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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Don Addington, *et. al.*,

Plaintiffs,

v.

US Airline Pilots Association, *et. al.*,

Defendants.

Case No.: CV-13-00471-PHX-ROS

US Airline Pilots Association's Statement in Response to the Court's August 13, 2013 Order

USAPA repeats that it favors the proposed merger and stands by its commitments under the MOU. USAPA nevertheless submits that the DOJ Antitrust Action significantly changes the facts underlying the Court's July 19, 2013 Order (Doc. 122) and that, as a result, this action should be dismissed without prejudice for a number of reasons.

First, the DOJ Antitrust Action reinforces USAPA's position that this action is not ripe and fails to present a justiciable controversy under Article III. In addition to lack of ripeness, plaintiffs lack standing as there is no injury in fact with respect to a contingent MOU that fails by it terms if no merger takes place.[1] As to ripeness, given the DOJ's announced determination to permanently halt the merger and the contingent nature of the MOU, there is simply no controversy of "sufficient immediacy and reality" to meet the test of constitutional ripeness. *United States v. Braren*, 338 F.3d 971, 975 (9th Cir. 2003)(quoting *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 273 (1941)). As to standing, plaintiffs cannot show any injury that is "real and concrete" as opposed to speculative and hypothetical. *Thomas v. Anchorage Equal Rights Comm*., 220 F.3d 1134, 1139 (9th Cir. 2000). The highly uncertain prospects of the merger present the very real possibility that any decision here would be purely advisory, declaring the parties' rights and obligations as to an agreement – the MOU – that may never become effective and a process – seniority integration through McCaskill Bond -- that may never apply because the pilot workforces will not be integrated.

Second, the DOJ suit also undermines the reasoning behind the finding that this case meets the prudential ripeness test. In denying USAPA's motion to dismiss, the Court

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[1] The MOU and seniority integration process are not effective until the effective date of the POR. Doc.77-8 at p.1 & ¶18(c). The POR cannot become effective, until, *inter alia*, "The Debtors shall have received any authorizations, consents, regulatory approvals, rulings, letters, no-action letters, opinions, or documents that are necessary to implement the Plan and are required by law, regulation, or order." Second Amended Joint Chapter 11 Plan §9.2(c) in *In re AMR Corp. et. al., No.* 11-15463(SHL), Doc. 8590 at p.104 of 287 (SDNY Bkr.). Even if the POR becomes effective, there is no possible beginning of any arbitration proceeding involving the seniority integration until a Joint Collective Bargaining Agreement is finalized. Doc 77-8, ¶10(a).

weighed the unusual circumstances of this case with a concern for "the *immediate* orderly integration of the two airlines' operations." Doc. 122, at 5 (emphasis supplied). The government's action makes clear that there is now no impending merger and, even if following conclusion of the government's lawsuit one is eventually approved, the MOU clearly will not become effective in the near future.[2] As a result, there are now even more contingencies impacting the MOU than previously advanced. Respectfully, the *immediacy* of the seniority integration proceedings, which heavily informed the Court's July 19, 2013 Order, is completely by the boards.

Third, concrete practical considerations warrant dismissal without prejudice. It is highly likely continuing with this action will be an enormous waste of the Court's and parties' resources. Pursuant to the Court's July 19, 2013 Order, the parties are required to be engaged in an accelerated and extremely aggressive schedule to commence and complete all discovery and numerous filings including all motions, Joint Pretrial Order, Findings of Fact and Conclusions of Law, etc. The parties are also addressing discovery disputes and questions regarding a protective order. There are pending contested motions, including the motion for class certification and motion to intervene. Trial is presently scheduled for September 24 and 25, 2013, with the possibility of further dates. All of the Court's and parties' significant resources necessary to complete these actions stand a high probability of being for naught.[3] Finally, Plaintiffs also claim attorneys' fees. It would be manifestly unjust for USAPA and its members to face such a claim incurred in pursuit of matters that may never come to pass.

Respectfully submitted this 15th day of August, 2013,

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[2] It is clear the DOJ's 56 page complaint is not a *pro forma* objection to the merger. *See e.g. U.S., Filing Suit, Moves to Block Airline Merger*, N.Y. Times, Aug. 14, 2013**,** at A1, noting that when asked whether compromise was possible, the Chief of the Antitrust Division stated: "We think a full-stop injunction is the right course for the consumer." Even a consensual resolution would entail a lengthy process. *See* 15 U.S.C. §16 (b).

[3] And, even if not totally wasteful, depending on the length of time by which the DOJ lawsuit will delay the merger, there is a substantial likelihood discovery would have to be revisited and supplemented resulting in further duplicative and wasteful efforts.

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CERTIFICATE OF SERVICE

I hereby certify that on August 15, 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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