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**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 ARTHUR McDANIELS
 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, ARTHUR McDANIELS, hereby declare as follows:

2 **I. Background**

3 1. I am a pilot employed by American Airlines, Inc. (“American” or the “Company”). I
4 was hired by American in February 1989. I make this declaration in support of the Motion for
5 Summary Judgment or, in the alternative, for Partial Summary Judgment that I understand will be filed
6 herewith by Defendant Allied Pilots Association (“APA”) in the above-captioned case.

7 2. Before I was hired at American, I served in the U.S. Air Force from 1977 to 1988. In
8 1977, I graduated from Oklahoma State University with a B.S. in Accounting.

9 3. APA is certified by the National Mediation Board (“NMB”), the federal government
10 agency regulating labor matters in the airline industry, as the collective bargaining representative of the
11 pilots employed by American. Throughout my employment with American, I have been a member of
12 APA. I have served on APA’s Membership Committee since 2001 and as Chair of that committee from
13 May 2003 until May 2010. The Membership Committee is responsible for maintaining detailed
14 information about American pilots, including the seniority number of each pilot, the length of service
15 credited to each pilot under the collective bargaining agreement, and other information; checking the
16 accuracy of that data; and coordinating with American to ensure that the Company is using accurate
17 data. The Membership Committee is also responsible for maintaining data regarding furloughs and
18 subsequent recalls from American, and communicating with pilots regarding furloughs and recalls. In
19 the course of, and to facilitate, the Membership Committee’s regularly-conducted activities, that
20 Committee maintains the foregoing information, as well as arbitration decisions rendered under the so-
21 called “Flow-Through Agreement” and correspondence with the so-called “Flow-Through Pilots”
22 regarding length of service and other contractual issues. Consequently, as Chair of the Membership
23 Committee, I became very knowledgeable regarding the various contractual provisions related to
24 seniority, length of service, furlough, and other areas, and, in my service with the Committee, I have
25 frequently utilized and referred to the information described above that is maintained by the
26 Committee and can testify competently thereto. The Membership Committee has been involved in
27 various issues related to groups of pilots from other airlines who have come to American, such as the
28

1 former TWA pilots and the Eagle Flow-Through Pilots.

2 4. I am currently chair of APA's Information Technology Committee, a capacity in which
3 I have served since 2014. The Information Technology manages APA's IT resources, including its
4 website.

5 **II. The Allied Pilots Association**

6 5. As noted above, APA is certified by the NMB to represent the pilots at American.

7 6. On April 3, 2002, the NMB certified APA as the collective bargaining representative of
8 the former pilots of Trans World Airlines, Inc. ("TWA"), who had been transferred to a new entity
9 known as TWA Airlines, LLC ("TWA LLC") during the TWA bankruptcy proceeding, following the
10 purchase of TWA by AMR Corporation, the corporate parent of American. *American Airlines,*
11 *Inc./Trans World Airlines, LLC*, 29 NMB 260, 2002 WL 512018 (2002). The prior month, on March 5,
12 2002, the NMB had determined that American and TWA-LLC were operating as a single company.
13 *American Airlines, Inc./Trans World Airlines, LLC*, 29 NMB 201, 2002 WL 399665 (2002).

14 7. On September 16, 2014, the NMB certified APA as the collective bargaining
15 representative of the pilots of US Airways, Inc., which was determined to be part of a single
16 transportation system with American. *American Airlines, Inc./US Airways, Inc.*, 41 NMB 289, 2014
17 WL 4658148 (2014).

18 **III. Background regarding seniority and length of service**

19 8. At American, a pilot's "occupational seniority—to which I will refer simply as
20 "seniority," consistent with common practice—is used when the pilot bids for positions within the
21 airline, and for certain other purposes (e.g., determining who is retained when the company furloughs
22 pilots). *See* Exh. 2 (relevant excerpts from the 2015 CBA), §§ 2(AA), 13(D) (pilots' seniority used for
23 "promotion, demotion, their retention in case of reduction in force, their recall from furlough, their
24 assignment or reassignment due to expansion or reduction in force or schedules, and their choice of
25 vacancies").

26 9. Under the American CBA, seniority begins to accrue "from the date a pilot is first
27 assigned to airline flying duty" at American, and is normally not affected when a pilot is furloughed or
28 otherwise out of active flying. *Id.* § 13(B).

