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

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

12 Plaintiffs,

13 vs.

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

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

**DEFENDANT USAPA’S FIRST  
NOTICE AND MOTION TO EXTEND  
TIME TO ANSWER PLAINTIFFS’  
SECOND AMENDED COMPLAINT**

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

18 Plaintiffs,

19 vs.

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

22 Defendants.

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

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

2 **NOTICE.**

3 PLEASE TAKE NOTICE that Defendant US Airline Pilots Association  
4 (“USAPA” or Defendant) will move this Court to be heard without oral argument, for  
5 an order extending USAPA’s time to answer Plaintiffs’ Second Amended Complaint  
6 until ten (10) days following the Court’s disposition of USAPA’s forthcoming Rule 12  
7 motion to dismiss.

8 **MOTION.**

9 COMES NOW Defendant to move this Court, pursuant to LR 7.3, for an order  
10 extending USAPA’s time to answer Plaintiffs’ Second Amended Complaint until ten  
11 (10) days following the Court’s disposition of USAPA’s forthcoming Rule 12 motion to  
12 dismiss.

13 This motion is based on this Notice of Motion, the grounds set forth herein, and  
14 all pleadings, records and papers on file in this action. USAPA has conferred and  
15 Plaintiffs do not consent to this motion. A proposed order is separately submitted.

16 **GROUND.**

17 First, this Court held oral argument on USAPA’s motion to stay on August 20,  
18 2009, and thereafter entered the following relevant deadlines related to the damage  
19 phase of this litigation (*See* Doc. # 606).

- 20
- Plaintiffs to file their Amended Complaint regarding damages no later  
21 than August 31, 2009.
- 22

- Defendant to file any motion challenging Plaintiffs' Amended Complaint by no later than October 23, 2009.

Second, USAPA intends to file a motion to dismiss Plaintiffs' Second Amended Complaint pursuant to Fed. R. Civ. P. 12, and has informed the Court and Plaintiffs of such on the record. (Tr. 8/20/09 at 19:1-5).

Third, however, pursuant to Fed. R. Civ. P. 15(a)(3), "unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 10 days after service of the amended pleading, whichever is later." In this circumstance, it is the ten (10) day response that would apply unless the Court now orders an extended time.

Fourth, the Court should order an extended time. Under normal circumstances, the filing of a Rule 12 motion tolls the time to answer: "If the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 10 days after notice of the court's action." Fed. R. Civ. P. 12(a)(4). But here the Court has given USAPA until October 23 to file a Rule 12 motion for the reason that the "intense time" needed to work on the expedited appeal "would not be interfered with." (Tr. 8/20/09 at 23:10-11). Under the same consideration, USAPA respectfully requests that the time to answer Plaintiffs' forthcoming Second Amended Complaint be extended, until ten (10) days following the Court's disposition of USAPA's Rule 12 motion, if that motion is denied. For the same reason the Court set the schedule it has, such an extension will alleviate any interference with the expedited appellate briefing, and if the Rule 12 motion is granted, will have spared USAPA from expending its resources on

1 unnecessary work.

2 Fifth, this motion is necessary because upon conferring by phone and email on  
3 August 26, Plaintiffs unreasonably refused to stipulate to an extension, although they  
4 confirmed their intent to amend on August 31. Plaintiffs oppose the motion, apparently,  
5 arguing that they will be harmed by this small delay. But the Court has already ordered  
6 a “stay of discovery on the damage claims until it has ruled on the motions challenging  
7 the Amended Complaint.” (Doc. # 606). Therefore, this extension request will not  
8 delay the proceedings any more than has already been imposed by this Court. Thus, the  
9 claim that USAPA is delaying simply for sake of delay is misplaced.

10 In support of its motion Defendant relies on all the pleadings, papers, and other  
11 records on file, the record at trial, and any oral argument had.

12 **REQUESTED RELIEF.**

13 Defendant requests this Court enter an order granting USAPA’s time to answer  
14 Plaintiffs’ Second Amended Complaint until ten (10) days following the Court’s  
15 disposition of USAPA’s forthcoming Rule 12 motion to dismiss.

16 A proposed order is separately submitted.

1 Respectfully Submitted,

2 Dated: August 27, 2009

By: /s/ Nicholas P. Granath, Esq.

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1 **CERTIFICATE OF SERVICE**

2 This is to certify that on the date indicated herein below true and accurate copies  
3 of the foregoing documents and their attachments, *to wit*,

- 4 • DEFENDANT USAPA’S FIRST NOTICE AND MOTION TO EXTEND TIME  
5 TO ANSWER PLAINTIFFS’ SECOND AMENDED COMPLAINT
- Proposed Order
  - Certificate of Service

6 were electronically filed with the Clerk of Court using the CM/ECF system, which  
7 will send notification of such filing to all admitted counsel who have registered with  
the ECF system, including but not limited, to:

8 Marty Harper	Don Stevens	Andrew S. Jacob
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9 Kelly J. Flood	Katie Brown	
KFlood@Polsinelli.com	KVBrown@Polsinelli.com	

10 Further, I certify that paper hard copies shall be provided to The Honorable Neil  
11 V. Wake, District Court Judge, 401 W. Washington Street, SPC 52, Phoenix, AZ 85003.

12 On August 27, 2009, by:

13 */s/ Nicholas P. Granath, Esq.*

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