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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 THOMAS DUNCAN 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, THOMAS L. DUNCAN, hereby declare as follows:

2 **I. Background**

3 1. I am a pilot employed by American Airlines (“American” or the “Company”). I make
4 this declaration in support of the Motion for Summary Judgment or, in the alternative, for Partial
5 Summary Judgment that I understand will be filed herewith by Defendant Allied Pilots Association
6 (“APA”) in the above-captioned case.

7 2. My airline career began on April 27, 1992, when I was hired as a First Officer at
8 American Eagle (“Eagle”). I remained employed at Eagle until July 31, 1996.

9 3. I was hired at TWA on August 1, 1996, and remained at TWA until its merger with
10 American in 2001. After the merger, I became employed at TWA LLC, an entity operated as part of
11 American Airlines and owned by its corporate parent, AMR Corporation. I was furloughed from TWA
12 LLC on May 1, 2003.

13 4. During the summer of 2004, I learned that I could “flow back” to Eagle as a furlougee
14 from American. I was placed on a waiting list to do so, and was called to training by Eagle on
15 December 29, 2004, more than a year and a half after I was furloughed. I worked at Eagle until I was
16 recalled to American from furlough on July 6, 2011.

17 5. I currently serve as a member of the American Airlines Pilots Seniority Integration
18 Committee (“AAPSIC”), which represents pilots employed by American prior to its merger with US
19 Airways in the ongoing seniority integration process, discussed in more detail below. In the course of,
20 and to facilitate, AAPSIC’s regularly-conducted activities in the seniority integration process, AAPSIC
21 has obtained and reviewed prior seniority integration arbitration decisions; collective bargaining
22 agreements in place at American going back at least to 1996 (including the Flow-Through Agreement),
23 as well as labor agreements from US Airways; seniority lists and detailed pilot employment
24 information from American; stipulations, position statements, reporter’s transcripts, and other
25 materials created for or in the current seniority integration arbitration; and correspondence relating to
26 that arbitration. As a member of AAPSIC, I have frequently utilized and referred to those materials as
27 reviewed by AAPSIC, and can testify competently thereto.

6. I also served as a union officer while at Eagle, as the chairperson of a Local Executive Council of the Air Line Pilots Association (“ALPA”), the labor organization that represented the Eagle pilots. I served in that capacity from 1995 to 1996.

7. In 2013, I served as member of a committee representing former TWA pilots in an arbitration related to the closure of the St. Louis pilot base in American’s bankruptcy.

II. American’s acquisition of TWA

8. In 2001, when I was a pilot at TWA, AMR Corp. purchased certain assets of TWA and temporarily operated those assets through TWA Airlines, LLC (“TWA LLC”) until such time as those assets could be transferred to and combined into the American Airlines operation. I am familiar with the events surrounding this acquisition through my personal experience as a TWA and American pilot and based on my review of the relevant collective bargaining agreements and seniority lists and other pilot information obtained by AAPSIC as discussed above.

9. All of the former TWA pilots (except three pilots) were transferred to TWA LLC with the intention that they would eventually be transferred to American.

10. On March 5, 2002, the National Mediation Board (“NMB”) determined that TWA LLC and American were operating as a single company, and on April 3, 2002, the NMB certified APA as the representative of pilots at American and at TWA LLC. *See American Airlines, Inc./Trans World Airlines, LLC*, 29 NMB 201, 2002 WL 399665 (2002); *American Airlines, Inc./Trans World Airlines, LLC*, 29 NMB 260, 2002 WL 512018 (2002).

11. On January 1, 2002, the collective bargaining agreement between APA and American began to apply to the pilots at TWA LLC. Supplement CC to the American/APA collective bargaining agreement, which established the integrated American/TWA seniority list, became effective as to all pilots in the combined pilot group (regardless of whether a pilot was working in the American or TWA LLC operation) on April 3, 2002, when the NMB certified APA as the bargaining representative of the combined pilot craft and class. A true and correct copy of Supplement CC is included in APA’s compendium of exhibits as Exhibit 16. Thereafter, all furloughs were to be administered in inverse seniority order based on that integrated seniority list, regardless of whether a pilot was working in the American or TWA LLC operation.

