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10 Attorneys for Intervenor
US Airways, Inc.

11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE DISTRICT OF ARIZONA**

13 Don Addington; John Bostic; Mark
14 Burman; Afshin Iranpour; Roger Velez;
Steve Wargoeki; Michael J. Soha;
15 Rodney Albert Brackin; and George
Maliga, on behalf of themselves and all
16 similarly situated former America West
Pilots,

17 Plaintiffs,

18 vs.

19 US Airline Pilots Ass'n, an
unincorporated association,

20 Defendant.

21 -----

22 US Airways, Inc.

23 Intervenor.

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

**INTERVENOR US AIRWAYS, INC.'S
MOTION FOR LEAVE TO FILE
RESPONSE TO PLAINTIFFS'
MOTION FOR RULE 25(C) JOINDER
OF ALLIED PILOTS ASSOCIATION
(APA) AND FOR ISSUANCE OF
PERMANENT INJUNCTION**

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1 Intervenor US Airways, Inc. (“US Airways”) hereby requests leave to file the
2 attached response to Plaintiffs’ Motion to Join the Allied Pilots Association (APA) and for
3 Permanent Injunction (Doc. No. 317).¹ US Airways intervened in this litigation to protect
4 its significant interest in a prompt and final resolution of the seniority integration dispute
5 between the US Airways East and West Pilots. US Airways believes that the broad
6 injunction requested by Plaintiffs would jeopardize its “significant protectable interest” in
7 a timely and final resolution of the seniority-integration process, and, for that reason,
8 submits that the Court should consider the proposed response (attached hereto as
9 Exhibit A) when deciding Plaintiffs’ Motion for Permanent Injunction.

10 Respectfully submitted,

11 Dated: September 14, 2015

O’Melveny & Myers LLP

12
13 By: /s/Robert A. Siegel
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15 Chris A. Hollinger (*pro hac vice*)
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22 Attorneys for Intervenor US Airways, Inc.

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26 ¹ US Airways is filing this motion for leave out of an abundance of caution, because
27 the Court’s Order (Doc. No. 321) setting the briefing schedule for responses to Plaintiffs’
28 Motion for Permanent Injunction expressly mentioned the Allied Pilots Association and
Defendant US Airline Pilots Association, but did not mention US Airways.

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CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2015, I caused to be electronically transmitted the attached Intervenor US Airways Inc.'s Motion for Leave to File a Response to Plaintiffs' Motion for Rule 25(c) Joinder of Allied Pilots Association (APA) and for Issuance of Permanent Injunction, with Exhibit A, to the Clerk's office using the CM/ECF System for filing and transmittal.

/s/ Robert A. Siegel
Robert A. Siegel

OMM_US:74452840.1

Exhibit A

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RESPONSE TO PLAINTIFFS'
MOTION FOR RULE 25(C) JOINDER
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(APA) AND FOR ISSUANCE OF
PERMANENT INJUNCTION**

1 Intervenor US Airways, Inc. (“US Airways”) hereby submits this Response to
2 Plaintiffs’ Motion to Join the Allied Pilots Association (APA) and for Permanent
3 Injunction (“Motion for Injunction”) (Doc. No. 317).¹

4 ARGUMENT

5 After years of litigation, the *Addington* Plaintiffs finally prevailed in their quest to
6 vindicate the Nicolau seniority-integration arbitration award. But instead of seeking
7 quickly to conclude the process of integrating the American Airlines and US Airways
8 pilots seniority lists in a manner consistent with the Nicolau award in the upcoming pilot
9 seniority list integration arbitration (“SLI Arbitration”), to be conducted pursuant to the
10 McCaskill-Bond statute, the *Addington* Plaintiffs have sought a needlessly broad
11 injunction that could delay both the pending SLI Arbitration as well as the Company’s
12 implementation of the integrated seniority list that is generated through the SLI
13 Arbitration. While the Company has been, and remains, entirely neutral in regard to how
14 the pilot seniority lists are to be integrated, it opposes any such delay and disruption to the
15 seniority-integration process.

16 On June 26, 2015, just three days before the SLI Arbitration was scheduled to
17 begin, the Ninth Circuit issued its decision, ruling that Defendant US Airline Pilots
18 Association (“USAPA”) had violated its duty of fair representation to the West pilots by
19 not requiring use of the Nicolau Award in connection with the merger between
20 US Airways and American Airlines, and remanding the case to this Court for entry of an
21 injunction prohibiting USAPA from advocating against use of the Nicolau Award in the
22 SLI Arbitration. Immediately thereafter, the USAPA Merger Committee withdrew from
23 the SLI Arbitration on the stated ground that the USAPA Merger Committee – which had
24 been authorized by the post-merger certified pilots union, the Allied Pilots Association
25

26 ¹ After the filing of the instant lawsuit, US Airways entered into a merger transaction
27 whereby it became a subsidiary of American Airlines Group Inc. (“AAG”). American
28 Airlines, Inc. is also a subsidiary of AAG. For labor relations purposes, US Airways and
American now operate as a “single carrier” sometimes referred to as the “New American
Airlines.” *See In re Allied Pilots Ass’n*, 41 N.M.B. 289 (2014).

1 (“APA”), to represent the pre-merger US Airways East pilots in the SLI Arbitration –
2 could no longer adequately represent those pilots.

