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13 **IN THE UNITED STATES DISTRICT COURT**

14 **FOR THE DISTRICT OF ARIZONA**

<p>16 Aircraft Mechanics Fraternal 17 Association, 18 19 Plaintiff, 20 v. 21 Southwest Airlines Co., a Texas 22 corporation, 23 Defendant.</p>	<p>No. COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF (Jury Trial Demanded)</p>
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25 **I. SUMMARY.**

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27 1. This action is brought under the Railway Labor Act (“RLA” or “Act”), 45
28 U.S.C. § 151 *et seq.*, to remedy “major dispute” violations of the RLA by Defendant

1 Southwest Airlines, Co. and seeks declaratory and injunctive relief pursuant to 28 U.S.C.
2 § 2201, the Declaratory Judgment Act, and the RLA.

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4 **II. JURISDICTION AND VENUE.**

5 2. This Court has subject matter jurisdiction over this action.

6 3. Subject matter jurisdiction over this action arises under 28 U.S.C. § 1331
7 because the case arises under federal law, the RLA, under which plaintiff asserts a federal
8 claim.

9 4. In addition, jurisdiction also arises pursuant to 28 U.S.C. § 1337, as this is
10 an action arising under a statute that regulates commerce and/or protects trade and
11 commerce against restraints, namely, the RLA.

12 5. Plaintiff's claims are also brought under the Declaratory Judgment Act, 28
13 U.S.C. §§ 2201 and 2202, and seek a declaration as to the parties' rights and obligations
14 under the RLA.

15 6. Plaintiff is entitled to such a declaration because the instant dispute is an
16 actual and existing controversy.

17 7. Venue is properly laid in the United States District Court for the District of
18 Arizona.

19 8. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) because a
20 substantial part of the events giving rise to the claims in all Counts arose in this district
21 and because defendant has and continues to conduct regular business in Maricopa County
22 of the State of Arizona and employs hundreds of plaintiff's members in this district.

23 9. This Court has personal jurisdiction over defendant because of service of
24 process on defendant within the territorial confines of this state, in which this Court sits.

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26 **III. PARTIES.**

27 10. Plaintiff, the Aircraft Mechanics Fraternal Association ("AMFA" or
28 "union") is a "representative" or "labor union" within the definition of the RLA, 45

1 U.S.C. § 151, Sixth.

2 11. AMFA was certified by the National Mediation Board (“NMB”) on January
3 27, 2003 (30 NMB No. 27; CASE NO. R-6919), following a contested representation
4 election, to be “duly designated and authorized to represent for the purposes of the RLA,
5 as amended, the craft or class of Mechanics and Related Employees, employees of
6 Southwest Airlines Company, its successors and assigns.”

7 12. AMFA is currently certified to represent the craft and class of “Mechanics
8 and Related Employees” (“Mechanics”) at Southwest Airlines Co., which includes
9 Aircraft Mechanics, Aircraft Inspectors, Ground Support Equipment Mechanics, Plant
10 Maintenance Mechanics, Maintenance Controllers, Technical Instructors, Appearance
11 Technicians and Facilities Maintenance Mechanics.

12 13. AMFA has standing in this matter because it is the certified representative
13 of the Mechanics and Related craft and class of Employees at Southwest Airlines Co. and
14 is a party to a collective bargaining agreement with defendant and is currently in
15 collective bargaining with Southwest Airlines Co.

16 14. Defendant Southwest Airlines, Co. (“Southwest” or “company” or
17 “carrier”) is a domestic for-profit corporation, organized and existing under the laws of
18 the State of Texas and has its offices and its principal place of business at 2702 Love
19 Field Drive, Dallas, Texas 75235.

20 15. Southwest is a “common carrier” by air engaged in interstate and foreign
21 commerce under 42 U.S.C. § 1981 and is subject to the provisions of the RLA, 45 U.S.C.
22 § 151, First.

23 16. Southwest does business in Phoenix, Arizona where it conducts regularly
24 scheduled flights and employs hundreds AMFA members.

25 17. Southwest may be served via its registered agent for service in this District.

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IV. FACTS.

1) **The Parties Are Engaged In A “Major Dispute” Over The Formation Of A Collective Bargaining Contract, Pursuant To The Railway Labor Act.**

18. AMFA and Southwest are parties to a collective bargaining agreement (“CBA” or “contract”) negotiated to cover the period from August 16, 2008 through August 16, 2012, that is expressly “made and entered into in accordance with the provisions of Title 2 of the Railway Labor Act ...”.

19. In 2012 the parties commenced the current round of collective bargaining for a new contract covering Aircraft Mechanics, Aircraft Inspectors, Ground Support Equipment Mechanics, Plant Maintenance Mechanics, Maintenance Controllers and Technical Instructors, which continues to the present day.

20. The RLA and interpretive case law under it broadly define two types of disputes that may arise between covered employers and the labor organizations representing their employees. 45 U.S.C. § 151(a)(4) and (a)(5).

21. Disputes “concerning rates of pay, rules, or working conditions” within the meaning of 45 U.S.C. § 151a(4) have been denominated by the United States Supreme Court as “major” disputes. *Elgin, Joliet and Eastern Railway Company v. Burley*, 325 U.S. 711, 723 (1945).

22. A “major” dispute concerns contract formation, or the amendment of a collective bargaining agreement, and the resolution of such disputes is governed by § 6 of the RLA, 45 U.S.C. §§ 156, 181; *Western Airlines, Inc. v. International Brotherhood of Teamsters*, 480 U.S. 1301, 1302 (1987).

23. The RLA establishes “major” dispute resolution procedures, including, but not limited to, negotiation between the parties, mediation before the NMB, voluntary interest arbitration, and “self help” following release by the NMB. *Consolidated Rail Corporation v. Railway Labor Executives’ Association*, 491 U.S. 299 (1989).

24. In contrast, where a carrier asserts a contractual right to take contested action the ensuing dispute is denominated “minor” under the RLA, provided the action is

1 arguably justified by the terms of the parties' collective bargaining agreement. A carrier
2 cannot assert a minor dispute where it asserts frivolous or insubstantial contractual
3 arguments in defense of its unilateral action. Where such frivolous or insubstantial
4 contractual defenses are asserted, the carrier's unilateral action constitutes a major
5 dispute. *Consolidated Rail Corporation v. Railway Labor Executives' Association*, 491
6 U.S. 299, 306 (1989).

7 25. Within the meaning of the RLA, AMFA and Southwest are currently
8 engaged in a "major" dispute, namely collective bargaining to amend the current contract
9 pursuant to the RLA's dispute resolution process.

10 26. Pursuant to this bargaining the parties each have negotiating or bargaining
11 committees that have met in face-to-face bargaining sessions in: Dallas, Texas; San
12 Antonio, Texas; Phoenix, Arizona; Washington, D.C.; Chicago, Illinois and Kansas City,
13 Missouri.

14 27. Currently, collective bargaining is conducted under the auspices of the
15 NMB through its assigned Mediator.

16 **2) The Railway Labor Act Imposes A Duty On Southwest To Bargain In Good**
17 **Faith.**

18 28 Under Section 2 (First) of the RLA, i.e. 45 U.S.C. § 152, First, Southwest is
19 legally required to "exert every reasonable effort to make and maintain agreements
20 concerning rates of pay, rules, and working conditions ..."

21 29. Under Section 2 (Second) of the RLA, 45 U.S.C. § 152, Second, Southwest
22 is legally required to consider all "disputes between" it and its "employees" and "if
23 possible" to decide them "with all expedition, in conference between representatives
24 designated and authorized so to confer, respectively, by the carrier or carriers and by the
25 employees thereof interested in the dispute."

26 30. Implicit in this 45 U.S.C. § 152, First and § 152, Second requirement is a
27 duty to bargain in good faith.
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1 31. As compared to the duty to bargain in good faith under the National Labor
2 Relations Act (“NLRA”), “[the RLA] imposes a higher standard of negotiation efforts...”
3 by its creation of a legal obligation that the parties exert “every reasonable effort” to
4 reach an agreement. *Japan Air Lines Co., Ltd. v. Int’l Ass’n of Machinists and Aerospace*
5 *Workers*, 389 F. Supp. 27, 34 (S.D.N.Y. 1975), *aff’d*, 538 F.2d 46 (2d Cir. 1976).

