

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 Katherine V. Brown (#26546)
8 kvbrown@polsinelli.com
9 **POLSINELLI SHUGHART, P.C.**
10 Security Title Plaza
11 3636 N. Central Ave., Suite 1200
12 Phoenix, AZ 85012
13 Phone: (602) 650-2000
14 Fax: (602) 264-7033
15 *Attorneys for Plaintiffs*

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

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

14 *Plaintiff,*

15 vs.

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

22 and

23 US AIRLINE PILOTS ASS'N, an
24 unincorporated association,

25 *Defendants..*

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

**ADDINGTON PILOTS' LRCIV. 7.2(e)
MOTION TO STRIKE "USAPA'S
MEMORANDUM OF LAW IN SUPPORT
OF DEFENDANT USAPA'S RULE 12(B)
MOTION TO DISMISS" (DOC # 43).**

26 Don ADDINGTON; John BOSTIC; Mark BURMAN; Afshin IRANPOUR;
27 Roger VELE; and Steve WARGOCKI, on behalf of themselves and all other
28 similarly-situated individuals, file this *LRCiv. 7.2(e) Motion to Strike "USAPA's
Memorandum of Law in Support of Defendant USAPA's Rule 12(b) Motion to
Dismiss" (Doc # 43)*. The Court should strike this filing and/or dispose of the
motion summarily because, in flagrant violation of this Court's Order (Doc.

1 #42) USAPA filed a thirty-eight (38) page long memorandum. This response
2 is supported by the Memorandum of Points and Authorities that follows.

3 MEMORANDUM OF POINTS AND AUTHORITIES

4 Local Rule 7.2(e) provides that “[u]nless otherwise permitted by the
5 Court, a motion including its supporting memorandum, and the response
6 including its supporting memorandum, each shall not exceed seventeen (17)
7 pages, exclusive of attachments and any required statement of facts.” As an
8 exhibit to its motion for leave to file an over-length brief (Doc. #37), USAPA
9 lodged a proposed brief of sixty-eight (68) pages (Doc. #38). Eighteen (18)
10 pages of this brief were an unpublished decision from the Southern District
11 of New York that can be disregarded. Fifty pages, however, were
12 memorandum. These fifty (50) pages included thirteen (13) pages that were
13 entitled “Facts” and twenty-six (26) pages (plus two lines) that were entitled
14 “Argument.”

15 The Court granted USAPA’s motion only in part, ordering: “Defendant
16 USAPA may file a brief of not more than 25 pages in support of its Rule 12(b)
17 Motion to Dismiss.” Doc. #42. In violation of this Order, USAPA filed a thirty-
18 eight (38) page long memorandum. Doc. #43. This brief again has thirteen
19 (13) pages entitled “Facts.” It has only one page less “Argument” –shortened
20 from twenty-six (26) to twenty-five (25) pages. In other words, in response to
21 the Court’s Order, USAPA merely deleted **one** page. Not counting tables of
22 contents and authorities, its memorandum went from thirty-nine (39) pages
23 to thirty-eight (38) pages.

24 *USAPA’s Memorandum of Law in Support of Defendant USAPA’s Rule*
25 *12(b) Motion to Dismiss* violates LRCiv 7.2(e) as modified by this Court’s
26 Order. Apparently, USAPA interprets LRCiv. 7.2(e) as limiting briefs to
27 seventeen (17) pages of “argument,” thereby permitting it to add as many
28 additional pages as it chooses as long as it characterizes such pages as

1 “facts.” Hence, it interprets this Court’s order to extending that seventeen
2 (17) page limit on “argument” to twenty-five (25) pages. USAPA interprets
3 this Court’s Order as permitting it to file twenty-five (25) pages of argument
4 with as many additional pages as it chooses as long as it characterizes such
5 pages as facts.

6 The plain language of LRCiv. 7.2(e), however, does not limit the length
7 of just the “argument” to seventeen (17) pages; it limits the length of the
8 entire brief to seventeen (17) pages. The rule excludes only attachments
9 (such as the unreported decision attached as an Addendum, doc. #43-1) and
10 any “required” statements of fact. If LRCiv. 7.2(e) operated as USAPA
11 contends—if it only applied to “argument”—the rule would have expressly
12 said so. It would have limited “argument” to seventeen (17) pages. If the
13 exception applied to any statement of facts, the rule would not have used
14 “required” to modify “statements of facts.” As the rule is written, the rule
15 does not operate the way that USAPA would have it.

16 Judge McNamee addressed this issue last year. *Campbell v. Fernando-*
17 *Sholes*, Order (CV-05-0880, filed Jan. 21, 2009) (copy attached as Exhibit
18 “A”). He held that the only statement of facts that is “required” by the rules is
19 “the separate statement of facts that must be submitted with a motion for
20 summary judgment. Consequently, he explained, a memorandum “length of
21 thirty-one pages, exceeds the permissible page length.” *Id.*

22 Judge McNamee was correct. Unlike summary judgment, the rules do
23 not require a statement of facts for a motion to dismiss. Because no
24 statement of facts is “required,” the pages of such statement are included
25 when counting pages toward the seventeen (17) page limit. Simply put, if
26 USAPA wishes to include a statement of facts in its motion to dismiss, it is
27 free to do so, but it must count those pages toward the page limit set by the
28 rules or by the Court.

1 Local Rule 7.2 provides a remedy for situations such as this. “If a
2 motion does not conform in all substantial respects with the requirements of
3 this Local Rule, . . . such non-compliance may be deemed a consent to the
4 denial . . . of the motion and the Court may dispose of the motion
5 summarily.” LRCiv. 7.2(i). In addition, a motion may be filed to strike a filing
6 or submission that is not authorized by a court rule or court order. LRCiv.
7 7.2(m)(1). Both of these provisions apply here. The Addington Pilots,
8 therefore, respectfully ask the Court—at a minimum—to strike USAPA’s
9 filing of Doc. #43.

10 Dated this 16th day of September, 2010.

11 **POLSINELLI SHUGHART, PC**

12 By /s/ Andrew S. Jacob
13 Marty Harper
14 Kelly J. Flood
15 Andrew S. Jacob
16 Katherine V. Brown
17 3636 N. Central Ave., Suite 1200
18 Phoenix, AZ 85012
19 *Attorneys for Plaintiffs*

20 **CERTIFICATE OF SERVICE**

21 I hereby certify that on this 16th day of September 2010, I electronically
22 transmitted the foregoing document to the U.S. District Court Clerk’s Office
23 by using the ECF System for filing and transmittal.

24 By /s/ Andrew S. Jacob
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