Declaration of Thomas Duncan in Support of APA’s Motion for Summary Judgment

12. Former TWA pilots began transferring from TWA LLC to American in 2003. However, the TWA-LLC pilots did not transfer to American in seniority order, but instead transferred whenever their aircraft type from TWA was transferred to American, so they essentially transferred to American with their planes.

III. Post-9/11 furloughs at American

13. Many former TWA pilots were furloughed either before or after making the transition from TWA LLC to American, as American cut capacity after the terrorist attacks of September 11, 2001.

14. I was one of the former TWA pilots who was furloughed before we were transferred from TWA LLC to American. At the time of my furlough, TWA LLC and American had been classified as a single company by the NMB, the pilots in the two corporations were covered by the same contract, and APA represented all of the pilots in both corporations.

15. After I was furloughed in May 2003, I was unemployed for six or seven weeks. Ultimately, I found a job with the railroad company CSX as a conductor and yard master in June 2003. Like me, some of the furloughed former TWA pilots did not immediately find work after being furloughed, and ended up in non-airline jobs.

16. In the context of concessionary negotiations to avoid bankruptcy in 2003, APA and American agreed that certain former TWA pilots furloughed from American could flow down to Eagle under the Flow-Through Agreement. *See* Exh. 8 (Letter OO).

17. Based on my time flying at Eagle from 2004 to 2011, I am aware that, during the post-9/11 period when American pilots suffered huge pay cuts and massive furloughs, the pay rates in the Eagle collective bargaining agreement were never cut. Moreover, based on my review of pilot information maintained by AAPSIC, none of the pilots who came to American under the Flow-Through Agreement ever experienced a furlough at Eagle.

18. In the summer of 2004, after learning I was eligible to obtain a position at Eagle, I registered for a spot. I was called to training at Eagle on December 29, 2004, after waiting for about 5 months.

19. I understand from their Second Amended Complaint in this lawsuit, which I have reviewed, that Plaintiffs allege that at least 174 Eagle pilots were displaced from their positions by furloughed TWA LLC pilots who flowed down to American. Second Amended Complaint ¶ 48. Any pilot displaced would have been displaced under the Eagle/ALPA collective bargaining agreement, including Letter 3, as interpreted and applied in applicable arbitrations; and would have been among the most junior Eagle pilots flying as captains. Based on a thorough review of data from American provided to the merger committees in the American-US Airways seniority integration proceedings in which I am currently participating, at most seven pilots who subsequently came to American under the Flow-Through Agreement could have been displaced from their positions at Eagle to accommodate furloughed American pilots who were exercising their rights under the Flow-Through Agreement to “flow down” to Eagle after or in place of furlough from American. I would also note in this regard that being displaced from one’s position is not the same as being furloughed, as the displaced pilot continues to be employed, and to fly as a pilot, albeit in a potentially less desirable position.

IV. American-US Airways merger and seniority integration

20. As a result of the merger of American and US Airways, the pilot seniority list at American has to be integrated with the two pilot seniority lists in place at US Airways. I have been centrally involved in that process as a member of AAPSIC.

A. Background relating to US Airways

21. The reason US Airways had two separate pilot seniority lists stems from the merger in 2005 of US Airways and America West. Today, the pilots from the pre-2005 US Airways operation are commonly known as the “USAir East” pilots, while the pilots from American West are commonly known as the “USAir West” pilots.

22. The USAir East and USAir West pilots have remained on separate seniority lists ever since 2005, a situation that has led to extensive litigation.

23. Background regarding the conflict between USAir East and USAir West pilot was summarized in the Ninth Circuit’s decision in *Addington v. US Airline Pilots Ass’n*, 791 F.3d 967 (9th Cir. 2015). (I will refer to this opinion as “*Addington II*” to distinguish it from the Ninth Circuit’s opinion in an earlier *Addington* case related to the same dispute.) In relevant part, the opinion explains:

Declaration of Thomas Duncan 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 At [the time of the 2005 merger], a single collective bargaining representative,
2 ALPA, represented both the East and West Pilots. In September 2005, ALPA and the
3 merging airlines entered into a Transition Agreement that set forth the process for
achieving operational integration of the two airlines, including issues of pilot seniority
relevant here. ...

