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18 US Airways, Inc.

19 **IN THE UNITED STATES DISTRICT COURT**
20 **FOR THE DISTRICT OF ARIZONA**

21 Don Addington, *et al.*, on behalf of
22 themselves and all similarly situated
23 former America West Pilots,

24 Plaintiffs,

25 vs.

26 US Airline Pilots Ass'n, an
27 unincorporated association,

28 Defendant,

29 US Airways, Inc.,

30 Intervenor.

Case No. 2:13-cv-00471-ROS

**US AIRWAYS, INC.'S MOTION FOR
LIMITED INTERVENTION UNDER
RULE 24 OF THE FEDERAL RULES
OF CIVIL PROCEDURE**

1 US Airways, Inc. (“US Airways”), by and through its undersigned counsel, hereby
2 files this motion to intervene pursuant to Rule 24 of the Federal Rules of Civil Procedure.
3 This motion is supported by the following memorandum of points and authorities.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 In prior briefing to this Court on its motion to dismiss plaintiffs’ breach-of-contract
6 claim (Count Two), US Airways explained that: “US Airways has a significant interest in
7 the prompt and final resolution of the merits of plaintiffs’ DFR claim against USAPA. It
8 therefore intends to file a motion for limited intervention under Rule 24 of the Federal
9 Rules of Civil Procedure if and when its motion to dismiss is granted.” (US Airways’
10 Reply In Support Of Motion To Dismiss (Doc. No. 54), at p. 3 n.2 (p. 4 of ECF filing).)
11 On July 19, 2013, the Court granted US Airways’ motion to dismiss. (Order (Doc.
12 No. 122), at pp. 6:18-7:1.) In accordance with Rules 24(a) and 24(b) of the Federal Rules
13 of Civil Procedure, US Airways thus moves for intervention in this lawsuit for the limited
14 purposes of protecting its interest in:

- 15 (i) a prompt resolution of the merits of the West Pilots’ claim against defendant
16 US Airline Pilots Association (“USAPA”) for breach of the duty of fair
17 representation (“DFR”) – including ensuring that US Airways has the right
18 to participate in potential additional district court and appellate proceedings
19 with regard to the ripeness of the West Pilots’ claim; and
20 (ii) a prompt determination that the West Pilots have the right under the federal
21 McCaskill-Bond statute to full and separate representation in the upcoming
22 seniority-integration proceedings between the pilots employed by
23 US Airways and American Airlines, Inc. (“American”) – contrary to the
24 position that USAPA has recently taken in this litigation.

25 The requested intervention is necessary to protect US Airways’ significant interest
26 in achieving a seniority integration of the US Airways and American pilots in accordance
27 with the schedule prescribed in the Memorandum of Understanding (“MOU”) that was
28 executed in connection with the US Airways/American merger by US Airways,

1 American, USAPA representing the US Airways pilots, and the Allied Pilots Association
2 representing the American pilots. Under the MOU, the US Airways/American seniority-
3 integration process is scheduled to begin “as soon as possible” after the close of the
4 merger transaction, which is currently anticipated to occur during the third quarter of this
5 year.

6 Because the plaintiffs’ DFR claim against USAPA implicates how USAPA may
7 proceed under the terms of the MOU (i.e., whether it must use the Nicolau Award as the
8 sole basis for determining the relative seniority ordering of East and West Pilots), and
9 because the plaintiffs’ McCaskill-Bond declaratory-relief claim (set forth in their
10 proposed First Amended Complaint) implicates how all of the parties may proceed vis-à-
11 vis the West Pilots, a failure to promptly resolve the merits of these claims would threaten
12 to disrupt and delay the process of integrating US Airways and American pilots following
13 the merger. That process is central to the airline’s realization of the operational and
14 financial benefits from the combined pilot workforce that is contemplated by the MOU
15 and the merger. Accordingly, while US Airways has been and still is neutral regarding
16 the merits of the underlying DFR claim between USAPA and the West Pilots, it has a
17 significant protectable interest in seeing that the plaintiffs’ claims against USAPA are
18 resolved promptly and on the merits and, with respect to the McCaskill-Bond issue, a
19 significant interest in confirming its legal position that its obligation under McCaskill-
20 Bond to provide for a “fair and equitable” seniority integration entails affording an
21 opportunity for full and separate participation by the West Pilots under the circumstances
22 of this case.

23 US Airways therefore respectfully seeks intervention as of right under Rule 24(a)
24 or, alternatively, permissive intervention under Rule 24(b).¹

25
26 ¹ Rule 24(c) provides that a motion for intervention shall be accompanied by a “pleading
27 that sets out the claim or defense for which intervention is sought.” Attached hereto is
28 US Airways’ Intervention Pleading, which sets forth the grounds for US Airways’ requested
intervention, including the “claim . . . for which intervention is sought” within the meaning of the
case law applying Rule 24(b)(1)(B).

