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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,
24 *Defendant.*

25 Case No.: CV-13-00471-PHX-ROS
26 **US AIRLINE PILOTS**
27 **ASSOCIATION'S LOCAL RULE**
28 **56.1 SEPARATE STATEMENT**
OF FACTS IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT

1 Pursuant to L.R. Civ. 56.1(a), defendant US Airline Pilots Association
2 (“USAPA”) hereby submits its Statement of Facts in Support of its Motion for Summary
3 Judgment. This statement is supported by the attached exhibits, statements contained in
4 the parties’ Stipulations and Undisputed Facts in Proposed Final Pretrial Order for Bench
5 Trial contained in ¶ F pp. 13-34 Doc. 206-1 (hereinafter referred to as “Undisputed
6 Facts”), the exhibits hereto, and the record before this Court.

7 Background

8 1. In May, 2005, US Airways and America West agreed to merge to become a
9 single airline known as US Airways. Undisputed Facts ¶1.
10

11 2. At the time of the merger, the pilots employed by US Airways were
12 represented for the purpose of collective bargaining under the RLA by the Air Line Pilots
13 Association (ALPA) through a subordinate body known as the US Airways Master
14 Executive Council (US Airways MEC). *Addington v. USAPA*, 606 F.3d 1174, 1177 (9th
15 Cir. 2010); Undisputed Facts, ¶5.

16 3. At the time of the merger, the pilots employed by America West were
17 represented for the purpose of collective bargaining under the RLA by ALPA through a
18 subordinate body known as the America West Master Executive Council (America West
19 MEC). *Addington*, 606 F.3d at 1177; Undisputed Facts, ¶5.

20 4. At the time of the merger, the America West collective bargaining
21 agreement (“CBA”) provided for seniority to be ordered based on date of hire. USAPA
22 Exhibit 143, at Section 22, annexed hereto at Tab 4; Undisputed Facts, ¶10, 11. *See also*
23 Deposition Transcript of Michael Soha 12:13-15, 21:11-22:13, annexed hereto at Tab 5
24 (Plaintiff Captain Soha who started working for America West on August 15, 1983
25 testifying he was promoted from first officer to captain at America West because of his
26 seniority, *i.e.*, date of hire).

27 5. America West Holdings Corporation, America West, US Airways Group,
28

1 US Airways, ALPA, the US Airways MEC and the America West MEC entered into a
2 “Transition Agreement” that established how various employment terms and merger-
3 related conditions of employment would be affected by the merger between US Airways
4 and America West. USAPA Exhibit 102, annexed hereto at Tab 6; Undisputed Facts, ¶7.

5 6. The Transition Agreement provided that “[t]he pilot workforces . . . will
6 remain separate and covered by their respective collective bargaining agreements” until
7 “Operational Pilot Integration” which would occur only after “completion of the
8 integrated pilot seniority list” and negotiation of a single collective bargaining agreement.
9 USAPA Exhibit 102, Section VI.A, annexed hereto at Tab 6; Undisputed Facts, ¶¶8, 14-
10 15.

11 7. The Transition Agreement also provided that ALPA and the airline parties
12 would negotiate “a single collective bargaining agreement applicable to the merged
13 operations of America West and US Airways and that the airline operations of America
14 West and US Airways . . . shall be merged “no later than twelve (12) months following
15 the later of (i) completion of the integrated pilot seniority list and (ii) negotiation of the
16 Single Agreement” USAPA Exhibit 102, Section VI.A, annexed hereto at Tab 6;
17 Undisputed Facts, ¶¶15, 19.

18 8. The Transition Agreement also provides that its terms can be modified by
19 written agreement between US Airways and USAPA. It is undisputed that the Transition
20 Agreement can be modified at any time “by written agreement of [USAPA] and the [US
21 Airways].” Order dated October 11, 2012 in *US Airways v Addington, et. al.* No. CV-10-
22 01570-PHX-ROS, Doc. No. 193 p. 7 (D. Ariz. Oct. 11, 2012); USAPA Exhibit 102,
23 Section XII, at USAPA001419, annexed hereto at Tab 6; Deposition Transcript of Gary
24 Hummel 149:14-16, annexed hereto at Tab 7; USAPA Exhibit 154, annexed hereto at
25 Tab 8.

26 9. At the time, ALPA maintained a “Merger and Fragmentation Policy”
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1 (usually referred to simply as the “Merger Policy”) to resolve seniority and other issues in
2 the event of a merger or other airline transaction. USAPA Exhibit 103, annexed hereto at
3 Tab 9; Undisputed Facts, ¶17.

4 10. The ALPA Merger Policy at the time did not include longevity as a factor
5 to be considered in constructing an integrated seniority list. USAPA Exhibit 103, at
6 Section G pp. 5-6, annexed hereto at Tab 9; Undisputed Facts, ¶17.

7 11. The US Airways Merger Committee and the America West Merger
8 Committee followed the procedures of ALPA Merger Policy through arbitration before a
9 Board of Arbitration consisting of neutral arbitrator George Nicolau and pilot neutrals
10 Stephen Gillen and James Brucia. USAPA Exhibit 104, annexed hereto at Tab 10;
11 Undisputed Facts, ¶23.

12 12. The Board of Arbitration issued its opinion and award (known as the
13 “Nicolau Award”) on May 1, 2007. USAPA Exhibit 104, annexed hereto at Tab 10;
14 Undisputed Facts, ¶24.

15 13. The Nicolau Award placed about 500 senior East Pilots at the top of the list
16 because West Pilots were not operating the widebody international aircraft flown by the
17 most senior East Pilots at the time of the merger. USAPA Exhibit 104, annexed hereto at
18 Tab10; Undisputed Facts, ¶¶25-26.¹

19 20 14. The Nicolau Award also placed the approximately 1700 East Pilots
21 furloughed at the time of the merger at the bottom of the list below the most junior West
22 Pilots. USAPA Exhibit 104, annexed hereto at Tab10; Undisputed Facts, ¶27.

