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13 **UNITED STATES BANKRUPTCY COURT**
14 **SOUTHERN DISTRICT OF NEW YORK**

15
16 In re:) Chapter 11 Case No.:
17 AMR CORPORATION, et al.) 11-15463 (SHL)
18 Debtors.) (Jointly Administered)
19 _____)
20 Carolyn Fjord, Katherine R. Arcell, Keith) ADV. NO.
21 Dean Bradt, Judy Bray, Jose' M. Brito, Jan)
Marie Brown, Robert D. Conway, Judy) **COMPLAINT FOR**
22 Crandall, Rosemary D'Augusta, Brenda K.) **INJUNCTIVE RELIEF**
Davis, Pamela Faust, Don Freeland, Donald V.) **AGAINST VIOLATION OF**
23 Fry, Gabriel Garavanian, Harry Garavanian,) **SECTION 7 OF THE**
Valarie Ann Jolly, Gail S. Kosach, Michael C.) **CLAYTON ANTITRUST ACT**
24 Malaney, Len Marazzo, Lisa McCarthy,)
Patricia Ann Mceeuwsen, L. West Oehmig, Jr.,)
25 Cynthia Prosterman, Deborah M. Pulfer, Dana)
L. Robinson, Robert A. Rosenthal, Bill)
26 Rubinsohn, Sondra K. Russell, Sylvia N.)
Sparks, June Stansbury, Clyde D. Stensrud.)
27 Wayne Taleff, Gary Talewsky, Annette M.)
Tippetts, Diana Lynn Ultican, J. Michael)
28 Walker, Pamela S. Ward, Christine O. Whalen.)
Plaintiffs,)

1 9. Each plaintiff named herein below is an individual and a citizen of the state
2 listed as the address for each such plaintiff, and in the four years next prior to the filing of this
3 action, each plaintiff purchased airline tickets from the defendants and/or American, and each
4 plaintiff expects to continue to purchase airline tickets from the defendants or their merged
5 entity in the future:

6 Carolyn Fjord, 4405 Putah Creek Road, Winters, CA 95694;

7 Katherine R. Arcell, 4427 S. Miro St., New Orleans, LA 70125;

8 Keith Dean Bradt, 690 W 2nd St, Suite 200, Reno, NV 89503;

9 Judy Bray, 5140 N Union Blvd., Ste 200, Colorado Springs, CO 80918;

10 Jose' M. Brito, 2715 Sage Bluff Ct., Reno, NV 89523;

11 Jan Marie Brown, 975 Kennedy Dr., Carson City, NV, 89706;

12 Robert D. Conway, 6160 W Brooks Ave., Las Vegas, NV 89108;

13 Judy Crandall, 4085 Ramrod Circle, Reno, NV 89519

14 Rosemary D'Augusta, 347 Madrone St., Millbrae, CA 94030;

15 Brenda K. Davis, 11022 Old Military Trail, Forney, TX, 75126;

16 Pamela Faust, 6227 Whileaway Dr., Loveland, Ohio 45140;

17 Don Freeland, 73801 White Sands Dr., Thousand Palms, CA 92276;

18 Donald V. Fry, 6740 Northrim Ln., Colorado Springs, CO 80919;

19 Gabriel Garavanian, 104 Sequoia Road, Tyngsboro, MA 01879;

20 Harry Garavanian, 104 Sequoia Road, Tyngsboro, MA 01879;

21 Yvonne Jocelyn Gardner, 10-Gold Coin Ct., Colorado Springs, CO 80919;

22 Lee M. Gentry, 7021 Forestview Dr., West Chester, OH 45069-3616;

23 Valarie Ann Jolly, 2121 Dogwood Loop, Mabank, TX 75156;

24 Gail S. Kosach, 4085 Ramrod Cir., Reno, NV 89519;

25 Michael C. Malaney, 5395 Egypt Creek NE., Ada, MI 49301;

26 Len Marazzo, 1260 Springer Ct., Reno, NV 89511;

27 Lisa McCarthy, 35 Lancashire Place, Naples, FL 34104;

28 Patricia Ann Meeuwsen, 1062 Wedgewood, Plainwell, MI 49080;

1 L. West Oehmig, Jr., 1017 East Brow Road, Lookout Mountain, TN 37350;
2 Cynthia Prosterman, 527 20th Avenue, San Francisco, CA 94121;
3 Deborah M. Pulfer, 16264 E. Mason Rd., Sidney, OH 45365;
4 Dana L. Robinson, 127B Palm Bay Terrace, Palm Beach Gardens, FL 33418;
5 Robert A. Rosenthal, 4659 Bridle Pass Drive, Colorado Springs, CO 80923;
6 Bill Rubinsohn, 261 Old York Road, Jenkintown, PA 19046;
7 Sondra K. Russell, 1206 N. Loop 340, Waco, TX 76705;
8 Sylvia N. Sparks, 3320 Conte Drive, Carson City, NV 89701;
9 June Stansbury, 363 Smithridge Park, Reno, NV 89502;
10 Clyde D. Stensrud, 1529 10th St W., Kirkland, WA 98033;
11 Wayne Taleff, 768 Farmsworth Ct., Cincinnati, OH 45255;
12 Gary Talewsky, 12 Cortland Drive, Sharon, MA 02067;
13 Annette M. Tippetts, 2783 East Canyon Crest Dr., Spanish Fork, Utah 84660;
14 Diana Lynn Ultican, 9039 NE Juanita Dr, #102, Kirkland, WA 98034;
15 J. Michael Walker, 11865 Heather Ln., Grass Valley, CA 95949;
16 Pamela S. Ward, 1322 Creekwood Dr., Garland, TX 75044;
17 Christine O. Whalen, 1129 Pine St., New Orleans, LA 70118.

