

EDGAR N. JAMES\*  
STEVEN K. HOFFMAN\*  
DANIEL M. ROSENTHAL\*  
James & Hoffman, P.C.  
1130 Connecticut Avenue, N.W., Suite 950  
Washington, D.C. 20036  
Telephone: (202) 496-0500  
Facsimile: (202) 496-0555  
ejames@jamhoff.com  
skhoffman@jamhoff.com  
dmrosenthal@jamhoff.com

JEFFREY B. DEMAINE (SBN 126715)  
JONATHAN WEISSGLASS (SBN 185008)  
Altshuler Berzon LLP  
177 Post Street, Suite 300  
San Francisco, California 94108  
Telephone: (415) 421-7151  
Facsimile: (415) 362-8064  
jdemaine@altshulerberzon.com  
jweissglass@altshulerberzon.com

Attorneys for Defendant  
Allied Pilots Association

*\*Admitted pro hac vice*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

AMERICAN AIRLINES FLOW-THRU  
PILOTS COALITION, *et al.*,

Plaintiffs,

v.

ALLIED PILOTS ASSOCIATION, *et al.*,

Defendants.

Case No. 3:15-cv-03125-RS

**DECLARATION OF DAVID C. BROWN IN  
SUPPORT OF APA'S MOTION FOR  
SUMMARY JUDGMENT OR, IN THE  
ALTERNATIVE, FOR PARTIAL SUMMARY  
JUDGMENT**

Fed. R. Civ. P. 56

Date: April 21, 2016  
Time: 1:30 p.m.  
Courtroom: 3 - 17th Floor  
Judge: Hon. Richard Seeborg

1 I, DAVID C. BROWN, hereby declare as follows:

2 **I. Background**

3 1. I am a pilot employed by American Airlines (“American” or the “Company”). I was  
 4 hired by American in April 1989. I have a BS in finance from Texas A&M University. Prior to my  
 5 employment at American, I flew for Texas A&M University, charter and freight operators, and a  
 6 regional passenger carrier. I make this declaration in support of the Motion for Summary Judgment or,  
 7 in the alternative, for Partial Summary Judgment that I understand will be filed herewith by Defendant  
 8 Allied Pilots Association (“APA”) in the above-captioned case.

9 2. I have been a member of APA throughout my employment at American, holding  
 10 positions at both the local and national level since 1995. Among other things, from 1995 to 2002 I  
 11 served as a member of the APA Membership Committee (both at the local and national level); and was  
 12 a member of the APA Negotiating Committee for most of the period from October 2007 through  
 13 January 2015. I was acting Chairman of the Negotiating Committee from March 2014 to January 2015.

14 3. As part of the Negotiating Committee, I participated in negotiating the collective  
 15 bargaining agreements discussed below in this declaration: the December 2012 Collective Bargaining  
 16 Agreement (“2012 CBA”), the January 2013 Memorandum of Understanding Regarding Contingent  
 17 Collective Bargaining Agreement (“MOU”), the Merger Transition Agreement (“MTA”), and the  
 18 January 2015 Collective Bargaining Agreement (“2015 CBA”).

19 4. In the course of, and in order to facilitate, its regularly-conducted activities of  
 20 negotiating, administering, and enforcing its collective bargaining agreements, APA has a regular  
 21 practice of maintaining copies of those agreements, which are reduced to writing, copied, and filed  
 22 soon after they are negotiated and approved. The same is true of obtaining and maintaining copies of  
 23 the collective bargaining agreements of other air carriers, including but not limited to Delta Air Lines,  
 24 Inc. (“Delta”), United Airlines, Inc. (“United”), and Southwest Airlines Co. (“Southwest”), which are  
 25 consulted by APA’s Negotiating Committee in the course of determining its collective bargaining  
 26 objectives, priorities, and proposals, and in analyzing, evaluating, and responding to collective  
 27 bargaining proposals it receives from American’s negotiating committee. As a member of APA’s  
 28

1 Negotiating Committee, I frequently utilize and refer to these agreements maintained by APA, am  
 2 personally familiar with APA's practice of maintaining such agreements among its business records,  
 3 and can testify competently thereto.

4  
 5 **II. The AMR bankruptcy, merger with U.S. Airways, and related collective bargaining agreements**

6 5. American and its parent corporation, AMR Corp., filed for Chapter 11 bankruptcy on  
 7 November 29, 2011. The bankruptcy concluded when American's plan of reorganization as approved  
 8 on December 9, 2013.