3 Once the USAPA Merger Committee had withdrawn, only two APA-appointed
4 merger committees were left to participate in the SLI Arbitration – one for the pre-merger
5 US Airways West pilots and one for the pre-merger American Airlines pilots. As a result,
6 the three-arbitrator panel designated to conduct the SLI Arbitration (the “McCaskill-Bond
7 Arbitration Board”) postponed the start of the hearings until September 29, 2015, and
8 ruled that the APA should use its best efforts to appoint a new merger committee that
9 would represent the interests of the pre-merger US Airways East pilots (the “New East
10 Pilots Merger Committee”). (*See* Motion for Injunction (Doc. No. 317-1) Ex. C.) In so
11 ruling, the McCaskill-Bond Arbitration Board noted that all of the pilot groups, including
12 the US Airways East pilots, “are presumptively entitled to have their interests represented
13 in this SLI Proceeding,” and expressly declined to impose any restrictions on the positions
14 that could be advocated by the New East Pilots Merger Committee. (*See id.* Ex. C at ECF
15 pp. 12-13.) Through their instant motion for permanent injunction, however, the
16 *Addington* Plaintiffs seek to restrict what the New East Pilots Merger Committee is
17 permitted to argue before the McCaskill-Bond Arbitration Board.

18 Although, as the *Addington* Plaintiffs correctly note, the Ninth Circuit stated that
19 the pre-merger US Airways East pilots should not benefit from Defendant USAPA’s
20 breach of the duty of fair representation, the court expressly declined to order the sort of
21 broad injunction against non-parties that the Plaintiffs now seek. The court specifically
22 rejected Plaintiffs’ request that the injunction provide that “an unmodified Nicolau Award
23 must be used...in the pending McCaskill-Bond process.” *See Addington v. US Airline*
24 *Pilots Ass’n*, 791 F.3d 967, 991 n.12 (2015). Imposing an injunction limiting the
25 authority of the McCaskill-Bond Arbitration Board to construct an integrated seniority list
26 is, in any event, unnecessary; the McCaskill-Bond Arbitration Board is fully able, and is
27 certain, to create an integrated seniority list consistent with the Ninth Circuit’s decision
28 without an injunction mandating that result.

1 Likewise, there is no need to extend the permanent injunction that is to be issued
2 against USAPA to cover what the New East Pilots Merger Committee is allowed to argue
3 to the McCaskill-Bond Arbitration Board. Each pilot merger committee should be free to
4 present any position it wishes in the SLI Arbitration. If the New East Pilots Merger
5 Committee chooses to advocate against use of the Nicolau Award, the West Pilots Merger
6 Committee will certainly have a full and fair opportunity to argue that the New East Pilots
7 Merger Committee's position must be rejected as inconsistent with the Ninth Circuit's
8 decision that the Nicolau Award should have been implemented by USAPA. All interests
9 will thereby be protected, the McCaskill-Bond Arbitration Board will be able to render a
10 final and binding award consistent with the Ninth Circuit's decision, and no party will
11 have any sound legal ground to challenge the result of the SLI Arbitration.

12 Conversely, the broad injunction sought by the *Addington* Plaintiffs against entities
13 such as the APA, which had no role in USAPA's breach of the duty of fair representation
14 and which by any objective measure has been scrupulously fair in its dealings with the
15 various merger committees, is certain to spawn still more litigation, either before the SLI
16 Arbitration can be completed or after an integrated pilot seniority list has been issued.
17 Implementation of the new integrated seniority list would be delayed, uncertainty over the
18 finality of the arbitration award would result, and the New American Airlines would be
19 unable to enjoy the full benefits of a merger just as US Airways was never able to fully
20 integrate operations following its merger with America West Airlines.

21 In seeking to intervene in this case after its dismissal, US Airways explained that
22 its purpose was to advocate for a prompt and final resolution of the seniority dispute
23 between the East Pilots and the West Pilots, in order to "avoid[] any delay or disruption to
24 the process of integrating US Airways and American pilots following the merger – a
25 process that is central to the airline's realization of the operational and financial benefits
26 from a combined pilot workforce." (*See* Doc. No. 197 at ¶ 15.) And in granting
27 US Airways' Motion to Intervene, this Court agreed, finding that "US Airways has a
28 'significant protectable interest' in the timely resolution of the seniority dispute[,] [and

1 that] the failure to resolve the seniority dispute in a timely manner may ‘impair or impede’
 2 that interest by frustrating the expected realization of ‘the operational and financial
 3 benefits from the combined pilot workforce.’” (See Doc. No. 194 at 4.) The injunction
 4 requested by the *Addington* Plaintiffs would undermine US Airways’ “significant
 5 protectable interest” in a timely resolution of the seniority-integration process. Not only
 6 would US Airways and American Airlines be hamstrung as prolonged litigation over the
 7 fairness of the SLI Arbitration process dragged on, but all of the affected pilots would be
 8 deprived of seniority-related opportunities to transfer to other bases, to fly different
 9 aircraft and to enjoy promotional opportunities.

10 The purpose of the 2007 McCaskill-Bond Amendment, 49 U.S.C. § 42112, note
 11 § 117(b)(3), was to ensure that final and binding integrated seniority lists would be
 12 created and implemented promptly following any airline merger. The broad injunction
 13 sought by the *Addington* Plaintiffs here would frustrate Congressional intent by virtually
 14 ensuring still more years of litigation. Accordingly, US Airways respectfully requests that
 15 the injunction entered by the Court apply only to USAPA, the party which actually
 16 engaged in the conduct violative of the duty of fair representation owed to the Plaintiffs.

17 Respectfully submitted,

18
 19 Dated: September 14, 2015

O’Melveny & Myers LLP

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