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7 *Attorneys for Plaintiffs*

8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF MARICOPA**

10 DON ADDINGTON, JOHN BOSTIC,
11 MARK BURMAN, AFSHIN IRANPOUR,
12 ROGER VELEZ, and STEVE WARGOCKI,
13 individual residents of the State of Arizona,
14 pilots formerly employed by America West
Airlines, Inc., and presently employed by its
15 successor after merger, US Airways, Inc., *on*
their own behalf and on behalf of all persons
similarly situated;

16 Plaintiffs,

17 vs.

18 STEVEN H. BRADFORD, PAUL J.
19 DIORIO, ROBERT A. FREAR, MARK W.
20 KING, DOUGLAS L. MOWERY, and JOHN
21 A. STEPHAN, individuals residing outside
Arizona, pilots formerly employed by
22 US Airways, Inc., and presently employed by
23 its successor after merger using the same
name, *on their own behalf and on behalf of*
24 *all persons similarly situated;*

25 Defendants.
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CASE NO. _____

VERIFIED COMPLAINT

**CLASS ACTION:
PLAINTIFF AND DEFENDANT
CLASSES**

(Injunctive Relief)

1 For their Complaint, Plaintiffs allege as follows:

2 **OVERVIEW**

3 1. In May 2005, two air carriers, America West Airlines, Inc. (“America
4 West”) and US Airways, Inc., agreed to merge such that they would combine all or
5 substantially all their assets. .

6 2. Hereinafter, Plaintiffs use:

- 7 a) “Merger” to refer to this merger event;
- 8 b) “US Airways” to refer to the post-merger air carrier;
- 9 c) “Old US Airways” to refer to the pre-merger carrier;
- 10 d) “West CBA” to refer to the collective bargaining agreement
11 between America West and its pilots;
- 12 e) “West Pilots” to refer, as individuals and as a group (unless
13 otherwise indicated), to the pilots on the seniority list incorporated
14 into the West CBA.
- 15 f) “East CBA” to refer to the collective bargaining agreement
16 between Pre-Merger US Airways and its pilots;
- 17 g) “East Pilots” to refer, as individuals and as a group (unless
18 otherwise indicated), to the pilots on the seniority list incorporated
19 into the East CBA;
- 20 h) “West and East Pilots” to refer, as individuals and as a group
21 (unless otherwise indicated) to the entire group of pilots on both
22 West CBA and East CBA seniority lists;
- 23 i) “Separate Operations” to refer to that phase of the Merger where
24 West Pilots can operate only the aircraft that were in the service of
25 America West prior to the Merger or added thereafter (“West
26 Airplanes”) and East Pilots can operate only the aircraft that were
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1 in the service of Old US Airways or added thereafter (“East
2 Airplanes”);

3 and

4 j) “Integrated Operations” to refer to that phase of the Merger where
5 West and East Pilots are placed onto a single seniority list and are
6 not limited to operating either West Airplanes or East Airplanes.

7 **Parties**

8 3. Plaintiff DON ADDINGTON is a resident of the State of Arizona, who at
9 all times relevant to this Complaint has been a West Pilot.

10 4. Plaintiff JOHN BOSTIC is a resident of the State of Arizona who at all
11 times relevant to this Complaint has been a West Pilot.

12 5. Plaintiff MARK BURMAN is a resident of the State of Arizona, who at
13 all times relevant to this Complaint has been a West Pilot.

14 6. Plaintiff AFSHIN IRANPOUR is a resident of the State of Arizona, who
15 at all times relevant to this Complaint has been a West Pilot.

16 7. Plaintiff ROGER VELEZ is a resident of the State of Arizona, who at all
17 times relevant to this Complaint has been a West Pilot.

18 8. Plaintiff STEVE WARGOCKI is a resident of the State of Arizona, who
19 at all times relevant to this Complaint has been a West Pilot.

20 9. The state of residence for Defendants is alleged upon information and
21 belief, as set out below.

22 10. Defendant STEVE H. BRADFORD is a resident of the State of
23 Pennsylvania, who at all times relevant to this Complaint has been an East Pilot.

