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21 **UNITED STATES DISTRICT COURT**  
22 **DISTRICT OF ARIZONA**

23 US Airways, Inc., a Delaware  
24 Corporation,

25 Plaintiff,

26 v.

27 Don Addington, an individual; John  
28 Bostic, an individual; Mark Burman, an  
individual; Afshin Iranpour, an  
individual; Roger Velez, an individual;  
and Steve Wargoeki, an individual, on  
behalf of themselves and all other  
similarly-situated individuals,

and

US Airline Pilots Association, an  
unincorporated association,

Defendants.

Case No.

**COMPLAINT  
FOR DECLARATORY RELIEF**

1 Plaintiff US Airways, Inc. (“US Airways”), by and through its counsel, and in  
2 support of its claims for declaratory relief against defendants Don Addington, John Bostic,  
3 Mark Burman, Afshin Iranpour, Roger Velez, and Steve Wargocki, on behalf of  
4 themselves and all other similarly-situated individuals, and against defendant US Airline  
5 Pilots Association (“USAPA”), alleges as follows.

### 6 INTRODUCTION

7 1. This action arises from a protracted seniority dispute between the pilots  
8 employed by US Airways, Inc. (the “East Pilots”) and the pilots employed by America  
9 West Airlines, Inc. (the “West Pilots”) prior to the merger of those two airlines in 2005.  
10 Plaintiff US Airways is the air carrier formed by that merger. US Airways has never  
11 taken any position on the merits of this seniority dispute. It always has been, and still is,  
12 neutral. US Airways does, however, have a current obligation under the Railway Labor  
13 Act to negotiate for a collective bargaining agreement with defendant USAPA, the union  
14 that represents US Airways’ pilots -- and the pilots’ resolution of their seniority dispute is  
15 a necessary condition for the successful negotiation of any such agreement.

16 2. The recent decision by the United States Court of Appeals for the Ninth  
17 Circuit in *Addington v. US Airline Pilots Ass’n*, 606 F.3d 1174 (9th Cir. 2010), held that  
18 potential claims for breach of the duty of fair representation **by the West Pilots against**  
19 **USAPA**, based on USAPA’s position on seniority issues in its collective bargaining  
20 negotiations with US Airways, were not ripe for judicial determination because US  
21 Airways and USAPA have not completed their negotiations and actually entered into a  
22 collective bargaining agreement. Although the Ninth Circuit “[e]ft USAPA to bargain in  
23 good faith pursuant to its DFR, with the interests of all members-both East and West-in  
24 mind, **under pain of an unquestionably ripe DFR suit, once a contract is ratified,**” *id.*  
25 at 1180 n.1 (emphasis added), it did not discuss the legal rights, constraints and  
26 obligations of **US Airways** in those collective bargaining negotiations, including how US  
27 Airways could complete those negotiations without exposure to potential legal liability in  
28

1 light of the conflicting assertions by the West Pilots and USAPA regarding the  
2 permissibility of USAPA's position on the seniority issues.

3         3.         The West Pilots, consistent with their position on the merits in the  
4 *Addington* trial, have recently re-asserted their view that the only permissible integrated  
5 seniority list is the one mandated by a prior arbitration decision known as the Nicolau  
6 Award -- a seniority list which the West Pilots perceive to be very favorable and the East  
7 Pilots perceive to be very unfavorable. The West Pilots claim that the Nicolau Award is  
8 "final and binding," and have made clear that they will challenge in future litigation  
9 against USAPA *and US Airways* any non-Nicolau seniority list to which US Airways and  
10 USAPA might agree. They have further indicated that, in addition to potential monetary  
11 claims against USAPA for breach of the duty of fair representation and against US  
12 Airways for "facilitat[ing]" or "assist[ing]" in USAPA's alleged breach, they will seek to  
13 enjoin implementation of any non-Nicolau seniority list. On the other hand, as mandated  
14 by its constitution, USAPA has always insisted on a "date-of-hire" integrated seniority list  
15 -- a list which the West Pilots perceive to be significantly less favorable than the Nicolau  
16 Award. Since the Ninth Circuit's decision, USAPA has re-affirmed that position and  
17 expressed the view that, in light of *Addington*, it is now free to negotiate for and agree to a  
18 collective bargaining agreement which does not incorporate the Nicolau Award.

19         4.         Because the pilots' seniority dispute remains unresolved and because the  
20 Ninth Circuit's decision provides no guidance to US Airways, unless this Court issues  
21 declaratory relief clarifying the parties' respective rights, constraints and obligations, US  
22 Airways will face substantial damage to its operations and finances through either:  
23 (i) protracted negotiations and a possible work stoppage at the end of those negotiations,  
24 potentially exposing US Airways to hundreds of millions of dollars in lost revenue and  
25 customer goodwill, if it does not agree to USAPA's requirements for a non-Nicolau  
26 integrated seniority list; or (ii) litigation by the West Pilots against USAPA and US  
27 Airways for USAPA's alleged breach of the duty of fair representation if it does agree to  
28 USAPA's requirements for a non-Nicolau integrated seniority list, exposing US Airways

1 to potentially tens of millions of dollars in litigation costs and monetary damages, as well  
2 as an injunction invalidating an integrated seniority list and combined collective  
3 bargaining agreement that had taken literally years to negotiate.

