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17 Attorneys for US Airline Pilots Association

18 **IN THE UNITED STATES DISTRICT COURT**
19 **DISTRICT OF ARIZONA**

20 Don Addington, *et. al.*,)
21 *Plaintiffs,*)
22 v.)
23 US Airline Pilots Association, *et. al.*,)
24 *Defendants.*)
25)
26)

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Case No.: CV-13-00471-PHX-ROS
Answer of US Airline Pilots Association

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1 Defendant US Airline Pilots Association (“USAPA”) as and for its answer to the
2 Complaint, alleges as follows:

3 1. Admits the allegations contained in ¶1 of the Complaint.

4 2. Denies the allegations contained in ¶2 of the Complaint, except admits that,
5 because both pilots groups were represented by the Air Line Pilots Association (ALPA),
6 they were bound by the ALPA Constitution and by the ALPA Merger and Fragmentation
7 Policy in existence at the time of the merger.

8 3. Denies the allegations contained in ¶3 of the Complaint, except admits that
9 Arbitrator George Nicolau presided on a panel of three arbitrators, that the panel issued
10 its award in May 2007, that one member of the panel dissented and that the decision is
11 referred to as the Nicolau Award.

12 4. Denies the allegations contained in ¶4 of the Complaint, except admits that
13 the East Pilots were strongly opposed to the Nicolau Award because it unfairly gave West
14 Pilots a significant windfall at the expense of the East Pilots.

15 5. Denies the allegations contained in ¶5 of the Complaint, except admits that
16 USAPA was formed in or about February 2008 for the purpose of decertifying and
17 replacing ALPA. USAPA avers that there were numerous reasons why pilots were
18 opposed to ALPA, most long pre-dating the issuance of the Nicolau Award.

19 6. Denies the allegations contained in ¶6 of the Complaint.

20 7. Denies the allegations contained in ¶7 of the Complaint, except admits that
21 USAPA was certified by the National Mediation Board as the exclusive bargaining
22 representative of US Airways Pilots (both East and West) in 2008 because a majority of
23 the US Airways pilots entitled to vote in that certification election voted in favor of
24 USAPA. USAPA avers that there were numerous reasons why pilots opposed
25 representation by ALPA.
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1 8. Denies the allegations contained in ¶8 of the Complaint, except admits that
2 on April 18, 2008, the National Mediation Board issued a decision certifying USAPA as
3 the exclusive bargaining representative of all the pilots employed by US Airways.

4 9. Denies the allegations contained in ¶9 of the Complaint. USAPA avers that
5 it never made any agreement concerning the Nicolau Award and that as a newly certified
6 bargaining representative it was free to negotiate terms and conditions of employment,
7 including seniority, without regard to any position, proposal or agreement that might have
8 been made by the former bargaining representative.

9 10. Denies the allegations contained in ¶10 of the Complaint, except admits
10 that various West Pilots have since 2008 twice sued USAPA over the issue of seniority
11 integration (most recently in this action) and that US Airways filed a complaint against
12 USAPA and several individual West Pilots in July 2010.

13 11. Denies the allegations contained in ¶11 of the Complaint, except that
14 USAPA admits that it entered into an agreement with US Airways, American Airlines
15 and the Allied Pilots Association (which represents the pilots employed by American
16 Airlines) that, among other things, guarantees all US Airways (East and West) substantial
17 increases in wages and benefits in the event that a merger between US Airways and
18 American is consummated. USAPA further admits that the agreement makes no
19 determinations with respect to seniority integration and sets forth a procedure for
20 determining seniority integration with the pilots employed by American Airlines and
21 represented by the Allied Pilots Association.
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23 12. Denies the allegations contained in ¶12 of the Complaint.

24 13. Admits the allegations contained in ¶13 of the Complaint.

25 14. Admits the allegations contained in ¶14 of the Complaint.

26 15. Admits the allegations contained in ¶15 of the Complaint.

27 16. Admits the allegations contained in ¶16 of the Complaint.
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1 17. Admits the allegations contained in ¶17 of the Complaint.

2 18. Admits the allegations contained in ¶18 of the Complaint.

3 19. Admits the allegations contained in ¶19 of the Complaint.

4 20. Admits the allegations contained in ¶20 of the Complaint.

5 21. Admits the allegations contained in ¶21 of the Complaint.

6 22. Admits the allegations contained in ¶22 of the Complaint.