24 11. Defendant Bradford is the President of US Airline Pilots Association
25 (“USAPA”), an unincorporated association with a principal place of business in
26 Charlotte, North Carolina, that is certified by the National Mediation Board (“NMB”) as
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1 the collective bargaining representative of the pilots employed in the service of
2 US Airways.

3 12. Defendant PAUL J. DIORIO is a resident of the State of Massachusetts,
4 who at all times relevant to this Complaint has been an East Pilot.

5 13. Defendant Diorio is the Chairman of the USAPA Negotiating Advisory
6 Committee.

7 14. Defendant ROBERT A. FREAR is a resident of the State of New York
8 who at all times relevant to this Complaint has been an East Pilot.

9 15. Defendant Frear is a Member of the USAPA Negotiating Advisory
10 Committee.

11 16. Defendant MARK W. KING is a resident of the State of Pennsylvania,
12 who at all times relevant to this Complaint has been an East Pilot.

13 17. Defendant King is the USAPA Secretary-Treasurer.

14 18. Defendant DOUGLAS L. MOWERY is a resident of the State of Florida,
15 who at all times relevant to this Complaint has been an East Pilot.

16 19. Defendant Mowery is a Consultant to the USAPA Negotiating Advisory
17 Committee.

18 20. Defendant JOHN A. STEPHAN is a resident of the State of New Jersey,
19 who at all times relevant to this Complaint has been an East Pilot.

20 21. Defendant Stephan was the chairman of the US Airways Master Executive
21 Council (“MEC”), Airline Pilots Association, International (“ALPA”), when it
22 represented those who would be members of the East Pilot Class, as defined herein.

23 **JURISDICTION AND VENUE**

24 22. This Complaint seeks an Order on behalf of Plaintiffs, and a class of West
25 Pilots who are similarly situated, directing Defendants, and a class of East Pilots who
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1 are similarly situated, to comply in good faith with an arbitration (the “Nicolau
2 Arbitration”) held pursuant to ordinary contractual obligations.

3 23. The contract underlying the Nicolau Arbitration is memorialized in two
4 documents:

5 a) A multilateral contractual agreement entitled the “*Transition*
6 *Agreement;*”

7 and

8 b) A set or policies, procedures and rules, which the *Transition*
9 *Agreement* incorporates by direct reference, referred to as “*ALPA*
10 *Merger Policy.*”

11 24. The contract underlying the Nicolau Arbitration is neither an agreement
12 between labor organizations subject to the Labor Management Relations Act, 29 U.S.C.
13 §§ 185, *et seq.*, nor an agreement between an air carrier and its employees subject to the
14 Railway Labor Act, 45 U.S.C. §§ 151, *et seq.*

15 25. The Nicolau Arbitration was neither subject to federal labor law, nor
16 conducted by a federal agency or administrative body.

17 26. The Nicolau Arbitration concerned the pilot operations of US Airways
18 because it created a list (the “Nicolau List”) that defined the relative seniority rights of
19 West and East Pilots.

20 27. Because the Nicolau List substantially affected pilot operation of
21 US Airways, Defendants did foresee, or reasonably should have foreseen, that their
22 actions and omissions in denigration of the Nicolau List would likely have substantial
23 impact on US Airways pilot operations.

24 28. US Airways has its headquarters in Tempe, Arizona.

25 29. US Airways conducts a substantial portion of its pilot operations in
26 Arizona.

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1 41. The named Plaintiffs will fairly and adequately represent the interests of
2 the putative West Pilot Class because:

- 3 a) They have moral and financial support from many West Pilots;
4 b) One or more of them have suffered and/or are likely to suffer each
5 kind of injuries suffered or about to be suffered by other West
6 Pilots as a result of Defendants' denigration of the Nicolau
7 Arbitration;

8 and

- 9 c) They each have a good understanding of the issues underlying this
10 litigation and have demonstrated a willingness to invest the
11 necessary time and efforts to fulfill their duties as representative
12 parties.

