

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

US AIRLINE PILOTS ASSOCIATION,)
)
Plaintiff,)
)
v.)
)
AWAPPA LLC, JOHN MCILVENNA, MITCH)
VASIN, PETER BLANDINO, ERIC)
FERGUSON, JEFF KOONTZ, RUSS PAYNE,)
KEITH KRUEGER, ERIC AUXIER,)
CHRISTOPHER CUNDARI, JACK TOOKE,)
DAVID BRAID, ROBERT J. NARLOCH,)
BRUCE A. HANNAH, RON GABALDON,)
SHAWN METZKER, JURIE MAREE, and)
JOHN DOES 1-100,)
)
Defendants.)
_____)

Docket No.:

JURY TRIAL DEMANDED

COMPLAINT

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Plaintiff, US AIRLINE PILOTS ASSOCIATION (“USAPA”), by and through its undersigned attorneys, for its Complaint against the defendants, alleges as follows:

NATURE OF ACTION

1. This is an action by USAPA to enjoin, and recover damages for, the defendants’ pattern of racketeering activity, and acts in violation of federal and North Carolina state law, in which the defendants have engaged in pursuit of their declared goal of destroying the plaintiff union. USAPA was certified as the collective bargaining representative of the pilots employed by US Airways on April 18, 2008. Since that date, the defendants and their co-conspirators have subjected USAPA, its officers, and individual US Airways pilots to a concerted campaign of sabotage, which has included the following: 1) a deluge of frivolous calls to USAPA’s toll-free telephone line in order to jam the service and impose costs on the Union; 2) false communications to USAPA’s safety line – the equivalent of maliciously triggering a fire alarm; 3) communications to US Airways pilots asserting that their “safety” will be jeopardized if they pay dues to USAPA; 4) the false attribution of defamatory statements to USAPA officers by use of a slightly altered e-mail address; 5) maliciously arranging for USAPA officers to receive subscriptions to electronic services, including sexually-related services, in an apparent effort to defame these officers and sabotage their electronic communications; 6) a concerted effort to deprive pilots at US Airways the ability to commute to work by denying USAPA members the use of the cockpit jump seat; and 7) a conspiracy to violate the union security provisions of the applicable collective bargaining agreements and to induce US Airways to violate these same provisions. The defendants’ actions violate the

Racketeer Influenced and Corrupt Organizations (“RICO”) Act, 18 U.S.C. § 1961 *et seq.*, the North Carolina RICO Act, N.C. Gen. Stat. § 75D-1 *et seq.*, and the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1. In addition, the defendants are liable to the plaintiff under North Carolina common law claims of trespass to chattels, tortious interference with contractual relations, defamation, and civil conspiracy.

PARTIES

2. Plaintiff USAPA is an unincorporated association organized for the purpose and objective of a labor organization and is a “representative” as defined in Section 1, Sixth of the Railway Labor Act (“RLA”), 45 U.S.C. § 151, Sixth. USAPA is the certified collective bargaining representative of the pilots employed by US Airways, Inc. USAPA’s principal place of business is located at 5821 Fairview Road, Charlotte, North Carolina 28209.

3. Defendant, AWAPPA LLC (“AWAPPA”) (formerly America West Airlines Pilots Protective Alliance LLC) is an Arizona Limited Liability Corporation with its principal place of business located in Phoenix, Arizona. AWAPPA was created by several former pilots of America West Airlines for the purpose of destroying USAPA in order to obtain pecuniary benefits for former America West pilots that would otherwise be distributed to all US Airways pilots on a date of hire seniority basis.

4. Upon information and belief, defendant, John McIlvenna (“McIlvenna”), is a citizen of the State of Arizona, who resides at 4425 East Bighorn Avenue, Phoenix, Arizona 85044. McIlvenna is a former America West pilot, who is currently employed as

a pilot for US Airways, and is a founder and director of AWAPPA. McIlvenna is also a director of Leonidas LLC, an organization that was established in August 2007 to build a case against USAPA. McIlvenna also served as the Chairman of the America West Airlines Master Executive Council (“MEC”) for the Air Line Pilots Association (“ALPA”). ALPA was the representative of the America West pilots prior to April 18, 2008.

5. Upon information and belief, defendant, Mitch Vasin (“Vasin”), is a citizen of the State of Arizona, who resides at 618 West Laguna Azul Avenue, Mesa, Arizona 85210-6830. Vasin is a former America West pilot, who is currently employed as a pilot for US Airways, and is a founder and director of AWAPPA. Vasin is also a director of Leonidas LLC.

6. Upon information and belief, defendant, Peter Blandino (“Blandino”), is a citizen of the State of Arizona, who resides at 525 West Cypress Street, Phoenix, Arizona 85003. Blandino is a former America West pilot, who is currently employed as a pilot for US Airways, and is a founder and director of AWAPPA. Blandino also served as the Secretary/Treasurer of the America West Airlines MEC for ALPA.

7. Upon information and belief, defendant Eric Ferguson (“Ferguson”), is a citizen of the State of Texas, who resides at 8800 Kameryn Lane, Lantana, Texas 76226. Ferguson is a former America West pilot, who is currently employed as a pilot for US Airways, and is a director of AWAPPA. Ferguson is also a founder and director of Leonidas LLC. Ferguson also served as a member of the Merger Committee of the America West Airlines MEC for ALPA.

8. Upon information and belief, defendant Jeff Koontz (“Koontz”), is a citizen of the State of California, who resides at 33765 Captains Lane, Apt. 231, Dana Point, California 92629. Koontz is a former America West pilot, who is currently employed as a pilot for US Airways, and is a director of AWAPPA. Koontz is also a founder and director of Leonidas LLC.

9. Upon information and belief, defendant Russ Payne (“Payne”), is a citizen of the State of Arizona, who resides at 9441 South 50th Street, Phoenix, Arizona 85044. Payne is a former America West pilot, who is currently employed as a pilot for US Airways, and is a director of AWAPPA. Payne also served as a member of the Merger Committee, Negotiating Committee, and Joint Negotiating Committee of the America West Airlines MEC for ALPA.

10. Upon information and belief, defendant Keith Krueger (“Krueger”), is a citizen of the State of Arizona, who resides at 11181 East Peralta Canyon Drive, Gold Canyon, Arizona 85218. Krueger is a former America West pilot, who is currently employed as a pilot for US Airways.

11. Upon information and belief, defendant Eric Auxier (“Auxier”), is a citizen of the State of Arizona, who resides at 1905 East University Drive, Tempe, Arizona 85281. Auxier is a former America West pilot, who is currently employed as a pilot for US Airways.

12. Upon information and belief, defendant Christopher Cundari (“Cundari”), is a citizen of the State of Arizona, who resides at 3626 West Glass Lane, Phoenix, Arizona 85041. Cundari is a former America West pilot, who is currently employed as a pilot for US Airways.

13. Upon information and belief, defendant Jack Tooke (“Tooke”), is a citizen of the State of Arizona, who resides at 15222 North 181st Court, Surprise, Arizona 85388. Tooke is a former America West pilot, who is currently employed as a pilot for US Airways.

14. Upon information and belief, defendant David Braid (“Braid”), is a citizen of the State of Arizona, who resides at 1335 East June Street, Apt. 235, Mesa, Arizona 85203. Braid is a former America West pilot, who is currently employed as a pilot for US Airways.

15. Upon information and belief, defendant Robert J. Narloch (“Narloch”), is a citizen of the State of Arizona, who resides at 7530 East Coolidge Street, Scottsdale, Arizona 85251. Narloch is a former America West pilot, who is currently employed as a pilot for US Airways.

16. Upon information and belief, defendant Bruce A. Hannah (“Hannah”), is a citizen of the State of Arizona, who resides at 721 West Loughlin Drive, Chandler, Arizona 85225. Hannah is a former America West pilot, who is currently employed as a pilot for US Airways.

17. Upon information and belief, defendant Ron Gabaldon (“Gabaldon”), is a citizen of the State of Arizona, who resides at 6833 North 24th Place, Phoenix, Arizona 85016. Gabaldon is a former America West pilot, who is currently employed as a pilot for US Airways.

18. Upon information and belief, defendant Shawn Metzker (“Metzker”), is a citizen of the State of Oregon, who resides at 17100 Fir Drive, Sandy, Oregon 97055.

Metzker is a former America West pilot, who is currently employed as a pilot for US Airways.