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FACTUAL AND PROCEDURAL BACKGROUND

In order to avoid unnecessary repetition, US Airways refers the Court to its “Intervention Pleading Pursuant To Rule 24 Of The Federal Rules Of Civil Procedure” filed concurrently herewith and incorporates by reference the material contained therein (in particular, ¶¶ 1-7).

ARGUMENT

I. US AIRWAYS SATISFIES ALL OF THE REQUIREMENTS FOR INTERVENTION AS OF RIGHT UNDER RULE 24(a).

Intervention as of right under Rule 24(a) of the Federal Rules of Civil Procedure should be granted where: (a) the movant has a significant protectable interest relating to the property or transaction that is the subject of the action; (2) the disposition of the action may, as a practical matter, impair or impede the movant’s ability to protect its interest; (3) the motion to intervene is timely; and (4) the existing parties may not adequately represent the movant’s interest. *United States v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir. 2002). In evaluating these requirements, “courts are guided primarily by practical and equitable considerations [and] construe the Rule broadly in favor of proposed intervenors.” *Id.*

A. US Airways’ Interest In Ensuring That The US Airways/American Pilots Seniority Integration Takes Place According To The Schedule Prescribed In The MOU And In Accordance With Its Obligations Under McCaskill-Bond, So That That There Is No Delay In The Realization Of The Operational And Financial Benefits From A Combined Pilot Workforce, Is A Significant Protectable Interest.

“Whether an applicant for intervention demonstrates sufficient interest in an action is a practical, threshold inquiry. No specific legal or equitable interest need be established.” *Greene v. United States*, 996 F.2d 973, 976 (9th Cir. 1993). As the Ninth Circuit has explained:

By allowing parties with a *practical* interest in the outcome of a particular case to intervene, we often prevent or simplify future litigation involving related issues; at the same time, we allow an additional interested party to express its views

1 before the court. *City of Los Angeles*, 288 F.3d at 398
2 (emphasis in original).

3 The MOU, to which US Airways is a party, contains a schedule for the initiation
4 and completion of the seniority-integration process between the US Airways (East and
5 West) pilots and the American pilots. (*See, e.g.*, US Airways, Inc.’s Intervention Pleading
6 Pursuant To Rule 24 Of The Federal Rules Of Civil Procedure (“Intervention Pleading”),
7 filed concurrently herewith, ¶ 2.) Compliance with an agreement to which a proposed
8 intervenor is a party constitutes a significant protectable interest. *See City of Los Angeles*,
9 288 F.3d at 400 (finding that police union had protectable interest where proposed
10 resolution to litigation, namely, a consent decree between the parties, potentially
11 conflicted with terms of union’s collective bargaining agreement); *EEOC v. AT&T*,
12 506 F.2d 735, 741-42 (3rd Cir. 1974) (intervention appropriate where contractual rights of
13 movant may be affected).

14 Here, plaintiffs seek an injunction requiring USAPA “to conduct seniority
15 integration according to the MOU procedures but using the seniority order in the Nicolau
16 Award list to order the US Airways pilots.” (FAC ¶ 136; Doc. No. 124 Ex. 2; Compl.
17 ¶ 123.) They also seek a declaratory judgment against USAPA that the West Pilots have
18 the right under McCaskill-Bond to full and separate representation (with counsel of their
19 own choosing) in the seniority-integration negotiation/arbitration proceedings with the
20 American pilots. (*See* FAC ¶ 137.) Because the plaintiffs’ DFR claim implicates how
21 USAPA may proceed under the terms of the MOU, and because their McCaskill-Bond
22 declaratory-relief claim implicates how all of the parties may proceed vis-à-vis the West
23 Pilots, a failure to promptly resolve the merits of these claims would threaten to disrupt
24 and delay the process of integrating US Airways and American pilots following the
25 merger – a process that is central to the airline’s realization of the operational and
26 financial benefits from the combined pilot workforce that is contemplated by the MOU
27 and the merger. Accordingly, while US Airways has been and still is neutral regarding
28 the merits of the underlying DFR claim between USAPA and the West Pilots, it has a

1 significant protectable interest in seeing that the plaintiffs' claims against USAPA are
2 resolved promptly and on the merits.