7 23. Admits the allegations contained in ¶23 of the Complaint.

8 24. Admits the allegations contained in ¶24 of the Complaint.

9 25. Admits the allegation contained in ¶25 of the Complaint.

10 26. Admits the allegation contained in ¶26 of the Complaint.

11 27. Admits the allegation contained in ¶27 of the Complaint.

12 28. Admits that Plaintiffs assert the claims set forth in ¶28 of the Complaint,
13 denies the claims have merit and denies that Plaintiffs are entitled to the relief sought.
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15 29. Denies the allegations contained in ¶29 of the Complaint insofar as they
16 call for conclusions of law and refer all such questions to the Court for determination.

17 30. Admits that the actions alleged in the Complaint affected one or more
18 Plaintiffs residing in this district, that the headquarters of US Airways is located in this
19 district and that venue is appropriate in this district. USAPA otherwise denies the
20 allegations of ¶30.

21 31. Denies the allegations contained in ¶31 of the Complaint.

22 32. Denies the allegations contained in ¶32 of the Complaint.

23 33. Denies the allegations contained in ¶33 of the Complaint, except admits
24 that as of May 2005, US Airways was in Chapter 11 bankruptcy.

25 34. Denies the allegations contained in ¶34 of the Complaint, except admits
26 that in 2005 there was a reorganization plan that provided for the merger of US Airways
27 with America West with the merged company to be called US Airways and an agreement
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1 titled the Transition Agreement was entered into by US Airways, America West and
2 ALPA.

3 35. Denies the allegations contained in ¶35 of the Complaint because they are
4 vague and ambiguous.

5 36. Admits the allegations contained in ¶36 of the Complaint. USAPA avers
6 that, at the time of the merger, there were 5,098 pilots on the pre-merger US Airways
7 seniority list and 1,894 pilots on the America West seniority list.

8 37. Denies the allegations contained in ¶37 of the Complaint and avers that as
9 of May 2005 many America West pilots were not actively flying.

10 38. Denies the allegations contained in ¶38 of the Complaint, except admits
11 that as of May 2005, there were 1,691 pilots employed by pre-merger US Airways then
12 on furlough and avers that approximately 300 of those furloughed pilots were recalled
13 prior to May 1, 2007, and that all pilots on furlough were recalled as of the end of
14 October 2007.

15 39. Admits the allegations contained in ¶39 of the Complaint.

16 40. Denies the allegations contained in ¶40 of the Complaint, except admits
17 that there were separate Master Executive Councils which were permitted to act on behalf
18 of their respective pilot groups for certain purposes.

19 41. Admits the allegations contained in ¶41 of the Complaint, except denies
20 that the Chairmen of the Master Executive Council Chairmen had any legal authority to
21 bind ALPA.

22 42. Denies the allegations contained in ¶42 of the Complaint, except admits
23 that the Transition Agreement contained a provision titled “Seniority List Integration”
24 and respectfully refers the Court to the Transition Agreement for the contents and
25 meaning thereof.
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1 43. Denies the allegations contained in ¶43 of the Complaint, except admits
2 that there was an ALPA Merger Policy in effect at the time, which has since been
3 amended, and respectfully refers the Court to the ALPA Merger Policy at the relevant
4 time for the contents and meaning thereof.

5 44. Denies the allegations contained in ¶44 of the Complaint, except admits
6 that at various times herein there was an ALPA Merger Policy in effect, which has since
7 been amended, and respectfully refers the Court to said ALPA Merger Policy for the
8 contents and meaning thereof.

9 45. Denies the allegations contained in ¶45 of the Complaint, except admits
10 the ALPA Merger Policy in effect at that time contained an arbitration provision and that
11 it included, among other terms, the quoted phrases, and respectfully refers the Court to
12 said provision for the contents and meaning thereof. In particular, USAPA avers that the
13 ALPA Merger Policy in effect in 2005 included other terms not quoted by Plaintiffs, that
14 the Merger Policy did not include “longevity” as a criterion that must be applied and that
15 the Merger Policy was later amended to include “longevity” as a criterion that must be
16 applied.

17 46. Denies the allegations contained in ¶46 of the Complaint, except admits the
18 two ALPA Merger Committees proceeded to arbitration as required by ALPA Merger
19 Policy.

20 47. Denies the allegations contained in ¶47 of the Complaint, except admits
21 that the East Merger Committee argued that all pilots should be given credit for their
22 longevity, that is, the actual time of their active service with their airline.