19. Upon information and belief, defendant Jurie Maree (“Maree”), is a citizen of the State of Arizona, who resides at 15740 East Mustang Drive, Fountain Hills, Arizona, 85268. Maree is a former America West pilot, who is currently employed as a pilot for US Airways.

20. Upon information and belief, the fictitiously named defendants sued herein as John Doe Defendants 1 through 100, inclusive, and each of them, were in some manner responsible and/or legally liable for the events, actions, transactions, and circumstances alleged herein. The true names and capacities of these fictitiously named defendants, whether individual, corporate, associate, or otherwise, are at present unknown to the plaintiff, who will seek leave of this Court to amend this Complaint to assert the true names and capacities of these fictitiously named defendants when their names and capacities have become known to the plaintiff.

21. Upon information and belief, the John Doe Defendants, and each of them, were the agents, employees, partners, joint-venturers, co-conspirators, owners, or principals of the remaining defendants, and each of them are, and at all times herein mentioned were, acting within the course and scope of their agency, partnership, employment, conspiracy, ownership, or joint venture.

22. Upon information and belief, the acts and conduct alleged herein of each John Doe Defendant were known to, authorized by, or ratified by defendants AWAPPA, McIlvenna, Vasin, Blandino, Ferguson, Koontz, Payne, Krueger, Auxier, Cundari, Tooke, Braid, Narloch, Hannah, Gabaldon, Metzker, and/or Maree.

JURISDICTION AND VENUE

23. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331, because the case arises under the laws of the United States, specifically, the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1962. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1332, because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different states. This Court has personal jurisdiction over the defendants pursuant to 18 U.S.C. § 1965, the due process clause of the U.S. Constitution, and the North Carolina long-arm statute, N.C. Gen. Stat. § 1-75.4.

24. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over plaintiff’s additional claims arising under North Carolina state law for, *inter alia*, trespass to chattels, tortious interference with contractual relations, defamation, civil conspiracy, violation of North Carolina’s Racketeer Influenced and Corrupt Organizations Act, N.C.G.S. § 75D, *et seq.*, and violation of North Carolina’s Unfair and Deceptive Trade Practices Act, N.C.G.S. § 75-1.1, *et seq.*

25. Venue is proper in the Western District of North Carolina pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claim occurred in the Western District of North Carolina, and a substantial part of the property that is the subject of the action is situated in the Western District of North Carolina. Because the Western District of North Carolina has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, the residence and citizenship of the John Doe defendants is irrelevant.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

I. Events Leading up to the Certification of USAPA

26. On May 19, 2005, US Airways merged with America West Airlines and the merged airline became US Airways. Shortly thereafter, the process of integrating the employee workgroups from the two airlines began.

27. By and large the major unionized employee groups from the two airlines, including flight attendants, mechanics and related employees, stock clerks, and flight dispatchers, were integrated on the basis of date of hire seniority principles. The one notable exception to this date of hire integration method was the pilots.

28. “Date of hire” refers to seniority that is based on a pilot’s employment commencement date. At the time of the merger, pilots from the pre-merger US Airways had, on average, much longer length of service than the pilots at the pre-merger America West Airlines. By way of example, the most senior pilot at pre-merger America West was hired seventeen years after the most senior pilot from pre-merger US Airways.

29. At the time of the merger, the pilot groups at US Airways and America West Airlines were each represented by the Air Line Pilots Association (“ALPA”). ALPA’s internal seniority integration policy calls for the development of a bargaining proposal on seniority integration, for submission to the carrier, through negotiations between the two pilot groups and, in the event negotiations are unsuccessful, through an internal ALPA arbitration process. ALPA’s internal policy resulted in a seniority integration arbitration award issued by Arbitrator George Nicolau on May 1, 2007. This seniority integration arbitration award is referred to as the “Nicolau Award.”

30. Where a pilot is placed on the seniority list determines a pilot's wages, benefits and working conditions that he or she is entitled to under the collective bargaining agreement, such as status, the type of aircraft flown, the pilot's domicile, flying schedule, and job security.

31. The Nicolau Award rejected the concept of date of hire seniority integration, and instead was based on the concept of super seniority favoring the more junior, pre-merger America West pilots. The decision was the result of the arbitrator's comparison of the relative economic strength of the separate pre-merger carriers.

32. Under ALPA's internal policy, the Nicolau Award did not have any immediate effect, but rather constituted a bargaining proposal which ALPA was required under its policy to submit to the carrier in order to effectuate integration of the pre-merger pilot groups.

33. After the issuance of the Nicolau Award, pilots from the more senior pre-merger US Airways (East pilots) lobbied against its implementation, while the pilots from the pre-merger America West Airlines (West pilots) favored the as-is implementation of the Nicolau Award. For a period of several months, ALPA sponsored negotiations between the two pilot groups for the purpose of reaching an agreement on modifying the Nicolau Award. These negotiations proved unsuccessful and ALPA, after substantial delay, eventually submitted the seniority list generated by the Nicolau Award to the carrier as ALPA's proposal. Nevertheless, since the seniority integration issue is part of ongoing negotiations for a single collective bargaining agreement to be applied to all US Airways pilots, the seniority list generated by the Nicolau Award has never been implemented.

34. In order to establish a democratic union that respects date of hire seniority, among other reasons, a group of pilots formed the US Airline Pilots Association (“USAPA”), and sought to replace ALPA as the collective bargaining representative of the pilots at the combined US Airways. On November 13, 2007, USAPA invoked the services of the National Mediation Board to investigate and determine who may represent the pilots of US Airways. Upon investigation, the Board directed that an election be conducted to determine the pilots’ representation choice.

35. Consistent with its constitutional objective “[t]o maintain uniform principles of seniority based on date of hire and the perpetuation thereof,” USAPA campaigned on a platform that included its intention to negotiate with the carrier a seniority list based on date of hire for the pilots of post-merger US Airways similar to the approach adopted by other labor groups, including the flight attendants, mechanics and related employees, stock clerks, and the dispatchers.

36. During the election campaign, a group of pilots from pre-merger America West Airlines formed the America West Airlines Pilots Protective Alliance LLC (“AWAPPA”) to oppose USAPA and its goal of date of hire seniority integration. A rival union assisted in the formation of AWAPPA by contributing facilities and monies. According to AWAPPA’s website, “AWAPPA will educate pre-merger America West pilots about USAPA and relevant events taking place, while providing recommendations that will ultimately lead to USAPA’s downfall.”

37. Another organization that was formed to oppose USAPA was Leonidas, LLC, which was established in August 2007. In a letter to former America West pilots, dated April 17, 2008, the Leonidas LLC Board of Directors wrote that “[t]he founders of

Leonidas chose to consider USAPA a viable threat at that time [August 2007] and have been building our case against them ever since.”

38. Defendants McIlvenna, Vasin, Ferguson, Koontz, and Payne are members of the Board of Directors of both AWAPPA and Leonidas LLC.

39. In AWAPPA’s update dated May 20, 2008, AWAPPA announced that “both AWAPPA and Leonidas LLC have been in the process of combining our legal efforts to best protect the interests of the America West pilots.”

40. In a March 18, 2008, letter to former America West pilots, defendant McIlvenna, a director of AWAPPA and Leonidas LLC, declared “war against USAPA” and stated that “there are plans in place to destroy USAPA should they prevail as our bargaining agent.”

41. On April 17, 2008, the National Mediation Board tallied the votes, and announced that, of the 5,238 votes cast in the election, USAPA defeated ALPA by 469 votes.

42. After the election results were released on April 17, 2008, the leaders of AWAPPA issued a press release, stating that AWAPPA had been formed to engage in an “aggressive strategy” against USAPA, and further stating their belief that “USAPA’s demise is just a matter of time.”

43. Defendants and their co-conspirators seek to destroy USAPA in order to compel the implementation of the Nicolau Award and to deprive USAPA of its statutory right under the Railway Labor Act, 45 U.S.C. § 151, *et seq.*, to negotiate terms and conditions of employment, and otherwise provide representation services, for the US Airways pilots. In so doing, defendants and their co-conspirators seek, *inter alia*, to

obtain pecuniary benefits for America West pilots that would otherwise be distributed to all US Airways pilots on a date of hire seniority basis.

44. On April 18, 2008, the National Mediation Board certified USAPA as the collective bargaining representative of the pilots of the combined US Airways. US Airways, 35 NMB No. 37 (2008).