9 6. In December 2012, after difficult negotiations, APA and American reached a collective  
 10 bargaining agreement that was submitted to and approved by the bankruptcy court. I will refer to that  
 11 agreement as the "2012 CBA," although its terms actually took effect on January 1, 2013. A true and  
 12 correct copy of relevant excerpts from the 2012 CBA is included in APA's compendium of exhibits as  
 13 Exhibit 4.

14 7. During the bankruptcy, a number of creditors, including the unions at American,  
 15 supported a merger with US Airways on the basis that the synergies between the two carriers would  
 16 create a stronger competitor and a more secure future for American. Ultimately, American did begin  
 17 considering a merger with US Airways in the bankruptcy process.

18 8. In preparation for the possible merger, the management and pilot unions at both  
 19 companies decided to negotiate a collective bargaining agreement that would govern the pilot group at  
 20 the combined company in the event of a merger. On January 15, 2013, those negotiations concluded in  
 21 a four-party agreement among American, US Airways, APA, and USAPA (the union that was certified  
 22 to represent the US Airways pilots), known as the Memorandum of Understanding Regarding  
 23 Contingent Collective Bargaining Agreement ("MOU"). A true and correct copy of the MOU is  
 24 included in APA's compendium of exhibits as Exhibit 3.

25 9. The MOU was "contingent" because it would not take effect unless and until a merger  
 26 was approved by the bankruptcy court. Following a delay caused by an antitrust challenge brought by  
 27 the Department of Justice, the merger was eventually approved on December 9, 2013. In re AMR  
 28 Corp., Case No. 11-15463, Doc. 11402 (Bankr. S.D.N.Y.). On that date, the MOU became effective.

**Declaration of David C. Brown in Support of APA's Motion for Summary Judgment**

*American Airlines Flow-Thru Pilots Coalition v. Allied Pilots Assn.*, Case No. 3:15-cv-03125-RS

10. The MOU provided that pilots' terms and conditions of employment at the combined airline would be governed by the 2012 CBA between APA and American, with certain modifications specified in the MOU. See MOU ¶¶ 1, 3-4. The 2012 CBA as modified by the MOU is referred to as the "Merger Transition Agreement," or "MTA." Id. ¶ 1(a).

11. In short, as of the date of the merger, December 9, 2013, the Merger Transition Agreement governed the terms and conditions for all pilots at the combined airline.<sup>1</sup> As of that date, the former US Airways pilots and American pilots were both governed by the pay provisions of the MTA.

12. The MTA pay scale retained the structure established in the 2012 CBA. First, aircraft were grouped into five categories, Group I (the smallest aircraft) to Group V (the largest aircraft). Within each of those five categories, there was a separate pay scale for captains and first officers (the two positions in the cockpit crew). And all of the pay scales included a 12-step progression, based on a pilot's length of service. A pilot with 12 years length of service would be at the top of the pay scale for his or her particular Group and Captain/First Officer status.

13. Consistent with American's practice from prior mergers, the US Airways pilots were given credit for the length of service they had accrued at US Airways. The pre-merger US Airways pilots began getting paid under this approach as soon as the MTA took effect. This approach was widely known and understood within the American pilot group.

14. The MOU provided that, after a single union was certified to represent all of the pilots at the combined company, the union and the company would engage in another round of negotiations for a revised collective bargaining agreement, the "Joint Collective Bargaining Agreement," or "JCBA." See Exh. 3 ¶ 27. The product of those negotiations is now also known as the "2015 CBA,"

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<sup>1</sup> Although not directly relevant to this case, Paragraph 4 of the MOU provided that the terms of the MTA would become applicable to US Airways pilots "at the earliest practicable time for each term." MOU ¶ 4. As a result, the US Airways pilots continued to work under certain terms and conditions of their pre-merger contracts even after December 9, 2013. However, the MTA's pay scale took effect immediately on December 9.

because it was executed in January 2015. A true and correct copy of relevant excerpts from the 2015 CBA is included in APA's compendium of exhibits as Exhibit 2.

15. The table immediately below shows which collective bargaining agreement applied to the pilot groups during recent years.