18 **THE DEFENDANTS**

19 8. US Airways Group, Inc. ("USAir") is a corporation incorporated under the
20 laws of the State of Delaware with its principal place of business in Tempe, Arizona.

21 9. US Airways Inc. is a Delaware corporation that has its principal place of
22 business in Tempe, Arizona.

23 10. USAir operates the fifth largest domestic carrier, with more than 45 billion
24 domestic revenue passenger miles ("RPMs") from 2011-2012. One RPM equals one
25 passenger flown one mile. RPMs are the commonly accepted measure of airline size in the
26 industry.

1 11. USAir operates the US Airways Shuttle, a US Airways brand which provides
2 hourly service between Boston, New York, and Washington, D.C. Regional airline service is
3 branded US Airways Express, operated by contract and subsidiary airline

4 12. USAir has and operates hubs in Charlotte, Philadelphia, Phoenix, and
5 Washington, D.C. Ronald Reagan International Airport.

6 13. With its regional partners, USAir carries approximately 62 million passengers
7 per year.

8 14. USAir also provides scheduled transportation of cargo throughout the United
9 States and around the world.

10 15. USAir has more than 31,000 full-time employees.

11 16. USAir regularly conducts business by operating commercial flights into and
12 out of this judicial district.

13 17. AMR Corporation ("AMR") is a corporation incorporated under the laws of the
14 State of Delaware with its principal place of business in Fort Worth, Texas. AMR is, as of the
15 date of the filing of this complaint, in Chapter 11 proceedings in the United States Bankruptcy
16 Court for the Southern District of New York, Case No. 11-15463 (SHL).

17 18. AMR is a holding company that owns and operates American Airlines, Inc.

18 19. American Airlines, Inc. ("American") is a Delaware corporation that has its
19 principal place of business in Fort Worth, Texas. AMR owns 100 percent of the common
20 stock of American Airlines, Inc. and AMR Eagle Holding Corporation ("American Eagle"),
21 and those two companies are wholly owned and controlled subsidiaries of AMR. American
22 Airlines, Inc. is in the business of air transportation of passengers for hire throughout the
23 United States and between cities in the United States and numerous international destinations.
24 American and American Eagle are, as of the date of filing this complaint, in Chapter 11
25 proceedings in the United States Bankruptcy Court for the Southern District of New York,
26 Case No. 11-15463 (SHL).

27 20. American operates the fourth largest domestic carrier, with more than 73
28 billion RPMs from 2011-2012.

1 21. With its regional partners, American carries approximately 136 million
2 passengers per year.

3 22. American is engaged in the business of transporting passengers and cargo and
4 has approximately 76,200 full-time employees.

5 23. American operates domestic hubs at Dallas/Forth Worth, Chicago O'Hare,
6 Miami, Los Angeles, and New York JFK.

7 24. American's subsidiary shares its name with American Eagle, and operates
8 much of the regional carrier's flights; since November 2012, the subsidiaries of SkyWest, Inc.,
9 SkyWest Airlines and ExpressJet Airlines, have also operated regional flights as American
10 Eagle. In addition, AmericanConnection is the regional brand for codeshare flights currently
11 operated by Chautauqua Airlines.

12 25. AMR is reported to imminently merge with defendant USAir and will be the
13 surviving entity as a result of the proposed merger. The American-USAir merger will be the
14 fourth merger of major U.S. airline companies since 2008, when Delta merged with Northwest
15 Airlines. In 2010, United Airlines merged with Continental Airlines, and in 2011, Southwest
16 merged with AirTran.

17 **NATURE OF TRADE AND COMMERCE**

18 26 The relevant product and geographic markets for purposes of this action are the
19 transportation of airline passengers in the United States.

20 27. Within the relevant market, well-defined submarkets may exist which, in
21 themselves constitute product markets for antitrust purposes.

22 28. American and USAir are substantial rivals and competitors in the relevant
23 market.

24 29. American and USAir are substantial potential rivals and potential competitors
25 in the relevant market.

26 30. Not only do American and USAir provide competing passenger service against
27 each other on a number of passenger routes, but also they are potentially able to provide
28

1 competing passenger service against each other on any route anywhere in the United States if
2 they believe it would be profitable to do so.

3 31. American CEO Horton has admitted that, "Airlines are networks. even where
4 no overlap, they are competing against each other because of these connecting flights."

5 32. Former Continental CEO, and now United CEO, Jeff Smisek admitted that
6 existing airlines can easily enter new markets: "I mean, there are---competitors can enter your
7 market at 540 miles an hour, so it's very easy to enter a market when you are already an
8 airline...If I decide I want to fly to Charlotte tomorrow, all I have to do—I would want to sell
9 the seats of aircraft, but I could take a 737 and point it to Charlotte and there I'd be. So it's
10 actually fairly easy to enter markets."

11 33. American has the capability to serve every major market in the United States
12 with a population above 5,000 people.

13 34. USAir has the capability to serve every major market in the United States with
14 a population above 5,000 people.

15 35. The behavior of American is constrained by the actual and potential
16 competition from USAir throughout the entire relevant market and submarkets.

17 36. The behavior of USAir is constrained by the actual and potential competition
18 from American throughout the entire relevant market and submarkets.