6 32. The standard employed in determining what type of conduct constitutes a
7 violation of the duty to bargain in good faith is “whether the party charged with violation
8 of its duty has merely gone through the motions of compliance with the [RLA’s] required
9 procedures without a desire to reach an agreement.” *Japan Air Lines Co., Ltd. v. Int’l*
10 *Ass’n of Machinists and Aerospace Workers*, 389 F. Supp. 27, 34 (S.D.N.Y. 1975), *aff’d*,
11 538 F.2d 46 (2d Cir. 1976).

12 33. Whether this standard has been met “must be determined by the whole of
13 the party’s conduct at the bargaining table.” *Kennedy v. Long Island Rail Road Co.*, 319
14 F.2d 366 (2d Cir. 1963), *cert. denied*, 375 U.S. 830 (1963).

15 34. A party’s unlawful intent not to reach an agreement can be demonstrated
16 where the party was “[e]ngaged in the mere pretense of negotiation, [or] adopted evasive
17 and dilatory tactics that revealed an intent to wait until the union acceded to its demands.”
18 *Association of Flight Attendants v. Horizon Air Industries, Inc.*, 976 F.2d 541, 545 (9th
19 Cir. 1992) (internal quotations omitted).

20 35. The Supreme Court has held that the requirement of 45 U.S.C. § 152, First
21 is a legal obligation that is judicially enforceable. *Chicago and North Western Railway*
22 *Co. v. United Transportation Union*, 402 U.S. 570, 91 S. Ct. 1731 (1971).

23 **3) The Railway Labor Act Imposes A Duty On Southwest To Treat With**
24 **AMFA, The Mechanics’ Representative.**

25 36. Under Section 2 (Ninth) of the RLA, 45 U.S.C. § 152, Ninth, Southwest is
26 legally required to “treat with the representative so certified [by the NMB] as the
27 representative of the craft or class ...” over negotiations of rates of pay, rules and
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1 working conditions.

2 37. A carrier's belief, even if in good faith, that an organization is no longer
3 supported by a majority of employees is not sufficient to relieve the carrier of its duty to
4 treat. *International Ass'n of Machinists v. Alitalia Airlines*, 753 F.2d 3 (2d Cir. 1985).

5 38. The duty to treat is enforceable in federal court by injunctive relief.
6 *Virginian Ry. v. System Fed'n No. 40*, 300 U.S. 515, 549-53 (1937).

7 **4) The Railway Labor Act Imposes A Duty On Southwest Not To Interfere With**
8 **The Designated Representative Of Its Mechanics, AMFA.**

9 39. Under Section 2 (Third) and (Fourth) of the RLA, 45 U.S.C. § 152, Third,
10 and Fourth, a carrier is prohibited from "in any way" interfering with the choice of
11 representatives of its employees, or to "interfere in any way with the organization of its
12 employees."

13 40. Federal courts have jurisdiction to remedy violations of § 152, Third, and
14 Fourth in both pre and post certification situations, where necessary to enforce the
15 protections of the RLA. *Texas & N.O. R.R. v. Railway & Steamship Clerks*, 281 U.S. 548
16 (1930); *Trans World Airlines. v. Flight Attendants*, 489 U.S. 426, 440, 441 (1989)
17 (quoting *Switchmen's Union v. NMB*, 320 US 297 (1943)).

18 **5) Southwest Is Bargaining In Bad Faith:**

19 **a) Southwest's Take-It-Or-Leave-It And Surface Bargaining:**

20 41. Since July 1, 2016, and prior thereto, in collective bargaining with AMFA,
21 Southwest has engaged in take-it-or-leave-it and surface bargaining tactics calculated to,
22 or that have the foreseeable effect of, avoiding agreement, imposing delay or cost,
23 displaying the mere pretense of bargaining, and implying an unwillingness to ever reach
24 agreement with AMFA, as follows:

25 42. On August 16, 2016, in or from Dallas, defendant's bargaining committee
26 chairperson and Vice President of Labor Relations, Mike Ryan ("Ryan"), sent a mass-
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1 mailing letter to all AMFA members about mandatory subjects of bargaining entitled
2 “AMFA Mediation.”

3 43. Ryan’s August 16 letter overtly threatened AMFA members with a refusal
4 to *ever* come to agreement with the Mechanics’ chosen representative, AMFA, absent its
5 acquiescence to defendant’s demands to surrender to take-it-or-leave-it positions by
6 stating, in part, that, “we fear, sadly, that absent some change in the attitude of the AMFA
7 bargaining committee, *there is no agreement that can be reached*” [emphasis added] and
8 “it would be foolhardy to describe the current situation as anything but bleak.” This
9 stated or implied an unwillingness to ever reach agreement, or to bargain in good faith,
10 with the Mechanics’ craft or class chosen representative, AMFA.

11 44. In a bargaining session in Dallas on August 11, 2016, defendant suggested
12 to the AMFA bargaining committee that there would be no contract unless AMFA
13 acquiesced to across-the-board demands, when Lead Company negotiator Mike Ryan
14 stated that (or in words to the effect of), “In all seriousness ... I am having a hard time
15 seeing where these negotiations go after four years ... *none of this* [company offer] *on the*
16 *table today* [is] *available without our asks.*” [emphasis added]. This stated or implied an
17 unwillingness to ever reach agreement, or to bargain in good faith, with the Mechanics’
18 craft or class chosen representative, AMFA.

19 45. In a bargaining session in Dallas on August 9, 2016, defendant again
20 communicated to the AMFA bargaining committee that there would be no contract unless
21 AMFA acquiesced to defendant’s demands when Lead Company negotiator Mike Ryan
22 stated that (or in words to the effect of), “I think the floor will understand the asks with
23 the money I am putting on the table I *must have these asks.*” [emphasis added]. This
24 stated or implied an unwillingness to ever reach agreement, or to bargain in good faith,
25 with the Mechanics’ craft or class chosen representative, AMFA.

26 46. Moreover, in the bargaining session in Dallas on August 9, 2016, defendant
27 presented to the AMFA bargaining committee an economic package as a take-it-or-leave-
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1 it proposal tied to the rest of the defendant's concessionary demands to 'gut' – or
2 virtually surrender – contract language protecting jobs on U.S. soil, secured over years of
3 past bargaining (i.e. language protecting jobs in fact, as well as in the informed,
4 subjective assessment of AMFA's experienced bargaining committee).

5 47. Moreover, the above conduct is a continuation of a pre-existing pattern of
6 earlier conduct *before* July 1, 2016, wherein in Southwest engaged in take-it-or-leave-it
7 and surface bargaining tactics all calculated to, or that had the foreseeable effect of,
8 avoiding agreement, implying an unwillingness to come to agreement with AMFA,
9 imposing delay or cost, and displaying the mere pretense of bargaining, as follows:

10 48. In a bargaining session on April 14, 2016, in Chicago, defendant suggested
11 to the AMFA bargaining committee that there would be no contract at all unless AMFA
12 acquiesced to defendant's take-it-or-leave-it demands when Lead Company negotiator
13 Mike Ryan stated that (or in words to the effect of), "My message to you is that I need
14 my needs to build your economic package ... For me to be able to put [a] number on the
15 Board I need a feel for your gives ... *We are not going to get very far then ...*" [emphasis
16 added]

17 49. By such take-it-or-leave-it posturing and patent surface bargaining tactics
18 the intent of defendant is to undermine AMFA's bargaining representatives, undermine
19 the chosen representatives of the Southwest Mechanics, and force AMFA to acquiesce to
20 defendant's demands for concessionary contract terms that are in the interests of
21 defendant while at the expense of AMFA members and contrary to the compromise
22 proposals of AMFA bargaining representatives. This is all to the detriment and
23 irreparable harm of AMFA and its members' rights under the RLA and their economic
24 interests. Southwest's abdication of its obligation to engage in every reasonable effort to
25 reach an agreement communicates and implies that it is not willing to continue
26 negotiating with AMFA's chosen representatives.

