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

10 Don ADDINGTON, *et al.*,
11 *Plaintiffs*,
12 vs.
13 US AIRLINE PILOTS ASSN., and
14 US AIRWAYS, INC.,
15 *Defendants.*

CONSOLIDATED CASES NO.
2:08-CV-1633-PHX-NVW;
2:08-CV-1728-PHX-NVW

**MOTION TO EXTEND, BY ONE DAY,
THE TIME TO FILE PLAINTIFFS'**

16 Don ADDINGTON, *et al.*,
17 *Plaintiffs*,
18 vs.
19 Steven H. BRADFORD, *et al.*,
20 *Defendants.*

**REPLY IN SUPPORT OF
PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION**

21 Plaintiffs file this motion asking the Court to make an order extending
22 the time to file their *Reply in Support of Plaintiffs' Motion for Class*
23 *Certification* (doc. 214) by one day. Plaintiffs inadvertently filed this Reply a
24 day late, on February 27, 2009.

25 On February 20, 2009, the Court held a telephonic conference to address,
26 among other things, that on February 16, 2009, without leave of Court,
27 USAPA filed two motions to compel discovery supported by sixteen additional
28 documents (declarations and exhibits). (Docs. 187-193.)

1 In its Order arising from that hearing, the Court stated that the “briefing
2 on [the issue of class certification] is scheduled to conclude on February 26,
3 2009.” (*Order*, 1 (Feb. 23, 2009) (doc. 210 at 1).) On February 25, 2009,
4 Counsel received the hearing transcript, which showed the Court “ordered
5 that the parties may file by a week from today [what would be February 27,
6 2009] brief statements of dispositive or partially dispositive motions they
7 would like leave to bring.” (RT at 42:22-25.)

8 Counsel inadvertently conflated the two due dates, thinking that the date
9 to file statements of dispositive motions (“one week from today,” a Friday)
10 was the same as the date to file the class certification Reply (“February 26,
11 2009”). As a result, Counsel filed both on Friday, February 27, 2009—a day
12 late for the Reply.

13 On February 27, 2009, within 57 minutes of Plaintiffs’ filing their Reply,
14 USAPA filed a motion to strike, wherein it argued that Plaintiffs’ filing one
15 day late “delayed USAPA’s ability to comply with the Court’s Order relating
16 to submission of a Proposed Pre-Trial Order relating to an evidentiary class
17 certification hearing.” (*Mot. to Strike*, 2:16-17 (Feb. 27, 2009) (doc. 217).) In
18 regard to USAPA’s claim of prejudice, “[s]imply saying so does not make it
19 so.” *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1129 (9th Cir. 2002). Given
20 that a reply is limited to issues raised in a response, how could there be
21 prejudice?

22 In effect, USAPA asks this Court to find that the interests of justice
23 would best be served if the Court read the its 18 page memorandum, five
24 declarations, and thirty-two exhibits (docs. 195-201) without the benefit of
25 Plaintiffs’ Reply. When faced with similar arguments to disregard one day
26 late filings, other courts have declined to do so on the basis of lack of
27 prejudice. *Green v. Baca*, 306 F.Supp.2d 903, 913 (C.D. Cal. 2004); *In re*
28 *Mallas Enterprises, Inc.*, 37 B.R. 964, 966-67 (9th Cir. BAP 1984); *Organic*

1 *Chemical Site PRP Group v. Total Petroleum Inc.*, 58 F. Supp. 2d 755, 759
2 (W.D. Mich. 1999) (calling such motions “bickering”); *see also Del Campo v.*
3 *American Corrective Counseling Services, Inc.*, 2007 WL 3306496, 5 (N.D.
4 Cal. 2007) (no sanction for filing two days late). Plaintiffs ask this Court to
5 respond along similar lines.

6 Plaintiffs intended no disrespect by, and sought no advantage from, filing
7 their Reply one day late. Rather, as explained above, this was the
8 inadvertent result of Counsel conflating two deadlines, one that was
9 expressed as a numerical date and the other that was expressed as a day of
10 the week. Sanction is not warranted for such errors. Even if the Court were
11 to disagree, it ought not to strike Plaintiffs’ Reply because the interest in
12 proper class certification surely outweighs any other.

13 Plaintiffs, therefore, respectfully ask the Court to grant this motion to
14 extend the time to file their *Reply in Support of Plaintiffs’ Motion for Class*
15 *Certification* (doc. 214) by one day to February 27, 2009.

16 Dated this 1st day of March, 2009.

17 **Polsinelli Shughart, P.C.**

18 */s/ Andrew S. Jacob*
19 By: _____

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27 **CERTIFICATE OF SERVICE**

28 I hereby certify that on March 1st, 2009, I electronically transmitted the
foregoing document to the U.S. District Court Clerk’s Office by using the
CM/ECF System for filing and transmittal of a Notice of Electronic Filing.

s/ Andrew S. Jacob