

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 11 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

THOMAS RACHFORD; WENDY
ALBRIGHT; MARK LUTHI; NEAL
GALLAGHER,

Plaintiffs - Appellants,

v.

AIR LINE PILOTS ASSOCIATION,
INTERNATIONAL; EMERY
WORLDWIDE AIRLINES INC., a
Nevada corporation; EMERY AIR
FREIGHT CORPORATION, a Delaware
corporation aka Menlo Worldwide, dba
Emery Freight Forwarding, Inc.; CNF,
INC.,

Defendants - Appellees.

No. 06-16938

D.C. No. CV-03-03618-PJH

ORDER AMENDING
MEMORANDUM DISPOSITION

Before: SCHROEDER, J. WALKER*, and N.R. SMITH, Circuit Judges.

The memorandum disposition filed on July 2, 2008, is amended as follows.

Add a new paragraph and mandate as follows:

On December 7, 2006, plaintiffs filed an “Unopposed Motion to Dismiss Appeal of Judgment Dismissing the First Claim for Relief as

* The Honorable John M. Walker, Jr., Senior Circuit Judge for the United States Court of Appeals for the Second Circuit, sitting by designation.

Moot, and to Vacate that Judgment and Remand to Dismiss that Claim Without Prejudice.”

The appeal from the judgment dismissing the first claim for relief is **DISMISSED**. The judgment dismissing the first claim for relief is **VACATED** and the case is **REMANDED** with instructions to dismiss that claim without prejudice. The judgment dismissing the remaining claims is **AFFIRMED**.

AFFIRMED in part; **DISMISSED, VACATED, and REMANDED** in part.

Plaintiffs’ -Appellants’ “Unopposed Motion to Dismiss Appeal of Judgment Dismissing the First Claim for Relief as Moot, and to Vacate that Judgment and Remand to Dismiss that Claim Without Prejudice” is otherwise denied as moot.

The panel has voted to deny the petition for panel rehearing and to deny the petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are denied. No future petitions for panel rehearing or rehearing en banc will be entertained.