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14 **IN THE UNITED STATES DISTRICT COURT**
15 **DISTRICT OF ARIZONA**

18 Don Addington, *et. al.*,)
19)
20 *Plaintiffs,*)
21 v.)
22)
23 US Airline Pilots Association, *et. al.*,)
24 *Defendants.*)
25)
26)

Case No.: CV-13-00471-PHX-ROS
**US Airline Pilots Association's
Controverting Statement of Facts to
Plaintiffs' Statement of Facts
Responding to Summary Judgment
Motions**

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28

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2 Pursuant to LR Civ 56.1, Defendant US Airline Pilots Association (“USAPA”)
3 submits this Controverting Statement of Facts to Plaintiffs’ Statement of Facts,
4 Responding to Summary Judgment Motions (Doc. 268):¹

5 1. In May 2005, two airlines, America West and US Airways, agreed to merge
6 to become a single airline known as US Airways (the “2005 Merger”). [Stipulated Fact,
7 ¶1 (Doc. 206-1) (“SF”).]

8 Admitted.

9 2. At the time of the 2005 Merger, including pilots on furlough, there were
10 about 5,100 pilots employed by US Airways (“East Pilots”) and 1,900 pilots employed by
11 America West (“West Pilots”). [SF at ¶ 2.]

12 Admitted.

13 3. At the time of the 2005 Merger, no West Pilots were on furlough. [SF at ¶
14 3.]

15
16 USAPA objects on grounds of relevancy to the issue in this case which as stated
17 by the Court, is whether USAPA breached its duty of fair representation when it entered
18 into the MOU (in a process that began in 2012 and was finalized in 2013), which does not
19 require USAPA to use the Nicolau Award in the McCaskill-Bond process. Doc. 122, at p.

20 4. See also Trial Transcript October 22, 2013 at 39:16-19 (sustaining objection to
21 questioning regarding events occurring in 2007); Tr. of May 14, 2013 Hearing (Doc. 91)

22
23
24 ¹ Plaintiffs did not submit any response to USAPA’s Separate Statement of Facts in
25 Support of its Motion for Summary Judgment in violation of LR Civ. 56.1(b). As such,
26 USAPA’s facts should be deemed undisputed on summary judgment. Fed.R.Civ.P.
27 56(e); *Szaley v. Pima Cnty.*, 371 F.App’x 734, 735 (9th Cir. 2010); *Protective Life Ins.*
28 *Co. v. Mizioch*, 2:10-CV-01728-PHX, 2011 WL 3297340, at *6 (D. Ariz. Aug. 1, 2011)
adhered to on reconsideration, 2:10-CV-01728-PHX, 2011 WL 3583199 (D. Ariz. Aug.
12, 2011) (“Because the Montoyas did not take the time to respond to Mr. Mizioch’s
Statement of Facts in Support of his Motion for Partial Summary Judgment, the Court
will deem Mr. Mizioch’s Statement of Material Facts admitted for purposes of the
pending Motion.”).

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2 p. 7:20-24. Subject to and without waiving USAPA’s objections, USAPA does not
3 dispute ¶3.²

4 4. But, approximately 1700 East Pilots were on furlough. [SF at ¶ 4.]
5 USAPA objects on grounds of relevancy to the issues in this case, i.e., whether
6 USAPA breached its duty of fair representation when it entered into the MOU (in a
7 process that began in 2012 and was finalized in 2013), which does not require USAPA to
8 use the Nicolau Award in the McCaskill-Bond process. Doc. 122, at p. 4. See also Trial
9 Transcript October 22, 2013 at 39:16-19 (sustaining objection to questioning regarding
10 events occurring in 2007); Tr. of May 14, 2013 Hearing (Doc. 91) p. 7:20-24. Subject to
11 and without waiving USAPA’s objections, USAPA does not dispute ¶4.
12

13 5. The Air Line Pilots Association (“ALPA”) represented both pilot groups.
14 [SF at ¶ 5.]

15 Admitted.

16 6. On September 23, 2005, ALPA and the two merging airlines entered into a
17 contract referred to as the Transition Agreement. [SF at ¶ 6.]

18 Admitted that the parties entered into the Transition Agreement but state that the
19 citation should be to SF at ¶7.

20 7. Pursuant to the Transition Agreement [Trial Exhibit 113 “Ex.”], until
21 certain conditions are satisfied, US Airways will conduct separate pilot operations
22 according to the pre-merger collective bargaining agreements (“CBAs”) and seniority
23 lists for the two pilot groups. [SF at ¶¶ 8-9.]

24 Disputed in part. Admitted that under the Transition Agreement, the terms and
25 conditions of employment are governed by the pre-merger CBAs and that since 2005 US
26 Airways continued to bid in accordance with a two-seniority list system. USAPA objects
27

28 ² The parties reserved all rights to object to the relevance of any facts. See Doc. 206-1, at 13:8-9.

1
2 to “until certain conditions are satisfied” as vague. The Transition Agreement provided,
3 *inter alia*, that “[t]he pilot workforces . . . will remain separate and covered by their
4 respective collective bargaining agreements” until “Operational Pilot Integration” which
5 would occur only after the issuance of a single operating certificate, “completion of the
6 integrated pilot seniority list” and negotiation of a “single agreement.” Ex. 113 at VI.A.
7 The Court has ruled that “[i]t is undisputed that the Transition Agreement can be
8 modified at any time ‘by written agreement of [USAPA] and the [US Airways].’” 2:10-
9 cv-01570-ROS, Doc. 193, at 7. The MOU ¶4, which was proposed by the Companies,
10 provides that all prior agreements, including the TA, are replaced by the Merger
11 Transition Agreement (“MTA”) as of the Effective Date. MOU ¶ 4; Trial Transcript
12 October 23, 2013, at 275-276; SF at ¶176.
13

14 8. The Transition Agreement provided, however, that US Airways would
15 integrate its pilot operations within 12 months of the occurrence of the last of these three
16 events: (a) obtaining a single operating certificate (which occurred in 2007); (b) creating
17 a single seniority list according to ALPA Merger Policy (which also occurred in 2007
18 with the issuance of the Nicolau award); and (c) negotiation of the “Single Agreement.”
19 [SF at ¶ 19; Ex. 113 at § VI.A.]

20 Disputed in part. The Transition Agreement provided, *inter alia*, that “[t]he pilot
21 workforces . . . will remain separate and covered by their respective collective bargaining
22 agreements” until “Operational Pilot Integration” which would occur only after the
23 issuance of a single operating certificate, “completion of the integrated pilot seniority
24 list” and negotiation of a “single agreement.” Ex. 113 at VI.A. The Court has ruled that
25 “[i]t is undisputed that the Transition Agreement can be modified at any time ‘by written
26 agreement of [USAPA] and the [US Airways].’” 2:10-cv-01570-ROS, Doc. 193, at 7.
27 The MOU ¶4, which was proposed by the Companies, provides that all prior agreements,
28

1
2 including the TA, are replaced by the Merger Transition Agreement (“MTA”) as of the
3 Effective Date. MOU ¶ 4; Trial Transcript October 23, 2013, at 275-276; SF at ¶176.

4 USAPA also disputes ¶8’s assertion that “a single seniority list according to ALPA
5 Merger Policy . . . occurred in 2007 with the issuance of the Nicolau award” in that
6 it ignores various additional preconditions to implementation of the results of ALPA’s
7 Merger Policy such as negotiation of ancillary provisions concerning the implementation
8 and operation of the list, a joint collective bargaining agreement, and separate ratification
9 by the East and West MECs. Transition Agreement (Ex. 113) (Tab 6 to USAPA’s 56.1
10 Statement, Doc. 213-4).

11 9. The Transition Agreement defines the “Single Agreement” as a “single
12 collective bargaining agreement applicable to the merged operations of America West
13 and US Airways.” [Ex. 113 at V.]

14 Admitted.

15
16 10. ALPA Merger Policy provided, if it was necessary to arbitrate the single
17 seniority list, that “[t]he Award of the Arbitration Board shall be final and binding on all
18 parties to the arbitration and shall be defended by ALPA.” [SF at ¶ 21; Ex. 116.]

19 Disputed. USAPA objects on grounds of relevancy. The former union’s merger
20 policy is neither relevant nor material to the issues presented on this motion for summary
21 judgment. *See* USAPA’s objections to ¶3, *supra*. To the extent that this Court considers
22 ¶10, USAPA avers that this alleged undisputed fact does not indicate which version of
23 ALPA Merger Policy is referred to, but whatever version of ALPA Merger Policy is at
24 issue, the document speaks for itself. Further, the US Airways MEC filed a complaint
25 against the America West MEC in the Superior Court for the District of Columbia to
26 vacate the Nicolau Award because the Award violated ALPA Merger Policy, in part, by
27 giving “windfalls (unwarranted and unexpected benefits) to the pilots of America West at
28 the expense of US Airways pilots, thereby permanently depriving US Airways pilots of

1
2 their career expectations, while affording gains in career promotion to America West
3 pilots which they could not have achieved absent the Award.” After USAPA was
4 certified by the NMB as the exclusive bargaining representative in April 2008, the
5 litigation was dismissed because the two parties to the action—the US Airways MEC and
6 the America West MEC—ceased to exist and ALPA’s constitution, bylaws and Merger
7 Policy were no longer applicable or relevant because USAPA was free to negotiate
8 unconstrained by the policies of the previous bargaining representative. Declaratory
9 Judgment Action, Case No. 2:10-cv-01570, Doc. 154-1 (USAPA Ex. 8, Complaint in DC
10 Superior Court), Doc 154-3 (USAPA Ex. 10, Joint Stipulation of Dismissal).

11
12 11. In this instance, it was necessary to arbitrate a single seniority list because
13 the two pilot groups tried but failed to create such a list through negotiation and
14 mediation. [SF at ¶¶ 22-23.]

15 Disputed. USAPA objects on grounds of relevancy. *See* USAPA’s objections to
16 ¶3 and 10, *supra*, incorporated herein by reference. To the extent that this Court
17 considers ¶11, it is admitted that the APLA Merger policy in effect in 2005 through 2009
18 required the two Merger Committees to arbitrate if they were unsuccessful in their efforts
19 to reach a list through negotiation or mediation.

20 12. The arbitration board issued its award (the “Nicolau Award”) on May 1,
21 2007, determining that it was a fair and equitable integration. [SF at ¶ 24; Ex. 114.]

22 Disputed. USAPA objects on grounds of relevancy. *See* USAPA’s objections to
23 ¶3 and 10, *supra*, incorporated herein by reference. To the extent that this Court
24 considers ¶12, the Nicolau Award violated ALPA Merger Policy was unfair to a majority
25 of US Airways pilots on several objective measures, gave West Pilots significant
26 windfalls in seniority and increased career compensation at the expense of East Pilots,
27 and failed to give any weight to length of service. Bradford Dep., 48:6-10 (Ex. 3 to
28 Szymanski Decl. dated Nov. 13, 2013, Doc. 269-4). The Nicolau Award clearly states

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2 that it is based on the criteria contained in the ALPA Merger Policy in effect at the time.
3 Thus, the Nicolau Award gave no consideration to “Date of Hire” or longevity. *See*
4 Nicolau Award pp. 26-27 (US Airways Exhibit B). *See* SF at ¶ 17; Nicolau Award (Tab
5 10 to USAPA’s 56.1 Statement, Doc. 213-6) pp. 1-2, Bruscia Dissent, p. 3 (“the US
6 Airways pilots, who had already received notice of their opportunity to return to work
7 from furlough, should have received some consideration for the substantial time they
8 have already invested in their airline”). As a result of the problem caused by the Nicolau
9 Award, ALPA Merger Policy was subsequently revised to include longevity as a factor to
10 be included in seniority integration. *See* SF at ¶ 29; ALPA Merger Policy 2009 (Ex. 1 to
11 Szymanski Decl. dated Nov. 13, 2013, Doc. 269-3). Subsequent arbitration decisions on
12 pilot seniority integration have criticized Nicolau and rejected efforts by pilots to argue
13 for similar results. UAL-CAL Decision (Ex. 2 to Szymanski Decl. dated Nov. 13, 2013,
14 Doc. 269-3), at pp. 11-12 (“Following Arbitrator Nicolau’s decision in US Airways and
15 America West Airlines, ALPA revised its merger policy. . . . The most significant
16 change in the policy, particularly in light of the decision that prompted the revision [the
17 Nicolau Award], was the addition of ‘longevity.’”), p. 22 (rejecting as unfair, inequitable
18 and creating windfalls any integration methodology that ignores longevity)). *See also*
19 USAPA’s response to ¶13, *infra*, incorporated herein by reference.
20

21 13. The Nicolau Award placed the approximately 1700 East Pilots who were
22 furloughed at the time of the 2005 Merger at the bottom of the list. [SF at ¶ 27.]

