 obligation to honor the Nicolau arbitration."

9 **WPC SOF ¶48:** In August 2007, USAPA's counsel provided an opinion letter that
10 USAPA published to the East Pilots, stating,

11 You have asked us to provide our legal opinion concerning whether
12 Arbitrator Nicolau's seniority integration arbitration award could be
13 overturned or otherwise modified via litigation or subsequent negotiation.
14 Federal case law supports the conclusion that any effort to overturn the
15 Nicolau award via litigation would be fruitless. By contrast, we believe
16 that a successor union would be free to negotiate with US Airways
17 concerning the terms of any seniority integration.

18 **RESPONSE:** USAPA objects and moves to strike both WPC SOF ¶48 and the evidence
19 cited in support, (Doc. 151-1 West Pilots App. 151), pursuant to L.R. Civ. 7.2(b) and
20 56.1(a) on the grounds that it is irrelevant and immaterial. See USAPA's Response to
21 WPC SOF ¶41 & n.1, above. Legal conclusions are for the Court and, in any event,
22 whether the action filed in the Superior Court for the District of Columbia would have
23 been successful is entirely speculative.

24 **WPC SOF ¶49:** During the representation election, USAPA's campaign materials gave
25 a clear message that equated ALPA (but not USAPA) with the Nicolau arbitration.

26 **RESPONSE:** USAPA objects and moves to strike both WPC SOF ¶49 and the evidence
27 cited in support, (Doc. 151-1 West Pilots App. 154-156), pursuant to L.R. Civ. 7.2(b)
28 and 56.1(a) on the grounds that it is irrelevant and immaterial. See USAPA's Response
to WPC SOF ¶41 & n.1, above. Subject to and without waiving USAPA's objections,
USAPA does not dispute that USAPA's campaign materials stated that USAPA opposed
the Nicolau Award. The cited campaign material also contrasted USAPA with ALPA in

1 stating that USAPA would provide membership ratification, simplified committee
2 structure and professional negotiators and advocated for a quality industry contract,
3 superior insurance services, aeromedical protections and no change in long term
4 disability along with dues waivers for pilots on long term disability or military leave.

5 **WPC SOF ¶50:** In the course of the representation election, East Pilots circulated
6 messages encouraging votes for USAPA including one that referred to USAPA's "goal of
7 utilizing DOH [date of hire] as the lodestar for seniority integration."

8 **RESPONSE:** USAPA objects and moves to strike both WPC SOF ¶50 and the evidence
9 cited in support, (Doc. 151-1 West Pilots App. 157-158), pursuant to L.R. Civ. 7.2(b)
10 and 56.1(a) on the grounds that it is hearsay, irrelevant, immaterial, and not supported by
11 any competent evidence bearing on the issue before the Court. See USAPA's Response
12 to WPC SOF ¶41 & n.1, above. Subject to and without waiving USAPA's objections,
13 USAPA does not dispute WPC SOF ¶50. See also response to WPC SOF ¶49, above.

14 **WPC SOF ¶51:** During the election, USAPA stated that it would negotiate for a date-of-
15 hire seniority integration rather than the Nicolau Award.

16 **RESPONSE:** USAPA objects and moves to strike both WPC SOF ¶51 and the evidence
17 cited in support, (Doc. 151-1 West Pilots App. 154-156), pursuant to L.R. Civ. 7.2(b) and
18 56.1(a) on the grounds that it is irrelevant and immaterial. See USAPA's Response to
19 WPC SOF ¶41 & n.1, above. In any event, USAPA disputes WPC SOF ¶51 because it
20 misrepresents USAPA's position, which has consistently been to maintain uniform
21 principles of seniority based upon date of hire and the perpetuation thereof, with
22 reasonable conditions and restrictions to preserve each pilot's unmerged career
23 expectations. USAPA SOF, (Doc. 153), ¶¶28, 38.

24 **WPC SOF ¶52:** In a letter to East Pilots, addressed to "Fellow US Airways Pilots" and
25 dated February 2, 2008, Stephen Bradford wrote, "the question of East West will be
26 decided by a vote for ALPA or USAPA. If USAPA becomes the bargaining agent, there
27 is no west and a simple majority can re-negotiate the Nicolau award."

