

FILED

SUPERIOR COURT OF NORTH CAROLINA  
GENERAL COURT OF JUSTICE DIVISION 07  
MECKLENBURG COUNTY

14-CVS-00577

US AIRLINE PILOTS ASSOCIATION,

*Plaintiff,*

v.

ROGER VELÉZ, on behalf of himself and all  
similarly situated former America West Pilots,  
and LEONIDAS, LLC,

*Defendants.*

COMPLAINT FOR  
DECLARATORY  
JUDGMENT

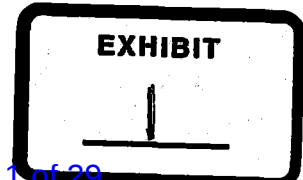
Plaintiff US AIRLINE PILOTS ASSOCIATION (hereinafter "USAPA"), respectfully  
alleges as follows:

INTRODUCTION

Parties

1. Plaintiff USAPA is a private, unincorporated non-profit association existing and operating under the laws of North Carolina, and which formerly operated as a labor organization representing the pilots of US Airways. USAPA has its principal place of business located at 200 E. Woodlawn Road, Suite 250, Charlotte, North Carolina, 28217.

2. Upon information and belief, defendant Roger Velez is a pilot and a former or current employee of US Airways. Defendant Velez is also a member of the certified class of plaintiffs in *Addington, et al. v. US Airline Pilots Ass'n, et al.*, Case No. 2:13-CV-00471-PGR, defined as "[a]ll pilots who are on the America West seniority list currently incorporated into the West Pilot's collective bargaining agreement."



3. Defendant Velez was a named plaintiff and representative of the certified class of plaintiffs in *Addington, et al. v. US Airline Pilots Ass'n, et al.*, Case No. 2:13-CV-00471-ROS, defined as “[a]ll pilots who are on the America West seniority list currently incorporated into the West Pilot’s collective bargaining agreement.” Doc. 305. Defendant Velez was a named defendant and representative of the certified class of defendants in *US Airways, Inc. v. Addington, et al.*, Case No. 2:10-cv-01570-ROS, defined as “[a]ll pilots employed by the airline US Airways in September 2008 who were on the America West seniority list on September 20, 2005.” Doc. 125, Order at 10. Defendant Velez was a named plaintiff and representative of the certified class of plaintiffs in *Addington, et al. v. US Airline Pilots Ass'n, et al.*, Case No. 2:08-cv-01633-NVW, defined as “[a]ll pilots employed by the airline US Airways in September 2008 who were on the America West seniority list on September 20, 2005.” Doc. 248.

4. Numerous individuals comprising the putative class are members of USAPA.

5. Upon information and belief, Defendant Velez, or persons acting in concert with him with his approval and/or at his behest, solicited US Airways pilots who are domiciled in North Carolina to participate in and help finance the litigation set out above.

6. Upon information and belief, Defendant Leonidas is an Arizona limited liability corporation, formed by certain West Pilots in 2007, principally for the purpose of funding litigation against USAPA.

7. Upon information and belief, Defendant Leonidas solicited US Airways pilots who are domiciled in North Carolina to participate in and help finance the litigation set out above.

#### **JURISDICTION AND VENUE**

8. Jurisdiction is proper in this Court under N.C. Gen. Stat. (“NCGS”) §§1-253, 1-254 (“Declaratory Judgment Act”).

9. A dispute exists between the parties requiring clarification and settling of the parties' rights. A declaratory judgment by this Court will afford the parties relief from the uncertainty, insecurity, potential ongoing liability, and controversy giving rise to this action, which it is practically certain will result in future litigation without an order by this Court.

10. Venue is proper in this Court because USAPA's principal place of business is in Mecklenburg County, North Carolina. NCGS §59B-13.

11. Pursuant to NCGS Section 1-253, *et seq.*, and Rules 23 and 57 of the North Carolina Rules of Civil Procedure, plaintiff USAPA brings this action against Defendant Velez, on behalf of himself and all similarly situated former America West Pilots, and Leonidas, LLC (collectively "Defendants") for a declaratory judgment.

12. This action seeks declaratory relief with respect to certain actions that have been taken by the National Officers of USAPA that are provided for in the USAPA Constitution and Bylaws that are likely to be challenged by Defendants through litigation based upon Defendants' statements and past actions.

13. It is important for these issues to be resolved as the uncertainty and threat of ongoing legal actions and potential liability arising from decisions and actions taken by the National Officers will adversely impact USAPA's ability to protect and promote the interests of the pilots of the former US Airways as provided for in its Constitution and Bylaws and by operation of law.

14. There has been a long history of contentious litigation brought by dissident US Airways pilots who had formerly been employed by America West Airlines, Inc. (the "West Pilots") before the 2005 merger of US Airways and America West that resulted in a single airline known as US Airways. Defendant Velez, among several other individual class representatives,

assisted and supported by Defendant Leonidas, initiated two lawsuits – both ultimately dismissed -- alleging USAPA has breached its duty of fair representation to its members.

