

1 Marty Harper (#003416)
 2 mharper@polsinelli.com
 3 Kelly J. Flood (#019772)
 4 kflood@polsinelli.com
 5 Andrew S. Jacob (#22516)
 6 ajacob@polsinelli.com
 7 **POLSINELLI SHUGHART, P.C.**
 8 Security Title Plaza
 3636 N. Central Ave., Suite 1200
 Phoenix, AZ 85012
 Phone: (602) 650-2000
 Fax: (602) 264-7033
Attorneys for Plaintiffs

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

11 US AIRWAYS, INC., a Delaware
 corporation, *et al.*,
 12 *Plaintiff,*

13 vs.

14 Don ADDINGTON; John BOSTIC;
 15 Mark BURMAN; Afshin IRANPOUR;
 Roger VELEZ; and Steve
 16 WARGOCKI, on behalf of themselves
 and all other similarly-situated
 17 individuals,

18 and

19 US AIRLINE PILOTS ASS'N, an
 20 unincorporated association,

21 *Defendants..*

CASE NO. 2:10-cv-01570-PHX-ROS

**ADDINGTON PILOTS' RESPONSE IN
 OPPOSITION TO USAPA'S
 EMERGENCY MOTION TO STAY ALL
 FURTHER PROCEEDINGS**

22 Don ADDINGTON; John BOSTIC; Mark BURMAN; Afshin IRANPOUR;
 23 Roger VELE; and Steve WARGOCKI, on behalf of themselves and all other
 24 similarly-situated individuals, file this *Response in Opposition to USAPA's*
 25 *Emergency Motion to Stay All Further Proceedings*. The Court should deny
 26 this motion because: (1) it is an improper collateral attack intended to
 27 prevent Judge Wake from addressing *Plaintiffs' Motion to Transfer Related*
 28 *Case, Pursuant to LRCIV 42.1* (doc. # 642), which was filed in the *Addington*

1 case (08-cv-01633) three days before USAPA filed this motion to stay; and (2)
2 USAPA's arguments prove that this action is closely related to the *Addington*
3 case. If USAPA wants to stay consideration of the motion to transfer, it
4 should file in the *Addington* case because that is "the case with the lowest
5 case number." LRCiv 42.1. This response is supported by the Memorandum
6 of Points and Authorities that follows.

7 MEMORANDUM OF POINTS AND AUTHORITIES

8 As a general rule, "Federal courts routinely apply law-of-the-case
9 principles to transfer decisions of coordinate courts." *Christianson v. Colt*
10 *Industries Operating Corp.*, 486 U.S. 800, 816 (1988). A motion to transfer a
11 related case should be heard and decided by the District Judge to whom "the
12 case with the lowest case number [is] assigned." LRCiv 42.1. Asking this
13 Court to stay this matter before Judge Wakes rules on the motion to transfer
14 is tantamount, therefore, to asking this Court to preemptively abrogate law-
15 of-the-case principles. USAPA evidently makes this extraordinary request
16 because it is dissatisfied with Judge Wake. Indeed, this is at least the third
17 time that USAPA has shown overt hostility towards Judge Wake.¹

18 In addition to demonstrating hostility to Judge Wake, USAPA's motion
19 demonstrates that this case is quite closely related to the *Addington* case.
20 Although USAPA distorts much of the underlying factual and procedural
21

22 ¹ In its Opening Brief to the Ninth Circuit, USAPA argued that "[t]he
23 district court's statements and actions reflect both **hostility to USAPA** and
24 the judge's determination that his personal sense of what was
25 'honorable . . . ' " *Op. Br.* at 56 (emphasis added). At the conclusion of that
26 brief, USAPA asked, if the Ninth Circuit did not rule in its favor, that it
27 "order that the case be **reassigned to a new judge.**" *Id.* at 63 (emphasis
28 added). On November 2, 2009, while the injunction was on appeal, USAPA
took the extraordinary step of filing a motion to transfer venue to the District
of the District of Columbia, for plainly pretextual reasons. Doc. #622.

1 background in *Addington*, it nonetheless makes very clear that this case and
2 *Addington* have a substantial “overlap in issues” to the point that if they are
3 addressed in different courts there is a substantial risk of inconsistent
4 rulings. *Mot.* at 13:22; *id.* at 1:13-15.

5 Finally, it is entirely proper for this case to proceed on the merits,
6 whether before this Court or before Judge Wake. The fact that a petition for
7 certiorari will be filed is immaterial. As a rule, it is entirely proper for a
8 district court to consider issues that might be affected by a matter on
9 petition to the Supreme Court. In fact, the Supreme Court has gone so far as
10 to approve making a Rule 60(b) motion to reopen a judgment while a petition
11 for certiorari is pending. *See Standard Oil Co. of California v. United States*,
12 429 U.S. 17 (1976) (holding that “the district court may consider a motion to
13 vacate once the mandate has issued”). The Ninth Circuit explained that
14 *Standard Oil*: (1) holds “that, once the appellate mandate has issued, leave of
15 this court is not required for district court consideration of a Rule 60(b)
16 motion”; and (2) “preclude[s] the necessity of seeking leave of the Supreme
17 Court” while a petition for certiorari is pending. *Gould v. Mutual Life Ins. Co.*
18 *of New York*, 790 F.2d 769, 772 -773 (9th Cir. 1986). Surely, if a Rule 60(b)
19 motion is proper, a LRCiv 42.1 motion to transfer is proper.

20 In short, USAPA makes an improper motion, for improper reasons,
21 based on misconstrued authority. This Court, therefore, should deny relief.

22 Dated this 6th day of August, 2010.

23 **POLSINELLI SHUGHART, PC**

24 By /s/ Andrew S. Jacob

25 Marty Harper

26 Kelly J. Flood

27 Andrew S. Jacob

3636 N. Central Ave., Suite 1200

Phoenix, AZ 85012

Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of August 2010, 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