23 48. Admits the allegations contained in ¶48 of the Complaint.

24 49. Denies the allegations contained in ¶49 of the Complaint, except admits
25 that under the terms of the Transition Agreement, US Airways committed to accepting
26 the results of the ALPA seniority integration proceeding if it satisfied certain stated
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1 conditions. USAPA respectfully refers the Court to the Transition Agreement for the
2 contents and meaning thereof.

3 50. Admits that the three-member arbitration panel issued its decision on May
4 1, 2007, that the principal decision was written by Arbitrator Nicolau and that the
5 decision is known as the Nicolau Award. USAPA otherwise denies the allegations of
6 ¶50. USAPA avers that one member of the panel, Captain Bruscia, dissented and wrote a
7 separate opinion. USAPA respectfully refers the Court to the Award itself for its
8 contents.

9 51. Denies the allegations contained in ¶51 of the Complaint because it quotes
10 only a selected portion of the decision and inaccurately states the seniority integration
11 method proposed by the East Merger Committee. USAPA respectfully refers the Court to
12 the Nicolau Award for the substance and meaning of said Award.

13 52. Denies the allegations contained in ¶52 of the Complaint because it
14 characterizes only a selected portion of the decision and respectfully refers the Court to
15 the Nicolau Award for the substance and meaning of said Award.

16 53. Denies the allegations contained in ¶53 of the Complaint because it
17 characterizes only a selected portion of the decision and respectfully refers the Court to
18 the Nicolau Award for the substance and meaning of said Award.

19 54. Denies the allegations contained in ¶54 of the Complaint because it is
20 vague and ambiguous and respectfully refers the Court to the Nicolau Award for the
21 substance and meaning of said Award.

22 55. Admits the allegations contained in ¶55 of the Complaint. USAPA avers
23 that in proffering the list to US Airways, ALPA explicitly noted that the list was not to go
24 into effect until ALPA negotiated a single collective bargaining agreement to cover the
25 consolidated pilot group and negotiated various ancillary procedures concerning the
26 implementation of the list. USAPA further avers that the single agreement could not go
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1 into effect unless it was separately ratified by both the East and the West MECs and their
2 pilots.

3 56. Admits the allegations contained in ¶56 of the Complaint.

4 57. Denies the allegations contained in ¶57 of the Complaint, except admits
5 that the ALPA Executive Committee denied the appeal made by the East MEC.

6 58. Denies the allegations contained in ¶58 of the Complaint, except admits
7 that at various times herein Stephen Bradford and other pilots exercised their rights under
8 the Railway Labor Act with respect to their then existing bargaining representative.

9 59. Denies knowledge or information sufficient to form a belief as to the
10 allegations contained in ¶59 of the Complaint and declines to speculate as to Mr.
11 Bradford's thought process might have been in 2007.

12 60. Denies the allegations contained in ¶60 of the Complaint.

13 61. Admits the allegations contained in ¶61 of the Complaint.

14 62. Admits the allegations contained in ¶62 of the Complaint. USAPA avers
15 that the election was conducted by the National Mediation Board, that a majority of the
16 pilots voting in the election voted for USAPA and the National Mediation Board certified
17 USAPA as the exclusive bargaining representative of the craft or class of US Airways
18 Pilots effective April 18, 2008.

19 63. Denies the allegations contained in ¶63 of the Complaint and denies that it
20 ever proposed a strict date-of-hire seniority proposal, except admits that in late
21 September 2008 USAPA presented a seniority proposal to the Company based upon date-
22 of-hire principles with extensive conditions and restrictions to protect the interests of
23 former America West Pilots, including but not limited to conditions and restrictions that
24 prevented East pilots from displacing West pilots from their customary America West
25 assignments. USAPA further avers that there have been no negotiations over the
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1 proposal and that US Airways has at various points cited pending litigation as the reason
2 it has not negotiated about the proposal.

3 64. Denies the allegations contained in ¶64 of the Complaint, except admits
4 that USAPA has thoroughly considered the Nicolau Award and has concluded that it
5 unfairly favors one group of pilots over another, particularly in light of the circumstances
6 at the time USAPA became the exclusive representative of all US Airways pilots and
7 since that time.