27 50. To remedy such irreparable harm, there is no other avenue available to
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1 resolve this dispute, or to avoid industrial strife, than this Court.

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3 **b) Southwest's Regressive Bargaining Or Take-Back Agreements Deployed:**

4 51. Since July 1, 2016, and prior thereto, in collective bargaining with AMFA,
5 Southwest has engaged in regressive bargaining, or take-back agreement tactics, all
6 calculated to, or with the foreseeable effect of, avoiding agreement or imposing delay or
7 cost, displaying the mere pretense of bargaining, and implying, if not announcing, an
8 unwillingness to ever come to agreement with AMFA, as follows:

9 52. In a bargaining session in Dallas on November 2, 2016, in response to
10 compromise offers by the AMFA bargaining committee on Article 2 language concerning
11 outsourcing protection, defendant refused any discussion of compromise, insisted on its
12 own proposal as a "must have item." reverted back to its original proposal, refused any
13 further meaningful discussion – all without justification of economic necessity, such as
14 changed economic circumstances, or profitably.

15 53. In bargaining sessions since July 1, 2016, defendant had similarly
16 demanded AMFA acquiesce to its concessionary demands on issues of Inspector backfill,
17 paid rest, down-lines, and ETOPS. Moreover, when the AMFA bargaining committee
18 offered compromise proposals, defendant reverted back to its original proposals and
19 refused any further meaningful discussion – all without justification of economic
20 necessity or profitably.

21 54. In addition, as part of a continuation of earlier conduct, before July 1, 2016,
22 Southwest engaged in regressive bargaining or take-back agreement tactics calculated to,
23 or that had the foreseeable effect of, avoiding agreement, imposing delay or cost,
24 displaying the mere pretense of bargaining, and implying an unwillingness to ever come
25 to agreement with AMFA, as follows:

26 55. In a bargaining session on April 16, 2014, in Phoenix, defendant informed
27 AMFA's bargaining committee that contract language that the parties had earlier agreed
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1 to in February of 2014, concerning training hotels, was no longer acceptable to defendant.
2 No reasonable justification for this regression was offered, much less existed.

3 56. In a bargaining session on November 12, 2014, in Dallas, defendant
4 informed AMFA's bargaining committee that contract language that the parties had
5 earlier agreed to in Article 9 regarding limitations on work performed by "bump-up"
6 supervisors was no longer acceptable to defendant in its entirety because "the operators" -
7 - who were not even present at the bargaining table at the time of agreement - had
8 "found too many holes." This putative justification was specious.

9 57. By such regressive bargaining or take-back agreement tactics the true
10 purpose of defendant is to undermine AMFA's bargaining representatives, undermine the
11 chosen representatives of Southwest Mechanics, force AMFA to acquiesce to defendant's
12 demands for concessionary contract terms, all in the interests of defendant and at the
13 expense of AMFA members, and contrary to the compromise proposals of AMFA
14 bargaining representatives - to the detriment and irreparable harm of AMFA and its
15 members' rights under the RLA and their economic interests. Further, Southwest's
16 abdication of its obligation to engage in every reasonable effort to reach an agreement
17 effectively communicates and implies that it is not willing to continue negotiating in
18 good faith with its Mechanics' chosen, elected representatives, AMFA.

19 58. To remedy such irreparable harm, there is no other avenue available to
20 resolve this dispute, or to avoid industrial strife, than this Court.

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22 c) **Southwest's Coming Unprepared To Negotiation Sessions:**

23 59. As part of a continuation of earlier conduct, before July 1, 2016, Southwest
24 engaged in the tactic of asserting that it was unprepared to negotiate regarding contract
25 items despite the parties' schedule of these items for negotiation well in advance of the
26 meeting date. This tactic was calculated to, or had the foreseeable effect of, avoiding
27 agreement, imposing delay or cost, and displaying the mere pretense of bargaining, as
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1 follows:

2 60. On November 12, 2014, defendant informed AMFA's bargaining
3 committee that it had to undo a tentative agreement that had already been reached
4 between the parties earlier, which related to the selection process for temporary
5 supervisors, because the operators – who were not even present at the table – could not
6 agree to the language. No changed circumstances justified this bogus withdrawal.

7 61. On January 14, 2015, during a previously scheduled bargaining session,
8 defendant requested a caucus to prepare counter-offers but after nearly three and a half
9 hours returned with the *exact* proposal it had previously provided in the last *year* of
10 bargaining.

11 62. On January 18-19, 2014, the parties were scheduled in advance for a two-
12 day bargaining session when defendant abruptly cancelled the second day after declaring
13 it had nothing further to discuss.

14 63. On March 13, 2014, defendant abruptly ended a previously scheduled
15 bargaining session at 2:15 p.m. announcing that it was “not prepared for anything else –
16 sorry.”

17 64. By such tactics of coming to scheduled-in-advance bargaining sessions
18 unprepared to bargain, the true purpose of defendant is to undermine AMFA's bargaining
19 representatives, undermine the chosen representatives of Southwest Mechanics, force
20 AMFA to acquiesce to defendant's demands for concessionary contract terms in the
21 interests of defendant at the expense of AMFA members and contrary to the compromise
22 proposals of AMFA bargaining representatives – all to the detriment and irreparable harm
23 of AMFA and its members' rights under the RLA and economic interests, and such
24 conduct is in derogation of Southwest' obligation to make every reasonable effort to
25 reach an agreement.

26 65. To remedy such irreparable harm, there is no other avenue available to
27 resolve this dispute or to avoid industrial strife than this Court.

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1 **d) Southwest’s Canceling Meetings Without Good Cause:**

2 66. As part of a continuation of earlier conduct, before July 1, 2016, Southwest
3 engaged in the tactic of canceling bargaining sessions scheduled in advance without good
4 cause. This was calculated to, or had the foreseeable effect of, avoiding agreement,
5 imposing delay or cost, displaying the mere pretense of bargaining, and implying an
6 unwillingness to ever come to agreement with AMFA, as follows:

7 67. On May 10, 2016, the parties’ respective bargaining committees were
8 scheduled to meet for three days of face-to-face bargaining but defendant cancelled the
9 first day without good cause when it was unprepared for bargaining by failing to bring
10 the appropriate subject-matter expert to the table to address the scheduled issues.

11 68. On December 10, 2014, defendant cancelled the second day of a two day
12 previously scheduled bargaining session asserting that it wanted to caucus in private
13 about contract articles that had not yet even been negotiated.

14 69. “Burning” scheduled dates for face-to-face bargaining, where actual
15 agreement is possible, for supposed preparation of issues not even yet broached, for
16 which no bargaining dates are yet agreed, directly implies an unwillingness to reach
17 agreement with AMFA in the present over matters open and scheduled for discussion.

18 70. By deploying the tactic of canceling bargaining sessions scheduled in
19 advance without good cause the true purpose of defendant is to undermine AMFA
20 bargaining representatives, undermine the chosen representatives of Southwest
21 Mechanics, force AMFA to acquiesce to defendant’s concessionary demands for contract
22 terms in the interests of defendant at the expense of AMFA members and contrary to the
23 compromise proposals of AMFA bargaining representatives, and accurately conveys or
24 implies an unwillingness to ever reach agreement with AMFA or to continue negotiating
25 with AMFA in good faith – all to the detriment and irreparable harm of AMFA and its
26 members’ rights under the RLA and their economic interests.

27 71. To remedy such irreparable harm, there is no other avenue available to
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1 resolve this dispute or to avoid industrial strife than this Court.

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3 e) **Southwest's Refusal of Reasonable Information Requests:**

4 72. Since July 1, 2016, in collective bargaining with AMFA, Southwest has
5 engaged in a tactic of refusing AMFA's reasonable information or document requests that
6 are related to bargaining – and notwithstanding Southwest's representations, made across
7 the table, that such reasonable requests would indeed be honored in order to facilitate
8 bargaining. These refusals, as follows below, are calculated to, or have the foreseeable
9 effect of, avoiding agreement, imposing delay or cost, and displaying the mere pretense
10 of bargaining. They convey or imply to rank and file, and to their chosen
11 representatives, an unwillingness to ever come to agreement with AMFA or to negotiate
12 in good faith:

13 73. Since July 1, 2016, AMFA's bargaining committee requested of
14 defendant's bargaining committee that it provide economic costing data regarding an
15 issue known as "Inspector backfill" that is a subject of bargaining, for the purpose of
16 reaching agreement on the issue. AMFA was advised by the defendant that such data
17 would be forthcoming. Defendant, however, has without reasonable cause or any claim to
18 reasonable cause, failed to date to provide a comprehensive response.