4 The Transition Agreement provided for the integration of the seniority lists in
5 accordance with ALPA's Merger Policy, which required the two pilot groups to negotiate
6 an integrated list and, if negotiation failed, to submit to binding arbitration. ... The
7 Transition Agreement also provided a timeline for implementing the single seniority list.
Specifically, the Agreement stated that the seniority list would be implemented when
[among other conditions] the pilots and the new airline negotiated a "Single Agreement"
— a new collective bargaining agreement — applicable to all pilots. ...

8 [After negotiations for a merged list did not succeed,] the arbitration panel issued
9 a careful, 35-page decision known as the 'Nicolau Award.' ...

10 [A] majority of the East Pilots 'strenuously objected' to the Nicolau Award and
immediately set about finding ways to prevent its implementation. ...

11 [D]issatisfied with ALPA's commitment to the Nicolau Award and hoping to
12 prevent the Award from ever going into effect, the East Pilots decided to leave ALPA and
form a new union, [known as USAPA]. ...

13 In September 2008 ... USAPA presented a new seniority proposal to US Airways.
14 This proposal ignored the Nicolau Award, instead ordering the pilots according to their
15 date of hire. USAPA's ordering system effectively forced the West Pilots to the bottom of
the seniority list, leaving them vulnerable to any furloughs. USAPA made clear that it
would never implement the Nicolau Award.

16 *Id.* at 971-73.

17 24. One other aspect of US Airways' history is relevant, pre-dating the America West
18 merger. In their Second Amended Complaint, Plaintiffs discuss pilots from MidAtlantic Airways. *See*
19 Second Amended Complaint ¶¶ 52(d), (e)(iv). MidAtlantic Airways was created in 2003, when, in the
20 context of significant financial struggles at US Airways, the airline and ALPA (then the collective
21 bargaining representative of its pilots) agreed that US Airways would create a new operation to fly
22 regional jets, which could be flown by pilots furloughed from US Airways. *See Naugler v. Air Line*
23 *Pilots Ass'n*, No. 05-4751 (E.D.N.Y. April 11, 2012), at 3-5, a true and correct copy of which is
24 included in APA's compendium of exhibits as Exhibit 17. MidAtlantic was "initially intended to
25 operate ... as a wholly-owned subsidiary" of US Airways. *See id.* at 3. However, MidAtlantic
26 ultimately was formed as a division within US Airways, rather than a subsidiary, and it operated on the
27 US Airways operating certificate issued by the Federal Aviation Administration. *Id.* As of the date of
28 the American-US Airways merger, certain former MidAtlantic pilots were flying for the mainline US

1 Airways operation and are therefore part of the group of US Airways pilots being integrated with the
 2 American pilots in the ongoing proceeding described below. These pilots fall into two groups: pilots
 3 who were furloughed from the mainline US Airways operation, then worked in the MidAtlantic
 4 operation, and later returned to the mainline operation; and pilots who were originally hired into the
 5 MidAtlantic operation and thereafter moved to the mainline US Airways operation.

6 **B. American-US Airways integration**

7 25. In 2014 and early 2015, APA appointed committees to represent each of the three pre-
 8 merger pilot groups for the purposes of a seniority integration arbitration: AAPSIC to represent the
 9 American pilots; a committee established and funded by USAPA to represent the USAir East pilots;
 10 and a separate committee to represent the USAir West pilots.

11 26. APA itself is not a party to the seniority integration proceedings under the agreement
 12 governing the process, known as the Protocol Agreement, a true and correct copy of which included in
 13 APA's compendium of exhibits as Exhibit 18. *See* Exh. 18 ¶ 9. Rather, APA has left it to the
 14 committees to represent each of their respective groups. According to the Protocol Agreement, "APA
 15 shall not interfere in the deliberations and decision making of the Merger Committees. APA shall not
 16 interfere with any Merger Committee with respect to filling any vacancy, choosing legal counsel or
 17 other advisors and experts, or the manner in which legal and other expenses are financed." *See id.* ¶
 18 8(a).