3 The Court's July 19, 2013 ruling that plaintiffs' DFR claim against USAPA is ripe,
4 and its scheduling of a September 24, 2013 trial on the merits of that claim (consolidated
5 with the hearing on plaintiffs' motion for preliminary injunction), are consistent with
6 US Airways' interest as described above. But US Airways still has a strong and
7 continuing interest in ensuring that the remaining proceedings before this Court are
8 conducted in a manner that promotes a prompt resolution of the merits of the West Pilots'
9 claims. With respect to the dispute regarding the West Pilots' role in the McCaskill-Bond
10 process, which was not addressed in the Court's July 19 Order, US Airways has a
11 significant protectable interest in a prompt resolution as well as confirmation of its legal
12 position (disputed by USAPA) that its obligation under McCaskill-Bond to provide for a
13 "fair and equitable" seniority integration entails affording an opportunity to the West
14 Pilots to have a "separate seat at the table" under the circumstances of this case. *Cf. Smith*
15 *v. Pangilinan*, 651 F.2d 1320, 1325 (9th Cir. 1980) ("In appropriate circumstances,
16 therefore, *stare decisis* may supply the requisite practical impairment warranting
17 intervention of right.").

18 As to plaintiffs' DFR claim, USAPA continues to assert that the West Pilots' claim
19 is not ripe notwithstanding the Court's July 19 ruling to the contrary. (*See Answer Of US*
20 *Airline Pilots Association* (Doc. No. 123), at p. 15:3-4 (asserting, as second affirmative
21 defense, that "The Complaint does not present a claim that is ripe for adjudication.").)
22 Additionally, US Airways has a strong interest in being a party in this case so that, unlike
23 in *Addington I, Addington v. US Airline Pilots Ass'n*, 606 F.3d 1174 (9th Cir. 2010), it
24 may participate in any future proceedings before the Ninth Circuit – especially with
25 regard to the ripeness of the West Pilots' DFR claim against USAPA.

26 US Airways seeks to intervene only for the limited purposes of protecting the
27 specific interests described herein. It is within the Court's discretion to "limit intervention
28 to particular issues" or to allow intervention for "a limited purpose." *Dep't of Fair Empl.*

1 & *Hous. v. Lucent Techs., Inc.*, 642 F.3d 728, 741 (9th Cir. 2011) (court has “discretion to
2 limit intervention to particular issues”); *In re NSA Telcoms. Records Litig.*, 2007 U.S.
3 Dist. LEXIS 14473, at *41-42 (N.D. Cal. Feb. 20, 2007) (court may grant intervention for
4 “a limited purpose”); *Harris v. Pernsley*, 820 F.2d 592, 599 (3rd Cir. 1987) (movant for
5 intervention “may have a sufficient interest to intervene as to certain issues in an action
6 without having an interest in the litigation as a whole”).

7 **B. The Disposition Of This Action May, As A Practical Matter, Impair Or**
8 **Impede US Airways’ Ability To Protect Its Interests.**

9 In determining whether an interest may be impaired or impeded, courts have been
10 guided by the Advisory Committee’s notes on Rule 24, which provide that “if an absentee
11 would be substantially affected in a practical sense by the determination made in an
12 action, he should, as a general rule, be entitled to intervene.” *Sw. Ctr. for Biological*
13 *Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2001) (quoting from Fed. R. Civ. P. 24
14 advisory committee’s notes); *see also City of Los Angeles*, 288 F.3d at 401 (“the relevant
15 inquiry is whether the [disposition of the action] ‘may’ impair rights ‘as a practical
16 matter,’” and not whether it “will ‘necessarily’ impair them”) (citation omitted).

17 US Airways may be substantially affected if this action does not promptly generate
18 a disposition on the merits of plaintiffs’ claims against USAPA and/or if the West Pilots’
19 role in the McCaskill-Bond process is adjudicated without US Airways’ participation. *See*
20 *Smith*, 651 F.2d at 1325. As noted in Section I.A, *supra*, the plaintiffs’ claims against
21 USAPA implicate how the parties may proceed, and, as a result, a failure to promptly
22 resolve the merits of those claims or a resolution that results in additional legal challenges
23 would threaten to disrupt and delay the process of integrating US Airways and American
24 pilots. That is a process which is central to the airline’s realization of the operational and
25 financial benefits from the combined pilot workforce that is contemplated by the merger.

26 **C. US Airways’ Motion Is Timely.**

27 US Airways filed this motion soon after the Court’s July 19 decision on its motion
28 to dismiss and the plaintiffs’ July 25 motion for leave to file a first amended complaint – a

1 proposed pleading which, except for purposes of preserving plaintiffs' rights on appeal,
2 does not assert any claims against US Airways. (*See* Doc. No. 124, at p. 3:8-16.) Those
3 two events rendered US Airways a non-party and thus eligible to intervene. US Airways'
4 intervention at this stage of the lawsuit will not cause prejudice to plaintiffs or to USAPA.
5 This motion is timely.