28 **RESPONSE:** USAPA objects and moves to strike WPC SOF ¶52 and the evidence cited
in support, (Doc. 151-2 West Pilots App. 173), pursuant to L.R. Civ. 7.2(b) and 56.1(a)
on the grounds that it is irrelevant, immaterial, hearsay and does not include any

1 competent evidence bearing on the issue before the Court. See USAPA's Response to
 2 WPC SOF ¶41 & n.1, above. Mr. Bradford's individual actions and statements have no
 3 bearing on this case. Subject to and without waiving USAPA's objections, USAPA does
 4 not dispute that WPC SOF ¶52 accurately quotes one phrase from Mr. Bradford's letter.

5 **WPC SOF ¶53:** On December 8, 2007, USAPA's web site stated as follows:

6 Will electing a new bargaining agent enhance our ability to redress the
 inequities of the Nicolau award?

7 Yes. The Nicolau [sic] is the product of an ALPA-mandated process and
 8 ALPA is bound to defend that process. The ALPA-US Airways MEC
 9 cannot prevail in its current litigation because it voluntarily submitted to the
 10 ALPA mandated process. USAPA, however, is not bound by ALPA's
 11 Constitution and cannot be subjected to ALPA's political control. USAPA
 12 will assert its right under the Railway Labor Act to negotiate over the terms
 of any seniority integration. Under the RLA, seniority is a mandatory
 subject of bargaining.

13 **RESPONSE:** USAPA objects and moves to strike WPC SOF ¶53 and the evidence cited
 14 in support, (Doc. 151-2 West Pilots App. 164-165, 296-297), pursuant to L.R. Civ. 7.2(b)
 15 and 56.1(a) on the grounds that it is irrelevant and immaterial for the reasons stated in
 16 USAPA's Response to WPC SOF ¶41 & n.1, above. There is also no Bradford
 17 testimony at West Pilots App. 296 or 297. Subject to and without waiving USAPA's
 18 objections, USAPA does not dispute that WPC SOF 53 accurately quotes one statement
 19 that appeared on USAPA's website during the campaign. The same website also stated
 20 immediately before the quoted provision, "Nicolau is not the reason for USAPA..."
 (Doc. 151-2 West Pilots App. 164)

21 **WPC SOF ¶54:** Pursuant to ALPA Merger Policy, each MEC appointed a single Joint
 22 Negotiating Committee ("JNC") charged with negotiating a single CBA.

23 **RESPONSE:** USAPA objects and moves to strike WPC SOF ¶54 pursuant to L.R. Civ.
 24 7.2(b) and 56.1(a) on the grounds that it is irrelevant and immaterial for the reasons stated
 25 in USAPA's Response to WPC SOF ¶41 & n.1, above. USAPA also moves to strike the
 26 testimony of Douglas Dotter about the Merger Policy, (Doc. 151-2 West Pilots App.
 27 286), as hearsay and because the document and not the testimony about the document is
 28 the best evidence of what the document provides. In any event, USAPA disputes WPC

1 SOF ¶54 because it is not accurate. The America West MEC and the US Airways MEC
2 each appointed two representatives to the JNC. USAPA Exhibit 4 (ALPA Merger
3 Policy), at 12 (Section 45.N.1).

4 **WPC SOF ¶55:** Pursuant to ALPA Merger Policy, the CBA to be negotiated by the JNC
5 must be ratified by a majority of pilots in each of the two pilot groups before it can be
6 implemented.

7 **RESPONSE:** USAPA objects and moves to strike WPC SOF ¶55 and the evidence cited
8 in support pursuant to L.R. Civ. 7.2(b) and 56.1(a) on the grounds that it is irrelevant and
9 immaterial for the reasons stated in USAPA's Response to WPC SOF ¶41 & n.1, above
10 and because the testimony of Ken Stravers, (Doc. 151-2 App. 294), is hearsay and
11 because the document and not the testimony about the document is the best evidence of
12 what the document provides. In any event, USAPA disputes that ratification was
13 required by ALPA Merger Policy as in effect at the time of the merger. ALPA Merger
14 Policy nowhere discusses or requires ratification by any pilot group.

15 **WPSOF ¶56:** In May 2007, the JNC received a comprehensive CBA proposal from the
16 Airline known as the Kirby proposal.