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10. In general, a pilot's seniority is expressed by his or her "seniority number," i.e. his or her rank among all American pilots in seniority. For example, the most senior pilot has a seniority number of 1.

11. "Length of service for pay purposes"—to which I will refer as "length of service"—is a distinct concept from "seniority." Length of service helps determine a pilot's pay as described below. While seniority is usually expressed as a rank on the seniority list, "length of service" is usually expressed as a number corresponding to the pilot's years of active service at American.

12. "Length of service" affects pilots' pay in the following manner. Each pilot is placed on a pay scale depending on the pilot's aircraft "group" (between Group I, the smallest aircraft, and Group V, the largest aircraft), and the pilot's position (Captain or First Officer, the two positions in the cockpit crew). Then, for each group/position cohort, there is a 12-step pay scale based on a pilot's length of service. So, a 737 First Officer with 12 years length of service would be at the top of the pay scale for Group II First Officers, while a 737 First Officer with 1 year length of service would be at the bottom of that same pay scale.

13. Length of service for pay purposes is calculated under the CBA using the pilot's "classification date." *Id.* § 2(F). "Classification date" is originally assigned to a pilot "concurrent with [each] pilot's occupational date," i.e. the date used for determining seniority. *Id.* However, under the general rules in the CBA, length of service for pay purposes does not include a pilot's time on furlough. *Id.* § 17(V)(4). Thus, absent some other agreement modifying the general rule, when a pilot returns from furlough, his or her "classification date" is retroactively adjusted so that the pilot's length of service will exclude furlough time.

IV. AMR Eagle, Inc., now Envoy Air, Inc.

14. AMR Eagle, Inc. ("Eagle"), recently renamed Envoy Air, Inc., is a regional affiliate of American, and is owned by the same corporate parent as American but operated independently.

15. On December 1, 1995, the NMB certified the Air Line Pilots Association ("ALPA") as the collective bargaining representative of the pilots at Eagle. *American Eagle*, 23 NMB 85, 1995 WL 725334 (1995).

16. As noted above, Eagle is operated independently of American. It is recognized as a separate airline from American by the NMB, which has accordingly certified different unions to represent the pilots of Eagle and American. Eagle and American are also recognized as separate airlines by the Federal Aviation Administration (“FAA”), which has issued separate operating certificates to each entity. True and correct copies of American’s and Eagle’s operating certificates, from the FAA website, are included in APA’s compendium of exhibits as Exhibits 5 and 6, respectively.

V. The Flow-Through Agreement

17. In 1997, American, Eagle, APA, and ALPA negotiated the “American Airlines Employment Opportunities and Furlough Protection,” known as “Supplement W” in the American/APA collective bargaining agreement and Letter 3 in the Eagle/ALPA agreement, and popularly referred to as the “Flow-Through Agreement.” A true and correct copy of the Flow-Through Agreement is included in APA’s compendium of exhibits as Exhibit 1.

18. The Flow-Through Agreement was executed on May 5, 1997. *Id.* at 5.

19. The Flow-Through Agreement stated that it would expire on the later of ten years after its execution, or the “amendable date” of the next APA-American CBA, *id.* ¶ VII(A), which turned out to be May 1, 2008. A true and correct copy of relevant excerpts from the 2003 CBA is included in APA’s compendium of exhibits as Exhibit 7.

20. The relevant text of the Flow-Through Agreement is set out below, but I provide first a summary of its relevant provisions.

21. The Flow-Through Agreement provided separate benefits for the pilots of Eagle and American. For Eagle pilots, it provided opportunities for them to obtain employment at American, which was generally higher-paying and more prestigious than employment at Eagle. Specifically, Eagle pilots were given access to one out of every two “new hire” positions at American. Flow-Through Agreement ¶ III(A). In general, such positions were awarded to captains at Eagle in order of their seniority at Eagle. *Id.*

1 22. The Eagle pilots who came to American under the Flow-Through Agreement are
2 commonly referred to as “Flow-Through Pilots.”

