

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**

CASE NO.: 0:17-cv-60917

SPIRIT AIRLINES, INC.

Plaintiff,

v.

AIR LINE PILOTS ASSOCIATION,
INTERNATIONAL; SPIRIT AIRLINES
MASTER EXECUTIVE COUNCIL;
STUART MORRISON; BRIAN COLEY;
MICHAEL LORUSSO; TODD HIRSHON;
MICHAEL LUCKSTONE; RYAN
PACHKOFKY; JAMES ACKERMAN,
TIM CONNORS; ANTONIO NASSAR,
PAUL SLOTTEN and MICHAEL MATYAS,

Defendants.

COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiff Spirit Airlines, Inc. (“Spirit” or the “Company”), for its Complaint herein against the Air Line Pilots Association, International (“ALPA”), which represents pilots at Spirit, the ALPA Master Executive Council (“MEC”), a representative body that, under the International’s Constitution and Bylaws, makes all decisions on matters affecting Spirit pilots;¹ MEC Chairman Captain Stuart Morrison, MEC Vice Chairman Captain Brian Coley, and MEC Secretary-Treasurer Captain Michael LoRusso; as well as MEC members Captain Todd Hirshon, First Officer Michael Luckstone, Captain Ryan Pachkofsky, Captain James Ackerman, Captain Tim Connors and First Officer Antonio Nassar; and MEC Negotiating Committee Members Captain Paul Slotten and Captain Michael Matyas (collectively, “Defendants”), states as follows:

¹ For purposes of this Complaint, references herein to ALPA include the MEC except as otherwise noted.

INTRODUCTION

1. Over the past seven days, the pilots employed by Spirit Airlines, Inc. (“Spirit” or the Company”) have been engaged in a pervasive illegal work slowdown that has caused approximately 300 flight cancellations and has disrupted the travel plans of over 20,000 customers, while causing Spirit to incur approximately \$8.5 million in lost revenue and irreparable harm to its goodwill with its customers. On this past Sunday, May 7 alone, Spirit was forced to cancel 81 flights due to pilot unavailability, equaling approximately 17% of its scheduled flying for the day. The pilots are engaged in this illegal slowdown in order to bring pressure on Spirit during current negotiations for an amended collective bargaining agreement pursuant to Section 6 of the Railway Labor Act (“RLA”), 45 U.S.C. §151 et seq. This slowdown is in direct violation of the RLA, which prohibits work slowdowns and strikes during collective bargaining negotiations, as expressly recognized by a series of court decisions, including by this Circuit in *Delta Air Lines v. Air Line Pilots Association, International*, 238 F.3d 1300 (11th Cir. 2001). Spirit has asked ALPA to fulfill its legal obligation under the RLA to take all necessary steps to end this illegal slowdown, but the union has failed effectively to do so. Spirit therefore asks this Court to issue a temporary restraining order and preliminary injunction compelling an immediate end to this illegal work slowdown.

2. Spirit files this lawsuit under the Railway Labor Act, 45 U.S.C. § 151 *et seq.* (the “RLA”), against ALPA, the MEC, and its officers, agents and members, including the individual defendants, to prohibit them from engaging in, and to require them to make every reasonable effort to end this illegal concerted work slowdown -- specifically to require Defendants to discourage and terminate unlawful concerted actions by pilots that include refusing to accept “junior assignment” flying and refusing to pick up “open time” flying. The

purpose of these concerted efforts is indisputably to cause flight cancellations in order to pressure Spirit in its current collective bargaining negotiations with ALPA, the union representing the Spirit pilots. These concerted efforts represent a significant increase, compared to normal status quo operations, in the rate at which pilots have refused to pick up open time or junior assignment opportunities. These actions are unlawful under the RLA, and impose irreparable harm to Spirit and the traveling public if not enjoined.

3. The status quo obligation in Section 2, First, of the RLA not only prohibits ALPA from instigating or encouraging a work slowdown which alters the status quo during collective bargaining, it also requires that ALPA make all reasonable efforts to prevent or stop a slowdown that is occurring even if the union did not instigate the slowdown. ALPA has utterly failed to meet its obligation under the RLA.

4. The applicable legal precedent confirms that ALPA's attempt to put pressure on Spirit in ongoing contract negotiations by disrupting operations is a blatant violation of its status quo obligations under Section 2, First, of the RLA. *Delta Airlines v. Air Line Pilots Association, International*, 238 F.3d 1300 (11th Cir. 2001). ALPA instigated the illegal slowdown by encouraging pilots to not accept junior assignment flying or pick up open time flying, and has failed effectively to stop it upon demand by Spirit.

5. The Spirit pilots' concerted refusal to accept junior assignments or pick up open time flying has dramatically impacted Spirit's operations leading to cancellations throughout its system, and most particularly for flights departing from Fort Lauderdale, Chicago-O'Hare, Detroit, and Las Vegas.

6. The requirements for a temporary restraining order and preliminary injunction are plainly met here. Spirit will succeed on the merits of its claims under the RLA because

the compelling evidence leaves no doubt that the Spirit pilots, as represented by ALPA, are violating the RLA-mandated status quo by substantially disrupting Spirit's operations to gain leverage in collective bargaining.

7. The irreparable injury showing that is typically required to obtain injunctive relief does not apply under the RLA. *See Consol. Rail Corp. v. Ry. Labor Executives' Ass'n*, 491 U.S. 299, 303-04 (1989). Nonetheless, irreparable injury is present in this circumstance. Spirit has suffered and will continue to suffer irreparable harm in the form of lost customer goodwill and damage to its reputation if it continues to have to cancel or delay flights, and the public will suffer harm as a result of cancelled flights and lost time. There can be no claim of harm to Defendants in issuing an injunction because an injunction would simply prohibit them from engaging in illegal activity.

8. Spirit has attempted to resolve this dispute without judicial intervention by repeatedly putting ALPA on notice of its violations of the RLA and demanding that it make all reasonable efforts to stop the slowdown as required by the RLA. Yet, following such notice, ALPA's actions have done nothing to abate the concerted activity. The best evidence that ALPA has not done enough to stop the concerted efforts is overwhelming evidence that the concerted efforts to disrupt Spirit's operations continue, thus requiring Spirit to seek injunctive relief. For the reasons set forth below, in this situation, Section 2, First, of the RLA requires the issuance of injunctive relief.

