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12 **IN THE UNITED STATES DISTRICT COURT**  
13 **FOR THE DISTRICT OF ARIZONA**  
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15 Don Addington; *et al*,  
16 *Plaintiffs*,  
17 vs.  
18 US Airline Pilots Ass’n; and US Airways,  
19 Inc.,  
20 *Defendants*.

21 CASE NO. 2:13-CV-00471-ROS  
22 **REPLY TO ALLIED PILOTS**  
23 **ASSOCIATION (APA) IN SUPPORT**  
24 **OF MOTION FOR RULE 25(C)**  
25 **JOINDER OF ALLIED PILOTS**  
26 **ASSOCIATION (APA) AND FOR**  
27 **ISSUANCE OF PERMANENT**  
28 **INJUNCTION**

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31 The Allied Pilots Association (APA) misses the point of Plaintiffs’ motion.  
32 Plaintiffs’ motion merely seeks a ruling recognizing that APA is the successor to USAPA  
33 in the context of “taking any action on behalf of legacy US Airways East pilots in the  
34 McCaskill-Bond proceedings.” Doc. 317 at 9:25 to 9:26. Plaintiffs do not seek—and Rule  
35 25 is not intended to be used—to establish that APA is the successor to USAPA for all  
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1 purposes.<sup>1</sup> Hence, it is immaterial whether USAPA’s assets were transferred to APA or  
2 that it is still sitting on millions of dollars that rightfully belong to the West Pilots.

3 As the Ninth Circuit stated, “injunctive relief is necessary and appropriate in this  
4 case **to prevent the East Pilots from continuing to enjoy the benefits of USAPA’s**  
5 **breach at the expense of the West Pilots.”** *Addington v. US Airline Pilots Ass’n*, No.  
6 14-15757, slip op. at \*54 (9th Cir. Jun. 26, 2015) (Emphasis added). In effect, the Ninth  
7 Circuit held that USAPA would violate its duty of fair representation as the union  
8 representing the East and West pilots if it failed to advocate for the Nicolau Award.

9 Without a doubt, the APA East Merger Committee, is “a successor entity that has  
10 been created in order to evade the original injunction.” *Additive Controls & Measurement*  
11 *Sys. v. Flowdata*, 96 F. 3d 1390, 1397 (Fed. Cir. 1996). As such, it “may be found to be  
12 acting ‘in active concert or participation’ with the enjoined party and thus subject to  
13 contempt under Rule 65(d).” *Id.* By operation of Rule 65(d)(2), then, the APA East  
14 Merger Committee will be bound by the injunction even if it is directed only at USAPA.  
15 Were it otherwise, the East Pilots would be able to act through APA to nullify the  
16 injunction. *See S.E.C. v. Homa*, 514 F.3d 661, 674 (7th Cir. 2008) (holding that  
17 “defendants may not nullify a decree by carrying out prohibited acts through aiders and  
18 abettors, although they were not parties to the original proceeding”). This is precisely  
19 what the Ninth Circuit intended to prevent by its injunction as reflected in the quotation  
20 noted above.

21 But it is evident here that the East Pilots think otherwise. They think that they can  
22 evade the Court’s injunction, and thereby participate in seniority integration without  
23 advocating the Nicolau Award, by changing the label attached to their merger committee  
24 from “USAPA” to “APA.” They are wrong. But, to avoid needless litigation and  
25 disruption of the seniority integration process, this Court should make that clear. To do  
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28 <sup>1</sup> All references to “Rule” are to the Federal Rules of Civil Procedure.

1 so, it should use Rule 25(c) to join APA “for the purpose of subsequent proceedings to  
2 enforce judgment.” *JATSB, LLC v. Timeshare Beat, Inc.*, 2008 WL 4809484, at \*2 (D.  
3 Haw. Nov. 4, 2008).<sup>2</sup>

4 To be clear, Plaintiffs neither object to APA appointing a merger committee for the  
5 East Pilots nor to that committee participating in the McCaskill-Bond proceedings.  
6 Rather, Plaintiffs object to the APA East Merger Committee participating in those  
7 proceedings without advocating for the Nicolau Award. Given the rapidity after the Ninth  
8 Circuit’s ruling by which the East Pilots dissolved the USAPA Merger Committee and  
9 formed an APA merger committee, it is evident that the East Pilots intend that this  
10 committee will not advocate the Nicolau Award. Plaintiffs seek an order that takes away  
11 all question of whether they can do this.

12 Several points raised in APA’s brief should be addressed. First, Plaintiffs do not  
13 object to the APA East Merger Committee using Baptiste & Wilder as counsel. *See* Doc.  
14 322 at 7, n.3 (APA stating otherwise).<sup>3</sup> Plaintiffs noted that the APA East Merger  
15 Committee is using Baptiste & Wilder to show that it is just a continuation of the USAPA  
16 merger committee, albeit under a different label, and it is nevertheless bound by Rule  
17 65(d)(2). When Baptiste & Wilder attorneys advise the APA East Merger Committee,  
18 Plaintiffs are hopeful that they will advise them to comply with the injunction. But in  
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21 <sup>2</sup> Plaintiffs take no position here as to whether the APA merger committee  
22 representing legacy American Airlines pilots must also advocate the Nicolau Award,  
23 since they seek only an injunction against any entity that is currently representing “legacy  
24 U.S. Airways East Pilots.”

