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FLOW-THRU PILOTS COALITION,  
GREGORY R. CORDES, DRU MARQUARDT,  
DOUG POULTON, STEPHAN ROBSON,  
and PHILIP VALENTE III on behalf of themselves and all  
others similarly situated

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

AMERICAN AIRLINES FLOW-THRU  
PILOTS COALITION, GREGORY R.  
CORDES, DRU MARQUARDT, DOUG  
POULTON, STEPHAN ROBSON, and  
PHILIP VALENTE III, on behalf of  
themselves and all others similarly situated,

Plaintiffs,  
vs.

ALLIED PILOTS ASSOCIATION and  
AMERICAN AIRLINES, INC.,

Defendants.

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

) **NOTICE OF MOTION, MOTION AND**  
) **MEMORANDUM IN SUPPORT OF**  
) **MOTION FOR CLASS CERTIFICATION**

) April 21, 2016  
) 1:30 P.M.  
) Courtroom 3, 17<sup>th</sup> Floor  
) Judge Richard Seeborg

**NOTICE OF MOTION**

To Defendants ALLIED PILOTS ASSOCIATION (“APA”) and AMERICAN AIRLINES, INC. (“American”), and their attorneys of record:

PLEASE TAKE NOTICE that on April 21, 2016, at 1:30 P.M., before the Honorable Richard Seeborg, United States District Judge, in Courtroom 3, 17<sup>th</sup> Floor, 450 Golden Gate Avenue, San Francisco, CA 94102, Plaintiffs AMERICAN AIRLINES FLOW-THRU PILOTS COALITION, GREGORY R. CORDES, DRU MARQUARDT, DOUG POULTON, STEPHAN ROBSON and PHILIP VALENTE III, on behalf of themselves and all others similarly situated, will move the Court to certify this action as a class action under Rule 23(b)(2) and Rule 23(b)(3) of the Federal Rules of Civil Procedure and for the appointment of plaintiff’s counsel as class counsel pursuant to Rule 23(g) of the Federal Rules of Civil Procedure. This motion is based on this Notice and Motion, the accompanying Memorandum In Support of Motion For Class Certification, the Declarations of Christopher W. Katzenbach, Gregory R. Cordes, Dru Marquardt, Doug Poulton, Stephan Robson and Philip Valente III In Support of Motion for Class Certification, the records and files in this action, and such other evidence or argument that may be presented at the hearing and considered by the Court.

Dated: March 17, 2016.

KATZENBACH LAW OFFICES

By s/ Christopher W. Katzenbach

Christopher W. Katzenbach

Attorneys for Plaintiffs AMERICAN AIRLINES  
FLOW-THRU PILOTS COALITION, GREGORY R.  
CORDES, DRU MARQUARDT, DOUG POULTON,  
STEPHAN ROBSON, and PHILIP VALENTE III on  
behalf of themselves and all others similarly situated

**MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL**

Plaintiffs AMERICAN AIRLINES FLOW-THRU PILOTS COALITION, GREGORY R. CORDES, DRU MARQUARDT, DOUG POULTON, STEPHAN ROBSON and PHILIP VALENTE III, on behalf of themselves and all others similarly situated, move to certify this

1 action as a class action under Rule 23(b)(2) and Rule 23(b)(3) of the Federal Rules of Civil  
2 Procedure, for certification of plaintiffs as class representatives, and for the appointment of  
3 plaintiff's counsel as class counsel pursuant to Rule 23(g) of the Federal Rules of Civil  
4 Procedure. As more fully stated in the accompanying Memorandum and supporting  
5 declarations:

6 1. Plaintiffs move for certification of the following proposed class: All pilots who  
7 worked at American Eagle Airlines and became employed at American Airlines ("American")  
8 pursuant to the terms of the Flow-Through Agreement, also known as Supplement W or Letter  
9 3. These pilots are referred to as "Flow-Thru Pilots" or "FTPs".

10 2. This class is (a) so numerous that joinder of all members is impracticable; (b)  
11 there are questions of law or fact common to the class; (c) the claims of the representative  
12 parties are typical of the claims of the class; and (d) the representative parties will fairly and  
13 adequately protect the interests of the class.

14 3. The class should be certified under Rule 23(b)(2) as APA and American have  
15 acted or refused to act on grounds that apply generally to the proposed class, so that final  
16 injunctive or corresponding declaratory relief is appropriate respecting the class as a whole.

17 4. This class should be certified under Rule 23(b)(3) as the questions of law or fact  
18 common to the class members predominate over any questions affecting only individual  
19 members and a class action is superior to other available methods for fairly and efficiently  
20 adjudicating the controversy.

21 5. Plaintiffs' counsel, Christopher W. Katzenbach should be appointed counsel for  
22 the class under Rule 23(g) as he has the requisite experience and knowledge, he has invested  
23 substantial time in identifying and investigating the issues in this case and he and the plaintiffs  
24 have committed the resources to pursue this matter.

25 WHEREFORE, Plaintiffs move and request that:

26 1. The Court certify the following class as a class action under Rule 23(b)(2) and  
27 Rule 23(b)(3): All pilots who worked at American Eagle Airlines and became employed at  
28

American Airlines (“American”) pursuant to the terms of the Flow-Through Agreement, also known as Supplement W or Letter 3. These pilots are herein referred to as “Flow-Thru Pilots” or “FTP’s”.

2. The Court certify plaintiffs as representatives of the certified class.

3. The Court issue a certification order pursuant to Rule 23(c)(1) that defines the class and the class claims and issues in this case as concerning whether the APA has breached the duty of fair representation towards the FTPs and whether American has participated in, aided or abetted this breach. The specific claims and issues involved in APA’s breach of duty that should be identified in the certification order are:

- a. Whether APA acted arbitrarily, discriminatorily or in bad faith by failing or refusing to negotiate for or otherwise seek Length of Service (LOS) credits for time FTPs were working as jet captains at American Eagle during the period when FTPs were unable work at American after September 2001 because American stopped hiring pilots until the FTPs were hired by American after June 2010.
- b. Whether APA has acted arbitrarily, discriminatorily or in bad faith as to representing the interests of FTPs in including the FTPs’ years of service at American Eagle as a part of any longevity factor used in placing pilots on the integrated seniority list arising from the seniority merger of pilots of American Airlines and US Airways.

4. The Court appoint Plaintiffs’ counsel, Christopher W. Katzenbach, as class counsel under Rule 23(g).

Dated: March 17, 2016.

KATZENBACH LAW OFFICES

By s/ Christopher W. Katzenbach

Christopher W. Katzenbach

Attorneys for Plaintiffs AMERICAN AIRLINES  
FLOW-THRU PILOTS COALITION, GREGORY R.  
CORDES, DRU MARQUARDT, DOUG POULTON,  
STEPHAN ROBSON, and PHILIP VALENTE III on  
behalf of themselves and all others similarly situated

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1 Plaintiffs submit the following memorandum of points and authorities in support of their  
 2 motion for an order under Rule 23(c)(1)(A) of the Federal Rules of Civil Procedure that this  
 3 action may be maintained as a class action and to approve the appointment of Christopher W.  
 4 Katzenbach as class counsel as required by Fed.R.Civ.P., Rule 23(g)\ .

## 5 INTRODUCTION

6 This case concerns the representation of a group of pilots at American Airlines  
 7 (“American”) - the Flow-Through Pilots (“FTP”) - by their collective bargaining representative,  
 8 Allied Pilots Association (“APA”). The FTPs came to American under an agreement that  
 9 allowed commuter jet (“CJ”) captains to move from the American Eagle (“Eagle”) regional  
 10 airlines to American. This agreement was executed in 1997 and is known as the Flow-Through  
 11 Agreement (“FTA”), Supplement W and Letter 3. The FTA allowed Eagle CJ captains to flow-  
 12 up to jobs at American but also allowed pilots at American to flow-down to Eagle CJ captain  
 13 positions in the event of layoffs at American. The Second Amended Complaint (“SAC”) alleges  
 14 that APA breached its duty of fair representation owed the FTPs by repeatedly discriminating  
 15 against FTPs in favor of other pilot groups. This discrimination arose because of APA’s hostility  
 16 to the FTPs and their rights under the FTA or from the APA’s desire to favor other numerically  
 17 larger pilot groups—particularly pilots formerly employed by TWA. Among other things, the  
 18 APA’s breach of duty has resulted in loss of Length of Service Credits for FTPs that all other  
 19 American pilots received and that impact pilots’ employment income and benefits. SAC ¶¶ 50,  
 20 52(d), 81 (First Claim for Relief). The APA has continued to discriminate against FTPs in  
 21 connection with a Seniority List Integration (SLI) process to develop an integrated seniority list  
 22 for pilots following the merger of American with US Airways. SAC ¶¶ 60-66, 86-87 (Second  
 23 Claim for Relief). Plaintiffs seek monetary damages and equitable relief (injunction and  
 24 declaratory relief) for all members of the Class. SAC at Prayer.



## ANALYSIS

### I. THE DESCRIPTION OF THE CLASS AFFECTED BY APA’S AND AMERICAN’S ACTIONS THE WERE DIRECTED TOWARDS THE CLASS AS A WHOLE AND WHICH INVOLVE PREDOMINANTLY COMMON LEGAL AND FACTUAL ISSUES.

The class plaintiffs are seeking to represent includes all pilots who worked at American Eagle Airlines and became employed at American Airlines (“American”) pursuant to the terms of the Flow-Through Agreement, also known as Supplement W or Letter 3. These pilots are referred to as “Flow-Thru Pilots” or “FTP’s”.

As discussed below, APA and American have acted in this dispute on grounds that apply to all FTPs and common questions predominate in the case. All FTPs did not receive Length of Service (LOS) credits for time FTPs were working as jet captains at American Eagle but had been unable to transfer to American after September 2001. All FTPs will have their position on the integrated seniority list adversely affected by not including service at American Eagle as part of any factor of longevity used in created the integrated seniority list. Declaration of Christopher W. Katzenbach in Support of Motion for Class Certification (“CWK Decl.”) ¶ 7.

The class claims and issues in this case concern whether the APA has breached the duty of fair representation towards the FTPs and whether APA has participated in, aided or abetted this breach. CWK Decl. ¶¶ 9, 10. The specific matters involved in this breach of duty concern Length of Service (LOS) credits denied FTPs for the time they could not work at American because of lack of work but given all other pilots that were similarly unable to work at American and longevity credit in the current seniority integration process for FTPs for the FTPs years of service at American Eagle (CWK Decl. ¶ 6). These matters arising from APA’s breach of duty can be expressed as:

- a. Whether APA acted arbitrarily, discriminatorily or in bad faith by failing or refusing to negotiate for or otherwise seek Length of Service (LOS) credits for time FTPs were working as jet captains at American Eagle during the period when FTPs were unable work at American after September 2001 because

American stopped hiring pilots until the FTPs were hired by American after June 2010.

- b. Whether APA has acted arbitrarily, discriminatorily or in bad faith as to whether the FTPs' years of service at American Eagle should be included as a part of any longevity factor used in placing pilots on the integrated seniority list arising from the seniority merger of pilots of American Airlines and US Airways.

## II. THE PRELIMINARY REQUIREMENTS OF RULE 23(A).

Rule 23(a), F.R.Civ.P. has four initial requirements (prerequisites) in order to certify a class action:

One or more members of a class may sue or be sued as representative parties on behalf of all members only if

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims ... of the representative parties are typical of the claims ... of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

If these four requirements are satisfied then the action must fit into one of the three categories or types of class actions described in Rule 23(b).

### A. The Four Prerequisites Requirements Are Satisfied

#### 1. Rule 23(a)(1): Numerosity.

The numerosity requirement of Rule 23(a)(1) is satisfied when joinder of individual plaintiffs would be impracticable. "The rule of thumb adopted by most courts is that proposed classes in excess of 40 generally satisfy the numerosity requirement." *McLaughlin on Class Actions* § 4:5 (9th ed.); Moore's *Federal Practice* sec. 23.22 (3d ed.) ["a class of 41 or more is usually sufficiently numerous" (citing cases from the 3<sup>rd</sup>, 4<sup>th</sup>, 7<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and D.C. circuits)]. The proposed class is all airline pilots who are employed by American and represented by the APA and who obtained their employment at American pursuant to the terms of the Flow-

Through Agreement executed on May 5, 1997. SAC ¶ 10. There are over 500 pilots who are in this proposed class. Declaration of Gregory R. Cordes In Support of Motion for Class Certification (“Cordes Decl.”) ¶¶ 3, 11, 16.

The degree of geographic dispersion of the members of the proposed class further supports a finding that joinder is impracticable. See *Harriss v Pan American Airways*, 74 F.R.D. 24, 45 (N.D.Cal. 1977) (approving class of airline stewardesses); *Riordan v Smith Barney*, 113 F.FR.D. 60, 62 (N.D.Ill 1986) (29 class members met the numerosity requirement because they came from 9 states). Here the members of the proposed class are widely scattered over the United States. Cordes Decl. ¶ 25.

Moreover, plaintiffs would suffer a strong litigational hardship and judicial economy would not be served if joinder of all members of the putative class into one proceeding were required. Such an action would drastically increase the expenses for all parties, be time-consuming and logistically unfeasible. Individual adjudication of the claims of all of the class members would require multiple proceedings, would be lengthy, duplicative and unnecessarily expensive, run the risk of inconsistent results and not serve the courts’ interest in judicial economy. *In re Drexel Burnam Lambert*, 960 F.2d 285, 289. (2d Cir. 1992).

## 2. Rule 23(a)(2): Common Questions.

“A class has sufficient commonality ‘if there are questions of fact and law which are common to the class.’ Fed. R. Civ. P. Rule 23(a)(2). The commonality preconditions of Rule 23(a)(2) are less rigorous than the companion requirements of Rule 23(b)(3). Indeed, Rule 23(a)(2) has been construed permissively. All questions of fact and law need not be common to satisfy the rule. The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9<sup>th</sup> Cir. 1998); *Parra v. Bashas’ Inc.*, 536 F.3d 975, 978 (9<sup>th</sup> Cir. 2008).

A proposed class will satisfy the commonality requirement if the class shares even a single common question of law or fact. *Wal-Mart Stores v. Dukes*, 564 U.S. 338, 359 (2011)

1 (“We quite agree that for purposes of Rule 23(a)(2) ‘[e]ven a single [common] question’ will  
 2 do.”); *Mazza v. American Honda Motor Company Inc.*, 666 F.3d 581, 589 (9<sup>th</sup> Cir. 2012)  
 3 (plaintiffs satisfied “limited burden” to show that there was a least one significant question of  
 4 law or fact common to class). *Id.*, at 588:

5 [C]ommonality requires that the class members' claims “depend  
 6 upon a common contention” such that “determination of its truth or  
 7 falsity will resolve an issue that is central to the validity of each  
 8 [claim] in one stroke.” [citation omitted]. The plaintiff must  
 demonstrate “the capacity of classwide proceedings to generate  
 common answers” to common questions of law or fact that are “apt  
 to drive the resolution of the litigation.”