JURISDICTION

9. This action arises under the Railway Labor Act, 45 U.S.C. § 151 et seq. The Court has jurisdiction over this action under 28 U.S.C. § 1331.

VENUE

10. Venue is proper within the Southern District of Florida pursuant to 28 U.S.C. § 1391(b) & (e).

THE PARTIES

Plaintiff Spirit

11. Spirit is a commercial air carrier, headquartered in Miramar, Florida, with domestic and international operations, and employs nearly 6,000 employees. Spirit is a “common carrier by air” as defined in the Federal Aviation Act of 1958 and a “carrier” as defined by the RLA. Spirit currently serves over 220 non-stop markets in the U.S., Canada, Latin America and the Caribbean, and operates over 400 flights per day to more than 60 destinations using a fleet of 102 narrow-body Airbus aircraft. Most of Spirit’s flying in these markets is low-frequency, and is primarily point-to-point (as opposed to hub and spoke) flying. Spirit’s customer base consists primarily of leisure travelers.

Defendants

12. Defendant Air Line Pilots Association, International is a unincorporated labor organization, with its principal offices in Washington, D.C. and Herndon, Virginia. ALPA has been the certified collective bargaining representative under the RLA of the Spirit pilots since October 29, 1996. ALPA has four international officers: a President, First Vice-President, Vice President-Administration/Secretary, and Vice President-Finance/Treasurer. Along with the Executive Vice Presidents, these four officers make up the International’s Executive Council, which advances the objectives and policies established by the Board of Directors, interprets the Constitution and By-Laws, and bears fiduciary responsibility for ALPA.

13. Defendant ALPA MEC is a representative body that, under the ALPA Constitution and Bylaws, makes all decisions on behalf of ALPA regarding matters affecting Spirit pilots. The MEC consists of the Chairman and Vice-Chairman from each of the three Local Executive Councils (“LECs”) maintained by ALPA at Spirit. The MEC members, in turn, elect an MEC Chairman, Vice Chairman and Secretary-Treasurer, who serve two-year terms. The current MEC Chairman is Captain Stuart Morrison, the MEC Vice Chairman is Captain Brian Coley, and the MEC Secretary-Treasurer is Captain Michael LoRusso. The remainder of the individual defendants are MEC members Captain Todd Hirshon, First Officer Michael Luckstone, Captain Ryan Pachkofsky, Captain James Ackerman, Captain Tim Connors and First Officer Antonio Nassar; and MEC Negotiating Committee members Captain Paul Slotten and Captain Michael Matyas.

BACKGROUND OF THE DISPUTE

Background Regarding the Parties’ Contract Negotiations

14. Spirit and ALPA are parties to a collective bargaining agreement (“CBA”) governing the terms and conditions of employment for Spirit’s nearly 1600 pilots. The current CBA became effective on August 1, 2010 and became amendable on July 31, 2015. Spirit proposed, and ALPA agreed, to commence negotiations for an amended CBA prior to the amendable date. Accordingly, in February 2015, Spirit and ALPA commenced negotiations in the hopes of reaching an early agreement. In August 2015, the contract became amendable but the parties continued in their effort to reach an agreement without formal negotiations under Section 6 of the Railway Labor Act (“Section 6 negotiations”).

15. In January 2016, however, ALPA informed Spirit that it wanted to discontinue the early negotiations process and shift to formal Section 6 negotiations. Accordingly, the parties commenced Section 6 negotiations in February 2016. In July 2016, the parties

requested the services of the National Mediation Board (“NMB”) to facilitate negotiations for an amended CBA. NMB-facilitated negotiations, generally attended by representatives of ALPA, Captain Morrison, and the MEC’s Negotiating Committee members, began in September 2016 and are ongoing.

16. The parties have been able to agree on 22 out of 31 sections of the CBA. The parties began negotiating over the economic sections of the CBA in mid-March 2017 and are far apart on pay rates, in particular, with ALPA arguing it requires “industry standard” rates comparable to the largest legacy carriers: Delta, United, and American. Spirit has maintained that it recognizes the importance of a competitive contract in compensating its employees, and to assist with recruiting new pilots to come to Spirit, but that the appropriate industry comparators must take into account Spirit’s business model as an ultra-low cost carrier (“ULCC”) and its relative size, among other things.

17. Specifically, on March 17, 2017, ALPA presented a comprehensive economic proposal with wage rates, retirement benefits, profit-sharing and retroactive pay components that would result in an incremental cost of more than \$1.9 billion over a five year period.

18. On April 13, 2017, the Company presented a counterproposal that would have provided pilots with, among other benefits, a 30% increase in pay on the date of signing of the amended agreement. The Company’s proposal represented an incremental cost of more than \$440 million over a five year period.

19. ALPA expressed its strong displeasure with the Company’s offer at the table and during the parties’ most recent bargaining session, on April 25, 2017 – just days before the job action began – ALPA presented a counterproposal that made virtually no changes to its

March 17, 2017 economic proposal. Soon after the last bargaining session, Spirit began to see a significant spike in cancellations due to pilot unavailability.

Spirit Pilots' Concerted Refusal To Accept Open Time and Junior Assignment Flying.

20. Almost immediately following the last bargaining session, Spirit began to see a significant increase in cancellations due to pilot unavailability.

21. Spirit pilots bid for their monthly flying schedules ("lines of flying") in the prior month. Following assignment of the lines of flying to lineholder pilots (i.e., those pilots who have an assigned line of flying for the month), some amount of flying for the month remains unassigned each month, and some becomes open as a result of contractually-required schedule adjustments. This unassigned flying is referred to as "open time" flying. Additional flying may become part of the open time pool of flying during the course of the month due to pilots dropping trips or calling in sick.

22. Like at many airlines, open time flying is a normal and expected part of Spirit's crew scheduling process and is addressed in Section 25 of the parties' CBA. Over at least the past three years, initial open time typically consists of approximately four percent of Spirit's scheduled flights at the beginning of each month. During that same time period, this open time flying has regularly been picked up by available pilots who are thereby able to be paid more than their bid line of flying would yield.