19 27. Consistent with the Protocol Agreement, AAPSIC has operated entirely separately and
 20 independently from APA throughout the seniority integration proceedings. Since the merger, AAPSIC
 21 has received no funding from APA, other than \$1.33 million advanced to each of the three committees,
 22 which will ultimately be paid by the Company.

23 28. AAPSIC represents the entire pre-merger American pilot group, including pilots now
 24 flying at American who arrived under the terms of the Flow-Through Agreement, and has been
 25 charged in the seniority integration proceedings with working to achieve a fair and equitable result for
 26 the entire group.

27 29. On June 19, 2015, the three pilot merger committees submitted position statements to a
 28 panel of three arbitrators, in advance of a hearing scheduled to begin on June 29, 2015. I received

Declaration of Thomas Duncan in Support of APA's Motion for Summary Judgment

1 copies of these statements in my capacity as a member of AAPSIC. True and correct copies of those
2 three statements are included in APA's compendium of exhibits as Exhibits 19, (AAPSIC), 20
3 (USAPA), and 21 (US Airways West).

4 30. In its June 19 position statement, the US Airways West committee urged the arbitrators
5 to first integrate the USAir East and USAir West pilots using the Nicolau award, then integrate that
6 combined list with the American seniority list. *See* Exh. 21 at 4. In their June 19 position statements,
7 AAPSIC and the USAPA committee opposed that procedure. *See* Exh. 19 at 67-68; Exh. 20 at 22-24.

8 31. Between the submission of position statements on June 19, 2015, and the scheduled
9 start of the hearings on June 29, 2015, the Ninth Circuit issued its decision in *Addington II*. The Ninth
10 Circuit enjoined the USAPA merger committee from arguing against use of the Nicolau Award, in
11 order to remedy a breach of the duty of fair representation by USAPA related to the events described in
12 the above excerpts from the opinion. *Addington II* at 990-91.

13 32. As a result, the USAPA merger committee withdrew from the proceedings, because it
14 refused to support use of the Nicolau Award. The arbitrators rescheduled hearings to begin on
15 September 29, 2015. A true and correct copy of the arbitrators' decision rescheduling the hearings is
16 included in APA's compendium of exhibits as Exhibit 22.

17 33. Meanwhile, AAPSIC withdrew the position statement it submitted to the arbitrators on
18 June 19, 2015. AAPSIC counsel stated on the record on June 30, 2015: "[W]e hereby recall our
19 position statement in this matter, which attached our proposal. We recall our proposed exhibits. We are
20 going to reassess our position." A true and correct copy of relevant excerpts from the reporter's
21 transcript from the Arbitration Hearing held on June 30, 2015 is included in APA's compendium of
22 exhibits as Exhibit 51, and that statement can be found at pages 68-69 of that transcript.

23 34. In July 2015, APA appointed a new committee to represent the USAir East pilots,
24 known as the East Pilots Seniority Integration Committee, or EPSIC. A letter from APA counsel Edgar
25 James to the arbitrators announcing the formation of the new committee is included in APA's
26 compendium of exhibits as Exhibit 23.

1 35. On September 19, 2015, all three pilot merger committees submitted new position
2 statements to the arbitrators. True and correct copies of those three statements are included in APA's
3 compendium of exhibits as Exhibits 24 (AAPSIC), 25 (USAir East), and 26 (USAir West).

4 36. Throughout the seniority integration proceedings, APA has made a variety of
5 documents associated with the process available on a website accessible to all American pilots. The
6 URL of the website is www.alliedpilots.org/Indexes/Seniority-Integration. The documents posted on
7 the website include: (1) the original position statements from each pilot merger committee submitted to
8 the arbitrators on June 19, 2015; (2) the new position statements from each committee submitted to the
9 arbitrators on September 19, 2015; (3) all versions of the stipulations among the committees; and (4)
10 the non-confidential transcripts and exhibits from each hearing session.