6 **D. Plaintiffs And USAPA May Not Adequately Represent US Airways'**
7 **Interests.**

8 Only a "minimal showing" is required to demonstrate that representation of the
9 proposed intervenor's interest by the existing parties "may" be inadequate. *City of Los*
10 *Angeles*, 288 F.3d at 402. The most important consideration "is how the interest [of the
11 proposed intervenor] compares with the interests of existing parties." *Arakaki v.*
12 *Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003). In this case, plaintiffs' and USAPA's
13 interests lie fundamentally in successfully prosecuting or successfully defending the West
14 Pilots' DFR and McCaskill-Bond declaratory-relief claims, regardless of how the
15 litigation of those claims ultimately might affect the timing of the seniority-integration
16 process between the US Airways and American pilots.

17 Plaintiffs have made clear their desire to obtain a prompt adjudication of the merits
18 of their claims against USAPA, so that there is no interference with the process for the
19 US Airways/American pilots seniority integration. But, separate and apart from the West
20 Pilots' interests that will be advocated by plaintiffs, US Airways has a significant interest
21 in its own behalf to be allowed to start and complete the seniority-integration process on a
22 timely basis given that any interference with that process could have an adverse impact on
23 the operational and financial benefits of the merger with American. USAPA's actions in
24 this litigation have been, and still are, inconsistent with a prompt resolution on the merits
25 of plaintiffs' claims. Indeed, notwithstanding the Court's July 19 decision, USAPA still
26 asserts that the West Pilots' DFR claim is not ripe. (*See Answer Of US Airline Pilots*
27 *Association* (Doc. No. 123), at p. 15:3-4.)
28

1 Because US Airways' interests differ from the interests of both plaintiffs and
 2 USAPA, its interests may not be adequately represented by the parties and, accordingly,
 3 US Airways satisfies the "minimal showing" necessary to satisfy the final requirement for
 4 intervention as of right under Rule 24(a).

5 **II. US AIRWAYS SATISFIES ALL OF THE REQUIREMENTS FOR**
 6 **PERMISSIVE INTERVENTION UNDER RULE 24(b).**

7 If this Court were to conclude that US Airways is not entitled to intervene as of
 8 right under Rule 24(a), US Airways should nonetheless be permitted to intervene under
 9 Rule 24(b). Permissive intervention under Rule 24(b) should be granted where: (1) the
 10 motion is timely; and (2) the proposed intervenor has a claim or defense, within the
 11 meaning of Rule 24(b), that shares a common question of law or fact with the main action.
 12 *Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 843-44 (9th Cir. 2011).²
 13 The court must also "consider whether the intervention will unduly delay or prejudice the
 14 adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3).

15 **A. US Airways' Motion Is Timely.**

16 As demonstrated in Section I.C, *supra*, US Airways' motion is timely.

17 **B. US Airways Has A Claim Or Defense, Within The Meaning Of**
 18 **Rule 24(b), That Shares A Common Question Of Law Or Fact With**
 19 **This Action.**

20 Although the plain language of Rule 24(b)(1)(B) refers to an intervenor with "a
 21 *claim or defense* that shares with the main action a common question of law or fact"
 22 (emphasis added), this requirement is not strictly enforced. Rather, "[w]hether there is a
 23 common question of law or fact is liberally construed by the courts," *S. Yuba River*

24 ² Although a proposed intervenor sometimes must also establish an independent ground for
 25 subject-matter jurisdiction, "[w]here the proposed intervenor in a federal-question case brings no
 26 new claims, the jurisdictional concern drops away." *Freedom from Religion Found., Inc.*,
 27 644 F.3d at 844. Because this Court has original federal-question jurisdiction over plaintiffs'
 28 DFR claim against USAPA and because US Airways does not seek to assert any new cause of
 action (i.e., its request for a determination of the West Pilots' rights under McCaskill-Bond is
 already the subject of plaintiffs' previously-filed motion for leave to file a First Amended
 Complaint), US Airways need not demonstrate an independent ground for this Court's
 jurisdiction in order to be permitted to intervene under Rule 24(b).

1 *Citizens League v. Nat'l Marine Fisheries Serv.*, 2007 U.S. Dist. LEXIS 81636, *42
2 (E.D. Cal. Oct. 16, 2007), and courts frequently grant permissive intervention even though
3 the intervenor does not have a free-standing claim or defense. *See, e.g., Brooks v. Flagg*
4 *Bros., Inc.*, 63 F.R.D. 409, 415 (S.D.N.Y. 1974) (“the words ‘claim or defense’ have not
5 been read in a technical sense [and] permissive intervention has been upheld even
6 where . . . the existence of any nominate ‘claim’ or ‘defense’ is difficult to find”);
7 *Wilderness Soc’y v. Wisely*, 524 F. Supp. 2d 1285, 1294 (D. Colo. 2007) (permissive
8 intervention granted where, “[r]egardless of how they may be conceived and described,
9 [movant] possesses interests in leases, . . . and matters relating to the legality of the
10 decision . . . that resulted in the sale of those leases clearly share common questions of law
11 and fact with Plaintiffs’ claims”). It is sufficient for a proposed intervenor to show that it
12 is “directly affected” by the parties’ lawsuit. *See S. Yuba River Citizens League*,
13 2007 U.S. Dist. LEXIS 81636, at *43 (allowing permissive intervention where movant
14 had an interest in enforcing the environmental opinion that was contested in the lawsuit
15 and thus was “directly affected” by the dispute, thereby establishing “common issues of
16 fact”).

