

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

US AIRLINE PILOTS ASSOCIATION, )

Plaintiff, )

v. )

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

Defendants. )

Civil Action No.:  
3:14-CV-577-RJC-DCK

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EDDIE BOLLMEIER, BILL TRACEY )  
and, SIMON PARROTT, )

Plaintiffs, )

v. )

GARY HUMMEL, STEPHEN )  
BRADFORD, ROB STREBLE, )  
STEVE SMYSER, ROBERT FREAR, )  
COURTNEY BORMAN, and JANE )  
DOE BORMAN, RONALD NELSON, )  
PAUL DIORIO, PAUL MUSIC, )  
JOHN TAYLOR, JOE STEIN, )  
PETE DUGSTAD, JAY MILKEY, )  
and STEPHEN NATHAN, )

Defendants. )

Civil Action No.:  
3:15-cv-00111-RJC-DCK

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Roger Velez, )

Counterclaimant and )  
Third Party Plaintiff, )

v. )

Civil Action No.:  
3:14-CV-577-RJC-DCK

US AIRLINE PILOTS ASSOCIATION )  
GARY HUMMEL, )  
STEPHEN BRADFORD, )  
ROB STREBLE, STEVE SMYSER, )  
And JOHN OWENS, in their official )  
capacity as officers of USAPA )  
 )  
Counter Defendant )  
And Third Party Defendants. )  
\_\_\_\_\_ )

**VELEZ AND LEONIDAS DEFENDANTS’ ANSWER TO AMENDED  
COMPLAINT AND VELEZ’S COUNTERCLAIMS and THIRD PARTY  
COMPLAINT in  
USAPA v. Velez, 3:14-CV-577-RJC-DCK**

Defendants Roger Velez (“Velez”) and Leonidas, LLC (“Leonidas”), answer  
Plaintiff’s Amended Complaint as follows:

**INTRODUCTION**

1. Defendants admit the allegations of Paragraph 1.
2. Defendants admit the allegations of Paragraph 2.
3. Defendants admit the allegations of Paragraph 3.
4. Defendants admit the allegations of Paragraph 4.
5. Defendants deny the allegations of Paragraph 5.

6. Defendants admit that Leonidas is an Arizona LLC formed by certain West Pilots on 2007 and that it has engaged in fund raising efforts, but deny the remaining allegations in paragraph 6.
7. Defendants admit that Leonidas communicated with US Airways pilots domiciled in North Carolina, but deny the remainder of this paragraph.

### **JURISDICTION AND VENUE**

8. Defendants admit that Plaintiff USAPA has brought an action under North Carolina's Declaratory Judgment Act, but deny that jurisdiction is appropriate as to them personally.
9. Defendant Velez admits that he is a party whose rights will be affected by the declaratory judgment that Plaintiff seeks. Defendant Leonidas denies the allegations of Paragraph 9 because it is not a party to any contract or agreement with USAPA, including USAPA's constitution and bylaws. Thus Defendant Leonidas is not a proper party to this action.
10. Defendants admit that USAPA's principal place of business was Mecklenburg County, North Carolina.
11. Defendants deny the allegations of Paragraph 11 to the extent that it suggests a class action is appropriate under the circumstances because the class is not properly defined and Leonidas could not possibly be a member of any putative class.
12. Defendants deny the allegations of Paragraph 12.
13. Defendants deny the allegations of Paragraph 13.

14. Defendants dispute and therefore deny the inaccurate and misleading mischaracterizations by USAPA in this paragraph, but generally admit that there has been a long history of disputes between West Pilots, on the one side, and USAPA and East Pilots, on the other side.
15. Defendants admit only that Mr. Velez sent a letter to USAPA dated September 12, 2014, and that the letter speaks for itself. Defendants deny the remainder of the allegations of Paragraph 15.
16. Defendants admit that Leonidas posted an update on June 18, 2014, and that it speaks for itself. Defendants deny the remaining allegations of Paragraph 16.
17. Defendants admit that the USAPA Constitution and Bylaws contain a provision for dissolution, and that it speaks for itself. Defendants deny the remaining allegations of Paragraph 17.
18. Defendants admit that the USAPA Constitution and Bylaws contain a provision for dissolution, and that it speaks for itself. Defendants deny the remaining allegations of Paragraph 18.
19. Defendants admit that the USAPA Constitution and Bylaws contain a provision for dissolution, and that it speaks for itself. Defendants deny the remaining allegations of Paragraph 19.
20. Defendants admit that the USAPA Constitution and Bylaws contain a provision for dissolution, and that it speaks for itself. Defendants deny the remaining allegations of Paragraph 20.

21. Defendants lack the personal knowledge and foundation regarding the allegations of Paragraph 21 and therefore deny them.
22. Defendant deny the allegations of Paragraph 22 because, upon information and belief, the BPR vote was not unanimous, and Defendants otherwise lack the personal knowledge and foundation regarding these allegations.
23. Defendants deny the allegations of Paragraph 23 other than to admit that Mr. Velez's letter September 12, 2014 letter speaks for itself and that the Officer and Directors of USAPA acted contrary to the letter.
24. Defendants deny the allegations of Paragraph 24.
25. Defendants deny allegations of Paragraph 25.
26. Defendants deny the allegations of Paragraph 26.