23. In cases where a trip has not been picked up by a pilot at regular pay, Spirit may offer such open time flying as a "junior assignment" trip, which is paid at 200% of the pilot's regular pay. Junior assignment trips are offered to pilots who are scheduled to be off duty during that period in reverse seniority order.

24. Picking up open time or accepting junior assignments is at times referred to as “overtime” for pilots because it is in addition to the flying assigned to them on their monthly schedules. While individual pilots are not required under the CBA to pick up open time or accept junior assignments, as a matter of the regular practice over the past three years, Spirit pilots have accepted open time and junior assignments at a rate that that allows Spirit to cover its scheduled flying. That is the “status quo” basis on which Spirit, like virtually all air carriers, has staffed its pilot workgroup.

25. Spirit also maintains a pool of reserve pilots who do not have a particular scheduled line of flying to operate flights in the event a scheduled pilot is unavailable and there has been no change to the percentage of reserve pilots (30%) that the Company maintains for the month of May. Together, the reserve complement and the status quo practice of pilots accepting open time and junior assignment flying has been sufficient to cover the Company’s flying over the past three years or more under normal operations.

26. Over the past 12 months, the Company has taken steps to improve its operational reliability. These steps included, for example, adding additional block time to flights (i.e., increasing the scheduled duration of flights), increasing length of turn time so that flights have time to meet their scheduled departure, eliminating back-to-back red eye flying for flight crew to avoid fatigue, improving maintenance overnight capture to minimize maintenance-caused delays, and altering the scheduling of flight crews in LaGuardia, Newark, Boston and Los Angeles to minimize the possibility of crew unavailability during weather or other irregular operations situations.

27. Accordingly, over the past year, until the recent change in pilot behavior involving the illegal work slowdown, the Company has not cancelled more than 17 flights per

day for lack of crew availability the number of cancelled flights for lack of pilot availability has never exceeded 17 flights in a day.

28. However, since on or about May 1, 2017, the Company has experienced a significant decline in the number of pilots picking up open time and/or accepting junior assignments, which has forced the Company to cancel approximately 300 flights due to pilot unavailability from May 1 - May 7, adversely impacting thousands of customers. On Sunday, May 7 alone, Spirit was forced to cancel 81 flights due to lack of pilot crew availability - a full 17% of the Company's scheduled flying for the day.

29. In addition, training pilots (i.e. those pilots who train other pilots and who are also represented by ALPA) bid for their monthly training schedules, and, like the scheduling process for regular pilots, a certain number of training events are left unassigned at the start of the month. Under normal operations, training pilots pick up these open assignments. Since May 1, 2017, however, like the regular pilots, training pilots have been refusing to pick up open training events. For instance, in the past year, before this change of behavior, only one pilot training event was cancelled due to lack of coverage. Between May 1 and May 7, however, 12 training events were cancelled due to lack of training pilot coverage as a result of training pilots refusing to pick up these training events from open time. If this behavior continues, Spirit estimates that it will be forced to cancel 35 to 45 scheduled training events in May due to lack of coverage. Moreover, the 30.9 percent of training pilots bidding training lines for the month of June is the lowest since January of 2016 and, as a result, there are currently 239 open training events in the month of June. As a result, Spirit estimates that approximately 80 to 100 June training events will be cancelled. These actions will have far-

reaching impact on Spirit's operations because Spirit will not have a sufficient number of pilots available to cover flying over the busy summer months.

Intimidation and Harassment of Pilots Who Pick Up Open Time

30. Some of Spirit's pilots are also engaged in a campaign to threaten and intimidate other pilots who accept junior assignments or pick up open time flying in order to disrupt the Company's operations with the purpose of obtaining leverage in negotiations.

31. For instance, in an April 29, 2017 recorded telephone call with Crew Scheduling, a pilot reported that "a lot of guys are not picking up stuff up next month and I don't want to be one of those guys that you know, they are shaming for picking shit up next month. So, I'd rather finish this month off good and then I'm going to need the money for next month." The pilot then asked if his name could be kept off of a published junior assignment list because he wanted to keep himself "in the clean," and "everybody [is] getting on everybody's case about picking shit up." The pilot further stated why the slowdown was occurring: "Unfortunately, we don't have a contract. . . . I am a firm believer that we don't have anything that we can do to get the Company to come on our side to get a contract. So if this will help a little bit . . . we're trying to show to send a message to the company, you know, pay us All those trips would be eaten up in a heartbeat if we had a contract." Another pilot's recorded outgoing voicemail message states that, "if this is crew scheduling, I'd love to help out just as soon as an industry-standard contract is approved...."

32. On May 5, 2017, in response to a call from Crew Scheduling requesting that a Captain pick up an open time trip, the Captain responded: "... the really, really sad thing is -- and I'm just going to go ahead and say this because I know it is on a recorded line. I would be interested, except for the fact that the pilot group has taken the hostilities and the harassment of anybody picking up open time to an extreme level So, I would like to, I really would. I

would be happy to come in and fly. But, due to those things, I'm unfortunately going to have to decline." The Captain further stated "I would come in and fly, but it literally has gotten to the point of people threatening physical violence."

33. Spirit became aware of a website named "Spachokers.com." on May 4, 2017. The website stated that it was "dedicated to those pilots that continue to undermine the pilot group by saving the day for the company!" The website further contained the title "HEROES OF THE MONTH" and stated "#CompanyHeroes: These people don't give a shit about you or your family" before listing the names of Spirit pilots who had accepted open time flying, inserting certain derogatory comments, and specifically indicating which individual was a "NON ALPA MEMBER." The website also listed the names of so-called "INSTRUCTOR WHORES," and "WHORES OF THE WEEK," which listed the number of hours flown by a pilot in the month of March. The website was removed on the same day that the Company became aware of it. When the Company attempted to determine who had started the site, it learned that the site was hosted by Godaddy.com but the registration information was made non-public.