15. By letter dated September 12, 2014 addressed to USAPA and its National Officers, Defendant Velez, writing on behalf of himself and the previously certified West Pilot class, demanded that USAPA take certain actions, including, but not limited to (a) immediate dissolution of USAPA and (b) making an immediate distribution of USAPA assets, both of which actions a majority of the National Officers, acting within their authority under the USAPA Constitution and Bylaws, refused to take. (A true copy of the September 12, 2014 letter is annexed hereto as Exhibit “A”)

16. In an update dated June 18, 2014, Defendant Leonidas threatened yet another lawsuit against USAPA based upon its view of USAPA’s obligations to its members, including distribution of its assets, in the event that USAPA is decertified as the exclusive bargaining representative of the pilots of the former US Airways (which was then anticipated and has since come to pass, as set forth below).

17. USAPA’s Constitution and Bylaws provide for USAPA’s dissolution on grounds that include, as is relevant here, a representational vote resulting in its decertification by the National Mediation Board (“NMB”).

18. USAPA’s Constitution and Bylaws further provide, in the event of dissolution, that all assets shall be liquidated, and such assets, less any debts, shall be returned to its members in good standing.

19. USAPA’s Constitution and Bylaws also provide that dissolution of USAPA shall be deferred if a majority of the National Officers of USAPA determine “existing circumstances present, or may present in the future, the need for collective legal action on behalf of the pilot group,

including, but not limited to representation in seniority integration proceedings.” USAPA Constitution and Bylaws, Article I, Section 3.C, a true and correct excerpts of which are annexed hereto as Exhibit “B.”

20. USAPA’s Constitution and Bylaws further provide that in the event the commencement date of dissolution of USAPA is deferred and available funds exceed the expected costs of collective legal representation, the National Officers have the authority to determine whether excess monies should be distributed as set forth in the Constitution and Bylaws.

21. On September 16, 2014, the National Officers (President, Vice President, Secretary-Treasurer, Executive Vice President) unanimously decided to defer the commencement date of dissolution of USAPA and further determined that due to the unknown costs of collective legal action, including seniority integration proceedings, there would be no interim distribution of any monies at this time.

22. On September 4, 2014, the USAPA Board of Pilot Representatives (“BPR”), the governing body of USAPA, passed resolutions urging the National Officers to defer the commencement date of dissolution of the Association in the event of decertification and further urging the National Officers to defer distributing any assets of the Association at this time.

23. These actions are contrary to the demands of Defendants, as stated in, among other places, Defendant Velez’s September 12, 2014 letter and the June 18, 2014 Leonidas update.

24. Given Defendants’ demands, prior actions and history of litigation, the potential for on-going liability, and the unlikelihood of a non-judicial resolution, it is practically certain Defendants will commence another lawsuit against USAPA, *inter alia*, challenging the determination to defer dissolution and distribution of USAPA assets at this time.

25. USAPA asserts the validity and enforceability of the provisions of its Constitution and Bylaws authorizing the duly elected National Officers to defer the dissolution of USAPA and continue the organization as an unincorporated nonprofit association where “existing circumstances present, or may present in the future, the need for collective legal action on behalf of the pilot group, including, but not limited to, representation in seniority integration” and to defer any distribution of monies at this time. USAPA Constitution and Bylaws, Article I, Section 3.

26. USAPA seeks a declaratory judgment, including, but not limited to, an order declaring that the National Officers’ decision to defer dissolution upon USAPA’s decertification and their decision to defer distribution of USAPA’s assets at present, were proper, valid, and enforceable exercises of their authority under USAPA’s Constitution and Bylaws.

#### **CLASS ACTION ALLEGATIONS**

27. Rule 23 of the North Carolina Rules of Civil Procedure provides that “[i]f persons constituting a class are so numerous as to make it impracticable to bring them all before the court, such of them, one or more, as will fairly insure the adequate representation of all may, on behalf of all, sue or be sued.” Accordingly, class actions against a class of defendants are permitted under Rule 23. *See Crow v. Citicorp Acceptance Co., Inc.*, 319 N.C. 274, 286 (1987) (“Moreover, the precise historic purpose of class actions has been to permit claims by many plaintiffs or against many defendants to be brought and resolved in one action.); *see also Crowell v. Chapman*, 306 N.C. 540 (1982) (Action against a class of defendants pursuant to Rule 23.).

28. USAPA brings this action against Defendant Velez in his individual capacity and as a representative of all similarly situated persons.

29. The defendant class (the “West Pilot Class”) is defined as “All pilots employed by US Airways/American Airlines on September 16, 2014 who were on the America West seniority list on September 20, 2005.”

30. The West Pilot Class includes approximately 1,600 individuals, and as such, the class is so numerous that joinder of all such persons is impracticable.

31. The West Pilot Class is the same class certified as the plaintiff class in *Addington, et al. v. US Airline Pilots Ass’n, et al.*, Case No. 2:13-CV-00471-ROS, and *Addington, et al. v. US Airline Pilots Ass’n, et al.*, Case No. 2:08-cv-01633-NVW, and certified as the defendant class in *US Airways, Inc. v. Addington, et al.*, Case No. 2:10-cv-01570-ROS.

32. There exist common questions of law and fact affecting the West Pilot Class.

33. Defendant Velez was one of the individually named plaintiffs and class representatives of the certified class of plaintiffs in *Addington, et al. v. US Airline Pilots Ass’n, et al.*, Case No. 2:13-CV-00471-ROS, and *Addington, et al. v. US Airline Pilots Ass’n, et al.*, Case No. 2:08-cv-01633-NVW, and individually named defendants and representatives of the certified class of West Pilots in *US Airways, Inc. v. Addington, et al.*, Case No. 2:10-cv-01570-ROS.