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25 ¹ In USAPA’s independent contentions of fact in the Joint Proposed Pretrial Order,
26 USAPA sets forth many facts and circumstances transpiring over the last seven years that
27 completely undermine the principal assumptions upon which the Nicolau award was
28 based. See Doc. 206-1 pp. 43-45. However, because these facts are not necessary to
grant summary judgment in USAPA’s favor and because certain facts are disputed by
Plaintiffs, USAPA has not set them forth herein.

1 15. Pilot Neutral Captain Brucia, dissented, stating that he “differ[ed] with my
2 fellow members of the Board . . . in the area of credit that should be given to a pilot based
3 on date of hire and the pilot's resulting length of service.” USAPA Exhibit 104, at p. 2 of
4 Dissenting Opinion, USAPA001485, annexed hereto at Tab10.

5 16. In particular, Captain Brucia noted that “[t]he most senior furloughed US
6 Airways pilot (Colello) was hired in 1988 and had accrued 16.4 years of service as of the
7 date of announcement of the merger. *Id.* He was furloughed in 2003. *Id.* Below Colello,
8 there were over 440 pilots on furlough with at least 15½ years of tenure and well over 12
9 years of credited length of service. *Id.* The remaining furlougees . . . had at between 5
10 years and 15 years of tenure and from 1½ to 6 years of service.” *Id.* Captain Bruscia
11 further noted,

12 The junior 305 pilots on the America West seniority list all had less
13 than 2 years of service when the merger was announced on May
14 19,2005. In fact, the bottom 150 pilots on the America West list
15 were hired less than 1 year before the announcement. I do not agree
16 with the Board's decision, in the particular circumstances of this
17 case, to integrate only working pilots as of the date announcement,
18 leaving all those on furlough at that date on the bottom of the
19 combined seniority list. As a consequence of the Board’s decision,
20 America West pilot Odell, who was hired less than 2 months before
21 the merger was announced, has been placed immediately senior to
22 US Airways pilot Colello who was hired more than 16 years earlier
23 and who had over 16 years of credited length of service. I disagree
24 with this placement, which disregards Colello’s substantial service
25 time.

26 *Id.* at pp. 2-3, USAPA001485-USAPA001486, annexed hereto at Tab 10.

27 17. Captain Brucia concluded: “At a minimum, it is my opinion that the US
28 Airways pilots, who had already received notice of their opportunity to return to work
from furlough, should have received some consideration for the substantial time they
have already invested in their airline. In the event that the "new" company again decided
to furlough pilots in the near future, conditions and restrictions could have been used to

1 insure a measure of protection for the junior America West pilots to protect them from
2 furlough for some period of time. In fact such a restriction was part of the US Airways
3 Pilot's integration proposal in this case. I believe that this approach would have better
4 balanced the equities that each pilot group brought to this merger." *Id.* at pp. 3-4.

5 18. Following the problems raised by the Nicolau Award, ALPA made
6 significant changes to its Merger Policy, including changing the factors to be considered
7 to explicitly include "longevity." USAPA Exhibit 110 (ALPA Merger Policy, dated
8 April 30, 2009), annexed hereto at Tab 11; Undisputed Facts, ¶32.

9 19. In mid-2007, several pilots formed a new organization known as the US
10 Airline Pilots Association ("USAPA"). Joint Statement of Facts, ¶¶37, 39.

11 20. On November 13, 2007, USAPA filed an application with the National
12 Mediation Board ("NMB") seeking to replace ALPA as the representative of a combined
13 bargaining unit (referred to in the RLA as a "craft or class") consisting of both the US
14 Airways pilots and the America West pilots. USAPA Exhibit 100, annexed hereto at Tab
15 12.

16 21. In early 2008, the NMB determined that US Airways pilots and the
17 America West pilots constituted a single craft for purposes of labor representation and
18 conducted an election among the pilots. There were no objections to the election, and the
19 NMB certified USAPA as the new bargaining representative of the combined pilot group
20 on April 18, 2008. USAPA Exhibit 100, annexed hereto at Tab 12; Undisputed Facts,
21 ¶¶6, 39-45.

22 22. USAPA's Constitution and Bylaws states that one of USAPA's objectives
23 is "[t]o maintain uniform principles of seniority based on date of hire and the
24 perpetuation thereof, with reasonable conditions and restrictions to preserve each pilot's
25 un-merged career expectations." USAPA Exhibit 101, annexed hereto at Tab 13, at p. 8;
26 Undisputed Facts, ¶50.
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1 USAPA's 2008 Seniority Proposal

2 23. On September 30, 2008, as part of negotiations for a new collective
3 bargaining agreement, USAPA submitted its seniority proposal to US Airways. USAPA
4 proposed a date of hire seniority system with conditions and restrictions. Undisputed
5 Facts, ¶54.

6 24. Conditions and restrictions specify how a particular seniority list operates,
7 and can afford pilots opportunities to bid and hold flying that would otherwise not be
8 available to someone in their seniority position. Undisputed Facts, ¶57.

9 25. Conditions and restrictions can also restrict pilots from opportunities that
10 would otherwise be available to someone in their seniority position. Undisputed Facts,
11 ¶57.

12 26. USAPA's proposal with conditions and restrictions placed West Pilots on
13 the merged seniority list according to their original dates of hire with America West and
14 included extensive conditions and restrictions that prevented East Pilots from displacing
15 them from their customary West assignments and allowed them to bid into East flying
16 including wide body aircraft and international routes as vacancies were created as the
17 result of growth, retirements and other normal attrition among East pilots. US Airways
18 has not responded to the proposal to date. USAPA Exhibit 112, annexed hereto at Tab
19 14.
20

21 27. On November 13, 2009, after being unable to reach agreement on a new
22 collective bargaining agreement in direct negotiations with US Airways, USAPA
23 submitted applications requesting the mediatory services of the NMB with respect to both
24 the US Airways and the America West CBAs. On January 27, 2010, the NMB initiated
25 mediation and assigned a mediator. USAPA Exhibit 119, annexed hereto at Tab 15.
26

27 Possible Merger with American Airlines

28 28. On November 29, 2011, AMR Corporation and its subsidiaries including

1 American Airlines (the “Debtors” or “American”) commenced a voluntary Chapter 11
2 case in the United States Bankruptcy Court for the Southern District of New York. *In re*
3 *AMR Corp.*, Case No. 11-15463; Undisputed Facts, ¶69.