4         5. For US Airways, this situation is untenable. The Railway Labor Act  
5 requires US Airways to bargain with USAPA *now*, and, in order to satisfy those  
6 obligations in a manner consistent with the purposes of the Railway Labor Act, US  
7 Airways must have clarification as to the parties' respective rights, constraints, and  
8 obligations in those negotiations. Accordingly, US Airways is entitled to a declaratory  
9 judgment to the effect that: (i) USAPA's continued insistence that US Airways accept a  
10 collective bargaining agreement which does not incorporate the Nicolau Award, but rather  
11 a seniority list based on "date-of-hire" principles, violates USAPA's duty under Section 2,  
12 First, of the Railway Labor Act, to "exert every reasonable effort to make and maintain  
13 agreements concerning rates of pay, rules, and working conditions..., in order to avoid  
14 any interruption to commerce or to the operation of any carrier," and entry into a  
15 collective bargaining agreement that does not incorporate the Nicolau Award would  
16 constitute a breach of USAPA's duty of fair representation to the West Pilots and  
17 therefore US Airways is prohibited from accepting or implementing a non-Nicolau  
18 seniority list; *or, in the alternative*, (ii) USAPA's continued insistence that US Airways  
19 accept a collective bargaining agreement which does not incorporate the Nicolau Award,  
20 but rather a seniority list based on "date-of-hire" principles, does *not* violate USAPA's  
21 duty under Section 2, First, of the Railway Labor Act, and entry into a collective  
22 bargaining agreement that does not incorporate the Nicolau Award would *not* constitute a  
23 breach of USAPA's duty of fair representation to the West Pilots and therefore US  
24 Airways is *not* prohibited from accepting or implementing a non-Nicolau seniority list, *or,*  
25 *in the alternative*, (iii) regardless of whether USAPA's continued insistence on and/or  
26 entry into a collective bargaining agreement which does not incorporate the Nicolau  
27 Award would constitute a breach of USAPA's obligations under Section 2, First, of the  
28 Railway Labor Act and/or its duty of fair representation to the West Pilots, US Airways

1 would not be liable to the West Pilots under the Railway Labor Act or otherwise if it were  
2 to enter into a collective bargaining agreement with USAPA that did not incorporate the  
3 Nicolau Award.

4 6. This action for declaratory judgment is ripe because, unlike the Ninth  
5 Circuit's assessment of the West Pilots' claims against USAPA, US Airways' Complaint  
6 seeks a declaration as to the parties' legal rights, constraints, and obligations in the context  
7 of an actual, concrete and substantial controversy in the midst of currently-ongoing  
8 collective bargaining negotiations between US Airways and USAPA. *See Hal Roach*  
9 *Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1555 (9th Cir. 1990) (stating  
10 that an action for a declaratory judgment is ripe if "there is a substantial controversy  
11 between parties having adverse legal interests, and the controversy is of sufficient  
12 immediacy and reality to warrant declaratory relief."). The Declaratory Judgment Act  
13 "permits actual controversies to be settled *before they ripen into violations of law or a*  
14 *breach of contractual duty.*" *United Food & Commercial Workers Local Union Nos. 137*  
15 *v. Food Employers Council, Inc.*, 827 F.2d 519, 524 (9th Cir. 1987) (citation and internal  
16 quotation marks omitted; emphasis added).

#### 17 THE PARTIES

18 7. US Airways is a Delaware corporation with its principal place of business  
19 located at 111 West Rio Salado Parkway, Tempe, Arizona 85281. US Airways is a  
20 commercial airline with national and international operations, and it is a "common carrier  
21 by air" within the meaning of 45 U.S.C. § 181. As such, US Airways' labor relations are  
22 governed by the Railway Labor Act, 45 U.S.C. §§ 151 *et seq.*

23 8. On information and belief, defendant Don Addington ("Addington") is a  
24 resident of the State of Arizona. Addington is subject to the jurisdiction of this Court.

25 9. On information and belief, defendant John Bostic ("Bostic") is a resident of  
26 the State of Arizona. Bostic is subject to the jurisdiction of this Court.

27 10. On information and belief, defendant Mark Burman ("Burman") is a  
28 resident of the State of Arizona. Burman is subject to the jurisdiction of this Court.



1 respect to USAPA’s continued requirement that US Airways accept a collective  
 2 bargaining agreement which does not incorporate the Nicolau Award, and US Airways’  
 3 ability to accept or reject such a seniority list without exposure to potentially hundreds of  
 4 millions of dollars in lost revenue and customer goodwill from protracted negotiations and  
 5 a possible work stoppage at the end of those negotiations, or potentially tens of millions of  
 6 dollars in costs and monetary damages from litigation by the West Pilots against USAPA  
 7 and US Airways for USAPA’s alleged breach of the duty of fair representation. *See, e.g.,*  
 8 *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1555 (9th Cir.  
 9 1990). The Declaratory Judgment Act permits actual controversies, such as here, to be  
 10 resolved before they ripen into violations of law or contractual or other duty. *See United*  
 11 *Food & Commercial Workers Local Union Nos. 137 v. Food Employers Council, Inc.*,  
 12 827 F.2d 519, 524 (9th Cir. 1987) (the Declaratory Judgment Act “permits actual  
 13 controversies to be settled *before they ripen into violations of law or a breach of*  
 14 *contractual duty.*”) (citation and internal quotation marks omitted; emphasis added);  
 15 *accord Rowan Cos. v. Griffin*, 876 F.2d 26, 28 (5th Cir. 1989) (declaratory judgment is “a  
 16 means of settling an actual controversy before it ripens into a violation of the civil or  
 17 criminal law, or a breach of a contractual duty.”).

### CLASS ALLEGATIONS

18  
 19 18. Rule 23 of the Federal Rules of Civil Procedure provides that “[o]ne or  
 20 more members of a class may sue or be sued as representative parties on behalf of all  
 21 members.” Accordingly, Rule 23 permits actions against a class of *defendants*. *See, e.g.,*  
 22 *Henson v. East Lincoln Township*, 814 F.2d 410, 412 (7th Cir. 1987) (“It is apparent from  
 23 the words of Rule 23(a) (‘sue or be sued as representative parties’) that suits against a  
 24 defendant class are permitted.”).