34. In his letter dated September 12, 2014, Defendant Velez relied upon these prior class representative certifications as grounds to demand that USAPA take certain actions on behalf of all members of the previously designated West Pilots Class and, on said basis, he cannot deny he will fairly and adequately represent the interests of all members of the class.

35. Upon information and belief, no conflict of interest exists between Defendant Velez and members of the class.

36. Upon information and belief, Defendant Velez has a genuine personal interest in the outcome of this action.

37. USAPA's claims against Defendant Velez with respect to the validity of the National Officers' determination to defer dissolution of USAPA and distribution of USAPA assets are typical of the claims against the West Pilot Class as a whole.

38. There exist common questions of law and fact affecting the West Pilot Class that predominate over questions of law and fact affecting only individual class members.

39. Material questions of law and fact arising in this action that are common to Defendants and members of the West Pilot Class include, but are not limited to, the following:

- a) The validity of the determination by the National Officers that there is a need for collective legal action on behalf of the pilots of the former US Airways, such that their decision to defer dissolution was a proper, valid, and enforceable exercise of their constitutional authority, and consistent with USAPA's Constitution and Bylaws;
- b) The validity of the National Officers' decision to defer distribution of USAPA's assets to members during the dissolution deferral period until, in the sole discretion of the National Officers, the need for current and/or future collective legal action no longer exists and dissolution is no longer deferred.

#### **NOTICE TO CLASS MEMBERS**

40. As soon as practicable after the filing of this action, the following actions will be taken to provide notice of the pendency of this action to the West Pilot Class:

1. Notice of the filing of this action will be posted on the public side of the USAPA website and a copy of the complaint will be posted in the legal library; and
2. Notice of the filing of this action and a copy of the complaint herein by email to all pilots domiciled in Phoenix who have registered email addresses with USAPA to receive updates (as of the date hereof, 872 pilots).



## FACTS

41. In May 2005, US Airways and America West agreed to merge to become a single airline known as US Airways.

42. At the time of the merger, the pilots employed by both US Airways and America West were represented for the purpose of collective bargaining by the Air Line Pilots Association ("ALPA").

43. Seniority list integration of the pilots of US Airways and America West went to arbitration and resulted in an award known as the "Nicolau Award".

44. In 2007, USAPA was formed as a non-profit association pursuant to North Carolina law.

45. On April 18, 2008, USAPA was certified by the NMB to replace ALPA as the certified bargaining representative of the pilots of US Airways to provide representation of the pilots of the US Airways for purposes of collective bargaining and administration and enforcement of the collective bargaining agreement.

46. By virtue of said certification, until its decertification by the NMB, USAPA was a labor organization within the meaning of the Railway Labor Act.

47. ALPA's replacement by USAPA arose out of, *inter alia*, dissatisfaction with ALPA's merger policy that resulted in a manifestly unfair seniority list integration (i.e. the Nicolau Award) that failed to include longevity as a factor in arriving at the list.

48. USAPA's Constitution and Bylaws provide that one of USAPA's objectives is "[t]o maintain uniform principles of seniority based on date of hire and the perpetuation thereof, with reasonable conditions and restrictions to preserve each pilot's un-merged career expectations." USAPA Constitution and Bylaws, Article 1, Section 8.

49. The USAPA Constitution and Bylaws was first filed with the United States Department of Labor in January 2008 and was last amended in October, 2008.

50. As of the date of this filing, there are approximately 5,100 members of USAPA comprised of pilots employed by former US Airways. Not all pilots employed by US Airways are members of USAPA.

51. By virtue of its decertification and concomitant lack of representative status of the US Airways pilots, as of September 16, 2014, USAPA is no longer a labor organization within the meaning of the RLA. At all times herein, irrespective of its status as a labor organization, USAPA was and is a non-profit association pursuant to North Carolina law.

Merger of US Airways and American

52. Article I, Section 3 of the USAPA Constitution and Bylaws, entitled "Duration and/or Dissolution," provides as follows:

A. The duration of USAPA shall be perpetual, or until dissolved as provided for in this Constitution and Bylaws. Subject to the deferral provisions of paragraphs B. and C. of this section, in the event of dissolution of the Association, the officers of USAPA shall act as agents for the membership and dispose of all of the physical assets of the Association by suitable means. All assets shall be liquidated and, less any indebtedness, shall then be prorated to the active members in good standing of USAPA as of the time of such dissolution in proportion to the monies paid by each such member in the twelve (12) months immediately preceding dissolution.

B. Dissolution of the Association may be affected through a representation vote conducted by the National Mediation Board (NMB) in accordance with the Railway Labor Act (RLA) that results in the Association's certification being extinguished or pursuant to a two-thirds vote of the Board of Pilot Representatives subsequently ratified in accordance with Article XI, Paragraph D. of this Constitution and Bylaws. In either case, the commencement of dissolution is subject to the deferral provisions of C. of this section.

C. Within three (3) business days of either the NMB decision or membership vote triggering dissolution (hereinafter, the "commencement date"), the National Officers shall make a determination as to whether existing circumstances present, or may present in the future, the need for collective legal action on behalf of the pilot group, including, but not limited to, representation in seniority integration proceedings. In the event the majority of the National Officers determine that such a need exists, the dissolution commencement date will be deferred until, in the judgment of a majority of the National Officers, the need for collective legal representation no longer exists. If, in the judgment of a majority of the National Officers, available funds exceed the expected costs of collective legal representation, the excess monies may be distributed in accordance with paragraph A of this section. The President shall break any tie votes among the National Officers.