34. Some Spirit pilots are also promoting refusing open time flying and intimidating pilots who pick up open time flying by denigrating those pilots on the Airline Pilot Central Forum ("APC"). APC is a publicly-accessible forum for pilots, generally grouped by airline, where pilots discuss a wide-range of topics pertaining to their employment, such as the currently ongoing contract negotiations. In approximately the past week, the posts on the APC Spirit blog/page have encouraged pilots to refuse open time and have begun to threaten/harass pilots who do pick up open time flying. These posts expressly tie the refusal to pick up open

time to obtaining leverage in the ongoing CBA negotiations with Spirit. For example, recent posts include²:

- “Up to 32 cancellations today again so far. Any ideas on how long these guys will let this go before coming to the table with a real deal?”
- “Never gets old when 400 of us picketed and when on strike in 2010 for our current contract and today 1500 pilots later we have coworkers taking JAs [junior assignment] to help the company continue the financial growth on our backs, it never gets old. Yesterday we cancelled 19 Today we cancelled 30 Tomorrow we already cancelled 9. Then bob Bendo and jyri will blame these daily cancellations on pilots not taking JAs, and somehow that small percentage will feel guilty and start helping in the name of keep NK³ from sinking. Please.”
- “Hold every JA accountable. List them all and call them out. Keep up the good work.”
- “Let's keep it simple: 1: get your awarded line 2: finesse it with IOT [Initial Open Time] and DOT [Daily Open Time] to make it commutable or higher credit without sacrificing days off when possible. (This includes you too TX conflict guys. If after the conflict, you have 18 days off then try to keep it at 18.) 3: fly your line 4: when at work, fly the contract. No waivers and no favors. 5: enjoy your days off and forget you have a phone. Pretty simple. If everyone just did this we'd have a contract by mid summer.”
- “Don't fall the tricks of crew scheduling. Flica alerts filled with trips finishing up in a base then next day deadhead back to the base that has crews not picking up the trip. Don't fall for the easy three day which is actually two if you get released from the last day deadhead. All you are doing is saving the company a lot of phone calls and ultimately a cancelled flight out of a base that's holding the line and doing whatever it takes. Don't undermine the guys that are fighting for your next contract. Stay home and enjoy your family time. Your days off are your days off.”
- [Discussing how a pilot was credited 212 hours in March 2017]: “In your list of ways to get that much credit you forgot be a total hour ***** and sell you union brother and hope of a contract down the river.”
- “Below min guar[antee] myself. It's hard to have the conviction and discipline not to pick up good trips! Look at the downside though.”
- “Several calls in the last 24 hours for JAs that I turned down yet no cancellations. What Vegas captains are turning my sacrifice into opportunity? If I'm going to

² Typographical errors in originals.

³ NK is the International Civil Aviation Organization code for Spirit.

lose on the money then these people should have consequences.”

- “Nice job LAS CAs...flight 170 is over 5 hours late...no Captain to be found...Clearly you did not like the fact another airline made gains today while we lag. As far as the others...Flica hasn't updated the JRM [junior man] log...here are recent chokers [names were ultimately deleted from the post by the site administrator.]”
- “Thanks to whoever just snagged that Denver overnight out of Vegas they were calling for all afternoon. Shmuck.”
- “Who was it? These people are going to find themselves on a Webpage dedicated to choking really soon.”
- [Regarding a pilot who picked up an open shift from DFW-LAS] “He has been counseled repeatedly, including immediately before accepting this, about his behavior. Don't let his green lanyard fool you, he doesn't give two **** about you or your fellow pilots. He will stab you in the back while smiling at your face. Be careful.”
- “Everyone needs to educate capt hat wearer in ord about his availability. It's disgusting!!! Every single month this happens.”
- [Regarding a post by the moderator that if people “persist in posting names and using profanity,” then the thread will be closed] “If people are using this forum as a tool to post names and take accountability, it will be done. A Movement is clearly underway. Close this thread...another will open...ban one member, he/she will be back with another account...Close the Spirit sub-thread and it will end up of the main page for Majors.”
- “Who's the dips@t on the SA [standing available] list CA side in Vegas. Anyone know him that can educate him?”
- [Regarding a flight that was 12 hours delayed] “I am proud!! I think rather than cancellations they delay until they can get someone to fold. It's just another indication that they are loosing this fight. Showing delays looks better than cancellations. Stay tough. Encourage everyone you fly with to spend that time off with family this summer. Turn off the phone on days off to make sure your rested up for you next trip. No extensions! No help!
- [Responding to the comment that stated: “When we sign a deal it will be because of u 10 genius guys on this board”] “The fact that you think it's 10 guys just nullified anything you say. WHATEVER IT TAKES.
- “[H]ow you cant see the pressure [cancelled flights] will bring is bewildering. Think of it like lots of mini strikes!! I just cancelled a couple days ago for lack of front end crew...Believe me, its more than 10 guys [who are participating in these

efforts]! Will this MAKE them come to the table? Maybe...maybe not. But it has to be putting a little pressure on them...I've always been a fan of a good JA (especially since they don't make it to me very often) yet not anymore. Just turned down a couple these last couple days. And I have a feeling more calls will be coming tomorrow. The only decision I'll have to make is whether to let it go to voicemail, or pick up to mess with them a bit!"

- "54 cancellations so far today via flightaware. Does the company have a good argument for a lawsuit? Sure, but a lawsuit would just push the aggression to the company that much farther resulting in fueling the fire and.....more cancelled flights costing them more money in the long run. Bring on the lawsuit...54 cancellations can easily turn into 154 cancellations. Ladies and gents, I believe things are about to get very ugly..."

ALPA's Efforts to Instigate the Unlawful Concerted Activity

35. ALPA laid the foundation for their campaign beginning on or about June 15, 2016, when the union posted a video online entitled "Whatever It Takes," that referenced the 2010 strike by Spirit's pilots and declared to pilots that "we will stand as one union and speak with one voice, just like we did in 2010, and do whatever it takes to get the contract we deserve."