II. Defendants' Campaign to Destroy USAPA

45. Since USAPA's certification on April 18, 2008, the defendants and their co-conspirators have subjected USAPA, its officers, and individual US Airways pilots to a concerted campaign of extortion and sabotage. This pattern of activity has included a number of criminal acts, including extortion, designed to destroy USAPA and render it incapable of discharging its legal duty to represent the US Airways pilots.

A. Defendants' Sabotage of USAPA's Toll-Free Telephone Service

46. USAPA maintains a toll-free telephone service so that US Airways pilots may contact their collective bargaining representative at no cost to themselves. The toll-free number is (877) 678-7272. Part of this service is referred to as the "hotline message." The hotline message is a pre-recorded telephonic message that provides pilots with union updates and other relevant information. A pilot who places a telephone call to the toll-free telephone number has the option of listening to this pre-recorded message.

47. Even before the release of the election results, the defendants and their co-conspirators encouraged America West pilots to sabotage the USAPA toll-free hotline by flooding it with frivolous calls. Upon information and belief, on April 16, 2008, defendant Krueger posted a message on the AWAPPA website message board (www.awappa.org) (hereinafter referred to as the "AWAPPA Web Board"), in which he

wrote, "Whatever the [election] results, I think we should all call the USAPA hotline over and over again to confirm them."

48. Since USAPA's certification on April 18, 2008, a deluge of frivolous telephone calls have been made to USAPA's toll-free telephone line, in violation of N.C. Gen. Stat. § 14-196(3)-(4), in a concerted effort to jam the service and impose unnecessary costs on USAPA. At one point, USAPA was forced to temporarily discontinue its hotline message as a result of this interrelated criminal activity.

49. From April 18, 2008 to May 20, 2008, 13,986 calls have been placed to USAPA's toll-free telephone information line for a combined total of 46,047 minutes. The USAPA telephone records show that many of these calls were placed in succession from the same incoming number. For example, 132 calls were placed between May 18 and May 20, 2008, from (202) 580-8200. The large volume of frivolous calls clogs the system and degrades the ability to check voicemail because legitimate voicemail messages from pilots are surrounded by hang-ups.

50. Upon information and belief, the defendants and their co-conspirators are responsible for the deluge of frivolous telephone calls to USAPA's toll-free telephone line. These mass frivolous calls have been made with the malicious intent to incapacitate USAPA and waste its assets.

51. Upon information and belief, on or about April 30, 2008, the following message was posted on the AWAPPA Web Board:

Want To Screw USAPA?

I took some advice from another thread and called their hotline 1-877-678-7272 option 1 and let it run it's [sic] course, about 15 minutes. I did some research and it cost them 7 cents a minute. After 9 pm cell phone usage is free and I can run two lines at once, plus my home phone....Oh yeah and I

passed a couple of pay phones, dialed it and left. So, just today, I probably cost them an easy \$30-\$40. If we all did this...holy crap!

52. Between April 24 and April 27, 2008, defendant Tooke made 152 telephone calls to the USAPA toll-free number from his cellular telephone. Upon information and belief, Tooke's cellular telephone carrier is Intermedia Communications, Inc., and his cell phone number is (623) 399-9434.

53. In addition to the above calls made by defendant Tooke, he also made 241 calls between April 26 and April 30, 2008 for a total of approximately 1,810 minutes to the USAPA toll-free number from a cellular telephone with the number (937) 361-8024. Upon information and belief, this cellular telephone is registered to defendant Tooke in Dayton, Ohio and the cellular telephone carrier is Sprint Spectrum, L.P., OH.

54. Between April 24, 2008, and May 1, 2008, defendant Krueger made 125 telephone calls to the USAPA toll-free number from the telephone number (480) 288-8350, for a total of approximately 794 minutes. Krueger made 110 of the 125 calls between April 25 and April 30, 2008. Upon information and belief, this telephone number is registered to Krueger at 11181 E. Peralta Canyon Dr., Gold Canyon, Arizona 85218.

55. Between April 21, 2008 and May 1, 2008, approximately 1,481 telephone calls to the USAPA toll-free number originated from the telephone number (602) 243-1006 for a total of approximately 9,767 minutes. Upon information and belief, this telephone number is registered to defendant Cundari at 3626 West Glass Lane, Phoenix, Arizona 85041.

56. In addition to the above calls made by defendant Cundari from his residence, he also made 837 calls, for a total of 5,516 minutes, to USAPA's toll-free

telephone number from his cellular telephone between April 19, 2008 and May 1, 2008.

Upon information and belief, Cundari's cellular telephone carrier is Verizon Wireless and his cell phone number is (602) 510-7650.

57. Upon information and belief, defendant Auxier made 45 telephone calls, for a total of 160 minutes, to the USAPA toll-free telephone number from telephone number (505) 710-4970. Auxier made 33 of the 45 calls between May 1 and May 7, 2008.

58. Defendant Auxier's postings on the AWAPPA Web Board end with the message, "Have you called 877-678-7272 25 times today???"

59. Upon information and belief, defendant Narloch made 30 telephone calls, for a total of 228 minutes, to the USAPA toll-free telephone number from telephone number (480) 946-2757. Narloch made 21 of the 30 calls between April 25 and April 30, 2008.

60. Upon information and belief, on April 30, 2008, defendant Hannah made 65 telephone calls, for a total of 227 minutes, to the USAPA toll-free telephone number from telephone number (480) 814-7772.

61. Upon information and belief, defendant Maree made 28 telephone calls, for a total of 153 minutes, to the USAPA toll-free telephone number from telephone number (480) 816-6127. Maree made 24 of the 28 calls on April 25, 2008.


62. Upon information and belief, on or about May 6, 2008, AWAPPA legal counsel Jeffrey Freund posted the following warning to former America West pilots on the AWAPPA Web Board:

While it is our goal to allow all America West pilots to access these forums for the purpose of unrestricted sharing of information and

opinions, it is important to remember that these forums are owned and operated by a private corporation that can be liable for things that take place here. That liability obligates us to maintain some degree of decorum. If we are negligent in that responsibility, we open ourselves up to litigation from the company and/or other pilots.

63. A pilot identified as “CJ” posted the following message on the AWAPPA Web Board, in agreement with Attorney Jeffrey Freund’s warning:

All this talk of dialing USAPA over and over and other threads could be problematic for AWAPPA if USAPA or the company become aggressive.

64. However, in response to the above posting by “CJ,” defendant Vasin, a director of AWAPPA, ratified the acts of telephone sabotage by posting a message on the AWAPPA Web Board in which he stated, “No, it's ok to talk about dialing USAPA over and over .

 Upon information and belief, the jeering face at the end of defendant Vasin’s message reflects the malicious intent of his directive to AWAPPA supporters.

65. AWAPPA is continuing to promote the above-described acts of telephone sabotage. On May 21, 2008, USAPA published an update message to its members, which stated, “recent news is also available on the USAPA phone message updated every few days. The news is out there; reach out and grab it!” Upon information and belief, in response to that May 21st message, defendant Braid posted the following message on the AWAPPA Web Board:

Look they said it again. Call often to stay informed. Reach out and call from every pay phone you see. What is the ambulance chaser talking about? Acts of sabotage. They said to call.

66. In addition to the above-described sabotage of USAPA’s toll-free information line, hundreds of false telephone calls have also been made to the USAPA Safety Hotline in order to sabotage that vital union service.

67. The USAPA Safety Hotline is a toll-free telephone line that US Airways pilots use to report incidents or accidents to the Union Safety Committee. This reporting is essential so that the Union can provide pilots with guidance to mitigate circumstances that could endanger the safety and well-being of the crew or passengers.

68. False telephone calls to the Safety Hotline endanger the entire incident/accident reporting process, and, consequently, undermine passenger safety. Since there are ordinarily very few calls to the Safety Hotline, if the system is inundated with false communications, the contractor that provides the system may place less importance on following proper protocol, as established by the Union, designed to place Union representatives in immediate contact with an affected crew.

69. As of the date of this Complaint, USAPA is unaware of the extent and exact amount of damages suffered as a result of defendants' sabotage of the toll-free telephone service.

B. Defendants' Use of Profane, Indecent, and Threatening Language Over the Telephone.

70. In violation of N.C. Gen. Stat. § 14-196(1), the defendants and their co-conspirators have used profane, indecent, vulgar and threatening language in telephone voicemail messages to USAPA, its officers, and individual US Airways pilots. These messages have been delivered in an effort to intimidate and harass USAPA, its officers, and individual US Airways pilots.