25 <sup>3</sup> APA weakly attempts to justify Wilder’s selection by pointing out that SLI pond is  
26 quite small with few fishes. The point may have some validity, but there are other  
27 advocates the East Pilots could have selected other than USAPA’s merger counsel. Dan  
28 Katz represented the East Pilots in the Nicolau Arbitration (See Ex. A) and Lee Seham  
made a brief cameo appearance in this case in early July (See Ex. B). Both are  
experienced SLI attorneys who have previously represented the East Pilots, so the East  
Pilots did not need to pluck the “tainted” USAPA fish from the pond.

1 case USAPA’s former counsel finds this too distasteful, the Court needs to eliminate any  
2 doubt by clearly articulating that the new East Committee is bound by the injunction.

3 Second, it does not matter that all of USAPA’s interests (such as funds) have not  
4 been transferred to APA. Rule 25(c) applies where there has been “any transfer of interest  
5 with respect to the subject matter of the suit.” Jerry E. Smith, *Moore’s Fed. Pract.*  
6 § 25.30 (2015). There is no question that the core interest at issue here—representation of  
7 the East Pilots in seniority integration—has been transferred from USAPA to APA.

8 Third, the fact that imposing an injunction against the APA East Merger Committee  
9 might cause “rancor” at American and within APA is not a legitimate reason for this  
10 Court not to apply the law reflected by Rule 65(d)(2).

11 Fourth, it is inappropriate to use Rule 19(a) here. Rule 19(a) is intended to allow  
12 joinder of a party that has an interest that must be addressed in order to provide relief  
13 among existing parties or that will be impaired in that person’s absence. APA need not be  
14 joined here to provide relief against USAPA. Any interest that APA has here exists only  
15 because APA has assumed USAPA’s role as the exclusive bargaining representative of  
16 the East and West pilots. To the extent that APA has assumed that role, it has succeeded  
17 USAPA in the context of this litigation. Plaintiffs merely seek recognition that the  
18 injunctive relief against USAPA applies with equal force to APA. That is accomplished  
19 by use of Rule 25(c).

20 Fifth, there is sound authority supporting the proposition that a labor union can be  
21 joined under Rule 25(c) in the context of the subject matter of the suit to the extent that  
22 the labor union succeeded to the named party labor union in that context. Thus a labor  
23 union was joined pursuant to Rule 25(c) for purpose of enforcing financial responsibility  
24 where the union succeeded in that context by merging finances with the named party  
25 labor union. *Lynn v. Sheet Metal Workers’ Int’l Ass’n*, 804 F. 2d 1472 Cir. 1986); *Screen*  
26 *Actors Guild, Inc. v. Federal Ins. Co.*, 957 F. Supp. 2d 1157 (C.D. Cal. 2013). And a  
27 labor union was joined pursuant to Rule 25(c) for purpose of enforcing a collective  
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1 bargaining agreement where the labor union succeeded to the named party labor union as  
2 the bargaining representative. *Air Line Pilots Ass'n. Int'l v. Texas Int'l Airlines, Inc.*, 567  
3 F. Supp. 78 (S.D. Tex. 1983). That is what happened here. APA succeeded USAPA as  
4 the bargaining representative responsible for the seniority integration of the East and  
5 West Pilots. Thus, APA is properly joined pursuant to Rule 25(c) here for purposes of  
6 being subject to a remedy in that context directed against USAPA.

7 Finally, the rule of mandate “allows a lower court to decide anything not foreclosed  
8 by the mandate.” *Hall v. City of Los Angeles*, 697 F. 3d 1059, 1067 (9th Cir. 2012). The  
9 “mandate[] require[s] respect for what the higher court decided, not for what it did not  
10 decide.” *United States v. Kellington*, 217 F.3d 1084, 1093 (9th Cir. 2000). Here, the  
11 Ninth Circuit did not directly decide whether the activities of an entirely new APA East  
12 Merger Committee should be covered by the injunction if the East Pilots disbanded  
13 USAPA’s merger committee and formed a committee under APA governance. That is  
14 only because this happened after the Ninth Circuit ruled. That issue, therefore, was left  
15 open for this Court to decide by applying Rule 65(d)(2)(1) to the circumstances that have  
16 evolved since June 26, 2015, with the objective of preventing “the East Pilots from  
17 continuing to enjoy the benefits of USAPA’s breach at the expense of the West Pilots.”  
18 (See June 26, 2105 opinion in *Addington v. USAPA*, at page 54).

19 In sum, the Ninth Circuit in effect directed this Court to enjoin the representative of  
20 the East Pilots in whatever form they currently enjoy from participating in the McCaskill-  
21 Bond proceedings unless they advocate the Nicolau Award. At the time of the Ninth  
22 Circuit’s opinion, USAPA was representing the East Pilots in those matters. Now, it is  
23 APA. Nothing of legal significance should change merely because the East Pilots  
24 changed the title of their committee from a “USAPA” committee to an “APA”  
25 committee. This Court, therefore, should join APA under Rule 25(c) and issue an  
26 injunction precluding USAPA, APA, and their agents, etc., from taking any action on  
27 behalf of legacy US Airways East pilots in the McCaskill-Bond proceedings, including  
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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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