4 29. On or about February 13, 2013, US Airways and American entered into an
5 Agreement and Plan of Merger (“Merger Agreement”). Undisputed Facts, ¶70.

6 30. On or about February 22, 2013, US Airways and American filed a joint
7 motion in the AMR bankruptcy proceeding seeking approval of the Merger Agreement.
8 *In Re AMR*, No. 7587, Case No. 11-15463, Doc. 6800.

9 31. On March 27, 2013, the Bankruptcy Court granted the motion seeking
10 approval of an agreement to merge. *In Re AMR*, No. 7587, Case No. 11-15463, Doc.
11 7587.

12 32. On April 15, 2013, US Airways and American filed a joint Plan of
13 Reorganization (“POR”) in the AMR bankruptcy proceeding seeking approval of AMR’s
14 emergence from bankruptcy. *In Re AMR*, No. 7587, Case No. 11-15463, Doc. 7631.

15 33. On or about April 17, 2012, USAPA learned of US Airways’ intention to
16 pursue a merger with American Airlines, Inc. (“American”). Deposition Transcript of
17 Gary P. Hummel 48:6-17, 49:22-25, annexed hereto at Tab 7.

18 34. US Airways negotiated various conditional labor agreements with the
19 unions representing employees of American Airlines, including the Allied Pilots
20 Association (“APA”), which represents the pilots of American, that would go into effect
21 if and when there is a merger between US Airways and AMR. Undisputed Facts, ¶74.

22 35. By April 2012, the APA and US Airways executed an agreement that has
23 been referred to as the “Conditional Labor Agreement” or “APA Term Sheet.”
24 Undisputed Facts, ¶75.

25 36. In or about June 2012, USAPA told US Airways that it would not support
26 the merger unless US Airways guaranteed appropriate terms, conditions, and protections
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1 for its pilots in the event of a merger with American. Undisputed Facts, ¶76.

2 37. In particular, USAPA demanded that US Airways pilots arrive at any
3 merger with equal pay, benefits and working conditions as the American pilots. Hummel
4 Tr., 50:14-21, 51:5-19, annexed hereto at Tab 7.

5 38. Although US Airways initially said it did not need anything from USAPA,
6 it subsequently agreed to negotiate with USAPA concerning terms, conditions, and
7 protections in addition to those stated in the Conditional Labor Agreement that would be
8 guaranteed to US Airways pilots in the event of a merger. Undisputed Facts, ¶76.

9 39. At the time US Airways informed USAPA President Hummel about the
10 conditional agreement it had negotiated with the APA and about its plan to merge with
11 American, US Airways took the position that any merger agreement with USAPA would
12 not address seniority other than to provide for its resolution through a process consistent
13 with the McCaskill-Bond Amendment. Undisputed Facts, ¶77.

14 40. It was US Airways' further position that a memorandum of understanding
15 would be silent as to seniority, and seniority would instead be dealt with after the merger.
16 Hummel Tr., 52:7-19, annexed hereto at Tab 7.

17 41. At the request of the Unsecured Creditors Committee ("UCC") in the AMR
18 Bankruptcy, American, US Airways, USAPA and the APA went to Dallas in mid-
19 December 2012 to negotiate a multi-party agreement to establish terms and conditions,
20 protections and procedures that would apply to the pilots in the event of a merger
21 between American and US Airways. Undisputed Facts, ¶86; Hummel Tr., 55:17-21,
22 127:18-25, 128:1-7, annexed hereto at Tab 7.

23 42. The USAPA Negotiating Advisory Committee ("NAC") was responsible
24 for negotiating terms of an agreement for a proposed merger of the airlines and
25 integration of US Airways and American pilots. Undisputed Facts, ¶88.

26 43. The NAC was comprised of two East Pilots, two West Pilots and a
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1 professional negotiator. Hummel Tr., 128:15-19, annexed hereto at Tab 7; Undisputed
2 Facts, ¶79.

3 44. The parties (American, US Airways, USAPA and the APA) were able to
4 negotiate a tentative agreement titled “Memorandum of Understanding Regarding
5 Contingent Collective Bargaining Agreement” (MOU), USAPA Exhibit 130, annexed
6 hereto at Tab 1. Undisputed Facts, ¶87.

7 45. On January 2, 2013, the NAC approved the tentative MOU and presented it
8 to the USAPA Board of Pilot Representatives (“BPR”) with its recommendation for
9 approval. Undisputed Facts, ¶89.

10 46. The BPR asked the parties to the MOU to increase the retroactive pay
11 provided for in the MOU by agreeing that, if the merger was approved, all US Airways
12 pilots would be paid at the American rates as of the date MOU was ratified by US
13 Airways pilots (likely early February 2013) instead of a relatively short time prior to the
14 Effective Date of the American Airlines’ Plan of Reorganization (“POR”) in the
15 Bankruptcy Court as was then currently provided. Undisputed Facts, ¶90.

16 47. On January 4, 2013, the Unsecured Creditors Committee, American, and
17 US Airways agreed to the proposed change. Undisputed Facts, ¶91.

18 48. The MOU provides that pilot seniority integration between pilots of US
19 Airways and American will be governed by a process consistent with the McCaskill-
20 Bond Amendment. USAPA Exhibit 130, at ¶ 10, USAPA001768, annexed hereto at Tab
21 1; Undisputed Facts, ¶93.

22 49. The MOU provides, in Paragraph 10(h): “US Airways agrees that neither
23 this Memorandum nor the JCBA shall provide a basis for changing the seniority lists
24 currently in effect at US Airways other than through the process set forth in this
25 Paragraph 10.” USAPA Exhibit 130, at ¶ 10, USAPA001769, annexed hereto at Tab 1;
26 Undisputed Facts, ¶93.
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1 50. The JCBA negotiation process is not a simple formality whereupon the
2 parties will merely memorialize the terms of the MOU and the Merger Transition
3 Agreement (“MTA”) into an integrated collective bargaining agreement. Undisputed
4 Facts, ¶¶135-137.