19 37. USAir has publicly admitted in judicial proceedings that the national market for
20 air transportation is the only relevant air transportation market for antitrust purposes. *In re Air*
21 *Passenger Computerized Reservations Systems*, 694 F.Supp. 1443, 1467 (C.D. Cal. 1988).

22 38. American has publicly acknowledged that the national market for air
23 transportation is the only relevant market for antitrust purposes.

24 39. In *Continental Airlines v. American Airlines* (S.D. Tex. 1993) Civ Nos. G-92-
25 259, G-92-266 1993 WL 379396 *2, American's position on relevant market was as follows:
26 "Defendants [American] claim that the national United States market is the only geographic
27 relevant market to this case. Defendants [American] claim that the national United States air
28 passenger service market includes all air passenger service within the United States.

1 Defendants [American] also claim that, for purposes of analyzing their national pricing
2 actions, hubs and regions are not relevant markets separate from the national market that
3 contains them.”

4 40. The market for the transportation of airline passengers in the United States is in
5 and part of interstate commerce, makes extensive use of the instrumentalities of interstate
6 commerce, and substantially affects interstate commerce. Airline passengers travel in a
7 continuous and uninterrupted flow of interstate commerce. Airline travel is a continuous and
8 uninterrupted flow of interstate commerce. Materials used in the construction of airplanes are
9 purchased and shipped in a continuous and uninterrupted flow of interstate commerce.

10 41. Any restraint of trade in the transportation of airline passengers in the United
11 States, including the restraints specifically alleged in this complaint, directly and substantially
12 restrains and affects interstate commerce.

13 TREND TOWARDS CONCENTRATION

14 42. In enacting and amending § 7 of the Clayton Act. “Congress sought to preserve
15 competition among many small businesses by arresting a trend towards concentration in its
16 incipiency before that trend developed to the point that a market was left in the grip of a few
17 big companies.” *United States v. Von’s Grocery Co.*, 384 U.S. 270, 277 (1966) [emphasis
18 added]. The line of Supreme Court cases relying upon this principle of law has never been
19 overruled and remains controlling law.

20 43. The Supreme Court has held that, “‘The dominant theme pervading
21 congressional consideration of the 1950 amendments was a fear of what was considered to be
22 a rising tide of economic concentration in the American economy.’ To arrest this ‘rising tide’
23 towards concentration into too few hands and to halt the gradual demise of the small
24 businessman. Congress decided to clamp down with vigor on mergers... Thus, where
25 concentration is gaining momentum in a market, we must be alert to carry out Congress’ intent
26 to protect competition against ever increasing concentration through mergers.” *United States*
27 *v. Von’s, supra*, 384 U.S. at 276-277.

1 44. The Supreme Court has held that. "What we have ... is simply the case of two
2 already powerful companies merging in a way which makes them even more powerful than
3 they were before. If ever such a merger would not violate § 7. certainly it does when it takes
4 place in a market characterized by a long and continuous trend toward fewer and fewer owner-
5 competitors which is exactly the sort of trend which Congress. with power to do so, declared
6 must be arrested." *United States v. Von's. supra*, 384 U.S. at 278.

7 45. The Supreme Court has held that. "We cannot avoid the mandate of Congress
8 that tendencies toward concentration in industry are to be curbed in their incipiency.
9 particularly when those tendencies are being accelerated through giant steps striding across a
10 hundred cities at a time." *Brown Shoe, Co. v. United States*, 370 U.S. 294 (1962).

11 46. The Supreme Court has held that where market "concentration is already great,
12 the importance of preventing even slight increases in concentration and so preserving the
13 possibility of eventual deconcentration is correspondingly great." *United States v.*
14 *Philadelphia Nat'l Bank*, 372 U.S. 321, 362 n.42 (1963).

15 47. The proposed merger of defendants with American will result in the largest
16 airline company in the United States.

17 48. The projected combined market shares of the merged USAir-American entity
18 (24%). and those of the next three largest competitors, Delta (22%), United (19%). and
19 Southwest (18%), will be approximately 83%, a figure well in excess of the 77% of the
20 combined market share of the four top firms that was condemned by the Supreme Court in
21 *United States v. Philadelphia Nat'l Bank, supra*, 374 U.S. 321. where the defendants proposed
22 to merge the 2nd and the 3rd largest banks in a four-county area. That merger. like the
23 proposed USAir-American merger would have resulted in intense concentration of the market.
24 The Supreme Court enjoined the merger, holding that the resultant market share of the
25 combined firm, as well as the significant intense concentration in the market, were both so
26 high as to be presumptively illegal.

27 49. The merger of USAir and American will result in the largest airline in the
28 United States with 24% of the U.S. air passenger market and a highly concentrated market

1 share by the top four airlines of approximately 83%. Such concentrations of market share in
2 four firms are unacceptably high according to the Supreme Court in *United States v. Alcoa*,
3 377 U.S. 271 (1964), which required divestiture where nine firms controlled 95% of all
4 aluminum created in the United States. In the narrower submarket for insulated aluminum
5 conductor, Alcoa was third with only 11.6% of the market and Rome Cable Corporation was
6 eighth with 4.7%; however, five companies controlled 65% and four smaller companies added
7 another 23%. Based on these figures the Supreme Court deemed both of markets “highly
8 concentrated.”

9 50. Similarly, the market share that will result from defendants’ merger with
10 American will exceed that which was condemned in *United States v. Continental Can Co.*,
11 378 U.S. 441 (1964), where the second largest competitor, Continental Can, acquired the sixth
12 largest competitor, Hazel-Atlas, with Continental Can’s post-merger market share rising from
13 21.9% to 25%. There, the Supreme Court ordered divestiture.