#### **CLASS ACTION ALLEGATIONS**

27. This paragraph contains legal conclusions and therefore Defendants deny them and deny that a class action is appropriate under the circumstances presented here and as USAPA has define the class.
28. Defendants admit the allegations of Paragraph 28.
29. Defendants admit only that this is how USAPA seeks to define the class, and that this is generally descriptive of West Pilots, but deny that such a class is appropriate under the circumstances presented here.
30. Defendants deny the allegations of Paragraph 30.
31. Defendants deny the allegations of Paragraph 31.
32. Defendants deny the allegations of Paragraph 32.

33. Defendants admit the allegations of Paragraph 33.
34. Defendants deny the allegations of Paragraph 34.
35. Defendants deny the allegations of Paragraph 35.
36. Defendants admit the allegations of Paragraph 36.
37. Defendants deny the allegations of Paragraph 37.
38. Defendants deny the allegations of Paragraph 38.
39. Defendant Velez admits only that the issues raised in USAPA's complaint will affect him and all members of USAPA, and denies the remainder of the allegations in Paragraph 39. Defendant Leonidas denies the allegations of Paragraph 39.

**NOTICE TO CLASS MEMBERS**

40. Defendants deny the allegations of Paragraph 40.

**FACTS**

41. Defendants admit the allegations of Paragraph 41.
42. Defendants admit the allegations of Paragraph 42.
43. Admit the allegations of Paragraph 43.
44. Defendants lack the personal knowledge and foundation regarding these allegations and therefore deny the allegations of Paragraph 44.
45. Defendants admit the allegations of Paragraph 45.
46. This calls for a legal conclusion and therefore Defendants deny the allegations of Paragraph 46.
47. Defendants lack the personal knowledge and foundation to admit this but on information and belief admit that East Pilots sought a way to avoid the result of

final and binding arbitration known as the Nicolau Award and formed USAPA as a way to accomplish this, and deny the remainder of the allegations.

48. Defendants admit that the USAPA Constitution and Bylaws speaks for itself.

Defendants deny the remaining allegations of Paragraph 48.

49. Defendants are without personal information or foundation and therefore deny the allegations of Paragraph 49.

50. Defendants are without personal information or foundation and therefore deny the allegations of Paragraph 50.

51. The first sentence requires a legal conclusion and Defendants therefore deny the first sentence of Paragraph 51. Defendants are without personal knowledge and foundation to admit and therefore deny the second sentence of Paragraph 51.

52. Defendants admit that the USAPA Constitution and Bylaws contain a provision for dissolution, and that it speaks for itself. Defendants deny the remaining allegations of Paragraph 52.

53. Defendants lack the personal knowledge and foundation and therefore deny the allegations of Paragraph 53.

54. Defendants deny the allegations of Paragraph 54.

55. Defendants admit the allegations of Paragraph 55.

56. Defendants admit the allegations of Paragraph 56.

57. Defendants admit the allegations of Paragraph 57.

58. Defendants admit the allegations of Paragraph 58.

59. Defendants admit the allegations of Paragraph 59.

60. Defendants admit the allegations of Paragraph 60.
61. Defendants admit the allegations of Paragraph 61.
62. Defendants admit that the USAPA Constitution and Bylaws contain a provision for dissolution, and that it speaks for itself. Defendants deny the remaining allegations of Paragraph 62.
63. Defendants deny the allegations of Paragraph 63 except to admit that that the negotiations commenced in late June 2015.
64. Defendant admit only that the MOU speaks for itself and deny the remaining allegations of Paragraph 64.
65. Defendants admit only that the MOU speaks for itself.
66. Defendants lack personal knowledge and foundation to admit and therefore deny the allegations of Paragraph 66 except to admit that Exhibit C appears to be what was issued and it speaks for itself.
67. Defendants deny the allegations of Paragraph 67.
68. Defendants deny the allegations of Paragraph 68 except that the USAPA Constitution and Bylaws speaks for itself.
69. Defendants deny the allegations of Paragraph 69.
70. Defendants admit the allegations of Paragraph 70.
71. Defendants deny the allegations of Paragraph 71 and affirmatively allege that the USAPA Merger Committee has withdrawn from the SLI proceedings and has no reason to continue to exist.



72. Defendants admit only that the Protocol Agreement speaks for itself and deny the remaining allegations of Paragraph 72.
73. Defendants admit the allegations of Paragraph 73.
74. Defendants lack the personal knowledge and foundation to admit and therefore deny the allegations of Paragraph 74.
75. Defendants admit only that Defendant Velez's letter speaks for itself and deny the remainder of the allegations of Paragraph 75.
76. Defendants admit only that Defendant Velez's letter speaks for itself and deny the remainder of the allegations of Paragraph 76.
77. Defendants admit only that Defendant Velez's letter speaks for itself and deny the remainder of the allegations of Paragraph 77.
78. Defendants admit only that Defendant Leonidas' update speaks for itself and deny the remainder of the allegations of Paragraph 78.
79. Defendants admit only that the "various communications" described speak for themselves and deny the remainder of the allegations of Paragraph 79.
80. Defendants admit only that the "various communications" described speak for themselves and deny the remainder of the allegations of Paragraph 80.
81. Defendants admit only that the "various communications" described speak for themselves and deny the remainder of the allegations of Paragraph 81.