5 51. The MOU provides, at paragraph 27 thereof, “If and when the NMB makes
6 a single-carrier finding, the organization certified to represent the pilots of the single
7 carrier, the single carrier acknowledged by the NMB and the certified organization shall
8 promptly engage or re-engage in negotiations to achieve a JCBA to be applicable to the
9 carrier that will be the product of the Merger. Undisputed Facts, ¶135; USAPA Exhibit
10 130, annexed hereto at Tab 1.

11 52. The MOU does not change the East and West seniority lists currently in
12 effect pursuant to the respective East and West CBAs. Undisputed Facts, ¶96.

13 53. By agreeing that seniority integration (in the event of a merger between US
14 Airways and American Airlines) would be conducted through the McCaskill-Bond
15 process, USAPA sought to avoid risking the substantial economic gains in the MOU by
16 tying it to the polarizing dispute regarding seniority integration. USAPA’s Response to
17 Plaintiffs’ Interrogatories, Response #1, Plaintiffs’ Ex. 1, at p. 4 (verified by USAPA
18 president Gary Hummel), annexed hereto at Tab .

19 54. None of the parties to the MOU (US Airways, USAPA, APA, and
20 American Airlines) wanted to tie it to a particular seniority list given the long and
21 contentious history surrounding the Nicolau Award and the existence of the McCaskill-
22 Bond process. USAPA’s Response to Plaintiffs’ Interrogatories, Response #1 and #2,
23 Plaintiffs’ Ex. 1, at pp. 2-5 (verified by USAPA president Gary Hummel), annexed hereto
24 at Tab 3.

25 55. The MOU was also an opportunity to leverage on the intense interest of US
26 Airways, American Airlines, and the Unsecured Creditors Committee in settling a
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1 contract timely while gaining significant benefits for US Airways pilots. *Id.*

2 56. Over its lifetime, the MOU will provide about \$1.6 Billion increase of
3 wages and other benefits above the current East and West CBAs. Undisputed Facts,
4 ¶110.

5 57. The MOU contains substantial economic improvements for all US Airways
6 pilots. USAPA's Response to Plaintiffs' Interrogatories, Response #1, Plaintiffs' Ex. 1 p.
7 4, annexed hereto at Tab C; Undisputed Facts, ¶98.

8 58. The MOU establishes terms and conditions that are the same for all US
9 Airways, including identical wages, defined contribution plan rates, vacation, and no
10 furlough guarantees. Undisputed Facts, ¶99.

11 59. The economic and non-economic benefits to US Airways pilots in the
12 MOU were discussed with the pilots of US Airways at the NAC roadshows in January
13 2013. Undisputed Facts, ¶100; USAPA Exhibit 133, annexed hereto at Tab 16.

14 60. The benefits of the MOU were also described in a publication from the
15 NAC entitled "What the Memorandum of Understanding Means to You," which was
16 distributed at the NAC roadshows and made available electronically to all pilots in good
17 standing. Undisputed Facts, ¶101; USAPA Exhibit 133, annexed hereto at Tab 16.

18 61. Specifically, in the event of a successful POR, the MOU makes the pay
19 rates and other economic benefits for US Airways pilots equal to those provided to
20 American pilots upon the Effective Date of the POR. Undisputed Facts, ¶102; USAPA
21 Exhibit 130, at USAPA001763, annexed hereto at Tab 1.

22 62. The MOU includes an industry average pay parity adjustment effective on
23 January 1, 2016, which would bring pay for all the pilots of New American (the name of
24 the carrier that will exist if there is a merger between US Airways and American) into
25 line with the two other major domestic carriers – Delta Airlines and United Airlines.
26 Undisputed Facts, ¶103; USAPA Exhibit 130, at USAPA001763-64, annexed hereto at
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1 Tab 1.

2 63. If a merger occurs with American in bankruptcy, the economic effects of
3 the MOU will result in substantial pay raises for all US Airways pilots upon the effective
4 date of the POR. Undisputed Facts, ¶104.

5 64. The immediate pay increase on the Effective Date of the POR for 12-year
6 captains operating the Airbus A320 aircraft would be more than \$40,000 annually for
7 those pilots flying under the East CBA, and more than \$20,000 annually for those pilots
8 flying under the West CBA. Undisputed Facts, ¶106.

9 65. As of the Effective Date of the POR, the defined contribution rate (made by
10 US Airways to a defined contribution plan on behalf of each eligible pilot) will increase
11 from the current rate of 10% to 14% for all US Airways pilots in addition to the pay
12 increases. Undisputed Facts, ¶107; USAPA Exhibit 130, at USAPA001763, annexed
13 hereto at Tab 1; USAPA Ex. 123, at USAPA001784., annexed hereto at Tab 17.

14 66. On January 1, 2014, the pay rates for all pilots will increase an additional
15 8% and the defined contribution rate will increase to 16%. Undisputed Facts, ¶108;
16 USAPA Exhibit 130, at sec. 1, USAPA001763, annexed hereto at Tab 1.

17 67. A January 7, 2013, side letter to the MOU provides (in a separate
18 agreement) for a \$40 million lump sum payment to be distributed to US Airways pilots
19 shortly after the Effective Date of the POR. Undisputed Facts, ¶109; USAPA Exhibit
20 131, at USAPA001782, annexed hereto at Tab 2.

21 68. The MOU also provides that the pay increases implemented upon the
22 Effective Date of the POR would be retroactive to February 8, 2013. Undisputed Facts,
23 ¶90-91; USAPA Exhibit 131, at USAPA001782, annexed hereto at Tab 2.

24 69. The MOU explicitly provides that a seniority integration process consistent
25 with the McCaskill-Bond Amendment to the Federal Aviation Act, 49 U.S.C. § 42112,
26 shall commence “as soon as possible after” the Effective Date. Undisputed Facts, ¶148.
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1 The first step under the seniority integration process is for the employees affected by a
2 merger to attempt to settle the matter through direct negotiations, and if that is
3 unsuccessful, the second step is binding arbitration resulting in the issuance of a “final
4 and binding” decision (MOU ¶10) that integrates seniority “in a fair and equitable
5 manner.” *See* 49 U.S.C. § 42112. The MOU implements these provisions by requiring
6 the pilot representatives to attempt to reach an agreement during the 90-day period
7 following the Effective Date and, if no agreement is reached, to commence an arbitration
8 process before a panel of three neutral arbitrators (MOU, ¶10.1). Undisputed Facts,
9 ¶148.