14 51. The number of major airlines remaining after the defendants’ proposed merger
15 with American will be four, reflecting a persistent pattern of concentration and reduction of
16 competition in the U.S. airline industry over the past several years. The Supreme Court in
17 *United States v. Vons, supra*, 384 U.S. 270, considered such factors alone to violate § 7 of the
18 Clayton Act (the acquisition by Von’s, which had a 4.7% share of the market, of Shopping
19 Bag, with 4.2% of the market, together with the growing number of grocery market chains and
20 the shrinking number of independently-owned stores resulted in the Court holding “these facts
21 alone are enough to cause us to conclude...that the Von’s-Shopping Bag merger did violate §
22 7”).

23 52. The proposed merger of defendants and American is a merger of far larger
24 competitors, resulting in a far greater share of the market in the merged entity than the
25 Supreme Court prohibited in *United States v. Pabst Brewing Co.*, 384 U.S. 546 (1966), where
26 the Court ordered divestiture of a merged entity which had combined the 10th and 18th largest
27 brewers in the United States, but which, when combined, resulted in just the 5th largest brewer
28 with only 4.49% of all domestic beer sales.

1 53. These Supreme Court cases have not been overruled or even diminished by
2 later opinions and they determine beyond peradventure that the proposed USAir-American
3 merger is unlawful.

4 54. In *Hospital Corp. of America v. Federal Trade Commission*, 807 F.2d 1381,
5 1385 (7th Cir. 1986), Judge Posner of the Seventh Circuit observed the above line of Supreme
6 Court precedent, taken together, prohibited "any nontrivial acquisition of a competitor."

7 **CONDUCT GIVING RISE TO VIOLATIONS OF LAW**

8 55. On February 14, 2013, American and USAir announced an agreement in which
9 the two carriers will combine to form a new company with a value of \$11 billion.

10 56. The new airline will operate under the name American Airlines Group, Inc.

11 57. The proposed merger will create the country's largest airline.

12 58. The proposed merger will create the world's largest airline.

13 59. The chief executive officer of the combined company will be Doug Parker, the
14 current chairman and CEO of USAir.

15 60. Tom Horton, CEO of American, will serve as non-executive chairman of the
16 combined company's Board of Directors until after the combined company's first shareholder
17 meeting in approximately mid-2014.

18 61. Mr. Parker will become executive chairman of the Board when Mr. Horton
19 ceases to be non-executive chairman.

20 62. Prior to announcing the merger Mr. Parker said, "I find it noteworthy that the
21 only opposition that seems to exist to this merger is the senior management at American. I
22 don't want to guess why it is that they don't support it. But we are hopeful that we can get
23 their support at some point in the future."

24 63. When the merger is completed, Mr. Horton will receive nearly \$20 million -
25 about half, or \$9.9 million, in cash and half in shares of the new company.

26 64. Prior to announcing the merger, Mr. Horton was anxious to have American
27 compete against the other airlines. Mr. Parker believed that the only obstacle to the merger
28 was Mr. Horton and senior management. In order to induce Mr. Horton to agree to the

1 merger, it was agreed that Mr. Horton would receive \$20 million personally. In response to
2 the offer of \$20 million, Mr. Horton, contrary to the interests of American Airlines, not only
3 agreed to the merger, but agreed to withdraw from the business. In the absence of the \$20
4 million offer, Mr. Horton (and American Airlines), would not have agreed to the merger, but
5 rather would have emerged from the restructuring in the bankruptcy court and competed
6 vigorously with Delta, United, Southwest, and USAir. American would have the most modern
7 fleet, a new logo, and renewed interest in succeeding on a competitive level. American had
8 achieved its best profit years, as had USAir. The \$20 million offer was the difference between
9 combination and competition.

10 65. Mr. Horton acted on behalf of American as a representative and intermediary in
11 the proposed transaction.

12 66. Mr. Parker and Mr. Horton met on July 19, 2012, to discuss a potential merger
13 between American and USAir.

14 67. Through secret and private meetings, Mr. Parker of USAir met on more than
15 one occasion with Mr. Horton of American.

16 68. One or more of the secret and private meetings of Mr. Parker and Mr. Horton
17 was carried on outside of their offices, including in hotel rooms.

18 69. At one or more of the secret and private meetings, Messrs. Parker and Horton
19 discussed the purposes and probable effects of the merger.

20 70. At one or more of the secret and private meetings, Messrs. Parker and Horton
21 discussed airline fares in general and specifically.

22 71. At one or more of the secret and private meetings, Messrs. Parker and Horton
23 discussed the frequency of flights.

24 72. At one or more of the secret and private meetings, Messrs. Parker and Horton
25 discussed the elimination or curtailment of the use of hubs.

26 73. At one or more of the secret and private meetings, Messrs. Parker and Horton
27 discussed the curtailment of capacity.

28

1 74. At one or more of the secret and private meetings, Messrs. Parker and Horton
2 discussed the firing of employees.

3 75. At one or more of the secret and private meetings, Messrs. Parker and Horton
4 discussed the type of aircraft to be eliminated.

5 76. At one or more of the secret and private meetings, Messrs. Parker and Horton
6 discussed the charges for services previously given to passengers for free.

7 77. At one or more of the secret and private meetings, Messrs. Parker and Horton
8 discussed the possible combination of American and USAir.

9 78. At one or more of the secret and private meetings, Messrs. Parker and Horton
10 discussed the potential fare increases in the monopoly submarkets that would be created by the
11 combine.