36. On June 18, 2016, Defendants published a Spirit Pilot Alert, a publication the ALPA MEC, that stated: "On June 18, 2010, Spirit pilots returned to their cockpits. After five days on the picket lines, a tentative agreement was reached late in the day on June 16. For those five days, the pilots did not waver. Not a single Spirit pilot crossed the picket line and not a single Spirit plane took off. Instead, we held firm and stood together...Though our company has grown...our unity remains as strong as ever. Today, we speak with one voice to demand an industry-standard contract and – just like six years ago – we will do "whatever it takes." If you were here during the 2010 strike – thank you for holding the line. For those who joined Spirit after, we encourage you to celebrate our legacy of standing together. Fly Safe. Fly the Contract."

37. On December 6, 2016, ALPA's Negotiating Committee sent a Crew Brief, a publication to pilots, updating pilots on negotiations. The Negotiating Committee ended by saying: "We are confident that we will prevail as we all do whatever it takes to get an agreement."

38. On February 25, 2017, Defendants sent a Crew Brief to the pilots reviewing its progress during negotiations. The communications stated that the union was "disappointed" with the parties' progress and that it "shared [the pilots'] frustration."

39. Defendants followed up just a few days later with a communication to pilots indicating that the time soon would come to "put pressure" on the Company and for the pilots to "express [their] collective displeasure" with the Company's bargaining position. On February 27, 2017, Defendants sent a communication to pilots stating: "The Crew Brief sent out by the Negotiating Committee on Saturday, following what can only be characterized as a disappointing week of bargaining was intended to evoke a response. *The Committee is extremely pleased with the overwhelming response from the pilots indicating they wanted to do "Whatever it Takes" to bring these negotiations to a close.* The Committee has been treading a thin line with the communications we put out and you deserve an explanation why. *Ratcheting up the intensity of the message and expanding the activities of the SPSC [Strategic Preparedness and Strike Committee] to put pressure on the Company has always been the game plan.* We anticipated that bargaining would slow significantly once the economic sections were on the table and felt that would be *the right time to express our collective displeasure*... (emphasis added.)

40. On April 24, 2017, just prior to the concerted refusal to pick up open time and accept junior assignments that has resulted in significant cancellations, the ALPA MEC posted

a graphic on Facebook with a man being slapped across the face, with a tagline: “Not the high five Spirit pilots had in mind. Contract now.”

41. Two days later, on April 26, 2017, ALPA Local Executive Council 109, including Defendants Tim Connors and Antonio Nassar, altered the usual ALPA communication sign-off of “Fly Safe, Fly Your Contract” to add, “Fly your schedule.” This sign-off telling pilots to only fly the trips that are on their monthly schedule was a directive not to accept open time and junior assignment flying, and followed a lengthy discussion of open time.

ALPA Has Failed to Stop the Unlawful Job Action Despite Spirit’s Attempts to Resolve This Dispute Without Judicial Intervention

42. Spirit has attempted to resolve this dispute by putting ALPA on notice of its violations of the RLA and asking that they make all reasonable efforts to stop the concerted efforts as required by the RLA. On May 3, 2017, John Bendoraitis, Spirit’s Senior Vice President and Chief Operating Officer, personally contacted counsel for ALPA, Art Luby, and outlined the above conduct. Mr. Luby responded that ALPA had already sent an email communication to the Spirit pilots regarding the issue of pilots refusing to pick up open time flying. The communication stated, among other things, that the actions being taken by Spirit pilots could subject the union to an injunction.

43. Following ALPA’s May 3, 2017 email to the pilots (which was not posted on the ALPA website, Facebook page or Twitter page) there was no improvement in the conduct. To the contrary, there was a spike in cancellations due to pilot unavailability. The number of cancellations due to pilot unavailability nearly doubled on the day following ALPA’s communication.

44. Mr. Bendoraitis spoke with Mr. Luby on May 4, 2017 and informed him of the state of the operations and the need for ALPA to stop the unlawful conduct. Mr. Bendoraitis also spoke with the MEC Chairman, Stuart Morrison, and informed him of the state of the operations, including the prior and current days' cancellations. Mr. Bendoraitis also informed Captain Morrison that Mr. Bendoraitis would be sending him a formal letter putting the MEC and ALPA on notice that the Company expects them to take all steps necessary to end the current unlawful campaign and to prevent any future unlawful action by the membership. As a result, on May 4, 2017, Mr. Bendoraitis sent a letter to ALPA reiterating the need to maintain the status quo and stating that the "Company . . . expects you to take all steps necessary to end the unlawful campaign . . ."

45. On May 5, 2017, Spirit suffered 52 flight cancellations due to pilot unavailability. ALPA sent a communication to pilots at the end of the day on May 5, 2017, which admitted that Spirit was suffering an unusual number of flight cancellations and further admitted that the union and its members were responsible by law to stop the concerted refusal to pick up open time and accept junior assignments. ALPA's communication stated that: "Over the past several days, Spirit Airlines has experienced a high level of flight cancellations" and asserted that the Company "has accused the Association and Sprit pilots of instigating a concerted action to disrupt operations by discouraging pilots from picking up this flying." ALPA conceded that "In this situation, there is no question that ALPA and its members are required by the Railway Labor Act to make every reasonable effort to restore and preserve Spirit's normal operations. This means not banding together to avoid or advocate avoiding open time and taking all steps necessary to assure that pilots who decide to pick up open time are not harassed or discouraged from doing so." Following this communication, Spirit pilots

posted further comments on the APC that confirmed that the pilots were engaged in a planned, concerted effort to refuse open time flying during the month of May, referred to by at least one pilot on the forum as the “May Massacre.” For example:

- “The Company doesn't think that the pilot contract is important so I'm using my contractual rights to do other things. See you in June!”
 - “June will be just fine, Bendo! Don't change a thing.”
 - “Now the Company wants me to give up my personal time to clean up their mess? Sorry NO! I'm sure the June bid cycle will be fine!”
 - “Exactly! We our doing this on our own will. Let's all stay strong till we get to the finish line. Keep spreading the word and educating the new guys coming on to the line. Pretty soon the company has to give.”
 - “Haha just got the email from the union. It's working boys and girls! Keep up the good work, don't help the company out. Pretty sure we will see light at the end of the tunnel.”
 - “It would only be a special kind of dumbass that would even consider picking up more because of this stupid threat. "OMG.....the company is threatening lawsuit.....we could get in really really really big trouble.....I better go work on my day off"! The only ones I think we'd have to worry about are the ones we've finally turned to see the light go back to their choking ways while justifying it!
- I've really never studied the history of past pilot groups suffering any ill fate due to the so called work actions. It just baffles me that any court would even consider awarding retribution if people simply don't want to work on their days off! Kind of mind blowing.....”
- “As of a moment ago, we're up to 82 cx'd. High Five! This management team are a fraud and useless.”
 - “I wonder how realistic it for management to say. "We can't have anymore cancelled flights. Here's a TA" with all the transition conflicts and not picking up the phone seems to be the best leverage the pilot group have so far.”