23 USAPA objects on the grounds of relevancy. *See* USAPA’s objections to ¶3 and
24 10, *supra*, incorporated herein by reference. To the extent the Court considers ¶13, it is
25 admitted that the Nicolau Award was unfair to the majority of former US Airways Pilots
26 and placed the US Airways furloughed pilots on the bottom of the list even though many
27 of the East Pilots had in fact been recalled by the time of the issuance of the Nicolau list
28 and it was possible that all would be recalled by the end of the year in which the Nicolau

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2 Award was issued. Bruscia Dissent (Tab 10 to USAPA’s 56.1 Statement, Doc. 213-6), p.
3 3. The Nicolau list also placed newly hired America West Pilots who were still in
4 training and had not yet flown in revenue service above former US Airways Pilots with
5 more than 16 years of service. *Id.* pp. 2-3. It placed former America West Pilots with
6 less than a year of service above US Airways Pilots with more than sixteen years of
7 service who had never been furloughed. *Id.* pp. 2-3. At trial in this matter, Jess Pauley’s
8 testimony (on cross-examination by Plaintiffs) presented a stark example of the inequity:
9 although he had never been furloughed from US Airways, the Nicolau Award placed him
10 below an America West pilot who is 15 years younger than he is and who had 16.4 years
11 fewer years of service. Pauley Trial Testimony, October 23, 2013, at p. 410:18-411:4
12 (Ex. K to USAPA’s Compendium of Trial Exhibits and Testimony in Support of
13 USAPA’s Reply in Further Support of Motion for Summary Judgment).

14
15 14. The Nicolau Award explained that “merging active pilots with
16 furlougees, despite the length of service of some of the latter, is not at all fair or
17 equitable.” [SF at ¶ 28.]

18 Disputed. USAPA objects on grounds of relevancy. *See* USAPA’s objections to
19 ¶3 and 10, *supra*, incorporated herein by reference. To the extent that this Court
20 considers ¶14, the Nicolau Award violated ALPA Merger Policy because it was unfair to
21 a majority of US Airways pilots on several objective measures, gave West Pilots
22 significant windfalls in seniority and increased career compensation at the expense of
23 East Pilots, and failed to give any weight to length of service. Bradford Dep., 48:6-10
24 (Ex. 3 to Szymanski Decl dated Nov. 13, 2013, Doc. 269-4). The Nicolau Award states
25 that it is based on the criteria contained in the ALPA Merger Policy in effect at the time.
26 Thus, the Nicolau Award gave no consideration to “Date of Hire” or longevity. *See*
27 Nicolau Award (Tab 10 to USAPA’s 56.1 Statement, Doc. 213-6), pp. 26-27, pp. 1-2,
28 Bruscia Dissent, p. 3 (“the US Airways pilots, who had already received notice of their

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2 opportunity to return to work from furlough, should have received some consideration for
3 the substantial time they have already invested in their airline”). *See* SF at ¶ 17. As a
4 result of the problem caused by the Nicolau Award, ALPA Merger Policy was
5 subsequently revised to include longevity as a factor to be included in seniority
6 integration. *See* SF at ¶ 29; ALPA Merger Policy 2009 (Ex. 1 to Szymanski Decl. dated
7 Nov. 13, 2013, Doc. 269-3). Subsequent arbitration decisions on pilot seniority
8 integration have criticized Nicolau and rejected efforts by pilots to argue for similar
9 results. UAL-CAL Decision, (Ex. 2 to Szymanski Decl. dated Nov. 13, 2013, Doc. 269-
10 3), at pp. 11-12 (“Following Arbitrator Nicolau’s decision in US Airways and America
11 West Airlines, ALPA revised its merger policy. . . . The most significant change in the
12 policy, particularly in light of the decision that prompted the revision [the Nicolau
13 Award], was the addition of ‘longevity.’”), p. 22 (rejecting as unfair, inequitable and
14 creating windfalls any integration methodology that ignores longevity)). *See also*
15 USAPA’s response to ¶13, *supra*, incorporated herein by reference.
16

17 15. On December 14, 2007, ALPA presented the Nicolau Award to US
18 Airways in accordance with the Transition Agreement and ALPA Merger Policy. [Tab 17
19 (USAPA001737) to USAPA’s Statement of Facts, Doc. 213-9].

20 Disputed. USAPA objects on grounds of relevancy. *See* USAPA’s objections to
21 ¶3 and 10, *supra*, incorporated herein by reference. USAPA also objects that the
22 statement is not supported by the record citation. Plaintiffs’ ¶ 15 ignores the statements
23 in the letter from former ALPA President Captain J. Prater that, “As you know, the
24 Transition Agreement, as well as ALPA Merger Policy, provides that no airline party
25 may use the award until the negotiation and implementation of a single collective
26 bargaining agreement. Such agreement will include appropriate negotiated terms for
27 implementation of the award.” Plaintiffs’ ¶ 15 also ignores various additional
28 preconditions to implementation of the results of ALPA’s Merger Policy such as

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2 negotiation of ancillary provisions concerning the implementation and operation of the
3 list, a joint collective bargaining agreement, and separate ratification by the East and
4 West MECs. Transition Agreement (Trial Exhibit 113) (Tab 6 to USAPA’s 56.1
5 Statement, Doc. 213-2).

6 16. On December 20, 2007, US Airways accepted the Nicolau Award as the
7 single seniority list that would be used to integrate its pilot operations according to the
8 provisions in the 2005 Transition Agreement. [SF at ¶ 30.]

9 Admitted in part. US Airways accepted the Nicolau Award subject to the
10 preconditions discussed in ¶¶8 and 15 above.

11 17. East Pilots opposed the Nicolau Award. [SF at ¶ 35.]

12 Admitted.

13 18. In May 2007, East Pilot Stephen Bradford and other East Pilots formed a
14 committee to consider forming a new union to take over representation of all US Airways
15 pilots (East and West). [SF at ¶ 36.]

16 USAPA objects on the grounds of relevancy. *See* USAPA’s objections to ¶3,
17 *supra*, incorporated herein by reference. The formation of USAPA in 2007 is neither
18 relevant nor material to any issues presented in this litigation. To the extent the Court
19 considers ¶ 18, it is admitted.

20 19. From the start, this committee was focused on creating a single airline
21 union that East Pilots, as the majority faction, could control and use to prevent
22 implementation of the Nicolau Award. [Trial Exhibit 36 (“Ex.”) (Bradford email to R.
23 Weber, referring to the “next merger”); Ex. 41 (Bradford telling East Pilots, “If ALPA is
24 not there, the [Nicolau] award is not there.”); Ex. 40 (Bradford telling East Pilots, “[T]he
25 Nicolau Award won’t die until ALPA dies”).]

26 Disputed. USAPA objects on the grounds of relevancy. *See* USAPA’s objections
27 to ¶3 and 10, *supra*, incorporated herein by reference. The formation of USAPA in 2007
28 is neither relevant nor material to any issues presented on summary judgment. USAPA

1 also objects that the statement is not supported by the record citation. To the extent that
2 this Court considers ¶19, USAPA disputes it on the grounds that Plaintiffs
3 mischaracterize Captain Bradford's quotes by taking them out of context. For example,
4 Captain Bradford's reference to wanting "some say in the next merger" does not support
5 plaintiffs' inference or supposition that "this committee was focused on creating a single
6 airline union that East Pilots, as the majority faction, could control and use to prevent
7 implementation of the Nicolau Award." Nothing in the record supports imputing to the
8 entire committee a motivation based on one individual's statements that are taken out of
9 context.

10
11 20. This committee then proceeded to form USAPA with the goal of having a
12 single-airline union that could replace ALPA, be controlled by the East Pilot majority,
13 and prevent implementation of the Nicolau Award. [SF at ¶ 39.]

14 Disputed. USAPA objects on the grounds of relevancy. *See* USAPA's objections
15 to ¶3 and 10, *supra*, incorporated herein by reference. The formation of USAPA in 2007
16 is neither relevant nor material to the issue presented on summary judgment. To the
17 extent, the Court considers ¶20, while the committee opposed the Nicolau Award
18 because, *inter alia*, it violated ALPA Merger Policy was unfair to a majority of US
19 Airways pilots on several objective measures, gave West Pilots significant windfalls in
20 seniority and increased career compensation at the expense of East Pilots, and failed to
21 give any weight to length of service (Bradford Dep., 48:6-10 (Ex. 3 to Szymanski Decl.
22 dated Nov. 13, 2013, Doc. 269-4)), both the East and West pilots had been unhappy
23 under ALPA's representation for some time. For example, ALPA agreed to eliminate the
24 defined benefit retirement plan, job protections and made other concessions in wages,
25 retirement and other benefits without obtaining "snapback" guarantees in the event of
26 improved economic performance. ALPA's governing documents allowed the MECs to
27 agree to changes affecting pilots working conditions without requiring pilot ratification.
28 And the ALPA national organization was not controllable by or answerable to the US
Airways pilots. The ALPA seniority proposal was just the final straw and the catalyst for

1
2 representational change. Bradford Dep. 48:6-10; 83:21-84:3 (Ex. 3 to Szymanski Decl.
3 dated Nov. 13, 2013. Doc. 269-4).

4 21. Indeed, USAPA was created with a Constitution, which to this day does
5 not allow it to use the Nicolau Award single seniority list. [SF at ¶ 50; Pauley Dep. at
6 49:14 to 49:22 (Sep. 18, 2013) (Merger Committee Chairman); Diorio Dep. at 46:13-
7 47:13 (Nicolau Award does not comply with date of hire principles in USAPA's
8 Constitution) (BPR Domicile Chairman from Philadelphia/Former Chairman of the
9 NAC); Pauley Trial Testimony at 395:1 to 395:12 (acknowledging that USAPA
10 constitutional mandate precludes conducting a neutral arbitration of East/West seniority);
11 Crimi (depo) at 19:2-16 (USAPA Constitution does not allow use of Nicolau Award)
12 (former BPR member from Charlotte domicile); Koontz at 47: 9 to 47:15 (USAPA
13 constitution constrains BPR to using date-of-hire for East/West integration).]