9 A need to undertake individualized calculations of damages for each class member does  
 10 not defeat commonality. “In this circuit, however, damage calculations alone cannot defeat  
 11 certification.” *Yokoyama v. Midland Nat'l Life Ins. Co.*, 594 F.3d 1087, 1094 (9<sup>th</sup> Cir. 2010).  
 12 Accord *Leyva v. Medline Industries, Inc.*, 716 F.3d 510, 513-514 (9<sup>th</sup> Cir. 2013).

13 In this case, common questions are at the core of the action alleged. A course of conduct  
 14 by the defendants affected all members of the class in the same way. The determinations as to  
 15 these common questions would be dispositive to all of the claims against the APA and American.  
 16 All issues of law and all substantive issues of fact are common to the named individual plaintiffs  
 17 and all members of the proposed class. The determinative issues affecting of any class member’s  
 18 right to damages or other relief are issues of law and fact common to all members of the class. .  
 19 CWK Decl. ¶¶ 8-11. Those common issues may be summarized as follows:

20  
 21 **(a) Common Issues of Law.**

22 There are only three issues of law in this action and all are common to the named  
 23 individual plaintiffs, all persons who are members of the American Airlines Flow-Thru Pilots  
 24 Coalition (“AAFTPC”) and all members of the proposed class.

- 25 a. Did the APA breach a duty of fair representation towards the FTPs as to their  
 26 terms and conditions of employment with American, including the representation  
 27 of the FTPs interests in the seniority list integration process?  
 28

1           b.       American liable for damages arising from a breach of the duty of fair  
2                   representation by APA as a joint participant or aider and abettor of APA's breach  
3                   of duty?

4           c.       May APA and American be enjoined from utilizing any integrated seniority list  
5                   arising from the seniority list integration proceedings initiated following the 2013  
6                   purchase of US Airways by American?

7           These legal issues arise from the common legal question whether APA violated its duty  
8           of fair representation.

9           A union violates its duty of fair representation (DFR) when it acts arbitrarily,  
10          discriminatorily or in bad faith. *Vaca v. Sipes*, 386 U.S. 171, 190 (1967). These represent three  
11          separate standards, a violation of any of which establishes a DFR. *Simo v. Union Of*  
12          *Needletrades, Indus.*, 322 F.3d 602, 617 (9<sup>th</sup> Cir. 2003): "Whereas the arbitrariness analysis  
13          looks to the objective adequacy of the Union's conduct, the discrimination and bad faith analyses  
14          look to the subjective motivation of the Union officials." *Id.* at 618. While the union has  
15          substantial discretion in representing members, "a union can still breach the duty of fair  
16          representation if it exercised its judgment in bad faith or in a discriminatory manner." *Beck v.*  
17          *United Food & Commercial Wkrs., Local 99*, 506 F.3d 874, 880 (9<sup>th</sup> Cir. 2007).

18          A union violates its duty of fair representation by favoring one union group over another  
19          for arbitrary or discriminatory reasons. *Barton Brands, Ltd. v. NLRB*, 529 F.2d 793, 798-799 (7<sup>th</sup>  
20          Cir. 1976); *Laborers & Hoc Carriers Loc. No. 341 v. NLRB*, 564 F.2d 834, 840 (9<sup>th</sup> Cir. 1977).  
21          "In their role as employees' exclusive representatives, unions must be careful to protect the  
22          interests of *all* those whom they represent: The needs of the many do not always outweigh the  
23          needs of the few, or the one." *Banks v. Bethlehem Steel Corp.*, 870 F.2d 1438, 1443 (9<sup>th</sup> Cir.  
24          1989). DFR violations have been found where a union caused an employee to be discharged  
25          because other workers thought they should have received the job he received (*Laborers Loc. No.*  
26          *341*, *supra*, 564 F.2d at 836, 840); where a union withdrew once set of grievances from  
27          arbitration because it felt that pursuing those cases weakened other members' positions before an  
28

1 arbitrator (*Gregg v. Chauffeurs, Teamsters & Helpers Union Local 150*, 699 F.2d 1015, 1016 (9<sup>th</sup>  
 2 Cir. 1983)); where a union has a policy of not calling union members as witnesses if their  
 3 testimony might be critical of another member (*Banks v. Bethlehem Steel Corp.*, supra, 870 F.2d  
 4 at 1442 (testimony that another employee started the fight for which the grievant was fired);  
 5 where a union favored a politically stronger group (*Barton Brands, Ltd. v. NLRB*, supra, 529  
 6 F.2d at 798-799); and where a union favored one pilot group at the expense of another in  
 7 violation of union's policies that required it to meet, mediate and arbitrate with both groups  
 8 before presenting proposals to employer (*Bernard v. Air Line Pilots Assn.* 873 F.2d 213, 216-217  
 9 (9<sup>th</sup> Cir. 1989)). In the context of negotiating a seniority list, the prohibition on arbitrariness  
 10 means that "a union may not juggle the seniority roster for no reason other than to advance one  
 11 group of employees over another." *Rakestraw v. United Airlines, Inc.*, 981 F.2d 1524, 1535 (7<sup>th</sup>  
 12 Cir. 1992), quoted in *Addington v. US Airline Pilots Association*, 731 F.3d 967, 984 (9<sup>th</sup> Cir.  
 13 2015).

14 **(b) Common Issues of Fact.**

15 There is one categorical issue of fact and numerous factual sub-issues of that categorical  
 16 issue. All of the factual issues, categorical and sub-issues, are issues of fact common to the  
 17 named individual plaintiffs, all persons who are members of the AAFTPC and all members of  
 18 the proposed class. CWK Decl. ¶ 10.

19 The categorical factual issue is: Did APA act arbitrarily, discriminatorily or in bad faith  
 20 towards the FTPs? Particularly: (a) Did APA act arbitrarily, in bad faith or in a discriminatory  
 21 manner by advancing the interests of the TWA-LLC pilots on the American pilot seniority list,  
 22 including the TWA-LLC Staplees, at the expense of and contrary to the interests of FTPs, who  
 23 were also on the American seniority list or entitled to jobs that APA arranged to be given to the  
 24 TWA-LLC pilots? (b) Did APA act arbitrarily, in bad faith or in a discriminatory manner by  
 25 refusing to protect the interests of FTPs in having time at American Eagle included in any  
 26 longevity factor used for an integrated seniority list by refusing to advocate for such inclusion,  
 27 stipulating that time at American Eagle would not be included and refusing to present evidence  
 28

1 to support including time at American Eagle? American's liability for participating in APA's  
 2 breach of duty likewise depends on the factual issue whether APA breached its duty of fair  
 3 representation. Common sub-issues of fact include (CWK Decl. ¶ 10):

- 4 (1) Did American and the APA agree arbitrarily, discriminatorily or in bad faith to  
 5 permit TWA-LLC pilots to flow down to American Eagle and displace FTPs from  
 6 their positions, including (a) changing prior agreements that would not have  
 7 permitted this flow-down and (b) treating TWA-LLC pilots who did not meet the  
 8 definition of a furloughed pilot under the applicable contracts that required the pilot  
 9 to have been in active service at American and laid off because of a reduction in  
 10 force, as if these pilots were furloughed American pilots for purposes of flowing-  
 11 down to American Eagle and displacing FTPs?
- 12 (2) Did APA act in bad faith, arbitrarily or discriminatorily by not submitting  
 13 agreements allowing flow-down for TWA-LLC pilots, including those who had  
 14 never been in active service with American and who were laid off because of the  
 15 TWA acquisition, not a reduction in force at American, for ratification or approval  
 16 by FTPs or seeking agreement from the union representing American Eagle pilots  
 17 because this changed the terms of the Flow-Through agreement?
- 18 (3) Did APA act arbitrarily, discriminatorily or in bad faith towards the FTPs, and did  
 19 American join or participate in, aid or abet APA's breach of duty, by continuing to  
 20 hire TWA-LLC pilots for new hire classes, in preference to FTPs or other jet  
 21 captains at American Eagle, after Arbitrator LaRocco in FLO-0903 held that the  
 22 TWA-LLC pilots were "new hire" pilots and the terms of the Flow-Through  
 23 Agreement requiring hiring of FTPs and other American Eagle jet captains applied  
 24 to these new hire classes?
- 25 (4) Did APA act arbitrarily, discriminatorily or in bad faith towards the FTPs, and did  
 26 American join or participate in, aid or abet APA's breach of duty, by giving pilots  
 27 Length of Service (herein "LOS") credit for time they were not working at American  
 28



1 (including time these pilots were working at American Eagle) after September 11,  
2 2001, but refuse to negotiate for or seek similar LOS credit for FTPs for time spent  
3 at American Eagle when, because of the events of September 11, 2001, the FTPs  
4 could not work at American?

5 (5) Did APA act arbitrarily, discriminatorily or in bad faith towards the FTPs, and did  
6 American join or participate in, aid or abet APA's breach of duty, by negotiating and  
7 agreeing to give two additional years of LOS credit for pilots because of lack of  
8 work at American after September 11, 2001 for all pilots other than the FTPs,  
9 including TWA-LLC pilots who had never been active pilots at American and who  
10 worked at American Eagle as flow-down pilots?

11 (6) Did APA act arbitrarily, discriminatorily or in bad faith towards the FTPs, and in  
12 collusion with American, by engaging in off-the-record submissions and discussions  
13 in Arbitration No. FLO-0108 before Arbitrator George Nicolau, to seek to have  
14 Arbitrator Nicolau to issue a remedy award in terms that impaired and abrogated the  
15 FTPs rights under the Flow-Through Agreement?

16 (7) Did APA act arbitrarily, discriminatorily or in bad faith towards the FTPs by (a)  
17 refusing to represent the interests of FTPs in ensuring that any longevity factor that  
18 was used on an integrated seniority list would include time FTPs spent at American  
19 Eagle, particularly where APA was agreeing that longevity for TWA-LLC pilots  
20 would start from the time they began working at TWA; (b) refusing to present  
21 evidence in support of including service at American Eagle as part of any longevity  
22 factor used for an integrated seniority list; and (c) refusing to give an explanation of  
23 its position to FTPs or provide documents to FTPs concerning APA position on  
24 whether any longevity factor that might be used should exclude service at American  
25 Eagle?



1                   **3. Rule 23(a)(3): Typicality of Claims.**

2           “The typicality prerequisite of Rule 23(a)(3) is fulfilled if “the claims or defenses of the  
3 representative parties are typical of the claims or defenses of the class.” Fed. R. Civ. P., Rule  
4 23(a)(3).

5           Under the rule's permissive standards, representative claims are “typical” if they are  
6 reasonably co-extensive with those of absent class members; they need not be substantially  
7 identical.” *Hanlon v. Chrysler Corp.*, *supra.*, 150 F.3d at 1019; *Staton v. Boeing Co.*, 327 F.3d  
8 938, 957 (9<sup>th</sup> Cir. 2003) (citing *Hanlon* and affirming that typicality does not require a complete  
9 identity of claims); *Armstrong v. Davis*, 275 F.3d 849, 869 (9<sup>th</sup> Cir. 2001) (“We do not insist that  
10 the named plaintiffs' injuries be identical with those of the other class members, only that the  
11 unnamed class members have injuries similar to those of the named plaintiffs and that the  
12 injuries result from the same, injurious course of conduct.”) Differences in types of damages or  
13 the amount of damages will not preclude typicality. For example, in a product defect case the  
14 court was unconcerned that the defect varied in strength from one car to the next, or that some  
15 purchasers might have broader remedies than were available to other purchasers in the class.  
16 *Wolin v. Jaguar Land Rover North Am.*, 617 F.3d 1168, 1175 (9<sup>th</sup> Cir. 2010).

17           Here, typicality is satisfied. Each named and unnamed class member's claim arises from  
18 the same course of events, each named and unnamed class member makes similar legal  
19 arguments to prove the defendants' liability, and each class member has lost seniority and  
20 incurred monetary damages as a consequence of defendants' breaches. CWK Decl. ¶ 11.

21           The individual representative plaintiffs and the unnamed members of the proposed class  
22 are all jet captains who had been employed at American Eagle and obtained employment at  
23 American pursuant to the terms of the Flow-Through Agreement (“FTA”). Corders Decl. ¶¶ 3,  
24 21, 22. See also, Declaration of Dru Marquardt In Support of Motion For Class Certification  
25 (“Marquardt Decl.”) ¶¶ 2, 7; Declaration of Doug Poulton In Support of Motion For Class  
26 Certification (“Poulton Decl.”) ¶¶ 2, 7; Declaration of Stephan Robson In Support of Motion For  
27 Class Certification (“Robson Decl.”) ¶¶ 2 7; Declaration of Philip Valente III In Support of  
28

1 Motion For Class Certification (“Valente Decl.”) ¶¶ 2, 5. The individual representative plaintiffs  
 2 and the unnamed class members all suffered the same injuries in this case arising from APA’s  
 3 breach of duty. See Cordes Decl. ¶¶ 19, 20; Marquardt Decl. ¶¶ 8-11; Poulton Decl. ¶¶ 8-11;  
 4 Robson Decl. ¶¶ 8-11; Valente Decl. ¶¶ 6-9. See also CWK Decl. ¶ 11, 12.

5 The entity representative AAFTPC is an voluntary organization of over 170 members  
 6 who are pilots flying for American Airlines and who obtained their employment at American  
 7 Airlines pursuant to the terms of the FTA. Cordes Decl. ¶ 4. The AAFTPC goals are to redress  
 8 the harms to the FTPs which are the subject of this action. *Id.* at ¶ 5. The AAFTPC has  
 9 engaged in and organized efforts to support the FTPs interests as to LOS credits and the  
 10 inclusion of service at American Eagle as a longevity factor in seniority list integration. *Id.* at ¶  
 11 6. The AAFTPC maintains a website to communicate with FTPs on these issues and has raised  
 12 funds for this litigation. *Ibid.* at ¶ 6, p. 3, lines 17-20.

#### 13 4. Rule 23(a)(4): Adequacy of Representation.

14 The final prerequisite posed by Rule 23(a) is that “the representative parties will fairly  
 15 and adequately protect the interests of the class.” Fed. R. Civ. P., Rule 23(a)(4).