17 **RESPONSE:** USAPA objects and moves to strike WPC SOF ¶56 and the evidence cited
18 in support, (Doc. 151-2 West Pilots App. 174-178, 287, 289), pursuant to L.R. Civ. 7.2(b)
19 and 56.1(a) on the grounds that it is irrelevant and immaterial. Subject to and without
20 waiving USAPA's objections, USAPA does not dispute WPC SOF 56.

21 **WPC SOF ¶57:** On August 10, 2007, USAPA circulated information to East Pilots
22 encouraging them to take steps to prevent implementation of the Nicolau Award by
23 refusing to ratify any CBA that might come out of the JNC negotiations.

24 **RESPONSE:** USAPA objects and moves to strike WPC SOF ¶57 and the evidence cited
25 in support, (Doc. 151-2 West Pilots App. 179-180), pursuant to L.R. Civ. 7.2(b) and
26 56.1(a) on the grounds that it is irrelevant and immaterial for the reasons stated in
27 USAPA's Response to WPC SOF ¶41 & n.1, above. In any event USAPA disputes WPC
28 SOF ¶57 because it misrepresents the evidence cited in its support. As the document
referred to makes clear, there were numerous issues in contention other than seniority
integration, including pay parity and the sufficiency of other compensation, benefits and

1 working conditions.

2 **WPC SOF ¶58:** On August 15, 2007, the East MEC formally resolved to boycott joint
3 contract negotiations: “BE IT FURTHER RESOLVED that our members of the
4 JNC will not reengage in Joint Contract Negotiations. . .”

5 **RESPONSE:** USAPA objects and moves to strike WPC SOF ¶58 and the evidence cited
6 in support, (Doc. 151-2 West Pilots App. 183, 311-312), pursuant to L.R. Civ. 7.2(b) and
7 56.1(a) on the grounds that it is irrelevant and immaterial for the reasons stated in
8 USAPA’s Response to WPC SOF ¶41 & n.1, above. Subject to and without waiving
9 USAPA’s objections, USAPA does not dispute WPC SOF 58.

10 **WPC SOF ¶59:** On August 15, 2007, the East MEC withdrew its representatives from
11 the JNC.

12 **RESPONSE:** USAPA objects and moves to strike WPC SOF ¶59 and the evidence cited
13 in support, (Doc. 151-2 West Pilots App. 295), pursuant to L.R. Civ. 7.2(b) and 56.1(a)
14 on the grounds that it is irrelevant and immaterial for the reasons stated in USAPA’s
15 Response to WPC SOF ¶41 & n.1, above. Subject to and without waiving USAPA’s
16 objections, USAPA does not dispute WPC SOF 59 except to the extent that WPC SOF
17 ¶59 refers to “the East MEC” as opposed to the “US Airways MEC.”

18 **WPC SOF ¶60:** In response to the withdrawal of the East representatives from the JNC,
19 US Airways stated: “[T]he resolution passed by the East MEC yesterday . . . states that
20 East ALPA is withdrawing from joint contract negotiations (JNC) and does not intend to
21 return unless the company immediately increases East pilot pay to West pilot rates
22 (actually their proposal goes above West pilot rates in many cases).”

23 **RESPONSE:** USAPA objects and moves to strike WPC SOF ¶60 and the evidence cited
24 in support, (Doc. 151-2 West Pilots App. 184), pursuant to L.R. Civ. 7.2(b) and 56.1(a)
25 on the grounds that it is irrelevant and immaterial for the reasons stated in USAPA’s
26 Response to WPC SOF ¶41 & n.1, above. Subject to and without waiving USAPA’s
27 objections, USAPA does not dispute WPC SOF ¶60 except to the extent that WPC SOF
28 ¶60 refers to “the East MEC” as opposed to the “US Airways MEC.”

29 **WPC SOF ¶61:** The East MEC never returned to negotiations.

30 **RESPONSE:** USAPA objects and moves to strike WPC SOF ¶61 and the evidence cited

1 in support, (Doc. 151-2 West Pilots App. 290-291, 295), pursuant to L.R. Civ. 7.2(b) and
2 56.1(a) on the grounds that it is irrelevant for the reasons stated in USAPA's Response to
3 WPC SOF ¶41 & n.1, above. Subject to and without waiving USAPA's objections,
4 USAPA does not dispute WPC SOF ¶61 except to the extent that it refers to "the East
5 MEC" as opposed to the "US Airways MEC."

6 **WPC SOF ¶62:** On January 23, 2008, the National Mediation Board certified a single
7 transportation system and a representation election followed.