25 19. US Airways brings this action against defendants Addington, Bostic,  
 26 Burman, Iranpour, Velez, and Wargocki (the “Named Addington Pilots”) both in their  
 27 individual capacity and as representatives of all similarly-situated persons. US Airways  
 28 proposes that the defendant class in this action (the “West Pilot Class”) have the same

1 definition, and the same class representatives, as the West Pilot Class certified in  
2 *Addington v. US Airline Pilots Association*, Case No. CV 08-1633-PHX-NVW. That  
3 class definition is “All pilots employed by the airline US Airways in September 2008 who  
4 were on the America West seniority list on September 20, 2005.”

5 20. The West Pilot Class includes approximately 1,900 members. Accordingly,  
6 the class is so numerous that joinder of all such persons is impracticable.

7 21. There exist common questions of law and fact affecting the West Pilot  
8 Class.

9 22. US Airways’ claims against the Named Addington Pilots with respect to the  
10 seniority and collective bargaining dispute underlying this lawsuit arise from their status  
11 as West Pilots and, therefore, US Airways’ claims against them are typical of its claims  
12 against the West Pilot Class.

13 23. The Named Addington Pilots can fairly and adequately represent the  
14 interests of the West Pilot class because:

15 (a) They have moral and/or financial support from many West Pilots;  
16 and

17 (b) They each have a good understanding of the issues underlying this  
18 litigation and have demonstrated a willingness to invest the necessary  
19 time and efforts to fulfill their duties as representative parties.

20 24. Material questions of law and fact arising in this action that are common to  
21 the Named Addington Pilots and the other members of the West Pilot Class include the  
22 following:

23 (a) Whether it would violate USAPA’s duty of fair representation to the  
24 West Pilots for USAPA to enter into a collective bargaining  
25 agreement with US Airways that does not include the Nicolau  
26 seniority list; and

27 (b) Regardless of whether it would violate USAPA’s duty of fair  
28 representation to the West Pilots for USAPA to enter into a collective

1 bargaining agreement with a non-Nicolau seniority list, whether US  
2 Airways has any potential liability to the West Pilots if it were to  
3 agree to a non-Nicolau seniority list.

4 25. This action is maintainable as a defendant class action because the factors  
5 enumerated herein satisfy the requirements of Rule 23(a) and Rule 23(b)(1) & (2).

### 6 **BACKGROUND FACTUAL ALLEGATIONS**

7 26. This action arises from a long and difficult seniority-integration dispute  
8 between two groups of pilots following the 2005 merger of US Airways, Inc. and America  
9 West Airlines, Inc. That dispute involves the relative placement of the pilots on an  
10 integrated seniority list that will be part of the combined collective bargaining agreement  
11 currently being negotiated by US Airways and USAPA. The former US Airways, Inc.  
12 group of pilots is known as the “East Pilots,” and the former America West Airlines, Inc.  
13 group of pilots is known as the “West Pilots.”

14 27. At the time of the merger, the Air Line Pilots Association (“ALPA”)  
15 represented the East Pilots and West Pilots in two separate bargaining units or “crafts or  
16 classes” -- one for the pilots of the former US Airways, Inc. and one for the pilots of the  
17 former America West Airlines, Inc. On January 23, 2008, the National Mediation Board  
18 determined that the merger had created a “single carrier” for Railway Labor Act purposes,  
19 and, as a result, both pilot groups were combined into one consolidated bargaining unit.  
20 ALPA was the collective bargaining representative of the combined group of US  
21 Airways’ pilots between January 13 and April 18, 2008, and USAPA has been the  
22 collective bargaining representative since April 18, 2008.

23 28. ALPA’s constitution provided that, when two ALPA-represented pilot  
24 groups were to be combined as part of an airline merger, the pilot seniority lists would be  
25 integrated on a “fair and equitable” basis in a “final and binding” arbitration between the  
26 two pilot groups. In accordance with the ALPA constitution, and consistent with the  
27 requirements of a September 23, 2005 agreement negotiated between ALPA, the East  
28 Pilots, the West Pilots, and pre-merger US Airways, Inc. and America West Airlines, Inc.

1 (the “Transition Agreement”), the East Pilots and West Pilots, through separate counsel,  
2 participated in such an arbitration before neutral arbitrator George Nicolau. Arbitrator  
3 Nicolau rendered his decision in May 2007 (the “Nicolau Award”). ALPA presented the  
4 integrated seniority list mandated by the Nicolau Award to US Airways in late 2007, and,  
5 as required by the Transition Agreement, US Airways accepted that integrated seniority  
6 list on December 20, 2007. The Nicolau Award did not integrate pilots based strictly on  
7 each pilot’s “date-of-hire” with their pre-merger airline as the East Pilots had sought, but  
8 instead purported to fashion a “fair and equitable” integration attributing importance to  
9 “career expectations” at each pre-merger airline, placing approximately 500 senior East  
10 Pilots at the top of the seniority list, 1700 then-furloughed East Pilots at the bottom of the  
11 list, and blending the remainder of the East Pilots with the West Pilots generally according  
12 to their relative positions on their respective pre-merger seniority lists.