16 “With reference to the ability of the named plaintiffs to represent the interests of the  
 17 class, two criteria for determining the adequacy of representation have been recognized. First, the  
 18 named representatives must appear able to prosecute the action vigorously through qualified  
 19 counsel, and second, the representatives must not have antagonistic or conflicting interests with  
 20 the unnamed members of the class.” *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512,  
 21 (9<sup>th</sup> Cir. 1978); *Hanlon v. Chrysler Corp.*, *supra.*, 150 F.3d at 1020.

22 To prove adequacy, the Plaintiff must demonstrate that (1) the class counsel is qualified,  
 23 experienced, and generally able to conduct the litigation and (2) that the class members must not  
 24 have any interests antagonistic to one another. *In re Drexel Burnham Lambert Group*, *supra.*, 960  
 25 F.2d at 291. .

**(a) The named representative plaintiffs have no interests that are antagonistic to the other member of the class and can adequately represent the class.**

The remedies sought would apply equally to and be received by all members of the class, named and unnamed, in proportion to the injury that each incurred. Consequently, there is no conflict of interest between any named and unnamed member of the class. Cordes Decl. ¶ 23; Marquardt Decl. ¶¶ 11, 12; Poulton Decl. ¶¶ 11, 12; Robson Decl. ¶¶ 11, 12; Valente Decl. ¶¶ 9, 10. See also CWK Decl. ¶ 12. The individual plaintiffs and the AAFTPC have all contributed financial resources to the financing of this action. Cordes Decl. ¶ 24; Marquardt Decl. ¶ 13; Poulton Decl. ¶ 13; Robson Decl. ¶ 13; Valente Decl. ¶ 11.

**(b) Class counsel is qualified, experienced, and able to conduct the litigation.**

Christopher W. Katzenbach is a graduate of Stanford University (BA 1972) and Yale Law School. He has specialized in matters involving labor law and union members' rights to fair representation for over 35 years. He has represented union members in numerous labor cases, including cases involving the duty of fair representation, in trials and in appeals. This work has included representing American Eagle pilots. CWK Decl. ¶¶ 3-5. He has invested substantial time in identifying and investigating the issues in this case. *Id.* at ¶ 14. He and the plaintiffs have the resources to pursue this action, including fund-raising by the AAFTPC. *Id.* at ¶ 14.

**III. THE CLASS MAY BE CERTIFIED UNDER BOTH RULES 23(B)(2) AND 23(B)(3)**

This action satisfies the requirements of both Rules 23(b)(2) and 23(b)(3) and the class may be certified under either or both of those sections. It is not unusual for a case to qualify as a class action and be certified under more than one of the three categories of class actions set out in Rule 23(b). Both the injunctive and the damage remedies that plaintiffs seek can be addressed under Rule 23(b)(2); or alternatively it is possible to certify the injunctive aspects of this suit under Rule 23(b)(2) and the damages aspects under Rule 23(b)(3). Whether there is here divided certification under (b)(2) and (b)(3) or certification under (b)(2) only, the Court could achieve both consistent treatment of the requested class-wide equitable relief and an opportunity for each

1 affected class member person to exercise control over the damages aspects by requiring that  
 2 notice and an opportunity to opt out be given and provided in the manner required for (b)(3)  
 3 classes pursuant to the Court's authority under Rule 23(d). *Jefferson v. Ingersoll Int'l Inc.*, 195  
 4 F.3d 894, 898 (7<sup>th</sup> Cir. 1999); *In re TFT-LCD Antitrust Litig.*, 267 F.R.D. 583, 596-598  
 5 (N.D.Cal. 2010); *In re NASDAQ Market-Makers Antitrust Litig.*, 169 F.R.D. 493, 515-516  
 6 (S.D.N.Y. 1996).

7 **A. Certification of the Class Under Rule 23(b)(2)**

8 Certification under Rule 23(b)(2) is proper if “the party opposing the class has acted or  
 9 refused to act on grounds that apply generally to the class, so that final injunctive relief or  
 10 corresponding declaratory relief is appropriate respecting the class as a whole.” This arises  
 11 where a party's action or inaction affects the entire class. As shown above in the discussion of  
 12 common issues of law and fact, APA and American have acted against the FTPs as a group  
 13 because they are FTPs. This satisfies Rule 23(b)(2)'s requirement for actions “respecting the  
 14 class as a whole.”

15 The Supreme Court recently explained (*Wal-Mart Stores, Inc. v. Dukes*, *supra*, 564 U.S.  
 16 at 360-361):

17 The key to the (b)(2) class is “the indivisible nature of the  
 18 injunctive or declaratory remedy warranted--the notion that the  
 19 conduct is such that it can be enjoined or declared unlawful only as  
 20 to all of the class members or as to none of them.” [citation  
 21 omitted]. In other words, Rule 23(b)(2) applies only when a single  
 22 injunction or declaratory judgment would provide relief to each  
 23 member of the class. It does not authorize class certification when  
 each individual class member would be entitled to a *different*  
 injunction or declaratory judgment against the defendant.  
 Similarly, it does not authorize class certification when each class  
 member would be entitled to an individualized award of monetary  
 damages.

24 While *Dukes* firmly re-established the rule that declaratory and injunctive relief is  
 25 appropriate under Rule 23(b)(2), it left open whether damages could be obtained in a Rule  
 26 23(b)(2) class action as “incidental” relief to declaratory or injunctive relief. *Id.* at 360, 366-367.  
 27 Damages are being sought in this case, in addition to injunctive and declaratory relief. As shown  
 28

below, the damages sought here are incidental to injunctive or declaratory relief and would not prevent certification under Rule 23(b)(2).

*Dukes* rested on the recognition that relief would not be incidental for purposes of Rule 23(b)(2) where each class member would require an “individualized determinations of each employee’s eligibility” for damages including individualized defenses to that individual claim. *Id.* at 366; see also *id.* at 361. In those situations, each individual putative class member has a due process right to opt-in or opt-out of the class action lawsuit. *Id.* at 363-364, 366.

After *Dukes*, the availability of monetary relief under Rule 23(b)(2) turns on the question whether the monetary damages “are merely incidental to the litigation” (*Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 986 (9<sup>th</sup> Cir. 2011)) or require “individualized determination of each employee’s eligibility” for monetary damages such that due process requires giving employees the right to opt-in or opt-out. *Id.* at 987.

Under this test, Rule 23(b)(2) remains appropriate if it is not necessary to determine individually each class member’s eligibility for damages. A number of circuits have concluded, after *Wal-Mart Stores, Inc. v. Dukes*, that monetary damages are appropriate for a class certified under Rule 23(b)(2) where the damages “flow directly from liability to the class as a whole” from the “claims forming the basis of . . . injunctive or declaratory relief.” *Amara v. CIGNA Corp.*, 775 F.3d 510, 519 (2d Cir. 2014). In *Amara*, the Second Circuit concluded that monetary damages could be awarded for Rule 23(b)(2) class when the damages due each class member are “easily capable of computation by means of objective standards.” *Id.* at 524. In *Johnson v. Meriter Health Servs. Emp. Ret. Plan*, 702 F.3d 364, 372 (7<sup>th</sup> Cir. 2012) the Seventh Circuit allowed a Rule 23(b)(2) class action to proceed where “the calculation of monetary relief will be mechanical, formulaic, a task not for a trier of fact but for a computer program”. The Seventh Circuit explained (*id.* at 371):

If once that is done [the pension plan reformed] the award of monetary relief will just be a matter of laying each class member’s pension-related employment records alongside the text of the reformed plan and computing the employee’s entitlement by subtracting the benefit already credited it to him from the benefit to which the reformed plan document entitles him, the monetary

1 relief will truly be merely "incidental" to the declaratory and (if  
2 necessary) injunctive relief (necessary only if Meriter ignores the  
3 declaration).

4 The Fourth Circuit in *Barry v. Schulman*, 807 F3d 600, 610-612 (4<sup>th</sup> Cir. 2015) reached  
5 the same result as to statutory damages that might be awarded each individual class member  
6 under the Fair Credit Reporting Act. The Fourth Circuit noted that the damages payable to each  
7 class member would be "set by rote calculation" (*id.* at 610) and that these damages were  
8 incidental to declaratory or injunctive relief "meaning that damages must be in the nature of a  
9 'group remedy,' flowing 'directly from liability to the class as a whole.'" *Id.* at 612. In *Lum v.*  
10 *SEIU Local 521*, 2016 U.S. Dist. LEXIS 23982 (N.D.Cal. 2016), Judge Koh in this district  
11 concluded that the interest on rebates of union dues improperly collected was properly  
12 considered incidental monetary relief for purposes of Rule 23(b)(2). *Id.* at pp. \*3-\*4.<sup>1</sup>

13 Here the declaratory and injunctive relief that is requested is appropriate for the entire  
14 class because the conduct of both the APA and American affected and, unless corrected by the  
15 requested declaratory and injunctive relief, will in the future continue to affect, the entire class.

16 On the first claim for relief Plaintiffs seek a declaration that APA has breached its duty of  
17 fair representation and discriminated against the FTPs, including discrimination in negotiating  
18 loss of service ("LOS") credits and an injunction directing APA to make up any monetary loss  
19 suffered by FTPs in the future arising from APA's breach of duty, including losses arising from  
20 the FTPs failure to receive LOS credits. Plaintiffs also seek damages and future damages from  
21 both APA and American because the FTPs did not obtain LOS credits as a result of APA's  
22 breach of duty and arbitrary favoritism of other pilot groups.

23 On the second claim for relief, Plaintiffs seek a declaration that APA has breached its  
24 duty of fair representation owed to the FTPs in connection with the SLI process, an injunction

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25 <sup>1</sup> The interest due each employee in *Lum* required individual calculation in a sense, as the class  
26 spanned dues paid over objection from December 2012 to 2016 and included only employees  
27 who "have timely and properly objected to paying non-chargeable fees to Local 521." *Id.* at p.  
28 \*2. Obviously, interest would be calculated based on the date the dues were paid and if the  
employee objected in any dues-year. That did not detract from the fact that the calculation of  
damages was nevertheless by formula once these variables were inserted.

1 directing APA to make up any monetary loss suffered by FTPs in the future arising from APA's  
 2 breach of duty affecting the FTPs placement on the integrated seniority list, and an injunction  
 3 prohibiting APA and American from using any integrated seniority list arising from the SLI  
 4 process. Plaintiffs also seek damages against APA for reduced employment opportunities, wages  
 5 and benefits arising from the adverse effect of the FTPs placement on the integrated seniority  
 6 list.

7 Damages under the first claim for relief flow directly from the denial of LOS credits to  
 8 the FTPs as a class. Like the pension benefits in *Johnson v. Meriter Health Servs. Emp. Ret.*  
 9 *Plan*, supra, 702 F.3d 364 at 371, all that will be necessary to determine damages is to compare  
 10 what the FTPs' received without the LOS credits and what they would have received with the  
 11 LOS credits. No individualized assessment of eligibility for the LOS credits will be necessary.

12 The same is true as to placement on the seniority list. Seniority list placement in an  
 13 integrated seniority list is by formula and the principle issue is how longevity and service at  
 14 American Eagle will or will not be part of the integration formula. See SAC ¶¶ 60, 63, 69; see  
 15 also SAC ¶ 40 (formula for integration of TWA and American seniority lists). Liability arises  
 16 from APA's failure to represent the interest of the FTPs in the contentions over the appropriate  
 17 formula or presenting evidence at the seniority integration arbitration to protect the FTPs  
 18 interests. APA's breach of duty arises particularly in connection with its position that service at  
 19 American Eagle should not be part of any factor of longevity that might be used in a final  
 20 integrated seniority list and its refusal to present evidence to support the interests of FTPs that  
 21 service at American Eagle should be counted in a longevity factor. See SAC ¶¶ 60-61, 63-64,  
 22 70-71, 86. See, e.g., *Ramey v. Dist. 141, Int'l Ass'n of Machinists and Aerospace Workers*, 378  
 23 F.3d 269, 276-277 (2<sup>d</sup> Cir. 2004) (union breached duty of fair representation by refusing to  
 24 advocate for seniority credit for work at prior airline for discriminatory and arbitrary reasons).

25 Placement on the seniority list will affect all FTPs equally, particularly as the  
 26 inclusion/exclusion of service at American Eagle is an unquestionably common factor for every  
 27 FTP who, by definition, all had service at American Eagle before flowing-up to American.  
 28



Again, as in *Johnson*, damages will flow by formula simply by comparing the FTPs position on the existing seniority list with their placement on the integrated list. Damages flow naturally if another pilot received a benefit by being ahead of the FTP on the integrated list where the FTP would have been entitled to the benefit on the existing list. See *Pettway v. American Cast Iron Pipe Co.*, 494 F.2d 211, 262-263 (5<sup>th</sup> Cir. 1974) (discussing use of comparable employees to determine damages for class members who were discriminated against).

Because damages for loss of LOS credits and loss of position on an integrated seniority list flow directly from the class-wide violations, such damages are incidental to the correction of LOS and seniority list placement issues and do not prevent certification under Rule 23(b)(2).

**B. Certification of the Class Under Rule 23(b)(3)**

A class action may be maintained under Rule 23(b) (3) if the court finds: (1) common questions of law or fact predominate over any questions affecting only individual class members; and (2) a class action is superior to other means for fairly and efficiently resolving the controversy. Rule 23(b)(3) sets forth four considerations that are pertinent to these two requirements:

(a) the class members' interest in individually controlling the prosecution of separate actions;

(b) the extent and nature of any litigation concerning the controversy already begun by or against the class members;

(c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and,

(d) the likely difficulties in managing a class action.

Rule 23(b)(3)'s predominance and superiority requirements were added "to cover cases 'in which a class action would achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.'" *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 615 (1997) (quoting Fed. R. Civ. P. 23(b)(3) Adv. Comm. Notes to 1966 Amendment). These requirements are clearly met here.



1                   **1. Common Issues Predominate**

2           In the instant case, common issues predominate. The entire action turns completely on  
 3 uniform events, specifically the granting of LOS credits and an integrated seniority list that  
 4 treated the members of the class differently than other pilot groups. All members of the class  
 5 were disadvantaged by those policies and the actions of the APA. Such uniform corporate  
 6 policies when relevant to the injury claimed by the plaintiff class are strong indicators of both the  
 7 predominance of common questions and the superiority of class resolution. The Ninth Circuit  
 8 explained this point in *Mevorah v. Wells Fargo Home Mortg. (In re Wells Fargo Home Mortg.)*,  
 9 571 F.3d 953, 958-959 (9<sup>th</sup> Cir. 2009):

10                   Of course, uniform corporate policies will often bear heavily on  
 11 questions of predominance and superiority. Indeed, courts have  
 12 long found that comprehensive uniform policies detailing the job  
 13 duties and responsibilities of employees carry great weight for  
 14 certification purposes. ... Such centralized rules, to the extent they  
 15 reflect the realities of the workplace, suggest a uniformity among  
 16 employees that is susceptible to common proof.