D. Notwithstanding any other provision in the Constitution and Bylaws, the full operating authority of USAPA shall reside with the National Officers as of the dissolution commencement date indicated in Paragraph A of this section. The President or the Acting President shall appoint an individual who was an active member as of the commencement date to fill any vacancies arising among the National Officers after the commencement date.

Exhibit "A".

53. In recognition of the fact that USAPA was an organization created and maintained to represent only one group of employees (and, consequently, that a merger with a larger airline could potentially result in USAPA's decertification as representative of that group), the drafters of the Constitution and Bylaws provided for specific dissolution procedures to be followed in the event of a loss of NMB certification.

54. The above dissolution language takes into account the fact that airline industry mergers often result in drawn out and contentious proceedings to integrate the pre-merger airline pilot seniority lists that would long survive USAPA's decertification as the bargaining representative in the event of a merger with an airline with a larger pilot workforce and allows the National Officers of USAPA to defer the commencement date of dissolution of USAPA and to

continue the organization for the purpose of representing the interests of former US Airways pilots in collective legal actions, including seniority integration proceedings.

55. In April 2012, US Airways announced its intention to pursue a merger with American Airlines.

56. In February 2013, USAPA, US Airways, American, and the Allied Pilots Association (“APA”) (the union representing the American pilots), entered into a four-party Memorandum of Understanding regarding a Contingent Collective Bargaining Agreement (“MOU”).

57. The merger closed on December 9, 2013, which was also the Effective Date of the MOU.

58. As a result of the merger closing, US Airways and American began integrating the operations of the two airlines.

59. Consistent with the MOU, in or about January 2014, APA filed a request with the NMB for a determination as to the single carrier status of New American Airlines (the post-merger airline).

60. On or August 8, 2014, the NMB issued its finding that US Airways and American are operating as a single carrier.

61. On September 16, 2014, the NMB certified APA as the exclusive bargaining representative of the class or craft of pilots of New American Airlines.

62. Such certification is an event that can give rise to dissolution under the USAPA Constitution and Bylaws. *See* Article I, Section 3.

63. Consistent with the MOU, APA will commence or re-commence negotiations for a Joint Collective Bargaining Agreement (“JCBA”) to be completed no later than 30 days post certification.

64. Consistent with the MOU, seniority integration cannot commence until the JCBA is completed.

65. Consistent with the MOU, seniority integration cannot commence until the JCBA is completed.

66. On September 16, 2014, a majority of the USAPA National Officers determined to defer the commencement date of the dissolution of USAPA, finding that existing circumstances present, or may present in the future, the need for collective legal action on behalf of the pilot group, including seniority integration proceedings. In addition and at the same time, the National Officers determined that it would be imprudent to make a distribution of the assets of the Association, in whole or part, to “members in good standing”, as provided for in subdivision A of Section 3 of Article I of the USAPA Constitution and Bylaws. The National Officers’ statement issued with respect to these determinations is set forth hereto as Exhibit “C” hereto.

#### Current Case and Controversy

67. The dissolution provisions of the USAPA Constitution and Bylaws are clear and unambiguous, and a permissible exercise of the power provided to an unincorporated nonprofit association to govern its internal affairs pursuant to its formative documents.

68. The specific provisions in the USAPA Constitution and Bylaws unquestionably provide the National Officers of USAPA with the sole discretion to (a) determine whether or not to defer dissolution, and (b) determine whether or not to distribute excess monies (i.e. monies the

National Officers estimate will not be needed for current or future collective legal action) to the pilots in the interim notwithstanding the deferred dissolution commencement date.

69. As set out above, there are various ongoing legal proceedings in which USAPA is either a named party on behalf of the US Airways pilots or otherwise represents the interests of the pilots of US Airways. See Exhibit "C" hereto.

70. On September 5, 2014, the USAPA BPR approved an agreement with APA, US Airways, and American, known as the Seniority Integration Protocol Agreement ("Protocol Agreement"), which addresses various procedures to be used to integrate the seniority lists of the pilots of the pre-merger US Airways and American.

71. Even after its decertification, the USAPA Merger Committee will continue to exist in that, *inter alia*, the Protocol Agreement provides that the USAPA Merger Committee will remain a party and the USAPA Merger Committee exists only by and through USAPA.

72. The Protocol Agreement provides that, "Nothing in this Protocol Agreement shall be deemed to modify or supersede any provision of the governing document of any party existing as of the effective date of this Seniority Integration Protocol Agreement that governs the relationship between a party and a Merger Committee which it has established."

73. In proceedings in which USAPA is the defendant there is the potential for USAPA to be liable for damages; in the *Addington* matter alone, the damages demanded by plaintiffs exceed three million dollars. In all cases in which USAPA is a party, USAPA will incur costs and attorneys' fees.

74. Additionally, USAPA has outstanding obligations to vendors, service providers, and other creditors.

75. As per his letter dated September 12, 2014, Defendant Velez, on behalf of the West Pilot Class, sets forth his opposition to the decision of the National Officers to defer dissolution of the Association as well as their decision to defer distribution of the assets of USAPA at this time.

76. As per his letter dated September 12, 2014, Defendant Velez, on behalf of the West Pilot Class, demands that USAPA take other actions that have not been taken and/or will not be taken by the National Officers or USAPA, including, *inter alia*, that USAPA separately fund participation by the West pilots in the Preliminary Arbitration.