11 **C. Longevity and regional affiliates**

12 37. During the course of the seniority integration arbitration proceeding, the three pilot
13 merger committees have entered into stipulations. The committees entered into a first set of
14 stipulations on June 19, 2015, a true and correct copy of which is included in APA's compendium of
15 exhibits as Exhibit 27. One of those stipulations provided: "A pilot's credited length of service will
16 exclude service at regional affiliates (e.g., American Eagle, Mid-Atlantic)." *See id.* at 1. I will refer to
17 length of service for the purposes of seniority integration as "longevity."

18 38. Historically, some airline seniority integrations have been largely or partly based on
19 longevity, meaning that the integrated seniority list was based, in whole or in part, on the pilots' dates
20 of hire, adjusted length of service (i.e., date-of-hire, adjusted for period of absence such as furlough
21 time), or other metrics based the length of employment with the airline and/or its predecessors.

22 39. The stipulation quoted above regarding longevity and regional affiliates became null
23 and void when USAPA withdrew from the proceedings and EPSIC subsequently refused to enter into
24 the stipulation. A true and correct copy of the email from EPSIC's counsel withdrawing from the
25 stipulation is included in APA's compendium of exhibits as Exhibit 30. On September 19, 2015, the
26 committees agreed on a new set of stipulations that did not include the stipulation about longevity
27 quoted above or any stipulation to the same or similar effect. A true and correct copy of this new set of
28 stipulations is included in APA's compendium of exhibits as Exhibit 28. The stipulations were then

revised on January 15, 2016, with minor changes not relevant to this case. A true and correct copy of the revised stipulations is included in APA's compendium of exhibits as Exhibit 29.

40. AAPSIC has maintained, throughout the seniority integration arbitration proceeding (in both its current and withdrawn position statements), that the arbitrators should not consider longevity in any form in combining the seniority lists. As explained in AAPSIC's September 19, 2015 position statement:

[T]he Arbitration Board's principal task is 'to establish a fair and equitable integrated seniority list as required by the McCaskill Bond Act [the statute governing seniority integration in airline mergers].' ...

The fair and equitable standard is based on an evaluation of pre-merger career expectations. ...

[M]etrics such as pre-merger date-of-hire and/or length-of-service do not measure the relative pre-merger career expectations between separate pre-merger pilot groups, per se. Measures of time alone, disconnected from the other equities reflecting the economic and work opportunities available to a premerger group relative to the other group(s) to be integrated, do not measure career expectations relative to the other group(s), unless the groups being integrated are effectively identical in demographics, pre-merger flying and work opportunities, and pre-merger compensation and benefits. ...

This is particularly so in this case, where the seniority lists being integrated are not date-based. As more fully discussed below, the pre-merger American seniority list is the product of multiple prior transactions in which seniority was not integrated on a date basis; the same is true of the pre-merger East seniority list. Moreover, whatever weight Arbitrator Nicolau may have purported to give to date-of-hire and length-of-service (Nicolau Award, at 26-27), his integration of the East and West Pilots bore little or no resemblance to a date-based list. Once the Nicolau Award is adopted as the basis for integrating the East and West Pilots, date-of-hire and length-of-service have no logical role in the construction of a fair and equitable [seniority list] in this case.

Exh. 24, at 6, 8, 11-12 n.7.

41. Rather than use longevity, AAPSIC proposed an integrated list "based largely on 'category and status' ratios, adjusted to reflect the superior equities of pre-merger American jobs in the same category and status groupings." *Id.* at 5.

42. In airline seniority integrations, "category and status" refers to the placement of pilots on the integrated seniority list based, in whole or in part, on the pre-merger jobs held by the pre-merger pilot groups, ranked based on "Category" (aircraft type) and "Status" (Captain and First Officer positions on the aircraft).

1 43. Plaintiffs have informed AAPSIC that they “agree” with its approach of using status
2 and category and arguing against use of longevity, presumably because they agree that it yields the
3 best result for pre-merger American pilot group, including the Flow-Through Pilots. *See infra* at ¶ 71.

4 44. However, because the other merger committees argued for use of longevity, Plaintiffs
5 complain that AAPSIC “refus[ed] to present evidence in support of including service at American
6 Eagle as part of any longevity factor used for an integrated seniority list.” Second Amended Complaint
7 ¶ 89.

8 45. AAPSIC has determined that use of time at regional affiliates for purposes of longevity
9 is not consistent with precedent from prior pilot seniority integration mergers.