71. On May 4, 2008, a caller left a voicemail message on the Union telephone extension of USAPA's Vice President, Mike Cleary, stating, "Hey scab ... Get ready to

bend over and take Nicolau.” The call was made from telephone number (202) 580-8200.

72. On or about May 8, 2008, USAPA Training Committee Vice-Chairman Bob Georges received a telephone call that was forwarded to his cellular telephone from the USAPA hotline. The caller left a voicemail message stating, “You fucking USAPA scabs will get yours, you fucking asses.”

73. According to USAPA’s Office Manager, one caller left a voicemail message directed to USAPA President Steve Bradford, in which the caller stated that Mr. Bradford does not and will never represent him, and ended his message by telling Mr. Bradford and his family that they can “go fuck themselves.” Other callers have left messages saying “scab” and then hung up.

C. Defendants’ Threatening and Harassing Communications

74. A number of communications, both telephonic and electronic, have been made, in violation of N.C. Gen Stat. §§ 14-196, 14-196.3, and 14-277.3, threatening US Airways pilots and asserting that their safety and/or employment rights will be jeopardized if they pay dues to, or participate in, the operation of USAPA.

75. On or about April 22, 2008, defendant McIlvenna, using electronic communication, threatened the safety of a US Airways pilot by stating that “I hope the pilot group does not know about your plan to pay USAPA dues and join as a member, else I fear for your safety.” Defendant McIlvenna is a member of the Board of Directors of AWAPPA.

76. The defendants and their co-conspirators have harassed and intimidated a pilot who was interested in becoming a USAPA representative by posting his telephone

number on the AWAPPA website and suggesting that a “couple HUNDRED strongly worded [telephone] messages” may deter his participation with his union. The pilot has determined not to become a USAPA representative, thereby depriving Phoenix-based US Airways pilots of representation within USAPA’s political structure.

77. The pilot referenced in paragraph 76 was forced to seek the assistance of US Airways in dealing with multiple threats he received by both telephone and e-mail in response to his interest in becoming a USAPA representative. One such electronic communication sent on or about May 12, 2008, inquired as to when a “blanket party” would be held for this pilot. Upon information and belief, a “blanket party” refers to a method of assault in which attackers restrain and blind their victim by throwing a blanket over the victim’s head, and then strike the victim repeatedly. The same pilot has been subjected to the threat of a concerted effort by multiple pilots to put him on a “no fly” list in order to severely limit or eliminate his work opportunities.

78. On or about May 9, 2008, a doll with “USAPA” written on it was discovered hanging from a noose inside the cockpit of a US Airways aircraft that landed at Lambert Airport in St. Louis, Missouri.

79. On or about May 26, 2008, the U.S. Postal Service informed USAPA that injurious articles, including rocks, have been sent through the mail addressed to USAPA’s post office box. There were also two instances in April 2008 of envelopes containing feces being sent through the mail to USAPA’s post office box. Upon information and belief, such mailings were made with intent to injure other persons, the mails or other property. The mailing of such nonmailable matter violates 18 U.S.C. § 1716, and subjects the person(s) responsible to fine or imprisonment of not more than

twenty years, or both. The U.S. Postal Service has requested USAPA's assistance in identifying the responsible parties and putting an end to this unlawful conduct. Upon information and belief, one or more of the defendants or their co-conspirators are responsible for this conduct.

D. Conspiracy to Violate Union Security Provision of Collective Bargaining Agreement

80. The union security provisions of the collective bargaining agreements applicable to the pilots of US Airways, including former America West pilots, require that all pilots pay union dues or agency fees to USAPA as a condition of employment. In the event that a pilot becomes delinquent in the payment of dues or agency fees, the collective bargaining agreements require that, after notice by the Union, the Company must take steps to discharge the employee from the service of the Company.

81. Upon information and belief, defendants have been and continue to be engaged in a concerted effort to interfere with the contractual relationship between USAPA and US Airways by coercing US Airways into violating the union security provisions of the collective bargaining agreement. Specifically, defendants and their co-conspirators have conspired to create a mass violation of the contractual dues obligation by encouraging former America West pilots to refuse to pay dues or agency fees to USAPA, and thereby leverage US Airways into refusing to enforce the union security provisions. Defendants have declared that if hundreds of pilots refuse to pay dues or agency fees to USAPA, the Company will not terminate them, as it is required to do under the collective bargaining agreement.

82. Upon information and belief, on or about May 14, 2008, an individual named Jon Dudeck posted the following on the AWAPPA Web Board:

Any idea on when USAPA is going to be sending us letters demanding payment for shop fees?

More importantly what should our collective and individual response be?

If no-one pays can the company start termination proceedings against a few or must all be treated equally?

83. Upon information and belief, a number of messages followed the above posting and evidence a concerted effort to coordinate a mass violation of the collective bargaining agreement between USAPA and US Airways.

84. Upon information and belief, on or about May 15, 2008, an individual named CJ Szmaj posted the following message on the AWAPPA Web Board in support and in furtherance of the contractual interference conspiracy:

[I]t would be manageable to terminate lets say 100 pilots in complete refusal to pay [dues] but, not hundreds or even 1800!

Our strength is in our solidarity and our safety is in our numbers.

85. Upon information and belief, in response to the above posting, defendant Maree demonstrated his support for the concerted interference with the contract and replied with the following message: "You nailed it CJ."

86. Upon information and belief, on or about May 15, 2008, an individual named Steve Wargocki posted the following message on the AWAPPA Web Board in support and in furtherance of the contractual interference conspiracy:

I don't know what part of it they don't get. . . they are not a union or my union and their check is not and will not be in the mail.

87. Upon information and belief, on or about May 22, 2008, an individual named Mark Doyal posted the following message on the AWAPPA Web Board in support and in furtherance of the contractual interference conspiracy:

Of course, you could always pay occasionally and have them spend a great deal of time trying to keep you current. If most people did that that [sic] could cause some heartburn.

88. Upon information and belief, on or about May 22, 2008, CJ Szmal posted another message on the AWAPPA Web Board in support and in furtherance of the contractual interference conspiracy:

The big question remains, will the company [US Airways] terminate hundreds of pilots on the same day. I do not thin [sic] they can selectively chose who to terminate if 2 or more pilots have identical delquencies [sic].

89. Upon information and belief, on or about May 22, 2008, an individual named Larry Diehl posted the following message on the AWAPPA Web Board in support and in furtherance of the contractual interference conspiracy:

Either no one pays, or we all pay a nickel a month (tough times, man). Keep it simple and uniform. Seems to me that would help our legal standing if the company/uscaba attempt to cherry pick. I guess we have 13 or so fools, but I mean the rest of us.

90. Upon information and belief, on or about May 23, 2008, an individual named Joe Heil posted the following message on the AWAPPA Web Board in support and in furtherance of the contractual interference conspiracy:

1800 guys and gals standing on principle and refusing to pay an organization founded for and dedicated to the destruction of their careers? I say let them try to fire 1800 pilots.

91. Upon information and belief, on or about May 23, 2008, an individual named Kevin Steele posted the following message on the AWAPPA Web Board in support and in furtherance of the contractual interference conspiracy:

Never pay them. They are clearly desperate. Let them bleed, death by 1800 cuts.

92. Upon information and belief, defendants and their co-conspirators have conspired to deceive USAPA as to the current addresses of pilots in order to interfere with plaintiff's ability to enforce the union security provisions of the collective bargaining agreements.

93. Defendants' scheme to have the 1800 former America West pilots refuse to pay union dues or agency fees to USAPA, as promoted on AWAPPA's Web Board, has resulted, and will continue to result, in the loss of dues/fees income to USAPA in the approximate amount of \$298,000 per month.

E. Imposition of Costs Through the Filing of Frivolous Grievances

94. Upon information and belief, the defendants have encouraged the filing of frivolous grievances in order to waste the assets of the Union.

95. Upon information and belief, a former America West pilot, Tony Lozano, encouraged and promoted the frivolous grievance scheme in the following message: "We should also consider filing an obscene amount of grievances. Should Usapa prevail, they are bound to defend them (This would also cost lots of money to Usapa)."

F. Imposition of Costs Through Deceptive Use of the U.S. Mail

96. Upon information and belief, defendants have conspired to deceptively manipulate the U.S. Postal Service in order to impose unnecessary costs on USAPA.