14 Disputed. USAPA avers that the USAPA Merger Committee is bound to follow
15 the direction of the USAPA BPR and USAPA's Constitution, however disputes that the
16 objective stated in the USAPA Constitution concerning date of hire principles and respect
17 for pre-merger career expectations is a straitjacket that prevents the Merger Committee
18 and the BPR from considering a wide range of alternative integration methodologies. In
19 fact, the BPR previously authorized the settlement Ad Hoc Committee to negotiate with
20 the Plaintiffs in this case without any such restriction. Bradford Dep. 41:21-42:15 (Ex. 3
21 to Szymanski Decl. dated Nov. 13, 2013, Doc. 269-4); Hummel Dep., 18:13-18:21; 25:4-
22 16 (Ex. 4 to Szymanski Decl. dated Nov. 13, 2013, Doc. 269-4); Pauley Dep., 49:14-22;
23 51:25-52:5 (Ex. 5 to Szymanski Decl. dated Nov. 13, 2013, Doc. 269-4); Crimi Dep.,
24 19:2-20:3 (Ex. 6 to Szymanski Decl. dated Nov. 13, 2013, Doc. 269-4); DiOrio Dep.,
25 46:1-25 (Ex. 7 to Szymanski Decl. dated Nov. 13, 2013, Doc. 269-4); Pauley Trial
26 testimony, 375 (Ex. 9 to Szymanski Decl. dated Nov. 13, 2013, Doc. 269-5); Hummel
27 Declaration dated November 13, 2013 ("Hummel MSJ Decl."), ¶17 (Doc. 269-1).
28 Several USAPA officers and representatives have indicated that they oppose the
unmodified Nicolau Award because it does not represent the best interests of the entire

1 pilot group and it is unlikely that USAPA would ever approve the use of the unmodified
2 Nicolau Award as a starting point for any pilot integration process. Bradford Dep. 41:21-
3 42:15 (Ex. 3 to Szymanski Decl. dated Nov. 13, 2013, Doc. 269-4); Hummel Dep.,
4 18:13-18:21; 25:4-16 (Ex. 4 to Szymanski Decl. dated Nov. 13, 2013, Doc. 269-4);
5 Pauley Dep., 49:14-22; 51:25-52:5 (Ex. 5 to Szymanski Decl. dated Nov. 13, 2013, Doc.
6 269-4); Crimi Dep., 19:2-20:3 (Ex. 6 to Szymanski Decl. dated Nov. 13, 2013, Doc. 269-
7 4); DiOrio Dep., 46:1-25 (Ex. 7 to Szymanski Decl. dated Nov. 13, 2013, Doc. 269-4);
8 Hummel MSJ Decl. ¶¶13-15 (Doc. 269-1).

9
10 22. An election contest between ALPA and USAPA followed. [SF at ¶ 40.]
11 Admitted but state that the correct citation to the record is SF at ¶ 41.

12 23. In the course of that election campaign, Mr. Bradford and other USAPA
13 supporters made it very clear that the “centerpiece” of USAPA’s policy would be to
14 promote the date-of-hire seniority integration that put East Pilots, who were furloughed in
15 2005, ahead of West Pilots who were active in 2005 – something that Mr. Nicolau found
16 was neither fair nor equitable. [SF at ¶ 51; Bradford (depo.), 75:4 to 75:22 (Sep. 18,
17 2013) (date-of-hire is USAPA’s “centerpiece”); *id.* at 82:7 to 82:20 (“date-of-hire is a
18 founding principal of this union”).]

19 Disputed. USAPA objects on the grounds of relevancy. *See* USAPA’s objections
20 to ¶3 and 10, *supra*, incorporated herein by reference. The formation of USAPA in 2007
21 is neither relevant nor material to the issue presented on summary judgment. To the
22 extent, the Court considers ¶23, the Nicolau Award violated ALPA Merger Policy was
23 unfair to a majority of US Airways pilots on several objective measures, gave West Pilots
24 significant windfalls in seniority and increased career compensation at the expense of
25 East Pilots, and failed to give any weight to length of service. Bradford Dep., 48:6-10
26 (Ex. 3 to Szymanski Decl. dated Nov. 13, 2013, Doc. 269-4). *See* USAPA’s response to
27 ¶ 20 above, showing the a multitude of reasons for dissatisfaction with ALPA’s
28 representation, USAPA further disputes the relevance of Arbitrator Nicolau’s opinion
regarding the placement of furlougees on this motion for summary judgment. USAPA

1 further notes that there is no merit to Plaintiffs' seeming contention that a motive can be
2 ascribed to a group voting in a secret ballot election, as were the US Airways Pilots in the
3 election conducted by the NMB. *See Palmer v. Thompson*, 403 U.S. 217 (1971).

4 24. USAPA won the election and, on April 18, 2008, the National Mediation
5 Board certified USAPA as the collective bargaining representative for the entire pilot
6 craft or class (East and West Pilots); "Craft or class" is the Railway Labor Act term for a
7 "bargaining unit." [SF at ¶¶ 43-44.]

8 Admitted.

9 25. USAPA proposed a date-of-hire seniority list to US Airways in September
10 2008. [SF at ¶ 54.]

11 Disputed. USAPA objects on the grounds of relevancy. *See* USAPA's objections
12 to ¶3, *supra*, incorporated herein by reference. USAPA further objects to ¶25 as not
13 supported by the record citation. USAPA has never proposed a strict date-of-hire list. The
14 list that USAPA proposed in 2008 was a date-of-hire seniority system that included
15 conditions and restrictions. SF at ¶¶54-55. Conditions and restrictions specify how a
16 particular seniority list operates. They can afford pilots opportunities to bid and hold
17 flying that would otherwise not be available to someone in their seniority position and
18 can restrict pilots from opportunities that would otherwise be available to someone in
19 their seniority position. SF at ¶ 57. Article I, Section 8.D of the USAPA Constitution
20 states that one of the "objectives" of USAPA is "To maintain uniform principles of
21 seniority based on date of hire and the perpetuation thereof, with reasonable conditions
22 and restrictions to preserve each pilot's un-merged career expectations." (Ex. 8 to
23 Szymanski Decl. dated Nov. 13, 2013, Doc. 269-5).

24 26. USAPA's seniority proposal combines the East and West seniority lists by
25 date-of-hire, without regard to whether a pilot was on furlough at the time of the merger
26 (or had prolonged periods of furlough prior to the merger). [SF at ¶ 59.]

27 Disputed in part. USAPA objects on the grounds of relevancy. *See* USAPA's
28 objections to ¶3, *supra*, incorporated herein by reference. Moreover, ¶26 does not

1 accurately quote the Stipulated Fact it refers to (SF ¶59). SF ¶59 refers to a proposal that
2 was made by USAPA in negotiations for a single collective bargaining agreement in
3 2008. The proposal has nothing to with the current situation and it irrelevant to the
4 matters at issue in this case.
5

6 27. For more than five years, USAPA has refused to take any steps towards
7 implementing the Nicolau Award and the West Pilots have steadfastly maintained that
8 USAPA has no legitimate union purpose to use a date-of-hire seniority list to integrate
9 pilot operations. [SF at ¶¶ 51-52.]

10 Disputed in part. It is undisputed that the West Pilots have consistently stated that
11 they will accept nothing other than an unmodified Nicolau award. SF at ¶52. It is also
12 not disputed that USAPA opposes the unmodified Nicolau Award and has not attempted
13 to implement it. Disputed that there are no legitimate reasons not to implement the
14 Nicolau Award including the facts that it was unfair to a majority of US Airways pilots
15 on several objective measures, gave West Pilots significant windfalls in seniority and
16 increased career compensation at the expense of East Pilots, and failed to give any weight
17 to length of service and because it is unlikely to be ratified. Bradford Dep., 48:6-10 (Ex. 3
18 to Szymanski Decl. dated Nov. 13, 2013, Doc. 269-4); Nicolau Award Bruscia Dissent,
19 (Tab 10 to USAPA's 56.1 Statement, Doc. 213-6), at pp. 2-3; Pauley Trial Testimony,
20 October 23, 2013, at p. 410:18-411:4 (Ex. K to USAPA's Compendium of Trial Exhibits
21 and Testimony in Support of USAPA's Reply in Further Support of Motion for Summary
22 Judgment). *See Addington v. US Airlines Pilots Ass'n*, 606 F.3d 1174, 1180 (9th Cir.
23 2010).
24

25 28. USAPA's governance is heavily weighted in favor of the East Pilot
26 majority such that there is no likelihood that USAPA will amend its date-of-hire
27 constitution provision or implement an unmodified Nicolau Award in the course of this
28 merger with American Airlines. [SF at ¶¶ 50-59.]

1
2 Disputed in part. Admitted that a majority of the USAPA BPR is made up of East
3 Pilots and that this proportional majority will likely oppose presentation of the
4 unmodified Nicolau Award during the seniority-integration process set forth in ¶10 of the
5 MOU. Otherwise, USAPA disputes this allegation because it is pure speculation as to
6 what proposal will be recommended by the BPR by the Merger Committee or what
7 proposal the BPR will support. The USAPA Merger Committee will continue to analyze
8 multiple seniority integration methodologies. The USAPA Merger Committee believes its
9 position vis á vis APA is stronger if it is not committed to one inflexible proposal. Pauley
10 Trial Testimony, pp. 406- 408 (Ex. 9 to Szymanski Decl. dated Nov. 13, 2013, Doc. 269-
11 5); Davison Trial Testimony, pp.414-415 (Ex. 10 to Szymanski Decl. dated Nov. 13,
12 2013, Doc. 269-5); Bradford Dep., 54:3-54:18 (Ex. 3 to Szymanski Decl. dated Nov. 13,
13 2013, Doc. 269-4), and Hummel Dep., 19:3-20:15; 106:10-107:9 (Ex. 4 to Szymanski
14 Decl. dated Nov. 13, 2013, Doc. 269-4).

15 29. The East Pilots that control USAPA's BPR have stated they would not
16 support an amendment to USAPA's Constitution to make it "neutral" and have on many
17 occasions blocked any efforts by the West Pilots on the BPR to amend the Constitution to
18 allow the Nicolau Award to be considered by the BPR. [Diorio (depo) at 48:12-21 (would
19 not support amending the USAPA Constitution to take out provision that requires it to
20 comply with date of hire principles) (BPR Member and former NAC Chairman); Scherff
21 at 149:14-153:2].

22 Disputed. USAPA objects that this statement is not supported by the record
23 citations. In addition, the USAPA Constitution provides that 25% of the membership can
24 petition for a referendum to amend. Article XIII (Ex. 8 to Szymanski Decl. Dated Nov.
25 13, 2013 Doc. 269-5). West Pilots comprise approximately one-third of the US Airways'
26 pilots. Hummel Dep., 107:1-9 (Ex. 4 to Szymanski Decl., dated Nov. 13, 2013, Doc.
27 269-4).

28 30. In 2008, six West Pilots sued USAPA claiming that USAPA breached its
duty of fair representation by repudiating the commitment to use the Nicolau Award. The

1 case was certified as a class action and proceeded to trial where the West Pilots prevailed.
2
3 On appeal, however, the case was dismissed as not presenting a ripe controversy. But in
4 so doing, the Ninth Circuit indicated that there would be a ripe claim if and “[w]hen the
5 collective bargaining agreement is finalized.” *Addington v. US Airline Pilots Ass’n*, 606
6 F.3d 1174, 1180 n.1 (9th Cir. 2010).

7 Admitted that in 2008, six West Pilots sued USAPA claiming that USAPA
8 breached its duty of fair representation by not using the Nicolau Award in contract
9 negotiations with US Airways. USAPA disputes that the Ninth Circuit stated that there
10 would be a ripe claim if and “[w]hen the collective bargaining agreement is finalized.”
11 The Ninth Circuit stated:

12 At this point, neither the West Pilots nor USAPA can be certain what
13 seniority proposal ultimately will be acceptable to both USAPA and the
14 airline as part of a final CBA. Likewise, it is not certain whether that
15 proposal will be ratified by the USAPA membership as part of a new,
16 single CBA. Not until the airline responds to the proposal, the parties
17 complete negotiations, and the membership ratifies the CBA will the West
18 Pilots actually be affected by USAPA's seniority proposal-whatever
19 USAPA's final proposal ultimately is. Because these contingencies make
20 the claim speculative, the issues are not yet fit for judicial decision. 606
21 F.3d at 1179-80.

22 31. On July 27, 2010, US Airways filed a declaratory judgment action, alleging
23 that it required guidance, *inter alia*, as to whether it would be liable if it entered into a
24 collective bargaining agreement with USAPA that did not implement the Nicolau Award.

25 [SF at ¶ 61.]

26 Admitted.

27 32. Although in its ruling the Court did not fully resolve the East/West pilot
28 seniority dispute at US Airways, it did provide substantial guidance as to what was
required of USAPA. [Ex. 115.]