8 65. Admits that such a lawsuit was filed as alleged and that, among other
9 allegations, the complaint alleged that USAPA breached the duty of fair representation
10 (“DFR”) by refusing to implement the Nicolau Award. USAPA otherwise denies the
11 allegations of ¶65 and respectfully refers the Court to the Complaint in that case for
12 exactly what was alleged and what claims were made.

13 66. Denies the allegations contained in ¶66 of the Complaint, except admits
14 that after trial, a jury found that USAPA breached its duty of fair representation and
15 otherwise refers the Court to the verdict and judgment for the meaning and interpretation
16 thereof. USAPA avers that the decisions and judgment ultimately entered by the District
17 Court were vacated by order of the United States Court of Appeals for the Ninth Circuit
18 and, as a result, in this case should be treated “as if [it] never occurred.” C. Goelz & M.
19 Watts, *Rutter’s California Practice Guide: Federal Ninth Circuit Civil Appellate*
20 *Practice* § 10:231 (emphasis in original), citing *State of Calif. Dept. of Social Servs. v.*
21 *Thompson*, 321 F3d 835, 847 (9th Cir. 2003).

22 67. Denies the allegations contained in ¶67 of the Complaint, except admits
23 that Judge Wake issued a written opinion to which the Court is referred for the meaning
24 and interpretation thereof. USAPA incorporates the last two sentences of its answer to
25 paragraph 66.
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1 68. Denies the allegations contained in ¶68 of the Complaint and each of the
2 subdivisions of ¶68 of the Complaint, except admits that Judge Wake issued a written
3 opinion to which the Court is referred for the meaning and interpretation thereof. USAPA
4 incorporates the last two sentences of its answer to paragraph 66.

5 69. Admits the allegations contained in ¶69 of the Complaint. USAPA avers
6 that because the Court of Appeals vacated the District Court order on the basis that
7 Plaintiffs' claim was not ripe, the Court did not address any of the other numerous errors
8 warranting reversal that were asserted by USAPA on appeal.

9 70. Denies the allegations contained in ¶70 of the Complaint, except admits
10 that ¶70 correctly quotes one portion of the Court of Appeals decision. USAPA
11 respectfully refers the Court to the complete opinion for its meaning and interpretation
12 thereof.

13 71. Admits that on July 27, 2010, US Airways filed the described action
14 making in part the claim that it required guidance. USAPA respectfully refers the Court
15 to the complaint filed by US Airways for the complete and accurate facts concerning this
16 allegation. USAPA otherwise denies the allegations of ¶71.

17 72. Admits that in the action filed by US Airways, the District Court certified a
18 defendant class with certain Plaintiffs as representatives of the class. USAPA
19 respectfully refers the Court to the order certifying the class for the complete and accurate
20 facts concerning this allegation. USAPA otherwise denies the allegations of ¶72.

21 73. Admits that ¶73 accurately quotes selected phrases from the Court's order.
22 USAPA respectfully refers the Court to the order certifying the class for the complete and
23 accurate facts concerning this allegation. USAPA otherwise denies the allegations of
24 ¶73.

25 74. Admits that ¶74 accurately quotes selected phrases from the Court's order.
26 USAPA respectfully refers the Court to the order certifying the class for the complete and
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1 accurate facts concerning this allegation. USAPA otherwise denies the allegations of
2 ¶74.

3 75. Admits that ¶75 accurately quotes selected phrases from the Court's order.
4 USAPA respectfully refers the Court to the order certifying the class for the complete and
5 accurate facts concerning this allegation. USAPA otherwise denies the allegations of
6 ¶75.

7 76. Admits the allegation contained in ¶76 of the Complaint. USAPA avers
8 that the Plaintiffs also did not appeal and that US Airways did appeal and the appeal is
9 currently pending in the United States Court of Appeals for the Ninth Circuit.

10 77. Admits the allegation contained in ¶77 of the Complaint. USAPA avers
11 that the bankruptcy proceeding is currently pending and that a hearing on the proposed
12 plan of reorganization is scheduled for August 15, 2013.

13 78. Denies the allegations contained in ¶78 of the Complaint, except admits
14 that USAPA, APA, US Airways, and AMR entered into an agreement titled
15 Memorandum of Understanding regarding Contingent Collective Bargaining Agreement"
16 ("MOU") with an effective date of February 14, 2013. USAPA respectfully refers the
17 Court to the MOU itself for the complete and accurate facts concerning this allegation.