77. As per his letter dated September 12, 2014 and his prior involvement in litigation against USAPA as detailed herein, and as supported and financed by Defendant Leonidas, it is substantially likely that Defendant Velez, on behalf of the West Pilot Class, again supported and financed by Leonidas, will initiate legal proceedings to obtain the demands set forth in his September 12, 2014 letter.

78. Additionally, as noted above, in a June 18, 2014 Leonidas update, Defendant Leonidas threatened another lawsuit against to compel USAPA to make an immediate distribution of the assets of the Association, contrary to the determination of the National Officers and the obligations of USAPA.

#### **FIRST CLAIM FOR RELIEF**

#### **DECLARATORY JUDGMENT (NCGS § 1-253, et seq.) FOR A DECLARATION THAT THE NATIONAL OFFICER'S DECISION TO DEFER DISSOLUTION UPON USAPA'S LOSS OF NMB CERTIFICATION WAS WITHIN THEIR CONSTITUTIONAL AUTHORITY AND CONSISTENT WITH THE USAPA CONSTITUTION AND BYLAWS**

79. USAPA repeats and realleges the allegations in paragraphs 1-78, inclusive, as if set forth fully herein.

80. NCGS § 1-253 provides that “[c]ourts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed. . . The declaration may be either affirmative or negative in form or effect; and such declarations shall have the force and effect of a final judgment or decree.”

81. USAPA seeks a declaratory judgment declaring the validity of the determination by the National Officers that there is a need for collective legal action on behalf of the pilots of the former US Airways, such that their decision to defer the commencement of the dissolution date was a proper, valid, and enforceable exercise of their constitutional authority and consistent with the Constitution and Bylaws of USAPA and consistent with the seniority integration provisions of the MOU.

82. USAPA also seeks an order enjoining defendants from instituting legal action in this or another jurisdiction challenging the deferral of dissolution and continued existence of USAPA.

83. The uncertainty, insecurity, threat of ongoing liability, and controversy surrounding the decision of the National Officers to defer dissolution interferes with USAPA’s constitutional mandate to pursue collective legal action and from fulfilling its responsibilities in advocating on behalf of the interests of all US Airways pilots.

84. USAPA is aggrieved by the uncertainty and unavoidable threat of litigation and ongoing liability.

85. USAPA thus seeks a declaration as to whether USAPA’s deferral of the commencement date of dissolution was proper, valid, and enforceable in order to: eliminate the uncertainty surrounding USAPA’s ability to continue to represent the interests of the former US Airways pilots in collective legal action, including seniority integration proceedings and eliminate the threat of ongoing liability.



**SECOND CLAIM FOR RELIEF**

**DECLARATORY JUDGMENT (NCGS § 1-253, et seq.)**  
**FOR A DECLARATION THAT THE NATIONAL OFFICER'S DECISION TO DEFER**  
**DISTRIBUTION OF ASSETS TO ITS MEMBERS UPON USAPA'S LOSS OF NMB**  
**CERTIFICATION WAS WITHIN THEIR CONSTITUTIONAL AUTHORITY AND**  
**CONSISTENT WITH THE CONSTITUTION AND BYLAWS**

86. USAPA repeats and realleges the allegations in paragraphs 1-85, inclusive, as if set forth fully herein.

87. NCGS § 1-253 provides that “[c]ourts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed. . . The declaration may be either affirmative or negative in form or effect; and such declarations shall have the force and effect of a final judgment or decree.”

88. USAPA seeks a declaratory judgment declaring the validity of the National Officers’ decision to defer asset distribution once dissolution was deferred, as a proper, valid, and enforceable exercise of their constitutional authority and consistent with the Constitution and Bylaws of USAPA.

89. USAPA also seeks an order enjoining Defendants from instituting legal action in this or another jurisdiction: (a) challenging the deferral of distribution of its assets; and (b) seeking distribution of assets during the deferral period.

90. The uncertainty, insecurity, threat of ongoing liability, and controversy surrounding the decision of the National Officers to defer distribution of USAPA’s assets interferes with USAPA’s constitutional mandate to pursue collective legal action and from fulfilling its responsibilities in advocating on behalf of the interests of all US Airways pilots.

91. USAPA is aggrieved by the uncertainty and unavoidable threat of litigation and ongoing liability.

92. USAPA thus seeks a declaration as to whether USAPA's deferral of asset distribution to its members in was proper, valid, and enforceable in order to eliminate the uncertainty surrounding USAPA's ability to continue to represent the interests of the former US Airways pilots in collective legal action, including seniority integration proceedings and eliminate the threat of ongoing liability.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff USAPA demands judgment against defendants, and respectfully requests the Court, as appropriate:

- (a) Issue an order declaring the validity of the determination by the National Officers that there exists a need for collective legal action on behalf of US Airways pilots, such that their decision to defer dissolution was a proper, valid, and enforceable exercise of their constitutional authority, and consistent with the Constitution and Bylaws of USAPA;
- (b) Issue an order declaring the validity of the National Officers' decision to defer distribution of assets once dissolution was deferred as a proper, valid, and enforceable exercise of their constitutional authority and consistent with the Constitution and Bylaws of USAPA;
- (c) Issue an order declaring that the provisions in the USAPA Constitution and Bylaws providing for deferral of dissolution and deferral of asset distribution are proper, valid, and enforceable; and
- (d) Such other and further relief as the Court deems equitable and just.