The Court’s decision speaks for itself and USAPA disputes that it can be
reasonably or accurately described through selective quotes. Among other things, the

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2 decision denied the West Pilots’ motion for summary judgment on Count I (alleging that
3 USAPA violates the DFR by refusing to negotiate for the Nicolau Award) and granted, in
4 part, USAPA’s motion on Count II (alleging that USAPA does not violate the DFR by
5 departing from the Nicolau Award). The Court held, in part, that subject to its duty of
6 fair representation, USAPA “is free to pursue any seniority position it wishes during the
7 collective bargaining negotiations.” CV-10-01570-PHX-ROS, Doc. 193, p. 1

8 33. In its order on summary judgment in that action, the Court stated,
9 among other things: “Discarding the Nicolau Award places USAPA on dangerous
10 ground.” [Id.]

11 The Court’s order speaks for itself and USAPA disputes that it can be
12 reasonably or accurately described through selective quotes.

13 34. The Court cautioned USAPA that it must have a legitimate union
14 purpose if it makes a contract that abandons the Nicolau Award. [Id.]

15 The Court’s order speaks for itself. The full sentence of the Court in this
16 regard was: “When the collective bargaining is finalized, individuals will be able to
17 determine whether USAPA’s abandonment of the Nicolau Award was permissible i.e.,
18 supported by a legitimate union purpose.” (p. 8) See USAPA’s response to ¶33, *supra*.

19 35. It also cautioned USAPA that it must give reasonable and fair consideration
20 to implementing the Nicolau Award in negotiations with US Airways. [Id.]

21 See USAPA’s response to ¶32, *supra*.

22 36. For whatever reason, USAPA’s leaders and attorneys grossly
23 misinterpreted the Court’s ruling, thereby further strengthening the belief among many
24 East Pilots that USAPA had an unrestrained legal right to impose a date-of-hire seniority
25 list on the West Pilots—meaning that USAPA is free to disregard any and all
26 commitments and obligations to implement the Nicolau Award. [Hummel (depo.), 100:24
27 to 101:19 (Sep. 17, 2013) (“as a result of Judge Silver’s . . . ruling, USAPA is free to use
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1
2 whatever seniority list we want”); *see also id.* 103:15 to 104:24 (same); Crimi (depo.),
3 122:13 to 123:1 (Sep. 19, 2013) (same); Bradford (depo.) at 108:4 to 108:21 (same); Ex.
4 19 (same).]

5 Disputed. This statement is not a fact, but an argument and/or opinion. Plaintiffs’
6 assertion that USAPA’s position statements somehow induced or strengthened beliefs
7 among “many East Pilots,” to take a certain position as to the Nicolau Award is
8 completely unsupported by any evidence and is irrelevant. USAPA denies that it has any
9 “obligation” to implement an unmodified Nicolau Award. This Court’s October 11, 2102
10 Order in the declaratory judgment action denied the West Pilots’ motion for summary
11 judgment on Count I (alleging that USAPA violates the DFR by refusing to negotiate for
12 the Nicolau Award) and granted, in part, USAPA’s motion on Count II (alleging that
13 USAPA does not violate the DFR by departing from the Nicolau Award). The Court
14 held, in part, that subject to its duty of fair representation, USAPA “is free to pursue any
15 seniority position it wishes during the collective bargaining negotiations.” CV-10-01570-
16 PHX-ROS, Doc. 193, p. 1. USAPA’s leadership has correctly interpreted the Court’s
17 ruling to mean that it does not need to utilize an unmodified Nicolau list in negotiations
18 with US Airways and that it must act within the boundaries of the duty of fair
19 representations. Bradford Dep., 47:3-12; 108:22-109:9; 125:18-22 (Ex. 3 to Szymanski
20 Decl. dated Nov. 13, 2013, Doc. 269-3); Hummel Dep., 152:22-153:13 (Ex. 4 to
21 Szymanski Decl., Doc. 269-3). Finally, USAPA objects as this statement is not supported
22 by the record citations, which are taken wholly out of context.
23

24 37. USAPA also prevented the West Pilots on the BPR from disseminating any
25 contradicting viewpoint on the import of the Court’s October 2012 rulings. [Scherff at
26 156:3-157:6; *Compare Exhibit 20 with Exhibit 45*].
27

28 Disputed. USAPA asserts that at all times the West Pilots were free to disseminate
any contrary viewpoints, and indeed, the evidence cited here shows that they did just that.

1
2 Exhibit 45 is a Phoenix Domicile Update discussing the Court's October 2012 ruling, co-
3 authored by John Scherff, a plaintiff and a West Pilot. Hummel Decl. dated Oct. 30,
4 2013 ¶ 16 (Doc. 256-2). *See also* Hummel MSJ Decl. ¶ 6 (Doc. 269-1).

5 38. After meeting with counsel to discuss the October Order, Mr. Bradford
6 wrote to Mr. Pauley that the order establishes that "USAPA's [sic] free to use any
7 seniority list it wants . . . provided that there's a legitimate union purpose for deviating
8 from the Nic." [Ex. 20.]

9 Disputed. USAPA objects that this statement is not supported by the record
10 citation. Exhibit 20 is not an email from Mr. Bradford to Mr. Pauley. It is an update
11 from the USAPA Communications Committee, dated October 12, 2012 and does not
12 contain the quotation.

13
14 39. And in an October 16, 2012, email he wrote: "I attended a special meeting
15 between our lawyers and the Officers last week after the decision. We have left
16 NOTHING OUT! The win is conclusive and complete." [Ex. 140 (emphasis in original).]

17 Disputed. USAPA objects on grounds of relevancy. The statement of one East
18 pilot responding to an email written by a West Pilot to the Pilot Action listserv, is wholly
19 without context here and utterly devoid of any meaning. USAPA admits that Mr.
20 Bradford wrote an email and that this quote is accurate. USAPA further admits that the
21 dismissal of the declaratory judgment action in which USAPA was a defendant
22 constituted what is generally regarded as a legal victory for the union.

23 40. In an email copied to USAPA officers, which was written shortly after the
24 October Order, Mr. Bradford wrote as follows: (1) "We won and the company is under a
25 positive duty"; (2) "When Judge Rosslyn Silver said we were free to negotiate for the
26 Nicolau Award she was making a legal order"; (3) "There is no legal basis for USAPA to
27 be forced to use the Nicolau award. NONE"; (4) "There is no basis in law for USAPA to
28 use the NIC"; and (5) "This is a bigger win than you can imagine. It means that the

1
2 Nicolau award has no special legal standing and that USAPA is free to negotiate
3 something different.” [Ex. 17 (emphasis in original).]

4 Disputed. USAPA objects on grounds of relevancy. While the text of these
5 quotes appears in Exhibit 17, these statements follow a disclaimer that Mr. Bradford had
6 not yet seen the order. Furthermore, these statements are not USAPA’s official position,
7 but the words of one individual. Thus, they are of no import and irrelevant to this motion
8 for summary judgment.

9 41. In another email, Mr. Hummel told the chairman of USAPA’s
10 Communications Committee: “Brief your crew . . . no more legal opinions or debates
11 emanating from USAPA. We won, it’s over and we are moving on. That’s all that needs
12 to be said.” [Ex. 18.]

13 USAPA objects on grounds of relevancy. Admitted that Mr. Hummel sent an
14 email containing this text.

15 42. A USAPA pilot-to-pilot communication written on October 8, 2012,
16 stated: (1) USAPA “is free to use whatever seniority list we want”; and (2) “Finally, is
17 the NIC gone? President Hummel said that based on Judge Silver’s proposed ruling it is
18 in terms of USAPA not having to use it.” [Ex. 19.]

19 Disputed. USAPA objects on grounds of relevancy. Further, USAPA objects that
20 these statements are quoted in an incomplete manner and out of context. The full text of
21 these statements is as follows: (1) “The bottom line is that USAPA is free to pursue any
22 seniority position it wishes during collective bargaining” but that, as the Ninth Circuit
23 held in Addington, the West Pilots are entitled to file a duty of fair representation claim
24 once there is a ratified agreement, if they believe that agreement violates the duty of fair
25 representation; (2) “Finally, is the NIC gone? President Hummel said that based on Judge
26 Silver’s proposed ruling it is in terms of USAPA not having to use it. If there is a merger
27 with American, seniority integration with APA will be done according to McCaskill-
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2 Bond and all aspects will be complied with.” Thus, contrary to the plaintiffs’
3 characterization USAPA has always fully acknowledged that its obligations in the
4 seniority integration process are circumscribed by its duty of fair representation and the
5 McCaskill-Bond procedures.

6 43. In the same time frame, USAPA published a Charlotte domicile update,
7 that stated: (1) “Common sense would dictate that Judge Silver obviously believes there
8 are legitimate union purposes for setting aside the Nicolau award”; (2) “There is no
9 question that USAPA has a legitimate union purpose – in fact many good reasons – for a
10 seniority proposal different from the Nicolau Award”; and (3) “It is legitimate to
11 integrate seniority based on date of hire.” [Ex. 152.]

12 Disputed. USAPA objects on grounds of relevancy. Further, Defendants’
13 selective quotations are misleading, out of context and incomplete. To the extent the
14 Court determines to consider ¶ 43, USAPA respectfully refers the Court to the entire
15 exhibit which contained a much more extensive discussion and also included a link to the
16 Court’s Order and Judgment.

17 44. On November 29, 2011, AMR Corporation (“AMR”) and its subsidiaries,
18 including American Airlines, Inc. (“American”), commenced a voluntary Chapter 11 case
19 in the United States Bankruptcy Court for the Southern District of New York, In re AMR
20 Corp., Case No. 11-15463. [SF at ¶ 69.]

21 Admitted.

22 45. On February 13, 2013, US Airways Group, Inc. (the corporate parent of US
23 Airways) and AMR entered into an Agreement and Plan of Merger that contemplated the
24 combination of US Airways and American. [SF at ¶ 70.]

25 Admitted.

26 46. By April 11, 2013, the Bankruptcy Court had approved the merger subject
27 to conditions that are not at issue here. [SF at ¶¶ 71-73.]
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Admitted.

47. While it was contemplating the merger with American, US Airways began negotiating labor contract terms with the Allied Pilots Association (“APA”), the union for American pilots, that would go into effect if and when there was a merger with American. [SF at ¶ 74.]

Admitted.

48. On April 23, 2012, APA and US Airways executed an agreement that has been referred to as the “Conditional Labor Agreement” (“CLA”) or “APA Term Sheet.” [SF at ¶ 75.]

Admitted.

49. USAPA was not involved in the negotiations or agreement to the APA Term Sheet and initially US Airways did not want USAPA’s involvement. [SF at ¶ 76; Response to USAPA’s Summary of Evidence, Doc. 263 at ¶ 3].

Admitted.

50. US Airways subsequently agreed to negotiate with USAPA concerning terms, conditions, and protections in addition to those stated in the CLA that would be guaranteed to US Airways pilots in the event of a merger, but there is no evidence that USAPA was able to obtain that concession from US Airways, rather it was APA who allowed USAPA to be part of the process. [*Id.*]

Disputed. USAPA objects to ¶50 as not supported by any admissible evidence and contradicted by the record citation. The stipulated fact cited by Plaintiffs directly contradicts Plaintiffs’ assertion and states that: “*US Airways* subsequently agreed to negotiate with USAPA concerning terms, conditions, and protections in addition to those stated in the CLA that would be guaranteed to US Airways pilots in the event of a merger.” SF ¶ 76, emphasis supplied. And it is contrary to the testimony of NAC Chairman Dean Colello that in fact USAPA was responsible for obtaining several

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2 increased benefits from US Airways and American, the most notable of which was that
3 the NAC was the first union party to obtain a guarantee of industry parity effective on
4 January 1, 2016. Colello Trial Testimony, October 23, 2013, 291:25-293:2 (Ex. D to
5 USAPA’s Compendium of Trial Exhibits and Testimony in Support of USAPA’s Reply
6 in Further Support of Motion for Summary Judgment).

7 51. USAPA assigned its Negotiating Advisory Committee (“NAC”) the task of
8 negotiating the labor terms and provisions regarding integration of US Airways and
9 American pilots, in connection with a potential US Airways/American merger. [SF at ¶
10 78.]

11 Admitted.

12 52. The outcome of these negotiations was memorialized in a document
13 entitled “Memorandum of Understanding Regarding Contingent Collective Bargaining
14 Agreement” (“MOU #1”). [SF at ¶ 80; Ex. 7.]