13 42. Material questions of law and fact arising from this action that are
14 common to the Plaintiffs and other members of the putative West Pilot Class include the
15 following:

- 16 a) Whether Plaintiffs and other West Pilots have individual standing
17 to remedy the conduct complained of herein that impairs their
18 enjoyment of the seniority rights established by the Nicolau List;
19 b) Whether Defendants and other East Pilots, as individuals, owe a
20 duty to Plaintiffs and other West Pilots to abide by the Nicolau
21 List;
22 c) Whether Defendants and other East Pilots, as individuals, are in
23 breach of their duty to Plaintiffs and other West Pilots to abide by
24 the Nicolau List;

25 and

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- a) Whether Plaintiffs and other West Pilots have individual standing to remedy the conduct complained of herein that impairs their enjoyment of the seniority rights established by the Nicolau List;
 - b) Whether Defendants and other East Pilots, as individuals, owe a duty to Plaintiffs and other West Pilots to abide by the Nicolau List;
 - c) Whether Defendants and other East Pilots, as individuals, are in breach of their duty to Plaintiffs and other West Pilots to abide by the Nicolau List;
- and
- d) Whether the injunctive relief requested herein is an appropriate remedy.

52. Defendants and the East Pilots have acted in concert to evade their common obligation to abide by the Nicolau List.

53. Because Defendants and the East Pilots have acted in concert and because the material issues of law and fact are common to Defendants and the East Pilots, a single resolution of this dispute is the most judicially efficient way to proceed.

54. Because Plaintiffs do not seek any monetary damages in this action, there would neither be injustice nor compromise of due process rights if the Court gives this action defendant class action treatment.

55. This action, therefore, is maintainable as a defendant class action because the factors enumerated herein satisfy the requirements of Rule 23(a) and Rule 23(b)(2).

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS
Collective Bargaining Agreements And Merger

56. West and East Pilots work under collective bargaining agreements that allocate a variety of rights according to defined seniority lists.

1 57. The West CBA is set out in a document referred to herein as the “2004
2 CBA” and in subsequently executed Letters of Agreement.

3 58. A true and correct copy of relevant pages from the 2004 CBA is attached
4 here as Exhibit A.

5 59. The 2004 CBA provides, in relevant part:

6 **Seniority shall govern all Pilots in case of promotion and demotion,
7 retention in case of reduction in force, assignment or realignment due
8 to expansion or reduction in schedules, reemployment after release
9 due to reduction in schedules, reemployment after release due to
10 reduction in force, and choice of vacancies, provided the Pilot can
11 qualify and is able to assume the assignment.**

12 **F. SUCCESSORSHIP AND MERGERS**

13 **2. In the event of a complete merger between the Company and
14 another air carrier (i.e., the combination of all or substantially all the
15 assets of the two carriers) where the surviving carrier decides to
16 integrate the pre-merger operations, the following procedures will
17 apply: (1) if the Company is the surviving carrier, the Company will
18 integrate the two Pilot groups in accordance with Association Merger
19 Policy if both groups are represented by the Association, . . . and (2) if
20 the Company is not the surviving carrier, the Company will make
21 reasonable efforts to have the surviving carrier integrate the two pilot
22 groups in the same manner as stated in (1) of this paragraph.**

23 Transition Agreement

24 60. On September 20, 2005, America West, US Airways, West and East
25 Pilots entered into a multilateral contractual agreement entitled, the “*Transition
26 Agreement.*”

27 61. A true and correct copy of the *Transition Agreement* is attached here as
28 Exhibit B.

62. The *Transition Agreement* established contractual rights and obligations
that ran, *among other things*:

- a) Among individual West Pilots and individual East Pilots;
- b) Between individual West Pilots and the East Pilot group;
- c) Between individual East Pilots and the West Pilot group;

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and/or

d) Between the West Pilot group and the East Pilot group.

63. The *Transition Agreement* added or changed certain terms of the West CBA and/or the East CBA.

64. The *Transition Agreement*, therefore, established collective bargaining rights and obligations that ran, among other things:

a) Between US Airways and individual West and East Pilots;

b) Between US Airways and the West Pilot Group;

and/or

c) Between US Airways and the East Pilot Group.

65. All parties understood and intended that the rights and obligations arising in the *Transition Agreement* were part of a multiparty bargained-for exchange.