**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.**

82. Defendants re-allege and incorporate all of their answers, denials and affirmative allegations set forth above as if fully set forth herein.

83. This calls for a legal conclusion and Defendants therefore deny the allegations of Paragraph 83.

84. Defendants deny the allegations of Paragraph 84.

85. Defendants deny the allegations of Paragraph 85.

86. Defendants deny the allegations of Paragraph 86.

87. Defendants deny the allegations of Paragraph 87.

88. Defendants deny the allegations of Paragraph 88.

**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 USAPA CONSTITUTION  
AND BYLAWS**

89. Defendants re-allege and incorporate all of their answers, denials and affirmative allegations set forth above as if fully set forth herein.

90. This calls for a legal conclusion and Defendants therefore deny the allegations of Paragraph 90.

91. Defendants deny the allegations of Paragraph 91.

92. Defendants deny the allegations of Paragraph 92.

93. Defendants deny the allegations of Paragraph 93.

94. Defendants deny the allegations of Paragraph 94.

**THIRD CLAIM FOR RELIEF**

**DECLARATORY JUDGMENT (NCGS § 1-253, et seq.) FOR A  
DECLARATION THAT FUNDING THE USAPA MERGER COMMITTEE  
ONLY IS CONSISTENT WITH THE USAPA CONSTITUTION AND  
BYLAWS.**

95. Defendants re-allege and incorporate all of their answers, denials and affirmative allegations set forth above as if fully set forth herein.

96. This calls for a legal conclusion and therefore Defendants deny the allegations of Paragraph 96.

97. Defendants deny the allegations of Paragraph 97.

98. Defendants deny the allegations of Paragraph 98.

99. Defendants deny the allegations of Paragraph 99.

100. Defendants deny the allegations of Paragraph 100.

101. Defendants deny the allegations of Paragraph 101.

**FOURTH CLAIM FOR RELIEF**

**DECLARATORY JUDGMENT (NCGS § 1-253, et seq.) FOR A  
DECLARATION THAT DENIAL OF DISTRIBUTION TO THE WEST  
PILOTS AND/OR THE WEST MERGER COMMITTEE ANY MONEY  
RELATING TO THE 0.5% DUES INCREASE IS CONSISTENT WITH  
THE USAPA CONSTITUTION AND BYLAWS.**

102. Defendants re-allege and incorporate all of their answers, denials and affirmative allegations set forth above as if fully set forth herein.

103. This calls for a legal conclusion and therefore Defendants deny the allegations of Paragraph 103.

104. Defendants deny the allegations of Paragraph 104.

105. Defendants deny the allegations of Paragraph 105.

106. Defendants deny the allegations of Paragraph 106.

107. Defendants deny the allegations of Paragraph 102.

**PAYER FOR RELIEF ON PLAINTIFF'S AMENDED COMPLAINT**

**WHEREFORE** Defendants Velez and Leonidas having answered the amended complaint they respectfully request that this Court;

- A. Dismiss the Amended Complaint and that Plaintiff take nothing and receive no relief thereon;
- B. Award Defendants their attorneys' fees and costs in having to appear and defend against this action; and
- C. Grant whatever further relief is equitable and just under the premises.

**COUNTERCLAIMS AND THIRD PARTY COMPLAINT**

For his Counterclaim and Third Party Complaint, Roger Velez hereby alleges as follows:

**PARTIES, JURISDICTION AND VENUE**

- 1. Roger Velez is and has during all times relevant been a member in good standing

of the US Airways Pilots Association (USAPA), and brings this action on behalf of himself and all others similarly situated, including all member and non-member agency fee paying pilots of the former US Airways.

2. At all times herein material, beginning April 18, 2008, USAPA operated as a national unincorporated labor organization within the meaning of 29 U.S.C. § 402(i) and, until its decertification on September 16, 2014, served as the exclusive bargaining representative for all US Airways pilots. Since its 2014 decertification as the pilots' bargaining representative, USAPA has continued to exist and operate as a private unincorporated nonprofit association under the laws of North Carolina. USAPA's principal office is located at 200 East Woodlawn Road in Charlotte, North Carolina. At all times herein material, USAPA was to be governed in accordance with its Constitution and Bylaws, and applicable governance documents.

3. Third Party Defendants Gary Hummel, Stephen Bradford, Steve Smyser, John Owens and Rob Streble, are named in their official capacity as officers of USAPA during the relevant time periods alleged herein. During the relevant time periods described herein, Stephen Bradford was the Vice President and is now the President of USAPA, Gary Hummel is the immediate past President of USAPA, Steve Smyser is the immediate past Executive President of USAPA, Rob Streble is the immediate past Treasurer/Secretary of USAPA, and John Owens is the current Treasurer/Secretary of USAPA.