13 29. The East Pilots perceived the Nicolau Award to be less favorable to them as  
14 a group than the “date-of- hire” integrated seniority list they had sought from Arbitrator  
15 Nicolau. In response to the Nicolau Award, the East Pilots formed a new labor union,  
16 USAPA, whose constitution expressly mandates a “date-of-hire” integrated seniority list  
17 and prohibits implementation of the Nicolau Award. The East Pilots significantly  
18 outnumber the West Pilots, and, following a representation election between USAPA and  
19 ALPA, the National Mediation Board certified USAPA as the new collective bargaining  
20 representative for the East Pilots and West Pilots on April 18, 2008. In subsequent  
21 collective bargaining negotiations with US Airways, and consistent with its constitutional  
22 mandate, USAPA proposed that US Airways agree to a “date-of-hire” integrated seniority  
23 list that is contrary to the Nicolau Award. The West Pilots perceived USAPA’s “date-of-  
24 hire” seniority position to be substantially less favorable to them as a group than the  
25 Nicolau Award.

26 30. On September 4, 2008, the Named Addington Pilots, as the representatives  
27 of the West Pilot class, filed suit against USAPA and US Airways in the United States  
28 District Court for the District of Arizona. *Addington v. US Airline Pilots Association*,

1 Case No. CV 08-1633-PHX-NVW. The Court dismissed US Airways, and the case  
2 proceeded to a jury trial against USAPA. The jury found in favor of the West Pilots on  
3 their claim for breach of the duty of fair representation, and the Court entered judgment  
4 against USAPA on or about July 17, 2009. The Court found that USAPA had breached its  
5 duty of fair representation to the West Pilots through its “date-of-hire” seniority proposals,  
6 “because it cast aside the result of an internal seniority arbitration solely to benefit East  
7 Pilots at the expense of West Pilots” and “failed to prove that any legitimate union  
8 objective motivated its acts.” (Findings of Fact and Conclusions of Law and Order  
9 (July 17, 2009) (Doc. No. 593) at 12:8-12.) The Court further ruled that “USAPA will be  
10 ordered to negotiate in good faith for the implementation of the Nicolau Award, defending  
11 that award in negotiations and presenting it with the single new CBA to the pilots for  
12 ratification vote.” (Id. at 45:22-24.)

13 31. USAPA appealed the Court’s decision in *Addington*, and, on June 4, 2010,  
14 the United States Court of Appeals for the Ninth Circuit reversed the judgment of the trial  
15 court. *Addington v. US Airline Pilots Ass’n*, 606 F.3d 1174, 1179-80 (9th Cir. 2010). The  
16 court held that the West Pilots’ potential claims against USAPA for USAPA’s alleged  
17 breach of the duty of fair representation, based on USAPA’s position on seniority issues  
18 in its collective bargaining negotiations with US Airways, were not ripe for judicial  
19 determination because US Airways and USAPA have not completed those negotiations  
20 and actually entered into a collective bargaining agreement. The Ninth Circuit stated that  
21 “[a]t this point, neither the West Pilots nor USAPA can be certain what seniority proposal  
22 ultimately will be acceptable to both USAPA and the airline as part of the final CBA,” *id.*  
23 at 1179, and that “USAPA’s final proposal may yet be one that does not work the  
24 disadvantages Plaintiffs fear, even if that proposal is not the Nicolau Award.” *Id.* at 1181.  
25 Although the Ninth Circuit “[le]ft USAPA to bargain in good faith pursuant to its DFR,  
26 with the interests of all members-both East and West-in mind, ***under pain of an***  
27 ***unquestionably ripe DFR suit, once a contract is ratified,***” *id.* at 1180 n.1 (emphasis  
28 added), it did not discuss the legal rights, constraints and obligations of *US Airways* in

1 those collective bargaining negotiations, including how US Airways could complete those  
2 negotiations without exposure to potential legal liability in light of the conflicting  
3 assertions by the West Pilots and USAPA regarding the permissibility of USAPA's  
4 position on the Nicolau seniority list. The West Pilots petitioned for rehearing of the  
5 Ninth Circuit's decision, and that petition was denied on July 8, 2010.

6 32. USAPA is inalterably opposed to implementation of the Nicolau Award.  
7 USAPA, through counsel's statements to this Court, has previously agreed that "USAPA  
8 will not in any event negotiate for the arbitrated Seniority List," and that it is "undisputed"  
9 that the seniority list in any collective bargaining agreement with US Airways "won't be  
10 the Nicolau -- the seniority arbitration award." Since the Ninth Circuit's decision,  
11 USAPA has re-affirmed its position regarding a "date-of-hire" integrated seniority list and  
12 expressed the view that, in light of the *Addington* decision and as mandated by its  
13 constitution, it is now free to negotiate for and agree to a collective bargaining agreement  
14 which does not incorporate the Nicolau Award. For example, on June 18, 2010, USAPA  
15 posted on its website a "Q&A Regarding Ninth Circuit Decision in Addington Case,"  
16 which stated, *inter alia*, that "the Ninth Circuit made it clear that USAPA is presumably  
17 free to negotiate and ratify a contract ***that does not include Nicolau.***"

18 33. If US Airways agrees to USAPA's position on the integrated seniority list,  
19 the West Pilots will seek legal recourse against USAPA and US Airways. According to  
20 counsel for the West Pilots, the West Pilots assert that, following the Ninth Circuit's  
21 ripeness decision in *Addington*, "nothing has changed regarding the validity of the  
22 Nicolau Award and its proper inclusion into a single collective bargaining agreement for  
23 all US Airways Pilots." The West Pilots "will be watching the negotiations carefully."  
24 And, according to their counsel, "they will act if US Airways and USAPA agree to a  
25 seniority proposal" that does not reflect the Nicolau Award. The West Pilots have further  
26 threatened that US Airways would be held liable for "facilitat[ing]," or "assist[ing],"  
27 USAPA's alleged breach of the duty of fair representation if it were to accept a non-  
28 Nicolau seniority list. Moreover, the West Pilots have indicated that they would seek an

1 injunction blocking implementation of any non-Nicolau seniority list to which US  
2 Airways and USAPA might agree.