12 79. At one or more of the secret and private meetings, Messrs. Parker and Horton
13 discussed the potential fare increases in the duopoly submarkets created by the combine.

14 80. In an extraordinary admission contained in a letter written to American's
15 employees by Mr. Horton on July 10, 2012, American's chairman and CEO admitted that he
16 went to competing airlines to seek their permission and approval to enter a combination
17 between American and their companies:

18 In fact, last year, I approached my counterparts at other airlines about the
19 merits of possible combinations. Since that time, as we embarked on the
20 restructuring journey, I have held the view that it is best that first put our house
21 in order before considering a complex and challenging airline acquisition.

22 81. The combined company and its regional partners will provide access to more
23 than 337 destinations in 56 countries, have approximately \$38 billion in annual aggregate
24 revenues, operate a mainline fleet of nearly 1,000 aircraft, and employ approximately 113,000
25 people worldwide.

26 82. Combined, American and USAir will have more than 119 billion RPMs
27 domestically. Their combined RPMs comprise 21% of domestic capacity, which tops the
28 current domestic leaders, United Air Lines and Delta Airlines.

1 83. If the merger is consummated, the United States will be left with just four
2 major airlines, which will dominate the United States market. The three major legacy airlines
3 will be the new combined American, United, and Delta. The fourth is low-cost carrier
4 (“LCC”) and legacy look-alike, Southwest Airlines.

5 84. If the merger is consummated, as much as 83% of the United States domestic
6 airline industry will be controlled by just four airlines.

7 85. If the merger is consummated, it will result in lower capacity; that is, fewer
8 seats in the sky, which, in turn, will result in higher ticket fares for consumers.

9 86. If the merger closes, Defendants and American will reduce their overall
10 capacity.

11 87. Defendants’ and American’s merger would occur in and further concentrate an
12 already highly concentrated market, characterized by mergers, including the most recent
13 mergers of Southwest and AirTran in 2011, United and Continental in 2010 (which made
14 United the U.S.’s largest carrier), and Delta and Northwest Airlines in 2008.

15 88. In addition, Defendants and American are themselves the products of mergers
16 and acquisitions.

17 89. In 2001, American Airlines merged with Trans World Airlines. TWA was one
18 of the largest domestic airlines in the United States and following the merger, American shut it
19 down, together with TWA’s St. Louis hub, despite American’s representations it would not do
20 so.

21 90. For its part, America West acquired and merged with US Airways in 2005.
22 The new company adopted the name US Airways Group.

23 91. Since these mega-mergers started in 2007-2008, capacity has been substantially
24 reduced despite a strengthening economy and increased demand for aircraft.

25 92. Delta cut 41% of its flight out of Memphis when it merged with Northwest.
26 Before the merger, Northwest had 300 flights out of Memphis. After the merger, only 90
27 flights remained.
28

1 93. Since 2007, in the 29 largest hubs, scheduled domestic capacity has been
2 reduced by 9%.

3 94. Since 2007, in the 35 medium hubs, scheduled domestic capacity has been
4 reduced by 26%.

5 95. Since 2007, in the 70 small hubs, scheduled domestic capacity has been
6 reduced by 18%.

7 96. Remaining flights have become more crowded.

8 97. If the proposed merger is permitted, the merged entity will reduce service to
9 smaller and mid-sized communities. USAir CEO Parker has admitted that the less lucrative,
10 smaller community routes are the first to go: "If it is a choice to ask us to divest slots and give
11 them to another carrier, we by definition, with a scarce resource, will continue to (serve
12 markets) that are most lucrative, will reduce service to small and mid-sized communities and
13 the carriers that get those slots will fly to large communities."

14 98. Capacity reduction has resulted in higher prices for fares and other services. If
15 the proposed merger is consummated, the top three airlines will control over 80% of the
16 domestic airline market, and the top four airlines, including Southwest, will control 96% of the
17 market.

18 99. The proposed merger would be the fourth mega-merger in five years in the
19 airline industry. The prior mergers have resulted in fare increases and capacity decreases.
20 Another merger will drive up fares.

21 100. Although it was formally expected that low-cost airlines, especially Southwest,
22 would constrain legacy airfare increases, that is no longer the case, especially since Southwest
23 merged with AirTran, the major low-cost carrier competitor of Southwest. So, AirTran no
24 longer constrains Southwest from increasing prices, nor does Southwest constrain the legacy
25 airlines from increasing their prices. Consequently, many and significant price increases have
26 taken place since 2008.

27 101. During the late summer/early fall of 2012, Southwest launched two of the three
28 fare increases that stuck during the quarter. When an attempted increase by United faltered,

1 Southwest revived it. An expert says this was “the first time [he] remembers a low-cost airline
2 reviving a failed domestic price increase in almost a decade of watching fares.”

3 102. Southwest raised fares in markets following the mergers of Delta, Northwest,
4 US Airways, and America West, more than average fare increases overall, unless another low-
5 cost airline was already in that market. The merger of Southwest with its principal low-cost
6 rival lessens the potential that Southwest could counteract higher fares in markets following
7 this proposed merger.

8 103. If the proposed merger closes, US Air’s Philadelphia operations, one of
9 USAir’s main operation centers, will be transferred to Dallas (American’s operations hub),
10 and the merged entity will cut jobs.

11 104. If Defendants and American are permitted to merge, air fares will increase.

12 105. Air fares have already increased nationwide as a result of the mega-mergers
13 beginning in 2007-2008.