4. This Court has federal question and diversity jurisdiction over Counter and Third Party Defendants because USAPA's assertions about what "representational" actions it is permitted to take after decertification raise questions under the Railway Labor Act, 45

U.S.C. §§ 151, et seq., and McCaskill Bond, 49 U.S.C. § 42112., the parties are geographically diverse, and the amount in controversy is approximately \$12 million. 28 U.S.C. § 1331, -1332. Venue lies in this Court because a substantial portion of the events and omissions alleged in the Counterclaims and Third Party Complaint occurred within the Western District of North Carolina.

## **FACTS**

5. In early 2013, and in anticipation of the impending merger between US Airways and American, Third Party Defendants, upon authorization of the Board of Pilot Representatives (BPR), began implementation of Article 2, Section 5F of the USAPA Constitution and Bylaws, which calls for an increase in dues to create a “Merger Fund,” which was to be accounted for separately and used by USAPA to pay for merger-related expenses. (See USAPA Constitution and Bylaws excerpts attached hereto as Ex. A, Art. II, Sect. 5 Dues, at pages A-5,6) Notwithstanding the fact that Counterclaim and Third Party Defendants have collected over \$4.5 million under this provision and kept those funds in a separate account, they have failed and refused to use these funds for merger-related purposes and have, instead, used the general treasury funds.

6. In early 2013, while USAPA was still the certified bargaining agent of the pilots of US Airways under the RLA, and while the integration of the East and West Pilots’ seniority lists was still being litigated in federal court, US Airways and American Airlines entered into a preliminary merger agreement, which was finalized on December 9, 2013. At the time of this announcement, the Allied Pilots Association (“APA”) represented the approximately 10,000 pilots employed by American Airlines, while USAPA continued to

claim it represented the approximately 5000 pilots (East and West) employed by US Airways.

7. On August 8, 2014, the NMB, acting pursuant to 45 U.S.C. § 181, determined that American Airlines and US Airways constituted a “single transportation system,” and as a result, on September 16, 2014, it extinguished USAPA’s status as the exclusive bargaining agent for US Airways pilots and extended APA’s certification as the exclusive bargaining agent for both the American Airlines and US Airways pilots.

8. On September 4, 2014, a majority of the USAPA Board of Pilot Representatives passed a resolution urging the Third Party Defendant Officers to defer the commencement date of dissolution and the attendant distribution of USAPA assets. Among the reasons stated for deferring dissolution was the unknown costs of “collective legal action,” including seniority integration proceedings. Under the USAPA Constitution and Bylaws, in the event a trigger for dissolution exists, the Officers of USAPA “shall act as agents for the membership” with respect to all assets of USAPA. (See Ex. A, Art. 1, Sect. 3 Duration and/or Dissolution (A) at page A-2.) This is true also at all times under the LMRDA, under which officers have fiduciary duties to members to hold all USAPA funds in trust for the benefit of members.

9. On September 4, 2014, a majority of the USAPA BPR passed resolution AI 14-164, purporting to change the USAPA Constitution and Bylaws with respect to how the issue of a pilot’s “good standing” would be determined, and adopted a resolution that purported to change the relevant date for determining good standing from “*dissolution*” to “*decertification*.” (See September 4, 2014 BPR Meeting Minutes, attached as Ex. B, at

pages B-2,3.) This change purported to result in an amendment to the USAPA Constitution and Bylaws, Art. 1, Sect 3 (A), but was not accomplished as a lawful Constitutional amendment as required under Art. XIII, (A)(2)(a-b). (See Ex. A, Art. 1 General, Sect 3 (A) at page A-2, and Art. XIII Amendments, (A)(2)(a-b) at page A-7.)

10. Upon information and belief, the effect of this change has resulted or will result in numerous pilots being denied “good standing” for purposes of receiving their pro rata share of USAPA treasury funds at the time of dissolution. Counterclaim and Third Party Defendants have been acting and operating as if this was a lawful Constitutional amendment, and have, upon information and belief, been performing dues reconciliation in a fashion designed to designate as many pilots as possible as not in good standing in order to deny those pilots their pro rata share of treasury funds upon dissolution. Additionally, upon information and belief, Counterclaim and Third Party Defendants have, with respect to the dues reconciliation process, acted arbitrarily and capriciously and in bad faith in the calculation and collection of dues, especially for those pilots who do not utilize the dues check-off mechanism, by failing to calculate dues in the manner provided under the Constitution. (See Ex. A, Art. 2, Sect. 5 Dues, at pages A-5, 6.)