3 23. For American pilots, the Flow-Through Agreement offered opportunities to obtain
4 employment at Eagle in the event that a pilot was furloughed from American. Pilots who “flowed
5 down” from American to Eagle were able to “displace” certain Eagle pilots from captain positions on
6 commuter jet aircraft at Eagle, meaning that the American pilot would take a position that had
7 previously been held by an Eagle pilot, *id.* ¶ IV(B), whereas the displaced Eagle pilot would take
8 another position at Eagle.

9 24. Under the Flow-Through Agreement, captains at Eagle could make themselves immune
10 to being “displaced” by furloughed American pilots by foregoing the opportunity to obtain
11 employment at American under the Agreement. *Id.* In effect, then, the Flow-Through Agreement
12 offered Eagle captains a choice between strengthened job security at Eagle or greater career
13 advancement opportunities.

14 25. The Flow-Through Agreement contained provisions to limit the disruption of Eagle’s
15 operations from pilots flowing up to American. Specifically, the Agreement provided that the first 125
16 Eagle pilots to complete their “Initial Operation Experience” as captains, i.e. their first flight as a
17 captain at Eagle, would remain at Eagle for 18 months before they could start work at American. *Id.*
18 ¶ III(E). After the first 125 pilots, Eagle captains would have to wait two years after their Initial
19 Operating Experience before they could start work at American. *Id.* The 18 month or two year period
20 is referred to as a “training freeze.” *Id.*

21 26. When an Eagle pilot became entitled to a position at American, but was unable to
22 immediately fill that position due to a “training freeze,” the pilot would nevertheless receive a
23 “placeholder” seniority number on the American Airlines seniority list as if he or she had started at
24 American right away. *Id.* ¶ III(B). The pilot would then start work at American sometime after the
25 “training freeze” was over, and at that time would be considered senior to all pilots hired after the
26 Flow-Through Pilot became entitled to a position at American.

27. Aside from training freezes, the timing of Eagle pilots' employment at American was also affected by American's hiring schedule. Specifically, after an Eagle pilot completed a training freeze, the pilot would then have to wait until the next time American hired new pilots, at which time American would bring on the Eagle pilots with the greatest AA seniority who were waiting to flow up. Thus, for example, when American stopped hiring after the September 11, 2001 terrorist attacks and begun furloughing pilots instead, *see infra* at ¶ 42, Eagle pilots who had received seniority numbers and completed their training freezes had to await the existence of new openings at American before "flowing up."

28. To illustrate these points, I provide the following hypothetical example:

On January 1, 1999, Eagle pilot John Johnson starts flying as a captain at Eagle. In autumn, American decides that, on November 5, 1999, it will bring on 40 pilots. American is required to offer half of those slots to eligible pilots at Eagle. Because Johnson is one of the 20 most senior Eagle pilots who have not yet been offered a position at American, he is entitled to one of those 20 positions. However, Eagle exercises its authority to hold Johnson in his position until July 1, 2000, eighteen months after Johnson became a captain at Eagle. The next time American hires new pilots after July 1, 2000, Johnson is one of those pilots. Once at American, Johnson receives a seniority number on American's seniority list as if he had been hired at American on November 5, 1999, the date he became entitled to a position at American, i.e., he is senior to pilots hired at American after November 5, 1999.

29. The Flow-Through Agreement specified that a Flow-Through Pilot's length of service for pay purposes is "based on the date such pilot is entered on the AA payroll," not the date the pilot became entitled to a position at American. Flow-Through Agreement ¶ III(C). This rule has remained in place since the Flow-Through Agreement was executed in 1997, except to the extent modified for certain pilots by the arbitration award discussed in paragraph 52 below.

30. Finally, the Flow-Through Agreement included a dispute resolution procedure. The agreement provided for expedited binding arbitration between APA, ALPA, American, and Eagle when one of the parties raised a dispute regarding the "interpretation or application" of the Agreement. *Id.* ¶ VI.

31. I now set forth the relevant provisions of the Flow-Through Agreement.

III. Employment Opportunities at AA for AMR Eagle, Inc. Pilots

A. At least one (1) out of every two (2) new hire positions per new hire class at AA will be offered to CJ [Regional or Commuter Jet] Captains who are line pilots and who have completed their IOE [Initial Operating Experience or check ride] at AMR Eagle, Inc. Such positions will be offered to the CJ Captains who are line pilots in order of their AMR Eagle, Inc. seniority.