10
11 70. The MOU further provides that the parties will commence negotiations for
12 a Joint Collective Bargaining Agreement (“JCBA”) and that those negotiations are to be
13 completed no later than 30 days after the NMB determines that the combined operation
14 constitutes a “single carrier” and certifies the bargaining representative for the pilots of
15 the single carrier. Under the timeline adopted by the parties, this date is estimated to be
16 11-13 months after the POR is approved. Undisputed Facts, ¶112; USAPA Exhibit 130,
17 at ¶5, USAPA001764, annexed hereto at Tab 1.

18 71. In the meantime, the MOU provides that the seniority integration process
19 will proceed but that any arbitration hearing cannot begin until the JCBA is final.
20 Undisputed Facts, ¶113; USAPA Exhibit 130, at ¶10(a), USAPA01768, annexed hereto
21 at Tab 1.

22 72. On January 4, 2013, the BPR voted unanimously to approve the MOU and
23 to send the MOU out for pilot ratification with a BPR recommendation to approve.
24 Undisputed Facts; ¶115.

25
26 73. The MOU had the unanimous support of the BPR members that represent
27 all former US Airways East pilot domiciles (Charlotte, Washington DC, and
28 Philadelphia), and from the domicile that includes all former America West pilots

1 (Phoenix). Undisputed Facts, ¶117.

2 Ratification of the MOU

3 74. During the negotiation and ratification periods, USAPA took numerous
4 actions to inform the pilots regarding the content and effect of the MOU. Undisputed
5 Facts, ¶118.

6 75. Throughout the negotiation and ratification periods, all NAC updates
7 included the names, cellular phone numbers, and e-mail addresses for the members of the
8 NAC. Undisputed Facts, ¶119.

9 76. Pilots were encouraged to contact NAC members with any questions or
10 concerns regarding the MOU. Undisputed Facts, ¶120.

11 77. On January 15, 2013, the NAC published an update to all pilots in good
12 standing regarding the MOU, which included a summary of some of the significant terms
13 therein, and a schedule of the upcoming roadshow presentations being held at each
14 domicile. Undisputed Facts, ¶121; USAPA Exhibit 187, annexed hereto at Tab 18.

15 78. The January 15, 2013 NAC Update also contained links to the actual text of
16 the MOU and the conditional labor agreement (referred to therein as the “APA 2012
17 Contract”). Undisputed Facts, ¶122; USAPA Exhibit 187, annexed hereto at Tab 18.

18 79. In or around January 16, 2013, USAPA published and mailed an analysis
19 and explanation of the MOU to all pilots in good standing in a document entitled “Flight
20 Plan to a Merger: What the Memorandum of Understanding Means to You.” Undisputed
21 Facts, ¶123; USAPA Exhibit 134, annexed hereto at Tab 19.

22 80. The NAC scheduled the following roadshow presentations regarding the
23 MOU:
24
25

Base	Dates (Times)	Location
DCA	Thurs, Jan 17th (9-2)	Conference Center, Terminal A, ground floor, next to the lobby of the old terminal
	Thurs, Jan 17th (2-5)	Room 264 in terminal A

	Fri, Jan 18th (9-1)	
CLT	Mon, Jan 21st (4 PM)	USAPA Headquarters
	Tue, Jan 22nd (9-5)	Auditorium, above the Food Court
	Wed, Jan 23rd (9-4)	
PHX	Thurs, Jan 24th (9-5)	International Concourse, Meeting Room next to British Airways Club, above B23
	Fri, Jan 25th (9-1)	
PHL	Mon, Jan 28th (9-5)	Airport Tour Room, inside security, between concourses C&D, near Au Bon Pain
	Tue, Jan 29th (9-4)	

Undisputed Facts, ¶125.

81. Members of the NAC were present at each roadshow. Undisputed Facts, ¶12.

82. At each roadshow, pilots were told that seniority integration with American Airlines would be accomplished by a process consistent with McCaskill-Bond.

Undisputed Facts, ¶126.

83. On February 8, 2013, 75% of valid ballots cast in the referendum balloting voted to ratify the MOU. Undisputed Facts, ¶127, USAPA Ex. 137, USAPA001867, annexed hereto at Tab 20.

84. Of the 1,041 West pilots that voted, 1,017 voted to approve the MOU, and 24 voted to oppose it (a 97.69% approval rate). Undisputed Facts, ¶128.

85. Approximately 250 active West Pilots were not eligible to vote on ratification of the MOU because they have not joined USAPA. Undisputed Facts, ¶129.

86. Another 45 West Pilots were not eligible to vote on ratification of the MOU because they were on furlough. Undisputed Facts, ¶130.

87. Prior to the time the MOU ratification balloting closed, the West Pilots knew that USAPA opposed using the Nicolau Award as the basis for integrating the East and West Pilot seniority lists. Undisputed Facts, ¶132.