11. On September 12, 2014, Roger Velez, a West Pilot writing on behalf of the West Pilots, sent Defendants correspondence, urging them to follow the USAPA Constitution’s dissolution procedures in light of its then imminent decertification by the NMB. [Doc. 46-4, Exhibit D] In this letter, Mr. Velez demanded an accounting of USAPA’s treasury (including the value of its present assets, outstanding liabilities, and the total dues/fees/assessments paid by each US Airways pilot to USAPA in the preceding 12



months). Mr. Velez's letter further advised Defendants that a decision to defer dissolution of USAPA in order "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" would constitute a breach of Defendants' legal and fiduciary duties to USAPA's members. [See *id.* at p. 2.] As Mr. Velez's September 12 letter stated, such action is directly adverse to the interests of one substantial faction of members and would not be "collective legal action on behalf of the pilot group," which is the only permissible reason outlined in the Constitution for delaying dissolution.

12. On September 16, 2014, the National Officers, purporting to act pursuant Article I, Section 3(C) of the USAPA Constitution, determined to defer the commencement date of dissolution and further determined that there would be no interim distribution of any monies to the members of USAPA so that USAPA could continue to participate in seniority proceedings. [Doc. 46-4, Exhibit C.]

13. Despite Mr. Velez's September 12 letter, USAPA's National Officers, namely Defendants Hummel, Bradford, Streble, and Smyser, decided to defer dissolution of USAPA, purporting to act pursuant Article I, Section 3(C) of the USAPA Constitution. At that time, Defendants made no disbursement to its membership of any of the \$11–\$13 million of funds in its treasury, stating that "it is currently not possible to determine with certainty whether available funds exceed the expected costs of collective legal action." [Doc. 46-4, Exhibit C, at page 3.]

14. Subsequently, Counterclaim and Third Party Defendants authorized the use of, used, and continue to use USAPA funds for purposes that do not constitute “collective legal action on behalf of the pilot group.” Specifically, between September 16, 2014, and January 9, 2015, Defendants expended USAPA funds to advance USAPA’s position before the PAB that the West Pilots should be denied separate representation in the seniority integration process occasioned by the merger with American Airlines. USAPA’s position before the PAB advanced only the interests of the East Pilots (which includes Third Party Defendants here) at the expense of the interests of the West Pilots. Accordingly, expenditures in furtherance of this position were not collective in nature nor on behalf of the pilot group as a whole.

15. Since September 16, 2014, and continuing to the present, Counterclaim and Third Party Defendants have authorized the use of, used, and continue to use USAPA funds for the purpose of advancing the seniority interests of only the East Pilots (including Third Party Defendants) at the expense of the interests of the West Pilots (including Velez) in the Substantive SLI Process. More specifically, on information and belief, Defendants have authorized the use of, used, and continue to use USAPA funds to, *inter alia*, pay the fees of lawyers and experts and to pay flight pay loss and expenses of East Pilots who were members of the USAPA Merger Committee, all of whom who advanced the East Pilots’ interest in the Substantive SLI Process.

16. Prior to USAPA’s loss of certification, American, USAPA and APA had entered into an agreement called the “MOU” that, *inter alia*, provided a mechanism to integrate the American Airlines and the East and West Pilots seniority lists.

17. Because USAPA continued to insist on advancing a seniority integration principle that favored the East Pilots, rather than the Nicolau Award, the West Pilots asserted that they should be represented by a separate merger committee to participate in the American Airlines SLI negotiations.

18. USAPA opposed allowing West Pilot separate representation, despite APA asserting that, as the soon-to-be exclusive bargaining representative for all pilots, it had the discretion to appoint any merger committees it chose.

19. Under a second agreement reached between USAPA, APA, and American regarding the merger and SLI process, the “Protocol Agreement,” USAPA, APA, and American agreed to resolve through a final and binding “Preliminary Arbitration” the question of whether there should be a West Pilots Merger Committee. They also agreed in the Protocol Agreement and the MOU that subsequent to the Preliminary Arbitration, any remaining disputes concerning the SLI process that could not be resolved by negotiations would be resolved in a second arbitration (the “Substantive SLI Process”) between the Company, the American Pilots Merger Committee, and the East Pilots Merger Committee, and that the West Pilots Merger Committee would become a party to that Substantive SLI Process if the Preliminary Arbitration Board (“PAB”) determined that a West Pilots Merger Committee should be appointed.

20. On January 9, 2015, the PAB issued a decision holding that APA had the right to appoint a West Pilots Merger Committee to represent the West Pilots’ interests in the Substantive SLI Process. [See Doc. 1 filed in *Bollmeier v. Hummel*, 3:15-cv-00111-RJC-DCK (The LMRDA action) at Exhibit 4.]

21. In so ruling, the PAB said:

“The Board dismisses USAPA’s argument that it—as the pre-merger representative of all US Airways pilots—has the full authority to represent all former US Airways pilots and has the sole discretion to allow or not a West Pilots Merger Committee to participate in the SLI process. This argument is unconvincing and runs contrary to the NMB’s determination that APA is the representative of all Company pilots (both US Airways and American Airlines).” Id. at 31.

“USAPA, the Board finds, has neither obligations nor responsibilities to any bargaining unit members, including even the East Pilot seniority list grouping. What is clear, though, is that USAPA does not represent the West Pilot seniority list grouping and does not have a duty of fair representation to that group of employees.” Id. at 32.

