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

11
12 Don Addington, an individual, *et al*,

13 Plaintiffs,

14 vs.

15 US Airline Pilots Association, *et al*,

16 Defendants.

Case No. 2:08-CV-01633-PHX-NVW

Case No. 2:10-CV-01570-PHX-ROS

**DEFENDANT USAPA'S
OPPOSITION TO PLAINTIFFS'
MOTION FOR LEAVE TO FILE
SUPPLEMENTAL BRIEF**

1 ARGUMENT

2 Defendant USAPA files this brief in opposition to “Plaintiffs’ Motion For Leave
3 To File Supplemental Briefing On The Issue Of Strict Compliance With Local Rules”
4 (Doc. 659) on the following grounds:

5 First, **plaintiffs already had ample opportunity** as the movant to both research
6 and supply the authorities they now offer – and as the Court indicated in oral argument on
7 another “surprise” argument advanced by plaintiffs – they should have briefed that.
8 USAPA clearly presented the argument, in its opposition to transfer, that Local Rule 42.1
9 requires two or more “pending” cases. (Doc. # 648 at 6). Plaintiffs had seven days after
10 service of USAPA’s opposition to analyze USAPA’s argument, research relevant
11 authority, and file an eleven page reply brief. Plaintiffs chose instead to file a six page
12 reply two days after USAPA’s opposition, and there was no mention of the argument
13 they now wish to present to the Court via “supplemental briefing.” Plaintiffs apparently
14 opted to file a quick reply as opposed to a thorough one.

15
16 Instead of researching and briefing the authority they now seek leave to provide
17 *after* oral argument, plaintiffs instead mis-cited a docket, which provided no support for
18 their position. (Doc. # 649 at 2-4).¹ Plaintiffs’ motion for leave to file a supplemental
19 brief is akin to a request by a party to file a sur-reply, which the local rules in the District
20 of Arizona do not authorize absent a “compelling reason.” *See Kurchack v. Life Ins. Co.*
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23 ¹ Plaintiffs noticeably relied upon an alleged “precedent” (i.e. *Navajo & Minority* cases)
that they failed to research adequately. That failure should not now be *rewarded* by a
second bite at the apple.

1 of *N. Am.*, 2010 U.S. Dist. LEXIS 75515 (D. Ariz. July 26, 2010) (denying motion for
2 leave to file sur reply noting that “Arizona Local Rule of Civil Procedure 7.2 generally
3 does not allow sur-replies ... [absent] a compelling reason”); *Silvas v. GMAC Mortgage,*
4 *LLC*, 2009 U.S. Dist. LEXIS 118854, at *7 (D. Ariz. Dec. 1, 2009) (*citing* L.R. Civ. P.
5 7.2) (“The Local Rules do not authorize filing a surreply.”).

6 Plaintiffs have not offered any reason, let alone a “compelling reason,” which
7 would warrant granting leave to file supplemental briefing on authority that could, in the
8 exercise of reasonable diligence, have been included in their original reply. *See Harshaw*
9 *v. Bethany Christian Services*, 2010 U.S. Dist. LEXIS 14699, at *4 (W.D. Mich. Feb. 19,
10 2010) (supplemental briefing proper only when “the party seeking to file the
11 supplemental brief has new authority or evidence that was not available to him in the
12 exercise of reasonable diligence when it filed the briefs allowed by the Rules.”). A
13 compelling reason necessary to file supplemental briefing cannot be established simply
14 because plaintiffs failed to adequately research and brief the issues when they filed their
15 initial briefs allowed by the Rules.

17 Second, the **authorities supplied offer nothing** to the legal analysis because
18 “strict” compliance is not the issue rather compliance *at all* is the issue. There is no
19 currently pending *Addington* case to transfer to, just as the Court noted in oral argument.
20 This Court has no jurisdiction under the Rule of the Mandate. Nothing in the lodged
21 brief changes this dispositive fact and that fact is all that is necessary to decide plaintiffs’
22
23

1 motion to transfer.²

2 Moreover, as the Court observed in oral argument, there are strong policy reasons
3 militating against judges ‘selecting’ their own cases and in favor of random selection, just
4 as has occurred here.

5 **CONCLUSION**

6 USAPA respectfully requests that plaintiffs’ motion for leave to file supplemental
7 briefing should be denied. In the event that the Court grants plaintiffs’ motion and allows
8 the lodged brief to be filed, USAPA respectfully requests the opportunity and adequate
9 time to substantively respond to that filing.
10

11 Respectfully Submitted,

12 Dated: October 13, 2010

13 By: /s/Nicholas P. Granath

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20 ² It makes no difference that plaintiffs’ motion happened to be filed prior to formal
21 issuance of the Ninth Circuit Mandate. *Prior* to issuance of the Mandate, this Court was
22 divested of jurisdiction by reason of the pending appeal. *Thorp v. Thorp*, 655 F.2d 997,
23 998 (9th Cir. 1981) (“district court is divested of authority to proceed ... until the
mandate has been issued by the court of appeals”). *After* issuance of the Mandate, the
Court was required to immediately dismiss for lack of subject matter jurisdiction.
Invention Submission Corp. v. Dudas, 413 F.3d 411, 415 (4th Cir. 2005) (“because our
order stated that the district court lacked jurisdiction, the court was not free to do
anything else but to dismiss the case”).

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CERTIFICATE OF SERVICE

I hereby certify that on this day of 13 October, 2010, I electronically transmitted the foregoing document, and its attachments, to the U.S District Court Clerk's Office using the ECF System for filing and transmittal.

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

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