19 74. In addition, as part of a continuation of earlier conduct, before July 1, 2016,
20 Southwest has engaged in the tactic of refusing reasonable information requests
21 calculated to, or that has the foreseeable effect of, avoiding agreement, imposing delay or
22 cost, and displaying the mere pretense of bargaining, as follows:

23 75. By deploying the tactic of refusing AMFA's reasonable information or
24 document requests related to bargaining, the true purpose of defendant is to convey or
25 imply an unwillingness to reach agreement with AMFA's representatives, to undermine
26 AMFA bargaining representatives, to undermine the chosen representatives of Southwest
27 Mechanics, and to force AMFA to acquiesce to defendant's concessionary demands for
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1 contract terms – all in the interests of defendant and at the expense of AMFA members
2 and contrary to the compromise proposals of AMFA bargaining representatives. This is
3 all to the detriment and irreparable harm of AMFA and its members’ rights under the
4 RLA and their economic interests.

5 76. To remedy such irreparable harm, there is no other avenue available to
6 resolve this dispute, or to avoid industrial strife, than this Court.

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8 **f) Southwest’s Not Bringing Authorized Bargaining Representatives:**

9 77. As part of a continuation of earlier conduct, before July 1, 2016, Southwest
10 has engaged in a tactic of refusing to bring bargaining representatives to scheduled
11 bargaining sessions who are actually authorized to make agreements. This is calculated
12 to, or has the foreseeable effect of, avoiding agreement, imposing delay or cost,
13 displaying the mere pretense of bargaining and amply demonstrating that Southwest has
14 no intention of ever reaching agreement with AMFA:

15 78. On May 10, 2016, defendant canceled an entire day of previously
16 scheduled bargaining claiming it was unprepared with proper subject-matter experts.

17 79. On January 18-19, 2014, the parties were scheduled in advance for a two-
18 day bargaining session. Defendant abruptly cancelled the second day, however, because
19 defendant’s lead negotiator was absent.

20 80. On December 10, 2014, defendant cancelled the second of a two-day
21 bargaining session. It claimed it wanted to spend time focusing on opening up articles
22 that had not yet been previously negotiated. This ‘horse before the cart’ tactic is
23 obfuscation of defendant’s RLA obligation to bargain in good faith.

24 81. On January 18-19, 2014 the parties were scheduled for a two-day
25 bargaining session but defendant abruptly canceled the entire second day after advising
26 the AMFA bargaining committee that it had nothing further to discuss. However, since
27 that date the parties had met on at least a dozen occasions yet still no agreement has been
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1 reached.

2 82. On November 12, 2014, in Dallas, defendant regressed from previously
3 agreed-to language in Article 9, regarding limitations on work performed by “bump-up”
4 supervisors, because it claimed “the operators” – who were not even present at the
5 bargaining table at the time of agreement – had “found too many holes.” This
6 explanation highlights the futility of negotiations with a party, defendant, that plans ahead
7 to undermine any agreement reached by claiming lack of authority *retroactively*.

8 83. By such transparent tactics of not bringing bargaining representatives to
9 bargaining sessions who are actually authorized to make agreements the true purpose of
10 defendant is to undermine AMFA bargaining representatives, undermine the chosen
11 representatives of Southwest Mechanics, force AMFA to acquiesce to defendant’s
12 concessionary demands for contract terms in the interests of defendant at the expense of
13 AMFA members and contrary to the compromise proposals of AMFA bargaining
14 representatives, all to the detriment and irreparable harm of AMFA and its members’
15 rights under the RLA and their economic interests. These tactics imply an un willingness
16 to ever reach agreement with AMFA.

17 84. To remedy such irreparable harm, there is no other avenue available to
18 resolve this dispute or to avoid industrial strife than this Court.

19 **6) Southwest Is Direct Dealing:**

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21 a) **Direct Polling Of AMFA Members About Mandatory Bargaining**
22 **Subjects Or Union Representation:**

23 85. Since July 1, 2016, Southwest has directly polled AMFA members about
24 mandatory bargaining subjects, or about AMFA representation in collective bargaining,
25 with the intent, purpose and effect, of dealing directly with AMFA members in order to
26 bargain for *defendant’s* proposals, or to undermine the effectiveness of AMFA bargaining
27 representatives, or AMFA, or the collective bargaining process itself. Through such
28 actions a clarion message is sent of defendant’s unwillingness to ever come to agreement

1 with the Mechanics' chosen, elected representative, AMFA.

2 86. On or about November 9, 2016, in or from Dallas, defendant's bargaining
3 committee leader and Vice President of Labor Relations, Mike Ryan, sent a mass mailing
4 letter to all AMFA members all about mandatory subjects of bargaining entitled
5 "Negotiation Update and New Resources" that announced defendant was "launching a
6 negotiations feedback inbox" for all AMFA members to "get you the answers you need"
7 about bargaining and that invited members to *correspond with defendant* and potentially
8 even get "individual response[s] to each email" about bargaining, and that solicited
9 AMFA members to view *future* on-line resources developed by defendant – a "Resources
10 Map ... on SWALife labor page" – in order that AMFA members can "get the facts"
11 about "contract negotiations" all so that defendant could gather AMFA members' "input"
12 that defendant declares it "will use ... to build Frequently Asked Questions (FAQs) that
13 will live [in the future] on the SWALife Labor page" [defendant's internal intranet].

14 87. Such conduct constitutes *polling by on-line* or electronic means of
15 communication.

16 88. Such on-line polling is ongoing and expanding beyond the purview of
17 AMFA and distracting from efforts to reach agreement at the table.

18 89. By such on-line polling of AMFA members, the true purpose of defendant,
19 or foreseeable effect, is to deal directly with rank and file AMFA members – instead of
20 their chosen representative in order to undermine the chosen representatives of Southwest
21 Mechanics, undermine AMFA, undermine collective bargaining, or to force AMFA or its
22 members to acquiesce to defendant's concessionary take-it-or-leave-it demands for
23 contract terms in the interests of defendant at the expense of AMFA members and
24 contrary to the compromise proposals of AMFA bargaining representatives. This is all to
25 the detriment and irreparable harm of AMFA and its members' rights under the RLA and
26 their economic interests. Such conduct announces, if not implies, defendant's resolve to
27 avoid any agreement with AMFA or to ever bargain in good faith with it.
28

1 90. To remedy such irreparable harm, there is no other avenue available to
2 resolve this dispute, or to avoid industrial strife, than this Court.

3
4 b) **Direct Emailing Or Corresponding With AMFA Members About**
5 **Mandatory Bargaining Subjects Or Union Representation:**

6 91. Since July 1, 2016, and most recently on December 12, 2016, Southwest
7 has directly corresponded by email or otherwise with AMFA members about mandatory
8 bargaining subjects or about AMFA representation in collective bargaining, with the
9 intent, purpose and effect of dealing directly with AMFA members to bargain for
10 Company proposals, or to undermine the effectiveness of AMFA bargaining
11 representatives, or AMFA, or the collective bargaining process itself, and to demonstrate
12 to all of rank and file defendant's unwillingness to ever come to agreement with AMFA
13 as well as its open contempt for the AMFA bargaining representatives at the table who
14 are attempting to reach agreement with the carrier in a time not of industry or company
15 hardship but rather of plenty and record profits.