17           Each of the common questions of law and fact set forth above in relation to the discussion  
 18 of the requirements of Rule 23(a)(2) are also the predominant questions which will drive this  
 19 entire case. Indeed, there are no questions of fact currently known that would not be common to  
 20 the class. As the answer to these common questions will ultimately decide the liability phase of  
 21 the case, the common questions clearly predominate over any potential individual issues. They  
 22 raise common factual issues as well as common legal issues that are dispositive of the claims  
 23 presented on behalf of the proposed class. The question of whether defendant's conduct was or  
 24 was not in violation of their duty of fair representation, whether other groups of pilots were given  
 25 advantages denied to the class as a whole, is common to all the class members. Questions  
 26 concerning defendants' conduct predominate in connection with all of the averments made in this  
 27 action.

28           No fact-intensive investigation of each employee's circumstances will be required. With  
 regard to the calculation of the amount of damages, if any, which will be owed to each class  
 member, the necessary information is available from Defendants' payroll records. The

1 calculation of lost LOS is uniform for the entire class, the actual pay rates of each member of the  
 2 class and the pay rates each would have received with the additional credit are available from  
 3 Defendants' records. The special additional 2-years of LOS credit is equally determinable by  
 4 formula. American's policies and procedures concerning payment of compensation, and the  
 5 information contained on wage statements and in employment records, is identical for all class  
 6 members and applied equally to all class members. Consequently, the calculation of damages for  
 7 loss of LOS credits will be straight forward and readily done. *Lemus v. H&R Block Enters.,*  
 8 *LLC*, 2010 U.S. Dist. LEXIS 133697, 2010 WL 5069695, at p. 5 (N.D.Cal. 2010) (granting class  
 9 certification under Rule 23(b)(3) on several wage-and-hour claims and concluding that payroll  
 10 records would make "[c]alculation of damages relating thereto [for each class member],  
 11 including penalties under section 203 . . . straight forward and readily done"); also see *Mendez*  
 12 *v. R&L Carriers, Inc.*, 2012 U.S. Dist. LEXIS 165221, at p. 52, fn. 10 (N.D.Cal. 2012).

## 13 **2. Superiority of Class Action to Other Forms of** 14 **Adjudication**

15 In this case, the legal and factual issues surrounding denial of LOS credits to the FTPs  
 16 and the APA's refusal to protect the interests of FTPs in having their years of flying for  
 17 American Eagle included in any longevity factor used in the seniority integration formula are  
 18 issues uniquely suited to class treatment. Both these issues affect all class members equally who  
 19 have all been treated exactly the same by Defendants. Because the FTPs rise or fall as a group  
 20 on these issues, no FTP has a superior claim to control the litigation on an individual basis.

21 Individualized litigation would not only be inefficient, it would be impractical. Requiring  
 22 individual FTPs to sue over the LOS credits would simply create divisions among the FTPs  
 23 between those who brought and individual action and received LOS credits and those who did  
 24 not. It is even more difficult to see how the seniority list issues could be litigated—much less  
 25 resolved—on the basis of individual litigation. Are there to be multiple seniority lists for FTPs  
 26 depending on which FTPs sued and which did not?

27 In this case, there are no likely difficulties in managing a class action. The names and  
 28 addresses of the members of the class are known; indeed, FTPs are designated as such on

American's seniority lists. The plaintiff AAFTPC provides a vehicle for keeping class members informed of the case and soliciting their input.

### CONCLUSION

This action satisfies the prerequisites set forth in Rule 23(a) and the requirements for certification as a class action under both Rules 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure. Plaintiffs propose that the Court set a later date for hearing on the form of notice and that Plaintiffs will present a method and form of notice that complies with the opt-out and other due process requirements of Rule 23(b)(3).

For the above stated reasons, the Court should grant Plaintiffs' motion and issue a Certification Order under Rule 23(c)(1)(A) that this action may be maintained as a class action under Rules 23(b)(2) and (b)(3) and that plaintiffs shall be certified as class representatives.

Pursuant to Rule 23(c)(1)(B), the Certification Order should define the class as: All pilots who worked at American Eagle Airlines and became employed at American Airlines ("American") pursuant to the terms of the Flow-Through Agreement, also known as Supplement W or Letter 3. These pilots are referred to as "Flow-Thru Pilots" or "FTP's". The Certification Order should define the class claims and issues in this case as concerning whether the APA has breached a duty of fair representation towards the FTPs and whether American has participated in, aided or abetted this breach. The specific claims and issues involved in APA's breach of duty that should be identified in the certification order pursuant to Rule 23(c)(1)(B) are:

- a. Whether APA acted arbitrarily, discriminatorily or in bad faith by failing or refusing to negotiate for or otherwise seek Length of Service (LOS) credits for time FTPs were working as jet captains at American Eagle during the period when FTPs were unable work at American after September 2001 because American stopped hiring pilots until the FTPs were hired by American after June 2010.
- b. Whether APA has acted arbitrarily, discriminatorily or in bad faith as to representing the interests of FTPs in including the FTPs' years of service at American Eagle as a

1 part of any longevity factor used in placing pilots on the integrated seniority list  
2 arising from the seniority merger of pilots of American Airlines and US Airways.

3 The Certification Order should further appoint Christopher W. Katzenbach as Class  
4 Counsel pursuant to Rule 23(g).

5 Dated: March 17, 2016.

KATZENBACH LAW OFFICES

6  
7 By s/ Christopher W. Katzenbach

8 Christopher W. Katzenbach  
9 Attorneys for Plaintiffs AMERICAN AIRLINES  
10 FLOW-THRU PILOTS COALITION, GREGORY R.  
11 CORDES, DRU MARQUARDT, DOUG POULTON,  
12 STEPHAN ROBSON, and PHILIP VALENTE III on  
13 behalf of themselves and all others similarly situated  
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CHRISTOPHER W. KATZENBACH  
(SBN 108006)

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GREGORY R. CORDES, DRU MARQUARDT,  
DOUG POULTON, STEPHAN ROBSON,  
and PHILIP VALENTE III on behalf of themselves and all  
others similarly situated

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

AMERICAN AIRLINES FLOW-THRU	)	Case No.: 3:15-cv-03125 RS
PILOTS COALITION, GREGORY R.	)	
CORDES, DRU MARQUARDT, DOUG	)	
POULTON, STEPHAN ROBSON, and	)	DECLARATION OF CHRISTOPHER W.
PHILIP VALENTE III, on behalf of	)	KATZENBACH IN SUPPORT OF MOTION
themselves and all others similarly situated,	)	FOR CLASS CERTIFICATION
	)	
Plaintiffs,	)	April 21, 2016
vs.	)	1:30 P.M.
	)	Courtroom 3, 17 <sup>th</sup> Floor
ALLIED PILOTS ASSOCIATION and	)	Judge Richard Seeborg
AMERICAN AIRLINES, INC.,	)	
	)	
Defendants.	)	

I, CHRISTOPHER W. KATZENBACH, declare under penalty of perjury:

1. I am an attorney for the plaintiffs in this action. I am submitting this declaration in support of plaintiffs' motion for class certification.

2. I have over 35 years' experience in employment and labor law and litigation, with the government and in private practice. I have an undergraduate degree from Stanford University (A.B. 1973) and a law degree from Yale Law School (J.D. 1976). I am a member of

1 the California, New York and Illinois bars. Among the federal courts, I am a member of the  
2 Northern, Southern, Central and Eastern Districts in California, the Northern District of Illinois,  
3 the Ninth Circuit, and the First, Second, Fourth, Seventh, Tenth, District of Columbia and  
4 Federal Circuits, and the United States Supreme Court.

5 3. I have concentrated my practice in labor and employment law since I began as an  
6 attorney with the Enforcement Division (Appellate Court Branch) of the National Labor  
7 Relations Board in Washington, D.C. after graduating from law school. My practice and  
8 experience includes both traditional labor law and non-traditional areas of employment law. I  
9 tried multiple adversary proceedings, both in arbitrations and in federal and state courts. I have  
10 handled over 50 appeals in federal and state appellate courts.

11 4. I have extensive experience in matters of internal union disputes and rights under  
12 collective bargaining agreements. This includes representation of individuals on individual  
13 claims and representation of groups of employees on claims common to the group. I have also  
14 represented and advised labor unions in various matters. Among other cases,

- 15 • I represented the leaders of the Civil Service Division of the California State  
16 Employees Association (“CSEA”) in efforts to establish the independence of the  
17 Civil Service Division from the CSEA in representing some 80,000 state civil  
18 service workers. This case involved two appeals to the California appellate courts  
19 and ultimately resulted in establishing the division as a separately-incorporated  
20 labor union now operating under the name Local 1000, Service Employees  
21 International Union.
- 22 • I have represented union members, individually and in groups, in a variety of cases  
23 concerning union elections, unlawful removals from union office, unlawful  
24 discipline and other internal union matters. These cases have included unlawful  
25 removal for questioning union finances and other free speech issues, disciplinary  
26 actions taken by biased union panels and right to run for and hold union office.

- 1 • I represented a large group of drivers in connection with loss of employment
- 2 following a sale and merger. This case involved issues of breach of contract and
- 3 fair representation. This case ultimately resulted in a settlement with
- 4 compensation to drivers who lost work.
- 5 • I have advised and represented airline pilots at American Eagle airlines on duty of
- 6 fair representation issues in connection with other matters, including the
- 7 ratification of the 1997 contract for American Eagle pilots and representation of
- 8 pilots in the Fifth Circuit in connection with efforts to appeal the decision of
- 9 Arbitrator Nicolau regarding remedy in FLO-0108.
- 10 • I have represented union members in seeking recovery of unlawfully increased
- 11 union dues on behalf of the affected union members.
- 12 • I represented a union member in obtaining a writ directing an election of union
- 13 officers in a public employee union and setting aside new bylaws that were
- 14 improperly adopted and defending this decision on appeal.
- 15 • I have represented an organization of dissident union members in a lawsuit brought
- 16 by their union accusing members of taking union membership lists in order to call
- 17 union members in connection with an internal union dispute, including prevailing
- 18 on an anti-SLAPP motion in that case.

19 5. The issues raised in this case involve the union's duty of fair representation and  
 20 obligations under collective bargaining agreements that are typical of claims as to which I have  
 21 been involved over the years.

22 6. In this case, plaintiffs are seeking a remedy for two claims:

- 23 a. For denial of length of service (LOS) credits for time FTPs were working as jet
- 24 captains at American Eagle but had been unable to transfer to or work at
- 25 American after September 2001 until June 2010 when FTPs began transferring to
- 26 American. These LOS credits are used for both pay and other purposes. This
- 27 claim arises from the following discrimination against FTPs alleged in this action:
- 28

(i) The plaintiffs contend that the former TWA pilots, including the TWA-LLC Staplees, received LOS credit for their work at TWA and for the period after American acquired TWA's asserts when former TWA pilots were not flying at American, including time when former TWA pilots were flying at American Eagle under the flow-down provisions of the Flow-Through Agreement.

(ii) In addition, in the most recent collective bargaining agreement between APA and American, any pilot on furlough since September 11, 2001 received an additional two years of LOS credit. This credit is described in Letter G to the collective bargaining agreement. A copy of Letter G is attached to this declaration. The plaintiffs contend that all the TWA-LLC Staplees received the LOS credits in Letter G, including TWA-LLC Staplees who had flowed-down to American Eagle and displaced FTPs from their jobs.

b. In the current seniority list integration proceedings, there is a significant issue of how years of service as a pilot ("longevity") will be a factor in placement on the integrated list. I understand that APA has refused to put on evidence or argue that FTPs' service at American Eagle should be included as part of any longevity factor that should be used. Plaintiffs are seeking to have any seniority list set aside if longevity is a factor and service at American Eagle is not included. The plaintiffs believe that failure to include service at American Eagle would be a product of APA breach of its duty of fair representation and the seniority integration would therefore not have been done in a fair and equitable manner, as required by the McCaskill-Bond Amendment, Pub.L. 110-161, Div. K, Title I, § 117, Dec. 26, 2007, 121 Stat. 2383, codified at 49 U.S.C. § 42112 note, adopting the standards applied by the Civil Aeronautics Board in the Allegheny-Mohawk merger, 59 C.A.B. 45 (1972).



1           7.       The class plaintiffs are seeing to represent includes all pilots who came to  
 2 American Airlines from American Eagle Airlines pursuant to the Flow Through Agreement, also  
 3 known as Supplement W or Letter 3. These pilots are referred to as Flow-Thru Pilots (FTP).  
 4 All FTPs did not receive LOS credits for time FTPs were working as jet captains at American  
 5 Eagle but had been unable to transfer to American after September 2001. All FTPs will have  
 6 their position on the integrated seniority list arising from American's acquisition of US Airways'  
 7 assets adversely affected by not including service at American Eagle as part of any factor of  
 8 longevity used in created the integrated seniority list.

9           8.       These claims present common issues of law and fact affecting all members of the  
 10 proposed class. The determinative issues affecting of any class member's right to damages or  
 11 other relief are issues of law and fact common to all members of the class.

12           9.       The common issues of law arise from the common legal question whether APA  
 13 had violated its duty of fair representation. These common issues include:

- 14           a. Did the APA breach a duty of fair representation towards the FTPs as to their  
 15 terms and conditions of employment with American, including the representation  
 16 of the FTPs interests in the seniority list integration process?
- 17           b. American liable for damages arising from a breach of the duty of fair  
 18 representation by APA as a joint participant or aider and abettor of APA's breach  
 19 of duty?
- 20           c. May APA and American be enjoined from utilizing any integrated seniority list  
 21 arising from the seniority list integration proceedings initiated following the 2013  
 22 purchase of US Airways by American?