46. ALPA's May 5, 2017 communication failed to stop the illegal conduct. On May 6, 2017, Spirit suffered 63 flight cancellations due to pilot unavailability – a full 15% of its

scheduled flights for that day. On May 7, 2017, Spirit suffered 81 flight cancellations due to pilot unavailability - more than 17% of its scheduled flights for that day.

47. Mr. Bendoraitis spoke with ALPA counsel Art Luby on May 6 and May 7 and informed him that the refusal to accept open time and junior assignment flying was continuing and informed him of the number of resulting cancellations. Also, the CEO of Spirit, Robert Fornaro, spoke with the ALPA International President, Captain Tim Canoll, and informed him of the continued job action and the ineffectiveness of the letters. As a result of the ongoing concerted refusal to accept open time and junior assignment flying, Spirit sent another letter to Captain Morrison on May 7, 2017 reiterating that ALPA had failed to stop the job action and that it was obligated to do so under the RLA.

48. On the afternoon of May 8, 2017, after Defendants' counsel had been given notice of this lawsuit, ALPA filed a grievance alleging that the Company is not adequately staffed. ALPA has not previously raised any such allegation and neither ALPA counsel nor the MEC Chairman raised any such allegation during Mr. Bendoraitis' discussions with them over the past several days when he contacted them regarding the significant increase in cancellations due to the concerted work slowdown by the pilots. The Company has not reduced pilot staffing for the month of May.

49. Despite this, ALPA has not taken any further steps to effectively stop this illegal work slowdown.

The Spirit Pilots' Unlawful Job Action Has Irreparably Harmed Spirit and the Traveling Public

50. The Spirit pilots' concerted refusal to accept open time and junior assignment flying has been effective, and these changes in the status quo cannot be explained by "chance." Spirit has an elaborate system for tracking and compiling detailed data regarding delayed

departures, taxi times, maintenance write-ups, and a number of other variables that impact Spirit's operations.

51. Since on or about May 1, 2017, for flights operated by Spirit's pilots, there has been a significant increase in the number of flight cancellations. As a result of these changes in operational performance, the travel plans of many thousands of members of the traveling public have been disrupted because of cancelled flights. Cancelled flights due to pilot unavailability have impacted over 20,000 passengers since May 1.

52. This data demonstrates that the Spirit pilots have been engaged in a concerted effort to alter the status quo and illegally slow down the operation through refusal to accept open time and junior assignment flying. Specifically, a statistical analysis shows that the abnormally high rates of flight cancellations that Spirit has been experiencing since the start of May is not the result of random statistical variation, weather, or changes in other factors that vary systematically with flight cancellations. However, because the sharp spike in Spirit's cancellations coincides with several communications by the Company's pilots threatening to disrupt the Company's operations as well as a decline in pilots willingness to accept open time, it is reasonable to conclude the increase in pilot-staffing related cancellations is a result of a concerted effort among its pilots to exert leverage on the Company during contract negotiations.

53. A comparison of Spirit's operations with its competitors' operations also demonstrates that the increase in delays and cancellations is a result of the Spirit pilots' concerted efforts. This comparison is important because Spirit's operations are subject to the same weather and any other airport specific issue that would impact cancellations. Even though Spirit is a relatively small carrier (it comprises less than 3% of the U.S. airline

industry's scheduled mainline flights on a typical day), Spirit cancelled more flights between May 3 and May 7 than the rest of the U.S. airline industry combined.

54. All of the increases in operational metrics described above are considered "statistically significant." In other words, these increases were all well in excess of what conventional statistical analysis would consider to be "random" occurrences.

55. As a result of dramatic changes in Spirit pilot behavior in refusing to accept open time and junior assignment flying and ALPA's refusal to do everything it can to stop the conduct, Spirit has suffered serious and irreparable harm and if the concerted refusal to accept open time and junior assignment flying continues unabated, Spirit will be unable to operate its flight schedules. As described above, from May 1, 2017 to May 7, 2017, Spirit has been forced to cancel approximately 300 flights (which represents 10% of its flights for that period) for lack of pilot availability and, of course, cancelled flights translate directly into unhappy customers and the loss of goodwill. This lost customer goodwill is difficult if not impossible to replace or to rectify with monetary compensation. Once a customer becomes dissatisfied as a result of a poor travel experience, it is extraordinarily difficult and expensive to convince that customer to return. This is especially concerning for Spirit, which under new leadership has focused on improving reliability and the customer experience and has made significant strides in that regard over the past 12 months.

56. ALPA's and the Spirit pilots' actions are also causing irreparable harm to the traveling public. Over 20,000 customers have been adversely affected by the illegal work slowdown over the past 7 days, and more are continuing to be harmed every day. This is more than the total number of customers that had their plans disrupted by a pilot-staffing cancellation during the first four months of the year.

57. Each flight that is late or cancelled results in disruption to the customers' daily lives, including missing an important family events, vacation plans, and business obligations. This harm to the traveling public is real and in many situations extremely harmful and disruptive. This is especially true for an airline like Spirit whose customers are primarily leisure travelers and are often traveling at this time of year for vacations, weddings, graduations and other important personal events. Moreover, because of Spirit's relatively smaller size compared to the large legacy carriers and its network of flying, it often only flies to a particular destination once or twice per day, making it far more costly and difficult to re-accommodate customers due to cancellations. In fact, the large spike in pilot-driven cancellations suffered by the Company has also resulted in a massive spike in the amount Spirit has had to pay to re-accommodate customers, either by paying for hotel and meal vouchers, or by having purchase tickets on other airlines to transport customers to their destination. For example, on May 4th Spirit was forced to spend \$1.1 million, 90% of which was due to crew cancellations, on passenger re-accommodation fees, more than it had spent on any other day in 2017.