8 **RESPONSE:** Not disputed.

9 **WPC SOF ¶63:** USAPA won the election.

10 **RESPONSE:** Not disputed.

11 **WPC SOF ¶64:** The National Mediation Board certified USAPA as the East and West
12 Pilots' collective bargaining representative on April 18, 2008, with Mr. Bradford
13 as its president.

14 **RESPONSE:** Disputed that the NMB said anything about "East and West Pilots." Not
15 disputed either that the NMB certified USAPA as the exclusive bargaining representative
16 on April 18, 2008, of the consolidated pilot craft at US Airways or that Mr. Bradford was
17 its provisional president at the time.

18 **WPC SOF ¶65:** In September 2008, USAPA proposed a seniority list to the Airline (the
19 "USAPA List").

20 **RESPONSE:** Disputed in part as a mischaracterization of the proposal as a "seniority
21 list." It was a proposal. Not disputed that on September 30, 2008, as set forth in USAPA
22 SOF ¶38, that as part of negotiations for a new collective bargaining agreement, USAPA
23 submitted its seniority proposal to US Airways.

24 **WPC SOF ¶66:** The USAPA List combines the existing East and West lists by date of
25 hire, making no adjustment for whether a pilot was on furlough at the time of the merger.

26 **RESPONSE:** USAPA objects that the precise details of its current proposal are not
27 properly before the Court given the decision of the Court of Appeals in *Addington*.

28 USAPA also objects and moves to strike WPC SOF ¶66 and the evidence cited in
support, (Doc. 151-2 West Pilots App. 301), pursuant to L.R. Civ. 7.2(b) and 56.1(a) on
the grounds that it does not support the statement of fact, is hearsay and because

1 USAPA's proposal is the best evidence of what the proposal provides. Subject to and
2 without waiving USAPA's objections, USAPA disputes the mischaracterization of the
3 proposal as a "USAPA List." It was a proposal. USAPA does not dispute that the
4 current USAPA proposal generally places America West pilots on the merged seniority
5 list based on their original date of hire by America West and makes no adjustment for any
6 time that any individual pilot (America West or US Airways) may have spent on furlough
7 either at the moment the merger took place or otherwise. The proposal places West pilots
8 on a merged seniority list according to their original dates of hire with America West and
9 included extensive conditions and restrictions that prevented East pilots from displacing
10 them from their customary West assignments and allowed them to bid into East flying
11 including wide body aircraft and international routes as vacancies were created as the
12 result of growth, retirements and other normal attrition among East pilots. Moreover, at
13 the time it was made, USAPA's proposal would have made 63 senior West pilots
14 immediately eligible to bid and hold wide body positions. USAPA ACF ¶ 14-15, below;
15 Second Mowrey Declaration, ¶¶19, 20; USAPA Exhibit 25.

16 **WPC SOF ¶67:** On the USAPA List, a majority of West Pilots are at or close to the
17 bottom of the list.

18 **RESPONSE:** USAPA objects that the precise details of its current proposal are not
19 properly before the Court given the decision of the Court of Appeals in *Addington*.
20 USAPA also objects and moves to strike WPC SOF ¶67 and the evidence cited in
21 support, (Doc. 151-2 West Pilots App. 301), pursuant to L.R. Civ. 7.2(b) and 56.1(a) on
22 the grounds that it does not support the statement of fact, is hearsay and because
23 USAPA's proposal is the best evidence of what the proposal provides. Subject to and
24 without waiving USAPA's objections, USAPA disputes the mischaracterization of the
25 proposal as a "USAPA List." It was a proposal. USAPA also disputes WPC SOF ¶67
26 because placing pilots from the America West seniority list on the merged seniority list
27 according to their original date of hire with America West distributes them throughout
28 the list, including making 63 senior America West pilots immediately eligible (at the time
the proposal was made in 2008) to bid and hold wide body positions. USAPA ACF ¶ 14.

WPC SOF ¶68: The USAPA List includes certain conditions and restrictions that

1 provide some protection to West Pilots.