Dated: September 16, 2014  
Charlotte, NC

Respectfully submitted,

TIN FULTON WALKER & OWEN

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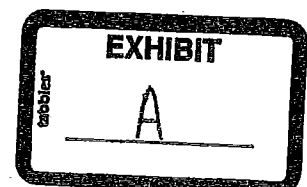
September 12, 2014

Dear Mssrs Hummel, Bradford, Streble, and Smyser:

I am a member of USAPA, and have been paying dues to USAPA as a condition of my employment since USAPA's inception. I am also a former America West pilot who has been employed by US Airways, and now American Airlines, since prior to USAPA becoming certified as the US Airways pilots' bargaining agent. Finally, I am a certified representative of a class of former America West Pilots, and I am writing on behalf of all of them.

USAPA is on the verge of losing its NMB certification. The loss of that certification will have two undeniable consequences: first, USAPA will no longer have any responsibilities or privileges as the exclusive bargaining agent of any pilot group. Second, under Article I, Section 3 of USAPA's Constitution, the loss of NMB certification triggers an immediate dissolution of USAPA. Furthermore, USAPA's Constitution requires the liquidation of all union assets, and the distribution of those assets (less outstanding indebtedness) to the union membership on a pro rata basis, following dissolution. In light of those facts, and the facts described below in this letter, we demand the following:

1. That USAPA make an accounting of its treasury to determine, as of the date USAPA's certification is extinguished by the NMB:
  - a. the value of all USAPA's assets (including but not limited to all cash accounts, investment and savings vehicles and all tangible, saleable assets);
  - b. all outstanding indebtedness;



- c. the total dues, fees and assessments paid by each US Airways pilot to USAPA for the 12 months prior to the date USAPA's certification is extinguished by the NMB;
  - d. the total amount of dues, fees and assessments paid by all US Airways pilots to USAPA for the 12 months prior to the date USAPA's certification is extinguished by the NMB; and
2. That USAPA take immediate steps to calculate the amount of money to be returned to each US Airways pilot pursuant to the formula contained in Article I, Section 3.B of USAPA's Constitution & Bylaws.

We recognize that under Article I, Section 3.C, USAPA's National Officers may make a determination as to whether there is a "need for collective legal action on behalf of the pilot group," and may defer the dissolution of the union until "the need for collective legal representation no longer exists." We further understand that the Board of Pilot Representatives has recommended that the National Officers make such a determination. In making that determination, however, the National Officers are constrained by duties imposed on them by federal and state law and USAPA's governing documents.

The National Officers cannot, consistent with their legal and fiduciary duties, choose to defer the dissolution of the union and postpone the distribution of USAPA's assets as required by its Constitution so that it can use those assets—consisting entirely of dues collected while it was a certified exclusive bargaining agent of the entire US Airways pilot group—solely to further the interests of one faction of that group (East pilots) to the detriment of another faction (West pilots), especially in light of the open hostility of the East pilots toward the West pilots since USAPA's inception. Such a course of action would not be "*collective* legal action on behalf of *the* pilot group"—which can only be understood to mean on behalf of the *entire* pilot group. Nor would such conduct be consistent with USAPA's objectives, one of which is "to protect the individual and collective rights of the members of USAPA and promote their professional interests." USAPA Constitution Article I, Section 8.B.

To put this in concrete terms: under the recently adopted Protocol Agreement, USAPA's Merger Committee will presumably move forward to represent the interests of the East Pilots in the seniority integration proceedings, and will undoubtedly do so in a manner designed to disadvantage the West pilots. Indeed, the first substantive action that will be taken under the Protocol Agreement is the Preliminary Arbitration to confirm APA's discretion to appoint a West Pilot Merger Committee. We understand that in that Preliminary Arbitration, the USAPA Merger Committee will seek to prevent that from happening. Taking that position is the antithesis of "collective action on behalf of the pilot group." And if the Preliminary Arbitration Panel determines that APA may appoint a West Pilot Merger Committee and APA appoints one, the work of the USAPA Merger Committee will be decidedly in support of only the East Pilots and will not be "collective action on behalf of the pilot group."

Given this state of affairs, it would be a breach of the National Officers' fiduciary obligations under USAPA's governing documents and controlling federal and state law to the entire pilot group to defer dissolution so that USAPA's assets can be used to thwart the West Pilots' efforts to participate as a full party in the upcoming seniority integration proceedings—without, at a minimum, providing reasonable funding to the East pilots so that they can participate in the Preliminary Arbitration on a full and equal basis with USAPA, as contemplated by the Protocol Agreement that was agreed to by USAPA.

Furthermore, in the (likely) event that the West pilots are given party status in the seniority integration proceedings, it is beyond any question that the National Officers would breach their legal obligations by choosing to defer dissolution so that USAPA's assets can be retained to provide funding solely to further the interests of the East group in the substantive seniority integration proceedings. Under no conception of "collective legal action," in light of the fact that the funds in question were compelled from the entire US Airways pilot group (of which West pilots comprise a substantial part) can a deferral for that purpose be justified as a legitimate and non-self-interested decision.