23           10.       There is one principle categorical issue of fact and numerous factual sub-issues of  
 24 that issue, all of which are issues of fact common to the named individual plaintiffs, all persons  
 25 who are members of the AAFTPC and all members of the proposed class. The categorical  
 26 factual issue is: Did APA act arbitrarily, discriminatorily or in bad faith towards the FTPs?  
 27 Particularly: (a) Did APA act arbitrarily, in bad faith or in a discriminatory manner by  
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1 advancing the interests of the TWA-LLC pilots on the American pilot seniority list, including the  
 2 TWA-LLC Staplees, at the expense of and contrary to the interests of FTPs, who were also on  
 3 the American seniority list or entitled to jobs that APA arranged to be given to the TWA-LLC  
 4 pilots? (b) Did APA act arbitrarily, in bad faith or in a discriminatory manner by refusing to  
 5 negotiate Length of Service (LOS) credits for FTPs when it negotiated for and obtained LOS  
 6 credits for all other pilot groups? (c) Did APA act arbitrarily, in bad faith or in a discriminatory  
 7 manner by refusing to protect the interests of FTPs in having time at American Eagle included in  
 8 any longevity factor used for an integrated seniority list by refusing to advocate for such  
 9 inclusion, stipulating that time at American Eagle would not be included and refusing to present  
 10 evidence to support including time at American Eagle? American's liability for participating in  
 11 APA's breach of duty likewise depends on the factual issue whether APA breached its duty of  
 12 fair representation. Common sub-issues of fact include:

13 (1) Did American and the APA agree arbitrarily, discriminatorily or in bad faith to  
 14 permit TWA-LLC pilots to flow down to American Eagle and displace FTPs from  
 15 their positions, including (a) changing prior agreements that would not have  
 16 permitted this flow-down and (b) treating TWA-LLC pilots who did not meet the  
 17 definition of a furloughed pilot under the applicable contracts that required the  
 18 pilot to have been in active service at American and laid off because of a  
 19 reduction in force, as if these pilots were furloughed American pilots for purposes  
 20 of flowing-down to American Eagle and displacing FTPs?

21 (2) Did APA act in bad faith, arbitrarily or discriminatorily by not submitting  
 22 agreements allowing flow-down for TWA-LLC pilots, including those who had  
 23 never been in active service with American and who were laid off because of the  
 24 TWA acquisition, not a reduction in force at American, for ratification or  
 25 approval by FTPs or seeking agreement from the union representing American  
 26 Eagle pilots because this changed the terms of the Flow-Through agreement?  
 27  
 28

- 1 (3) Did APA act arbitrarily, discriminatorily or in bad faith towards the FTPs, and did  
2 American join or participate in, aid or abet APA's breach of duty, by continuing  
3 to hire TWA-LLC pilots for new hire classes, in preference to FTPs or other jet  
4 captains at American Eagle, after Arbitrator LaRocco in FLO-0903 held that the  
5 TWA-LLC pilots were "new hire" pilots and the terms of the Flow-Through  
6 Agreement requiring hiring of FTPs and other American Eagle jet captains  
7 applied to these new hire classes?
- 8 (4) Did APA act arbitrarily, discriminatorily or in bad faith towards the FTPs, and  
9 did American join or participate in, aid or abet APA's breach of duty, by giving  
10 pilots Length of Service (herein "LOS") credit for time they were not working at  
11 American (including time these pilots were working at American Eagle) after  
12 September 11, 2001, but refuse to negotiate for or seek similar LOS credit for  
13 FTPs for time spent at American Eagle when, because of the events of September  
14 11, 2001, the FTPs could not work at American?
- 15 (5) Did APA act arbitrarily, discriminatorily or in bad faith towards the FTPs, and  
16 did American join or participate in, aid or abet APA's breach of duty, by  
17 negotiating and agreeing to give two additional years of LOS credit for pilots  
18 because of lack of work at American after September 11, 2001 for all pilots other  
19 than the FTPs, including TWA-LLC pilots who had never been active pilots at  
20 American and who worked at American Eagle as flow-down pilots?
- 21 (6) Did APA act arbitrarily, discriminatorily or in bad faith towards the FTPs, and in  
22 collusion with American, by engaging in off-the-record submissions and  
23 discussions in Arbitration No. FLO-0108 before Arbitrator George Nicolau, to  
24 seek to have Arbitrator Nicolau to issue a remedy award in terms that impaired  
25 and abrogated the FTPs rights under the Flow-Through Agreement?
- 26 (7) Did APA act arbitrarily, discriminatorily or in bad faith towards the FTPs by (a)  
27 refusing to represent the interests of FTPs in ensuring that any longevity factor  
28

that was used on an integrated seniority list would include time FTPs spent at American Eagle, particularly where APA was agreeing that longevity for TWA-LLC pilots would start from the time they began working at TWA; (b) refusing to present evidence in support of including service at American Eagle as part of any longevity factor used for an integrated seniority list; and (c) refusing to give an explanation of its position to FTPs or provide documents to FTPs concerning APA position on whether any longevity factor that might be used should exclude service at American Eagle?

11. The class of FTPs in this action is affected as a group by these claims.

a. All FTPs who had not yet transferred to American were denied LOS credits for time they were at American Eagle after September 2001 and unable to move to American. If FTPs recover LOS credits in this case, all the FTPs will benefit equally.

b. All FTPs are affected if time at American Eagle is excluded from any longevity factor used to create an integrated seniority list. All FTPs benefit equally if service at American Eagle is included as part of a longevity factor used in an integrated seniority list.

12. The claims of the individual representative plaintiffs are typical of the claims of the class members. They are flow-through Pilots who were unable to transfer to American until after June 2010 pursuant to the remedy award in FLO-0108. If successful in recovering LOS credits, they would benefit in the same way as other FTPs who are members of the class. If longevity includes service at American Eagle, the individual plaintiffs would benefit just like the other FTPs who are members of the class.

13. None of the representative plaintiffs have any conflicts of interest with other class members. All the FTPs will win or lose as a group. Any damages that are recovered or any use of longevity in an integrated seniority list will be a product of a formula applicable to all FTPs

1 equally. None of the individual plaintiffs are in a position to demand or receive better treatment  
2 on the issues in this case than any other member of the proposed class.

3 14. The American Airlines Flow-Thru Pilots Coalition (AAFTPC) has engaged in  
4 fund raising for this lawsuit. I anticipate that it will be able to continue to do so and to provide  
5 the resources necessary for this case. I have, to date, expended substantial time in the  
6 identification of issues and investigation of the claims in this action. This has involved not only  
7 the drafting of the complaints in this case, but substantial research into the facts (both before  
8 filing the case and in reviewing discovery) and the law, including drafting various pre-litigation  
9 letters to the APA concerning, in particular, the seniority list integration issues. I intend to devote  
10 the resources necessary to represent the class in this matter. I have already committed substantial  
11 time and resources to this case. I intend to continue to do so.

12 I declare under penalty of perjury under the laws of the United States and the State of  
13 California that the foregoing is true and correct to the best of my knowledge and belief.

14 Dated: March 17, 2016

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Christopher W. Katzenbach  
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GREGORY R. CORDES, DRU MARQUARDT,  
DOUG POULTON, STEPHAN ROBSON,  
and PHILIP VALENTE III on behalf of themselves and all  
others similarly situated

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

AMERICAN AIRLINES FLOW-THRU  
PILOTS COALITION, GREGORY R.  
CORDES, DRU MARQUARDT, DOUG  
POULTON, STEPHAN ROBSON, and  
PHILIP VALENTE III, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

vs.

ALLIED PILOTS ASSOCIATION and  
AMERICAN AIRLINES, INC.,

Defendants.

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

)  
)  
)  
) **DECLARATION OF GREGORY R.  
CORDES IN SUPPORT OF MOTION  
FOR CLASS CERTIFICATION**

) April 21, 2016

) 1:30 P.M.

) Courtroom 3, 17<sup>th</sup> Floor

) Judge Richard Seeborg

I, GREGORY R. CORDES, declare under penalty of perjury:

1. I am a plaintiff in this action. I am submitting this declaration in support of  
plaintiffs' motion for class certification.

2. I am a pilot for American Airlines ("American"). Presently, I am serving as a  
First Officer on a Boeing 767 aircraft. Before coming to American, I was a Regional Jet (also  
known as Commuter Jet) Captain at American Eagle Airlines, a wholly owned subsidiary of

1 AMR, Inc. AMR, Inc. owned both American Eagle and American. I obtained my position at  
 2 American because of an agreement known as the Flow-Through Agreement, and also referred to  
 3 as Supplement W or Letter 3. The Flow-Through Agreement is part of the collective bargaining  
 4 agreement between American and the Allied Pilots Association (“APA”), where it is known as  
 5 “Supplement W” and the collective bargaining agreement between the Air Line Pilots  
 6 Association (“ALPA”) and American Eagle, where it is known as “Letter 3.” The Flow-Through  
 7 Agreement is dated May 5, 1997, and expired May 1, 2008 (the date the next collective  
 8 bargaining agreement between APA and American that was entered-into after the Flow-Through  
 9 Agreement was signed expired and became amendable).

10 3. The pilots who came to American pursuant to the Flow-Through Agreement are  
 11 known as Flow-Through Pilots, referred to herein as “FTP.” There are over 500 FTPs. At any  
 12 given time, this number has fluctuated for a variety of factors, including retirements, leaves of  
 13 absence and other reasons.

14 4. I am the president of the American Airlines Flow-Thru Pilots Coalition  
 15 (“AAFTPC”), a plaintiff in this action. AAFTPC is a subdivision of the American Eagle Pilots  
 16 Association, a California Corporation. AAFTPC is an association of pilots flying for American  
 17 Airlines who obtained their positions at American Airlines pursuant to the Flow-Through  
 18 Agreement—that is, the FTPs. AAFTPC has over 170 members.

19 5. AAFTPC has been an advocate for the interests of the FTPs. The AAFTPC’s  
 20 goals, as described on its website, are:

21 The AA Flow-Thru Pilots Coalition has 2 goals:

- 22 1. To defend the FTPs vested and bargained for positions on the  
 23 AA Seniority list from attack by the other parties during the SLI  
 process.
- 24 2. To have the Flow-Through Pilots time spent flying as regional  
 25 jet Captains at AMR count toward Length of Service (LOS) at AA,  
 26 the same as other AA pilots who have transferred to AA from other  
 27 airlines. There should be no Flow-through Pilot who is paid less  
 28 per hour for doing the same job than any pilot junior to him on the  
 AA System Seniority List.

1  
2 6. Among other things, AAFTPC has written to the APA in support of the interests  
3 of FTPs and in opposition to actions APA has taken that harm the economic and career  
4 expectations of FTPs. AAFTPC has organized individual FTPs to send letters to APA requesting  
5 that APA fairly and properly represent the FTPs interest and protesting the discriminatory  
6 treatment of FTPs. AAFTPC has requested that APA negotiate Length of Service (LOS) for  
7 FTPs for service at American Eagle in the same way APA has negotiated LOS credits for other  
8 pilots who have transferred to American from other airlines and AAFTPC has protested the  
9 APA's failure to do so or even explain APA's reasons for its failure. AAFTPC has also  
10 attempted to assert the interests of FTPs in the current seniority list integration arbitration  
11 involving pilots of American and US Airways, by urging APA and its committee representing  
12 American pilots (the American Airlines Pilots Seniority Integration Committee, known as  
13 "AAPSIC") not to agree to the proposition that service at American Eagle should be excluded  
14 from any longevity factor in devising an integrated seniority list of American and US Airways  
15 pilots (as APA/AAPSIC agreed in an initial stipulation in the arbitration) and to present evidence  
16 that would support treating time at American Eagle pilots as time at American because American  
17 and American Eagle had integrated operations, were commonly-owned subsidiaries of AMR,  
18 Inc., and American Eagle pilots had career expectations of moving to American. AAFTPC has  
19 raised funds to support this case and continues to do so as part of its mission. AAFTPC  
20 maintains a website to communicate with FTPs and provide information to them about this case  
21 and the underlying issues. I have personally sent letters protesting the treatment of FTPs. I have  
22 also produced charts and graphs showing how FTPs are paid below all other comparable pilots at  
23 American and I have calculated the financial loss FTPs have suffered.

24 7. The Flow-Through Agreement allowed American Eagle jet captains to move to  
25 American as places in new-hire classes became available. When American hired pilots, it would  
26 establish a new-hire class. FTPs were entitled to half the positions in each such new-hire class,  
27 that is one out of every two positions. An American Eagle jet captain who had been trained on  
28



1 the jet aircraft and completed initial operating experience (“IOE”) on the aircraft could bid for  
2 one of the new hire positions in an American new hire class. (IOE is a period of supervised  
3 flying, typically about 18 days after training was completed, for the newly-trained pilot.)

4 8. A pilot who successfully bid for a new-hire class was not necessarily entitled to  
5 attend the class and move to American immediately. American Eagle was entitled to hold-back  
6 or “withhold” the pilot at American Eagle for operational reasons, typically because of a  
7 “training freeze” or “lock-in” that prohibited a jet captain from transferring to another job for a  
8 period after they had been trained on a particular aircraft. All pilots received training that is  
9 specific to a particular aircraft being flown before they are qualified to fly that equipment. The  
10 training freeze is designed to allow the carrier to recoup the costs of such training by requiring  
11 the newly-trained pilot to fly the aircraft on which they have just been trained before they can  
12 transfer to another position. A training freeze or lock-in is typically two-years.

13 9. Under the Flow-Through Agreement, the first 125 American Eagle pilots had to  
14 serve an 18-month training freeze before they could move to a new hire class at American.  
15 Subsequent pilots had to serve a two-year training freeze.

16 10. As a result of a training freeze or other operational reasons, the American Eagle  
17 pilots who successfully bid for positions in new-hire classes at American before September 11,  
18 2001 were all held back at American Eagle. Notwithstanding the hold-back, the American Eagle  
19 pilot would get assigned a seniority number on the American pilot seniority list based upon and  
20 as if the pilot had been able to fill one of the positions and had attended the American new hire  
21 class the pilot would have attended if not held back.

22 11. Before September 11, 2001, about 518 American Eagle pilots had bid for new  
23 hire classes at American and had received seniority numbers on the American pilot seniority list.

24 12. Of these initial FTPs, 124 pilots (i.e., the first 125 less one who did not move to  
25 American) transitioned to American before September 11, 2001. The last of this group got to  
26 American about June 18, 2001 (according to the hire date indicated on the American pilot  
27 seniority list). After the first 124 pilots, none of the remaining FTPs—all of whom were on the  
28

1 American pilot seniority list but subject to a two year training freeze—were able to transfer to  
2 American until 2010 or later, following the arbitration award by Arbitrator George Nicolau in  
3 arbitration number FLO-0108, issued April 9, 2010. There were about 388 FTPs in this latter  
4 group as of the time the Flow-Through Agreement expired in May 2008.

5 13. After September 11, 2001, American stopped hiring new pilots, began  
6 furloughing pilots and did not start new hire classes until about May 2007.

7 14. Initially in 2007, American recalled American pilots who were on furlough.  
8 These initial recalls involved pilots who had been flying for American before their furlough.  
9 Starting in about June 2007 American began calling certain former TWA-LLC pilots for work  
10 that had never flown for American. These pilots are referred to a “TWA-LLC Staplees.” The  
11 TWA-LLC Staplees were below the FTPs on the seniority list.