10 46. For example, in the US Airways-America West pilot seniority integration, the US
11 Airways pilots argued that pilots at MidAtlantic Airways (including pilots furloughed from US
12 Airways, and pilots hired directly at MidAtlantic on a Combined Eligibility List [“CEL”]) should be
13 credited for longevity purposes in the seniority integration with their service at MidAtlantic. That
14 seniority integration was resolved by an arbitrator, a true and correct copy of whose decision is
15 included in APA’s compendium of exhibits as Exhibit 31. The arbitrator rejected the longevity
16 argument presented by the US Airways pilots. *See id.* at 20-21.

17 47. The United-Continental merger also resulted in an arbitration award resolving the pilot
18 seniority integration created by that merger. A true and correct copy of that arbitration award is
19 included in APA’s compendium of exhibits as Exhibit 32. In that arbitration proceeding, the
20 Continental pilots argued that longevity should include time flying at “Continental Express,” a regional
21 affiliate of Continental made up of wholly-owned subsidiaries of Continental. *See id.* at 26, 28. The
22 Continental pilots pointed out that Continental Express pilots had a “preferential hiring program,”
23 under which many pilots flowed up to United. *Id.* at 31. The panel of arbitrators—which included one
24 of the three arbitrators in the pending American- US Airways seniority integration merger, Dana
25 Eischen—rejected the Continental pilots’ longevity argument. *Id.* at 28.

26 48. AAPSIC was not and is not aware of any contrary precedent.

27 49. On July 13, 2015, Plaintiffs’ attorney Christopher Katzenbach sent a letter to AAPSIC
28 Counsel Wes Kennedy regarding the pending seniority integration arbitration. *See* Exh. 39. Mr.

Declaration of Thomas Duncan in Support of APA’s Motion for Summary Judgment

Katzenbach's letter asserted that there are two examples of use of longevity from regional affiliates in pilot seniority integration mergers. *See id.* at 1-2. This is not correct. Mr. Katzenbach's first example was US Airways-America West seniority integration arbitration, which reached the opposite result with regard to the MidAtlantic pilots, as described above. *See* Paragraph 46, *supra*, and Exh. 31 at 20-21. Mr. Katzenbach's second example was the merger of Republic Airlines with Hughes Air-West. A true and correct copy of the arbitration award resolving that pilot seniority integration dispute is included in APA's compendium of exhibits as Exhibit 33. That seniority integration presented the distinct situation of a "wet lease" of aircraft with Hughes Airwest pilots to another carrier, i.e., a lease of the pilots with the aircraft. *See id.* at 36. As the arbitrator determined, the leased pilots were at all times flying as employees of Hughes Airwest, and for its benefit; only for that reason was their time flying for Hughes Airwest through the "wet lease" credited for seniority integration purposes. That situation is simply not analogous to Plaintiffs' and the other Flow-Through Pilots' time at Eagle, which they are seeking to have credited if longevity is used for the purpose of seniority integration. Those pilots were not flying on a "wet lease," but instead were at all times flying directly for Eagle, not for the entirely separate airline American. There is simply no precedent of which AAPSIC is aware, nor has any been brought to its attention by Plaintiffs, their counsel, or anyone else, of the use of longevity in a seniority integration analogous to Plaintiffs' situation here.

50. AAPSIC determined that any "fallback" argument regarding the method for calculating longevity would detract significantly from its primary argument against use of longevity entirely, and thereby harm its position in the seniority integration proceedings, while occupying time and resources that could have been spent productively elsewhere, and indeed would not have been available given the limited time available for AAPSIC's presentation under the procedural ground rules for the arbitration.

D. AAPSIC's current position and proposal

51. AAPSIC decided to change aspects of its position between its initial position statement submitted on June 19, 2015, and its current position statement submitted on October 19, 2015.

52. Given the Ninth Circuit's intervening ruling in *Addington II* that USAPA had breached the duty of fair representation by avoiding implementation of the Nicolau Award, AAPSIC decided to use the Nicolau award in its proposal. As AAPSIC explained in its opening statement on September

1 29, 2015, “We start with the Nicolau Award. We integrate the East and West pilots on that basis....”
2 A true and correct copy of relevant excerpts from the reporter’s transcript from the Arbitration Hearing
3 held on September 29, 2015 is included in APA’s compendium of exhibits as Exhibit 34, and that
4 statement can be found at page 103 of that transcript.