14 106. In 2012 alone there were seven successful price increases instituted by the
15 major airlines.

16 107. Shortly after the announcement of the USAir-American merger, prices were
17 increased by \$4 to \$10 roundtrip on domestic flights throughout the United States by Delta,
18 United, American, and US Airways. Southwest matched the increase on a limited scale.

19 108. Since the mega mergers began, the major airlines have increased their ancillary
20 fees. In 2012, Delta, United, American, and USAir made more than \$1 billion in reservation
21 change fees. In 2012, US domestic airlines collected more than \$3.5 billion in baggage fees.
22 The four major carriers Delta, United, American and USAir in 2013, all raised their prices on
23 ticket changes from \$150 to \$200. If the proposed merger is consummated, these fees will
24 increase.

25 109. The American-USAir merger would surpass United’s in terms of number of
26 employees, seat capacity, and operating revenues to create the largest passenger airline in the
27 United States and the world.

28

1 110. The Department of Justice approved the mergers of Northwest and Delta in
2 2008, the merger of United and Continental in 2010, and the merger of Southwest and AirTran
3 in 2011. During Congressional hearings on the Delta-Northwest merger, then House Judiciary
4 Committee Chairman John Conyers stated, "We have an antitrust division that approves
5 mergers left and right." He further observed that "The department has not attempted to block
6 or modify any major merger over the last seven years, including some of the largest, most
7 controversial mergers among direct competitors." Given these facts, this action is the only
8 remaining avenue available to "arrest" the march to monopoly power in the airline industry.

9 111. The new American will operate nine hubs, including hubs in five of the six
10 largest cities in the United States.

11 112. Because American and USAir have several connecting hubs in the same region,
12 the combined American will cut flights to some of those hubs.

13 113. The merged airline will cut flights to the Phoenix, Arizona hub.

14 114. The merged airline will cut flights to the Charlotte, North Carolina hub.

15 115. The merged airline will cut flights to the Philadelphia, Pennsylvania hub.

16 116. Since American and USAir do not share any airport hubs, there is a substantial
17 and probable likelihood that USAir's hubs in Philadelphia and Charlotte will be shutdown or
18 substantially cut back in favor of American's better hubs in New York and Miami.

19 117. In addition, 59 out of the 116 domestic airports served by USAir from
20 Charlotte are also served by Miami.

21 118. In talking about New York and Miami, American CEO Horton has said, "These
22 are the most important population centers and we are very strong in them. What the airline
23 (USAir) does is carry a lot of connecting traffic over Charlotte and does so in a way that I
24 would suggest is somewhat unrewarding."

25 119. Closing hubs is not unprecedented. Following the American acquisition of
26 TWA, St. Louis ceased to be an American hub, even though they had promised not to close it.
27 Following the Delta-Northwest merger, service at Delta's hub in Cincinnati and Northwest's
28 hub in Memphis was greatly reduced.

1 120. Defendants' and American's merger will increase market concentration in
2 some of the largest U.S. cities, namely, Los Angeles, Philadelphia, Chicago, Washington,
3 D.C., Dallas, and Phoenix.

4 121. In addition, at the airport level, the following domestic airports will experience
5 undue increases in market concentration as a result of the defendants' and American's merger:
6 Charlotte Douglas International Airport (combined American will control over 92.1% of daily
7 departures), Dallas-Fort Worth International Airport (combined American will control over
8 86% of daily departures), Philadelphia International Airport (combined American will control
9 over 78% of daily departures), Miami International Airport (combined American will control
10 over 70% of daily departures), Ronald Reagan Washington National Airport (combined
11 American will control over 62% of daily departures), Phoenix Sky Harbor International
12 Airport (combined American will control over 50% of daily departures), LaGuardia Airport
13 (combined American will control over 31% of daily departures), O'Hare International Airport
14 (combined American will control over 38% of daily departures), and Los Angeles
15 International Airport (combined American will control over 21% of daily departures).

16 122. The new combined company's dominance at the airports listed in paragraph
17 119 will result in higher fares for flights to and from those airports.

18 123. Non-stop service is typically preferred by some passengers.

19 124. Defendants and American have overlapping non-stop flights on 12 routes.
20 including, *inter alia*, Charlotte to Dallas-Fort Worth, Charlotte to Miami, Charlotte to
21 Chicago, Charlotte to New York LaGuardia, Dallas-Fort Worth to Phoenix, Dallas-Fort Worth
22 to Philadelphia, and Dallas-Fort Worth to Chicago. Defendants' combination will result in
23 higher fare prices on these routes.

24 125. American and USAir overlap on 12 non-stop airport pair routes. In four
25 markets involving hub-to-hub routes, the transaction would result in a monopoly. In seven
26 additional airport pair markets, post-merger concentration is in excess of 9,000 Herfindahl-
27 Hirschman Index ("HHI"), with large changes in HHI, many of which are larger than 4,000
28 points.

1 126. The seven overlapping routes which will result in a monopoly are Charlotte-
2 Dallas-Fort Worth; Charlotte-Miami; Dallas-Fort Worth-Philadelphia; Miami-Philadelphia;
3 Dallas-Fort-Worth-Phoenix; Washington D.C.-Raleigh; Nashville-Washington, D.C.

4 127. If the USAir and American merger is permitted, the number of competitors in
5 airport-pair markets will go from two competitors to just one in 24 airport-pair markets. The
6 merger will reduce the number of competitors from three to two in 475 markets. The merger
7 will reduce the number of competitors from four to three in 749 airport-pair markets.