16 92. On September 14, 2016, in or from Dallas, defendant's bargaining
17 committee leader and Vice President of Labor Relations, Mike Ryan, sent a mass mailing
18 letter to all AMFA members about mandatory subjects of bargaining entitled
19 "Negotiation Update on Outsourcing" that commented on the AMFA bargaining
20 committee and unreasonably criticized it, that directly proposed terms of contract, that
21 sought to undermine AMFA's status as the exclusive collective bargaining representative,
22 and that stated in part that, "your Union took a different course ... false information like
23 this [union sponsored communications] ... will *never* bring us closer to an agreement."
24 [emphasis added]

25 93. On August 18, 2016, in or from Dallas, defendant's bargaining committee
26 leader and Vice President of Labor Relations, Mike Ryan, sent a mass mailing letter to all
27 AMFA members about mandatory subjects of bargaining entitled "AMFA Negotiation
28 Update." This mass mailing commented on the AMFA bargaining committee, directly

1 proposed terms of contract, unreasonably criticized AMFA’s bargaining representative,
2 and stated in part that, “based on the AMFA negotiating team’s reaction, we are
3 concerned that they have no intention of putting this [Company’s] best-in-class offer in
4 front of our Mechanics for a vote” and “they [AMFA bargaining representatives] have
5 also misrepresented the facts of our offer ...” and threatening that the Mechanic’s chosen
6 representatives “would extend negotiations indefinitely” and that “after four long years,
7 we think you deserve an opportunity to decide for yourself [to vote for the Company’s
8 demands]”. The patent implication from this to all rank-and-file was that defendant will
9 never reach an agreement with the chosen representatives of its Mechanics.

10 94. Again, on August 16, 2016, in or from Dallas, defendant’s bargaining
11 committee leader and Vice President of Labor Relations, Mike Ryan, sent a mass letter to
12 all AMFA members about mandatory subjects of bargaining entitled “AMFA Mediation”
13 that commented on the AMFA bargaining committee, that directly proposed terms of
14 contract, that unreasonably criticized AMFA’s bargaining representative, and that stated
15 in part that “but their Union representatives at the bargaining table ... now *that* is a
16 different story ...” and “to suggest that the Union is in turmoil would be an
17 understatement ...” [emphasis added]. This communication by defendant overtly
18 threatened AMFA members with a refusal to ever come to agreement without AMFA
19 (and its members’) surrender to defendant’s take-it-or-leave-it posture. Therefore, the
20 letter stated in part, “we fear, sadly, that absent some change in the attitude of the AMFA
21 bargaining committee, *there is no agreement that can be reached*” and “it would be
22 foolhardy to describe the current situation as anything but *bleak*” [emphasis added].

23 95. On August 11, 2016, in or from Dallas, defendant’s bargaining committee
24 leader and Vice President of Labor Relations, Mike Ryan, sent a mass mailing letter to all
25 AMFA members about mandatory subjects of bargaining entitled “AMFA Mediation.”
26 This letter commented on the AMFA bargaining committee, directly proposed terms of
27 contract, unreasonably criticized AMFA’s bargaining representative, and further stated in
28

1 part that, “we believe they [AMFA] are not representing the best interests of our
2 Mechanics.” The letter thus threatened AMFA members with “another year” of
3 bargaining and implied that no contract will be *ever* be made with the Mechanics’ chosen
4 representative absent their acquiescence to defendant’s take-it-or-leave it demands.

5 96. By such direct correspondence with AMFA members the true purpose of
6 defendant, or foreseeable effect, is to *deal directly* with members – instead of their
7 chosen representative. It is also to undermine the chosen representatives of Southwest
8 Mechanics, to undermine AMFA, to undermine the collective bargaining process itself, to
9 force AMFA or its members to surrender to defendant’s take-it-or-leave it demands for
10 concessionary contract terms that are in the interests of defendant at the expense of
11 AMFA members and contrary to the compromise proposals of AMFA bargaining
12 representatives, and to imply an unwillingness to reach agreement with AMFA
13 representatives or an unwillingness to negotiate in good faith. This all to the detriment
14 and irreparable harm of AMFA and its members’ rights under the RLA and their
15 economic interests.

16 97. To remedy such irreparable harm, there is no other avenue available to
17 resolve this dispute, or to avoid industrial strife, than this Court.

18
19 c) **Soliciting To, And Holding, Meetings With, AMFA Rank And File**
20 **Members About Mandatory Bargaining Subjects Or Union**
21 **Representation:**

22 98. Since July 1, 2016, Southwest has directly polled AMFA members about
23 mandatory bargaining subjects or about AMFA representation in collective bargaining,
24 with the intent, purpose and effect of dealing directly with AMFA members to bargain
25 for Company proposals or to undermine the effectiveness of AMFA bargaining
26 representatives, or AMFA, or the collective bargaining process itself, and to demonstrate
27 to rank-and-file defendant’s unwillingness to bargain in good faith with their chosen
28 representative.

1 99. Sometime in August 2016, defendant launched a program with lower level
2 management for direct, private contact with AMFA rank and file. This required and
3 instructed lower level management actively solicit and hold direct, private meetings with
4 AMFA members, singular or collectively, to discuss subjects of mandatory bargaining
5 and the quality of union representation.

6 100. In a publication describing the program entitled “Leader’s Toolkit
7 Mechanics and Related Employees August 2016 Offer” defendant instructed, in part, its
8 lower level management that, “as we enter this critical period in negotiations, we ask that
9 you talk to your Team Leaders [AMFA members] about the negotiating process” and that
10 “it is *appropriate* to talk about negotiations during morning meetings and other
11 administrative gatherings” and “we also *encourage* you to remind Mechanics of the
12 [online] resources available to them.” [emphasis added]

13 101. In addition, in the publication describing the program entitled “Leader’s
14 Toolkit Mechanics and Related Employees August 2016 Offer” defendant instructed its
15 lower level management to communicate in meetings with AMFA members, in part, the
16 following: that “based on the AMFA negotiating team’s reaction to our proposal, we
17 believe they are *not representing the best interests of our employees* and have no
18 intention of putting ...” [the defendant’s offer] out for a vote” [emphasis added]; that
19 “AMFA’s negotiating team has also *misrepresented* the facts of our offer and we must
20 set the record straight” [emphasis added]; that AMFA bargaining representatives “would
21 extend negotiations and indefinitely” [emphasis added]; that AMFA bargaining
22 representatives have used a “scare tactic” on AMFA members.

23 102. On or about November 15, 2016 in Dallas, defendant’s bargaining
24 committee member and Senior Manager of Labor Relations, Mark Lyon, met face-to-face
25 with several AMFA members and discussed mandatory bargaining subjects or union
26 representation.

27 103. By such meetings with AMFA members and solicitation for private,
28

1 propaganda meetings the true purpose of defendant, or foreseeable effect, is to deal
2 directly with members instead of their chosen representative, undermine the chosen
3 representatives of Southwest Mechanics, undermine AMFA, undermine collective
4 bargaining, force AMFA or its members to acquiesce to defendant's demands for
5 concessionary contract terms in the interests of defendant and at the expense of AMFA
6 members and contrary to the compromise proposals of AMFA bargaining representatives
7 – all to the detriment and irreparable harm of AMFA and its members' rights under the
8 RLA and economic interests.

9 104. To remedy such irreparable harm, there is no other avenue available to
10 resolve this dispute, or to avoid industrial strife, than this Court.

11
12 d) **Deploying The Company Bargaining Team To Hold "Road Show"**
13 **Meetings With Rank And File About Mandatory Bargaining Subjects**
14 **Or Union Representation:**

15 105. Since July 1, 2016, Southwest has conducted meetings with AMFA
16 members about mandatory bargaining subjects or about AMFA representation in
17 collective bargaining entitled "road shows" that feature the defendant's own *bargaining*
18 *committee*, all with the intent, purpose and effect of, dealing directly with AMFA
19 members to bargain for Company proposals or to undermine effectiveness of AMFA
20 bargaining representatives, or AMFA, or the collective bargaining process itself. Such
21 road shows powerfully and in-person demonstrate to AMFA rank and file members
22 defendant's refusal to ever reach agreement with AMFA and constitutes a parallel
23 collective bargaining process directly with members.