B. If a CJ Captain is unable to fill a new hire position at AA in accordance with Paragraph III.A. above, due to a training freeze or other operational constraint, (see Paragraph III.J. below), such CJ Captain will be placed on the AA Pilots Seniority List and will count toward the number of new hire positions. The pilot's AA occupational seniority date and number will be established as if he were able to fill such new hire position at AA and had attended the new hire training class referenced in Paragraph III.A. above. Such pilot's length of service for pay purposes, date of hire for pension purposes, and length of service for vacation accrual will be established in accordance with III.C. below. . . .

C. A CJ Captain's (1) placement on the AA Pilots Seniority List (except as provided in Paragraph III.B. above which is only applicable for placement on the AA Pilots Seniority List in order to establish an AA occupational seniority date and number), (2) length of service for pay purposes, and (3) "date of hire" for pension purposes will be based on the date such pilot is entered on the AA payroll. Such pilot's length of service for vacation accrual will be based on the cumulative total of the pilot's service at AMR Eagle, Inc. and AA.

. . . .

E. Each of the first 125 AMR Eagle, Inc. pilots who successfully complete transition training as a CJ Captain must fulfill a training freeze for a period of eighteen (18) months from the date said pilot completes IOE. All other pilots who successfully complete transition training as CJ Captains must fulfill a training freeze for a period of two (2) years from the date each pilot completes IOE, unless released from such training freeze by AMR Eagle, Inc.

F. An AMR Eagle, Inc. pilot may, not later than the completion of IOE for a CJ Captain position or at such time as the pilot is able to demonstrate hardship, elect to forfeit the opportunity to secure a position on the AA Pilots Seniority List as provided by this Supplemental Agreement. Such pilot will hereinafter be referred to as an "Eagle Rights CJ Captain," and will not be eligible for a future new hire position at AA which may otherwise become available under Paragraph III of this Supplemental Agreement. The existence of a hardship for this purpose shall be approved by the ALPA AMR Eagle MEC Chairman and the appropriate management official(s).

G. A CJ Captain who is awarded a new hire position at AA will be issued the lowest seniority number at AA in the applicable new hire class, subject to AA's policy concerning the assignment of seniority numbers to new hire pilots who have previous service in other employee classifications. AMR Eagle, Inc. pilots will receive their AA seniority number in order of their seniority at AMR Eagle, Inc.

IV. Furlough Protection at AMR Eagle, Inc. for Pilots Furloughed from AA.

A. A pilot furloughed from AA may displace a CJ Captain at an AMR Eagle, Inc. carrier provided that the number of CJ Captain positions available to furloughed AA pilots will be limited to the total number of CJ Captain positions at AMR Eagle, Inc. less the number of Eagle Rights CJ Captains.

B. A furloughed AA pilot may displace

1. A CJ Captain, other than an Eagle Rights CJ Captain, who has not been awarded a seniority number at AA, in reverse order of AMR Eagle, Inc. seniority; and then

2. A CJ Captain who has accepted a position on the AA Pilots Seniority List pursuant to Paragraph III.B. above, or a CJ Captain who was previously furloughed from AA, in reverse order of AA seniority.

...

VI. Dispute Resolution Procedures

...

B. The parties agree to arbitrate any grievance alleging a violation of this Supplemental Agreement on an expedited basis directly before a single neutral arbitrator jointly selected by all the parties. The jurisdiction of the neutral shall be limited to disputes involving the interpretation or application of this Supplemental Agreement.

VI. Length of service and seniority for pilots coming to American via merger

32. Through my work on the Membership Committee, I have become intimately familiar with the rules governing pilots' length of service and seniority at American. This includes pilots who have come to American via merger.

33. As noted above, pilots ordinarily begin accruing length of service when they first begin flying for American. Under the Flow-Through Agreement, this general rule applies to the Flow-Through Pilots: they begin accruing length of service "based on the date [they] entered on the AA payroll." *See* Flow-Through Agreement ¶ III(C).

34. When American has merged with another airline, however, it has consistently allowed the pilots from the other airline to preserve their pre-merger length of service, for purposes of determining their pay. This practice has been applied at least since American's merger with Air California in 1987, and includes mergers with Reno Air in 1999, TWA in 2001, and US Airways in 2013.

