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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' MOTION
 FOR JOINDER OF ALLIED
 PILOTS ASSOCIATION
 AND FOR ISSUANCE OF
 PERMANENT INJUNCTION**

Defendant US Airline Pilots Association ("USAPA") submits the following response to plaintiffs' motion for Rule 25(C) joinder of Allied Pilots Association ("APA") and for issuance of a permanent injunction. Doc. 317.

1 Joinder of APA

2 USAPA takes no position with respect to that part of the plaintiffs' motion that
3 seeks joinder of APA to this action and to extend the permanent injunction to the APA
4 under Rule 25(C) or on any other basis.

5 Issuance of Permanent Injunction

6 USAPA accepts that a permanent injunction will issue, and instituted measures
7 consistent with the Ninth Circuit opinion immediately following its issuance, but submits
8 that the injunction proposed by plaintiffs is overbroad and will introduce significant
9 uncertainty as to persons bound by the injunction and conduct and activities within its
10 ambit.

11 On June 29, 2015, three days after the Ninth Circuit issued its opinion in this
12 matter, *Addington v. U.S. Airline Pilots Ass'n*, No. 14-15757 (9th Cir. June 26, 2015)
13 (Doc.59-1), USAPA notified the McCaskill-Bond SLI Arbitration Panel (Arbitration
14 Panel) that it had permanently withdrawn from the McCaskill-Bond Seniority List
15 Integration proceedings, thus complying with the injunction that the Ninth Circuit
16 directed to be entered. Doc 317-1, Ex. A, at 4. USAPA took this action voluntarily and
17 without reservation, specifically stating that it would not seek to re-enter the McCaskill-
18 Bond SLI process at a later point "irrespective of any further ruling" by the Ninth Circuit.

19 *Id.*

20 Additionally, on August 26, 2015, in an action relating to, *inter alia*, the
21 expenditure of USAPA funds after USAPA's decertification (i.e. September 16, 2014),
22 the United States District Court, Western District of North Carolina, Charlotte Division,
23 issued an injunction that provides, in part:

24
25 USAPA and any officer, agent, or employee of USAPA are hereby
26 ENJOINED from authorizing, permitting, or causing USAPA to spend any
27 USAPA funds on any type of expenditure relating to, whether directly or
28 indirectly, any merger- or seniority-related matter, including but not limited

1 to any litigation directly or indirectly related to any merger- or seniority-
2 related matter, during the pendency of this case, except that USAPA shall
3 be permitted to expend a reasonable amount of funds relating only to the
4 filing of the Petition for Re-hearing En Banc in *Addington v. USAPA*, ___
5 F.3d ___, 2015 WL 3916665 (9th Cir. June 26, 2015), not to exceed
6 \$50,000.

7 *Bollmeier v. Hummel*, 3:14-cv-00577-RJC-DCK, Doc. 75, at 14.

8 Thus, USAPA is already enjoined from spending any funds of the USAPA
9 organization in relating to “any merger- or seniority-related matter”. Indeed, under the
10 North Carolina action injunction, USAPA cannot even expend any USAPA funds to
11 advocate *for* the Nicolau award. However, the former “East Pilots”, like the former
12 “West Pilots”, are also now APA members, and have interests in -- and rights to -- a fair
13 and equitable seniority list integration process vis-a-vis their West Pilots and legacy
14 American Airlines pilot counterparts wholly independent of USAPA. The injunction
15 propounded by plaintiffs will deprive the East Pilots of the ability to advocate for an
16 integrated seniority list in the McCaskill-Bond SLI arbitration that fairly and equitably
17 reflects their career expectations and interests.

18 Moreover, the injunction proposed by plaintiffs goes far beyond the injunction
19 ordered by the Ninth Circuit and is overbroad in a number of respects. First, it
20 significantly expands upon the Ninth Circuit’s instructions concerning who or what is
21 subject to the injunction. The *Addington* action was maintained against USAPA only,
22 and the injunction ordered by the Ninth Circuit is against USAPA only. Doc. 59-1, at 54,
23 56. USAPA accepts that it acts by and through its duly authorized officers so that an
24 injunction is also properly entered against USAPA’s officers acting in their official
25 capacities, as they are the persons who are empowered by the USAPA Constitution and
26 Bylaws to act for and effectuate USAPA directives and policies. USAPA is also a not for
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1 profit unincorporated association with a membership in excess of 5,000 pilots – a
2 majority of whom have repeatedly expressed their rejection of the Nicolau Award as
3 contrary to their interests. Plaintiffs’ broad “actual notice” language could potentially
4 sweep within its reach any former US Airways “East Pilot” who continues to believe a
5 Nicolau-based integration is bad for him or her and wants to advocate against its adoption
6 in whole or part. The proposed injunction must take into consideration the distinction
7 between enjoining USAPA and its officers, in their official and representative capacities,
8 who effectuate USAPA’s policies and positions, and the rights of individual pilots to
9 advocate for and promote a fair and equitable seniority list in its totality – not just in
10 relation to former West Pilots, but also in relation to former American Airlines pilots.