3         34. US Airways has never taken any position on the merits of the seniority  
4 dispute between the East Pilots and West Pilots. It always has been, and still is, neutral.  
5 However, US Airways does have a legitimate interest, consistent with the purposes of the  
6 Railway Labor Act, to promptly and successfully complete its negotiations with USAPA  
7 for a combined collective bargaining agreement. An integrated seniority list is an  
8 essential component of such a collective bargaining agreement. Consistent with the  
9 mandate of its constitution, USAPA has made crystal clear that there will be no integrated  
10 seniority list and hence no combined collective bargaining agreement unless US Airways  
11 accepts an integrated seniority list based on date-of-hire principles rather than the Nicolau  
12 Award. But the West Pilots, consistent with their position on the merits in the *Addington*  
13 trial, have recently made crystal clear that they will mount a legal challenge against  
14 USAPA *and US Airways* in response to any agreement to a non-Nicolau integrated  
15 seniority list. US Airways is thus caught in between these two competing legal positions  
16 by the pilot groups regarding the Nicolau seniority list. And because the legal dispute  
17 between the East Pilots and the West Pilots has not been resolved, and because the Ninth  
18 Circuit's decision in *Addington* provides no guidance to US Airways, unless this Court  
19 issues declaratory relief clarifying the parties' respective rights, constraints and  
20 obligations, US Airways faces substantial damage to its operations and finances through  
21 either: (i) protracted negotiations and a possible work stoppage at the end of those  
22 negotiations, potentially exposing US Airways to hundreds of millions of dollars in lost  
23 revenue and customer goodwill, if it does not agree to USAPA's requirements for a non-  
24 Nicolau integrated seniority list; or (ii) litigation by the West Pilots against USAPA and  
25 US Airways for USAPA's alleged breach of the duty of fair representation if it does agree  
26 to USAPA's requirements for a non-Nicolau integrated seniority list, exposing US  
27 Airways to potentially tens of millions of dollars in litigation costs and monetary  
28

1 damages, as well as an injunction invalidating an integrated seniority list and combined  
2 collective bargaining agreement that had taken literally years to negotiate.

3 35. This situation is untenable, and, for the reasons explained below, entitles US  
4 Airways to immediate judicial relief in the form of a declaratory judgment regarding the  
5 parties' respective rights and obligations. Specifically, as permitted by the alternative  
6 pleading provisions of Federal Rule of Civil Procedure 8(d), US Airways brings this  
7 action seeking, in the alternative, three declarations to the effect that: (i) USAPA's  
8 continued insistence on a collective bargaining agreement which does not incorporate the  
9 Nicolau Award as required by the Transition Agreement violates its duty under Section 2,  
10 First, of the Railway Labor Act to "exert every reasonable effort to make and maintain  
11 agreements concerning rates of pay, rules, and working conditions..., in order to avoid  
12 any interruption to commerce or to the operation of any carrier," and entry into a  
13 collective bargaining agreement that does not incorporate the Nicolau Award as required  
14 by the Transition Agreement constitutes a breach of USAPA's duty of fair representation  
15 to the West Pilots and therefore US Airways is prohibited from accepting or implementing  
16 a non-Nicolau seniority list, *or, in the alternative*, (ii) USAPA's continued insistence on  
17 and/or entry into a collective bargaining agreement which does not incorporate the  
18 Nicolau Award would *not* constitute a breach of USAPA's obligations under Section 2,  
19 First, of the Railway Labor Act and/or its duty of fair representation to the West Pilots and  
20 therefore US Airways is *not* prohibited from accepting or implementing a non-Nicolau  
21 seniority list; *or, in the alternative*, (iii) regardless of whether or not USAPA's insistence  
22 on and/or entry into a collective bargaining agreement which does not incorporate the  
23 Nicolau Award would constitute a breach of USAPA's obligations under Section 2, First,  
24 of the Railway Labor Act and/or its duty of fair representation to the West Pilots, US  
25 Airways would not be liable to the West Pilots under the Railway Labor Act or otherwise  
26 if it were to enter into a collective bargaining agreement with USAPA that did not  
27 incorporate the Nicolau Award.  
28

**FIRST CLAIM FOR RELIEF**

**DECLARATORY JUDGMENT (28 U.S.C. § 2201)**

**FOR A DECLARATION THAT AGREEMENT TO A NON-NICOLAU SENIORITY LIST WOULD VIOLATE THE RAILWAY LABOR ACT**

1  
2  
3  
4  
5 36. US Airways re-alleges and incorporates by reference each and every  
6 allegation contained in Paragraphs 1 through 35 of this Complaint as though set forth fully  
7 herein.

8 37. 28 U.S.C. § 2201 provides that, “[i]n a case of actual controversy within its  
9 jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading,  
10 may declare the rights and other legal relations of any interested party seeking such a  
11 declaration, whether or not further relief is or could be sought. Any such declaration shall  
12 have the force and effect of a final judgment or decree and shall be reviewable as such.”

13 38. A party to collective bargaining negotiations under the Railway Labor Act  
14 has a ripe cause of action -- during those negotiations and prior to final agreement --  
15 against the other party to those negotiations for a failure to “exert every reasonable effort  
16 to make and maintain agreements concerning rates of pay, rules, and working  
17 conditions . . . , in order to avoid any interruption to commerce or to the operation of any  
18 carrier.” 45 U.S.C. § 152 (First); *see generally Association of Flight Attendants v.*  
19 *Horizon Air Indus., Inc.*, 976 F.2d 541 (9th Cir. 1992) (affirming district court’s decision  
20 that carrier’s bargaining conduct, which occurred before and during National Mediation  
21 Board-supervised negotiations, violated Section 2, First).

