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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 ASS'N, *et al.*,
14 Defendants.

Case No. 2:08-CV-1633-PHX-NVW
Case No. 2:08-CV-1728-PHX-NVW
(Consolidated)

**PLAINTIFFS' NOTICE OF
SUPPLEMENTAL AUTHORITY
ON REQUIREMENT TO PLEAD
JOINT AND SEVERAL LIABILITY**

15
16 Don ADDINGTON, *et al.*,
17 Plaintiffs,
18 vs.
19 Steven H. BRADFORD, *et al.*,
20 Defendants.

21 In response to Defendant USAPA's assertion that the rules required
22 Plaintiffs to expressly plead joint and several liability, Plaintiffs provide
23 authority for the proposition that the rules do not require express pleading
24 of joint and several liability.

25 (1) In *United States v. Walton*, 909 F.2d 915 (6th Cir. 1990), the court
26 found "no showing of prejudice to the defendants because joint and several
27 liability was not requested in the government's initial pleadings." *Id.* at
28 927, n.11.

1 (2) In *Tcherepnin v. Franz*, 424 F.Supp. 778 (D.C.Ill. 1976), the court
2 held that plaintiff's "failure to plead joint and several liability in haec verba
3 did not preclude recovery under this theory." *Id.* at 781 (internal quotation
4 marks omitted); *see also In re Bennett*, 154 B.R. 140, 156 (Bankr. N.D.N.Y.
5 1992) (recognizing "that joint and several liability may be imposed without
6 being pled").

7 (3) In *Cayuga Indian Nation of New York v. Pataki*, 79 F.Supp.2d 66
8 (N.D.N.Y. 1999), the court declined to "disregard the United States' joint
9 and several liability argument due to this lack of ... any specific allegations
10 as to joint and several liability." *Id.* at 70, n.7.

11 (4) Finally, in *Gulf Ins. Co. v. Cottone*, 148 P.3d 814 (N.M. App. 2006),
12 held that Gulf did not waive joint and several liability because it "did not
13 plead joint and several liability in either its original or amended complaint,
14 and because Gulf in fact denied, in a letter to defense counsel, that it was
15 relying on a theory of joint and several liability." *Id.* at 819.

16 Dated this 11th day of June, 2009.

17 **POLSINELLI SHUGHART, PC**

18 By /s/ Andrew S. Jacob

19 Marty Harper
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25 **CERTIFICATE OF SERVICE**

26 I hereby certify that on this 11th day of June 2009, I electronically
27 transmitted the foregoing document to the U.S. District Court Clerk's Office
28 by using the ECF System for filing and transmittal.

By /s/ Andrew S. Jacob