8 128. If the proposed merger is permitted, there would be 530 more airport-pairs
9 losing an effective competitor than the merger between United and Continental in 2010.

10 129. If the combination of American and USAir is allowed in at least twenty-two
11 routes, changes in market concentration and post-merger concentration will exceed the
12 thresholds specified in the Horizontal Merger Guidelines by the Department of Justice and are
13 presumed, therefore, to lead to adverse competitive effects, including increases in fares,
14 reductions in service, and loss of choice.

15 130. Following airline deregulation in 1978, many mergers and acquisitions
16 occurred: Delta Air Lines merged with Western Airlines; United Airlines acquired Pan
17 American Airlines' Pacific routes; Northwest acquired Republic Airlines; American Airlines
18 and Air California merged; American acquired TWA; America West acquired US Airways;
19 Delta acquired Northwest; and United acquired Continental.

20 131. In addition, since deregulation, the legacy carriers bought or controlled the new
21 and growing feeder airlines with the specific purpose and intent of preventing them from
22 becoming major competitors.

23 132. In addition, defendants compete now on hundreds of domestic connecting
24 routes, where competition will be reduced or eliminated as a result of defendants' merger with
25 American.

26 133. The new airline will operate in a much more highly concentrated market. As a
27 result, the prospects for effective collusion among the airlines remaining after defendants' and
28 American's merger will substantially increase.

1 134. The potential for increased collusion among the remaining airlines is
2 significant, because the domestic passenger airlines, including, *inter alia*, the defendants and
3 American, have in the past colluded to fix prices with regard to airfares, surcharges, and cargo
4 prices, and to fix other terms and conditions of air transportation and travel.

5 135. In addition to the degree to which market concentration has increased, there
6 are substantial and significant barriers to entry into the industry in the relevant market, as well
7 as a history of a lack of successful new entry. There have been only two new major carriers in
8 recent years: Southwest Airlines and Jet Blue, both of which took substantial time to develop.
9 On the contrary, the relevant market has been characterized by the exit, rather than the entry,
10 of firms. In addition, Defendants' and American's combination will create an airline with
11 nine hubs, making entry into markets between such hubs particularly difficult for a non-hub
12 carrier because the prospective entrant will not have access to feed traffic and because the
13 combined American, as hub carrier, will have significant marketing advantages. The prospect
14 of new entry is, therefore, unlikely to eliminate any of the anticompetitive effects that will
15 eventuate from the defendants' and American's merger and the increasingly concentrated
16 structure of the relevant market.

17 136. There have been no new viable competitors since 2000.

18 137. USAir CEO Parker has publicly admitted that, "You cannot cover your cost of
19 capital by starting up a new airline."

20 138. Both of the CEO's of American and U.S. Airways have indicated publicly their
21 approval of the elimination of capacity and their desire to further concentrate the industry and
22 eliminate capacity further, with the obvious result of higher fares.

23 139. American and USAir have agreed that any cost savings by reason of the
24 merger's elimination of duplicative functions will not be passed on to the consumer in forms
25 of lower prices. To the contrary, every indication is that a merger of American and USAir will
26 result in higher fares charged to passengers, notwithstanding any so-called cost savings.

27 140. The defendants' and American's proposed merger will cause harm to
28 consumers, including the plaintiffs, by generating higher airfares, reducing the number of

1 flights on particular routes, and by eliminating air service to smaller communities.

2 Consumers, including the plaintiffs, will thus pay more for less airline service than would be
3 the case in the absence of the merger.

4 141. Former Chairman of the House Committee on Transportation and
5 Infrastructure. Representative James Oberstar (D-Minn.), has stated that. "The real victim in
6 this process is the traveling public... The reduction of choices, the increasing power of the
7 fortress hub makes it unlikely that other carriers would enter those markets where both
8 American and USAir serve, because they'll be competing with a much bigger presence, with
9 more power to serve those markets."

10 142. There are 29 major airports in the United States. located in the following cities:
11 Atlanta, Baltimore, Boston, Charlotte. Chicago, Dallas, Denver, Detroit, Fort Lauderdale,
12 Houston, Las Vegas, Los Angeles. Miami, Minneapolis. New York, Newark, Orlando.
13 Philadelphia, Phoenix, Portland. Salt Lake City, San Diego, San Francisco, Seattle. Tampa,
14 and Washington D.C.

15 143. Each major U.S. passenger airline, including American and USAir, have the
16 ability and financial capacity to offer competitive flights between any two major cities in the
17 United States. whether or not they currently offer such flights.

18 144. Each major U.S. passenger airline, including American and USAir, have the
19 ability and financial capacity to establish a competitive presence in any of the major airports
20 located throughout the United States by, *inter alia*, leasing or otherwise utilizing terminal
21 slots, hiring employees, and directing more flights to and from the given airport.

22 145. The proposed merger will eliminate American's actual rival, USAir.

23 146. The proposed merger will eliminate American's potential rival, USAir.

24 147. Neither company is a failing company.

25 148. American CEO Mr. Horton publicly stated on numerous occasions that
26 American would emerge from bankruptcy independently and strong enough to compete with
27 United and Delta.

28

1 149. Horton has publicly stated that, “[American] is going to be very successful. I
2 think we have a very powerful company coming out of restructuring. Our company is only
3 going to get more volume.”

4 150. In a December 13, 2012, meeting with American Airlines’ pilot union leaders,
5 Mr. Horton outlined his plan for a stand-alone exit from bankruptcy.

6 151. In January 2013, American revealed its new logo. It was the company’s first
7 external logo redo in more than 40 years.