22 39. US Airways seeks a declaratory judgment to the effect that: (a) USAPA is  
23 presently violating its duty under Section 2, First, of the Railway Labor Act “to exert  
24 every reasonable effort to make and maintain agreements concerning rates of pay, rules,  
25 and working conditions” by continuing to insist upon a “date-of-hire” integrated seniority  
26 list that does not incorporate the Nicolau Award and is not in accord with the  
27 requirements of the Transition Agreement; and (b) entry into a collective bargaining  
28 agreement between US Airways and USAPA which does not incorporate the Nicolau

1 Award would constitute a breach of USAPA's duty of fair representation to the West  
2 Pilots in violation of the Railway Labor Act and therefore US Airways is prohibited from  
3 accepting or implementing a non-Nicolau seniority list. US Airways brings this claim  
4 against USAPA, whose interests are adverse to US Airways with respect to this claim, and  
5 against the Named Addington Pilots and the West Pilot Class as persons required to be  
6 joined if feasible pursuant to Federal Rule of Civil Procedure 19.

7 40. USAPA's current and continued insistence on an integrated seniority list  
8 that is based on "date-of-hire" principles rather than the Nicolau Award violates Section 2,  
9 First, of the Railway Labor Act because such insistence constitutes a failure "to exert  
10 every reasonable effort" to reach agreement with US Airways on a combined collective  
11 bargaining agreement. This violation is evident because USAPA is aware of the  
12 following facts: the seniority arbitration before Arbitrator Nicolau was conducted  
13 between the East Pilots and West Pilots, represented by their own counsel, as a "final and  
14 binding" arbitration under the ALPA constitution; the Transition Agreement signed by the  
15 East Pilots, the West Pilots, ALPA, and pre-merger US Airways, Inc. and America West  
16 Airlines, Inc. required ALPA to present and US Airways to accept the Nicolau Award;  
17 such tendering and acceptance of the Nicolau Award has occurred in accordance with the  
18 terms of the Transition Agreement; and the West Pilots, through counsel, continue to  
19 assert that they are not being fairly represented by USAPA and, as set forth in  
20 Paragraph 33, have advised that they will initiate litigation once again if agreement is  
21 reached between USAPA and US Airways on an integrated seniority list that does not  
22 incorporate the Nicolau Award.

23 41. Furthermore, as set forth in Paragraph 33, the West Pilots presently assert  
24 that it would be a breach of USAPA's duty of fair representation to the West Pilots under  
25 the Railway Labor Act (and would be a breach of legal obligations by US Airways) if  
26 USAPA were to enter into a collective bargaining agreement with US Airways that did  
27 not incorporate the Nicolau Award. On the other hand, as set forth in Paragraph 32,  
28 USAPA presently asserts that, after the Ninth Circuit's decision in *Addington*, it is free to

1 negotiate for and agree to a non-Nicolau seniority list in keeping with the mandate of its  
2 constitution.

3 42. The uncertainty surrounding the lawfulness under the Railway Labor Act of  
4 the entry into a collective bargaining agreement which does not include the Nicolau  
5 Award will prevent the successful completion of negotiations between US Airways and  
6 USAPA. The resulting delay undermines the purposes of the Railway Labor Act, which  
7 include “to provide for the prompt and orderly settlement of all disputes concerning rates  
8 of pay, rules, or working conditions.” 45 U.S.C. § 151a(4). Moreover, on information  
9 and belief, if US Airways does not agree to a non-Nicolau integrated seniority list during  
10 the current collective bargaining negotiations, USAPA will ultimately attempt to exercise  
11 its right to engage in a work stoppage once permitted to do so under the Railway Labor  
12 Act. Such a result also would undermine the purposes of the Railway Labor Act, which  
13 include “[t]o avoid any interruption to commerce or to the operation of any carrier  
14 engaged therein.” 45 U.S.C. § 151a(1).

15 43. US Airways is aggrieved by the violations of law alleged herein. Unless the  
16 Court issues declaratory relief resolving the relevant legal issues, US Airways will be  
17 substantially injured. US Airways has no prompt, adequate and effective remedy at law  
18 and this action is the only means available to it for the protection of its rights.

19 44. US Airways thus seeks a declaration of the parties’ respective rights,  
20 constraints, and obligations in the current collective bargaining negotiations. US Airways  
21 seeks this declaration in order to: eliminate the uncertainty surrounding the lawfulness of  
22 USAPA’s bargaining position on seniority issues; enable US Airways and USAPA more  
23 promptly to reach a collective bargaining agreement that will permit the East Pilots and  
24 West Pilots to be combined into a single pilot work group; and avoid a possible disruption  
25 to US Airways’ flight operations, and attendant economic harm, from protracted  
26 negotiations and/or a subsequent work stoppage under the Railway Labor Act.

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**SECOND CLAIM FOR RELIEF**  
**DECLARATORY JUDGMENT (28 U.S.C. § 2201)**  
**FOR A DECLARATION THAT AGREEMENT TO A NON-NICOLAU**  
**SENIORITY LIST WOULD *NOT* VIOLATE THE RAILWAY LABOR ACT**

45. US Airways re-alleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 35 of this Complaint as though fully set forth herein.

46. US Airways asserts this Claim in the alternative to its First Claim.

47. 28 U.S.C. § 2201 provides that, “[i]n a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such a declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.”