2 **RESPONSE:** USAPA objects that the precise details of its current proposal are not
3 properly before the Court given the decision of the Court of Appeals in *Addington*.
4 USAPA also objects and moves to strike the evidence cited in support, (Doc. 151-2 West
5 Pilots App. 298-299), pursuant to L.R. Civ. 7.2(b) and 56.1(a) on the grounds that it is
6 hearsay and because USAPA's proposal is the best evidence of what the proposal
7 provides. Subject to and without waiving USAPA's objections, USAPA disputes the
8 mischaracterization of the proposal as a "USAPA List." It was a proposal. USAPA also
9 disputes WPC SOF ¶68 to the extent that WPC SOF ¶68 uses the terms "some" in
10 attempt to minimize the protection afforded by the conditions and restrictions that were
11 part of the proposal made by USAPA in September 2008. The protections afforded
12 former America West pilots are substantial and many prevent former US Airways pilots,
13 including former US Airways pilots who were formerly employed by Pacific Southwest
14 Airlines, many of whom live in the Western United States, from exercising their seniority
15 to deprive former America West pilots of their usual work assignments. USAPA ACF
16 ¶15; Second Mowrey Declaration, ¶20.

17 **WPC SOF ¶69:** The West Pilot protections in the USAPA List would disappear if the
18 Airline were to reduce the total number of pilot positions by 25% or more.

19 **RESPONSE:** USAPA objects that the precise details of its current proposal are not
20 properly before the Court given the decision of the Court of Appeals in *Addington*.
21 Subject to and without waiving USAPA's objections, USAPA disputes the
22 mischaracterization of the proposal as a "USAPA List." It was a proposal. Subject to
23 and without waiving USAPA's objections, USAPA disputes that WPC SOF ¶69
24 accurately sets forth the provisions of the proposal. USAPA does not dispute that the
25 proposal made by USAPA discussed what would happen in the event that positions
26 existing on June 1, 2008 were reduced by 75%. However, the protections did not
27 "disappear" as clearly set forth in the cited provision.

28 **WPC SOF ¶70:** The USAPA List offers no West Pilot protections against furloughs
because the Airline would implement all furloughs and recalls on a date-of-hire basis.

RESPONSE: USAPA objects that the precise details of its current proposal are not

1 properly before the Court given the decision of the Court of Appeals in *Addington*.
 2 Subject to and without waiving USAPA's objections, USAPA disputes the
 3 mischaracterization of the proposal as a "USAPA List." It was a proposal. Subject to
 4 and without waiving USAPA's objections, USAPA disputes WPC SOF ¶70 because (1)
 5 the September 2008 USAPA proposal exposes all pilots to the possibility of furlough
 6 based on their position on the merged seniority list and therefore does not identify
 7 America West pilots for selective adverse treatment in the event of a furlough and does
 8 provide for any pilot (America West or US Airways) any protection against furlough, (2)
 9 there have been many new hires since the proposal was made, US Airways is required to
 10 operate a guaranteed minimum amount of flying under the Transition Agreement, and
 11 any furlough of pilots on either seniority list at the time the merger was announced in
 12 2005 is extremely unlikely and (3) the September 2008 USAPA proposal continues to be
 13 subject to amendment, modification and revision based on discussion with all pilots
 14 concerning additional protection necessary and appropriate to protect their pre-merger
 15 expectations.

15 **WPC SOF ¶71:** USAPA's constitution includes a commitment "to maintain uniform
 16 principles of seniority based on date of hire and perpetuation thereof, with reasonable
 17 conditions and restrictions to preserve each pilot's un-merged career expectations."

18 **RESPONSE:** Not disputed that WPC SOF ¶71 accurately quotes one provision of the
 19 USAPA Constitution.

20 **WPC SOF ¶72:** USAPA officers consider themselves "bound" by the USAPA
 21 constitution never to implement the Nicolau Award.

22 **RESPONSE:** Not disputed.

23 **WPC SOF ¶73:** USAPA officers express the view that USAPA will only negotiate for
 24 and agree to a CBA that does not implement the Nicolau Award:

25 (a) A September 25, 2010, update from the Charlotte domicile stated "Our
 26 goal to ratify a contract that ensures a date-of-hire seniority solution with
 27 conditions and restrictions that protect all US Airways pilots is a USAPA
 28 Constitutional mandate."

(b) This Update also states: "Beyond the obvious seniority issues we must
 realize that we all have a common purpose and cause. That purpose is

1 stated clearly above, an industry standard contract that contains a fair and
2 equitable date-of-hire seniority solution that protects the entire US Airways
Pilot Group.”