24 106. On or about October through November 2016, members of the defendant's
25 bargaining committee, individually or collectively, conducted 'road shows' directly
26 discussing mandatory subjects of negotiations with AMFA members in stations where a
27 substantial number of AMFA members were employed, including but not limited to
28 Dallas, Oakland, and Phoenix, Denver, Fort Lauderdale, Baltimore, Los Angeles, Las

1 Vegas, and Chicago.

2 107. By such “road shows” with AMFA rank and file (with no union
3 representatives present) the true purpose of defendant, or foreseeable effect, is to deal
4 directly with members instead of their chosen representative, undermine the chosen
5 representatives of Southwest Mechanics, undermine AMFA, undermine collective
6 bargaining, force AMFA or its members to acquiesce to defendant’s demands for
7 concessionary contract terms in the interests of defendant and at the expense of AMFA
8 members and contrary to the compromise proposals offered by the AMFA bargaining
9 representatives, and demonstrates for all to see that no good faith bargaining with AMFA
10 will ever occur. This is all to the detriment and irreparable harm of AMFA and its
11 members’ rights under the RLA and economic interests.

12 108. To remedy such irreparable harm, there is no other avenue available to
13 resolve this dispute, or to avoid industrial strife, than this Court.

14
15 e) **Subjecting Rank And File To Televised Content About Mandatory**
16 **Bargaining Subjects Or Union Representation, In Their Workplace,**
While On Duty.

17
18 109. Since July 1, 2016, and before, Southwest has televised directly to AMFA
19 rank and file in their work stations, while on duty, content about mandatory bargaining
20 subjects or about AMFA representation in collective bargaining. Defendant has done so
21 with the intent, purpose and effect of dealing directly with AMFA members to bargain
22 for Company proposals, or to undermine effectiveness of AMFA bargaining
23 representatives, or undermine AMFA, or undermine the collective bargaining process
24 itself.

25 110. Defendant has live streamed bargaining proposals or bargaining related
26 content as well as implicit anti-union content using company television monitors in the
27 fixed in work place to saturate AMFA rank and file while on duty, on company property
28 in or about their work areas, at stations including Dallas (the largest station employing

1 AMFA members), in Phoenix, in Las Vegas, in Oakland, in Los Angeles, in Denver, and
2 in Houston – virtually system wide.

3 111. Defendant’s campaign to televise anti-AMFA media content into the
4 workplace, directly to a captive audience of AMFA members, alone or cumulatively
5 along with all the other acts of bad faith bargaining with AMFA representatives, direct
6 dealing, and interference (as alleged herein), demonstrates to AMFA members that
7 defendant refuses to ever reach agreement with AMFA, or bargain in good faith, and
8 constitutes a parallel collective bargaining process directly with members.

9 **7) Southwest Is Interfering With AMFA:**

10 112. Since July 1, 2016, Southwest has directly interfered with the designated
11 representative of its Mechanics craft or class, AMFA, or has interfered with organization
12 of its Mechanics craft or class, AMFA, or attempted to do so.

13 113. By and through all acts alleged herein to constitute bad faith bargaining or
14 direct dealing, defendant is also and inevitably *interfering* with the designated
15 representative of the craft or class of the Mechanics and Related Employees of Southwest
16 Airlines Company, i.e. AMFA, or is interfering with the organization of its employees,
17 i.e. AMFA, or the assistance of it by rank and file.

18 114. Since July 1, 2016 and before, defendant has televised directly to AMFA
19 rank and file while on duty, in their work stations, in Dallas, Phoenix, Las Vegas,
20 Oakland, Los Angeles, Denver, and Houston – for all practical purposes to a captive
21 audience – a constant barrage of bargaining proposals or bargaining related content as
22 well as implicit anti-union content using company television monitors.

23 115. On November 9, 2016, in or from Dallas, defendant’s bargaining
24 committee leader and Vice President of Labor Relations, Mike Ryan, sent a mass mailing
25 letter to all AMFA members about mandatory subjects of bargaining entitled
26 “Negotiation Update and New Resources” that announced defendant was presetting “new
27 resources” and “launching a negotiations feedback inbox” for all AMFA members to “get
28

1 you the answers you need” about bargaining and that invited members to correspond with
2 defendant and potentially even get “individual response[s] to each email” about
3 bargaining, and that solicited AMFA members to view through on-line resources
4 developed by defendant on its intranet web site, entitled “Resources Map ... on SWAlife
5 labor page”, material published by defendant in order that AMFA members can “get the
6 facts” about “contract negotiations” and that invited AMFA member’s “input.” This
7 interfered with AMFA.

8 116. Subsequent to defendant’s November 9, 2016 announcement of on-line
9 “new resources” for AMFA members, defendant published on-line statements to AMFA
10 members such as “we encourage you to reach out to the Union and express your desire
11 that AMFA *work with us ...*” [emphasis added]. The most recent publication to rank and
12 file by defendant was December 12, 2106.

13 117. Further, subsequent to defendant’s November 9, 2016, announcement of
14 on-line “new resources” for AMFA members, defendant published on-line a web page
15 entitled “myth vs fact” that contrasted supposed union positions on bargaining with those
16 substituted by defendant. The purpose and effect was to, and is, supplant and substitute
17 the elected representatives of the Mechanics with a company substitute. The intent and
18 effect is to create an on-line, company-dominated union – a 21st century version of a
19 company-run, bogus union. This is all at the expense of employees, contrary to
20 Congressional intent expressed in the RLA, and deeply subversive of the Act.

21 118. The establishment of said on-line resources is calculated to, or has the
22 effect of, *substituting* the defendant in place of the chosen representative of defendant’s
23 Mechanics, or its organization, AMFA.

24 119. By such interference with AMFA the true purpose of defendant, or
25 foreseeable effect, is to influence or coerce the Southwest Mechanics’ choice of
26 representative, to undermine its chosen representatives, or to force AMFA or its members
27 to acquiesce to defendant’s concessionary demands for contract terms in the interests of
28

1 defendant at the expense of AMFA members and contrary to the compromise proposals
2 of AMFA bargaining representatives – and to powerfully demonstrate to rank and file the
3 utter futility of any further negotiations with their chosen representatives – all to the
4 detriment and irreparable harm of AMFA and its members’ rights under the RLA and
5 economic interests.

6 120. To remedy such irreparable harm, there is no other avenue available to
7 resolve this dispute, or to avoid industrial strife, than this Court.

8
9 **V. CAUSES OF ACTION.**

10 **Count I:**

11 **Failure To Exert Every Reasonable Effort To Make And Maintain Agreements**
12 **Concerning Rates Of Pay, Rules, And Working Conditions,**
13 **Through Bad Faith In Collective Bargaining,**
14 **In Violation Of The Railway Labor Act, 45 U.S.C. § 152, First**

15 121. AMFA repeats and realleges paragraphs 1 through 120 of the Complaint as
16 if fully set forth herein.

17 122. The Railway Labor Act at 45 U.S.C. § 152, First, entitled “Duty of Carriers
18 And Employees To Settle Disputes”, provides in whole that [with emphasis added]:

19 It shall be the duty of all carriers, their officers, agents, and employees to
20 **exert every reasonable effort to make and maintain agreements**
21 **concerning rates of pay, rules, and working conditions**, and to settle all
22 disputes, whether arising out of the application of such agreements or
23 otherwise, in order to avoid any interruption to commerce or to the
24 operation of any carrier growing out of any dispute between the carrier and
25 the employees thereof.

26 123. The parties, plaintiff AMFA and defendant Southwest, are currently
27 engaged in collective bargaining over a new contract, as previously alleged herein.

28 124. By the following acts, including as previously alleged herein, occurring
within the last six months albeit, as part of a continuation of earlier conduct, by
cumulative effect, defendant has breached its duty to make and maintain agreements
through bad faith in collective bargaining in violation of 45 U.S.C. § 152, First by: i)

1 take-it-or-leave-it and surface bargaining tactics; ii) by regressive bargaining such as
2 taking back previously negotiated items, iii) by arriving to negotiations unprepared, iv)
3 by canceling meetings for dubious reasons; v) by refusing reasonable requests for
4 documents or information calculated to facilitate agreement, and vi) by failing to bring to
5 the ‘table’ in bargaining sessions carrier-representatives with proper authority to make
6 any agreements at all.