97. Upon information and belief, defendants have also engaged in a concerted effort to impose additional unnecessary costs on USAPA through the defendants' and their co-conspirators' return of U.S. Mail correspondence sent by USAPA, with the false notation, "No Longer at this Address – Return to Sender."

98. Upon information and belief, on or about May 15, 2008, an individual named Steve Trimmer posted the following message on the AWAPPA Web Board: "We really need to collectively do "Anything" do [sic] run their bills up."

99. Upon information and belief, in response to the above message, on or about May 15, 2008, an individual identified only as "CactusPrick" suggested the following as a way to "run up" USAPA's costs:

Everybody that gets a letter from the Scabs mark – NO LONGER AT THIS ADDRESS – RETURN TO SENDER.

100. Upon information and belief, on or about May 15, 2008, an individual named Mark Peeper posted the following message on the AWAPPA Web Board in support of and in furtherance of the conspiracy to impose unnecessary costs on USAPA through false use of the U.S. Mail:

Just return the empty envelope with USAPA as both the 'from' and 'to' addressees and no postage. It'll come postage due.

101. Upon information and belief, on or about May 23, 2008, an individual named Dan Klobe posted the following message on the AWAPPA Web Board in support

of and in furtherance of the conspiracy to impose unnecessary costs on USAPA through false use of the U.S. Mail:

And mail all that change to them in an envelope with no stamp and no return address!

Destroy USAPA

G. Jump Seat Boycott

102. Upon information and belief, the defendants and their co-conspirators have participated in a concerted effort to deprive pilots at US Airways the ability to commute to work by denying USAPA members the use of the cockpit “jump seat” on flights flown by former America West pilots as well as flights flown by pilots at other carriers.

103. Postings on the AWAPPA website indicate that the defendants have actively solicited pilots at US Airways and other airlines, including American Eagle and Alaska Airlines, to conspire in the jump seat boycott against USAPA members.

104. Upon information and belief, on or about May 10, 2008, the following message appeared on AWAPPA’s Web Board:

Also for those that don’t know former AWA pilots are totally unprotected with no rep’s or committees staffed out west, we have all lost our insurance coverage and our grievances have been dropped by the new scab union imposed on us, don’t forget that when you give these guys a jumpseat ride. A AWA pilot can be identified by the PXXXX number on the back of his ID and by the red “cactus” sticker on the badge backer.

(Emphasis added). As alleged in Paragraph 109 below, the reference to USAPA having dropped any grievances is defamatory. The reference to the alleged lack of representatives “out west” is false and misleading. USAPA has repeatedly solicited former America West pilots to fill union positions. However, upon information and

belief, under threats of reprisal, no former America West pilots have come forward to fill the open positions.

105. Upon information and belief, on April 19, 2008, Captain Ron Gabaldon posted the following message on the AWAPPA Web Board:

I will NOT allow any scab to ride my jumpseat (in the interest of safety).
... I'm networking all of my ALPA friends at other carriers to put forth motions before their MEC's to deny jumpseats to ALL USCABAS.

106. Upon information and belief, on April 28, 2008, defendant Auxier posted the following message on the AWAPPA Web Board:

Hey, the UAL guys have the balls to deny the Eastholes, the least we can do is follow suit. They are the pariahs of the industry, and frankly I think it IS unsafe to have them on our jumps. They've made their bed, now they get to lie in it. Plus – damn good point – they would be quicker than a hard up Fed to bust us for the slightest infraction. Nuff said. I'm on board – just itching to deny one to his face!

107. Pilots at other carriers have joined the jump seat boycott, as evidenced by the following two AWAPPA Web Board postings:

- Upon information and belief, on April 22, 2008, Shawn Metzker posted the following message on the AWAPPA Web Board:

I passed along our jumpseat concerns to a friend at Alaska (I ride them nearly every week) and told him how to tell an America West pilot apart by looking for the P number on the back of our id, top right corner. He passed it along to his MEC chair along with the link to our AWAPPA donate page.
- Upon information and belief, on or about May 14, 2008, defendant Vasin posted a message that was received on the AWAPPA website from Captain Ray McCrary, an American Eagle pilot who wrote, “Hi, Eagle guys have the Pxxxx information for jumpseat usage, so you guys should be fine. Best of luck, I have a lot of friends with your airline.”

108. Upon information and belief, the jump seat boycott perpetrated by the defendants and their co-conspirators has resulted in US Airways' pilots being unable to commute to the city in which their scheduled flight was to originate.

H. Defendants' Defamatory Acts

109. Upon information and belief, on or about May 10, 2008, AWAPPA published the following false statements in writing concerning USAPA:

- [USAPA] “failed to tell their membership that no further negotiations would take place (they planned on striking a deal exchanging the stapling of the west pilots for a concessionary contract)”
- “former AWA pilots are totally unprotected with no rep’s or committees staffed out west”
- “our grievances have been dropped by the new scab union imposed on us”

110. In violation of N.C. Gen. Stat. § 14-196.3, USAPA and its officers have been the victims of the false attribution of defamatory statements by use of slightly altered e-mail addresses. Upon information and belief, the defendants and their co-conspirators have engaged in a concerted pattern of activity whereby false and defamatory e-mail messages from the address “usairlinepilots.org” (thus deleting the single letter “r” from the standard USAPA electronic address) have been sent to appear as if they were originating from USAPA officers at the actual USAPA email address which is “usairlinepilots.org.”

111. On or about May 4, 2008, an e-mail falsely attributed to Mark King, the Secretary-Treasurer of USAPA, whose correct e-mail address is, “mking@usairlinepilots.org,” was sent from “mking@usairlinepilots.org” to USAPA Vice President, Michael Cleary, and read, in part, as follows:

Hi SCAB ASS,

SCAB ASS stopped by the House of Sissify

and suggested that you visit the following URL:

Here is their message. . . .

EAT SHIT ASSWIPES

112. Upon information and belief, the defendants and their co-conspirators have maliciously arranged for USAPA officers to receive subscriptions to electronic services, including sexually-related services, in an apparent effort to defame these officers and sabotage their electronic communications.

113. As a result of this concerted pattern of criminal activity, USAPA officers have, in certain circumstances, been unable to effectively communicate with the pilots they represent, and its professionals, due to malfunctioning e-mail accounts resulting from the flood of maliciously arranged subscription correspondence. These electronic subscriptions and solicitations have also flooded the inbox of USAPA's Office Manager, potentially causing legitimate e-mail regarding, for example, the updating of pilot information or questions regarding membership or insurance, to be missed.

III. Notice to AWAPPA

114. By letter dated May 6, 2008, counsel for USAPA requested that counsel for AWAPPA communicate to AWAPPA its obligation to refrain from the promotion or facilitation of the sabotage activities described above. USAPA counsel also requested that AWAPPA post on its website an advisory to its "members" that they must refrain from these sabotage activities.

115. In response, on May 9, 2008, counsel for AWAPPA, Jeffrey Freund, refused to instruct AWAPPA to take any remedial action, and implicitly threatened an increase in criminal misconduct when he offered to have AWAPPA post USAPA's

counsel's May 6, 2008 letter, stating: "However, I should observe that posting your letter could have the unintended consequences of planting ideas in the minds of persons who view the web site that they might not have had but for the posting."

116. Counsel for USAPA did not request to have his May 6, 2008 letter posted on the AWAPPA website. However, upon information and belief, AWAPPA posted the May 6, 2008 letter on its website as part of its May 20, 2008 Newsletter. AWAPPA posted the May 6, 2008 letter despite AWAPPA counsel's warning about the possible "unintended consequences" of planting ideas of criminal misconduct in the minds of persons who view AWAPPA's website.

IV. Defendants' Racketeering Activity

117. Defendants and their co-conspirators, acting singly and in concert, and personally or through their agents, repeatedly interfered with commerce by engaging in acts of extortion, as defined in 18 U.S.C. § 1951, in furtherance of their scheme to destroy USAPA, deprive USAPA of property, and to obtain property from USAPA and its members induced by wrongful use of actual or threatened force, violence, fear, or sabotage. Defendants and their co-conspirators thereby engaged in a pattern of racketeering activity. *Inter alia*, defendants and their co-conspirators seek to obtain pecuniary benefits for America West pilots that would otherwise be distributed to all US Airways pilots on a date of hire seniority basis. Defendants and their co-conspirators, through acts of extortion, also seek to deprive USAPA of dues/agency fee revenue to which it is contractually entitled and divert these monies to AWAPPA.