15 Admitted.

16 53. This draft did not have any language that purported to nullify the seniority
17 integration provisions in the 2005 Transition Agreement. [Ex. 7; Response to USAPA
18 Summary of Evidence, Doc. 263 at ¶¶ 3, 7, 8.]

19 Disputed. MOU I, a tentative agreement between US Airways, APA and USAPA
20 that was never signed or executed, did not contain any details regarding the seniority
21 integration process other than that it had to be completed within 24 months. (Compare
22 Trial Ex. 7 (MOU I) ¶9 (Ex. E to USAPA’s Compendium of Trial Exhibits and
23 Testimony in Support of USAPA’s Reply in Further Support of Motion for Summary
24 Judgment) and Trial Exhibit 24 (MOU) ¶ 10 (Tab 1 to USAPA’s 56.1 Statement, Doc.
25 213-2). Paragraph 4 of the MOU provides for the termination of the 2005 TA. (Doc.
26 213-2) Paragraph 4 was proposed by US Airways and AMR and the Unsecured Creditors
27 Committee, not by USAPA. Colello Trial Testimony, October 23, 2013, 275:14-277:5
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2 (Ex. D to USAPA’s Compendium of Trial Exhibits and Testimony in Support of
3 USAPA’s Reply in Further Support of Motion for Summary Judgment). Paragraph 4
4 provides that the Merger TA (“MTA”) (which is a combination of the AMR collective
5 bargaining agreement and the MOU final agreement) will replace any and all prior
6 collective bargaining agreements. The agreement and intention of the parties did not
7 change between the so-called MOU I and the final MOU. Both replaced the TA seniority
8 provisions with a seniority integration process based on McCaskill-Bond. Both
9 terminated the TA. Neither provided for the implementation of any integrated seniority
10 lists outside that process. Paragraph 10.h is merely a clarification based on the demand
11 made by US Airways and the other parties that seniority be addressed only through a
12 process based on McCaskill-Bond.
13

14 54. Negotiators for US Airways and the NAC (on behalf of USAPA)
15 tentatively approved MOU # 1 on August 20, 2012. [SF at ¶ 81.]

16 Admitted.

17 55. In August 2012, after the NAC presented the MOU I to the USAPA Board
18 of Pilot Representatives (“BPR”), the BPR concluded that there were deficiencies in
19 MOU #1 and directed the NAC to negotiate further to address those deficiencies. [SF
20 MOU ¶ 83.]

21 Admitted.

22 56. The BPR, however, did not identify any seniority-related deficiencies in
23 MOU #1I. [Colello (depo.), 35:4 to 38:1 (Sep. 20, 2013) (no mention of seniority
24 concerns in goals for MOU I in a presentation to BPR; *id.* at 39:9 to 39:15 (BPR directed
25 NAC to correct specific deficiencies in MOU I, none of which related to seniority); *id.* at
26 47:20 to 48:7 (same); *id.* at 54:21 to 56:14 (same); Ex. 104 (excerpt of Colello’s
27 presentation to BPR listing only non-seniority deficiencies); Hummel (depo.) at 158:6 to
28 160:19 (unable to identify anything other than economic terms and insurance needing

1
2 further negotiation); Crimi (depo.) at 21:12 to 21:25 (same); Scherff at 154:21-155:2;
3 Holmes at 75:9-14]

4 Disputed. USAPA objects to ¶56 on grounds of relevancy. Any purported
5 “seniority- related deficiencies” in the draft MOU have no bearing on the issues in this
6 lawsuit in part because no relevant changes were made with respect to seniority between
7 the draft MOU and the final MOU. Paragraph 4 of the MOU provides for the termination
8 of the 2005 TA. (Doc. 213-2) Paragraph 4 was proposed by US Airways and AMR and
9 the UCC, not by USAPA. Colello Trial Testimony, October 23, 2013 at 275:14-277:5
10 (Ex. D to USAPA’s Compendium of Trial Exhibits and Testimony in Support of
11 USAPA’s Reply in Further Support of Motion for Summary Judgment). Paragraph 4
12 provides that the Merger TA (“MTA”) (which is a combination of the AMR collective
13 bargaining agreement and the MOU final agreement) will replace any and all prior
14 collective bargaining agreements. The agreement and intention of the parties did not
15 change between the so-called MOU I and the final MOU. Both replaced the TA seniority
16 provisions with a seniority integration process based on McCaskill-Bond. Both
17 terminated the TA. Neither provided for the implementation of any integrated seniority
18 lists outside that process. Paragraph 10.h is merely a clarification based on the demand
19 made by US Airways and the other parties that seniority be addressed only through a
20 process based on McCaskill-Bond. *Id.*

22 57. Further negotiations between the NAC and US Airways were delayed until
23 December 2012 by matters that are not at issue here. [SF at ¶¶ 84, 85.]

24 Admitted.

25 58. From December 10, 2012, through January 2, 2013, US Airways, USAPA
26 and APA negotiated a tentative agreement titled “Memorandum of Understanding
27 Regarding Contingent Collective Bargaining Agreement” (the “MOU”). [SF at ¶¶ 86, 87;
28 Ex. 24.]

1
2 Admitted.

3 59. In the course of those negotiations, notwithstanding that the BPR did not
4 direct the NAC to address seniority integration, USAPA inserted seniority language into
5 the MOU that gave rise to this litigation. [Ex. 25, 58, 99; Holmes at 84:12 to 84:16.]

6 Disputed. USAPA did not insert any provision into the MOU that “gave rise to
7 this litigation.” It is apparent from the allegations made by Plaintiffs that what they are
8 now complaining about is the fact that the MOU replaces the 2005 Transition Agreement.
9 Paragraph 4 of the MOU provides for the termination of the 2005 TA. Doc. 213-2 (Ex.
10 24 (MOU)). Paragraph 4 was proposed by US Airways and AMR and the UCC, not by
11 USAPA. Colello Trial Testimony, October 23, 2013 at 275:14-277:22 (Ex. D to
12 USAPA’s Compendium of Trial Exhibits and Testimony in Support of USAPA’s Reply
13 in Further Support of Motion for Summary Judgment). Paragraph 4 provides that the
14 Merger TA (“MTA”) (which is a combination of the AMR collective bargaining
15 agreement and the MOU final agreement) will replace any and all prior collective
16 bargaining agreements. The agreement and intention of the parties did not change
17 between the so-called MOU I and the final MOU. Compare Ex. 7 (MOU I) (Ex E to
18 USAPA’s Compendium of Trial Exhibits and Testimony in Support of USAPA’s Reply
19 in Further Support of Motion for Summary Judgment) and (Ex. 24, MOU (Doc. 213-2)).
20 Both replaced the TA seniority provisions with a seniority integration process based on
21 McCaskill-Bond. Both terminated the TA. Neither provided for the implementation of
22 any integrated seniority lists outside that process. Paragraph 10.h is merely a clarification
23 based on the demand made by US Airways and the other parties that seniority be
24 addressed only through a process based on McCaskill-Bond. Paragraph 10.h of the MOU
25 expressly provides that the status quo with respect to seniority and bidding for US
26 Airways pilots will continue until the completion of the seniority integration process as
27 provided in paragraph 10. Paragraph 10 has nothing to do with terminating the 2005 TA.
28

1
2 Paragraph 10.h was proposed to make clear that the status quo with respect to the current
3 two-list seniority system at US Airways would continue until replaced by the results of
4 the seniority integration procedure otherwise set forth in paragraph 10. Ex. 24 (MOU)
5 (Doc. 213-2).

6 60. The MOU (as did MOU #1) provides that pilot seniority integration
7 between pilots of US Airways and American Airlines will be governed by a process
8 consistent with McCaskill-Bond. [SF at ¶ 92; Ex. 7, 24.]

9 Admitted.

10 61. In the negotiations for the MOU, US Airways, American and APA asked
11 only that seniority integration be “consistent” with McCaskill-Bond (which all knew did
12 not apply to mergers that occurred prior to 2008). [Holmes at 121:18 to 121:25.]

13 Disputed. This statement is not supported by the record evidence. Mr. Holmes
14 was asked whether he recalled “being present at a meeting wherein various company
15 representatives, US Airways, perhaps American, the UCC, said, in sum or substance, this
16 document will provide only for seniority integration to be consistent with McCaskill-
17 Bond and nothing more about seniority?” Thus, the record reflects that US Airways (and
18 later AMR and the UCC) made clear that an agreement that might be negotiated to
19 govern the terms and conditions of pilots employed by the merged carrier would not
20 address seniority in any way and, in particular, would not address the seniority dispute
21 between the former America West Pilots and the former US Airways Pilots. The
22 employer parties were firm on this point throughout negotiations and were unwilling to
23 include any specific resolution of the seniority dispute in the MOU. SF ¶77; Hummel
24 Dep., 52-53, 65-66 (Ex. C to USAPA’s Compendium of Trial Exhibits and Testimony in
25 Support of USAPA’s Reply in Further Support of Motion for Summary Judgment);
26 Colello Trial Testimony, 263 (Ex. D to USAPA’s Compendium of Trial Exhibits and
27 Testimony in Support of USAPA’s Reply in Further Support of Motion for Summary
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2 Judgment); Colello Dep., 64-65 (Ex. L to USAPA’s Compendium of Trial Exhibits and
3 Testimony in Support of USAPA’s Reply in Further Support of Motion for Summary
4 Judgment); Owens Dep., 87 (Ex. M to USAPA’s Compendium of Trial Exhibits and
5 Testimony in Support of USAPA’s Reply in Further Support of Motion for Summary
6 Judgment).

7 62. In the negotiations for the MOU, USAPA initially proposed this language
8 for what became ¶ 10(h): “This MOU is not intended to nor shall it constitute the ‘Single
9 Agreement’ referred to in Paragraph VI.A. of the September 23, 2005 Transition
10 Agreement.” [SF at ¶ 95.]

11 Admitted.

12 63. USAPA then proposed in place of that language: “US Airways agrees that
13 neither this Memorandum nor the JCBA [Joint Collective Bargaining Agreement] shall
14 provide a basis for changing the seniority lists currently in effect at US Airways other
15 than through the process set forth in this Paragraph 10.” [SF at ¶ 93.]

16 Admitted.

17 64. This became ¶ 10(h) in MOU II. [SF at ¶ 93.]

18 Admitted.

19 65. USAPA refused to provide evidence as to the reasons why it put ¶ 10.h into
20 the MOU. [Pauley (depo.) 80:12 to 80:18 (Szymanski objecting, “the reasons and the
21 discussion about why seem to me to be privileged”).]

22 Disputed. Plaintiffs selectively quote only one part of Mr. Pauley’s deposition
23 testimony, a part that dealt with a discussion solely between Mr. Pauley and counsel. Mr.
24 Pauley fully explains the purpose of paragraph 10.h elsewhere in his deposition
25 testimony, as did several other USAPA witnesses. SF ¶77; Hummel Dep., 52-53, 65-66
26 (Ex. C to USAPA’s Compendium of Trial Exhibits and Testimony in Support of
27 USAPA’s Reply in Further Support of Motion for Summary Judgment); Colello Trial
28

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2 Testimony, 263 (Ex. D to USAPA's Compendium of Trial Exhibits and Testimony in
3 Support of USAPA's Reply in Further Support of Motion for Summary Judgment);
4 Colello Dep., 64-65 (Ex. L to USAPA's Compendium of Trial Exhibits and Testimony in
5 Support of USAPA's Reply in Further Support of Motion for Summary Judgment);
6 Owens Dep., 87 (Ex. M to USAPA's Compendium of Trial Exhibits and Testimony in
7 Support of USAPA's Reply in Further Support of Motion for Summary Judgment);
8 Pauley Dep. p. 81 (Ex. B to USAPA's Compendium of Trial Exhibits and Testimony in
9 Support of USAPA's Reply in Further Support of Motion for Summary Judgment).

