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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' MOTION TO STRIKE:

***DEFENDANT USAPA'S MOTION
FOR LEAVE TO SUPPLEMENT THE
RECORD IN SUPPORT OF ITS
MOTION FOR SUMMARY
JUDGMENT ON PLAINTIFFS'
DAMAGES CLAIMS (DOC. 540)***

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

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24 Plaintiffs move to strike *Defendant USAPA's Motion for Leave to*
25 *Supplement the Record in Support of its Motion for Summary Judgment on*
26 *Plaintiffs' Damages Claims* (doc. 540). The Court should grant this motion
27
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Motion to Strike

1 because the Rules make no provision for a filing such as this without leave
2 of the Court (and none was obtained).

3 Regardless that USAPA styles this filing as a motion for leave to file, it
4 is a brief, a six-page brief that argues the merits of USAPA's position on
5 summary judgment. Filing a third brief on the merits is contrary to LRCiv.
6 7.2(d) (providing for responsive and reply memoranda only) and is grounds
7 to strike. *See Productive People, LLC v. Ives Design*, 2009 WL 1749751, *3,
8 n.6 (D. Ariz. June 18, 2009).

9 The Ives Defendants have also filed an "Opposition to Plaintiff's
10 Reply," which actually constitutes a surreply for which the local
11 rules make no provision. Plaintiff has filed a motion to strike this
document and that request will be granted.

12 *Id.* (citations omitted); *see also Fidelity Nat. Financial, Inc. v. Friedman*, 2009
13 WL 890471, *6 (D. Ariz. Mar. 31, 2009) (striking a document that "despite its
14 title is, in effect, a prohibited 'reply to a reply,' which the court will not
15 consider").

16 Moreover, in the context of summary judgment, the Rules "do not
17 permit the moving party to file a second statement of facts." *E.E.O.C. v.*
18 *TIN Inc.*, 2008 WL 2323913, *1 (D. Ariz. Jun. 2, 2008). They surely do not
19 allow the moving party to submit additional evidence without a statement of
20 facts.

21 As moving party, USAPA must show that there is no need "for a trier of
22 fact to weigh conflicting evidence, assuming the nonmoving party's evidence
23 is true." *Id.* If did not make this showing by its Reply brief, it surely cannot
24 do so with a sur-reply that adds new evidence and argument. *See id.*
25 Plaintiffs, therefore, respectfully ask the Court to strike document 540,
26 "*Defendant USAPA's Motion for Leave to Supplement the Record in Support*
27 *of its Motion for Summary Judgment on Plaintiffs' Damages Claims.*"

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Dated this 30th day of June, 2009.

POLSINELLI SHUGHART, PC

By /s/ Andrew S. Jacob
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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of June 2009, I electronically transmitted the foregoing document to the U.S. District Court Clerk's Office by using the ECF System for filing and transmittal.

By /s/ Andrew S. Jacob