12 15. The hiring of the TWA-LLC Staplees resulted in a series of grievances before  
13 Arbitrators John B. LaRocco (FLO-0903) and George Nicolau (FLO-0108). As a result of these  
14 grievances:

15 (a) 154 American Eagle pilots who were qualified to flow-up to American were given  
16 American seniority numbers with the effective date of April 30, 2008, at the  
17 bottom of the seniority list (FLO-0903); of these FTPs, 107 ultimately transferred  
18 to American.

19 (b) American was directed to begin placing FTPs in training classes starting no later  
20 than June 2010 (FLO-0108).

21 16. As a result of the decisions in FLO-0903 and FLO-0108, there were  
22 approximately 527 FTPs with American seniority numbers still at American Eagle. (This is less  
23 than the total number of FTPs who had received American seniority numbers because of attrition  
24 over the years.) Between June 2010 and the present, these 527 FTPs either transferred to  
25 American, left employment with American Eagle before transferring to American, or lost their  
26 American seniority number because the award in FLO-0108 imposed new conditions not  
27 provided for in the Flow-Through Agreement.

1           17. In addition, a separate arbitration before Arbitrator Richard I. Bloch (FLO-0107)  
 2 concerned the effect of the expiration of the Flow-Through Agreement on the FTPs right to  
 3 move to American. In FLO-0107, APA contended that the expiration of the Flow-Through  
 4 Agreement in May 2008 terminated all flow-up rights for all American Eagle pilots who had not  
 5 yet moved to American. That would have meant no flow-up rights for all FTPs other than the  
 6 first 124 who had moved to American, even though these FTPs were on the American pilot  
 7 seniority list. (At the time APA made this argument, American had already begun hiring TWA-  
 8 LLC Staplees in preference to FTPs.) Arbitrator Bloch's award concluded: "The right to flow-  
 9 up is to be retained by Eagle CJ captains who, prior to May 1, 2008, completed IOE and received  
 10 AA seniority numbers."

11           18. In this case, plaintiffs are seeking a remedy for two claims:

12           a. For denial of LOS credits for time FTPs were working as jet captains at American  
 13 Eagle but had been unable to transfer to American after September 2001. These  
 14 LOS credits are used for both pay and other purposes. This claim arises from the  
 15 following discrimination against FTPs.

16           (i) The plaintiffs contend that the former TWA pilots, including the TWA-  
 17 LLC Staplees, received LOS credit for their work at TWA and for the  
 18 period after American acquired TWA's asserts when former TWA pilots  
 19 were not flying at American, including time when former TWA pilots  
 20 were flying at American Eagle under the flow-down provisions of the  
 21 Flow-Through Agreement.

22           (ii) In addition, in the most recent collective bargaining agreement between  
 23 APA and American, any pilot on furlough since September 11, 2001  
 24 received an additional two years of LOS credit. This credit is described in  
 25 Letter G to the collective bargaining agreement. A copy of Letter G is  
 26 attached to this declaration. The plaintiffs contend that all the TWA-LLC  
 27 Staplees received the LOS credits in Letter G, including TWA-LLC  
 28

Staplees who had flowed-down to American Eagle and displaced FTPs from their jobs.

(iii) No FTP received LOS credits for the time they worked at American Eagle or the special extra credit in Letter G.

b. In the current seniority list integration proceedings, there is a significant issue of how years of service as a pilot (“longevity”) will be a factor in placement on the integrated list. Initially, APA stipulated that the FTPs time at American Eagle would not count for longevity. APA has since stated that this stipulation was withdrawn and that APA opposes any use of longevity to create an integrated list. The plaintiffs have requested that APA put on evidence that service at American Eagle should be included in longevity if longevity becomes a factor. APA has not put on this evidence plaintiffs requested and has refused to give the plaintiffs any explanation why not.

(i) Based on my review of the documents submitted in the seniority list integration process, the other parties to the proceeding have contended that longevity should be a factor. Longevity has been commonly used as a factor in other seniority list integration proceedings that have been reported.

(ii) One of the other parties (the US Air East Pilots) has included service with Mid-Atlantic Airlines (“MDA”), a regional carrier subsidiary of US Airways, for longevity; the East pilot group includes pilots with service at MDA. The US Air West Pilot group does not have any pilots who flew for MDA and has sought to exclude MDA service and American Eagle service from longevity.

(iii) In this case, plaintiffs are seeking to have any seniority list set aside if longevity is a factor and service at American Eagle is not included. The plaintiffs believe that failure to include service at American Eagle would

1 be a product of APA breach of its duty of fair representation and the  
 2 seniority list integration would therefore not have been done in a fair and  
 3 equitable manner, as required by the McCaskill-Bond Amendment, Pub.L.  
 4 110-161, Div. K, Title I, § 117, Dec. 26, 2007, 121 Stat. 2383, codified  
 5 at 49 U.S.C. § 42112 note, adopting the standards applied by the Civil  
 6 Aeronautics Board in the Allegheny-Mohawk merger, 59 C.A.B. 45  
 7 (1972).

8 19. In this case, the class we are seeing to represent includes all FTPs (a) who did not  
 9 receive LOS credits for time FTPs were working as jet captains at American Eagle but had been  
 10 withheld from transfer to American after September 2001 and (b) whose position on the  
 11 integrated seniority list arising from American's acquisition of US Airways' assets is adversely  
 12 affected by not including service at American Eagle as part of any factor of longevity used in  
 13 created the integrated seniority list.

14 20. The class of FTPs in this action is affected as a group by these claims.

15 a. All FTPs who had not yet transferred to American were denied LOS credits for  
 16 time they were at American Eagle after September 2001 and unable to move to  
 17 American. If FTPs recover LOS credits in this case, all these FTPs will benefit  
 18 equally.

19 b. All FTPs are affected if time at American Eagle is excluded from any longevity  
 20 factor used to create an integrated seniority list. All FTPs benefit equally if  
 21 service at American Eagle is included as part of a longevity factor used in an  
 22 integrated seniority list.

23 21. I believe that my claims are common and typical of the claims of the class  
 24 members. I am a flow-through Pilot. I was part of the group of FTPs who were unable to  
 25 transfer to American after getting my American seniority number before September 2001 and did  
 26 not move to American until after June 2010 pursuant to the remedy award in FLO-0108. If  
 27  
 28

1 successful in recovering LOS credits, I would benefit in the same way as other FTPs. If  
2 longevity includes service at American Eagle, I would benefit just like the other FTPs.

3 22. I am familiar with the other individual plaintiffs and they are also FTPs. Plaintiffs  
4 Dru Marquardt, Doug Poulton and Stephan Robson were American Eagle jet captains who, like  
5 me, obtained American seniority numbers before September 11, 2001 but were unable to transfer  
6 to American until after June 2010 pursuant to the remedy award in FLO-0108. Philip Valente  
7 III was a jet captain at American Eagle and received his American seniority number as part of  
8 the remedy award in FLO-0903. He moved to American after June 2010 pursuant to the remedy  
9 award in FLO-0108. They will benefit from any successful outcome in this case in the same way  
10 I would benefit.

11 23. I do not have any conflicts of interest with other class members. Nor do any of  
12 the other plaintiffs. We all will win or lose as a group. Any award of damages for denial of LOS  
13 credits will be calculated by formula. That is, if a FTP is entitled to additional LOS credits, the  
14 additional LOS credits to which he will be entitled will be calculated by a formula based on his  
15 original hire date at American Eagle. The additional LOS credits under Letter G will be a simple  
16 addition of two-years of credit in the same manner this credit was given the TWA-LLC Staplees.  
17 At the moment, there are no damages arising from placement on the integrated seniority list  
18 because the list has not been finalized and the precise effect of a longevity factor is yet to be  
19 determined. If an improper list is finalized, it is our intention to have the use of that list enjoined.  
20 If an injunction is not issued, however, any damages for improper placement on the integrated  
21 seniority list would be calculated by a formula that looked at the difference in pay received by  
22 the FTP and by the pilot in the position the FTP should have had on the seniority list.

23 24. I intend to pursue this matter vigorously. The other individual plaintiffs have  
24 indicated that they will be active in this case as well. The AAFTPC has raised, and continues to  
25 raise, funds for this lawsuit. All the individual plaintiffs have contributed funds to AAFTPC as  
26 well for this case.

25. The FTPs are disbursed throughout the United States. As head of AAFTPC, I am aware of the geographical locations of AAFTPC's members and other FTPs. As is typical for pilots, FTPs may live in one state but have their home-base for flying purposes in another state. For example, I live in Moro Bay, California, but my current home base for flying is Miami, Florida.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct to the best of my knowledge and belief.

Dated: March 17, 2016

Gregory R. Cordes



1           25. The FTPs are disbursed throughout the United States. As head of AAFTPC, I am  
2 aware of the geographical locations of AAFTPC's members and other FTPs. As is typical for  
3 pilots, FTPs may live in one state but have their home-base for flying purposes in another state.  
4 For example, I live in Moro Bay, California, but my current home base for flying is Miami,  
5 Florida.

6           I declare under penalty of perjury under the laws of the United States and the State of  
7 California that the foregoing is true and correct to the best of my knowledge and belief.

8 Dated: March , 2016



Gregory R. Cordes

# EXHIBIT 1

LETTER G

January 30, 2015

Captain Keith Wilson  
President – Allied Pilots Association  
14600 Trinity Boulevard, Suite #500  
Fort Worth, TX 76155 – 2512

Re: Furlough Length of Service (LOS)

Dear Captain Wilson,

All “New American Airlines” Pilots (LUS and LAA) furloughed after September 11, 2001 will have the length of time they were on furlough added to their total accredited service in accordance with the following guidelines:

1. Pilots involuntarily furloughed after September 11, 2001 who have returned to active status or accepted recall by January 30, 2015 shall have up to two (2) years Company service restored for vacation accrual and pay (LOS credit).
2. Furlough Stand in Stead pilots shall receive LOS credit for the time spent on furlough prior to their first offer of recall.
3. Furloughed pilots will not receive LOS credit for time on deferred status.
4. Nothing contained in this letter shall impact furloughed pilots contractual rights under Letter T of the 2013 MTA dated December 9, 2013.

American Airlines will provide LOS credit as described in this letter based on a final spreadsheet provided by APA. The spreadsheet shall include, at a minimum, names, employee numbers, and amount of credit.

American Airlines will apply the length of service credit associated with this provision within 60 days after the receipt of the spreadsheet from APA. All provisions are fully retroactive to December 2, 2014 and distribution of the retroactive components will be coordinated with the Association.

Sincerely,

By: / signed /  
Beth Holdren  
Managing Director  
Labor Relations - Flight

AGREED

ALLIED PILOTS ASSOCIATION

By: / signed /  
Captain Keith Wilson  
President

CHRISTOPHER W. KATZENBACH  
(SBN 108006)

Email: ckatzenbach@kkcounsel.com

KATZENBACH LAW OFFICES

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FLOW-THRU PILOTS COALITION,  
GREGORY R. CORDES, DRU MARQUARDT,  
DOUG POULTON, STEPHAN ROBSON,  
and PHILIP VALENTE III on behalf of themselves and all  
others similarly situated

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

AMERICAN AIRLINES FLOW-THRU	)	Case No.: 3:15-cv-03125 RS
PILOTS COALITION, GREGORY R.	)	
CORDES, DRU MARQUARDT, DOUG	)	
POULTON, STEPHAN ROBSON, and	)	DECLARATION OF DRU MARQUARDT
PHILIP VALENTE III, on behalf of	)	IN SUPPORT OF MOTION FOR CLASS
themselves and all others similarly situated,	)	CERTIFICATION
	)	
Plaintiffs,	)	April 21, 2016
vs.	)	1:30 P.M.
	)	Courtroom 3, 17 <sup>th</sup> Floor
ALLIED PILOTS ASSOCIATION and	)	Judge Richard Seeborg
AMERICAN AIRLINES, INC.,	)	
	)	
Defendants.	)	

I, DRU MARQUARDT, declare under penalty of perjury:

1. I am a plaintiff in this action. I am submitting this declaration in support of plaintiffs' motion for class certification.

2. I am a pilot for American Airlines ("American"). Before coming to American, I was a Regional Jet (also known as Commuter Jet) Captain at American Eagle Airlines, a wholly

1 owned subsidiary of AMR, Inc. I obtained my position at American because of an agreement  
2 known as the Flow-Through Agreement, and also referred to as Supplement W or Letter 3.

3 3. The pilots who came to American pursuant to the Flow-Through Agreement are  
4 known as Flow-Through Pilots, referred to herein as “FTP.”

5 4. The Flow-Through Agreement allowed American Eagle jet captains to move to  
6 American as places in new-hire classes became available.

7 5. A pilot who successfully bid for a new-hire class was not necessarily entitled to  
8 attend the class and move to American immediately. American Eagle was entitled to hold-back  
9 or “withhold” the pilot at American Eagle for operational reasons, typically because of a  
10 “training freeze” or “lock-in” that prohibited a jet captain from transferring to another job for a  
11 period after they had been trained on a particular aircraft.

12 6. As a result of a training freeze or other operational reasons, the American Eagle  
13 pilots who successfully bid for positions in new-hire classes at American before September  
14 2001 were all held back at American Eagle. Notwithstanding the hold-back, the American Eagle  
15 pilot would get assigned a seniority number on the American pilot seniority list based upon and  
16 as if the pilot had been able to fill one of the positions and had attended the American new hire  
17 class the pilot would have attended if not held back.

18 7. Before September 11, 2001, I was one of the American Eagle pilots who had bid  
19 for new hire classes at American and had received seniority numbers on the American pilot  
20 seniority list. I was held-back at American Eagle because of the two-year training freeze.  
21 Because of the events of September 11, 2001, American stopped hiring and conducting new hire  
22 classes. I was able to move to American after June 2010 following the arbitration award by  
23 Arbitrator George Nicolau in arbitration number FLO-0108, issued April 9, 2010.

24 8. In this case, plaintiffs are seeking a remedy for two claims:

- 25 a. For denial of length of service (LOS) credits for time FTPs were working as jet  
26 captains at American Eagle but had been unable to transfer to American after  
27 September 2001. These LOS credits are used for both pay and other purposes.