7 125. By and through these acts defendant has demonstrated a purpose and intent
8 not to reach a mutual agreement with AMFA but rather to delay and frustrate negotiations
9 and to impose unnecessary cost in order to compel AMFA to acquiesce to defendant’s
10 unilateral demands.

11 126. By and through these acts defendant has and remains in violation of 45
12 U.S.C. § 152, First.

13 127. By and through these acts by defendant, AMFA and its members have been
14 harmed and will suffer irreparable harm if injunctive relief is not provided because there
15 is no other avenue available to resolve this dispute and to avoid industrial strife.

16 128. Further, 28 U.S.C. § 2201 provides that:

17 [i]n the case of actual controversy within its jurisdiction any court of the
18 United States, upon the filing of an appropriate pleading, may declare the
19 rights and other legal relations of any interested party seeking such
20 declaration, whether or not further relief is or could be sought. Any such
21 declaration shall have the force and effect of a final judgment or decree and
22 shall be reviewable as such.

23 129. AMFA seeks a declaration pursuant to 28 U.S.C. § 2201 that defendant’s
24 conduct constitutes a violation of 45 U.S.C. § 152, First.

25 130. AMFA is aggrieved of the violations of law alleged herein. Therefore,
26 unless the Court issues declaratory relief as requested, AMFA will be irreparably injured.
27 AMFA has no prompt, adequate and effective remedy at law. AMFA will be successful
28 on the merits of this action.

Count II:
Failure To Consider Disputes With All Expedition In Conference With AMFA
In Collective Bargaining,
In Violation Of The Railway Labor Act, 45 U.S.C. § 152, Second

131. AMFA repeats and realleges paragraphs 1 through 130 of the Complaint as if fully set forth herein.

132. The Railway Labor Act at 45 U.S.C. § 152, Second, entitled “Consideration Of Disputes By Representatives”, provides in whole that [with emphasis added]:

All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, **with all expedition, in conference** between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

133. The parties, plaintiff AMFA and defendant Southwest, are currently engaged in collective bargaining over a new contract, as previously alleged herein.

134. By the following acts, including as previously alleged herein, occurring within the last six months, albeit as part of a continuation of earlier conduct, and by cumulative effect, defendant has breached its duty to consider all disputes and if possible decide them with all expedition in conference with AMFA in collective bargaining in violation of 45 U.S.C. § 152, Second by: i) take-it-or-leave-it and surface bargaining tactics; ii) by regressive bargaining such as taking back previously negotiated items, iii) by arriving to negotiations unprepared, iv) by canceling meetings for dubious reasons; v) by refusing reasonable requests for documents or information calculated to facilitate agreement, and vi) by failing to bring to the ‘table’ in bargaining sessions carrier-representatives with proper authority to make any agreements at all.

135. By and through these acts defendant has demonstrated a purpose and intent not to reach a mutual agreement with AMFA but rather to delay and frustrate negotiations and to impose unnecessary cost in order to compel AMFA to acquiesce to defendant’s unilateral demands.

136. By and through these acts defendant has and remains in violation of 45

1 U.S.C. § 152, Second.

2 137. By and through these acts by defendant, AMFA and its members have been
3 harmed and will suffer irreparable harm if injunctive relief is not provided because there
4 is no other avenue available to resolve this dispute and to avoid industrial strife.

5 138. Further, 28 U.S.C. § 2201 provides that:

6 [i]n the case of actual controversy within its jurisdiction any court of the
7 United States, upon the filing of an appropriate pleading, may declare the
8 rights and other legal relations of any interested party seeking such
9 declaration, whether or not further relief is or could be sought. Any such
10 declaration shall have the force and effect of a final judgment or decree and
11 shall be reviewable as such.

12 139. AMFA seeks a declaration pursuant to 28 U.S.C. § 2201 that defendant's
13 conduct constitutes a violation of 45 U.S.C. § 152, Second.

14 140. AMFA is aggrieved of the violations of law alleged herein. Therefore,
15 unless the Court issues declaratory relief as requested, AMFA will be irreparably injured.
16 AMFA has no prompt, adequate and effective remedy at law. AMFA will be successful
17 on the merits of this action.

18 **Count III:**
19 **Failure To Treat With AMFA,**
20 **The Certified Representative Of The Craft Or Class Of Aircraft Mechanics,**
21 **In Violation Of The Railway Labor Act, 45 U.S.C. § 152, Ninth.**

22 141. The plaintiff repeats and realleges paragraphs 1 through 140 of the
23 Complaint as if fully set forth herein.

24 142. The Railway Labor Act at 45 U.S.C. § 152, Ninth, entitled "Disputes as to
25 identity of representatives; designation by Mediation Board; secret elections", provides in
26 whole that [with emphasis added]:

27 If any dispute shall arise among a carrier's employees as to who are the
28 representatives of such employees designated and authorized in accordance
with the requirements of this chapter, it shall be the duty of the Mediation
Board, upon request of either party to the dispute, to investigate such
dispute and to certify to both parties, in writing, within thirty days after the

1 receipt of the invocation of its services, the name or names of the
2 individuals or organizations that have been designated and authorized to
3 represent the employees involved in the dispute, and certify the same to the
4 carrier. Upon receipt of such certification the **carrier shall treat with the
representative so certified** as the representative of the craft or class for the
purposes of this chapter.

5 143. AMFA is the certified bargaining representative of the craft or class of
6 Mechanics and Related Employees of Southwest Airlines Company, its successors and
7 assigns, as previously alleged.

8 144. By the following acts, including as previously alleged herein, occurring
9 within the last six months, albeit as part of a continuation of earlier conduct, and by
10 cumulative effect, defendant has breached its duty to treat with AMFA in violation of 45
11 U.S.C. § 152, Ninth by: i) directly polling AMFA members, ii) by directly emailing or
12 corresponding with AMFA members, iii) by holding individual supervisor meetings with
13 members (singly or collectively), iv) by conducting meetings or “road shows” with its
14 bargaining committee directly with AMFA members who are not on AMFA’s bargaining
15 committee, where such polling, email or correspondence, or meetings are about
16 mandatory subjects of bargaining, made in a manner and with such cumulative force as to
17 suggest or imply a refusal to bargain in good faith with AMFA’s designated
18 representatives, and to undermine AMFA, and v) by televising bargaining proposals and
19 anti-AMFA content into the workplace to directly reach a captive audience of rank and
20 file.

21 145. By and through these acts defendant has and remains in violation of 45
22 U.S.C. § 152, Ninth.

23 146. By and through these acts by defendant, AMFA and its members have been
24 harmed and will suffer irreparable harm if injunctive relief is not provided because there
25 is no other avenue available to resolve this dispute and to avoid industrial strife.

26 147. Further, 28 U.S.C. § 2201 provides that:

27 [i]n the case of actual controversy within its jurisdiction any court of the
28 United States, upon the filing of an appropriate pleading, may declare the

1 rights and other legal relations of any interested party seeking such
2 declaration, whether or not further relief is or could be sought. Any such
3 declaration shall have the force and effect of a final judgment or decree and
shall be reviewable as such.

4 148. AMFA seeks a declaration pursuant to 28 U.S.C. § 2201 that defendant's
5 conduct constitutes a violation of 45 U.S.C. § 152, Ninth.

6 149. AMFA is aggrieved of the violations of law alleged herein. Therefore,
7 unless the Court issues declaratory relief as requested, AMFA will be irreparably injured.
8 AMFA has no prompt, adequate and effective remedy at law. AMFA will be successful
9 on the merits of this action.

10 **Count IV:**
11 **Interference With The Designated Choice Of Representative,**
12 **Of The Southwest Aircraft Mechanics, AMFA,**
13 **In Violation Of The Railway Labor Act, 45 U.S.C. § 152, Third.**

14 150. The plaintiff repeats and realleges paragraphs 1 through 149 of the
Complaint as if fully set forth herein.