18 79. Admits that the ballots in the ratification referendum were counted on
19 February 8, 2013, and that over 75% of the US Airways Pilots who cast ballots during the
20 ratification process (and more than 97% of the former America West pilots who cast
21 ballots) voted to approve the MOU. USAPA avers that the MOU was approved by the
22 Bankruptcy Court in the AMR Bankruptcy proceeding.

23 80. Admits that the MOU provides completely equal and substantially
24 improved wages and benefits to all US Airways Pilots, both East and West. USAPA
25 otherwise denies the allegations of ¶80.
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1 81. Admits that the MOU provides a process for integrating seniority between
2 the pilots of US Airways and American Airlines that generally incorporates the principles
3 of the McCaskill Bond Amendment. USAPA avers, in particular, that neither the MOU
4 nor the future Joint Collective Bargaining Agreement (“JCBA”) would provide any basis
5 for changing the existing two-list seniority system at US Airways except through the
6 process provided in the MOU. USAPA otherwise denies the allegations of ¶81.

7 82. Denies the allegations contained in ¶82 of the Complaint, except admits the
8 MOU does not incorporate the Nicolau Award in any way. USAPA avers that it was the
9 intent of the parties in negotiating and agreeing to the MOU that it would be neutral with
10 respect to East-West seniority integration.

11 83. Denies the allegations contained in ¶83 of the Complaint.

12 84. Denies the allegations contained in ¶84 of the Complaint. USAPA avers
13 that one of the “objectives” stated in its Constitution is “To maintain uniform principles
14 of seniority based on date of hire and the perpetuation thereof, with reasonable conditions
15 and restrictions to preserve each pilot’s un-merged career expectations.”

16 85. Admits that Plaintiffs purport to maintain this action on behalf themselves
17 and others similarly situated. USAPA otherwise denies the allegations contained in ¶85.

18 86. Admits that Plaintiffs purport to define the West Pilot class as “all pilots
19 who are on the America West seniority list currently incorporated into the West CBA”.
20 USAPA otherwise denies the allegations contained in ¶86.

21 87. Admits that it would be impractical to individually join each of the
22 approximately 1600 former America West pilots. USAPA otherwise denies the
23 allegations contained in ¶87 of the Complaint.

24 88. Admits that some questions of law and fact affecting the alleged class are
25 common to all members of the alleged class. USAPA otherwise denies the allegations
26 contained in ¶88 of the Complaint.
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1 89. Denies the allegations contained in ¶89 of the Complaint, except admits
2 that Plaintiffs contend their standing to enjoy and protect the seniority rights established
3 by the Nicolau Award arises from their status as West Pilots and is therefore the same as
4 any other West Pilot.

5 90. Denies knowledge or information sufficient to form a belief concerning the
6 allegations contained in ¶90 of the Complaint and the subdivisions thereof, except admits
7 that Plaintiffs contend they will fairly and adequately represent the interests of putative
8 West Pilot Class.

9 91. Denies the allegations of ¶91 of the Complaint and the subdivisions thereof,
10 except admits that Plaintiffs contend common questions of law and fact arising from this
11 action are common to the named Plaintiffs and other members of the putative West Pilot
12 Class.

13 92. Admits that USAPA is the exclusive representative for all pilots employed
14 by US Airways and that USAPA therefore owes a duty of representation to all US
15 Airways pilots including those in the alleged class. USAPA otherwise denies the
16 allegations of ¶92 of the Complaint because they call for a legal conclusion.

17 93. Admits that all US Airways pilots (both East and West) have an interest in
18 USAPA adhering to its duty of fair representation. USAPA otherwise denies the
19 allegations of ¶93 and, in particular, denies that the Nicolau Award which was solely a
20 product of the ALPA Merger Policy is in any way binding upon USAPA.

21 94. Denies knowledge or information sufficient to form a belief as the
22 allegations contained in ¶94 of the Complaint.

23 95. Denies the allegation contained in ¶95 of the Complaint as it calls for a
24 legal conclusion.

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26 **I. Claim One**

27 96. Defendant USAPA repeats and realleges each and every answer to the
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1 foregoing paragraphs of the Complaint as if set forth in full herein.

2 97. Denies the allegation contained in ¶97 of the Complaint because it calls for
3 a legal conclusion and because it does not correctly state the legal definition of the duty
4 of fair representation.

5 98. Denies the allegations contained in ¶98 of the Complaint.

6 99. Denies the allegations contained in ¶99 of the Complaint.