1 This claim arises from the following discrimination against FTPs alleged in this  
2 action:

- 3 (i) The plaintiffs contend that the former TWA pilots, including the TWA-  
4 LLC Staplees, received LOS credit for their work at TWA and for the  
5 period after American acquired TWA's asserts when former TWA pilots  
6 were not flying at American, including time when former TWA pilots  
7 were flying at American Eagle under the flow-down provisions of the  
8 Flow-Through Agreement.
- 9 (ii) In addition, in the most recent collective bargaining agreement between  
10 APA and American, any pilot on furlough since September 11, 2001  
11 received an additional two years of LOS credit. This credit is described in  
12 Letter G to the collective bargaining agreement. A copy of Letter G is  
13 attached to this declaration. The plaintiffs contend that all the TWA-LLC  
14 Staplees received the LOS credits in Letter G, including TWA-LLC  
15 Staplees who had flowed-down to American Eagle and displaced FTPs  
16 from their jobs.
- 17 (iii) No FTP received LOS credits for the time they worked at American Eagle  
18 or the special extra credit in Letter G.
- 19 b. In the current seniority list integration proceedings, there is a significant issue of  
20 how years of service as a pilot ("longevity") will be a factor in placement on the  
21 integrated list. I understand that APA has refused to put on evidence or argue that  
22 FTPs' service at American Eagle should be included as part of any longevity  
23 factor that should be used. Plaintiffs are seeking to have any seniority list set  
24 aside if longevity is a factor and service at American Eagle is not included. The  
25 plaintiffs believe that failure to include service at American Eagle would be a  
26 product of APA breach of its duty of fair representation and the seniority  
27 integration would therefore not have been done in a fair and equitable manner, as  
28

1 required by the McCaskill-Bond Amendment, Pub.L. 110-161, Div. K, Title I, §  
2 117, Dec. 26, 2007, 121 Stat. 2383, codified at 49 U.S.C. § 42112 note, adopting  
3 the standards applied by the Civil Aeronautics Board in the Allegheny-Mohawk  
4 merger, 59 C.A.B. 45 (1972).

5 9. In this case, the class plaintiffs are seeking to represent includes all FTPs (a) who  
6 did not receive LOS credits for time FTPs were working as jet captains at American Eagle but  
7 had been unable to transfer to American after September 2001 and (b) whose position on the  
8 integrated seniority list arising from American's acquisition of US Airways' assets is adversely  
9 affected by not including service at American Eagle as part of any factor of longevity used in  
10 created the integrated seniority list. .

11 10. The class of FTPs in this action is affected as a group by these claims.

12 a. All FTPs who had not yet transferred to American were denied LOS credits for  
13 time they were at American Eagle after September 2001 and unable to move to  
14 American. If FTPs recover LOS credits in this case, all the FTPs will benefit  
15 equally.

16 b. All FTPs are affected if time at American Eagle is excluded from any longevity  
17 factor used to create an integrated seniority list. All FTPs benefit equally if  
18 service at American Eagle is included as part of a longevity factor used in an  
19 integrated seniority list.

20 11. I believe that my claims are common and typical of the claims of the class  
21 members. I am a flow-through Pilot. I was part of the group of FTPs who were unable to  
22 transfer to American after getting my American seniority number and did not move to American  
23 until after June 2010 pursuant to the remedy award in FLO-0108. If successful in recovering  
24 LOS credits, I would benefit in the same way as other FTPs. If longevity includes service at  
25 American Eagle, I would benefit just like the other FTPs.

26 12. I do not have any conflicts of interest with other class members. We all will win  
27 or lose as a group.

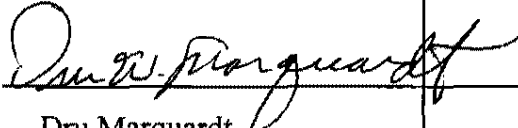




I intend to pursue this matter vigorously. The American Airlines Flow-Thru Pilots Coalition (AAFTPC) has engaged in fund raising for this lawsuit. I have also contributed to AAFTPC for this case.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct to the best of my knowledge and belief.

Dated: March/7, 2016

  
Dru Marquardt

CHRISTOPHER W. KATZENBACH  
(SBN 108006)

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GREGORY R. CORDES, DRU MARQUARDT,  
DOUG POULTON, STEPHAN ROBSON,  
and PHILIP VALENTE III on behalf of themselves and all  
others similarly situated

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

AMERICAN AIRLINES FLOW-THRU	)	Case No.: 3:15-cv-03125 RS
PILOTS COALITION, GREGORY R.	)	
CORDES, DRU MARQUARDT, DOUG	)	
POULTON, STEPHAN ROBSON, and	)	DECLARATION OF DOUG POULTON IN
PHILIP VALENTE III, on behalf of	)	SUPPORT OF MOTION FOR CLASS
themselves and all others similarly situated,	)	CERTIFICATION
	)	
Plaintiffs,	)	April 21, 2016
vs.	)	1:30 P.M.
	)	Courtroom 3, 17 <sup>th</sup> Floor
ALLIED PILOTS ASSOCIATION and	)	Judge Richard Seeborg
AMERICAN AIRLINES, INC.,	)	
	)	
Defendants.	)	

I, DOUG POULTON, declare under penalty of perjury:

1. I am a plaintiff in this action. I am submitting this declaration in support of plaintiffs' motion for class certification.

2. I am a pilot for American Airlines ("American"). Before coming to American, I was a Regional Jet (also known as Commuter Jet) Captain at American Eagle Airlines, a wholly

1 owned subsidiary of AMR, Inc. I obtained my position at American because of an agreement  
2 known as the Flow-Through Agreement, and also referred to as Supplement W or Letter 3.

3 3. The pilots who came to American pursuant to the Flow-Through Agreement are  
4 known as Flow-Through Pilots, referred to herein as “FTP.”

5 4. The Flow-Through Agreement allowed American Eagle jet captains to move to  
6 American as places in new-hire classes became available.

7 5. A pilot who successfully bid for a new-hire class was not necessarily entitled to  
8 attend the class and move to American immediately. American Eagle was entitled to hold-back  
9 or “withhold” the pilot at American Eagle for operational reasons, typically because of a  
10 “training freeze” or “lock-in” that prohibited a jet captain from transferring to another job for a  
11 period after they had been trained on a particular aircraft.

12 6. As a result of a training freeze or other operational reasons, the American Eagle  
13 pilots who successfully bid for positions in new-hire classes at American were all held back at  
14 American Eagle. Notwithstanding the hold-back, the American Eagle pilot would get assigned a  
15 seniority number on the American pilot seniority list based upon and as if the pilot had been able  
16 to fill one of the positions and had attended the American new hire class the pilot would have  
17 attended if not held back.

18 7. Before September 11, 2001, I was one of the American Eagle pilots who had bid  
19 for new hire classes at American and had received seniority numbers on the American pilot  
20 seniority list. I was held-back at American Eagle because of the two-year training freeze.  
21 Because of the events of September 11, 2001, American stopped hiring and conducting new hire  
22 classes. I was able to move to American after June 2010 following the arbitration award by  
23 Arbitrator George Nicolau in arbitration number FLO-0108, issued April 9, 2010.

24 8. In this case, plaintiffs are seeking a remedy for two claims:

- 25 a. For denial of length of service (LOS) credits for time FTPs were working as jet  
26 captains at American Eagle but had been unable to transfer to American after  
27 September 2001. These LOS credits are used for both pay and other purposes.  
28

1 This claim arises from the following discrimination against FTPs alleged in this  
2 action:

- 3 (i) The plaintiffs contend that the former TWA pilots, including the TWA-  
4 LLC Staplees, received LOS credit for their work at TWA and for the  
5 period after American acquired TWA's asserts when former TWA pilots  
6 were not flying at American, including time when former TWA pilots  
7 were flying at American Eagle under the flow-down provisions of the  
8 Flow-Through Agreement.
- 9 (ii) In addition, in the most recent collective bargaining agreement between  
10 APA and American, any pilot on furlough since September 11, 2001  
11 received an additional two years of LOS credit. This credit is described in  
12 Letter G to the collective bargaining agreement. The plaintiffs contend  
13 that all the TWA-LLC Staplees received the LOS credits in Letter G,  
14 including TWA-LLC Staplees who had flowed-down to American Eagle  
15 and displaced FTPs from their jobs.
- 16 (iii) No FTP received LOS credits for the time they worked at American Eagle  
17 or the special extra credit in Letter G.
- 18 b. In the current seniority list integration proceedings, there is a significant issue of  
19 how years of service as a pilot ("longevity") will be a factor in placement on the  
20 integrated list. I understand that APA has refused to put on evidence or argue that  
21 FTPs' service at American Eagle should be included as part of any longevity  
22 factor that should be used. Plaintiffs are seeking to have any seniority list set  
23 aside if longevity is a factor and service at American Eagle is not included. The  
24 plaintiffs believe that failure to include service at American Eagle would be a  
25 product of APA breach of its duty of fair representation and the seniority  
26 integration would therefore not have been done in a fair and equitable manner, as  
27 required by the McCaskill-Bond Amendment, Pub.L. 110-161, Div. K, Title I, §  
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117, Dec. 26, 2007, 121 Stat. 2383, codified at 49 U.S.C. § 42112 note, adopting the standards applied by the Civil Aeronautics Board in the Allegheny-Mohawk merger, 59 C.A.B. 45 (1972).

9. In this case, the class plaintiffs are seeking to represent includes all FTPs (a) who did not receive LOS credits for time FTPs were working as jet captains at American Eagle but had been unable to transfer to American after September 2001 and (b) whose position on the integrated seniority list arising from American's acquisition of US Airways' assets is adversely affected by not including service at American Eagle as part of any factor of longevity used in created the integrated seniority list.

10. The class of FTPs in this action is affected as a group by these claims.

a. All FTPs who had not yet transferred to American were denied LOS credits for time they were at American Eagle after September 2001 and unable to move to American. If FTPs recover LOS credits in this case, all the FTPs will benefit equally.

b. All FTPs are affected if time at American Eagle is excluded from any longevity factor used to create an integrated seniority list. All FTPs benefit equally if service at American Eagle is included as part of a longevity factor used in an integrated seniority list.

11. I believe that my claims are common and typical of the claims of the class members. I am a flow-through Pilot. I was part of the group of FTPs who were unable to transfer to American after getting my American seniority number and did not move to American until after June 2010 pursuant to the remedy award in FLO-0108. If successful in recovering LOS credits, I would benefit in the same way as other FTPs. If longevity includes service at American Eagle, I would benefit just like the other FTPs.

12. I do not have any conflicts of interest with other class members. We all will win or lose as a group.



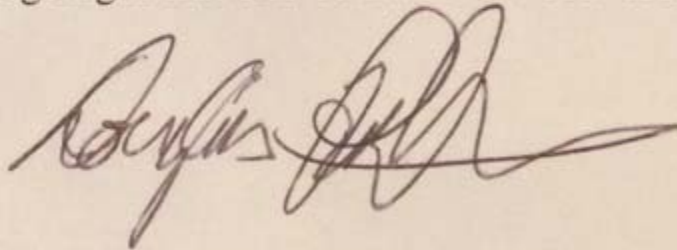
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AUTONUM \\* Arabic I do not have any conflicts of interest with other members. We all will win or lose as a group.

AUTONUM \\* Arabic I intend to pursue this matter vigorously. The American Airlines Flow-Thru Pilots Coalition (AAFTPC) has engaged in fund raising for this lawsuit. I have also contributed to AAFTPC for this case.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct to the best of my knowledge and belief.

March 16, 2016

A handwritten signature in dark ink, appearing to be "Ryan [unclear]", written over a horizontal line.

CHRISTOPHER W. KATZENBACH  
(SBN 108006)

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GREGORY R. CORDES, DRU MARQUARDT,  
DOUG POULTON, STEPHAN ROBSON,  
and PHILIP VALENTE III on behalf of themselves and all  
others similarly situated

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

AMERICAN AIRLINES FLOW-THRU	)	Case No.: 3:15-cv-03125 RS
PILOTS COALITION, GREGORY R.	)	
CORDES, DRU MARQUARDT, DOUG	)	
POULTON, STEPHAN ROBSON, and	)	DECLARATION OF STEPHAN ROBSON
PHILIP VALENTE III, on behalf of	)	IN SUPPORT OF MOTION FOR CLASS
themselves and all others similarly situated,	)	CERTIFICATION
	)	
Plaintiffs,	)	April 21, 2016
vs.	)	1:30 P.M.
	)	Courtroom 3, 17 <sup>th</sup> Floor
ALLIED PILOTS ASSOCIATION and	)	Judge Richard Seeborg
AMERICAN AIRLINES, INC.,	)	
	)	
Defendants.	)	

I, STEPHAN ROBSON, declare under penalty of perjury:

1. I am a plaintiff in this action. I am submitting this declaration in support of plaintiffs' motion for class certification.

2. I am a pilot for American Airlines ("American"). Before coming to American, I was a Regional Jet (also known as Commuter Jet) Captain at American Eagle Airlines, a wholly



1 owned subsidiary of AMR, Inc. I obtained my position at American because of an agreement  
2 known as the Flow-Through Agreement, and also referred to as Supplement W or Letter 3.

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4 known as Flow-Through Pilots, referred to herein as “FTP.”

5 4. The Flow-Through Agreement allowed American Eagle jet captains to move to  
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8 attend the class and move to American immediately. American Eagle was entitled to hold-back  
9 or “withhold” the pilot at American Eagle for operational reasons, typically because of a  
10 “training freeze” or “lock-in” that prohibited a jet captain from transferring to another job for a  
11 period after they had been trained on a particular aircraft.

12 6. As a result of a training freeze or other operational reasons, the American Eagle  
13 pilots who successfully bid for positions in new-hire classes at American before September 2001  
14 were all held back at American Eagle. Notwithstanding the hold-back, the American Eagle pilot  
15 would get assigned a seniority number on the American pilot seniority list based upon and as if  
16 the pilot had been able to fill one of the positions and had attended the American new hire class  
17 the pilot would have attended if not held back.

18 7. Before September 11, 2001, I was one of the American Eagle pilots who had bid  
19 for new hire classes at American and had received seniority numbers on the American pilot  
20 seniority list. I was held-back at American Eagle because of the two-year training freeze.  
21 Because of the events of September 11, 2001, American stopped hiring and conducting new hire  
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1 This claim arises from the following discrimination against FTPs alleged in this  
2 action:

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8 Flow-Through Agreement.

9 (ii) In addition, in the most recent collective bargaining agreement between  
10 APA and American, any pilot on furlough since September 11, 2001  
11 received an additional two years of LOS credit. This credit is described in  
12 Letter G to the collective bargaining agreement. The plaintiffs contend  
13 that all the TWA-LLC Staplees received the LOS credits in Letter G,  
14 including TWA-LLC Staplees who had flowed-down to American Eagle  
15 and displaced FTPs from their jobs.

16 (iii) No FTP received LOS credits for the time they worked at American Eagle  
17 or the special extra credit in Letter G.