10 Consistent with this testimony, USAPA has always maintained that the purpose of
11 paragraph 10.h of MOU II was to ensure that MOU II was neutral with respect to
12 seniority and that MOU II did not reorder the existing seniority lists except through the
13 process provided in the rest of paragraph 10. USAPA Disputed Fact at ¶27 (Doc. 206-1).

14
15 66. The only person from USAPA that knew the reason for ¶ 10.h was Pat
16 Szymanski, who refused to testify under oath at deposition or during trial. [Trial
17 Transcript at 310:21-311:4; Exhibits 127-130].

18 Disputed. This is not a statement of fact, but a baseless argument by plaintiffs. SF
19 ¶77; Hummel Dep., 52-53, 65-66 (Ex. C to USAPA's Compendium of Trial Exhibits and
20 Testimony in Support of USAPA's Reply in Further Support of Motion for Summary
21 Judgment); Colello Trial Testimony, 263 (Ex. D to USAPA's Compendium of Trial
22 Exhibits and Testimony in Support of USAPA's Reply in Further Support of Motion for
23 Summary Judgment); Colello Dep., 64-65 (Ex. L to USAPA's Compendium of Trial
24 Exhibits and Testimony in Support of USAPA's Reply in Further Support of Motion for
25 Summary Judgment); Owens Dep., 87 (Ex. M to USAPA's Compendium of Trial
26 Exhibits and Testimony in Support of USAPA's Reply in Further Support of Motion for
27 Summary Judgment). Trial testimony established that the West Pilots objected to the first
28 draft of the first sentence of paragraph 10.h of the MOU. After the West Pilots objected,

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2 the sentence was replaced with a completely new sentence. Holmes Trial Testimony,
3 113 (Ex. H to USAPA’s Compendium of Trial Exhibits and Testimony in Support of
4 USAPA’s Reply in Further Support of Motion for Summary Judgment); Colello Trial
5 Testimony, 273-274 (Ex. D to USAPA’s Compendium of Trial Exhibits and Testimony
6 in Support of USAPA’s Reply in Further Support of Motion for Summary Judgment). As
7 a member of the NAC, Mr. Holmes, along with the other West Pilot on the NAC
8 recommended the MOU for approval to the BPR. Holmes Trial Testimony, 116-117 (Ex.
9 H to USAPA’s Compendium of Trial Exhibits and Testimony in Support of USAPA’s
10 Reply in Further Support of Motion for Summary Judgment).

11 67. Although the MOU contains substantial economic improvements for US
12 Airways pilots [SF at ¶ 98], it did not provide any additional benefit or concession from
13 the airline in exchange for ¶ 10(h). [Holmes at 67:4 to 67:19 (rates of pay and most all
14 aspects of CBA were fixed by negotiations between Allied Pilots Association (“APA”) and
15 US Airways well before the MOU was negotiated between USAPA and other parties);
16 68:21 to 68:25 (same); *id.* at 78:13 to 78:16 (US Airways agreed to \$40 million payment
17 in summer of 2002, months before the MOU negotiations began); *id.* at 94; *id.* at 139:3 to
18 139:3 (retrospective pay was negotiated “the last day,” January 4, 2013); Colello at
19 304:22 to 305:8 (“So was there any economic benefit for the parties to agree to include
20 10H? I would say the answer was no.”).]

21
22 Disputed. USAPA objects on grounds of relevancy. Paragraph 10.h is merely a
23 clarification based on the demand made by US Airways and the other parties that
24 seniority be addressed only through a process based on McCaskill-Bond.

25 68. There is no evidence that US Airways, American or APA wanted USAPA
26 to have authority to dictate East/West integration without regard to legitimate union
27 purpose. [Scherff at 176:5 to 176:10.]
28

 Disputed. USAPA objects that this statement is irrelevant and argumentative and

1
2 not a statement of fact. USAPA also objects that the statement is not supported by any
3 admissible evidence. The record citation refers to testimony regarding whether US
4 Airways sought interim seniority integration of the East/West lists. This testimony does
5 not lead to the conclusion for which it is cited here.

6 69. There is no evidence that US Airways, American or APA wanted to
7 exclude the West Pilots from participating in the process of integrating the seniority of
8 the American and US Airways pilots. [Response to USAPA Summary of Evidence, Doc.
9 263 at ¶ 3.]

10 Disputed. USAPA objects that this statement is irrelevant and argumentative and
11 not a statement of fact. It is immaterial whether US Airways, American or APA wanted
12 the West Pilots' participation in the process of seniority integration as USAPA avers that
13 any preference would be self-serving as it would undermine the strength of USAPA in
14 negotiations and the much larger APA pilot group. The West Pilots have proportionate
15 representation on the Merger Committee and are currently participating through the
16 internal union structure. Separate representation was also unanimously opposed by all
17 members of the Merger Committee including the West Pilots serving on the six member
18 Merger Committee. Bradford Dep., 38:7-38:25 (Ex. 3 to Szymanski Decl. dated
19 November 13, 2013, Doc. 269-4); Hummel Dep., 8:17-13:17 (Ex. 4 to Szymanski Decl.
20 dated November 13, 2013, Doc. 269-4); Pauley Dep., 18:18-19:6 (Ex. 5 to Szymanski
21 Decl. dated November 13, 2013, Doc.269-4); Crimi Dep., 99:23-100:4 (Ex. 6 to
22 Szymanski Decl. dated November 13, 2013, Doc. 269-4); DiOrio Dep., 51:14- 51:23 (Ex.
23 7 to Szymanski Decl. November 13, 2013, Doc 269-4); Pauley Trial testimony, 382:18-
24 23 (Ex. 9 to Szymanski Decl., dated November 13, 2013, Doc. 269-5); Hummel MSJ
25 Decl. ¶16-18 (Doc. 269-1)

26 70. If the airline emerging from the US Airways/American merger and its
27 pilots cannot reach agreement on a JCBA, or if the pilots do not ratify a negotiated JCBA,
28

1
2 the MOU provides that the terms of the JCBA will be imposed through “final and
3 binding” arbitration and that the arbitrator’s award must be “consistent with the terms of
4 the MTA” and “specifically shall adhere to the economic terms of the MTA and shall not
5 change the MTA’s Scope terms (Paragraph 25 of this Memorandum) or the modifications
6 generated through the process set forth in Paragraph 24 of this Memorandum.” [Ex. 24 at
7 ¶ 27.]

8 Admitted.

9 71. Accordingly, the material terms and conditions of employment for both the
10 East and West pilots following the merger are now known and fixed by the MOU.
11 [Holmes at 66:25 to 67:11; *id.* at 83:19 to 83:23; Colello at 269:12 to 269:21 (accepting
12 the characterization that MOU negotiations were “collective bargaining negotiations”);
13 *id.* at 272:6 to 272:7 (same); *id.* at 275:24 to 276:18 (the MOU in conjunction with the
14 2012 APA CBA forms the new CBA for the US Airways pilots).]

15 Disputed. The record evidence shows that further negotiations are required before
16 the parties can reach a joint collective bargaining agreement. For example, the MOU does
17 not resolve material terms and conditions of employment such as grievances, scheduling,
18 and medical insurance. Bradford Dep., 116-17 (Ex. N to USAPA’s Compendium of Trial
19 Exhibits and Testimony in Support of USAPA’s Reply in Further Support of Motion for
20 Summary Judgment).

21
22 72. The MOU, in other words, sets new compensation levels, new working
23 conditions, new benefits and everything that a collective bargaining agreement provides.
24 [Ex. 24.]

25 Disputed. The record evidence shows that further negotiations are required before
26 the parties can reach a joint collective bargaining agreement. For example, the MOU does
27 not resolve material terms and conditions of employment such as grievances, scheduling,
28 and medical insurance. Bradford Dep., 116-17 (Ex. N to USAPA’s Compendium of Trial

1
2 Exhibits and Testimony in Support of USAPA’s Reply in Further Support of Motion for
3 Summary Judgment).

4 73. Mr. Holmes, a West Pilot member of the NAC, objected to the language in
5 ¶ 10.h and asked Mr. Szymanski, USAPA’s merger counsel, why it has to be in the
6 MOU. [Holmes at 88:13 to 88:20.]

7 Disputed. Mr. Holmes testified that the West Pilots objected to the first draft of
8 the first sentence of paragraph 10.h of the MOU. After the West Pilots objected, the
9 sentence was replaced with a completely new sentence. Holmes Trial Testimony, 113
10 (Ex. H to USAPA’s Compendium of Trial Exhibits and Testimony in Support of
11 USAPA’s Reply in Further Support of Motion for Summary Judgment); Colello Trial
12 Testimony, 273-274 (Ex. D to USAPA’s Compendium of Trial Exhibits and Testimony
13 in Support of USAPA’s Reply in Further Support of Motion for Summary Judgment). As
14 a member of the NAC, Mr. Holmes, along with the other West Pilot on the NAC
15 recommended the MOU for approval to the BPR. Holmes Trial Testimony, 116-117 (Ex.
16 H to USAPA’s Compendium of Trial Exhibits and Testimony in Support of USAPA’s
17 Reply in Further Support of Motion for Summary Judgment).

18 74. Mr. Szymanski told Holmes only that “it just needs to be in the MOU.”
19 [*Id.*].

20 Disputed. Mr. Holmes testified that the West Pilots objected to the first draft of the
21 first sentence of paragraph 10.h of the MOU. After the West Pilots objected, the sentence
22 was replaced with a completely new sentence. Holmes Trial Testimony, 113 (Ex. H to
23 USAPA’s Compendium of Trial Exhibits and Testimony in Support of USAPA’s Reply
24 in Further Support of Motion for Summary Judgment); Colello Trial Testimony, 273-274
25 (Ex. D to USAPA’s Compendium of Trial Exhibits and Testimony in Support of
26 USAPA’s Reply in Further Support of Motion for Summary Judgment).As a member of
27 the NAC, Mr. Holmes, along with the other West Pilot on the NAC recommended the
28 MOU for approval to the BPR. Holmes Trial Testimony at 116-117 (Ex. H to USAPA’s

1
2 Compendium of Trial Exhibits and Testimony in Support of USAPA’s Reply in Further
3 Support of Motion for Summary Judgment).

4 75. Mr. Szymanski later told Mr. Holmes and others not to be concerned
5 because MOU #2 had a “completely neutral” effect on East/West seniority integration.
6 [*Id.* at 95:12 to 95: 19.]

7 Admitted that USAPA and the NAC, which included Mr. Holmes, informed the
8 pilots that the MOU was neutral with respect to seniority.

9 76. Mr. Holmes also voiced serious concerns about ¶ 10.h to Mr. Hummel. [*Id.* at
10 88:19 to 88:25.]

11 Disputed in part. Mr. Holmes testified that the West Pilots objected to the first
12 draft of the first sentence of paragraph 10.h of the MOU. After the West Pilots objected,
13 the sentence was replaced with a completely new sentence. Holmes Trial Testimony,
14 113 (Ex. H to USAPA’s Compendium of Trial Exhibits and Testimony in Support of
15 USAPA’s Reply in Further Support of Motion for Summary Judgment); Colello Trial
16 Testimony, 273-274 (Ex. D to USAPA’s Compendium of Trial Exhibits and Testimony
17 in Support of USAPA’s Reply in Further Support of Motion for Summary Judgment). As
18 a member of the NAC, Mr. Holmes, along with the other West Pilot on the NAC
19 recommended the MOU for approval to the BPR. Holmes Trial Testimony at 116-117
20 (Ex. H to USAPA’s Compendium of Trial Exhibits and Testimony in Support of
21 USAPA’s Reply in Further Support of Motion for Summary Judgment).

22
23 77. Despite Mr. Holmes repeatedly urging Mr. Hummel to explain ¶ 10.h to the
24 West Pilot BPR members, Mr. Hummel refused to do so. [*Id.* at 88:22 to 89:10.]