“Given the history of intransigence and hostility between USAPA and the West Pilots, it is far from clear that USAPA could or would adequately represent the interests of the West pilots. The fact that USAPA's very constitution contains a provision stating that only date of hire principles is acceptable in any SLI process is simply one of several considerations supporting this conclusion.” Id. at 33.

22. The PAB further directed APA to designate the West Pilots Merger Committee as a full participant in the Substantive SLI Process.

23. On January 9, 2015, Mr. Velez’s counsel wrote to USAPA’s counsel and noted that, given the fact that USAP no longer represented the West Pilots, it should provide an immediate accounting of the specially assessed Merger Fund, including the percentage attributable to West Pilots, and cease spending any USAPA funds on seniority proceedings, including any legal proceedings. [Doc. 46-5, at Exhibit E.]

24. On January 12, 2015, counsel for USAPA responded, stating USAPA would refuse all of Mr. Velez and other West Pilots’ requests, and that it would continue to act at the discretion of the Third Party Defendant Officers and the BPR. (See January 12, 2015 letter from Brian O’Dwyer, attached hereto as Exhibit C.)

25. On January 12, 2015, APA appointed a separate Merger Committee to represent the interests of the West Pilots in the Substantive SLI Process.

26. Upon information and belief, throughout the times discussed herein, and especially after the PAB decision in January of 2015, numerous US Airways pilots, both East and West, wrote to Counterclaim Defendant USAPA and its Third Party Defendant Officers, requesting that USAPA immediately dissolve and distribute excess treasury funds to its members in accordance with its Constitution and Bylaws.

27. In furtherance of the Protocol Agreement, in January of 2015 APA created a procedure whereby all three merger committees could submit to APA for reimbursement for their share of a \$4 million fund to pay for SLI expenses. Through this process USAPA was entitled to seek reimbursement up to \$1.3 million for SLI-related expenses, making this \$1.3 million an important asset belonging to USAPA for the benefit of its membership. To this date, Counterclaim and Third Party Defendants have failed and refused to seek to bring this asset into the USAPA treasury.

28. Counterclaim and Third Party Defendants continued to defer dissolution and continued to expend USAPA resources to participate in the SLI process, including retaining and paying for experts, paying flight pay loss for USAPA Merger Committee members, paying for attorneys and consultants, and submitting briefs to the SLI Arbitration Board.

29. On June 26, 2015, the Ninth Circuit Court of Appeals issued an opinion in *Addington v. USAPA*, Nos. 14-15757, 15874, 15892. [Doc. 54.] The Ninth Circuit concluded that USAPA had violated its duty of fair representation to West Pilots when it was a certified union by organizing and operating for the sole benefit of East Pilots to the

detriment of West Pilots: “USAPA has served as the stalking horse for the East Pilots’ exclusive interests and left the West Pilots bereft of representation. USAPA’s manifest disregard for the interests of the West Pilots and its discriminatory conduct towards them constitutes a clear breach of duty.” [Id. at pages 55-56.] The Ninth Circuit remanded to the Arizona District Court for an injunction against USAPA to prevent it from participating the SLI process unless it agreed to propose the Nicolau Award.

30. Because USAPA breached its duty of fair representation to the West Pilots by failing and refusing to represent them in seniority proceedings, none of the seniority proceedings in which USAPA has participated and for which it has expended treasury funds have qualified as “collective legal action on behalf of the pilot group.”

31. On July 2, 2015, USAPA President and Third Party Defendant Steve Bradford confirmed that the USAPA Merger Committee had withdrawn from the Seniority Arbitration proceedings. [Doc. 62, Ex. A.] The letter ratified the USAPA Merger Committee’s previous avowal via counsel on June 29, 2015, that they were withdrawing from the SLI proceedings and would not re-enter the proceedings at any time in the future. [Doc. 56, at Exhibit 12.]

32. As a result of USAPA’s withdrawal from the SLI proceedings, the Arbitration Panel, after requesting briefing, determined that it would implement a process whereby it would appoint a new East Merger Committee. [Doc. 62, Ex. B.]

33. On July 10, 2015, counsel for USAPA revealed that USAPA its officers and had failed and refused to seek from APA for the \$1.3 asset to which USAPA was entitled for SLI-related expenses. On that same date, counsel undersigned demanded and again via

writing on July 13, 205 that Counterclaim and Third Party Defendants immediately seek reimbursement from APA, in order to ensure that the USAPA treasury is funded to the greatest extent for the benefit of all members. [Doc. 62, Ex. H.]

34. On July 14, 2015, USAPA submitted a brief in the consolidated LMRDA action confirming that it had not done so and had no immediate intention to seek the \$1.3 million to which USAPA was entitled for the benefit of its members. [Doc. 61]

35. Upon information and belief, Counterclaim and Third Party Defendants have been and are in the process of performing dues reconciliation in a manner that is arbitrary and capricious, not performed accurately or in good faith, and is designed to designate as many pilots as possible as not in good standing to deny them their pro rata share of USAPA funds at dissolution.