5 53. As AAPSIC further explained, “The effect of using the Nicolau Award instead of three
6 lists ... is to move most West pilots significantly up the seniority list. ... That placement of West pilots
7 vis-à-vis East pilots on the seniority list changes the age demographics of the list, changes the attrition
8 patterns going forward by leaving younger West pilots higher on the list where they become blockers
9 to older American pilots, where they wouldn’t have been if you hadn’t used the Nicolau Award.” *Id.* at
10 103-04.

11 54. AAPSIC further explained that the reason its “proposal ... is different than it was in
12 July” was “because of these effects of the Nicolau Award and because of the continued changes in the
13 fleet plan, among other reasons.” *Id.* at 105.

14 55. In their Second Amended Complaint, Plaintiffs complain about a variety of aspects of
15 AAPSIC’s original proposal—i.e., the proposal that was withdrawn and replaced. *See* Second
16 Amended Complaint ¶¶ 63, 66. AAPSIC’s new proposal does not contain the aspects of the original
17 proposal of which Plaintiffs complain. This fact has been recognized by Plaintiffs themselves, through
18 their counsel Christopher Katzenbach, who said so in a letter described below at paragraph 71.

19 56. First, Plaintiffs complain that the withdrawn proposal placed Flow-Through Pilots “in
20 the same tier with US Airways pilots with the lowest seniority at US Airways by placing all pilots
21 hired post-2007 at the bottom of the integrated list.” *See* Second Amended Complaint ¶ 63(a).

22 57. However, AAPSIC’s current proposal does not do this. AAPSIC’s current proposal
23 would place the post-2007 US Airways hires below all pre-merger American Pilots, including Flow-
24 Through Pilots. *See* Exh. 24 at 83-84, App. A.

25 58. Second, Plaintiffs complain that, under the withdrawn proposal, the most junior 124
26 Flow-Through Pilots were placed below 755 US Airways pilots on AAPSIC’s proposed list. *See*
27 Second Amended Complaint ¶ 63(b).

59. AAPSIC's current proposal does not have this effect. *See* Exh. 24 at 83-84, App. A.

60. Third, Plaintiffs complain that, under the withdrawn proposal, all of the Flow-Through Pilots senior to the 124 pilots referenced in paragraph 58 above were integrated in a 1:5 ratio with the US Airways pilots senior to the 755 pilots mentioned in paragraph 58 above. *See* Second Amended Complaint ¶ 62(c).

61. AAPSIC's current proposal does not have this effect. *See* Exh. 24 at 83-84, App. A.

E. Letters from Flow-Through Pilots

62. AAPSIC and its counsel, Wes Kennedy, have received several letters from a group of Flow-Through Pilots, speaking through their counsel Chris Katzenbach. As a member of AAPSIC, those letters were provided to me. True and correct copies of those letters, and the responses thereto, are included in APA's compendium of exhibits as Exhibits 35-44.

63. In general, these letters asked for information regarding AAPSIC's position in the seniority integration proceedings. But the position statements, exhibits, and transcripts of the proceedings were available to all pilots on a website hosted by APA. *See supra* ¶ 36. To the extent the letters asked AAPSIC to divulge information about its positions before AAPSIC was required to present those positions in the arbitration, doing so would have potentially compromised AAPSIC's strategic position by making it more likely that the other committees could have gotten advance access to AAPSIC's position, with extra time to prepare to rebut it. Moreover, once Plaintiffs filed their lawsuit, all of the information requests in the letters were subject to ongoing litigation.

64. I now briefly describe the specific letters.

65. On June 3, 2015, a letter from Mr. Katzenbach to Mark Stephens, Chairperson of AAPSIC, requested detailed information on AAPSIC's position in the seniority integration hearings, before the committees had submitted their initial position statements. *See* Exh. 35.