48. US Airways seeks a declaratory judgment to the effect that: (a) USAPA’s current insistence on an integrated seniority list other than as reflected in the Nicolau Award does *not* violate its duty under Section 2, First, of the Railway Labor Act to “exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions,” and (b) entry into a collective bargaining agreement which does not incorporate the Nicolau Award would *not* constitute a breach of USAPA’s duty of fair representation to the West Pilots in violation of the Railway Labor Act and therefore US Airways is *not* prohibited from accepting or implementing a non-Nicolau seniority list. US Airways brings this claim against the Named Addington Pilots and the West Pilot Class, whose interests are adverse to US Airways with respect to this claim, and against USAPA as an entity required to be joined if feasible pursuant to Federal Rule of Civil Procedure 19.

49. As set forth in Paragraph 33, the West Pilots presently assert that it would be a breach of USAPA’s duty of fair representation to the West Pilots under the Railway Labor Act (and would be a breach of legal obligations by US Airways) if USAPA were to

1 enter into a collective bargaining agreement with US Airways that did not incorporate the  
2 Nicolau Award. On the other hand, as set forth in Paragraph 32, USAPA presently asserts  
3 that, after the Ninth Circuit's decision in *Addington*, it is free to negotiate for and agree to  
4 a non-Nicolau seniority list in keeping with the mandate of its constitution.

5 50. The uncertainty surrounding the lawfulness under the Railway Labor Act of  
6 the entry into a collective bargaining agreement which does not include the Nicolau  
7 Award will prevent the successful completion of negotiations between US Airways and  
8 USAPA. The resulting delay undermines the purposes of the Railway Labor Act, which  
9 include "to provide for the prompt and orderly settlement of all disputes concerning rates  
10 of pay, rules, or working conditions." 45 U.S.C. § 151a(4). Moreover, on information  
11 and belief, if US Airways does not agree to a non-Nicolau integrated seniority list during  
12 the current collective bargaining negotiations, USAPA will ultimately attempt to exercise  
13 its right to engage in a work stoppage once permitted to do so under the Railway Labor  
14 Act. Such a result also would undermine the purposes of the Railway Labor Act, which  
15 include "[t]o avoid any interruption to commerce or to the operation of any carrier  
16 engaged therein." 45 U.S.C. § 151a(1).

17 51. US Airways is aggrieved by the violations of law alleged herein. Unless the  
18 Court issues declaratory relief resolving the relevant legal issues, US Airways will be  
19 substantially injured. US Airways has no prompt, adequate and effective remedy at law  
20 and this action is the only means available to it for the protection of its rights.

21 52. US Airways thus seeks a declaration of the parties' respective rights,  
22 constraints, and obligations in order to: eliminate the uncertainty surrounding the  
23 lawfulness of USAPA's bargaining position on seniority issues and of any agreement by  
24 US Airways to USAPA's non-Nicolau seniority proposals; enable US Airways and  
25 USAPA to more promptly reach a collective bargaining agreement that will permit the  
26 East Pilots and West Pilots to be combined into a single pilot work group; and avoid the  
27 possible disruption to US Airways' flight operations, and attendant economic harm, from  
28 protracted negotiations and/or a subsequent work stoppage under the Railway Labor Act.

**THIRD CLAIM FOR RELIEF**

**DECLARATORY JUDGMENT (28 U.S.C. § 2201)**

**FOR A DECLARATION THAT US AIRWAYS' AGREEMENT TO A NON-NICOLAU SENIORITY LIST WOULD NOT SUBJECT US AIRWAYS TO LIABILITY**

53. US Airways re-alleges and incorporates by reference each and every allegation contained in Paragraphs 1 through 35 of this Complaint as though fully set forth herein.

54. US Airways asserts this Claim in the alternative to its First and Second Claims.

55. 28 U.S.C. § 2201 provides that, “[i]n a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such a declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.”

56. US Airways seeks a declaratory judgment to the effect that, regardless of whether USAPA’s insistence on and/or entry into a collective bargaining agreement without the Nicolau Award violates the Railway Labor Act, US Airways would not be liable to the West Pilots under the Railway Labor Act or otherwise if it were to enter into such a collective bargaining agreement. US Airways brings this claim against the Named Addington Pilots, the West Pilot Class, and USAPA on the grounds that their interests are adverse to US Airways with respect to this claim and/or on the grounds that they are persons required to be joined if feasible pursuant to Federal Rule of Civil Procedure 19.

57. The West Pilots have asserted, on the basis of the District Court’s judgment in *Addington* and all of the facts which led to that judgment, that it would be a breach of USAPA’s duty of fair representation to the West Pilots if USAPA were to enter into a combined collective bargaining agreement with US Airways that did not incorporate the Nicolau Award. The basis for this asserted breach, according to the West Pilots, is that,

1 by blocking implementation of the Nicolau Award, USAPA has discriminated (and is  
2 continuing to discriminate) against the West Pilots and has acted (and is continuing to act)  
3 without any legitimate union objective. As set forth in more detail in Paragraph 33, the  
4 West Pilots have threatened that US Airways would be held liable for “facilitat[ing],” or  
5 “assist[ing],” USAPA’s alleged breach of the duty of fair representation if it were to  
6 acquiesce in USAPA’s insistence on a non-Nicolau integrated seniority list.