17 As discussed in Sections I.A and I.B, *supra*, US Airways has a significant interest
18 in ensuring that the McCaskill-Bond seniority-integration process may proceed in
19 accordance with the time frame in the MOU. This interest shares common questions of
20 law and fact with plaintiffs’ claims against USAPA. US Airways may thus be directly
21 affected by this litigation in a manner that is sufficient to warrant permissive intervention.

22 Moreover, to the extent the Court determines in its discretion that an actual “claim”
23 is necessary for permissive intervention, US Airways’ Intervention Pleading attached
24 hereto (in particular, ¶¶ 11-14) sets forth a claim for declaratory judgment against USAPA
25 to the effect that the West Pilots have the right to full and separate representation under
26 McCaskill-Bond in the US Airways/American pilot seniority-integration process.

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Dated: July 30, 2013.

O'Melveny & Myers LLP

By: /s/ Robert A. Siegel
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CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2013, I caused to be electronically transmitted the attached Defendant US Airways, Inc.'s Motion For Limited Intervention Under Rule 24 Of The Federal Rules Of Civil Procedure (with attachment) to the Clerk's office using the CM/ECF System for filing.

/s/ Robert A. Siegel _____

Robert A. Siegel

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21 Don Addington, *et al.*, on behalf of
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Case No. 2:13-cv-00471-ROS

**US AIRWAYS, INC.'S
INTERVENTION PLEADING
PURSUANT TO RULE 24 OF THE
FEDERAL RULES OF CIVIL
PROCEDURE**

1 In prior briefing to the Court on its motion to dismiss plaintiffs’ breach-of-contract
2 claim (Count Two), US Airways, Inc. (“US Airways”) explained that: “US Airways has a
3 significant interest in the prompt and final resolution of the merits of plaintiffs’ DFR
4 claim against USAPA. It therefore intends to file a motion for limited intervention under
5 Rule 24 of the Federal Rules of Civil Procedure if and when its motion to dismiss is
6 granted.” (US Airways’ Reply In Support Of Motion To Dismiss (Doc. No. 54), at p. 3
7 n.2 (p. 4 of ECF filing).) On July 19, 2013, the Court granted US Airways’ motion to
8 dismiss. (Order (Doc. No. 122), at pp. 6:18-7:1.) Pursuant to its prior representations to
9 the Court, and in accordance with Rules 24(a) and 24(b) of the Federal Rules of Civil
10 Procedure, US Airways alleges as follows in support of its intervention in this lawsuit for
11 the limited purposes of protecting its interest in:

- 12 (i) a prompt resolution of the merits of the West Pilots’ claim against defendant
13 US Airline Pilots Association (“USAPA”) for breach of the duty of fair
14 representation (“DFR”) – including ensuring that US Airways has the right
15 to participate in potential additional district court and appellate proceedings
16 with regard to the ripeness of the West Pilots’ claim; and
17 (ii) a prompt determination that the West Pilots have the right under the federal
18 McCaskill-Bond statute to full and separate representation in the upcoming
19 seniority-integration proceedings between the pilots employed by
20 US Airways and American Airlines, Inc. (“American”) – contrary to the
21 position that USAPA has recently taken in this litigation.

22 **FACTUAL AND PROCEDURAL BACKGROUND**

23 1. This lawsuit arises from a protracted seniority dispute between the pilots
24 employed by US Airways, Inc. (the “East Pilots”) prior to its merger with America West
25 Airlines, Inc. (“America West”) in 2005 and the pilots employed by America West at the
26 time of that merger (the “West Pilots”). Intervenor US Airways is the air carrier formed
27 by that merger. As a result of this ongoing seniority dispute, the East Pilots and West
28

1 Pilots have continued to operate under two separate seniority lists for the past eight years
2 and no integrated seniority list has been implemented.