Therefore, in addition to the demands above, we further demand that:

3. No deferral of dissolution occur unless it is:

- (1) accompanied by a resolution that West pilots will be provided reasonable funding to participate in the Preliminary Arbitration contemplated by the Protocol Agreement; and
- (2) limited so that the deferral will expire (and dissolution occur) upon the West pilots obtaining party status (i.e., the participation of a West pilot merger committee) in the substantive seniority integration process.

We will wait a reasonable period of time for USAPA to respond favorably to this demand. But given the pace of events contemplated by the Protocol Agreement, a reasonable time period for USAPA to respond would not extend beyond 48 hours after adjournment of the next BPR meeting, which we understand is scheduled for September 23 -- 24. If USAPA's National Officers fail to protect the funds of the entire pilot group in the manner outlined herein, we will make sure that all necessary action is taken to seek the recovery of any amounts expended from the Officers who authorized such expenditures. And, as we are certain USAPA's counsel will explain to you, in any such action the National Officers may not look to USAPA to finance their legal defense or to satisfy any judgment.

Sincerely,



cc: Brian O'Dwyer  
bodwyer@odblaw.com  
O'DWYER & BERNSTIEN, LLP  
52 Duane Street, 5th Floor  
New York, NY 10007

Marty Harper

Jeff Freund

## ARTICLE I: GENERAL

### SECTION 1: NAME

The name of the organization is US AIRLINE PILOTS ASSOCIATION. Whenever the term "USAPA," "association" or "union" is used in this Constitution and Bylaws, it shall refer to and mean the US AIRLINE PILOTS ASSOCIATION.

### SECTION 2: OFFICE LOCATION

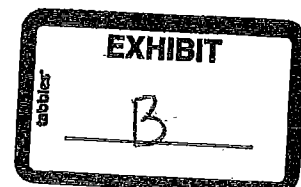
The general offices and headquarters of USAPA are located in Charlotte, NC as determined by the USAPA Board of Pilot Representatives (BPR). The location of the Association headquarters may be changed by a two-thirds (2/3) majority vote of the Board of Pilot Representatives.

### SECTION 3: DURATION AND/OR DISSOLUTION

A. The duration of USAPA shall be perpetual, or until dissolved as provided for in this Constitution and Bylaws. Subject to the deferral provisions of paragraphs B. and C. of this section, in the event of dissolution of the Association, the officers of USAPA shall act as agents for the membership and dispose of all of the physical assets of the Association by suitable means. All assets shall be liquidated and, less any indebtedness, shall then be prorated to the active members in good standing of USAPA as of the time of such dissolution in proportion to the monies paid by each such member in the twelve (12) months immediately preceding dissolution.

B. Dissolution of the Association may be affected through a representation vote conducted by the National Mediation Board (NMB) in accordance with the Railway Labor Act (RLA) that results in the Association's certification being extinguished or pursuant to a two-thirds vote of the Board of Pilot Representatives subsequently ratified in accordance with Article XI, Section D of this Constitution and Bylaws. In either case, the commencement of dissolution is subject to the deferral provisions of C. of this section.

C. Within three (3) business days of either the NMB decision or membership vote triggering dissolution (hereinafter, the "commencement date"), the National Officers shall make a determination as to whether existing circumstances present, or may present in the future, the need for collective legal action on behalf of the pilot group, including, but not limited to, representation in seniority integration proceedings. In the event the majority of the National Officers determine that such a need exists, the dissolution commencement date will be deferred until, in the judgment of a majority of the National Officers, the need for collective legal representation no longer exists. If, in the judgment of a majority of the National Officers, available funds exceed the expected costs of collective legal representation, the excess monies may be distributed in accordance with paragraph A of this section. The President shall break any tie votes among the National Officers.



D. Notwithstanding any other provision in the Constitution and Bylaws, the full operating authority of USAPA shall reside with the National Officers as of the dissolution commencement date indicated in Paragraph A of this section. The President or the Acting President shall appoint an individual who was an active member as of the commencement date to fill any vacancies arising among the National Officers after the commencement date.

#### SECTION 4: GOVERNMENT

A. This Constitution and Bylaws shall be the supreme law of USAPA.

B. The governmental powers of the Association shall be vested in the Board of Pilot Representatives and the National Officers in accordance with the provisions set forth herein. Ultimate control of USAPA is vested in the membership.

C. The Board of Pilot Representatives shall approve a Union Operating Manual for USAPA. All officers, committee members, agents and employees are obligated to be aware of, understand and comply with such policies contained therein.

#### SECTION 5: PARLIAMENTARY LAW AND RULES OF ORDER

All questions on parliamentary law and rules of order that are not provided for in this Constitution and Bylaws shall be decided according to the principles set forth in the most current edition of *Robert's Rules of Order Newly Revised*.

#### SECTION 6: FISCAL YEAR

The fiscal year of the Association shall be from April 1 to March 31.

#### SECTION 7: LOGO

The official logo of the U. S. Airline Pilots Association shall be:





NATIONAL OFFICERS STATEMENT  
Concerning  
THEIR DETERMINATION TO DEFER  
DISSOLUTION OF THE ASSOCIATION

In accordance with the USAPA Constitution and Bylaws, should a dissolution event occur, the National Officers shall have the sole and exclusive authority to determine whether the commencement date of dissolution of the Association should be deferred.

On September 15, 2014, the National Mediation Board (NMB) certified the Allied Pilots Association (APA) as the exclusive bargaining representative for the craft or class of pilots of the New American Airlines thereby decertifying USAPA as the bargaining representative for the pilots of US Airways.