118. Defendants and their co-conspirators, through acts of extortion, also seek to deprive US Airways pilots of their rights under the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 401, *et seq.*

119. Each such act of extortion in connection with the described scheme to destroy USAPA constitutes a separate and distinct violation of 18 U.S.C. § 1951, and constitutes probable cause to find a criminal violation, and therefore each such act constitutes a predicate act of “racketeering activity” pursuant to 18 U.S.C. § 1961(1)(B).

120. The predicate acts of racketeering described above constitute a pattern of racketeering activity. They had the same or similar unlawful purposes, results, participants, and victims, and were not isolated events: The common purpose of these multiple racketeering acts was to destroy USAPA and to obtain from USAPA the right to represent the pilots of US Airways, the right to collect membership dues and agency fees from the pilot group, and the right to determine the pilots’ terms and conditions of employment, including the terms under which the seniority lists of East and West pilots would be integrated. These racketeering acts were carried out by the defendants and their co-conspirators to the detriment of USAPA, and for the benefit of the defendants and their co-conspirators.

121. The defendants’ and their co-conspirators’ repeated and continuous acts of racketeering were neither isolated nor sporadic events. They were, and are, a calculated series of repeated violations of law in order to destroy USAPA and to obtain property from USAPA induced by wrongful use of actual or threatened force, violence, fear or sabotage. The defendants’ and their co-conspirators’ repeated violations of the law do

not constitute a scheme of limited duration, as the scheme has continued to the date of the filing of this Complaint.

122. The defendants have, in association with each other, and in association with Leonidas LLC, formed an enterprise, or a series of associated enterprises, through which they have attempted to achieve the ends described in paragraphs 117 and 120 above.

123. The activities described above were done intentionally and deliberately in order to induce USAPA to part with its property through the wrongful use of actual or threatened force, violence or fear, including fear of economic injury, and in so doing, the defendants adversely affected interstate commerce.

V. The Irreparable Injuries Being Inflicted Upon USAPA Require Immediate and Permanent Injunctive Relief.

124. The injuries inflicted upon USAPA by the defendants and their co-conspirators cannot adequately be remedied with monetary damages and thus are irreparably harming USAPA, its officers, and the pilots of US Airways whom it is certified by the federal government to represent. Consequently, USAPA reserves its right to seek an order restraining the defendants from engaging in the following extortionate and illegal acts:

- Sabotage of USAPA's toll-free telephone information line;
- Sabotage of USAPA's toll-free safety line;
- Use of profane, indecent, and threatening language over the telephone;
- Threats of physical and economic retaliation against those who wish to participate in the activities of USAPA;
- Filing of frivolous grievances designed to waste the assets of USAPA;

- Actions, including threats to safety, designed to induce the mass breach of the collective bargaining agreements' agency shop provisions by the pilots or to induce a breach of these provisions by US Airways.

125. USAPA is entitled to injunctive relief because it has a likelihood of success on the merits of these claims. USAPA further respectfully requests that, following USAPA's proof of the defendants' liability, the Court issue an order permanently restraining the defendants from engaging in the extortionate and illegal acts listed above.

COUNT ONE

Violation of Section 1962(c) of the Racketeer Influenced and Corrupt Organizations Act ("RICO") (Against All Defendants)

126. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 125 of this Complaint as if fully set forth herein.

127. At all relevant times, plaintiff USAPA was and is a "person" within the meaning of RICO, 18 U.S.C. §§ 1961(3) and 1964(c).

128. At all relevant times, defendants AWAPPA, McIlvenna, Vasin, Blandino, Ferguson, Koontz, Payne, Krueger, Auxier, Cundari, Tooke, Braid, Narloch, Hannah, Gabaldon, Metzker, and Maree, and the John Doe defendants, were and are "persons" within the meaning of RICO, 18 U.S.C. §§ 1961(3) and 1962(c).

129. At all relevant times, AWAPPA, McIlvenna, Vasin, Blandino, Ferguson, Koontz, Payne, Krueger, Auxier, Cundari, Tooke, Braid, Narloch, Hannah, Gabaldon, Metzker, Maree, the John Doe defendants, and Leonidas LLC formed an association-in-fact for the purpose of destroying USAPA and obtaining property from USAPA induced by wrongful use of actual or threatened force, violence, fear, or sabotage. This

association-in-fact was and is an “enterprise,” or more than one enterprise, within the meaning of RICO, 18 U.S.C. § 1961(4).

130. At all relevant times, this enterprise was engaged in, and its activities affected, interstate commerce, within the meaning of RICO, 18 U.S.C. § 1962(c).

131. At all relevant times, defendants and the other conspirators associated with this enterprise conducted or participated, directly or indirectly, in the conduct of the enterprise’s affairs through a “pattern of racketeering activity” within the meaning of RICO, 18 U.S.C. § 1961(5), in violation of RICO, 18 U.S.C. § 1962(c).

132. Specifically, at all relevant times, defendants and their co-conspirators engaged in “racketeering activity” within the meaning of 18 U.S.C. § 1961(1) by engaging in the acts set forth above. The acts set forth above constitute a violation of 18 U.S.C. § 1951 (interference with commerce by threats or violence). Defendants and their co-conspirators each committed two or more of these acts of racketeering activity.

133. The acts of racketeering activity referred to in the previous paragraph constitute a “pattern of racketeering activity” within the meaning of 18 U.S.C. § 1961(5). The acts alleged were and are related to each other by virtue of common participants, common victims (USAPA, its officers, and the pilots of US Airways), common methods of commission, and the common purpose and common result of destroying USAPA and obtaining property from USAPA induced by wrongful use of actual or threatened force, violence, fear, or sabotage.

134. As a direct and proximate result of the defendants’ ongoing criminal enterprise and pattern of racketeering activity, USAPA has been harmed in its business and property as described above.

135. As a result of the defendants' misconduct, the defendants are jointly and severally liable to USAPA for its losses in an amount to be determined at trial, including its losses resulting from the defendants' conspiracy to violate the union security provisions of the collective bargaining agreements, which amounts to approximately \$298,000 per month.

136. Pursuant to RICO, 18 U.S.C. § 1964(c), USAPA is entitled to recover threefold its damages plus costs and attorneys' fees from the defendants.

COUNT TWO

RICO Conspiracy (Against All Defendants)

137. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 136 of this Complaint as if fully set forth herein.

138. At all relevant times, plaintiff USAPA was and is a "person" within the meaning of RICO, 18 U.S.C. §§ 1961(3) and 1964(c).

139. At all relevant times, defendants AWAPPA, McIlvenna, Vasin, Blandino, Ferguson, Koontz, Payne, Krueger, Auxier, Cundari, Tooke, Braid, Narloch, Hannah, Gabaldon, Metzker, and Maree, and the John Doe defendants, were and are "persons" within the meaning of RICO, 18 U.S.C. §§ 1961(3) and 1962(d).

140. At all relevant times, AWAPPA, McIlvenna, Vasin, Blandino, Ferguson, Koontz, Payne, Krueger, Auxier, Cundari, Tooke, Braid, Narloch, Hannah, Gabaldon, Metzker, Maree, the John Doe defendants, and Leonidas LLC formed an association-in-fact for the purpose of destroying USAPA and obtaining property from USAPA induced by wrongful use of actual or threatened force, violence, fear, or sabotage. This

association-in-fact was and is an “enterprise,” or more than one enterprise, within the meaning of RICO, 18 U.S.C. § 1961(4).

141. At all relevant times, this enterprise was engaged in, and its activities affected, interstate commerce, within the meaning of RICO, 18 U.S.C. § 1962(c).

142. As set forth in Count One, the defendants and each of the other conspirators associated with this enterprise conducted or participated, directly or indirectly, in the conduct of the enterprise’s affairs through a “pattern of racketeering activity” within the meaning of RICO, 18 U.S.C. § 1961(5), in violation of RICO, 18 U.S.C. § 1962(c).

143. At all relevant times, the defendants and their co-conspirators each were associated with the enterprise and agreed and conspired to violate 18 U.S.C. § 1962(c), that is, agreed to conduct and participate, directly and indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity, in violation of 18 U.S.C. § 1962(d).

144. The defendants and their co-conspirators committed and caused to be committed a series of overt acts in furtherance of the conspiracy and to affect the objects thereof, including but not limited to the acts set forth above.