25 Disputed. Mr. Holmes testified that the West Pilots objected to the first draft of the
26 first sentence of paragraph 10.h of the MOU. After the West Pilots objected, the sentence
27 was replaced with a completely new sentence. Holmes Trial Testimony, 113 (Ex. H to
28 USAPA’s Compendium of Trial Exhibits and Testimony in Support of USAPA’s Reply
in Further Support of Motion for Summary Judgment); Colello Trial Testimony, 273-274

1 (Ex. D to USAPA's Compendium of Trial Exhibits and Testimony in Support of
2 USAPA's Reply in Further Support of Motion for Summary Judgment). As a member of
3 the NAC, Mr. Holmes, along with the other West Pilot on the NAC recommended the
4 MOU for approval to the BPR. Holmes Trial Testimony at 116-117 (Ex. H to USAPA's
5 Compendium of Trial Exhibits and Testimony in Support of USAPA's Reply in Further
6 Support of Motion for Summary Judgment).
7

8 78. Indeed, after Mr. Hummel missed three opportunities to provide such an
9 explanation, he told Mr. Holmes in an emphatic manner: "We're done. This is it. I do not
10 want to hear another word about it." [*Id.* at 89:7 to 89:10.]

11 Disputed. This testimony is inconsistent with the fact that Mr. Holmes agreed to
12 the revised provision that became paragraph 10.h in the MOU, that he never objected
13 during any BPR meeting, telephone briefing, roadshow or otherwise about paragraph
14 10.h, and that he consistently recommended the MOU as a member of the NAC. Holmes
15 Trial Testimony, 116-117 (Ex. H to USAPA's Compendium of Trial Exhibits and
16 Testimony in Support of USAPA's Reply in Further Support of Motion for Summary
17 Judgment). Mr. Holmes further testified that as a member of the NAC, he and the other
18 West Pilots had the ability to bring forward proposals and mention concerns they had.
19 Holmes Trial Testimony, 136 (Ex. H to USAPA's Compendium of Trial Exhibits and
20 Testimony in Support of USAPA's Reply in Further Support of Motion for Summary
21 Judgment). Mr. Holmes, along with the other members of the NAC, prepared explanatory
22 materials that were presented to the membership to educate the pilots, *inter alia*,
23 concerning the terms and conditions and other matters set forth in the MOU that were
24 mailed to pilots' homes. Holmes Trial Testimony, 94-95, 119-120 and Trial Ex. 233 (Exs.
25 H and O to USAPA's Compendium of Trial Exhibits and Testimony in Support of
26 USAPA's Reply in Further Support of Motion for Summary Judgment); Colello Trial
27 Testimony, 281-282 (Ex. D to USAPA's Compendium of Trial Exhibits and Testimony
28 in Support of USAPA's Reply in Further Support of Motion for Summary Judgment).
The materials the NAC prepared stated that seniority will be handled in accordance with

1 McCaskill-Bond and made no reference to the Nicolau Award. See Trial Exhibit 233 (Ex.
2 O to USAPA’s Compendium of Trial Exhibits and Testimony in Support of USAPA’s
3 Reply in Further Support of Motion for Summary Judgment).

4 79. Mr. Holmes, therefore, was not given sufficient information to make an
5 informed decision whether to withhold his recommendation for the MOU based on 10.h.
6 Consequently, he reasonably believed that the MOU “amend[ed] certain aspects of the
7 Transition Agreement” but did not modify provisions that control “merging the East and
8 West pilots.” [*Id.* at 140:8 to 140:16.]

9 Disputed. See response to ¶78, above. Mr. Holmes ran the website of the
10 Leonidas organization that had updates that stated that the MOU is seniority neutral,
11 contains no poison pill, and that no one should be afraid that voting for the MOU is
12 harmful to their ultimate goal of suing to enforce the Nicolau Award. Exs. 258, 259 (Exs.
13 P and Q to USAPA’s Compendium of Trial Exhibits and Testimony in Support of
14 USAPA’s Reply in Further Support of Motion for Summary Judgment); Holmes Trial
15 Testimony, 124-126 (Ex. H to USAPA’s Compendium of Trial Exhibits and Testimony
16 in Support of USAPA’s Reply in Further Support of Motion for Summary Judgment).

17 80. Mr. Holmes and Mr. Scherff attended all the meetings where Mr.
18 Szymanski explained the MOU to USAPA members (East and West) prior to MOU
19 ratification. [*Id.* at 95:20 to 95:21; Scherff at 164:7 to 164:10.]

20 Admitted.

21 81. At those meetings they both heard Mr. Szymanski tell a predominately East
22 Pilot audience that “the Nic. is dead.” [Holmes at 123:2 to 123:5; Scherff at 164:22 to
23 164:25.]

24 Disputed. USAPA objects on grounds of relevancy and disputes the accuracy of
25 the account. In any event, this statement is contrary to other actions taken by both Mr.
26 Holmes and Mr. Scherff. Mr. Holmes, along with the other members of the NAC,
27 prepared explanatory materials that were presented to the membership to educate the
28 pilots, *inter alia*, concerning the terms and conditions and other matters set forth in the

1 MOU that were mailed to pilots' homes. Holmes Trial Testimony, 94-95 (Ex. H to
2 USAPA's Compendium of Trial Exhibits and Testimony in Support of USAPA's Reply
3 in Further Support of Motion for Summary Judgment); Colello Trial Testimony, 281-282
4 (Ex. H to USAPA's Compendium of Trial Exhibits and Testimony in Support of
5 USAPA's Reply in Further Support of Motion for Summary Judgment). The materials
6 the NAC prepared stated that seniority will be handled in accordance with McCaskill-
7 Bond and made no reference to the Nicolau Award. *See* Exhibit 233 (Ex. O to USAPA's
8 Compendium of Trial Exhibits and Testimony in Support of USAPA's Reply in Further
9 Support of Motion for Summary Judgment). No one from the NAC or members of the
10 BPR (including Mr. Scherff who attended all of the roadshow sessions) raised any
11 question about any issues that Plaintiffs have now asserted were somehow misleading
12 including the termination of the TA or ¶10.(h). Colello Trial Testimony, 285-286 (Ex. D
13 to USAPA's Compendium of Trial Exhibits and Testimony in Support of USAPA's
14 Reply in Further Support of Motion for Summary Judgment). Under the balloting
15 process, any pilot who voted was entitled to change their vote up until the close of
16 balloting on February 8, 2013. Holmes Trial Testimony, 123 (Ex. H to USAPA's
17 Compendium of Trial Exhibits and Testimony in Support of USAPA's Reply in Further
18 Support of Motion for Summary Judgment). Mr. Holmes ran the Leonidas website.
19 Holmes Trial Testimony, 125-126, 131-133. (Ex. H to USAPA's Compendium of Trial
20 Exhibits and Testimony in Support of USAPA's Reply in Further Support of Motion for
21 Summary Judgment) Several updates encouraging West Pilots to vote to ratify the MOU
22 were issued by Leonidas. Holmes Trial Testimony, 125-126, 131-133. (Ex. H to
23 USAPA's Compendium of Trial Exhibits and Testimony in Support of USAPA's Reply
24 in Further Support of Motion for Summary Judgment) Mr. Holmes indicated that he
25 informed Leonidas members of discussions at the Road Show and that they were in
26 possession of the information that Mr. Holmes had regarding discussions at the Road
27 Shows and before balloting closed. Leonidas sent out several communications urging
28 ratification of the MOU in February 2013, after the Road Shows and before balloting

1 closed. Holmes Trial Testimony, 124-126 (Ex. H to USAPA’s Compendium of Trial
2 Exhibits and Testimony in Support of USAPA’s Reply in Further Support of Motion for
3 Summary Judgment); Exs. 258, 259 (Exs. P and Q to USAPA’s Compendium of Trial
4 Exhibits and Testimony in Support of USAPA’s Reply in Further Support of Motion for
5 Summary Judgment)

6
7 82. Contemporaneous personal notes made by Mr. Holmes confirm the “Nic is
8 dead” comment [Ex. 131] as does as does a contemporaneous email [Ex. 123] written by
9 East Pilot Glynn, a strong date-of-hire advocate.

10 Disputed. USAPA objects on grounds of relevancy. *See* USAPA’s response and
11 objections to ¶ 81, incorporated herein by reference.

12 83. Neither Mr. Szymanski nor anyone else from USAPA told the West Pilots
13 that all they meant by labeling the MOU as neutral on seniority was that the words
14 “Nicolau” and “date-of-hire” do not appear. [Holmes at 140:24 to 142:6 (never heard the
15 explanation of “neutral” that was used by Bradford at his deposition).]

16 Disputed. USAPA objects on the grounds of relevancy. *See* USAPA’s response
17 and objections to ¶¶78-79 and 81, *supra*, incorporated herein by reference.

18 84. Mr. Szymanski nor anyone from USAPA told the West Pilots that USAPA
19 intended to use the MOU “to take away the requirement to use the Nicolau.” [*Id.*]

20 Admitted.

21 85. Neither Mr. Szymanski nor anyone else at USAPA informed West Pilots
22 how they should vote if they wanted to preserve their claims to implement the Nicolau
23 Award. [Colello at 311:16 to 312:9; Owens at 343:4 to 343:13 (NAC did not “put out
24 any materials whatsoever about the Nicolau Award being waived by the MOU); Ex. 78.]

25 Admitted that neither Mr. Szymanski nor anyone else at USAPA counseled the
26 West Pilots with respect to their commitment to the Nicolau Award. Given that the West
27 Pilots are represented by their own legal counsel, any such advice would have been
28 wholly improper. As for the USAPA officers, the West Pilots have always been aware of
USAPA’s position towards the Nicolau Award.

1
2 86. Rather, USAPA repeatedly gave a grammatically obtuse instruction, drafted
3 by Mr. Szymanski, advising pilots to disregard their position on implementation of the
4 Nicolau Award when they voted: “MOU is completely neutral with respect to the Nicolau
5 Award. . . . So no East pilot should vote against the MOU because they fear that ratifying
6 the MOU will implement the Nicolau Award, and no West pilot should vote for the MOU
7 because they believe the MOU will implement the Nicolau Award.” [Ex. 78, 124, 125.]

8 Disputed. This is a characterization, not a statement of fact. In any event,
9 USAPA disputes that this statement is “grammatically obtuse” and refers the Court to the
10 language of the documents themselves. Moreover, Plaintiffs presented no evidence that
11 anyone was confused by the language.

12 87. In contrast USAPA used clear language to ensure that its members knew
13 that the MOU waived the change-of control provision in the East CBA. [Ex. 96.]

14 Disputed. USAPA disputes the inference that it used two different types of
15 language as argumentative and refers the Court to the documents. Obviously, it did not
16 and both statements were clear and accurate.

17 88. On the eve of the MOU ratification, West Pilot leaders encouraged “West
18 Pilots to consider voting to ratify the MOU in light of the fact that we do not believe it
19 harmful to our mission of protecting and enforcing the Nicolau award.” [Ex. 158.]

20 Admitted.

21 89. These West Pilot leaders stated that the MOU “moves us towards ripeness”
22 of the DFR claim because it “appear[s] to allow USAPA . . . to amend (abandon) our TA
23 which demands the Nic.” [Ex. 159.]

24 Admitted.

25 90. A substantial majority of the USAPA rank-and-file voted in favor of
26 ratifying the MOU. [SF at ¶ 115.]

27 Admitted.

28 91. Mr. Holmes voted to ratify because he hoped to get a new bargaining agent
in the American merger. [Holmes at 99:2 to 99:12]

1 Disputed. The cited evidence establishes that Mr. Holmes testified that the
2 “number one” reason he voted for the MOU was the benefit of the pay rates it achieved.
3 Mr. Holmes also testified that he expected there to be a new bargaining agent.
4

5 92. Mr. Scherff voted to ratify to obtain the pay raises. [Scherff at 163:23 to
6 164:2]

7 Admitted.

8 93. Approximately 500-600 West Pilots were not eligible to vote on the
9 ratification issue because they did not belong to USAPA. [Scherff at 167:25 to 168:6].

10 Disputed. USAPA objects that this statement is not supported by any admissible
11 evidence in the record. Mr. Scherff conceded that it was a “very rough guesstimate.” To
12 the extent that the Court considers, ¶ 93, it is undisputed that only approximately 250
13 active West Pilots were not eligible to vote on ratification of MOU II because they had
14 not joined USAPA. SF ¶ 129. In addition, a certain number of pilots were ineligible to
15 vote because they were on medical, military or other leave or were furloughed. Hummel
16 Dec, November 13, 2013, ¶ 3, Doc. 269-1.

