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

13 Don Addington; *et al*,

14 *Plaintiffs,*

15 vs.

16 US Airline Pilots Ass’n; and US Airways,  
17 Inc.,

18 *Defendants.*

CASE NO. 2:13-CV-00471-ROS

**REPLY TO US AIRLINE PILOTS  
ASSOCIATION (USAPA) IN  
SUPPORT OF MOTION FOR RULE  
25(C) JOINDER OF ALLIED PILOTS  
ASSOCIATION (APA) AND FOR  
ISSUANCE OF PERMANENT  
INJUNCTION**

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20 The Response of the US Airline Pilots Association (USAPA), Doc. 324, reads like a  
21 petition to amend Rule 65(d)(2).<sup>1</sup> The Court should reject USAPA’s arguments because  
22 they are plainly intended to get an injunction that would provide the East Pilots the means  
23 to evade the intent of the Ninth Circuit’s opinion.

24 Rule 65(d)(2) “describe[es] the ‘persons bound’ by every injunction.” *EEOC v.*  
25 *Peabody Western Coal Co.*, 610 F. 3d 1070, 1080 (9th Cir. 2010). The Rule merely  
26 codifies the common law by providing that an injunction binds:  
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<sup>1</sup> All references to “Rule” are to the Federal Rules of Civil Procedure.

1 the following parties who receive actual notice of it by personal service or  
2 otherwise: (A) the parties; (B) the parties’ officers, agents, servants,  
3 employees, and attorneys; and (C) other persons who are in active concert or  
participation with anyone described in Rule 65(d)(2)(A) or (B).

4 Rule 65(d)(2)(A)-(C). As the Supreme Court explained, the Rule:

5 is derived from the common-law doctrine that a decree of injunction not only  
6 binds the parties defendant but also those identified with them in interest, in  
7 “privity” with them, represented by them or subject to their control. In essence  
8 it is that defendants may not nullify a decree by carrying out prohibited acts  
9 through aiders and abettors, although they were not parties to the original  
proceeding.

10 *Regal Knitwear Co. v. NLRB*, 324 US 9, 14 (1945).

11 Speaking through USAPA, the East Pilots are asking this Court to omit from the  
12 Rule 65(d)(2)<sup>2</sup> “agents” and “persons in active concert or participation” language from its  
13 order. Their self-serving reasons are evident. They want an order that will leave them and  
14 their East members a colorable basis to assert that the APA East Merger Committee is  
15 free to do what the Ninth Circuit said USAPA cannot do: participate in the McCaskill-  
Bond proceedings on behalf of the East Pilots without advocating the Nicolau Award.

16 They also assert that an injunction that includes Rule 65 language will restrain “the  
17 individual rights” of the East Pilots. In the case tried to this Court in October, 2013,  
18 USAPA argued relentlessly (and successfully) that individuals like the West Pilots were  
19 precluded from making individual arguments before the McCaskill-Bond panel. USAPA  
20 has once again changed its tune and now claims that if the injunction is too broad “it  
21 would restrain individuals from advocating in their own interests. . . .” (Doc. 324 at 6:8 to  
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25 <sup>2</sup> One common theme runs through all of the opposing briefs to the West Pilots’  
26 proposed injunction. They all want the Court to disregard Rule 65, but for different  
27 reasons. We address USAPA’s reasons here. APA wants the Rule 65(d)(2) language to be  
28 disregarded to avoid “rancor” within its ranks and US Airways claims that it wants the  
Rule discarded to avoid delay in the implementation of the SLI list that US Airways itself  
will cause if it chooses in early 2016 to delay implementation because it wants a  
“riskless” legal environment before implementing. If only life could be so easy.

1 6:10.) As the Court correctly predicted in its opinion from January 10, 2014, when it suits  
2 its needs, USAPA will change its previous position:

3 The Court has no doubt that—as is USAPA’s consistent practice—USAPA will  
4 change its position when it needs to do so to fit its hard and unyielding view on  
5 seniority. That is, having prevailed in convincing the Court that only certified  
6 representatives should participate in seniority discussions, once USAPA is no  
7 longer a certified representative, it will change its position and argue entities other  
8 than certified representatives should be allowed to participate.

7 (*Addington v. USAPA*, No. CV-13-00471-PHX-ROS, Doc. 298, at pages 20-21.)

8 In 2007, the East Pilots incorrectly thought they could evade the Transition  
9 Agreement by changing their bargaining representative from ALPA to USAPA. Now  
10 they think they can evade the opinion of the Ninth Circuit by styling themselves as an  
11 APA committee rather than a USAPA committee. They must be told in no uncertain  
12 terms that they cannot do this. This Court must therefore include the Rule 65(d)(2)  
13 language into its order. Doing so will make it clear to all East Pilots and their  
14 representatives (hopefully), that the APA East Merger Committee and its members and  
15 advisors will be in contempt if they participate in the McCaskill-Bond proceedings  
16 without advocating the Nicolau Award.

17 Contrary to USAPA’s argument, the language in Rule 65(d)(2) does not create  
18 ambiguity. It is very straightforward. It clearly means that anyone who knows about the  
19 injunction cannot do as a new East Pilot merger committee what USAPA itself cannot do.  
20 *See Institute of Cetacean Research v. Sea Shepherd Conservation Soc.*, 774 F. 3d 935,  
21 955 (9th Cir. 2014) (holding persons in contempt for engaging in a similar scheme to  
22 evade an injunction). Anyone representing the East Pilot interests in the McCaskill-Bond  
23 proceedings will be in contempt if they fail to advocate the Nicolau Award as ordered by  
24 the Ninth Circuit.

25 Finally, Plaintiffs’ proposed injunction language is not overbroad. The proposed  
26 language is directed only at those who participate in the McCaskill-Bond proceedings on  
27 behalf of the East Pilots, as any sensible person would understand. Only those persons  
28 must advocate the Nicolau Award and they need do so only in that context. It would not

1 apply to East Pilots who, for example, use social media or chat on web boards. This  
2 Court, therefore, should enter an injunction using Plaintiffs' proposed language.

3 Respectfully submitted this 16th day of September, 2015.

4  
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 16, 2015, I electronically filed the foregoing with the Clerk of the Court and electronically served a copy of the same upon all parties by using the CM/ECF system. In addition, I transmitted the foregoing via email and US Mail Service to the following:

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