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9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF ARIZONA**

11 Don ADDINGTON; John BOSTIC; Mark
BURMAN; Afshin IRANPOUR; Roger
12 VELEZ; and Steve WARGOCKI,

13 Plaintiffs,

14 vs.

15 US AIRLINE PILOTS ASSOCIATION,
US AIRWAYS, INC.,
16 Defendants,

17 Don ADDINGTON; John BOSTIC; Mark
BURMAN; Afshin IRANPOUR; Roger
18 VELEZ; and Steve WARGOCKI,

19 Plaintiffs,

20 vs.

21 Steven H. BRADFORD, Paul J. DIORIO,
Robert, A. FREAR, Mark. W. KING,
22 Douglas L. MOWERY, and John A.
STEPHAN,
23

Defendants.

Case No. 2:08-cv-1633-PHX-NVW
(Consolidated)

**DEFENDANT USAPA'S
MOTION TO STRIKE PLAINTIFFS'
REPLY IN SUPPORT OF THEIR
MOTION FOR CLASS
CERTIFICATION (Docket No. 214)**

Case No. 2:08-cv-1728-PHX-NVW

1 TO : PLAINTIFFS, AND ALL PARTIES, AND THEIR ATTORNEYS OF RECORD.

2 **NOTICE**

3 PLEASE TAKE NOTICE that Defendant US Airline Pilots Association
4 (“USAPA”) will move this Court for an order striking Docket No. 214, i.e. Plaintiffs’
5 “Reply In Support of Plaintiff’s Motion for Class Certification” together with all of its
6 exhibits and attachments, pursuant to LRCiv 7.2(m)(1), at a time as soon as the Court
7 shall consider the motion without oral argument or if with oral argument, then upon a
8 date set by the Court for hearing.

9 **MOTION**

10 COMES NOW Defendant USAPA and hereby moves this Court for an order
11 striking Docket No. 214, i.e. Plaintiffs’ “Reply In Support of Plaintiff’s Motion for Class
12 Certification” together with all its exhibits and attachments, pursuant to LRCiv 7.2(m)(1).

13 In support of its motion USAPA states the following:

14 On December 15, 2008, the Court ordered a briefing schedule on the issue of class
15 certification (Dkt. No. 116). The Court originally ordered Plaintiffs to file “whatever
16 motions for class certification they wish by December 29, 2008 and that Defendants file
17 a Response by January 16, 2009 and Plaintiffs file a Reply by January 23, 2009.” (Id.).
18 Plaintiffs were given one week, five (5) business days to file a Reply to Defendants’
19 class action Response. On January 5, 2009, Defendant USAPA filed a motion seeking
20 an extension of time to file its Response to Plaintiffs’ Motion for Class Certification.
21 (Dkt. Nos. 131-132). Plaintiffs, in opposing USAPA’s Motion for Extension, did not
22
23

1 request additional time to file their Reply from the original deadlines imposed by the
2 Court's December 15 Order. (Dkt. No. 142). In fact, Plaintiffs' argued that USAPA was
3 requesting an extension solely for the purposes of delay. On January 15, 2009, the
4 Court granted USAPA's Motion for Extension, and USAPA was ordered to file its
5 Response no later than February 17, 2009. (Dkt. No. 155). USAPA complied with this
6 Order and filed its Response in Opposition on February 17, 2009. The Court's Order of
7 January 15 did not alter the Plaintiffs' time to file a Reply set forth by its original Order
8 of December 15 (Dkt. No. 116). Therefore, Plaintiffs Reply was due five (5) business
9 days following the filing of USAPA's Response in Opposition – February 24, 2009.
10

11 However, in an Order dated February 23, 2009, the Court stated that the "briefing
12 on [the issue of class certification] is scheduled to conclude on February 26, 2009."
13 (Dkt. No. 210 at 1). Plaintiffs subsequently filed their Reply in Support of their Motion
14 for Class Certification on February 27, 2009, outside of the time limits proscribed by
15 Order of this Court. Plaintiffs' failure to comply with this filing deadline has delayed
16 USAPA's ability to comply with the Court's Order relating to submission of a Proposed
17 Pre-Trial Order relating to an evidentiary class certification hearing.¹
18

19 WHEREFORE, Defendant USAPA respectfully moves that its motion to strike
20 Docket No. 214, i.e. Plaintiffs' "Reply In Support of Plaintiff's Motion for Class
21 Certification" together with all its exhibits and attachments be GRANTED.
22
23

1 Respectfully Submitted,

2 Dated: February 27, 2009 By:

/s/ Nicholas Paul Granath, Esq.

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21 ATTORNEYS FOR DEFENDANT USAPA
22

23 ¹ USAPA has complied with all filing deadlines imposed by the Court and the applicable Local Rules, notwithstanding the burden of meeting a compressed schedule.

1 **CERTIFICATE OF SERVICE**

2
3 This is to certify that on the date indicated herein below a true and accurate copy
4 of the foregoing pleading, *to wit*,

- 5
- 6 • Defendant USAPA’S Motion To Strike Plaintiffs’ Reply In Support Of Their
7 Motion For Class Certification (Docket No. 214)
 - 8 • Certificate of Service

9 were electronically filed with the Clerk of Court using the CM/ECF system, which will
10 send notification of such filing to all admitted counsel, including:

11

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Kelly J. Flood	Katie Brown	
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13 Further, I certify that paper hard copies shall be provided to The Honorable Neil
14 V. Wake, District Court Judge, 401 W. Washington Street, SPC 52, Phoenix, AZ 85003.

15 On February 27, 2009, by:

16 */s/ Nicholas P. Granath*