88. Prior to the time the MOU ratification balloting closed, the West Pilots knew of the economic and non-economic benefits provided in the MOU. Deposition Transcript of Don Addington 65:20-25, 66:13-21, 68:18-25, 69:1-15; Ex. 158, annexed

1 hereto at Tab 33; Deposition Transcript of John Bostic 71:10-15, 72:17-24, 73:12-23,
2 75:13-24, 76:1-5, annexed hereto at Tab 34; Rodney Brackin 72:8-15, 73:2-6, annexed
3 hereto at Tab 35; Deposition Transcript of David Braid 52:18-24, 53:3-22, 54:1-25, 55:1-
4 11, annexed hereto at Tab 36; Deposition Transcript of Mark Burman 101:1-3, 105:3-25,
5 106:1-21, 107:2-5, annexed hereto at Tab 37; Deposition Transcript of Kenneth Holmes
6 128:15-25, 129:1-23, 130:2-25, 131:1-8, annexed hereto at Tab 38; Deposition Transcript
7 of Jeffrey Koontz 100:8-23, 101:1-25, 102:1-14, annexed hereto at Tab 39; Deposition
8 Transcript of George Maliga 83:3-22, 84:16-25, 85:1-25, 86:1-21, annexed hereto at Tab
9 40; Deposition Transcript of Roger Velez 64:4-25, annexed hereto at Tab 41; Deposition
10 Transcript of Michael Soha 38:18-39:15 (acknowledging receipt and review of USAPA
11 Exhibit 133 including the “pay part”), annexed hereto at Tab 5; USAPA Exhibit 133,
12 annexed hereto at Tab 16; USAPA Exhibit 134, annexed hereto at Tab 19; USAPA
13 Exhibit 158, annexed hereto at Tab 21; USAPA Exhibit 187, annexed hereto at Tab 18.

15 89. Prior to the time the MOU ratification balloting closed, the West Pilots
16 knew that the MOU was “seniority neutral” and did not include the Nicolau Award.
17 USAPA Exhibit 159, annexed hereto at Tab 22. *See* Deposition Transcript of Brian
18 Stockdell 129:24-130:18, annexed hereto at Tab 32; Deposition Transcript of Afshin
19 Iranpour 48:11-18, annexed hereto at Tab 31; Deposition Transcript of Mark Burman
20 89:7-12, annexed hereto at Tab 37; Deposition Transcript of Roger Velez 50:22-51:5,
21 52:7-53:7, annexed hereto at Tab 41; Deposition Transcript of George Maliga 81:5-7,
22 annexed hereto at Tab 40.

23 90. Prior to the time the MOU ratification balloting closed, the West Pilots
24 knew that the MOU provided that seniority integration would be pursuant to the
25 McCaskill Bond process. Deposition Transcript of Steve Wargocki 46: 4-12, annexed
26 hereto at Tab 42; Deposition Transcript of Mark Burman 88:2-89:10, annexed hereto at
27 Tab 37; Deposition Transcript of George Maliga 82:14-21, annexed hereto at Tab 40.
28

1 91. The APA represents close to 10,000 American pilots. Undisputed Facts,
2 ¶149. USAPA represents approximately 5,000 pilots. Undisputed Facts, ¶152.

3 92. Beginning in May 2013 and continuing to present, USAPA and the APA
4 have been conducting negotiating sessions regarding the JCBA in Dallas-Fort Worth,
5 Texas. Undisputed Facts, ¶138.

6 93. If the merger with America is consummated, the APA and USAPA will
7 participate in the McCaskill Bond process through their respective merger committees.
8 Deposition Transcript of Gary Hummel 14:16-24, annexed hereto at Tab 7.

9 94. In or about June 2013, USAPA President Gary Hummel appointed two
10 West Pilots and four East Pilots to serve on the Merger Committee. Undisputed Facts,
11 ¶153.

12 95. As a result of these appointments, the Merger Committee is comprised of
13 representatives from all the major US Airways domiciles and a representative mix of
14 captains and first officers. Undisputed Facts, ¶154.

15 96. The Members of the Merger Committee are:

16 A. Chair, Jess Pauley. Jess Pauley is currently an A320 First Officer
17 based in Philadelphia. He has been a member of the Merger
18 Committee since 2010 and the Chairman of the Committee since
19 April 2012. First Officer Pauley was Vice Chairman of the Boston
20 Domicile from July 2008 until it closed in March 2010.

21 B. Kevin Barry. Kevin Barry is an A320 First Officer based in
22 Charlotte. First Officer Barry previously was a member of the
23 USAir Shuttle Negotiation Committee from May 1993 through
24 July 1996, was a member of the USAir Shuttle Merger Committee
25 from 1996 through 1999, and a member of the Joint Negotiating
26 Committee from August 1999 through February 2000, all with
27 respect to the merger of the USAir Shuttle into US Airways. He
28 was also a member of the USAPA Merger Committee from May
2008 through August 2008 and more recently has been supporting
the work of the USAPA Merger Committee as a "Subject Matter

1 Expert.”

2 C. James Calveri. James Calveri is an A320 First Officer based in
3 Phoenix. First Officer Calveri has been a member of the NAC
4 since April 2012. The NAC is charged with negotiating any
5 collective bargaining or other agreement with the Company. The
6 NAC was responsible for negotiating the MOU between US
7 Airways, AMR Corp., USAPA and the APA.

8 D. Robert E. Davison. Bob Davison is an A320 Captain based in
9 Philadelphia. Captain Davison was a member of the USAPA Merger
10 Committee from June 2008 through April 2010, Chairman of the
11 Committee from April 2010 through April 2011 and more recently has
12 been supporting the work of the Committee as a “Subject Matter
13 Expert.”

14 E. Tom Kubik. Tom Kubik is an A330 Captain based in Charlotte.
15 Captain Kubik has served as Assistant Chief Pilot, a Senior Check
16 Airman and as the Chairman of the USAPA Safety Committee.

17 F. Ken Stravers. Ken Stravers is an A320 Captain based in Phoenix.
18 Captain Stravers was the Chairman of the America West Merger
19 Committee during the Air Line Pilots Association (“ALPA”) seniority
20 integration proceeding that led to the Nicolau Award.

21 Undisputed Facts, ¶155.

22 97. If the merger with America is consummated, the APA and USAPA will
23 participate in the McCaskill Bond process through their respective merger committees.

24 Deposition Transcript of Gary Hummel 14:16-24, annexed hereto at Tab 7.

25 98. Since in or about 2009, dozens of West Pilots have served in various
26 official capacities on behalf of USAPA and on various USAPA committees, including,
27 but not limited to the USAPA BPR (the governing board of USAPA), the Appeal Board,
28 the Grievance Committee, the Scheduling Committee, the Negotiating Advisory
Committee, the Business Intelligence Committee, the Retirement and Insurance
Committee, the Membership Services Committee, and the Communications Committee.