145. As a direct and proximate result of the defendants’ ongoing criminal enterprise and pattern of racketeering activity, USAPA has been harmed in its business and property as described above.

146. As a result of the conspiracy, the defendants are jointly and severally liable to USAPA for its losses in an amount to be determined at trial, including its losses

resulting from the defendants' conspiracy to violate the union security provisions of the collective bargaining agreements, which amounts to approximately \$298,000 per month.

147. Pursuant to RICO, 18 U.S.C. § 1964(c), USAPA is entitled to recover threefold its damages plus costs and attorneys' fees from the defendants.

COUNT THREE

Violation of Section 75D-4 of the North Carolina Racketeer Influenced and Corrupt Organizations Act ("NC RICO") (Against All Defendants)

148. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 147 of this Complaint as if fully set forth herein.

149. At all relevant times, defendants AWAPPA, McIlvenna, Vasin, Blandino, Ferguson, Koontz, Payne, Krueger, Auxier, Cundari, Tooke, Braid, Narloch, Hannah, Gabaldon, Metzker, and Maree, and the John Doe defendants, were "persons" within the meaning of N.C. Gen. Stat. § 75D-4.

150. At all relevant times, AWAPPA, McIlvenna, Vasin, Blandino, Ferguson, Koontz, Payne, Krueger, Auxier, Cundari, Tooke, Braid, Narloch, Hannah, Gabaldon, Metzker, Maree, the John Doe defendants, and Leonidas LLC formed an association-in-fact for the purpose of destroying USAPA and obtaining property from USAPA induced by wrongful use of actual or threatened force, violence, fear, or sabotage. This association-in-fact was and is an "enterprise" within the meaning of N.C. Gen. Stat. § 75D-3(a).

151. At all relevant times, defendants and the other conspirators associated with this enterprise conducted or participated, directly or indirectly, in the conduct of the

enterprise's affairs through a "pattern of racketeering activity" within the meaning of N.C. Gen. Stat. § 75D-3(b), in violation of N.C. Gen. Stat. § 75D-4(a).

152. Specifically, at all relevant times, in furtherance of and for the purpose of executing their scheme to destroy USAPA, the defendants, acting personally or through their agents, engaged in "racketeering activity" within the meaning of N.C. Gen. Stat. § 75D-3(c) by engaging in the acts set forth above. The racketeering activity consisted of predicate acts outlined in N.C. Gen. Stat. § 75D-3(c), including repeated acts of extortion, in violation of N.C. Gen. Stat. § 14-118.4, and repeated acts of racketeering activity within the meaning of 18 U.S.C. § 1961(1). As set forth in Count One, defendants and their co-conspirators engaged in "racketeering activity" within the meaning of 18 U.S.C. § 1961(1) by engaging in repeated acts in violation of 18 U.S.C. § 1951 (interference with commerce by threats or violence). Defendants and their co-conspirators each committed two or more of these acts of racketeering activity.

153. The acts of racketeering activity referred to in the previous paragraph were and are related to each other by virtue of common participants, common victims (USAPA, its officers, and the pilots of US Airways), common methods of commission, and the common purpose and common result of destroying USAPA and obtaining property from USAPA induced by wrongful use of actual or threatened force, violence, fear, or sabotage.

154. The acts of racketeering activity being committed by the defendants have the purpose or effect of which is to derive pecuniary gain.

155. As a direct and proximate result of the defendants' ongoing criminal enterprise and pattern of racketeering activity, USAPA has been harmed in its business and property as described above.

156. As a result of the defendants' misconduct, the defendants are jointly and severally liable to USAPA for its losses in an amount to be determined at trial, including its losses resulting from the defendants' conspiracy to violate the union security provisions of the collective bargaining agreements, which amounts to approximately \$298,000 per month.

157. Pursuant to N.C. Gen. Stat. § 75D-8(c), USAPA is entitled to recover three times its actual damages sustained plus reasonable attorneys fees from the defendants.

158. Plaintiff has complied with N.C. Gen. Stat. § 75D-8(c) by concurrently notifying the Attorney General of North Carolina in writing of the commencement of this action.

COUNT FOUR

NC RICO Conspiracy (Against All Defendants)

159. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 158 of this Complaint as if fully set forth herein.

160. At all relevant times, defendants AWAPPA, McIlvenna, Vasin, Blandino, Ferguson, Koontz, Payne, Krueger, Auxier, Cundari, Tooke, Braid, Narloch, Hannah, Gabaldon, Metzker, and Maree, and the John Doe defendants, were "persons" within the meaning of N.C. Gen. Stat. § 75D-4.

161. At all relevant times, AWAPPA, McIlvenna, Vasin, Blandino, Ferguson, Koontz, Payne, Krueger, Auxier, Cundari, Tooke, Braid, Narloch, Hannah, Gabaldon, Metzker, Maree, the John Doe defendants, and Leonidas LLC formed an association-in-fact for the purpose of destroying USAPA and obtaining property from USAPA induced by wrongful use of actual or threatened force, violence, or fear. This association-in-fact was and is an “enterprise,” or more than one enterprise, within the meaning of N.C. Gen. Stat. § 75D-3(a).

162. As set forth in Count Three, the defendants and each of the other conspirators associated with this enterprise conducted or participated, directly or indirectly, in the conduct of the enterprise’s affairs through a “pattern of racketeering activity” within the meaning of N.C. Gen. Stat. § 75D-3(b), in violation of N.C. Gen. Stat. § 75D-4.

163. At all relevant times, the defendants and their co-conspirators each were associated with the enterprise and agreed and conspired to violate N.C. Gen. Stat. § 75D-4(a), that is, agreed to conduct and participate, directly and indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity, in violation of N.C. Gen. Stat. § 75D-4(a)(3).

164. The defendants and their co-conspirators committed and caused to be committed a series of overt acts in furtherance of the conspiracy and to affect the objects thereof, including but not limited to the acts set forth above.

165. As a direct and proximate result of the defendants’ ongoing criminal enterprise and pattern of racketeering activity, USAPA has been harmed in its business and property as described above.

166. As a result of the conspiracy, the defendants are jointly and severally liable to USAPA for its losses in an amount to be determined at trial, including its losses resulting from the defendants' conspiracy to violate the union security provisions of the collective bargaining agreements, which amounts to approximately \$298,000 per month.

167. Pursuant to N.C. Gen. Stat. § 75D-8(c), USAPA is entitled to recover three times its actual damages sustained plus reasonable attorneys fees from the defendants.

COUNT FIVE

Violation of Section 75-1.1 of the North Carolina Unfair and Deceptive Trade Practices Act (Against All Defendants)

168. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 167 of this Complaint as if fully set forth herein.

169. At all relevant times, plaintiff USAPA was a person engaged in business within the state of North Carolina. As such, USAPA maintained ethical standards of dealing with other persons engaged in business with it, both inside and outside of the state of North Carolina.

170. As discussed above in paragraphs 45 to 113, defendants and their co-conspirators have engaged in numerous unfair acts and criminal practices in violation of N.C. Gen. Stat. § 75-1.1.

171. At all relevant times, defendants and their co-conspirators, acting personally or through their agents, engaged in repeated unlawful acts intended to destroy USAPA. Each of defendants' unlawful and injurious acts occurred in or affected commerce. As such, each instance constitutes a violation of the prohibition of unfair and

deceptive acts as those terms are defined in N.C. Gen. Stat. § 75-1.1. Defendants' willfully unlawful conduct is further unfair in that it is unethical, oppressive, unscrupulous, and injurious to USAPA.

172. At all relevant times, defendants' conduct was in or affecting "commerce" as that term is defined by N.C. Gen. Stat §§ 75-1.1 et seq.

173. As a direct and proximate result of defendants' unlawful conduct in violation of N.C. Gen. Stat. § 75-1.1, USAPA has been injured in its business and property. Each extortionate act committed by defendants, which was intended to destroy USAPA, constitutes a separate economic injury inflicted upon USAPA. USAPA has suffered substantial monetary damages in an amount to be determined at trial, and will continue to incur costs, expenses and legal fees as a result of defendants' unlawful acts. USAPA is, therefore, entitled to recover threefold the damages it has sustained pursuant to N.C. Gen. Stat. § 75-16.