11 USAPA accepts that an order will enter enjoining it from participating in
12 the McCaskill-Bond SLI process except to the extent that it advocates the Nicolau
13 Award. However, the Ninth Circuit enjoined USAPA; the Ninth Circuit clearly
14 did not purport to restrain the 5,000 former US Airways pilots – approximately 2/3
15 of whom are “East Pilots” – all of whom have rights independent of USAPA,
16 including freedom of speech, rights under the RLA to work to engage in activities
17 for their collective interests and rights under McCaskill-Bond to a fair and
18 equitable seniority list integration process. The broad language propounded by
19 plaintiffs tramples upon those rights, interferes with the arbitral process now
20 established, and would potentially prevent (or allow others to make the claim for
21 preventing) *individual pilots* from advocating for a non-Nicolau seniority list,
22 notwithstanding that as individuals they have rights under the Constitution, the
23 Railway Labor Act, and the McCaskill-Bond Amendment. Such an injunction
24 enjoining individual pilots was not contemplated by the Ninth Circuit.
25

26 There is no basis to conclude that the Ninth Circuit contemplated or intended to
27 punish or prejudice individual former US Airways Pilots with respect to their individual
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1 Constitutional or statutory rights to advocate for a seniority list integration protocol of
2 their choosing. As the Ninth Circuit has stated, “While recognizing the district court’s
3 considerable discretion in fashioning the terms of an injunction, we must insure that it is
4 tailored to eliminate only the specific harm alleged. An overbroad injunction is an abuse
5 of discretion. *Lamb–Weston, Inc. v. McCain Foods, Ltd.*, 941 F.2d 970, 973 (9th
6 Cir.1991).” *E. & J. Gallo Winery v. Gallo Cattle Co.*, 967 F.2d 1280, 1297 (9th Cir.
7 1992).

8 Second, for the same reasons set forth above relating to the over breadth of the
9 terms of the injunction, adopting the language proposed by plaintiffs will result in
10 significant uncertainty and ambiguity as to the persons bound by the injunction. For
11 example, as to the persons bound, there will be uncertainty as to persons encompassed
12 within the language “persons in active support or participation with [USAPA, and [its]
13 officers, agents, servants, employees, and attorneys] who receive actual notice of this
14 order”. USAPA, Leonidas, and other West Pilot supporting entities typically post
15 documents affecting former US Airways pilots on their websites. This “actual notice”
16 language stands a substantial likelihood of resulting in uncertainty as to whether pilots
17 who have availed themselves of the opportunity to remain educated as to matters
18 affecting their careers by reading the Order that will enter herein from the web posting
19 will be deemed to have “actual notice” for these purposes. It would be counter-
20 productive to adopt language that contains uncertainty **and** discourages pilots from
21 remaining informed as to these matters.

22 Third, there is uncertainty and ambiguity as to the nature of activities
23 encompassed within the injunction. The proposed injunction provides that persons are
24 “enjoined from taking any action on behalf of legacy US Airways pilots . . . **except to**
25 **the extent that they advocate the Nicolau Award**”. Doc. 317, at 9 (emphasis added).
26 As indicated above, individual former US Airways pilots, both East and West, have rights
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1 independent of USAPA. Even if the proposed injunction language is capable of an
 2 interpretation that does not affect these rights directly, the possibility that such an
 3 injunction is subject to an expansive interpretation impermissibly chills individual pilots
 4 in the exercise of their Constitutional and statutory rights. *See Experience Hendrix*
 5 *L.L.C. v. Hendrixlicensing.com Ltd.*, 742 F.3d 377, 387-88 (9th Cir. 2014)(reversing
 6 district court’s entry of permanent injunction because it did not clearly state what conduct
 7 is and is not restrained).

8 Lastly, the language propounded by plaintiffs is too broad because it would
 9 restrain individuals from advocating in their own interests and make USAPA
 10 answerable for the acts of others, including but not limited to any and all of its
 11 members, even though USAPA has no control over these individuals and therefore
 12 has no ability to assure that such individuals comply with any order that enters.

13 The Injunction that Should be Entered

14 USAPA submits plaintiffs’ injunction is overbroad and impermissibly
 15 uncertain and ambiguous and proposes the following injunction in the alternative,
 16 which, *inter alia*, makes the distinction between USAPA and its officers, etc.
 17 acting in their official and representative capacities, as opposed to individual pilots
 18 acting consistent with their personal views on their own behalf:

19
 20 USAPA, ~~APA~~¹, and its ~~their~~ officers, ~~agents~~, servants, employees, and
 21 attorneys, acting in their official and/or representative capacities, ~~and those~~
 22 ~~persons in active concert or participation with them who receive actual~~
 23 ~~notice of this order~~ are hereby enjoined from taking any action ~~on behalf of~~
 24 ~~legacy US Airways pilots~~² in the McCaskill-Bond proceedings, including
 25

26 ¹ As noted above, USAPA takes no position as to whether the injunction should be
 27 extended to APA and that is the reason for striking it here.

28 ² The Ninth Circuit makes no mention of advocacy by others “on behalf of legacy US
 Airways pilots”, and it should not be part of the permanent injunction. The Ninth

1 any seniority-related discussions leading up to those proceedings, except to
2 the extent that they advocate the Nicolau Award.

3 **CONCLUSION**

4 For the foregoing reasons, USAPA respectfully requests that the Court deny
5 Plaintiffs' motion for entry of a permanent injunction in the form proposed and enter the
6 injunction propounded by USAPA as set forth above.

7 Respectfully submitted this 14th day of September 2015.

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Circuit ordered USAPA enjoined and an injunction against USAPA is all that is
28 required in that once enjoined, it is wholly irrelevant on whose behalf the advocacy
would have or could have been made.

CERTIFICATE OF SERVICE

1
2 I hereby certify that on September 14, 2015, I electronically transmitted the
3 attached document to the Clerk's Office using the CM/ECF System for filing and
4 transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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