35. In contrast to the practice with length of service, there is no consistent method for determining the seniority of pilots who come to American via a merger. Thus, for example, there is an ongoing arbitration process for determining how the seniority lists of American and US Airways will be integrated, described in the declaration of Thomas Duncan, a copy of which I have reviewed and which I understand is being submitted herewith. *See* Duncan Decl. ¶¶ 25-36.

36. I now provide further detail on the TWA merger and relevant events that followed.

VII. AMR acquisition of TWA

37. In 2001, AMR purchased certain assets of TWA and placed them TWA LLC, with the intention that the employees would eventually fly for American. As a member of the APA Membership Committee in 2001, I became familiar with the events surrounding the TWA acquisition, particularly as they related to seniority, length of service, and furlough.

38. On November 8, 2001, APA and American entered into an agreement known as Supplement CC that provided for the integration of the former TWA pilots into the American Airlines pilot seniority list. *See* Exh. 16 (Supplement CC). The Implementation Date for Supplement CC was defined as the “date on which the National Mediation Board issues a decision finding that American and TWA LLC are or have become a single carrier.” *Id.*

39. On the same day it entered into Supplement CC, APA filed an application with the NMB asserting that American and TWA LLC constituted a single transportation system, meaning that their pilots should be represented by a single union. On March 5, 2002, the NMB determined that the two carriers were being operated as a single transportation system, and on April 3, 2002 certified APA as the collective bargaining representative of the pilots at American and at TWA-LLC. *See supra* at ¶ 6.

40. Supplement CC and the new integrated Pilot System Seniority List went into effect on March 5, 2002. A class of former TWA pilots unsuccessfully litigated a claim that APA had breached its duty of fair representation by not giving TWA pilots credit for all of their time as pilots with TWA in determining their seniority. *Bensel v. Allied Pilots Ass’n*, 271 F. Supp. 2d 616 (D.N.J. 2003), *aff’d in pertinent part*, 387 F.3d 298 (3d Cir. 2004), *cert. denied*, 544 U.S. 1018 (2005). Former TWA pilots have also filed lawsuits more recently claiming that APA has not fairly represented them, two of which

are currently pending in the Southern District of New York Bankruptcy Court. *See Krakowski v. American Airlines, Inc. (In re AMR Corp.)*, 538 B.R. 213 (Bankr. S.D.N.Y. 2015) (partially dismissing adversary proceeding brought by former TWA pilots against APA and American, and discussing related case brought by former TWA pilots).

VIII. The 9/11 attacks and furloughs at American

41. Between the execution of the Flow-Through Agreement in 1997 and the terrorist attacks of September 11, 2001, more than 100 Eagle pilots had started work at American under the Flow-Through Agreement, while another several hundred had attained placeholder seniority numbers but were under a “training freeze” at Eagle, or otherwise had not yet started work at American. I became familiar with the status of these Flow-Through Pilots through my work on the Membership Committee. I also became deeply familiar with the furloughs that followed the September 11 attacks.

42. The terrorist attacks had a devastating effect on all domestic airlines. Many entered bankruptcy, and American began furloughs in October 2001 from both American and TWA LLC. Furloughs proceeded in seniority order, first under the separate TWA and American seniority lists until Supplement CC came into effect, and then based on the integrated list created by Supplement CC. American eventually furloughed 2,905 pilots and did not begin recalling pilots to training until January 3, 2007. The furloughed pilots included both former TWA pilots and pilots who had been hired at American prior to September 2001.

43. Approximately 1291 of the furloughed pilots were former TWA pilots. 1243 of those were furloughed while still at TWA LLC, and the remainder were furloughed after they had transferred to American.

44. No Flow-Through Pilots were furloughed from American. The Flow-Through Pilots who had begun work at American as of September 2011 were senior to more than one thousand former TWA pilots who were placed at the end of the then-existing American seniority list. They were also senior to many pilots hired at American prior to September 2001. (Recall the Flow-Through Pilots would generally be senior to other pilots starting work at the same time, because the Flow-Through Pilots would have received placeholder numbers on the American seniority list long before they started work at American. *See supra* at ¶¶ 26-28.)

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45. In 2003, when American was dealing with significant financial problems, APA agreed to a concessionary contract resulting in pay cuts for pilots of up to 30%. As part of that contract, American agreed to make positions at Eagle available under the Flow-Through Agreement to former TWA pilots who had been furloughed. A true and correct copy of this agreement, known as Letter OO, is included in APA's compendium of exhibits as Exhibit 8. This agreement was upheld against challenge from ALPA in an arbitration. *See infra* ¶ 49.