174. As set forth in paragraphs 45 to 113, defendants willfully engaged in unlawful acts and a pattern of extortionate activity intended to destroy and injure USAPA, and refused requests by USAPA to fully resolve the matter. USAPA is, therefore, entitled to recover its reasonable attorneys' fees pursuant to N.C. Gen. Stat. § 75-16.1.

COUNT SIX

Trespass to Chattels

(Against Defendants AWAPPA, McIlvenna, Vasin, Blandino, Ferguson, Koontz, Payne, Krueger, Auxier, Cundari, Tooke, Braid, Narloch, Hannah, and Maree, and the John Doe Defendants)

175. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 174 of this Complaint as if fully set forth herein.

176. As set forth in paragraphs 46 to 68 herein, by engaging in a concerted unlawful pattern of repetitive frivolous and harassing telephone calls to the USAPA toll-free telephone system, defendants intentionally interfered and intermeddled with plaintiff's right to possession and use of the toll-free telephone system, thereby depriving USAPA of its ability to effectively communicate with union members.

177. The toll-free telephone system was harmed and impaired as to its condition, quality and value as a proximate result of defendants' intentional interference and intermeddling and at one point the hotline message had to be shut down, thereby depriving USAPA and its members of the use of the toll-free telephone system and the ability to effectively communicate.

178. As set forth in paragraph 112 herein, by maliciously arranging for USAPA officers to receive subscriptions to a multitude of electronic services, defendants intentionally interfered and intermeddled with plaintiff's right to possession and use of its electronic mail service, thereby depriving the USAPA electronic mail server of vital storage capacity that was intended for and could have been used for legitimate union communications.

179. The electronic mail system was harmed and impaired as to its condition, quality and value as a proximate result of defendants' intentional interference and intermeddling and in some instances resulted in USAPA officers not receiving legitimate electronic mail as a result of the deprivation of electronic mail storage capacity.

COUNT SEVEN

**Tortious Interference With Contractual Relations
(Against All Defendants)**

180. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 179 of this Complaint as if fully set forth herein.

181. As set forth in paragraphs 80 to 93 herein, without justification, the defendants and their co-conspirators have conspired to intentionally induce US Airways to violate the union security provisions of the applicable collective bargaining agreements by creating a mass violation of the contractual dues/fee payment obligation. Defendants seek to persuade and/or compel hundreds of former America West pilots to refuse to pay dues or agency fees to USAPA, and, by doing so, interfere with the Company's ability to enforce the contractual union security provisions.

182. Defendants and their co-conspirators have sought to procure US Airways' violation of the union security provisions of the applicable collective bargaining agreements for their own pecuniary gain and to deprive USAPA of the funds it requires to discharge its duty to represent the pilots of US Airways.

183. As a direct and proximate result of the defendants' tortious interference with USAPA's contractual relations with US Airways, USAPA has suffered damages in the approximate amount of \$298,000 per month.

COUNT EIGHT

**Civil Conspiracy
(Against All Defendants)**

184. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 183 of this Complaint as if fully set forth herein.

185. Each and every one of the defendants were engaged in a civil conspiracy to destroy USAPA and to obtain property from USAPA induced by wrongful use of actual or threatened force, violence, fear, or sabotage.

186. Each and every one of the defendants agreed to commit the unlawful acts set forth in paragraphs 45 to 113 herein, which were intended to advance and which did advance and facilitate the objectives of the conspiracy.

187. Each and every one of the defendants has committed both unlawful and lawful overt acts in furtherance of the conspiracy, including but not limited to the acts set forth above, which were intended to advance and which did advance and facilitate the objectives of the conspiracy.

188. As a direct, proximate and readily foreseeable consequence of the civil conspiracy and the acts committed in furtherance of the civil conspiracy, USAPA has been harmed in its business and property as described above, and its good will, reputation, and relationships with its members have been damaged as a result thereof.

189. As a direct, proximate and readily foreseeable consequence of the civil conspiracy and the acts committed in furtherance of the civil conspiracy, USAPA has suffered substantial monetary damages in an amount to be proven at trial, and will continue to incur costs, expenses and legal fees as a result thereof.

COUNT NINE

Defamation (Against AWAPPA)

190. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 189 of this Complaint as if fully set forth herein.

191. Upon information and belief, on or about May 10, 2008, AWAPPA disseminated an “update” in which it published false statements in writing concerning USAPA. In particular, AWAPPA falsely stated that:

- [USAPA] “failed to tell their membership that no further negotiations would take place (they planned on striking a deal exchanging the stapling of the west pilots for a concessionary contract)”
- “former AWA pilots are totally unprotected with no rep’s or committees staffed out west”
- “our grievances have been dropped by the new scab union imposed on us.”

192. AWAPPA’s false statements, when considered alone without innuendo, tend to impeach USAPA in its trade or profession.

193. As a result of AWAPPA’s libel per se, fault is presumed as a matter of law. To the extent that any allegation of fault is required, AWAPPA, upon information and belief, made the false statements with knowledge of their falsity, or with reckless disregard for their truth or falsity.

194. As a result of AWAPPA’s libel per se, damages are presumed as a matter of law. To the extent that any allegation of damages is required, USAPA has, upon information and belief, been damaged in an amount to be determined at trial as a result of AWAPPA’s false statements.

COUNT TEN

**Defamation
(Against all Defendants)**

195. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 194 of this Complaint as if fully set forth herein.

196. As discussed above in paragraphs 110 to 111, defendants have engaged in a pattern of defamatory activity whereby falsely attributed written statements have been published and communicated to one or more third parties in e-mail messages from the address “usairlinepilots.org” (thus deleting the single letter “r” from the standard USAPA electronic address). These falsely attributed written statements have been sent to appear as if they were originating from USAPA officers at the actual USAPA email address which is “usairlinepilots.org.”

197. Defendants’ written false statements, when considered alone without innuendo, tend to damage plaintiff’s reputation and impeach plaintiff in its special trade and occupation and contain imputations that are necessarily harmful to plaintiff in its chosen business, trade or profession.

198. Defendants’ written false statements, when considered with the circumstances surrounding the publication and communication of statements falsely attributed to plaintiff, are defamatory to plaintiff, and have a tendency to injure and have injured plaintiff in its good name and reputation, and have caused plaintiff grievous mental suffering and humiliation.

199. As a result of defendants’ libel per se, fault is presumed as a matter of law. To the extent that any allegation of fault is required, defendants, upon information and

belief, made the false statements with knowledge of their falsity, or with reckless disregard for their truth or falsity.

200. As a result of defendants' libel per se, damages are presumed as a matter of law. To the extent that any allegation of damages is required, plaintiff has, upon information and belief, been damaged in an amount to be determined at trial as a result of defendants' false statements.

COUNT ELEVEN

Claim for Punitive Damages N.C. Gen. Stat. § 1D-15 (Against All Defendants)

201. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 200 of this Complaint as if fully set forth herein.

202. USAPA is entitled to compensatory damages as set forth herein.

203. Defendants' actions involve malice and willful and wanton conduct.

204. Defendants knew or should have known that their malicious, willful and wanton conduct was reasonably likely to result in injury, damage, and other harm to plaintiff.

205. Defendants' malicious, willful and wanton conduct, as described herein, did proximately cause injury, damage and harm to plaintiff.

206. Therefore, pursuant to N.C. Gen. Stat. § 1D-15, USAPA is entitled to recovery of punitive damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, US Airline Pilots Association, respectfully requests that this Court:

1. Enter an order temporarily restraining and preliminarily and permanently enjoining the defendants from engaging in the following extortionate and illegal acts:
 - Sabotage of USAPA's toll-free telephone information line;
 - Sabotage of USAPA's toll-free safety line;
 - Use of profane, indecent, and threatening language over the telephone;
 - Threats of physical and economic retaliation against those who wish to participate in the activities of USAPA;
 - Filing of frivolous grievances designed to waste the assets of USAPA;
 - Actions, including threats to safety, designed to induce the mass breach of the collective bargaining agreements' agency shop provisions by the pilots or to induce a breach of these provisions by US Airways.
2. Award the plaintiff damages against the defendants, jointly and severally, including punitive, exemplary, and compensatory damages, in the full amount permitted under the law.
3. Award the plaintiff costs and attorneys' fees incurred in this action.
4. Award the plaintiff further relief that the court considers just and proper.

JURY DEMAND

Plaintiff demands trial by jury of all claims so triable.

Respectfully submitted,

s/Robert A. Blake, Jr.

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Dated: May 30, 2008