	Prior to Dec. 9, 2013	Dec. 9, 2013 to February 1, 2015	February 1, 2015 to present
Pre-merger AA pilots	2012 CBA	MTA (modified 2012 CBA)	2015 CBA
Pre-merger USAir pilots	US Airways CBAs <sup>2</sup>		

### **III. Letter G**

16. Letter G is the name of an agreement between APA and American that was included in the 2015 CBA.

17. As background for Letter G, recall that pilots' pay is determined in part based on their "length of service." As described in the declaration of Arthur McDaniels, which I have reviewed and understand will be filed herewith, length of service for pay purposes ordinarily excludes a pilot's time on furlough or on most leaves of absence. See 2015 CBA §§ 11(A), 17(V)(4). For example, consider a pilot who was hired by American in 2000, furloughed in 2002, and recalled to service at American in 2009. Upon the pilot's departure in 2002, she would have two years length of service, and would still have two years length of service when she returned in 2009.

18. In the past, APA has often successfully negotiated with American to restore some or all of the length of service credit lost by furlougees. For example, as part of the 1997 CBA, in a side letter known as "Letter CC," the Company agreed to restore one-half of the length of service lost by

<sup>2</sup> As described in Paragraphs 20-23 of the declaration of Thomas Duncan, which I have reviewed and understand will be filed herewith, US Airways had a very complicated labor situation prior to the merger, with two separate groups of pilots operating under two separate collective bargaining agreements.

1 pilots furloughed between 1993 and 1997. A true and correct copy of Letter CC is included in APA's  
 2 compendium of exhibits as Exhibit 45. Subsequently, in 2001, in an agreement known as "Letter  
 3 CC(2)," the Company agreed to fully restore length of service to all pilots who had been furloughed.  
 4 A true and correct copy of Letter CC(2) is included in APA's compendium of exhibits as Exhibit 46.

5 19. Moreover, at several other airlines, pilots do not lose length of service credit while on  
 6 furlough at all—including at American's two principal competitors, Delta Air Lines, Inc. ("Delta"),  
 7 and United Airlines, Inc. ("United"). The 2012 United CBA provides that, "A Pilot shall continue to  
 8 accrue longevity [for pay purposes] when on furlough." A true and correct copy of relevant excerpts  
 9 from the 2012 United CBA is included in APA's compendium of exhibits as Exhibit 47, and the  
 10 quoted provision may be found therein in Section 3-B-3. The 2013 Delta CBA provides that  
 11 "longevity," which is used for pay purposes, is defined simply as "all time beginning at date of  
 12 employment as a pilot, and ending at termination of employment as a pilot, retirement as a pilot, or  
 13 death," regardless of furlough. A true and correct copy of relevant excerpts from the 2013 Delta CBA  
 14 is included in APA's compendium of exhibits as Exhibit 48 and the quoted provision may be found  
 15 therein at Section 2.A.157. Similarly, the 2009 CBA for Southwest Airlines Co. ("Southwest")  
 16 provides that, "A furloughed pilot shall ... continue to accrue longevity [for pay purposes] for a period  
 17 of three (3) years." A true and correct copy of relevant excerpts from the 2009 Southwest CBA is  
 18 included in APA's compendium of exhibits as Exhibit 49, and the quoted provision may be found  
 19 therein at Section 22.A.4.

20 20. In the negotiations leading to the 2015 CBA, APA proposed that the Company fully or  
 21 partially restore length of service to pilots who had been furloughed after the terrorist attacks of  
 22 September 11, 2001. The rationales for this proposal included that American previously agreed in 1997  
 23 and 2001 to partially or fully restore length of service lost by furlougees, and that other airlines do not  
 24 penalize furlougees in this way, i.e., by loss of service credit during the period of the furlough.

25 21. This agreement was memorialized in Letter G, which restores up to two years of this  
 26 lost length of service credit for pilots who had been furloughed from American or US Airways after  
 27 September 11, 2001. *See* Exh. 2 at Letter G (final page of excerpts from 2015 CBA). For example, if a  
 28 pilot flew at American for four years, then was furloughed for three additional years, the pilot would

ordinarily be credited with only four years length of service—but under Letter G, he or she is credited with six years.

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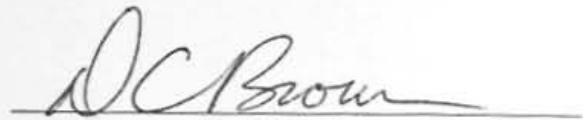
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**Declaration of David C. Brown in Support of APA's Motion for Summary Judgment**

*American Airlines Flow-Thru Pilots Coalition v. Allied Pilots Assn.*, Case No. 3:15-cv-03125-RS

1 I declare under penalty of perjury that the foregoing is true and correct on the basis of my  
2 personal knowledge and information from APA's business records. Executed on March 16, 2016, at  
3 LONDON, UK.

4  
5   
6 David C. Brown