3 2. In February of this year, US Airways agreed to merge with American. In
4 connection with the merger, US Airways, American, USAPA representing US Airways'
5 pilots, and the Allied Pilots Association representing American's pilots, entered into a
6 Memorandum of Understanding ("MOU") which prescribes that the seniority integration
7 of the US Airways (East and West) pilots with the American pilots will be pursuant to the
8 applicable federal statute, known as "McCaskill-Bond." This federal statute, which was
9 enacted in 2007 and thus was unavailable to resolve the US Airways/American West pilots
10 seniority dispute, mandates, *inter alia*, that seniority integration of airline employees
11 following the combination of two or more airlines shall occur in a "fair and equitable
12 manner." See 49 U.S.C. § 42112 (adopting "the labor protective provisions imposed by
13 the Civil Aeronautics Board in the Allegheny-Mohawk merger (as published at
14 59 C.A.B. 45)"); *Allegheny-Mohawk*, 59 C.A.B. 19, 45 § 3 (1972). The MOU requires
15 that the seniority-integration process begin "as soon as possible" after the close of the
16 US Airways/American merger, which is currently anticipated to occur in the third quarter
17 of this year. (See MOU ¶ 10(a); Plaintiffs' Evidentiary App. Part 3 (Doc. No. 14-3), at
18 pp. 372-373 (pp. 61-62 of ECF filing).)

19 3. Plaintiffs, a group of individual West Pilots seeking to represent a certified
20 West Pilot class, contend that a prior arbitration decision known as the "Nicolau Award"
21 provides the only permissible ordering of East and West Pilots vis-à-vis one another
22 within the overall US Airways/American integrated seniority list. (Complaint ("Compl.")
23 (Doc. No. 1), ¶¶ 96-100; [Proposed] First Amended Complaint ("FAC") (Doc. No. 124),
24 Ex. 2 ¶¶ 96-100 (pp. 37-38 of ECF filing).) The West Pilots allege that USAPA does not
25 have a legitimate union purpose for departing from the Nicolau Award in the integration
26 of West Pilots and East Pilots, and they allege that USAPA breached its DFR toward them
27 by entering into the MOU because the MOU does not specifically require use of the
28 Nicolau Award. (FAC ¶¶ 96-100.) As a remedy for USAPA's alleged breach of DFR, the

1 West Pilots seek an injunction requiring USAPA to use the Nicolau Award seniority list to
2 determine the relative order of US Airways pilots in the McCaskill-Bond seniority-
3 integration proceeding that will take place after the merger between US Airways and
4 American. (FAC ¶ 136 (p. 42 of Doc. No. 124 ECF filing); Compl. ¶ 123.)

5 4. USAPA has taken the position in this litigation that the West Pilots' DFR
6 claim is not yet ripe. (*See, e.g.*, USAPA's Motion To Dismiss (Doc. No. 44), at pp. 8:1-
7 10:19 (pp. 13-15 of ECF filing).) US Airways' position is that the West Pilots' DFR
8 claim is ripe. (*See, e.g.*, US Airways' Response To Plaintiffs' Motion For Preliminary
9 Injunction (Doc. No. 49), at pp. 3:15-10:15 (pp. 4-11 of ECF filing).) On July 19, 2013,
10 the Court denied USAPA's motion to dismiss, and, in so doing, ruled that plaintiffs' DFR
11 claim was ripe. (Order (Doc. No. 122), at pp. 4:23-5:21.) Thereafter, USAPA filed its
12 Answer to the plaintiffs' Complaint and it continues to assert that the West Pilots' DFR
13 claim is not ripe. (*See Answer Of US Airline Pilots Association* (Doc. No. 123), at
14 p. 15:3-4 (asserting, as second affirmative defense, that "The Complaint does not present a
15 claim that is ripe for adjudication.").)

16 5. USAPA denies that it has breached its DFR toward the West Pilots. (*See,*
17 *generally, Answer Of US Airline Pilots Association* (Doc. No. 123).) US Airways has
18 always been and still is neutral regarding the merits of the underlying DFR claim between
19 USAPA and the West Pilots. US Airways' only interest is in ensuring that the seniority
20 dispute is promptly resolved in a manner that will allow both pilot groups and the airline
21 to move forward with the merger and the seniority integration with American's pilots.
22 The Court has scheduled a trial on the merits of plaintiffs' DFR claim, consolidated with a
23 hearing on plaintiffs' motion for preliminary injunction, for September 24, 2013. (*See*
24 *Order* (Doc. No. 122), at p. 1:22-23 ("In hopes of bringing a swift end to the parties'
25 disputes, the Court will advance the trial on the merits and consolidate it with a
26 preliminary injunction hearing on September 24, 2013.").)