7 100. Denies the allegations contained in ¶100 of the Complaint.

8 **II. Claim Two**

9 101. Defendant USAPA repeats and realleges each and every answer to the
10 foregoing paragraphs of the Complaint as if set forth in full herein.

11 102. Denies the allegations contained in ¶102 of the Complaint because they call
12 for a legal conclusion and respectfully refer questions as to the meaning and
13 interpretation of the Transition Agreement to the Court for determination.

14 103. Admits that the Transition Agreement refers to a “single agreement” that
15 would be negotiated by ALPA with US Airways and that the Transition Agreement
16 further provided that the results of the ALPA Merger Policy procedure would not go into
17 effect until such an agreement was negotiated and ratified by both the East and the West
18 pilots. USAPA otherwise denies the allegations of ¶103 and respectfully refers the Court
19 to the Transition Agreement itself for its exact provisions.

20 104. Denies the allegations contained in ¶104 of the Complaint.

21 105. Admits that the MOU is a conditional collective bargaining agreement by
22 and among four parties (US Airways, American Airlines, USAPA and the Allied Pilots
23 Association) which, among other things, provides substantial increases in pay and
24 benefits for all US Airways pilots in the event the proposed merger is approved. USAPA
25 otherwise denies the allegations of ¶105.

26 106. Denies the allegations contained in ¶106 of the Complaint.

1 107. Denies the allegations contained in ¶107 of the Complaint and refers
2 questions as to the meaning and interpretation of the Transition Agreement to the Court
3 for determination.

4 108. Admits that the MOU is neutral with respect to the seniority integration.
5 USAPA otherwise denies the allegations of ¶108.

6 109. Denies the allegations contained in ¶109 of the Complaint.

7 110. Denies the allegations contained in ¶110 of the Complaint.

8 111. Denies the allegations contained in ¶111 of the Complaint because they rest
9 on an incorrect interpretation of the law and call for legal conclusions that are
10 respectfully referred to the Court for determination.

11 112. Denies the allegations contained in ¶112 of the Complaint.

12 113. Defendant USAPA repeats and realleges each and every answer to the
13 foregoing paragraphs of the Complaint as if set forth in full herein.

14 114. USAPA admits that it has several million dollars in its general fund and in
15 earmarked funds for various purposes. USAPA otherwise denies the allegations of ¶114.

16 115. Denies the allegations of ¶115.

17 116. Denies the allegations of ¶116.

18 117. Denies the allegations of ¶117.

19 118. Denies the allegations of ¶118.

20 119. Denies the allegations of ¶119.

21 120. Denies the allegations of ¶120.

22 121. Denies the allegations of ¶121.

23 122. Denies the allegations of ¶122.

24 123. Denies the allegations of ¶123.

25 124. Denies the allegations of ¶124.

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FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Complaint does not present a claim that is ripe for adjudication.

THIRD AFFIRMATIVE DEFENSE

The Complaint presents only “minor disputes” under the Railway Labor Act over which the System Board of Adjustment has exclusive jurisdiction and over which this Court lacks jurisdiction.

FOURTH AFFIRMATIVE DEFENSE

This Court lacks subject matter jurisdiction.

FIFTH AFFIRMATIVE DEFENSE

The claims are barred in whole or part under the doctrines of res judicata, collateral estoppel, and issue and claim preclusion.

SIXTH AFFIRMATIVE DEFENSE

The claims are barred in whole or part under the doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

The claims are barred in whole or part under the doctrine of waiver.

EIGHTH AFFIRMATIVE DEFENSE

The claims are barred in whole or part by virtue of the ratification of the MOU by the overwhelming majority of the members of the putative Plaintiff class.

NINTH AFFIRMATIVE DEFENSE

Plaintiff’s and/or the putative class members’ conduct estops them from asserting the claims in the Complaint.

TENTH AFFIRMATIVE DEFENSE

The claims are barred in whole or part under the doctrine of novation.

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PRAYER FOR RELIEF

WHEREFORE, Defendant USAPA demands judgment as follows:

- (a) order and judgment dismissing the Complaint with prejudice;
- (b) attorneys fees, costs and disbursements incurred in the defense of this action;
- (c) such other and different relief as the Court deems proper and just.

Respectfully submitted this 24th day of July, 2013.

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CERTIFICATE OF SERVICE

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I hereby certify that on July 24, 2013, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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