18 b. In the current seniority list integration proceedings, there is a significant issue of  
19 how years of service as a pilot ("longevity") will be a factor in placement on the  
20 integrated list. I understand that APA has refused to put on evidence or argue that  
21 FTPs' service at American Eagle should be included as part of any longevity  
22 factor that should be used. Plaintiffs are seeking to have any seniority list set  
23 aside if longevity is a factor and service at American Eagle is not included. The  
24 plaintiffs believe that failure to include service at American Eagle would be a  
25 product of APA breach of its duty of fair representation and the seniority  
26 integration would therefore not have been done in a fair and equitable manner, as  
27 required by the McCaskill-Bond Amendment, Pub.L. 110-161, Div. K, Title I, §  
28

117, Dec. 26, 2007, 121 Stat. 2383, codified at 49 U.S.C. § 42112 note, adopting the standards applied by the Civil Aeronautics Board in the Allegheny-Mohawk merger, 59 C.A.B. 45 (1972).

9. In this case, the class plaintiffs are seeking to represent includes all FTPs (a) who did not receive LOS credits for time FTPs were working as jet captains at American Eagle but had been unable to transfer to American after September 2001 and (b) whose position on the integrated seniority list arising from American's acquisition of US Airways' assets is adversely affected by not including service at American Eagle as part of any factor of longevity used in created the integrated seniority list.

10. The class of FTPs in this action is affected as a group by these claims.

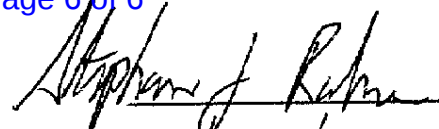
a. All FTPs who had not yet transferred to American were denied LOS credits for time they were at American Eagle after September 2001 and unable to move to American. If FTPs recover LOS credits in this case, all the FTPs will benefit equally.

b. All FTPs are affected if time at American Eagle is excluded from any longevity factor used to create an integrated seniority list. All FTPs benefit equally if service at American Eagle is included as part of a longevity factor used in an integrated seniority list.

11. I believe that my claims are common and typical of the claims of the class members. I am a flow-through Pilot. I was part of the group of FTPs who were unable to transfer to American after getting my American seniority number and did not move to American until after June 2010 pursuant to the remedy award in FLO-0108. If successful in recovering LOS credits, I would benefit in the same way as other FTPs. If longevity includes service at American Eagle, I would benefit just like the other FTPs.

12. I do not have any conflicts of interest with other class members. We all will win or lose as a group.



  
3/17/16

STEPHAN ROBSON

4

DECLARATION OF STEPHAN ROBSON IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

3:15-cv-03125 RS

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DOUG POULTON, STEPHAN ROBSON,  
and PHILIP VALENTE III on behalf of themselves and all  
others similarly situated

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

AMERICAN AIRLINES FLOW-THRU  
PILOTS COALITION, GREGORY R.  
CORDES, DRU MARQUARDT, DOUG  
POULTON, STEPHAN ROBSON, and  
PHILIP VALENTE III, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

vs.

ALLIED PILOTS ASSOCIATION and  
AMERICAN AIRLINES, INC.,

Defendants.

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

)  
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)  
) **DECLARATION OF PHILIP VALENTE**  
) **III IN SUPPORT OF MOTION FOR**  
) **CLASS CERTIFICATION**

) April 21, 2016

) 1:30 P.M.

) Courtroom 3, 17<sup>th</sup> Floor

) Judge Richard Seeborg

I, PHILIP VALENTE III, declare under penalty of perjury:

1. I am a plaintiff in this action. I am submitting this declaration in support of  
plaintiffs' motion for class certification.

2. I am a pilot for American Airlines ("American"). Before coming to American, I  
was a Regional Jet (also known as Commuter Jet) Captain at American Eagle Airlines, a wholly

1 owned subsidiary of AMR, Inc. I obtained my position at American because of an agreement  
2 known as the Flow-Through Agreement, and also referred to as Supplement W or Letter 3.

3 3. The pilots who came to American pursuant to the Flow-Through Agreement are  
4 known as Flow-Through Pilots, referred to herein as “FTP.”

5 4. The Flow-Through Agreement allowed American Eagle jet captains to move to  
6 American as places in new-hire classes became available. When American opened a new hire  
7 class, American Eagle jet captains were entitled to one-of-two positions in the class. Even if the  
8 American Eagle captain was held back at American Eagle because of a training freeze or other  
9 operational reason, the American Eagle pilot would get an American pilot seniority number and  
10 would be entitled to move to American once the training freeze or other operational holdback  
11 was finished.

12 5. FTPs who held American seniority numbers before the Flow-Through Agreement  
13 expired on May 1, 2008, were entitled to transfer to American as flow-through pilots. However,  
14 in a series of arbitrations, arbitrators found that, while the Flow-Through Agreement was still in  
15 effect, American had called certain former TWA pilots for new hire classes before calling any  
16 American Eagle jet captains. As a remedy for that violation, Arbitrator John B. LaRocco, in  
17 arbitration number FLO-0903, awarded an additional 154 American seniority numbers to  
18 American Eagle captains, with an occupational seniority date of April 30, 2008 (the day before  
19 the Flow-Through Agreement expired). I was one of the American Eagle jet captains who  
20 received one of these American seniority numbers. Thereafter, I was able to move to American  
21 in October 2013.

22 6. In this case, plaintiffs are seeking a remedy for two claims:

- 23 a. For denial of length of service (LOS) credits for time FTPs were working as jet  
24 captains at American Eagle but had been unable to transfer to American after  
25 September 2001. These LOS credits are used for both pay and other purposes.  
26 This claim arises from the following discrimination against FTPs alleged in this  
27 action:  
28

(i) The plaintiffs contend that the former TWA pilots, including the TWA-LLC Staplees, received LOS credit for their work at TWA and for the period after American acquired TWA's asserts when former TWA pilots were not flying at American, including time when former TWA pilots were flying at American Eagle under the flow-down provisions of the Flow-Through Agreement.

(ii) In addition, in the most recent collective bargaining agreement between APA and American, any pilot on furlough since September 11, 2001 received an additional two years of LOS credit. This credit is described in Letter G to the collective bargaining agreement. A copy of Letter G is attached to this declaration. The plaintiffs contend that all the TWA-LLC Staplees received the LOS credits in Letter G, including TWA-LLC Staplees who had flowed-down to American Eagle and displaced FTPs from their jobs.

(iii) No FTP received LOS credits for the time they worked at American Eagle or the special extra credit in Letter G.

b. In the current seniority list integration proceedings, there is a significant issue of how years of service as a pilot ("longevity") will be a factor in placement on the integrated list. I understand that APA has refused to put on evidence or argue that FTPs' service at American Eagle should be included as part of any longevity factor that should be used. Plaintiffs are seeking to have any seniority list set aside if longevity is a factor and service at American Eagle is not included. The plaintiffs believe that failure to include service at American Eagle would be a product of APA breach of its duty of fair representation and the seniority integration would therefore not have been done in a fair and equitable manner, as required by the McCaskill-Bond Amendment, Pub.L. 110-161, Div. K, Title I, § 117, Dec. 26, 2007, 121 Stat. 2383, codified at 49 U.S.C. § 42112 note, adopting



1 the standards applied by the Civil Aeronautics Board in the Allegheny-Mohawk  
2 merger, 59 C.A.B. 45 (1972).

3 7. In this case, the class plaintiffs are seeking to represent includes all FTPs (a) who  
4 did not receive LOS credits for time FTPs were working as jet captains at American Eagle but  
5 had been withheld from transfer to American after September 2001 and (b) whose position on  
6 the integrated seniority list arising from American's acquisition of US Airways' assets is  
7 adversely affected by not including service at American Eagle as part of any factor of longevity  
8 used in creating the integrated seniority list. .

9 8. The class of FTPs in this action is affected as a group by these claims.

10 a. All FTPs who had not yet transferred to American were denied LOS credits for  
11 time they were at American Eagle after September 2001 and unable to transfer to  
12 American. If FTPs recover LOS credits in this case, all the FTPs will benefit  
13 equally.

14 b. All FTPs are affected if time at American Eagle is excluded from any longevity  
15 factor used to create an integrated seniority list. All FTPs benefit equally if  
16 service at American Eagle is included as part of a longevity factor used in an  
17 integrated seniority list.

18 9. I believe that my claims are common and typical of the claims of the class  
19 members. I am a flow-through Pilot. I did not move to American until October 2013 when  
20 I should have been called for a new hire class and been able to transfer earlier. If successful in  
21 recovering LOS credits for the time I was kept at American Eagle, I would benefit in the same  
22 way as other FTPs. If longevity includes service at American Eagle, I would benefit just like the  
23 other FTPs.

24 10. I do not have any conflicts of interest with other class members. We all will win  
25 or lose as a group.  
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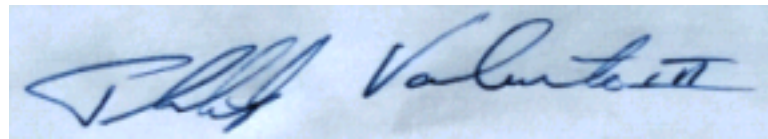
1 way as other FTPs. If longevity includes service at American Eagle, I would benefit just like the  
2 other FTPs.

3 I do not have any conflicts of interest with other class members. We all will win  
4 or lose as a group.

5 I intend to pursue this matter vigorously. The American Airlines Flow-Thru Pilots  
6 Coalition (AAFTPC) has engaged in fund raising for this lawsuit. I have also contributed to  
7 AAFTPC for this case.

8 I declare under penalty of perjury under the laws of the United States and the State of  
9 California that the foregoing is true and correct to the best of my knowledge and belief.

10 Dated: March , 2016

A handwritten signature in blue ink, appearing to read "Philip Valente III", is written over a light blue rectangular background.

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12 PHILIP VALENTE III  
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GREGORY R. CORDES, DRU MARQUARDT,  
DOUG POULTON, STEPHAN ROBSON,  
and PHILIP VALENTE III on behalf of themselves and all  
others similarly situated

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

AMERICAN AIRLINES FLOW-THRU  
PILOTS COALITION, GREGORY R.  
CORDES, DRU MARQUARDT, DOUG  
POULTON, STEPHAN ROBSON , and  
PHILIP VALENTE III, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

vs.

ALLIED PILOTS ASSOCIATION and  
AMERICAN AIRLINES, INC.,

Defendants.

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

)  
)  
) [Proposed] ORDER GRANTING  
) CERTIFICATION AS CLASS ACTION

) April 21, 2016

) 1:30 P.M.

) Courtroom 3, 17<sup>th</sup> Floor

) Judge Richard Seeborg

This matter is before the Court on the motion of Plaintiffs AMERICAN AIRLINES  
FLOW-THRU PILOTS COALITION, GREGORY R. CORDES, DRU MARQUARDT, DOUG  
POULTON, STEPHAN ROBSON , and PHILIP VALENTE III to certify this case as a class  
action under Rule 23 of the Federal Rules of Civil Procedure.

The Court Grants the motion, certifies this case as a class action, certifies plaintiffs as  
class representatives and issues the following Certification Order pursuant to Rule 23(c)(1).

1           1.       The Court certifies the following proposed class as a class action under Rule  
2 23(b)(2) and Rule 23(b)(3): All pilots who worked at American Eagle Airlines and became  
3 employed at American Airlines (“American”) pursuant to the terms of the Flow-Through  
4 Agreement, also known as Supplement W or Letter 3. These pilots are referred to as Flow-Thru  
5 pilots or FTPs.

6           2.       The Court certifies the plaintiffs as representatives of the certified class.

7           3.       The Court finds that the proposed his class is (a) so numerous that joinder of all  
8 members is impracticable; (b) there are questions of law or fact common to the class; (c) the  
9 claims of the representative parties are typical of the claims of the class; and (d) the  
10 representative parties will fairly and adequately protect the interests of the class.

11          4.       This class is certified under Rule 23(b)(2) as APA and American have acted or  
12 refused to act on grounds that apply generally to the proposed class, so that final injunctive or  
13 corresponding declaratory relief is appropriate respecting the class as a whole.

14          5.       This class is also certified under Rule 23(b)(3) as the questions of law or fact  
15 common to the class members predominate over any questions affecting only individual  
16 members and a class action is superior to other available methods for fairly and efficiently  
17 adjudicating the controversy.

18          6.       Pursuant to Rule 23(c)(1)(B), the Court defines the class claims and issues in this  
19 case as: Whether the Allied Pilots Association (“APA”) has breached the duty of fair  
20 representation towards the FTPs and whether American has participated in, aided or abetted this  
21 breach. The specific claims and issues involved in APA’s breach of duty that the Court  
22 identifies in this certification order are:

23           a.       Whether APA acted arbitrarily, discriminatorily or in bad faith by failing or  
24 refusing to negotiate for or otherwise seek Length of Service (LOS) credits for  
25 time FTPs were working as jet captains at American Eagle during the period when  
26 FTPs were unable work at American after September 2001 because American  
27 stopped hiring pilots until the FTPs were hired by American after June 2010.  
28

b. Whether APA has acted arbitrarily, discriminatorily or in bad faith as to representing the interests of FTPs in including the FTPs' years of service at American Eagle as a part of any longevity factor used in placing pilots on the integrated seniority list arising from the seniority merger of pilots of American Airlines and US Airways.

7. The Court appoints Plaintiffs' counsel, Christopher W. Katzenbach, as class counsel under Rule 23(g) as he has the requisite experience and knowledge, he has invested substantial time in identifying and investigating the issues in this case and he and the plaintiffs have committed the resources to pursue this matter.

The Court further Orders as follows:

Court sets \_\_\_\_\_, 2016 at 1:30 P.M. in Courtroom 3, 17<sup>th</sup> Floor, for hearing on the form of notice and method class members shall be notified of this action and their right to opt-in or opt-out. On or before \_\_\_\_\_, 2016, Plaintiffs will meet and confer with Defendants as to a method and form of notice that complies with the opt-out and other due process requirements of Rule 23(b)(3). If the parties cannot agree on a method and form of notice, on or before \_\_\_\_\_, 2016, Plaintiffs shall file their proposed method and form of notice, with a memorandum addressing the issues and any issues in dispute. On or before \_\_\_\_\_, 2016, Defendants shall file their opposition to Plaintiffs' method and form of notice and the alternative method and form of notice Defendants propose. Plaintiffs may file a reply to Defendants' opposition on or before \_\_\_\_\_, 2016.

SO ORDERED.

Dated: \_\_\_\_\_, 2016.

\_\_\_\_\_  
Richard Seeborg, United States District Judge