27 6. After this lawsuit was filed, a dispute arose between the West Pilots and
28 US Airways, on the one hand, and USAPA, on the other hand, regarding whether the

1 West Pilots have the right under the McCaskill-Bond statute to full and separate
2 representation (with counsel of their own choosing) in the seniority-integration
3 negotiation/arbitration proceedings that are scheduled to commence soon after the
4 US Airways/American merger is consummated. It is the position of the West Pilots and
5 US Airways that the West Pilots do have such a right, and it is the position of USAPA that
6 they do not. At the Court's direction, the parties have already submitted extensive
7 briefing on this issue. (*See* US Airways' Post-Hearing Supplemental Brief (Doc. No. 98),
8 at pp. 1:4-7:8 (pp. 2-8 of ECF filing); Plaintiffs' Trial Memorandum On The Participation
9 Of West Pilots In The McCaskill-Bond Process (Doc. No. 97); USAPA's Supplemental
10 Brief As Directed By The Court At May 14, 2013 Hearing (Doc. No. 95), at pp. 1:14-11:6
11 (pp. 2-12 of ECF filing); US Airways' Response To Plaintiffs' And USAPA's Post-
12 Hearing Supplemental Briefs (Doc. No. 110), at pp. 1:7-8:20 (pp. 2-9 of ECF filing);
13 Plaintiffs' Response To Memorandum By USAPA And US Airways On Remedy And
14 McCaskill-Bond (Doc. No. 106), at pp. 1:18-3:10; USAPA's Supplemental Brief In
15 Response To The Supplemental Briefs Of Plaintiffs And US Airways On Issues As
16 Directed By The Court At May 14, 2013 Hearing (Doc. No. 108), at pp. 1:5-8:6 (pp. 2-9
17 of ECF filing).)

18 7. Plaintiffs have sought leave to file a First Amended Complaint in which,
19 *inter alia*, they would add a claim for declaratory judgment against USAPA confirming
20 their right to full and separate representation under McCaskill-Bond in the seniority-
21 integration process. (*See* Plaintiffs' Motion For Leave To File Amended Complaint (Doc.
22 No. 124), Ex. 2 (FAC) ¶¶ 120-132.) The effect of this amendment would be merely to
23 formally add to plaintiffs' complaint the McCaskill-Bond issue that already has been
24 briefed to the Court. (*See* ¶ 6, *supra*.) The briefing on plaintiffs' motion for leave, which
25 US Airways supports, is scheduled to be completed no later than August 1, 2013. (*See*
26 Order (Doc. No. 127).)

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28

1 **US AIRWAYS' INTEREST IN A PROMPT RESOLUTION OF THE MERITS OF**
2 **THE WEST PILOTS' DFR CLAIM AGAINST USAPA**

3 8. The completion of the US Airways/American seniority-integration process
4 is a key component of the MOU which, in turn, is critical to American's restructuring
5 plan. Because the West Pilots' DFR claim implicates how USAPA may proceed under
6 the terms of the MOU, a failure to promptly resolve the merits of the claim would threaten
7 to disrupt and delay the process of integrating US Airways and American pilots following
8 the merger – a process that is central to the airline's realization of the operational and
9 financial benefits from the combined pilot workforce that is contemplated by the MOU
10 and the merger. Accordingly, while it has been and still is neutral regarding the merits of
11 the underlying DFR claim between USAPA and the West Pilots, US Airways has a
12 significant interest in seeing that the dispute over the use of the Nicolau Award is resolved
13 promptly and on the merits.

14 9. The Court's July 19, 2013 ruling that the plaintiffs' DFR claim against
15 USAPA is ripe, and its scheduling of a September 24, 2013 trial on the merits of that
16 claim (consolidated with the hearing on plaintiffs' motion for preliminary injunction), are
17 consistent with US Airways' interest as described herein, but US Airways still has a
18 strong and continuing interest in ensuring that the remaining proceedings before the
19 District Court are conducted in a manner that promotes a prompt resolution of the merits
20 of the West Pilots' DFR claim. US Airways also has a strong interest in being a party in
21 this case so that it may participate in any proceedings before the Ninth Circuit that may
22 occur after the District Court's entry of final judgment – especially with regard to the
23 ripeness of the West Pilots' DFR claim against USAPA.

24 10. Intervention under Rule 24 may be limited "to particular issues" or may be
25 for "a limited purpose." *Dep't of Fair Empl. & Hous. v. Lucent Techs., Inc.*,
26 642 F.3d 728, 741 (9th Cir. 2011) (court has "discretion to limit intervention to particular
27 issues"). Based on the foregoing, US Airways has the right to intervene under Rule 24(a),
28 or should be permitted by the Court to intervene under Rule 24(b), for the limited purpose

1 of protecting its interest in a prompt resolution of the merits of the West Pilots' DFR
2 claim against USAPA.

3 **US AIRWAYS' INTEREST IN A PROMPT DETERMINATION OF ITS CLAIM**
4 **THAT THE WEST PILOTS HAVE A RIGHT TO FULL AND SEPARATE**
5 **REPRESENTATION IN THE US AIRWAYS/AMERICAN SENIORITY-**
6 **INTEGRATION PROCESS**

7 11. There is presently a substantial controversy of sufficient reality, within the
8 meaning of 28 U.S.C. § 2201, between US Airways and plaintiffs, on the one hand, and
9 USAPA, on the other hand, regarding whether the West Pilots have the right under
10 McCaskill-Bond to full and separate representation (with counsel of their own choosing)
11 in the US Airways/American pilot seniority-integration process. (*See* ¶ 6, *supra*.) That
12 dispute implicates questions of fact and law that are a central part of the West Pilots'
13 claims against USAPA.