46. Approximately 137 former TWA pilots obtained positions at Eagle under the Flow-Through Agreement.

IX. Disputes under the Flow-Through Agreement

47. The TWA merger and post-9/11 furloughs led to a number of disputes under the Flow-Through Agreement, which were resolved through the arbitration process established by the Agreement.

48. Beginning in the mid-2000's, I assisted APA in all of the arbitrations under the Flow-Through Agreement. I helped APA formulate its positions, attended the hearings, and received and reviewed the arbitration decisions (many of which related to issues within the jurisdiction of the Membership Committee). I worked on all of the arbitrations discussed in this section, with the exception of the arbitration discussed in paragraph 49; as to that arbitration, my work on the later arbitrations led me to become familiar with it, and to review the arbitrator's opinion and award.

49. Shortly after APA and American agreed to allow former TWA pilots to flow down to Eagle, ALPA filed a dispute contesting that agreement. Labeled FLO-0203, the dispute was resolved on June 6, 2004, with a decision by Arbitrator Richard Bloch. A true and correct copy of Arbitrator Bloch's Opinion and Award is included in APA's compendium of exhibits as Exhibit 9. Arbitrator Bloch decided in favor of APA, ruling that the Flow-Through Agreement permitted all "furloughed AA pilots" to flow down to Eagle, regardless of "how they came to American." *Id.* at 10.

50. ALPA also filed a dispute, labeled FLO-0903, to contest American's practice of bringing TWA pilots into flying at American without also bringing up Flow-Through Pilots in the 1:2 ratio described in the Flow-Through Agreement. In other words, ALPA alleged that the former TWA pilots were filling "new hire positions" in "new hire classes" at American within the meaning of

Paragraph III.A. of the Flow-Through Agreement. On May 11, 2007, Arbitrator John LaRocco ruled partially for APA and partially for ALPA. A true and correct copy of Arbitrator LaRocco's Opinion and Award is included in APA's compendium of exhibits as Exhibit 10. Arbitrator LaRocco ruled that "the former TWA pilots who assumed active employment at AA and occupied positions coincident with the acquisition were not new hire pilots." *See* Exh. 10, at 45. However, Arbitrator LaRocco identified a subset of former TWA pilots who had been furloughed while at TWA LLC (i.e., before the full corporate integration of TWA and American), and held that these pilots did fill "new hire" positions because the pilots had never worked at American prior to their furloughs. *See id.* at 46.

51. Following another hearing, Arbitrator LaRocco issued a remedy on October 20, 2008. A true and correct copy of Arbitrator LaRocco's Supplemental Opinion and Remedy Award is included in APA's compendium of exhibits as Exhibit 11. Arbitrator LaRocco held that there were 154 former TWA pilots who counted as "new hires" under the reasoning described above. Thus, he ruled, 154 Eagle pilots should have received the right to flow up to American, and each of those should be given a seniority number on the American Airlines seniority list as if they had begun work at American on April 30, 2008. They eventually started work at American in September 2013, after all of the then-furloughed American pilots were offered recall.

52. After Arbitrator LaRocco's decision, ALPA filed a related dispute, labeled FLO-0108, seeking damages for pay and other benefits that certain Eagle pilots would have received had they attended the new hire training classes that were otherwise occupied by the former TWA pilots designated "new hires" by Arbitrator LaRocco. On April 9, 2010, Arbitrator George Nicolau held that 244 Eagle pilots (all of whom already held American seniority numbers from prior to 9/11, but had not yet made the transition to American) should be offered the opportunity to start work at American. A true and correct copy of Arbitrator Nicolau's Opinion and Award is included in APA's compendium of exhibits as Exhibit 12. Arbitrator Nicolau also ordered that these 244 Eagle pilots starting work at American would receive length of service for pay purposes as if they had started work at American between 2007 and 2009, when TWA LLC furlougees were recalled. *See* Exh. 12, at 19.