66. Mr. Kennedy responded on June 25, 2015, expressing that AAPSIC intended to present "the Committee's best assessment of what is fair and equitable for the pre-merger American pilots, including your clients," based on "extensive, detailed analysis of the relevant equities." Exh. 36 at 1. Mr. Kennedy noted that AAPSIC's position statement was due on June 19, 2015, that the committee

1 was still formulating its position, and that the position statement would be available to pilots after they
2 were submitted to the arbitrators. *Id.*

3 67. Mr. Katzenbach sent another letter to Mr. Kennedy on June 25, 2015, again seeking
4 information regarding AAPSIC's position, and asking a number of questions about specific statements
5 in AAPSIC's position statement, which Mr. Katzenbach's clients had presumably accessed through the
6 APA website. *See* Exh. 37.

7 68. Mr. Kennedy responded on July 9, 2015. *See* Exh. 38. Mr. Kennedy informed Mr.
8 Katzenbach that AAPSIC had withdrawn its June 19, 2015 position statement and was formulating a
9 new position statement. *Id.* at 1. Kennedy expressed that AAPSIC remained dedicated to representing
10 the interests of all pre-merger American pilots, including the Flow-Through Pilots. *Id.* at 2.

11 69. Mr. Katzenbach sent another letter to Mr. Kennedy on July 13, 2015. *See* Exh. 39. This
12 letter is addressed above at paragraph 49.

13 70. Mr. Kennedy responded on August 13, 2015. *See* Exh. 40. Mr. Kennedy observed that
14 Mr. Katzenbach had filed this lawsuit against APA, and that Mr. Kennedy would not comment on
15 matters that were subject to ongoing litigation. *See id.* at 1.

16 71. Mr. Katzenbach sent another letter to Mr. Kennedy on October 9, 2015, commenting on
17 the new position statement that AAPSIC had filed in September 2015. *See* Exh. 41. Mr. Katzenbach
18 observed that AAPSIC had "eliminate[d] certain of the matters I addressed in prior letters," *id.* at 1,
19 referring to the complaints about AAPSIC's original proposal that are set forth in Plaintiffs' Second
20 Amended Complaint. Mr. Katzenbach stated, "[W]e are encouraged to see these important changes."
21 *Id.* at 2. Mr. Katzenbach also noted AAPSIC was advocating against use of longevity in the seniority
22 integration process. *See id.* at 1. Mr. Katzenbach further stated, "Generally, my clients agree on that
23 approach." *Id.* Mr. Katzenbach nevertheless asked several questions regarding AAPSIC's position. *See*
24 *id.* at 4.

25 72. Edgar N. James, counsel to APA in this action, responded to Mr. Katzenbach's October
26 9 letter on October 15, 2015. *See* Exh. 42. Mr. James noted that "[v]irtually everything relevant to the
27 questions posed in your letter can be found on the APA website, where we post all of the documents
28 that have been submitted in connection with the proceedings—including the stipulations, briefs, and

Declaration of Thomas Duncan in Support of APA's Motion for Summary Judgment

1 exhibits—as well as transcripts of the hearings.” *Id.* at 1. Mr. James further noted that AAPSIC was
2 currently in the process of putting on its case in the arbitration. *Id.*

3 73. Mr. Katzenbach wrote to Mr. Kennedy again on December 21, 2015, again asking for
4 information about AAPSIC’s position. *See* Exh. 43. While recognizing that AAPSIC was advocating
5 against use of longevity, Mr. Katzenbach urged Mr. Kennedy to take the fallback position that, if
6 longevity were considered, the Flow-Through Pilots should be credited for time flying at Eagle. *See id.*
7 at 3-5.

8 74. On January 7, 2016, Mr. James responded to Mr. Katzenbach’s letter of December 21,
9 2015. *See* Exh. 44. Mr. James noted that Mr. Katzenbach was again asking about issues subject to
10 ongoing litigation, and that a website accessible to American pilots contained sufficient information to
11 answer Mr. Katzenbach’s questions regarding AAPSIC’s position. *See id.* at 1.

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Declaration of Thomas Duncan 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 my review of the documents described in this declaration.

3 Executed on March 11, 2016, at LEBANON, TN 37087.

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6 Thomas Duncan
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