1 Undisputed Facts, ¶156.

2
3 US Airways Position that the MOU Is Not the Single Agreement under the Transition
4 Agreement

5 99. On February 28, 2013, well after the MOU was ratified on February 8, US
6 Airways denied a grievance filed by Pilot David Braid in part because “At this point in
7 time we have neither a combined contract nor a combined seniority list.” USAPA Exhibit
8 152, annexed hereto at Tab 43, at USAPA003588-89 (February 28, 2013, letter from
9 Captain Lyle Hogg, Vice President of Flight Operations for US Airways, to Captain Dave
10 Ciabattoni, USAPA Grievance Committee Chairman).

11 100. In August 2013, numerous West Pilots filed protests under Section 22.C of
12 the America West Pilots’ CBA concerning the July 1, 2013 seniority list posted by US
13 Airways, contending that US Airways is required to implement the Nicolau Award as
14 soon as the MOU becomes effective. Undisputed Facts, ¶175; USAPA Exhibit 154,
15 annexed hereto at Tab 8.

16 101. In August, 2013, in response to Section 22.C protests filed by Phoenix-
17 based pilots , US Airways stated as follows:

18 This will acknowledge receipt of the letter of protest you filed
19 pursuant to Section 22.C of the America West Pilots' Collective
20 Bargaining Agreement concerning the July 1, 2013 seniority list
21 posted by the Company. In that protest, you contend that the
22 Company is obligated to implement the Nicolau Award as soon as the
23 MTA/MOU becomes effective. That contention is meritless, and your
24 protest must be denied.

25 Section 22.C of the America West Pilots' Collective Bargaining
26 Agreement only applies to disputes regarding a West Pilot's seniority
27 relative to other West Pilots as set forth on the West Pilots seniority
28 list. Challenges to the East/West integrated seniority list, which will
be created after there has been a merger and the federally-required
McCaskill-Bond seniority integration process has been completed, are

1 beyond the scope of Section 22.C.

2 Moreover, even if the Section 22.C process applied to disputes
3 regarding the future East/West integrated seniority list, your claim
4 that the MTA/MOU amounts to a single labor agreement obligating
5 the Company to apply the Nicolau Award immediately is contrary to
6 the express provision in the Transition Agreement (Section XII.B)
7 that any of the Transition Agreement's provisions "[m]ay be modified
8 by written agreement of the Association and the Airline Parties
9 collectively."

9 By its terms, the MOU constitutes a written agreement between
10 USAPA and the Company which modifies the provisions of the
11 Transition Agreement relating to implementation of an integrated
12 seniority list. Paragraph 10.h. of the MOU specifies that "US Airways
13 agrees that neither this Memorandum nor the JCBA shall provide a
14 basis for changing the seniority list currently in effect at US Airways
15 other than through the process set forth in this Paragraph 10." The
16 Paragraph 10 process provides for seniority-list integration in
17 accordance with the standards and procedures of the federal
18 McCaskill-Bond law, and that process will not even begin until after
19 the merger has been consummated. Modifying the seniority lists
20 immediately, as you have requested, would violate the MTA/MOU.

21 Undisputed Facts, ¶176; USAPA Exhibit 154, annexed hereto at Tab 8.

22 Leonidas

23 102. In or around August 2007, a group of West pilots formed an Arizona
24 limited liability company named Leonidas, LLC to fund their seniority dispute with
25 USAPA. Undisputed Facts, ¶169; USAPA Exhibit 163, annexed hereto at Tab 23.

26 103. The sole purpose of Leonidas, LLC, pursuant to its Operating Agreement,
27 is as follows:

28 1.3. *Purpose.* The purpose and business of this Company shall consist
solely of soliciting funds in the form of cash and using said funds to
fund an independent legal campaign in the matter of the seniority
integration of the America West Airlines pilots and US Airways
pilots, for the benefit of the pilots of the former America West

1 Airlines.

2 Undisputed Facts, ¶170; USAPA Exhibit 147, annexed hereto at Tab 24.

3 104. The stated “Objectives” of Leonidas, LLC provide, in part, that:

4 (5) We will not tolerate discrimination against the pilots of America
5 West in any form, including the dilution of the Nicolau Award by any
6 means, contractual or otherwise.

7 (6) We will not engage in fruitless debates over matters already
8 settled.

9 Undisputed Facts, ¶171; USAPA Exhibit 148, annexed hereto at Tab 25.

10 105. Plaintiffs have refused to produce any evidence of payment of fees in
11 response to USAPA’s discovery demands but have stated that all fees have been paid
12 through Leonidas LLC. USAPA Ex. 196, Responses to Interrogatories 2-4, annexed
13 hereto at Tab 26; Undisputed Facts, ¶173; See Doc. 171.

14 106. There are no restrictions on who can contribute to Leonidas and both
15 entities and individuals can and have contributed to Leonidas. Deposition Transcript of
16 Brian Stockdell, 20:23-21:8, 36:24-15, annexed hereto at Tab 32; Deposition Transcript
17 of John Bostic, 56:13-15, annexed hereto at Tab 34.

18 107. A subset of Leonidas sends out updates and recommended that the West
19 Pilots vote to ratify the MOU. USAPA Exhibits 158, 160. *See, e.g.*, Deposition
20 Transcript of Brian Stockdell 48:13-50:24, annexed hereto at Tab 32; Deposition
21 Transcript of Jeffrey Koontz 110:7-10, annexed hereto at Tab 39.

22 Plaintiffs’ Position

23 108. In October 2012, Plaintiff Afshin Iranpour stated that “the notion that we as
24 West Pilots can be part of any seniority integration is ludicrous and needs to be put to rest
25 firmly” and explaining he meant “Leonidas is not a union” and has “no position to
26 negotiate a compromise to the Nicolau award on behalf of the West Pilots.” Deposition
27
28

1 Transcript of Afshin Iranpour 45:18-46:2, annexed hereto at Tab 31, referring to Exhibit
2 202, annexed hereto at Tab 30.