15 151. The Railway Labor Act at 45 U.S.C. § 152, Third entitled, "Designation Of
16 Representatives", provides in whole that [with emphasis added]:

17 Representatives, for the purposes of this chapter, shall be designated by the
18 respective parties without interference, influence, or coercion by either
19 party over the designation of representatives by the other; and neither party
20 shall in any way interfere with, influence, or coerce the other in its choice
21 of representatives. Representatives of employees for the purposes of this
22 chapter need not be persons in the employ of **the carrier, and no carrier
shall, by interference, influence, or coercion seek in any manner to
prevent the designation by its employees as their representatives of**
those who or which are not employees of the carrier.

23 152. As previously alleged, AMFA is the designated choice of representative for
24 the craft or class of Mechanics and Related Employees of Southwest Airlines Company.

25 153. By the following acts, including as previously alleged herein, occurring
26 within the last six months, albeit as part of a continuation of earlier conduct, and by
27 cumulative effect, defendant has interfered with the designated representative of the craft
28

1 or class of Mechanics and Related Employees of Southwest Airlines Company, AMFA,
2 in violation of 45 U.S.C. § 152, Third: i) bad faith bargaining, ii) direct dealing, iii) the
3 establishment of on-line resources to substitute and replace AMFA, and iv) televising
4 bargaining proposals and anti-AMFA content into the workplace to directly reach a
5 captive audience of rank and file.

6 154. By and through these acts defendant has and remains in violation of 45
7 U.S.C. § 152, Third.

8 155. By and through these acts by defendant, AMFA and its members have been
9 harmed and will suffer irreparable harm if injunctive relief is not provided because there
10 is no other avenue available to resolve this dispute and to avoid industrial strife.

11 156. Further, 28 U.S.C. § 2201 provides that:

12 [i]n the case of actual controversy within its jurisdiction any court of the
13 United States, upon the filing of an appropriate pleading, may declare the
14 rights and other legal relations of any interested party seeking such
15 declaration, whether or not further relief is or could be sought. Any such
16 declaration shall have the force and effect of a final judgment or decree and
17 shall be reviewable as such.

18 157. AMFA seeks a declaration pursuant to 28 U.S.C. § 2201 that defendant's
19 conduct constitutes a violation of 45 U.S.C. § 152, Third.

20 158. AMFA is aggrieved of the violations of law alleged herein. Therefore,
21 unless the Court issues declaratory relief as requested, AMFA will be irreparably injured.
22 AMFA has no prompt, adequate and effective remedy at law. AMFA will be successful
23 on the merits of this action.

24 **Count V:**
25 **Interference With The Organization**
26 **Of The Southwest Aircraft Mechanics, AMFA,**
27 **In Violation Of The Railway Labor Act, 45 U.S.C. § 152, Fourth.**

28 159. The plaintiff repeats and realleges paragraphs 1 through 158 of the
Complaint as if fully set forth herein.

160. The Railway Labor Act at 45 U.S.C. § 152, Fourth, entitled "Organization

1 and collective bargaining; freedom from interference by carrier; assistance in organizing
2 or maintaining organization by carrier forbidden; deduction of dues from wages
3 forbidden”, provides in whole that [with emphasis added]:

4 Employees shall have the right to organize and bargain collectively through
5 representatives of their own choosing. The majority of any craft or class of
6 employees shall have the right to determine who shall be the representative
7 of the craft or class for the purposes of this chapter. No carrier, its officers,
8 or agents shall deny or in any way question the right of its employees to
9 join, organize, or assist in organizing the labor organization of their choice,
10 **and it shall be unlawful for any carrier to interfere in any way with the**
11 **organization of its employees**, or to use the funds of the carrier in
12 maintaining or assisting or contributing to any labor organization, labor
13 representative, or other agency of collective bargaining, or in performing
14 any work therefor, or to influence or coerce employees in an effort to
15 induce them to join or remain or not to join or remain members of any labor
16 organization, or to deduct from the wages of employees any dues, fees,
17 assessments, or other contributions payable to labor organizations, or to
18 collect or to assist in the collection of any such dues, fees, assessments, or
19 other contributions: *Provided*, That nothing in this chapter shall be
20 construed to prohibit a carrier from permitting an employee, individually,
21 or local representatives of employees from conferring with management
22 during working hours without loss of time, or to prohibit a carrier from
23 furnishing free transportation to its employees while engaged in the
24 business of a labor organization.

18 161. As previously alleged, AMFA is the organization of the craft or class of
19 Mechanics and Related Employees of Southwest Airlines Company whom they chose.

20 162. By the following acts, including as previously alleged herein, occurring
21 within the last six months, albeit as part of a continuation of earlier conduct, and by
22 cumulative effect, defendant has interfered with the organization of its craft or class of
23 Mechanics and Related Employees of Southwest Airlines Company, AMFA, in violation
24 of 45 U.S.C. § 152, Fourth: i) bad faith bargaining, ii) direct dealing, iii) the
25 establishment of on-line resources to substitute and replace AMFA.

26 163. By and through these acts defendant has and remains in violation of 45
27 U.S.C. § 152, Fourth.
28

1 164. By and through these acts by defendant, AMFA and its members have been
2 harmed and will suffer irreparable harm if injunctive relief is not provided because there
3 is no other avenue available to resolve this dispute and to avoid industrial strife.

4 165. Further, 28 U.S.C. § 2201 provides that:

5 [i]n the case of actual controversy within its jurisdiction any court of the
6 United States, upon the filing of an appropriate pleading, may declare the
7 rights and other legal relations of any interested party seeking such
8 declaration, whether or not further relief is or could be sought. Any such
9 declaration shall have the force and effect of a final judgment or decree and
10 shall be reviewable as such.

11 166. AMFA seeks a declaration pursuant to 28 U.S.C. § 2201 that defendant's
12 conduct constitutes a violation of 45 U.S.C. § 152, Fourth.

13 167. AMFA is aggrieved of the violations of law alleged herein. Therefore,
14 unless the Court issues declaratory relief as requested, AMFA will be irreparably injured.
15 AMFA has no prompt, adequate and effective remedy at law. AMFA will be successful
16 on the merits of this action.

17 **VI. PRAYER FOR RELIEF.**

18 WHEREFORE, plaintiff respectfully requests that this Court grant the following
19 relief:

- 20 i) A declaratory judgment pursuant to 28 U.S.C. § 2201 declaring that the actions of
21 defendant complained of herein constitute a violation of the Railway Labor Act,
22 45 U.S.C. § 151, *et seq.*, as alleged herein;
- 23 ii) An order enjoining defendant as follows:
 - 24 a) To henceforth engage in good faith bargaining to make all reasonable
25 efforts to make and maintain agreements over pay, rule and working
26 conditions; and
 - 27 b) To cease and desist any direct polling in any form of AMFA members
28 about mandatory subjects of bargaining;
 - c) To cease and desist holding any direct meetings with members of AMFA

- 1 (singly or collectively) about mandatory subjects of bargaining unless also
2 attended by AMFA representatives;
- 3 d) To cease and desist direct emailing or corresponding or televising to or with
4 AMFA members about mandatory subjects of bargaining or disparaging
5 AMFA representatives unless confined only to explaining Company
6 proposals;
- 7 iii) An order enjoining defendant from engaging in any form of self-help following
8 release by the NMB, pursuant to the “unclean hands’ doctrine”, or if this Court
9 subsequently determines that defendant is in contempt of any part of this Order;
- 10 iv) An order awarding to AMFA the costs and reasonable attorney’s fees of this
11 action;
- 12 v) Any other relief as this Court may determine is just and proper.

13
14 **VII. JURY TRIAL DEMANDED.**

15 Pursuant to Fed. R. Civ. P. 38, plaintiff hereby demands a trial by jury of all issues
16 so triable by jury.

17 RESPECTFULLY SUBMITTED this 16th day of December, 2016,

18
19 LUBIN & ENOCH, P.C.
20 SEHAM, SEHAM, MELTZ & PETERSEN, LLP

21 /s/ Nicholas J. Enoch
22 Nicholas J. Enoch, Esq.
23 Attorneys for Plaintiff AMFA

24 **CERTIFICATE OF SERVICE**

25 I hereby certify that on the 16th day of December, 2016, I electronically transmitted the
26 attached Complaint to the U.S. District Court’s office using the CM/ECF System for
27 filing.

28 /s/ Cristina Gallardo-Sanidad