3 (c) A report from Bill McKee, the Charlotte Domicile Chairman, “[r]e-
4 emphasized our goals of a contract with seniority resolved with reasonable
5 conditions and restrictions, and contrasted them to the distractions.
6 Mentioned unfortunate efforts by some pilots to try to prevent a contract
because it won't have the Nicolau.”

7 (d) The minutes from a meeting of the USAPA Charlotte domicile reflect
8 that on March 31, 2011, USAPA President Michael Cleary “[a]ssured the
9 audience that we will not be distracted from our focus on our goals of
10 completing a contract, fixing seniority and leaving the union in a place to
operate after present leadership is gone.”

11 (e) The minutes from a meeting of the USAPA Charlotte domicile also
12 reflect that on March 31, 2011, USAPA Vice President Randy Mowrey
13 “reminded everyone why we are fighting this battle and that we should
never forget to remember the core values of seniority.”

14 (f) Former counsel for USAPA stated that USAPA will never
15 voluntarily implement the Nicolau Award.

16 **RESPONSE:** USAPA acknowledges that it is firmly opposed to the Nicolau list because
17 it is fundamentally unfair, fails to preserve each pilot’s pre-merger career expectations
18 and confers on America West pilots “windfall” promotions at the expense of US Airways
19 pilots. The specific statements in WPC SOF ¶73 are therefore irrelevant and hearsay and
20 it is not necessary for USAPA to respond to each statement in WPC SOF ¶73
21 individually.

22 **USAPA’s STATEMENT OF ADDITIONAL CONTROVERTING FACTS**

23 1. At the time the merger was announced in May 2005, America West was about
24 to file its own petition for reorganization under the Bankruptcy Code and was able to
25 avoid that filing because of the merger. Second Mowrey Declaration, ¶9.

26 2. The Plan of Reorganization approved by the Bankruptcy Court was the result
27 of an agreement by America West and US Airways to merge. Second Mowery
28 Declaration, ¶10.

3. The Transition Agreement was negotiated by the airline parties with ALPA

1 prior to submitting the Plan to the Bankruptcy Court for approval, and the unexecuted
2 Transition Agreement was an exhibit to the Plan submitted to the Bankruptcy Court for
3 approval. Findings of Fact, Conclusions of Law and Order Under 11 U.S.C. §§ 1129(a)
4 and (b) and Fed. R. Bankr. P. 3020 Confirming the Joint Plan of Reorganization of US
5 Airways, Inc. and Its Affiliated Debtors and Debtors-In-Possession, US Airways, Inc.,
6 Debtor, Case No. 04-13819-SSM (Bankr. E.D. Va. Sept. 16, 2005), Doc. 3193, Ex. D.

7 4. The Plan of Reorganization was confirmed by the Bankruptcy Court on
8 September 16, 2005. Findings of Fact, Conclusions of Law and Order Under 11 U.S.C.
9 §§ 1129(a) and (b) and Fed. R. Bankr. P. 3020 Confirming the Joint Plan of
10 Reorganization of Us Airways, Inc. and Its Affiliated Debtors and Debtors-In-Possession,
11 US Airways, Inc., Debtor, Case No. 04-13819-SSM (Bankr. E.D. Va. Sept. 16, 2005),
12 Doc. 3193.

13 5. Article XVIII of the ALPA Constitution in effect at the time of the merger
14 between America West and US Airways provides:

15 **SECTION 1 - COLLECTIVE BARGAINING**

16 Conference or negotiations shall not be initiated, carried on, or concluded
17 in the name of ALPA by any member, group, or groups of members thereof
18 to make or establish employment agreements relating to rates of pay, rules,
19 or other conditions of employment, or any other agreements, contracts, or
20 documents of a similar or related character, or any other form of
21 agreements, contracts, or documents without the prior approval of the
22 President. Any and all agreements, contracts, or documents of any and
23 every character whatsoever shall not become effective, binding or operative
24 unless and until they bear the signature of the President.

25 Second Mowrey Declaration, ¶11.

26 6. At the time of the merger between America West and US Airways, many of the
27 1,894 pilots on the America West Seniority list were not actively flying because of
28 disability, military service, assignment as check airmen and other reasons. Second
Mowrey Declaration, ¶12.

7. ALPA's merger policy can be changed or amended by majority vote of the
ALPA Executive Board. Ratification is no required and USAPA is not aware of any
change that was ratified by the pilots affected. Second Mowrey Declaration, ¶13.