58. Spirit estimates that the costs to the Company associated with each flight cancelled due to pilot unavailability is \$22,500 per crew cancelled flight, excluding goodwill. Spirit estimates that the lost revenue to the Company from refunded passengers due to cancelled flights is approximately \$2,300 per flight, excluding goodwill. Spirit estimates that the costs to the Company associated with each flight delayed due to pilot unavailability is \$66.67 per delay minute, excluding goodwill. Spirit estimates that the overtime associated with the management of the cancelled flights has cost the airline approximately \$150,000. In total, Spirit has suffered approximately \$8.5M in losses, excluding customer goodwill.

Item	Type	Cost Per Type	Total Dollars
Cancellations	300 cancels	\$22,500	\$6,750,000
Refunds	3,048 itineraries or portions of itineraries	\$234	\$712,000
Delays	11,242 minutes	\$66.67	\$750,000
Overtime	Airports, Reservations and Crew Scheduling		\$150,000
Total Estimated Impact			\$8,500,000

59. Cancelled flights translate directly into unhappy customers and lost customer goodwill, which is a precious commodity. This lost customer goodwill is difficult if not impossible to replace or to rectify with monetary compensation, particularly for customers whose interrupted travel plans had negative consequences on their lives. Some percentage of those customers who have been directly impacted will undoubtedly question whether to fly Spirit in the future, and instead choose another airline — known in the airline industry as “booking away.” A press report of the cancellations at Fort Lauderdale illustrates this point: “Tempers flared at Fort Lauderdale-Hollywood International Airport, Sunday, as the cancellations of nine Spirit Airlines flights led frustrated passengers to demand answers from officials... The situation caused upset travelers to lash out at the airline’s personnel... It’s ridiculous, and I’m not going to fly Spirit anymore,” said another passenger in line.”⁴

60. And regardless of whether the operation is returned to normal, it is likely that certain of these customers will never return. If other things are equal, a customer is more likely to choose an airline that he or she believes will arrive on-time and with which the customer has had a previous good experience. Moreover, customers who have bad experiences in the form

⁴ Ann Keil, *9 Spirit flights cancelled at FLL; officials deny pilot strike*, WSVN (May 7, 2017), <http://wsvn.com/news/local/9-spirit-flights-canceled-at-fll-officials-deny-pilot-strike/>

of cancelled flights discuss these experiences with friends, family members, and colleagues and often times broadly share their experience through social media channels, as Spirit has already experienced in the past several days as a result of the pilots' actions. This public denunciation of Spirit has the added effect of eroding the goodwill of other customers or potential customers who were not directly impacted by the cancelled flight, but who may now be less likely to consider flying Spirit in the future. In addition to the loss of customer goodwill, the deterioration in operational performance metrics caused by the pilots has also caused irreparable harm to Spirit's brand and reputation by lowering Spirit's on-time rankings as measured by the Department of Transportation. These rankings are important because customers and potential customers rely on them to make informed decisions regarding airline selection. And the widespread and publicly available nature of airline operational performance metrics results in relative operational performance being a key element of competition among carriers. The pilots' conduct will also continue to cause additional irreparable harm every day that it continues.

61. In 2016, the Company has had the best reliability in its history. For instance, in 2016, Spirit's arrivals within 14 minutes of scheduled arrival time as reported by the Department of Transportation, rose approximately 15 percentage points to approximately industry average. Similarly, in 2016, the DOT's reported Customer Complaints per 100,000 Customers dropped from a high of approximately 19 in 2015 to approximately 4 in December 2016. With approximately 300 cancellations so far in May, the Company's DOT-reported ratings will plummet, meaning that the hard work of the Company's employees in 2016, and the good will that their efforts created, will be effectively reversed.

62. Flight cancellations also directly translate into harm to the traveling public. Each flight that is late or cancelled results in disruption to the customers' daily lives, including missing important family events, vacation plans, and business obligations. Thus, a delayed or cancelled flight can be extremely disruptive to a passenger's life. And when this happens, those customers become much more likely to "book away" on their next flight.

63. In addition, ALPA's campaign is directly harming Spirit's employees, who are forced to handle justifiably irate customers and are being required to put their best foot forward, and sometimes put in extra hours, to address the flight cancellations caused by Spirit's pilots, in much-less than ideal circumstances. Thus, in addition to disrupting the lives of the traveling public and harming Spirit, ALPA is also causing direct harm to Spirit employees.

64. Given the large number of members of the traveling public impacted by the pilots' actions, the long-term damage and loss of goodwill and reputation to Spirit and its employees, as well as the long-term damage and harm to the traveling public, is obviously significant. And for each day that the pilots' actions continue, this long-term damage and harm will become greater. Simply put, at some point the massive daily harm that the Company is suffering will be too much to overcome, and will have a permanent impact on the Company's future.

FIRST CAUSE OF ACTION - VIOLATION OF RAILWAY LABOR ACT

65. Plaintiff realleges and incorporates by reference the allegations set forth in Paragraphs 1-64, inclusive.

66. The concerted refusal by Spirit pilots to accept open time and junior assignment flying in order to put pressure on Spirit in ongoing contract negotiations by disrupting

operations through the use of its safety campaign is a blatant violation of its status quo obligations under Section 2, First, of the RLA.

67. Until completion of the RLA negotiation/mediation process (which has not occurred here), Section 2, First, imposes two obligations that are at issue here: (1) it prohibits a union and its members from instigating, encouraging, or participating in a work action (or any other change in the status quo); and (2) it requires a union to make all reasonable efforts to prevent or stop a work action whether it has instigated the work action or not. ALPA and the Spirit pilots are violating both of these obligations.