8 152. The largest aircraft order ever was by American, which purchased nearly 500
9 new aircraft for \$40 billion to be delivered beginning in 2013.

10 153. USAir’s CEO Parker has stated that, “Either of our airlines could compete
11 independently. No one is suggesting that we couldn’t.”

12 154. American posted a \$44 million profit in January 2013.

13 155. USAir’s President Scott Kirby has publicly stated that, “We have a business
14 model that works, that is profitable, and generates margins that are far superior to
15 American’s...Our results prove that.”

16 156. USAir reported a 2012 net income of \$637 million, up 797% from a \$71
17 million net profit in 2011.

18 157. House Representative John Conyers (D-MI), noted in a February 26, 2013
19 hearing before the House Judiciary Committee’s Subcommittee on Regulatory Reform,
20 Commercial and Antitrust Law discussing the American-USAir merger that, “While American
21 is still in bankruptcy, it is poised to successfully reorganize in billions of dollars in cash and
22 reduced costs as a result of reorganization. Moreover, USAir posted record profits. These
23 facts suggest that both airlines are in fact perfectly capable of surviving, even thriving as
24 standalone companies.”

25 158. Since the major airlines already offer flights to and from various major U.S.
26 cities, each such airline, including defendants USAir and American, necessarily has the
27 managerial expertise to offer similar flights between any two major cities in the United States.
28

1 159. The major U.S. passenger airlines, including defendants US Air and American,
2 frequently trade, sell, lease, or purchase slots from other airlines in each of the major 29
3 airports throughout the United States.

4 160. The major U.S. passenger airlines with significant market share in specific
5 regions or major airports, including defendants USAir and American, endeavor to keep other
6 major airlines from entering the market with competitive flights.

7 161. On information and belief, each major U.S. passenger airline, including
8 defendants USAir and American, has created internal documents reflecting a financial and
9 economic cost/benefit analysis of increasing its presence in each or many of the major U.S.
10 airports.

11 162. On information and belief, each major U.S. passenger airline, including
12 defendants USAir and American, has created internal documents reflecting its analysis of how
13 the market for air transportation would be impacted within each regional market or major U.S.
14 airport by the entry of another major U.S. passenger airline into that region or major airport.

15 163. The entry of American or USAir into regions or major airports that are
16 dominated, controlled, or serviced by other major passenger airlines would result in lower
17 prices, increased service levels, and/or other pro-competitive effects on flights within the
18 region to or from the given major airport.

19 164. As the foregoing paragraphs show, the effect of the defendants' and
20 American's merger, if consummated, may be substantially to lessen competition, or tend to
21 create a monopoly in the relevant markets.

22 165. By reason of the defendants' and American's proposed merger, the plaintiffs
23 are threatened with loss or damage in the form of higher ticket prices and diminished service.
24 If the merger is consummated, the plaintiffs will sustain irreparable harm for which damages
25 will be unable to compensate plaintiffs, in that competition will be lessened. Service once lost
26 cannot easily be restored. Accordingly, plaintiffs bring this action for both preliminary and
27 permanent injunctive relief against defendants' and American's merger.

28 **VIOLATION ALLEGED**

1 Clayton Act, Section 7

2 166. The conduct of defendants described hereinabove, specifically their agreement
3 to merge with American, constitutes a violation of Section 7 of the Clayton Antitrust Act, 15
4 U.S.C. § 18, in that the effect of the proposed merger may be substantially to lessen
5 competition, or to tend to create a monopoly in the transportation of airline passengers in the
6 United States: by reason of which violation the plaintiffs are threatened with loss or damage in
7 the form of higher ticket prices and diminished service, as well as irreparable harm for which
8 damages will be inadequate to compensate plaintiffs, such that plaintiffs are entitled to bring
9 suit under Section 16 of the Clayton Antitrust Act, 15 U.S.C. § 26, to obtain preliminary and
10 permanent injunctive relief against defendants' merger, and to recover their cost of suit,
11 including a reasonable attorney's fee.

12 PRAYER FOR RELIEF

13 WHEREFORE, plaintiffs demand the following relief from this Honorable Court:

14 A. Declaring, finding, adjudging, and decreeing that the agreement of the
15 defendants and American to merge violates Section 7 of the Clayton Antitrust Act, 15 U.S.C.
16 § 18.

17 B. Preliminarily enjoining the defendants from consummating their merger during
18 the pendency of this action.

19 C. Permanently enjoining the defendants from consummating their merger or
20 requiring divestiture.

21 D. Awarding to plaintiffs their cost of suit, including a reasonable attorney's fee,
22 as provided by Section 16 of the Clayton Antitrust Act, 15 U.S.C. § 26.

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1 E. Granting to plaintiffs such other and further relief to which they may be entitled
2 and which the Court finds to be just and appropriate.

3 Dated: August 6, 2013

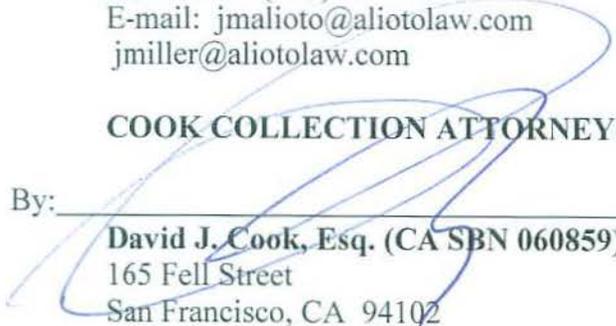
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11 Dated: August 6, 2013

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