66. All parties understood and intended that the rights and obligations arising in the *Transition Agreement* were supported by valid consideration and would be legally enforceable by all beneficiaries.

67. The bargained for terms of the *Transition Agreement* included among other things:

a) West Pilots agreed, for the benefit of East Pilots, to waive Scope Provisions of the West CBA that required US Airways to operate airplanes in the service of America West under America West designator code and/or marketing identity;

b) West Pilots agreed, for the benefit of East Pilots, that US Airways must provide all furloughed East Pilots an opportunity to be either recalled as East Pilots or hired as West Pilots before it could hire any new pilots;

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- c) East Pilots agreed, for the benefit of West Pilots, that US Airways must place any pilots hired after the date of the *Transition Agreement* on a third seniority list entitled ‘New Hire Seniority List’” and that it must treat these pilots as junior to all pilots on the West Pilot seniority list during separate operations;
- d) East Pilots agreed, for the benefit of West Pilots, that if any West Pilot was furloughed during Separate Operations, US Airways could not hire any new pilots until it provided all furloughed West Pilots an opportunity to be either recalled as West Pilots or hired as East Pilots;
- e) West Pilots agreed, for the benefit of East Pilots, to waive some of the West CBA restrictions on the seating capacity of aircraft using the company’s marketing identity that could be flown by Express Carriers;
- f) West Pilots agreed, for the benefit of East Pilots, that US Airways could use East Pilots to operate East Airplanes on certain flights that, according to the Scope Provisions of the West CBA, US Airways could fly only with West Pilots and West Airplanes;
- g) East Pilots agreed, for the benefit of West Pilots, that US Airways could use West Pilots to fly West Airplanes on certain flights that were according to the Scope Provisions of the East CBA, US Airways could fly only with East Pilots and East Airplanes;
- h) West Pilots agreed, for the benefit of East Pilots, to negotiate (in good faith) amendments to the West CBA necessary to allow Integrated Operations of US Airways using a single integrated seniority list and a single CBA;

- 1 i) East Pilots agreed, for the benefit of West Pilots, to negotiate (in
2 good faith) amendments to the East CBA necessary to allow
3 Integrated Operations of US Airways using a single integrated
4 seniority list and a single CBA;
- 5 j) US Airways agreed, for the benefit of West Pilots, to negotiate (in
6 good faith) amendments to the West CBA and to the East CBA
7 necessary to allow Integrated Operations of US Airways using a
8 single integrated seniority list and a single CBA;
- 9 k) West Pilots agreed, for the benefit of East Pilots, that the single
10 integrated seniority list referred to above would be created in
11 accordance with ALPA Merger Policy;

12 and

- 13 l) East Pilots agreed, for the benefit of West Pilots, that the single
14 integrated seniority list referred to above would be created in
15 accordance with ALPA Merger Policy.

16 **ALPA Merger Policy**

17 68. The terms of ALPA Merger Policy are set out in a document, entitled
18 “*Section 45 – Merger And Fragmentation Policy*” and dated August 10, 2005.
19 Hereinafter, Plaintiffs refer to this document as “*ALPA Merger Policy*.”

20 69. A true and correct copy of *ALPA Merger Policy* is attached here as
21 Exhibit C.

22 70. Pursuant to ALPA Merger Policy, West and East Pilots attempted to
23 create a single integrated seniority list through mediation.

24 71. West and East Pilots could not create a single integrated seniority list
25 through mediation.

1 81. The Nicolau Arbitration established, with finality, that the Nicolau List
2 was:

- 3 a) Fair and equitable;
- 4 b) Consistent with *ALPA Merger Policy*; and
- 5 c) Consistent with the *Conditions And Restrictions*.

6 **Standing**

7 82. Individual West and East Pilots were fully and adequately represented in
8 the Nicolau Arbitration by their respective Master Executive Councils (“MECs”).

9 83. West Pilots were represented by the America West MEC.

10 84. East Pilots were represented by the US Airways MEC.

11 85. Because individual West and East Pilots were fully and adequately
12 represented in the Nicolau Arbitration they have standing as parties to the Nicolau
13 Arbitration.