68. Section 2, First, of the RLA, 45 U.S.C. § 152, First, imposes an affirmative legal duty on employers, unions, and employees “to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions . . . in order to avoid any interruption to commerce.” This provision prohibits either party from altering the status quo or otherwise attempting to employ economic self-help from the moment a union is certified until the parties have exhausted the elaborate negotiation and mediation mechanisms provided for under the RLA.

69. An injunction is an appropriate remedy to compel the performance of this legal duty. Spirit and ALPA have not exhausted the procedures required by the RLA. Accordingly, the concerted campaign by Spirit pilots, to slow down Spirit’s operations, with ALPA’s direction and failure to stop it, changes the status quo and as such, violates Section 2, First, of the RLA.

PROPRIETY OF INJUNCTIVE RELIEF

70. No showing of irreparable injury is required to obtain an injunction against an unlawful violation of the status quo obligations under the RLA. In *Conrail*, the Supreme Court

held that “[t]he district courts have subject-matter jurisdiction to enjoin a violation of the status quo pending completion of the required procedures, without the customary showing of irreparable injury.” 491 U.S. at 303 (emphasis added); *see also United Air Lines*, 243 F.3d at 362-64. Thus, upon a showing that a union or its members have altered the status quo, a preliminary injunction should issue as a matter of course. The statistical evidence – paired with ALPA’s express directives to the pilots to alter the status quo -- justify such relief without further analysis.

71. Even if a showing of irreparable injury to the Company were required, Spirit has suffered and will continue to suffer irreparable injury as a result of Defendants’ unlawful job actions. As a direct result of Defendants’ illegal slowdown, Spirit has suffered irreparable harm in the form of lost customer goodwill and a loss of reputation.

72. Spirit has no adequate remedy other than injunctive relief because of the irreparable harm it is suffering as a result of the illegal actions of Defendants, and will continue to suffer irreparable harm without injunctive relief.

73. The traveling public is also suffering irreparable harm as a result of the illegal actions of Defendants, and will continue to suffer irreparable harm without injunctive relief. The public interest alone warrants an injunction.

74. Defendants are engaged in an ongoing concerted effort to delay and interfere with Spirit’s operations. A preliminary injunction is necessary in order to prevent this disruption to Spirit’s operations and the resultant damage to Spirit’s goodwill, brand, reputation, and relationship with its customers. Absent a preliminary injunction, Defendants and ALPA’s members will be free to continue to disrupt Spirit’s operations.

75. As to each item of relief sought, greater injury will be inflicted on the public and upon Spirit if such relief is denied than will be inflicted upon Defendants by the granting of the relief sought.

WHEREFORE, Plaintiff prays for relief as follows:

1. That this Court issue a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction, restraining and enjoining the Defendants, and each of them, their members, agents, and employees, and all persons and organizations acting by, in concert with, through, or under them, or by and through its or their orders, from calling, permitting, instigating, authorizing, encouraging, participating in, approving, or continuing any form of interference with Plaintiff's airline operations, including, but not limited to, any strike, work stoppage, sick-out, slowdown, work to rule campaign, concerted refusal to accept voluntary or overtime flight assignments, or other concerted refusal to perform normal pilot operations consistent with the status quo, including but not limited to, slow taxiing, writing up maintenance items, calling in fatigued, delaying flights, refusing to answer a call from the scheduling, refusing to fly an aircraft that meets legal requirements for flight, or refusing to accept voluntary or overtime flying, in violation of the RLA, 45 U.S.C. § 151 *et seq.*

2. That this Court further order that Defendants shall take all reasonable steps within their power to prevent the aforesaid actions and to refrain from continuing the aforesaid actions if commenced, including, but not limited to, the following:

- a. Instructing all pilots represented by Defendant ALPA and employed by Plaintiff to resume their normal working schedule and practices and providing Plaintiff a copy of all such instructions;
- b. Notifying all pilots represented by Defendant ALPA and employed by

Plaintiff, by the most expeditious means possible, of the issuance, contents, and meaning of the injunctive relief ordered and providing Plaintiff a copy of all such notices;

c. Including in such notice a directive from ALPA to Spirit's pilots not to engage in a concerted refusal to perform normal pilot operations consistent with the status quo, including but not limited to: slow taxiing, writing up maintenance items, calling in fatigued, delaying flights, refusing to answer a call from the scheduling, refusing to fly an aircraft that meets legal requirements for flight, refusing to accept voluntary or overtime flying, or otherwise engage in a concerted refusal to conduct pilot operations in the normal manner, and to cease and desist all such activity; and to cease and desist all exhortations or communications encouraging same, upon pain of fine, suspension, or other sanction by ALPA;

d. Posting the notice described above on Defendant ALPA's internet websites and social media accounts and providing Plaintiff a copy of the notices;

e. Including the contents of such notice on all recorded telephone hotlines under control of Defendants, until such time as the Court has acted on Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunctive Relief, and providing Plaintiff a copy of all such messages; and

f. Distributing the contents of such notice through all non-public communication systems maintained by Defendants, including any telephone trees, pilot-to-pilot communication systems, or similar systems, and providing Plaintiff a copy of the notices.

3. That this Court further order that Defendants are prohibited from including in such notices (or distributing contemporaneously with such notices) any statements that are

intended or could reasonably be interpreted to mean that pilots should continue to engage in the previously-described conduct notwithstanding the injunctive relief including:

- a. Any assertion that the injunctive relief does not prohibit individual pilots from making voluntary decisions to engage in such actions; and
- b. Any explanation of circumstances in which it would be appropriate or necessary for pilots to engage in such actions prohibited by the injunctive relief.

4. That this Court further order that that Defendants report to the Court by 5 p.m. on the day following issuance of any injunctive relief, by sworn affidavit, the methods used to effect the notice described above to all pilots represented by Defendant ALPA and furnish to the Court copies of all notices required to be furnished to Plaintiff by Defendants under the injunctive relief ordered; and

5. Such other and further relief as the Court deems proper.

DATED: May 8, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of May, 2017, I filed the foregoing document with the Clerk of the Court via CM/ECF and a true and correct copy of the foregoing was served on all counsel or parties of record on the attached Service List by the method indicated.

/s/ Humberto H. Ocariz
 Humberto H. Ocariz

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