

1 Marty Harper (#003416)
2 mharper@polsinelli.com
3 Andrew S. Jacob (#22516)
4 ajacob@polsinelli.com
5 Jennifer Axel (#023883)
6 jaxel@polsinelli.com
7 POLSINELLI PC
8 CityScape
9 One East Washington St., Suite 1200
10 Phoenix, AZ 85004
11 Fax: (602) 264-7033
12 Phone: (602) 650-2000
13 *Attorneys for Plaintiffs*

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

12 Don Addington; et al.,
13 Plaintiffs,

14 vs.

15 US Airline Pilots Ass’n, et al.,
16 Defendants.

No. CV-13-00471-PHX-ROS

**MOTION TO JOIN ALLIED PILOTS
ASSOCIATION PURSUANT TO
RULE 20(a)(2)**

17
18 Plaintiffs Addington, *et al.*, (the “West Pilots”) move to join Allied Pilots
19 Association (“APA) pursuant to Fed. R. Civ. P. 20(a)(2). This motion is supported by the
20 Memorandum of Points and authorities that follows.

21 Dated this 8th day of May, 2013.

22 **POLSINELLI PC**

23 */s/ Andrew S. Jacob*

24 By _____

25 Marty Harper

26 Andrew S. Jacob

27 Jennifer Axel

28 *Attorneys for Plaintiffs*

MEMORANDUM OF POINTS AND AUTHORITIES

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2 Fed. R. Civ. P. 20(a)(2) allows for joinder of defendants in a single action “if there
3 is asserted against them jointly, severally, or in the alternative, any right to relief in
4 respect of or arising out of the same transaction, occurrence, or series of transactions or
5 occurrences, and if any question of law or fact common to all defendants will arise in the
6 action.” Thus, a party seeking joinder of another must assert (1) a right to relief against
7 the other based on the same transaction or occurrence, and (2) a common question of law
8 or fact with respect to the other and parties already in the action. *See Desert Empire Bank*
9 *v. Insurance Co. of No. America*, 623 F.2d 1371, 1375 (9th Cir. 1980).

10 “[P]ermissive joinder is to be construed liberally in order to promote trial
11 convenience and to expedite the final determination of disputes, thereby preventing
12 multiple lawsuits.” *League to Save Lake Tahoe v. Tahoe Reg'l Planning Agency*, 558
13 F.2d 914, 917 (9th Cir. 1997); *see also United Mine Workers of Am. v. Gibbs*, 383 U.S.
14 715, 724 (1966) (“Under the rules, the impulse is toward entertaining the broadest
15 possible scope of action consistent with fairness to the parties; joinder of claims, parties
16 and remedies is strongly encouraged.”).

17 In the present action, Plaintiffs seek an order that would mandate as follows:

18 US Airline Pilots Association and US Airways, Inc., (and their successors)
19 must participate in the pilot seniority integration process as specifically
20 provided for in the Memorandum of Understanding Regarding Contingent
21 Collective Bargaining Agreement and, in so doing, must use an unmodified
22 Nicolau Award to define the seniority order of the US Airways pilots.

23 An injunction binds “other persons who are in active concert or participation” with
24 those expressly bound by the order. Fed. R. Civ. P. 65(d)(2)(C). For that purpose, a
25 successor can be “legally identified” with a bound party, and on that basis also be bound.
26 *G. & C. Merriam Co. v. Webster Dictionary Co., Inc.*, 639 F.2d 29, 36 (1st Cir. 1980). To
27 be bound on that basis, the successor must have received a transfer of the business or
28 some part of it from the enjoined party. *Id.*; *Saga Int'l, Inc. v. John D. Brush and Co.,*
Inc., 984 F. Supp. 1283, 1288 (C.D. Cal. 1997) (referring to assets).

1 It is nearly certain here that APA, the union presently representing American
2 Airlines pilots, will represent the combined craft of all pilots in the post-merger New
3 American airline. There is still a question as to when in the course of the MOU seniority
4 integration process that will occur. And there is a question whether it will occur in a
5 manner that causes APA to be “legally identified” with USAPA for purposes of being
6 bound by an injunction directed at USAPA.

7 To obviate the need to litigate whether APA is bound by the injunction here,
8 Plaintiffs have asked that the Court include successor language in its order. It is quite
9 likely, particularly with such language, that APA will be bound by such order. In all
10 fairness then, APA should have the opportunity to appear here to express its view on
11 ripeness.

12 APA is properly joined pursuant to Rule 20(a)(2) because it is subject to relief
13 based on the same transaction or occurrence as USAPA, the Nicolau Arbitration. It has an
14 interest in a common question of fact relevant to that relief, ripeness. Given that *Gibbs*,
15 383 U.S. at 724, directs that the Court should apply Rule 20 broadly, Plaintiffs
16 respectfully ask that the Court grant this motion joining APA pursuant to Rule 20(a)(2).

17 Dated this 8th day of May, 2013.

18 **POLSINELLI PC**

19 */s/ Andrew S. Jacob*

20 By _____

Marty Harper

Andrew S. Jacob

Jennifer Axel

Attorneys for Plaintiffs

21
22 **CERTIFICATE OF SERVICE**

23
24 I hereby certify that on this 8th day of May 2013, I electronically transmitted the
25 foregoing document to the U.S. District Court Clerk’s Office by using the ECF System
26 for filing and transmittal.

27 */s/ Andrew S. Jacob*

28 By _____