53. At the time of Arbitrator Nicolau's arbitration decision in FLO-0108, 824 Eagle captains had not yet received seniority numbers at American, and the Flow-Through Agreement had expired. *See id.* at 1, 17. Arbitrator Nicolau ordered that these 824 pilots should be offered the opportunity to fly at American through a "preferential hiring system" to be created by APA, ALPA, American, and Eagle. *Id.* at 20. On September 14, 2011, the APA, American, ALPA and Eagle entered into a letter agreement implementing Arbitrator Nicolau's preferential hiring award in FLO-0108. A true and correct copy of the agreement is included in APA's compendium of exhibits as Exhibit 13.

54. A group of Eagle pilots challenged the Nicolau decision in FLO-0108 on behalf of the same class of pilots at issue in this case, but failed to vacate the decision. *MacKenzie v. Air Line Pilots Ass'n Int'l*, 2011 U.S. Dist. LEXIS 126009 (N.D. Tex. Oct. 31, 2011), 598 Fed. Appx. 223 (5th Cir. 2014), *cert. denied*, 135 S. Ct. 2896 (2015).

55. An earlier dispute, labeled FLO-0107, also related to the effect of the expiration of the Flow-Through Agreement on May 1, 2008, and specifically whether Eagle pilots who had not started work at American as of that date would retain any rights to eventual employment at American. On June 30, 2008, Arbitrator Richard Bloch held that the Eagle pilots who had received seniority numbers at American between August 1999 and August 2001 had vested rights to those numbers, and would retain the right to flow up to American. A true and correct copy of Arbitrator Bloch's Opinion and Award is included in APA's compendium of exhibits as Exhibit 14. On the other hand, Arbitrator Bloch held that the Eagle pilots who had not yet received an American seniority number had lost their ability to flow up to American. *Id.* at 14. This state of affairs was subsequently modified by Arbitrator Nicolau's decision in FLO-0108, described above in Paragraphs 52-53.

56. The last award issued in an arbitration under the Flow-Through Agreement was Nicolau's decision referenced above in paragraph 52, dated April 9, 2010. None of the arbitration awards issued under the Flow-Through Agreement are under legal challenge.

57. At no time during any of the arbitrations under the Flow-Through Agreement did APA represent the Eagle pilots seeking to flow up to American, even where those pilots had obtained placeholder numbers on the American seniority list. Rather, ALPA represented those pilots, and

1 advocated on their behalf in the arbitration. For example, in FLO-0107, ALPA represented the Eagle
2 pilots who had obtained seniority numbers but had not yet flowed up to American.

3 **X. Information published by APA**

4 58. As the Chair of APA's Information Technology Committee and an APA member, I am
5 aware of the information published on APA's website, which is available at www.alliedpilots.org.
6 APA regularly publishes a variety of information on its website, which is accessible to all pilots at
7 American. For example, APA publishes all of its collective bargaining agreements. These are also
8 accessible as public documents from the NMB.

9 59. APA has also published on its website all agreements regarding its merger with US
10 Airways, Inc., which are described in the declaration of David Brown, a copy of which I have
11 reviewed and which I understand is being submitted herewith. *See* Brown Decl. ¶¶ 8-15.

12 60. APA also has published on its website all of the arbitration awards described above, and
13 various other documents related to the arbitrations under the Flow-Through Agreement.

14 61. In addition, APA has published on its website a large number of documents related to
15 the ongoing American-US Airways seniority integration proceedings, including the parties' position
16 statements, the stipulations, and the hearing transcripts.

17 **XI. Communications between APA and the Flow-Through Pilots**

18 62. A true and correct copy of the correspondence between the Eagle Flow Through pilots
19 and APA is included in APA's compendium of exhibits as Exhibit 15, excluding the correspondence
20 related to the American-US Airways merger, which is separately discussed in the declaration of
21 Thomas Duncan. *See* Duncan Decl. ¶¶ 62-64 & Exhs. 35-44.

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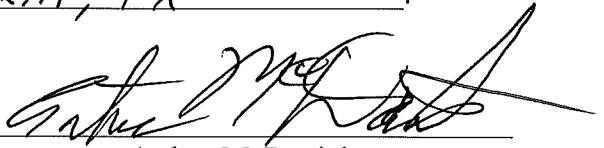
28 ///

Declaration of Arthur McDaniels 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 16, 2016, at FT WORTH, TX.

4
5 
6 Arthur McDaniels