In accordance with the applicable provisions of the USAPA Constitution and Bylaws, including, but not limited to provisions of Section 3 of Article I thereof, the National Officers have unanimously determined that existing circumstances present, and others may present in the future, the need for collective legal action on behalf of the pilot group, including but not limited to representation in seniority integration proceedings.

**WHEREAS**, while not required under the USAPA Constitution and Bylaws, acting in the best interests of the Association and the US Airways pilots, the National Officers in good faith set forth some of the considerations that have lead them to determine to defer dissolution of the Association.

**NOW THEREFORE**, the NATIONAL OFFICERS state as follows:

**FIRST:** In accordance with the powers granted to them in the USAPA Constitution and Bylaws, the National Officers have determined to defer the commencement date of dissolution of the Association in that "existing circumstances present, or may present in the future, the need for collective legal action."

**SECOND:** The following matters constitute some of the circumstances that necessitate the National Officers to conclude that "existing circumstances present, or may present in the future, the need for collective legal action on behalf of the pilot group, including but not limited to representation in seniority integration proceedings":

- Seniority list integration proceedings as between USAPA and APA;
- Under the MOU, entered into by American, US Airways, USAPA and APA in January 2013, seniority integration cannot commence until the JCBA is completed, thereby anticipating that USAPA would continue to exist for certain purposes post-decertification. The MOU was ratified



overwhelmingly by USAPA membership entitled to vote. The National Officers' decision to defer dissolution is consistent with and effectuates provisions of the MOU.

- The Protocol Agreement entered into by and between USAPA, APA, US Airways, and American on September 4, 2014, which, among other things, recognizes the USAPA Merger Committee as the representative of the pilots of the US Airways for purposes of seniority integration proceedings as stipulated in paragraphs 8 thereof. The continued existence of the Merger Committee necessitates the continued existence of USAPA in that the Merger Committee exists only as a duly constituted committee under the auspices of USAPA and derives its authority from the BPR (and ultimately the USAPA Constitution and Bylaws), which directs its activities.
- Litigation involving USAPA, including *Don Addington v. USAPA* (on appeal to the Ninth Circuit Court of Appeals), and which, if reinstated, would require USAPA to defend a duty of fair representation claim for entering into the MOU and also includes a claim for payment of attorneys' fees to the Addington attorneys resulting from the various *Addington* cases, in excess of 3 million dollars), *Cleary v. USAPA*, 14 CVS-9783 (pending in North Carolina State Court, Mecklenburg County), wherein former USAPA President Mike Cleary demands an unspecified amount of consequential, liquidated, and punitive damages, exclusive of attorneys' fees, as and for past due

compensation), and *US Airways v. USAPA and Cleary*, 11 Cv. 371 RJC-DCK (pending in the United States District Court for the Western District of North Carolina, Charlotte Division, wherein US Airways obtained a permanent injunction against USAPA).

THIRD: In accordance with the powers granted to the National Officers in the USAPA Constitution and Bylaws, the National Officers have determined that it is not prudent to make any distribution of assets at this time. It is currently not possible to determine with certainty whether available funds exceed the expected costs of collective legal action, including seniority list integration proceedings.

Gary Hummel, President

STATE OF NORTH CAROLINA

File No.

17208

14-CVS-

MECKLENBURG County

In The General Court Of Justice
District Superior Court Division

Name Of Plaintiff: US AIRLINE PILOTS ASSOCIATION
Address: c/o John W. Gresham, TIN FULTON WALKER & OWEN, PLLC
City, State, Zip: 301 E. Park Avenue, Charlotte, NC 28203

CIVIL SUMMONS
ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3, 4

VERSUS
Name Of Defendant(s): ROGER VELEZ, on behalf of himself and all similarly situated former America West Pilots, and LEONIDAS, LLC

Date Original Summons Issued
Date(s) Subsequent Summons(as) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1: Roger Velez, 16165 East Glenview Drive, Fountain Hills, AZ 85268

Name And Address Of Defendant 2: Roger Velez, P.O. Box 17342, Fountain Hills, AZ 85058

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

- 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served.
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

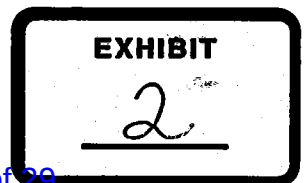
Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff): John W. Gresham, TIN FULTON WALKER & OWEN, PLLC, 301 E. Park Avenue, Charlotte, NC 28203

Date Issued: 9/16/14, Time: 11:27, Signature: [Handwritten Signature], Deputy CSC, Assistant CSC, Clerk Of Superior Court

ENDORSEMENT (ASSESS FEE)
This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement, Time, Signature, Deputy CSC, Assistant CSC, Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$15,000 or less are heard by an arbitrator before a trial.



**RETURN OF SERVICE**

I certify that this Summons and a copy of the complaint were received and served as follows:

**DEFENDANT 1**

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
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- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

*Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)*

- Other manner of service (specify)

- Defendant WAS NOT served for the following reason:

**DEFENDANT 2**

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
--------------------	---	--------------------------

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

*Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)*

- Other manner of service (specify)

- Defendant WAS NOT served for the following reason.

<i>Service Fee Paid</i> \$	<i>Signature Of Deputy Sheriff Making Return</i>
<i>Date Received</i>	<i>Name Of Sheriff (Type Or Print)</i>
<i>Date Of Return</i>	<i>County Of Sheriff</i>