7 58. Upon information and belief, the West Pilots’ threat to sue US Airways for  
8 “facilitat[ing],” or “assist[ing],” USAPA’s breach of duty of fair representation is based  
9 on a theory that US Airways would be “colluding” with USAPA’s alleged discriminatory  
10 conduct if US Airways were to agree to a non-Nicolau seniority list. *See, e.g., Price v. S.*  
11 *Pac. Transp. Co.*, 586 F.2d 750, 752 (9th Cir. 1978) (“Joinder of the employer is  
12 permissible when, as in this case, the employee alleges that the employer is implicated in  
13 the union’s breach of its duty of fair representation.”); *see also Raus v. Bhd. Ry. Carmen*  
14 *of the U.S. and Canada*, 663 F.2d 791, 798 (8th Cir. 1981) (“the question is whether there  
15 are well-plead allegations of something like collusion between the railroad and the  
16 union”). But the undisputed facts in this case show otherwise. For more than three years,  
17 US Airways has waited for the two pilot groups to resolve their seniority dispute. And,  
18 during that time, US Airways has remained neutral, has accepted the Nicolau list when  
19 tendered by ALPA, has not accepted or encouraged USAPA’s contrary “date-of-hire”  
20 seniority demands, and has not shown any animosity whatsoever to the West Pilots or the  
21 East Pilots. The pilots’ seniority dispute, however, remains unresolved following the  
22 Ninth Circuit’s decision in the *Addington* case, and US Airways continues to face the  
23 threat of a labor dispute involving significant operational disruptions and substantial  
24 financial costs. In such circumstances, and contrary to the assertions by the West Pilots,  
25 any potential agreement by US Airways with USAPA on a non-Nicolau seniority list  
26 would not be the result of actionable “collusion” by US Airways in USAPA’s alleged  
27 breach of its duty of fair representation to the West Pilots. *See, e.g., Rakestraw v. United*  
28 *Airlines, Inc.*, 765 F. Supp. 474, 493-94 (N.D. Ill. 1991) (holding that carrier was not

1 liable for collusion in union's breach of duty of fair representation to minority group of  
2 pilots where carrier agreed to union's seniority-list demands, because carrier was acting in  
3 response to union's increased bargaining leverage and not out of hostility or contempt  
4 toward minority pilot group), *aff'd in relevant part and rev'd in part on other grounds*,  
5 981 F.2d 1524 (7th Cir. 1992); *Kozera v. IBEW*, 892 F. Supp. 536 (S.D.N.Y. 1995).

6 59. Accordingly, in the event the Court does not find the declaratory judgments  
7 requested in the first and second claims for relief to be warranted because the Court  
8 concludes that it cannot determine at this time whether USAPA's insistence on a non-  
9 Nicolau seniority list would or would not violate its duty under Section 2, First, of the  
10 Railway Labor Act or its duty of fair representation to the West Pilots, US Airways is  
11 entitled, in the alternative, to a declaratory judgment confirming that it would not be liable  
12 under the Railway Labor Act or otherwise if it were to agree to USAPA's seniority-list  
13 demands.

14 60. US Airways is aggrieved by the violations of law alleged herein. Unless the  
15 Court issues declaratory relief resolving the relevant legal issues, US Airways will be  
16 substantially injured. US Airways has no prompt, adequate and effective remedy at law  
17 and this action is the only means available to it for the protection of its rights.

18 61. US Airways thus seeks a declaration of its rights in order to: eliminate the  
19 legal uncertainty surrounding any agreement by US Airways to USAPA's non-Nicolau  
20 seniority proposals; enable US Airways and USAPA to more promptly reach a collective  
21 bargaining agreement that will permit the East Pilots and West Pilots to be combined into  
22 a single pilot work group; and avoid the possible disruption to US Airways' flight  
23 operations, and the attendant economic harm, from protracted negotiations and/or a  
24 subsequent work stoppage under the Railway Labor Act. The requested declaration also  
25 will promote the purposes of Section 2, First, of the Railway Labor Act, 45 U.S.C. § 152  
26 (First), which imposes an affirmative legal duty on carriers "to exert every reasonable  
27 effort to make and maintain agreements concerning rates of pay, rules, and working  
28 conditions . . . in order to avoid any interruption to commerce."

**PRAYER FOR RELIEF**

1  
2 US Airways prays for judgment against the Named Addington Pilots, the West  
3 Pilot Class, and USAPA as follows:

4 1. **For a declaration that:** (a) USAPA is currently violating its duty under  
5 Section 2, First, of the Railway Labor Act “to exert every reasonable effort to make and  
6 maintain agreements concerning rates of pay, rules, and working conditions” by its  
7 continued insistence in current collective bargaining negotiations upon an integrated  
8 seniority list other than as reflected in the Nicolau Award, and (b) entry into a collective  
9 bargaining agreement between US Airways and USAPA which does not incorporate the  
10 Nicolau Award would constitute a breach of USAPA’s duty of fair representation to the  
11 West Pilots in violation of the Railway Labor Act, and therefore US Airways is prohibited  
12 from accepting or implementing a non-Nicolau seniority list; or

13 2. **In the alternative, for a declaration that:** (a) entry into a collective  
14 bargaining agreement between US Airways and USAPA which does not incorporate the  
15 Nicolau Award would *not* constitute a breach of USAPA’s duty of fair representation to  
16 the West Pilots in violation of the Railway Labor Act; and (b) USAPA would therefore  
17 *not* violate its duty under Section 2, First, of the Railway Labor Act “to exert every  
18 reasonable effort to make and maintain agreements concerning rates of pay, rules, and  
19 working conditions” if it continues to demand that US Airways agree to an integrated  
20 seniority list other than as reflected in the Nicolau Award, and therefore US Airways is  
21 *not* prohibited from accepting or implementing a non-Nicolau seniority list; or

22 3. **In the alternative, for a declaration that,** regardless of whether it would  
23 constitute a breach of USAPA’s duty of fair representation to the West Pilots or otherwise  
24 violate the Railway Labor Act for USAPA to insist upon or enter into a collective  
25 bargaining agreement that does not incorporate the Nicolau Award, US Airways would  
26 not be liable under the Railway Labor Act or otherwise if it were to enter into such a  
27 collective bargaining agreement; and  
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4. For such other, further, and/or different relief as the Court may deem just and proper.

Dated: July 26, 2010

US Airways, Inc.

By: s/ Karen Gillen

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