**FIRST CLAIM FOR RELIEF**

**DECLARATORY JUDGMENT (NCGS § 1-253, et seq.)**

**FOR A DECLARATION THAT USAPA AND THE NATIONAL  
OFFICERS' DECISION TO DEFER  
DISSOLUTION UPON USAPA'S LOSS OF NMB CERTIFICATION WAS  
NOT WITHIN THEIR CONSTITUTIONAL AUTHORITY AND WAS NOT  
CONSISTENT  
WITH THE USAPA CONSTITUTION AND BYLAWS.**

36. Velez re-alleges and incorporates here all prior paragraphs as if fully set forth herein.

37. Counterclaim and Third Party Defendants have fiduciary duties to members of USAPA to act in accordance with the USAPA Constitution and Bylaws. These duties stem from the USAPA Constitution and Bylaws, federal law, and state law.

38. Upon decertification by the NMB, Counterclaim and Third Party Defendants became agents of the membership to marshal and holds assets in a constructive trust for the benefit of the membership.

39. Upon decertification, Counterclaim and Third Party Defendants were obligated to determine whether there was a need for “collective legal action on behalf of the pilot group.” Counterclaim and Third Party Defendants were acutely aware that, because they had, since USAPA’s inception, failed and refused to represent the West Pilots, seniority proceedings were not “collective legal action on behalf of the pilot group.” Nevertheless, and in violation of the Constitution and Bylaw and their duties to members, Counterclaim and Third Party Defendants deferred dissolution and have spent nearly \$4 million on seniority proceedings that were not “collective legal action on behalf of the pilot group,” and have failed and refused to seek reimbursement from APA for \$1.3 million of those expenditures.

40. Additionally, given that the USAPA treasury held over \$12 million at the time of decertification, Counterclaim and Third Party Defendants’ failure to reserve a reasonable amount for the remaining few activities that did constitute “collective legal action on behalf of the pilot group,” and distribute excess treasury fund accordance with Article 1, Sect 3(A, C) was a breach of their duties to members and in violation of the Constitution and Bylaws.

41. Velez therefore seeks a declaration from this Court under NCGS § 1-253 that Counterclaim and Third Party Defendants’ decision to defer dissolution in order to participate in seniority integration proceedings was inconsistent with the Constitution and Bylaws, and was a violation of their duties to members.



**SECOND CLAIM FOR RELIEF**

**DECLARATORY JUDGMENT (NCGS § 1-253, et seq.) FOR A  
DECLARATION THAT USAPA AND THE NATIONAL OFFICERS'  
IMPLEMENTATION OF RESOLUTION AI 14-164 VIOLATES THE  
USAPA CONSTITUTION AND BYLAWS**

42. Velez re-alleges and incorporates here all prior paragraphs as if fully set forth herein.

43. Resolution AI 14-164 was passed by the BPR on September 4, 2014, by a 7-4 vote. Prior to the vote, then-BPR member Eric Ferguson objected on the basis that the USAPA Constitution and Bylaws, Art. 1, Sect 3 (A). Specifically, it amended the determination of “good standing” from occurring at “dissolution” to “decertification.” This has effect of having more pilots determined to be not in good standing and thus unable to receive their pro rata share of treasury funds distributed at dissolution.

44. Resolution AI 14-164 was not accomplished as a lawful Constitutional amendment as required under Art. XIII, (A)(2)(a-b), because it was not ratified by a two thirds majority of the membership.

45. Notwithstanding that AI 14-164 was not a lawful Constitutional amendment, Counterclaim and Third party Defendants have been implementing it as part of the ongoing dues reconciliation process, in breach of their duties to members to abide by the Constitution. This has damaged and will damage those members and non-members whose standing has changed and who are denied their pro rata share of distribution at dissolution as a result.

46. Velez therefore seeks a declaration from this Court under NCGS § 1-253 that Counterclaim and Third Party Defendants' implementation of AI 14-164 is not consistent with the USAPA Constitution and Bylaws, and is in violation of their duties to members.

**THIRD CLAIM FOR RELIEF**

**BREACH OF FIDUCIARY DUTY**

47. Velez re-alleges and incorporates here all prior paragraphs as if fully set forth herein.

48. Counterclaim and Third Party Defendants have fiduciary duties to members to act as agents of the members to marshal and preserve assets, and to abide by the USAPA Constitution and Bylaw in all respects.

49. Counterclaim and Third Party Defendants have breached their duties to members by, *inter alia*:

- (a) Participating in and expending USAPA funds for seniority integration proceedings when such activities were not “collective legal action on behalf of the pilot group;”
- (b) Failing and refusing to seek reimbursement from APA for the \$1.3 million asset available to USAPA for the benefit of its membership;
- (c) Failing to properly account for merger-related expenses and failing to pay such expenses out of the separate fund collected for that purpose;
- (d) Implementing AI 14-164 in order to deny members and non-members their pro-rate share of duns at dissolution;

- (e) Acting arbitrarily and capriciously with respect to the calculation and collection of dues; and
- (f) Failing and refusing to determine and reserve a reasonable amount of funds for actual “collective legal action on behalf the pilot group” and to distribute excess funds to members and non-members in accordance with the USAPA Constitution and Bylaws.