1 8. ALPA's Executive Board has amended the ALPA Merger Policy from time to
2 time. Second Mowrey Declaration, ¶14.

3 9. The ALPA Merger Policy in effect at point prior to the version of the Policy in
4 effect at the time of the merger between America West and US Airways provided in part:

5 Merger representatives should, WHEN POSSIBLE, USE CONDITIONS
6 AND RESTRICTIONS SO AS TO ACCOMPLISH SENIORITY LIST
INTEGRATION BASED ON DATE OF HIRE, KEEPING IN MIND

7 THE FOLLOWING PRIMARY GOALS:

8 a. PRESERVE JOBS.

9 b. AVOID WINDFALLS TO EITHER GROUP AT THE EXPENSE OF
10 THE OTHER.

11 c. MAINTAIN OR IMPROVE PRE-MERGER PAY AND
12 STANDARD OF LIVING.

13 d. MAINTAIN OR IMPROVE PRE-MERGER PILOT STATUS.

14 e. MINIMIZE DETRIMENTAL CHANGES TO CAREER
15 EXPECTATIONS. STATEMENT OF INTENT - Paragraph E.4
16 (45.01.02) The intent of this section is a preference for the use of
17 conditions and restrictions to balance the equities brought to a merger,
18 with seniority list integration based on date of hire. This preference is
19 not, however, to be construed as a prejudice implying that either
20 merger representatives or an arbitrator should sacrifice equity in order
21 to preserve date of hire seniority list integration. The application of
this section should not preclude the consideration or use of any
integration method which could balance the equities brought to a
merger.

22 Second Mowrey Declaration, ¶15.

23 10. After the dispute over the Nicolau Award ALPA again amended the Merger
24 Policy LPA Merger Policy effective April 30, 2009 (USAPA Ex. 11). This new version
25 provided (Section 45.C.4.e):

26 e. The merger representatives shall carefully weigh all the equities
27 inherent in their merger situation. In joint session, the merger
28 representatives should attempt to match equities to various methods
of integration until a fair and equitable integrated seniority list is

1 reached. Factors to be considered in constructing a fair and equitable
2 integrated seniority list, in no particular order and with no particular
weight, shall include but not be limited to the following:

- 3 ● Career expectations.
- 4 ● Longevity.
- 5 ● Status and category.

6 Second Mowrey Declaration, ¶16.

7 11. The lawyers involved in representing the America West Merger
8 Committee and the US Airways Merger Committee in the proceedings that led to
9 the Nicolau Award were hired by the America West MEC and the US Airways
10 MEC. Second Mowrey Declaration, ¶17.

11 12. The position taken by the US Airways Merger Committee in the ALPA
12 Merger Proceeding was that pre-merger US Airways pilots were entitled to be placed on
13 the integrated list based on their length of service with US Airways, with a series of
14 conditions and restrictions that would protect America West pilots from being displaced
15 from their positions even by US Airways pilots who would be placed higher on the
16 integrated list. Second Mowrey Declaration, ¶ 18.

17 13. ALPA delivered the Nicolau list to US Airways on December 19, 2007. This
18 was done at a time when the US Airways MEC had demanded that ALPA reject list,
19 while the lawsuit filed by the US Airways MEC to vacate the Nicolau Award was being
20 litigated and while the application filed by USAPA to replace ALPA as the bargaining
21 representative was being processed. Many pilots believed that at least part of the purpose
22 for having US Airways accept the list was to attempt to persuade pilots, particularly
23 pilots employed by US Airways before the merger, that it would be futile for them to
24 choose USAPA instead of ALPA. Second Mowrey Declaration, ¶ 8.

25 14. At the time it was made in September 2008, USAPA's seniority proposal, if
26 immediately implemented, would have made 63 senior West pilots eligible to bid and
27 hold wide body Captain positions. Second Mowrey Declaration, ¶ 19.

28 15. The conditions and restrictions that were part of the USAPA seniority

CERTIFICATE OF SERVICE

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I hereby certify that on February 21, 2012, 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

Marty Harper
Kelly J. Flood
Andrew S. Jacob
Katherine V. Brown
Polsinelli & Shughart, PC
CityScape
One East Washington St., Ste. 1200
Phoenix, AZ 85004

Attorneys for West Pilot Class

s/J. Kroll