17 94. USAPA’s officers and committee chairmen all agree that the MOU
18 operates to allow the USAPA BPR to dictate that the seniority of US Airways pilots will
19 be ordered by date-of-hire and not by the Nicolau Award when they are integrated with
20 the seniority of the American pilots according to the procedures in the MOU. [Pauley
21 (depo.) at 18:18 to 20:16 (East Pilot dominated merger committee that is overseen by the
22 East Pilot dominated BPR will decide East/West seniority integration); Ciabatonni (depo.)
23 50:7 to 50:15 (Sep. 17, 2013) (USAPA will submit date-of-hire list because it is required
24 by the union’s Constitution); Crimi (depo.) at 94:18 to 94:24 (recent effort to eliminate
25 date-of hire provision in union Constitution failed); Bradford (depo.) at 52:23 to 53:6
26 (USAPA will present date-of-hire seniority order for its pilots), *id.* at 126:2 to 126:7 (it
27 will be up to the BPR to decide); *id.* at 162:2 to 162:19 (effect of ¶ 10(h) is to “take away
28 the requirement” to use the Nicolau Award by amending the Transition Agreement).]

Disputed with respect to Plaintiffs’ characterization that “the MOU operates to...”

1
2 as not supported by any admissible evidence or the record citations. It is pure speculation
3 as to what proposal will be recommended to the BPR by the Merger Committee or what
4 proposal the BPR will support. The USAPA Merger Committee has and will continue to
5 analyze multiple seniority integration methodologies. The USAPA Merger Committee
6 believes its position vis á vis APA is stronger if it is not committed to one inflexible
7 proposal. Pauley Trial Testimony, 406-408 (Ex. 9 to Szymanski Decl. dated Nov. 13,
8 2013, Doc. 269-5); Davison trial testimony, 414-415 (Ex. 10 to Szymanski Decl. dated
9 Nov. 13, 2013, Doc. 269-5); Bradford Dep., 54:3-54:18 (Ex. 3 to Szymanski Decl. dated
10 Nov. 13, 2013, Doc. 269-4); Hummel Dep., 19:3-20:15; 106:10-107:9 (Ex. 4 to
11 Szymanski Decl. dated Nov. 13, 2013, Doc. 269-4).

12 95. Indeed, there are those at USAPA who read ¶ 10(h) as providing the “clean
13 slate” that this Court told USAPA in October 2012 it did not have. [Colello (depo.) at
14 85:24 to 86:9; Colello at 305:9 to 305:25 (admitting no one told this to West Pilots.)]

15 Disputed as not supported by any admissible evidence or the record citations. It is
16 pure speculation as to what proposal will be recommended to the BPR by the Merger
17 Committee or what proposal the BPR will support. The USAPA Merger Committee has
18 and will continue to analyze multiple seniority integration methodologies. The USAPA
19 Merger Committee believes its position vis á vis APA is stronger if it is not committed to
20 one inflexible proposal. Pauley Trial Testimony, 406-408 (Ex. 9 to Szymanski Decl.
21 dated Nov. 13, 2013, Doc. 269-5); Davison trial testimony, 414-415 (Ex. 10 to
22 Szymanski Decl. dated Nov. 13, 2013, Doc. 269-5); Bradford Dep., 54:3-54:18 (Ex. 3 to
23 Szymanski Decl. dated Nov. 13, 2013, Doc. 269-4); Hummel Dep., 19:3-20:15; 106:10-
24 107:9 (Ex. 4 to Szymanski Decl. dated Nov. 13, 2013, Doc. 269-4).

25 96. USAPA intends to integrate the East and West seniority lists with the
26 American list in a three-list process. [Pauley at 406:23 to 408:1; Davison at 414:24 to
27 415.]

28 Disputed. As Mr. Pauley testified, the proposal that will be made to APA
concerning seniority integration has not yet been determined. Nevertheless, as he also

1 testified, starting with the existing two seniority lists gives the Merger Committee and
2 USAPA more options concerning the proposals that will best serve the interests of all US
3 Airways pilots in the seniority integration proceeding with APA. Pauley Trial testimony,
4 pp. 406:23-407 (Ex. 9 to Szymanski Decl. dated Nov. 13, 2013, Doc. 269-5). However, it
5 is still pure speculation as to what proposal will be recommended to the BPR by the
6 Merger Committee or what proposal the BPR will support. The USAPA Merger
7 Committee has and will continue to analyze multiple seniority integration methodologies.
8 The USAPA Merger Committee believes its position vis á vis APA is stronger if it is not
9 committed to one inflexible proposal. Pauley trial testimony, pp. 406-408 (Ex. 9 to
10 Szymanski Decl. dated Nov. 13, 2013, Doc. 269-5); Davison trial testimony, pp.414-415
11 (Ex. 10 to Szymanski Decl. dated Nov. 13, 2013, Doc. 269-5); Bradford Dep., 54:3-54:18
12 (Ex. 3 to Szymanski Decl. dated Nov. 13, 2013, Doc. 269-5); Hummel Dep., 19:3-20:15;
13 106:10-107:9 (Ex. 4 to Szymanski Decl. dated Nov. 13, 2013, Doc. 269-4).

14
15 97. Indeed, Mr. Pauley, the Chairman of the Merger Committee testified “that
16 the end product that comes through [his] committee and the BPR that is then integrated
17 with the APA pilots [could not] possibl[y] . . . be the Nicolau list.” [Pauley at 404:13 to
18 404:21.]

19 Disputed. Mr. Pauley testified that an “unmodified” Nicolau list would not be
20 likely. Pauley Trial Testimony, 405:10-406:14 (Ex. K to USAPA’s Compendium of
21 Trial Exhibits and Testimony in Support of USAPA’s Reply in Further Support of
22 Motion for Summary Judgment).

23 98. USAPA steadfastly refuses to consent to the West Pilots having an
24 independent voice in the process of integrating seniority with the American pilots.
25 [Bradford (depo.) at 93:19 to 94:16, 97:7 to 97:11; Crimi (depo.) at 100:14 to 100:19,
26 102:1 to 102:15; Pauley at 399:23 to 400:18; *id.* at 402:5 to 402:14.]

27 Disputed. West Pilots have a voice on the Merger Committee and the Merger
28 Committee including the Two West Pilots on the Merger committee, unanimously oppose
providing a separate seat at the table for West Pilots. Hummel Dep., 109:5-20 (Ex. 4 to

1 Szymanski Decl. dated Nov. 13, 2013, Doc. 269-4); Pauley Trial Testimony, 382:18-23
2 (Ex. 9 to Szymanski Decl. dated Nov. 13, 2013, Doc. 269-5). As Mr. Pauley explained,
3 the Merger Committee represents all US Airways pilots, and they are able to present a
4 much better and stronger position as a unified group and will arrive at a much better
5 outcome than if there was separate representation. Pauley Trial Testimony, 382:18-23
6 (Ex. 9 to Szymanski Decl. dated Nov. 13, 2013, Doc. 269-5).

7
8 99. Most of the benefits of the MOU were actually provided by the 2012 CBA
9 that APA had already negotiated with American Airlines. [DeVicq at 203:3 to 203:23.]

10 Disputed. Plaintiffs stipulated that the MOU provides “substantial economic
11 improvements for US Airways Pilots.” (SF at ¶ 98). Even under DeVicq’s speculative
12 testimony about what would have happened if there had been no MOU, no benefits
13 would be provided to the US airways pilots until at least 13 to 15 months after the POR
14 date. Here, for example, the MOU provides retroactive pay as of the date of the POR.
15 See SF at ¶ 109.

16 100. The incremental value of ratifying the MOU was more in the order of \$300
17 million because \$1.3 billion of the benefits would have flowed to the US Airways pilots
18 by operation of the 2012 APA contract, even if the ratification failed. [*Id.*]

19 Disputed. Plaintiffs stipulated that the MOU provides “substantial economic
20 improvements for US Airways Pilots.” SF at ¶ 98. Even under DeVicq’s speculative
21 testimony about what would have happened if there had been no MOU, no benefits
22 would be provided to the US Airways pilots until at least 13 to 15 months after the POR
23 date. Here, for example, the MOU provides retroactive pay as of the date of the POR.
24 See SF at ¶ 109. Moreover, Mr. Holmes and Mr. Calveri agreed to each and every
25 statement made by the NAC and USAPA concerning the economic benefits of the MOU.
26 Holmes Trial Testimony, 124-126 (Ex. H to USAPA’s Compendium of Exhibits in
27 USAPA’s Compendium of Trial Exhibits and Testimony in Support of USAPA’s Reply
28 in Further Support of Motion for Summary Judgment).

1
2 101. Since 2007, US Airways has had the “Kirby” proposal on the table. [SF at
3 ¶63; Diorio at 7:19-8:3; 9:4-9].

4 Disputed. USAPA objects on relevance grounds. Plaintiffs stipulated that the
5 MOU provides “substantial economic improvements for US Airways Pilots.” SF at ¶ 98.
6 Moreover, a poll taken concerning the Kirby proposal indicated that almost 75 percent of
7 US Airways pilots opposed the Kirby Proposal. Ex. 320, at p. 9(Ex. S to USAPA’s
8 Compendium of Exhibits in USAPA’s Compendium of Trial Exhibits and Testimony in
9 Support of USAPA’s Reply in Further Support of Motion for Summary Judgment).

10 102. Moreover, the 2007 Kirby proposal would have paid increased wages from
11 2007 to 2013 and, in 2014, would have paid about the same wages as under MOU #2.
12 [Bradford (depo.) at 158:4 to 159:10 (conceding that “USAPA didn’t gain at the end
13 much over the Kirby” and the pay rates of the Kirby and MOU #2 are “probably close”).]

14 Disputed. USAPA objects on relevance grounds. Plaintiffs stipulated that the
15 MOU provides “substantial economic improvements for US Airways Pilots.” SF at ¶ 98).
16 And the Kirby Proposal was opposed by a clear majority of the pilots at the time it was
17 made. Moreover, it is entirely unrealistic to argue that USAPA in hindsight should have
18 agreed to the Kirby Proposal when it was made, despite pilot opposition.

19 103. By turning down a comparable contract offer made back in 2007 because it
20 would have led to implementation of the Nicolau Award, USAPA caused its members to
21 lose many hundreds of millions of dollars in income. [*Id.*]

22 Disputed. See responses to ¶¶101-102. USAPA objects on relevance grounds.
23 Plaintiffs stipulated that the MOU provides “substantial economic improvements for US
24 Airways Pilots.” SF at ¶ 98.

25 104. The properly discounted value of the change-of-control provision was only
26 \$120 million. [Devicq at 201:22 to 202:15.]

27 Disputed. USAPA objects on relevance grounds. Plaintiffs stipulated that the
28 MOU provides “substantial economic improvements for US Airways Pilots.” (SF, at ¶

1
2 98). The value of the Change of Control provision was much more. Owens Trial
3 Testimony, 328-330 (Ex. R to USAPA's Compendium of Trial Exhibits and Testimony
4 in Support of USAPA's Reply in Further Support of Motion for Summary Judgment).

5 105. USAPA presently assesses an additional 0.5% of pilots income for merger
6 related expenses and keeps separate accounting of those funds to ensure that they are
7 expended only on such matters. [Streble (Depo.) at 11:13 to 11:20 (USAPA Secretary-
8 Treasurer).]

9 Admitted.

10 106. USAPA presently has approximately \$7 million in its bank accounts. [*Id.* at
11 8:10 to 8:12.]

12 Admitted. USAPA will need all of its resource to adequately represent its
13 members in the seniority integration proceeding with APA and to insure that the Joint
14 Collective Bargaining Agreement includes the most favorable provision of its members.
15

16 Respectfully submitted this 19th day of November, 2013.

17
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CERTIFICATE OF SERVICE

I hereby certify that on November 19, 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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