50. Velez and USAPA members and non-members have been harmed by, *inter alia*, the reduction in the amount of USAPA treasury funds available for distribution to members and non-members at dissolution, and arbitrary and capricious treatment by Counterclaim and Third Party Defendants.

**FOURTH CLAIM FOR RELIEF**  
**INJUNCTIVE RELIEF**

51. Velez re-alleges and incorporates here all prior paragraphs as if fully set forth herein.

52. Counterclaim and Third Party Defendants have acted in violation of and inconsistent with the USAPA Constitution and Bylaws and their fiduciary duties, to the detriment of USAPA membership and dues payers. Unless Counterclaim and Third Party Defendants are enjoined, these breaches and violations will continue.

53. Velez therefore requests that this Court enter an order requiring Counterclaim and Third Party Defendants to:

- (a) Provide access to the books and records of USAPA for purposes of and provide a full and fair accounting performed by a neutral, qualified accounting firm at USAPA's expense;
- (b) Cease implementation of Resolution AI 14-164 in a manner detrimental to members and non-members and, instead, abide by USAPA's Constitution and Bylaws as written;
- (c) Perform dues reconciliation in a fair and consistent manner and in accordance with USAPA's Constitution and Bylaws; and
- (d) Take steps to dissolve USAPA in accordance with its Constitution and Bylaws.

**PAYER FOR RELIEF**

WHEREFORE Velez prays for a judgment against Counterclaim and Third Party Defendants as follows:

- (a) For a declaration from this Court that Counterclaim and Third Party Defendants' decision to defer dissolution in order to participate in seniority integration proceedings was inconsistent with the Constitution and Bylaws, and was a violation of their duties to members;
- (b) For a declaration from this Court that Counterclaim and Third Party Defendants' implementation of AI 14-164 is not consistent with the USAPA Constitution and Bylaws, and is in violation of their duties to members and non-members;

- (c) For a judgment that Counterclaim and Third Party Defendants have breached their fiduciary duties to Velez and other members, and for an award of damages to be proven at trial;
- (d) For an order requiring Counterclaim and Third Party Defendants to:
- (1) Provide access to the books and records of USAPA for purposes of and provide a full and fair accounting performed by a neutral, qualified accounting firm at USAPA's expense;
  - (2) Cease discriminatory implementation of Resolution AI 14-164 and, instead, abide by USAPA's Constitution and Bylaws as written;
  - (3) Perform dues reconciliation in a fair and consistent manner and in accordance with USAPA's Constitution and Bylaws; and
  - (4) Take steps to dissolve USAPA in accordance with its Constitution and Bylaws; and
- (e) For any other relief that the Court deems just and proper.

Respectfully submitted this 17<sup>th</sup> day of July, 2015.

/s/ Kelly J. Flood

Marty Harper, admitted *pro hac vice*  
Kelly J. Flood, admitted *pro hac vice*  
ASU ALUMNI LAW GROUP  
2 N. Central Avenue Suite 1600  
Phoenix, AZ 85004  
Telephone: (602) 251-3620  
Facsimile: (602) 251-8055  
[Kelly.Flood@asualumniawgroup.org](mailto:Kelly.Flood@asualumniawgroup.org)  
[Marty.Harper@asualumniawgroup.org](mailto:Marty.Harper@asualumniawgroup.org).

and

C. Grainger Pierce, Jr.  
Nexsen Pruet, PLLC  
227 West Trade Street, Suite 1550  
Charlotte, NC 28202  
Telephone: (704) 338-5321  
Fax: (704) 805-4712  
E-mail: [gpierce@nexsenpruet.com](mailto:gpierce@nexsenpruet.com)  
N.C. State Bar No. 27305  
Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Defendants Velez's and Leonidas' Answer to Amended Complaint and Counterclaim and Third Party Complaint with the Clerk of the court using the CM/ECF system and that notification will be sent via that system to:

John Gresham  
Tin Fulton Walker & Owen  
301 East Park Avenue  
Charlotte, NC 28203

O'DWYER & BERNSTIEN, LLP  
Brian O'Dwyer (admitted pro hac vice)  
Joy K. Mele (admitted pro hac vice)  
Zachary Harkin (admitted pro hac vice)  
52 Duane Street, 5th Floor  
New York, NY 10007

This the 17<sup>th</sup> day of July, 2015.

/s/ Kelly J. Flood  
Marty Harper, admitted *pro hac vice*  
Kelly J. Flood, admitted *pro hac vice*  
ASU ALUMNI LAW GROUP  
2 N. Central Avenue Suite 1600  
Phoenix, AZ 85004  
Telephone: (602) 251-3620  
Facsimile: (602) 251-8055  
[Kelly.Flood@asualumniawgroup.org](mailto:Kelly.Flood@asualumniawgroup.org)  
[Marty.Harper@asualumniawgroup.org](mailto:Marty.Harper@asualumniawgroup.org)