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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Don Addington, *et. al.*,

Plaintiffs,

v.

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

Defendants.

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

**US Airline Pilots Association's
Response to Plaintiffs' Notice of
Post-Trial Events That Are
Relevant to Remedy**

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1 USAPA submits this filing in response to plaintiffs' Notice of Post-Trial Events
2 That are Relevant to Remedy and the Declaration by Andrew S. Jacob (Docs. 294 and
3 295). USAPA submits that the Court should entirely disregard or strike plaintiffs' highly
4 improper post-submission "notice" filed without leave of Court, as it is nothing more than
5 a transparent attempt to improperly assert additional argument after trial and final
6 briefing.¹ *Mitchell v. Donahoe*, CV 11-02244-PHX-JAT, 2013 WL 4478892 (D. Ariz.
7 Aug. 21, 2013) (granting motion to strike unauthorized filing of document titled "Point of
8 Information to Defendants Reply in Support of Summary Judgment" which the Court
9 construed as a sur-reply filed without leave of Court); see also *Large v. Hilton*, CV-11-
10 01127-PHX-GMS, 2013 WL 694662 (D. Ariz. Feb. 26, 2013) (striking unauthorized
11 filings labeled as "Notices").

12 As an initial matter, despite the title of the document, the information provided has
13 no bearing with respect to the remedies plaintiffs seek, which are: (1) judgment that
14 USAPA breached its DFR; (2) injunction requiring USAPA and US Airways to use the
15 Nicolau list in seniority integration; and (3) judgment declaring the West Pilots are
16 entitled to party status in the MOU seniority integration process.² Nowhere in plaintiffs'
17 amended complaint do they seek what they now are attempting to improperly bring
18 before the Court – payment of personal expenses, flight pay loss, and the right to positive
19 space transportation – for activities related to seniority integration. (Doc. 294, at pp. 3-
20 4.) As one court recently stated in striking a filing made after full briefing and oral
21 argument, "Simply put, this case is not a game and Plaintiff's briefing should not be a
22 moving target..." *United States v. Tailwind Sports Corp.*, 10-CV-976 (RLW), 2014 WL
23 24235 (D.D.C. Jan. 2, 2014) (citation omitted).

24
25 ¹ Plaintiffs' filing without leave of Court is all the more egregious in light of their prior
26 disregard of the Court's order on page limitations for post-trial and summary
27 judgment briefing and the Court's admonishment that they should have complied.
Doc. 275.

28 ² Plaintiffs also seek an award of reasonable litigation expenses incurred since 2008.
However no evidence was submitted at trial on that requested remedy.

1 Notwithstanding their insistence on a judicial resolution of the claim that the
2 Nicolau List must somehow govern seniority integration, plaintiffs have now resorted to
3 self-help by improperly interjecting themselves into the seniority integration process.
4 Plaintiffs, by participating in the seniority integration process, and US Airways, by
5 allowing plaintiffs to participate, seek to bypass and disregard the Court, even though
6 both parties implicitly acknowledge they do not have the authority to take those actions
7 or they would not have sought the Court's intervention in the first instance (the West
8 Pilots in Count Four of the Amended Complaint and US Airways in its motion for
9 summary judgment). Indeed, in response to a grievance filed by USAPA, US Airways
10 has stated that "a federal district court, and not an MOU arbitrator, has the jurisdiction to
11 decide whether the West Pilots have the right to separate participation in the seniority-
12 integration process under the McCaskill-Bond statute". Exhibit "A" hereto.
13 Notwithstanding that admission, US Airways unilaterally invited plaintiffs to participate
14 in the seniority integration process. US Airways' actions and plaintiffs' attempt to
15 participate in bargaining regarding seniority integration, encroach upon the authority of
16 this Court, are an egregious disrespect of the Court and the rule of law, and should be
17 condemned in the strongest terms.

18 In the event the Court determines to consider plaintiffs' filings, USAPA requests
19 an opportunity to respond in order to correct the many factual misstatements in their
20 "notice" and declaration including: (1) the misstatement (Jacob Decl. ¶8) that the
21 USAPA Merger Committee "waited until late in the evening of December 19, 2013, to
22 respond that it would not attend the December 20 meeting" (USAPA responded on
23 December 12 that it would not attend a meeting that included parties other than those to
24 the MOU); (2) the misstatement (Jacob Decl. ¶10) that the USAPA Merger Committee
25 would "negotiate seniority integration with the APA pilots without the participation of . .
26 . New American" (USAPA stated it would initially discuss the Protocol Agreement
27 with the APA and would then include New American after the two exclusive bargaining
28 representatives had come to the point that it was worthwhile for the Company to be

1 included); (3) the misstatements (Jacob Decl. ¶18 & 23) that there were no negotiations
2 or bargaining at the meeting held on December 20 among New American, APA and
3 plaintiffs (to the contrary, the so-called “proposal” from the plaintiffs’ self-appointed
4 “west merger committee” (Jacobs Decl. Ex. “C”) and the description of the meeting
5 provided by Mr. Jacobs demonstrate that the participants negotiated and bargained on a
6 proposed protocol agreement and the seniority of pilots for whom USAPA is the certified
7 exclusive bargaining representative); (4) the misstatement (Jacob Decl. ¶19) that the
8 USAPA Merger Committee was in Washington, D.C. on December 19 (they were not);
9 (5) the misrepresentation (Doc. 294, p. 5), that USAPA filed a grievance that seeks to
10 place before an arbitrator the same issue that is currently pending before the Court (the
11 issue in the grievance is whether *pending decision by the Court*, New American/US
12 Airways can arrogate to itself the authority to include plaintiffs in the bargaining process.
13 USAPA’s position in the grievance is that New American/US Airways must abide by the
14 MOU unless and until there is a judicial determination that plaintiffs have any right to
15 interfere in USAPA’s right as the exclusive bargaining representative of the US Airways
16 pilots, not whether the West Pilots can participate separately); and (6) the
17 misrepresentation (Doc. 294, p. 5) that “the MOU seniority integration process is not
18 going smoothly because of USAPA” (in fact, it is US Airways and plaintiffs that are
19 hindering the seniority integration process in derogation of the MOU and USAPA’s
20 status as exclusive bargaining representative, and in advance of any judicial
21 determination in this matter).

22 In sum, the Notice filed by plaintiffs is unauthorized, inaccurate, and
23 argumentative. If the Court is inclined to consider it, USAPA requests leave to file a
24 declaration to correct the false and inaccurate statements made in the Notice and in the
25 Jacob declaration.

26 CONCLUSION

27 For the foregoing reasons, USAPA respectfully submits the Court should
28 disregard or strike Docs. 294, 295, and 295-1.

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Respectfully submitted this 6th day of January 2014.

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CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2014, 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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