3 109. Plaintiffs have stated that they believe the Nicolau list is the only “valid”
4 and “fair” list. Deposition Transcript of Steve Wargocki 47:19, annexed hereto at Tab 42
5 (“I believe the Nicolau list is the only valid list for US Airways pilots.”); Deposition
6 Transcript of Brian Stockdell 104:6-10, annexed hereto at Tab 32 (stating that it is not
7 possible to “to integrate US Airways pilots with American Airlines pilots using a US
8 Airways list that is not the Nicolau list that would be fair); Deposition Transcript of Mark
9 Burman 63:18-25, annexed hereto at Tab 37 (testifying it is the position of Leonidas,
10 Burman’s position and position of all Plaintiffs that they “will not accept any other
11 seniority integration lists other than the Nicolau award.”); Deposition Transcript of
12 Michael Soha 43:9-44:1, annexed hereto at Tab 5 (testifying it was his position it was
13 “Nic or Nothing”); Deposition Transcript of Jeffrey Koontz 46:7-12, 113:9-13, annexed
14 hereto at Tab 39 (testifying no other list that would be acceptable to him other than
15 Nicolau list).
16

17 110. Brian Stockdell, who has been identified as someone who sets the legal
18 strategy of this litigation, (*see* Deposition Transcript of Brian Stockdell 50:25-51:18,
19 annexed hereto at Tab 32; Deposition Transcript of Afshin Iranpour 27:5-28:1, annexed
20 hereto at Tab 31) stated that it is not possible to “to integrate US Airways pilots with
21 American Airlines pilots using a US Airways list that is not the Nicolau list that would be
22 fair. Deposition Transcript of Brian Stockdell. 104:6-10, annexed hereto at Tab 32.

23 111. Plaintiff Wargocki testified that having the right to participate in the
24 process meant having West Pilots “present to defend the interests of the West Pilots” and
25 admitted that there were two West Pilots who were present during the negotiation of the
26 MOU. Steve Wargocki Deposition Transcript 33:25-37:8 annexed hereto at Tab 42.

27 112. Plaintiff Maliga testified that he did not know what was meant by the
28

1 request in the Complaint seeking the “right (but not the obligation)” to participate in the
2 seniority integration proceedings. Deposition Transcript of George Maliga 69:4-71:20,
3 annexed hereto at Tab 40.

4 113. By letter dated October 12, 2012, USAPA President Gary Hummel wrote to
5 Captain John Scherff, the Phoenix Domicile Chairman for the USAPA Board of Pilot
6 Representatives (“BPR”), on whether he would discuss and propose any seniority
7 integration other than the Nicolau Award. USAPA Exhibit 125, annexed hereto at Tab
8 27.

9 114. In response, Captain Scherff wrote to President Hummel advising him that
10 “USAPA has only one safe option and that is the unmolested Nicolau Arbitrated Award”.
11 USAPA Exhibit 126, annexed hereto at Tab 28.

12 115. Captain Scherff further wrote that “USAPA cannot use any other list . . .
13 [and] that USAPA will breach the duty of fair representation if it implements a date-of-
14 hire seniority list or any list that is not the Nicolau Arbitrated Award.” USAPA Exhibit
15 126, annexed hereto at Tab 28.

16 116. Plaintiffs’ counsel stated in October 2012, *inter alia*, that “[t]here is no
17 ‘legitimate union purpose’ for deviating from the Nicolau Award . . . there never has been
18 nor will there ever be one.” USAPA Exhibit 127, annexed hereto at Tab 29 and further
19 that [a]ny date-of-hire seniority list (whatever conditions and restrictions it may have) is
20 unacceptable.” USAPA Exhibit 129, annexed hereto at Tab 29.

21 117. Plaintiffs’ responses to Defendant USAPA’s Interrogatories are set forth
22 hereto at Tab 26. Exhibit 196, Plaintiffs’ Responses to Defendant USAPA’s First Set of
23 Interrogatories.

24 118. None of the named plaintiffs could articulate with any specificity their DFR
25 claim against USAPA during depositions: *See* Deposition Transcript of Don Addington
26 30:5-6, annexed hereto at Tab33 (“I don’t know what all the legal ramifications are.”);
27
28

1 Deposition Transcript of John Bostic 31:10-19, annexed hereto at Tab 34 (“You know,
2 being USAPA falls underneath the transition agreement stemming from a merger that
3 happened back in 2005 . . . it was the fact that they didn’t include the Nicolau seniority
4 list within it.”); Deposition Transcript of Rodney Brackin 31:13-16, annexed hereto at
5 Tab 35 (“That USAPA has not fairly represented the West pilots because they’ve ignored
6 the – the arbitrated decision by George Nicolau, and they want to impose date of hire on
7 us.”); Deposition Transcript of David Braid 56:6-7, annexed hereto at Tab 36, (“I can’t
8 remember it right off the bat, right off the top of my head.”); Deposition Transcript of
9 Mark Burman 42:5-6, annexed hereto at Tab 37 (“USAPA did not incorporate the
10 Nicolau in the MOU.”); Deposition Transcript of Afshin Iranpour 38:25. 39:1-3, annexed
11 hereto at Tab 31 (“We’re basically alleging that USAPA has failed to show a legitimate
12 union purpose for not including the Nicolau award in the MOU.”); Deposition Transcript
13 of George Maliga 55:23-56:4, annexed hereto at Tab 40 (“The current case is about
14 USAPA, not including the Nicolau Award in the MOU.”); Deposition Transcript of
15 Michael Soha 23:12-19, annexed hereto at Tab 5 (Well, with the MOU, we want the
16 USAPA to use the Nicolau arbitration in the seniority system.”); Deposition Transcript of
17 Roger Velez 23:4-8, annexed hereto at Tab 41, (“The claim is is that USAPA did not
18 include the binding arbitrated Nicolau list, incorporating the Nicolau with the MOU.”);
19 Deposition Transcript of Steve Wargocki 23:17-24:1, annexed hereto at Tab 42 (“There’s
20 a breach of DFR claim for not including the Nicolau and MOU . . .”).
21
22

23 Respectfully submitted this 11th day of October, 2013.

24 **Martin & Bonnett, P.L.L.C.**

25
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CERTIFICATE OF SERVICE

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I hereby certify that on October 11, 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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