14 86. Because individual West and East Pilots have standing as parties to the
15 Nicolau Arbitration they are bound to treat the Nicolau List as final, binding, fair and
16 equitable.

17 87. Because West and East Pilots have standing as parties to the Nicolau
18 Arbitration they may, as individuals or as groups:

- 19 a) Assert *res judicata* or issue preclusion against West and East Pilots
20 as individuals or as groups;
- 21 b) Be subject to *res judicata* or issue preclusion asserted by West and
22 East Pilots as individuals or as groups;
- 23 c) Enforce obligations established by the Nicolau Award against West
24 and East Pilots as individuals or as groups;

25 and/or

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1 95. Thereafter a large number of individual East Pilots, acting in concert,
2 decided that by forming a new union they could negotiate a single collective bargaining
3 agreement with US Airways and ignore the Nicolau Award.

4 96. In the middle of 2007, therefore, East Pilots formed USAPA for the
5 purposes of:

6 a) Becoming the certified labor representative of the entire group of
7 US Airways pilots (East and West);

8 and

9 b) Impeding US Airways' implementation of the Nicolau List.

10 97. On January 23, 2008, counsel for USAPA advised the East Pilots that they
11 could use USAPA to re-negotiate the integrated seniority list.

12 98. On January 23, 2008, counsel for USAPA advised the East Pilots that they
13 could use USAPA to implement "a seniority-based pilot integration agreement."

14 99. Thereafter, the East Pilots planned to use USAPA to replace ALPA as the
15 certified labor representative and began a labor campaign to effectuate that objective.

16 100. In the course of this campaign, East Pilots promised that, if USAPA were
17 elected the labor representative, it would create, promote and implement a single
18 seniority list that would be inconsistent with the Nicolau List.

19 101. On or about April 18, 2008, USAPA became the certified labor
20 representative.

21 102. Since June 2008, Plaintiffs are informed and, therefore, allege that
22 US Airways and East Pilots have been negotiating a single collective bargaining
23 agreement that would **not** implement the Nicolau List.

24 103. USAPA has publicly stated that any contract it would negotiate with
25 US Airways:

26 **will not contain any reference to recent Nicolau document [the**
27 **Nicolau Award]. When the majority of member pilots in good**
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1 **standing vote yes on our new agreement, then this document dies on**
2 **the shelf.**

3 **Plaintiffs' Injuries**

4 104. As a direct and foreseeable result of actionable conduct alleged herein,
5 Defendants and the East Class, acting in concert, directly and through USAPA, have
6 caused and contributed to US Airways being in breach of the West CBA as modified by
7 the *Transition Agreement*.

8 105. As a consequence of US Airways' breach of the West CBA as modified
9 by the *Transition Agreement*, one or more Plaintiffs and other similarly situated West
10 Pilots have lost promotions and have lost other improvements in wages, benefits and
11 working conditions.

12 106. As a consequence of US Airways' breach of the West CBA as modified
13 by the *Transition Agreement*, one or more Plaintiffs and other similarly situated West
14 Pilots will likely be furloughed.

15 107. As a consequence of US Airways' breach of the West CBA as modified
16 by the *Transition Agreement*, one or more Plaintiffs and other similarly situated West
17 Pilots will likely be demoted and lose improvements in wages, benefits and working
18 conditions.

19 108. One or more Plaintiffs and other similarly situated West Pilots will
20 continue to accrue injuries until USAPA and US Airways implement a single CBA that
21 applies the Nicolau List.

22 **CAUSES OF ACTION**

23 **Count One: Breach of Expressed Contract Obligations**

24 109. Plaintiffs re-allege each and every allegation set forth above as if fully set
25 forth herein.

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A. An ORDER:

1. Precluding East Pilots from taking any steps toward negotiating a collective bargaining agreement that is inconsistent with fully implementing the Nicolau Award Single Seniority List;
2. Directing East Pilots to make good faith efforts to negotiate a single collective bargaining agreement that fully implements the Nicolau List;

and

- B. That Plaintiffs be granted such other relief that the Court deems necessary and proper.

Dated this 4th day of September, 2008.

SHUGHART THOMSON & KILROY, P.C.

/s/
By: _____
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