14 12. Because the dispute over the West Pilots' role under McCaskill-Bond
15 implicates how the parties proceed, and because the MOU requires that the seniority-
16 integration process start soon after the closing of the US Airways/American merger
17 (anticipated to occur within approximately the next two months), the McCaskill-Bond
18 dispute is of sufficient immediacy within the meaning of 28 U.S.C. § 2201.

19 13. US Airways has an obligation and interest under the McCaskill-Bond statute
20 in providing for a prompt seniority integration, conducted in a "fair and equitable"
21 manner, between the US Airways (East and West) pilots and the American pilots.
22 Because USAPA has taken the position in this litigation that the West Pilots do not have a
23 right to separate participation in the McCaskill-Bond process, a position which is contrary
24 to that of US Airways, there is presently a dispute between "parties having adverse legal
25 interests" within the meaning of 28 U.S.C. § 2201.

26 14. Plaintiffs, in their proposed First Amended Complaint, request a declaration
27 from the Court that "the West Pilots are entitled to an order declaring that they have party
28 status and the right (but not the obligation) to participate fully (with counsel of their own

1 choice) in the MOU Seniority Integration process.” (Doc. No. 124, Ex. 2 ¶ 137.) For the
2 reasons stated in its prior submissions, US Airways agrees that the Court should issue
3 such a declaration pursuant to the McCaskill-Bond statute. (*See* US Airways’ Post-
4 Hearing Supplemental Brief (Doc. No. 98), at pp. 1:4-7:8 (pp. 2-8 of ECF filing);
5 US Airways’ Response To Plaintiffs’ And USAPA’s Post-Hearing Supplemental Briefs
6 (Doc. No. 110), at pp. 1:7-8:20 (pp. 2-9 of ECF filing).)

7 15. Given USAPA’s opposition to separate participation for the West Pilots in
8 the McCaskill-Bond seniority-integration process, that process could be delayed and
9 disrupted in the absence of a prompt decision from the Court. US Airways has a strong
10 interest in avoiding any delay or disruption to the process of integrating US Airways and
11 American pilots following the merger – a process that is central to the airline’s realization
12 of the operational and financial benefits from a combined pilot workforce. The dispute
13 regarding the West Pilots’ role can be resolved expeditiously and efficiently by this Court
14 because the parties already have submitted extensive briefing on the subject (*see* ¶ 6,
15 *supra*) and because the dispute involves a predominantly legal issue that does not require
16 any additional factual development.

17 16. Intervention under Rule 24 may be limited “to particular issues” or may be
18 for “a limited purpose.” *Dep’t of Fair Empl. & Hous. v. Lucent Techs., Inc.*,
19 642 F.3d 728, 741 (9th Cir. 2011) (court has “discretion to limit intervention to particular
20 issues”). Based on the foregoing, US Airways has the right to intervene under Rule 24(a),
21 or should be permitted by the Court to intervene under Rule 24(b), for the limited purpose
22 of protecting its interest in a prompt determination that the West Pilots have a right under
23 McCaskill-Bond to full and separate representation (with counsel of their own choosing)
24 in the US Airways/American pilot seniority-integration negotiation/arbitration process.

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Dated: July 30, 2013.

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19 **IN THE UNITED STATES DISTRICT COURT**
20 **FOR THE DISTRICT OF ARIZONA**

21 Don Addington, *et al.*, on behalf of
22 themselves and all similarly situated
23 former America West Pilots,

24 Plaintiffs,

25 vs.

26 US Airline Pilots Ass'n, an
27 unincorporated association,

28 Defendant,

US Airways, Inc.,

Intervenor.

Case No. 2:13-cv-00471-ROS

**[PROPOSED] ORDER GRANTING
US AIRWAYS, INC.'S MOTION FOR
LIMITED INTERVENTION UNDER
RULE 24 OF THE FEDERAL RULES
OF CIVIL PROCEDURE**

1 Upon consideration of US Airways, Inc.'s Motion For Limited Intervention Under
2 Rule 24 Of The Federal Rules of Civil Procedure, and any opposition thereto,

3 IT IS HEREBY ORDERED that the Motion For Limited Intervention is
4 GRANTED for the purposes of protecting US Airways interest in:

5 (i) a prompt resolution of the merits of the West Pilots' claim against defendant
6 US Airline Pilots Association for breach of the duty of fair representation;

7 and

8 (ii) a prompt determination that the West Pilots have the right under the federal
9 McCaskill-Bond statute to full and separate representation in the upcoming
10 seniority-integration proceedings between the pilots employed by US
11 Airways and American Airlines, Inc.