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

Don ADDINGTON; *et al.*,
Plaintiffs,
vs.
US AIRLINE PILOTS ASS'N, *et al.*,
Defendants.

CASE NO. 2:13-CV-00471-PGR

**MOTION TO STRIKE PORTIONS
OF USAPA'S MOTION REPLY IN
SUPPORT OF MOTION FOR
EXTENSION**

AND

**NOTICE OF PENDING DISMISSAL
OF USAPA'S ADVERSARY
PROCEEDING PENDING IN AMR
BANKRUPTCY**

Plaintiffs move to strike a portion of USAPA's reply in support of its motion for extension of time because it urges arguments not made in its initial motion and makes numerous misstatements regarding the effect of this action on the pending merger between U.S. Airways and American Airlines. Plaintiffs also provide notice to the Court of the pending dismissal of the adversary proceeding filed by USAPA in the American Airlines bankruptcy matter pending in the Southern District of New York.

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I. USAPA’S NEWLY RAISED ARGUMENTS SHOULD BE STRICKEN.

In its reply, USAPA argues for the first time that the Court should extend the time to answer Plaintiffs’ complaint and temporary restraining order because: (1) it filed an adversary action in the American Airlines Bankruptcy matter pending in the Southern District of New York seeking to enjoin this proceeding; (2) that Plaintiffs’ have not joined all indispensable parties; and (3) that Plaintiffs will not be prejudiced. The Court should strike all of these arguments from the record because they were not raised in USAPA’s initial motion and therefore are waived. *See, e.g. United States v. Chao Fan Xu*, 706 F.3d 965, 983 (9th Cir. 2013). In the alternative, if the Court determines to hear these arguments, it should consider Plaintiffs’ responses to these issues, as discussed below, as they all weigh heavily in denying USAPA’s motion.¹

A. Dismissal of Adversary Proceeding in American Airlines Bankruptcy

USAPA argues in its reply that this Court should grant it an extension of time to file an answer because “USAPA now believes that this matter should be properly litigated in the Southern District of New York” because the relief sought by Plaintiffs is “inextricably intertwined with the successful emergence of American Airlines from bankruptcy.” Doc. 25 at pg. 3-2-6. At a hearing held on April 3, 2013, American Airlines, its Creditors Committee and the bankruptcy judge overseeing American’s bankruptcy unanimously and without reservation disagreed with this contention. *See* Transcript of April 3, 2013 Omnibus Hearing in AMR Corporation, et al., attached to Motion for Entry of Default, Doc. 34 as Exhibit A. Indeed, American’s counsel stated “the litigation in Arizona is a dispute between two groups of employees who work for a different company.” *Id.* at 13:14-15. America’s creditors committee agreed with this position. *Id.* at 19:13-15. The Judge found that he did not have jurisdiction to hear a dispute between two groups of US Airways pilots. *Id.* at 24:8-10. To the extent that USAPA argues it needs an extension of time to answer this complaint because of the

¹ USAPA’s Motion may be moot by the fact that Plaintiffs have moved for default judgment because of USAPA’s failure to file a timely response to Plaintiffs’ complaint.

1 American bankruptcy, this was simply another example (in a very long list) of its
2 recalcitrance and delay tactics. It was obvious to all parties, except of course USAPA,
3 that there was no jurisdiction for this matter in the bankruptcy court overseeing
4 American's bankruptcy.

5 At the conclusion of the hearing, the parties all agreed that the adversary proceeding
6 would be dismissed without prejudice and Plaintiffs anticipate the filing of a stipulation
7 as soon as language can be agreed upon by all parties. Hopefully USAPA will quickly
8 agree to the language American proposes, but the chances of that happening are remote.

9 **B. Plaintiffs have joined all indispensable parties to this action.**

10 USAPA also argues, for the first time in its reply, that Plaintiffs have failed to join
11 indispensable parties under Rule 19 and that this is somehow grounds for an extension of
12 time to answer the Complaint or Temporary Restraining Order. Although USAPA does
13 not actually name the parties it alleges are indispensable, it is inferred that this is
14 American Airlines and/or its pilots union, America Airlines Pilots Association. Plaintiffs
15 disagree that these entities are indispensable parties to this action. Again, this a dispute
16 between two groups of pilots that work for US Airways regarding what list these parties
17 will use with American Airlines and APA for purposes of pilot integration. USAPA's
18 point is raised only to delay the litigation process here.

19 **C. Further delay is highly prejudicial to Plaintiffs.**

20 Finally, all parties (again other than USAPA) recognize that the resolution of this
21 issue is very important, not only for the parties to this dispute, but also for everyone
22 associated with the American Airlines bankruptcy and its pending merger with Defendant
23 US Airways. At the hearing involving American Airlines, all parties (other than
24 USAPA) agreed that this matter should be resolved on an "expedited" basis, which
25 Plaintiffs have always sought, so that the question of what pilot list needs to be used on
26 the US Airways side does not delay the final integration of the pilots to the pending
27 merger. *Id.* at 13:17-22 (American Airlines urging the parties to resolve this matter in a
28 "timely way so that the parties can proceed without any hindrance with seniority

1 integration.”); 17:12-17 (Judge Lane urging the parties to “get these matters resolved
2 promptly”); 18:5-9 (American Airlines Creditors Committee stating that to stop this
3 action is “counterproductive”). It is very apparent to everyone that although Plaintiffs are
4 attempting to move this matter forward, USAPA is dragging its feet, thereby seeking
5 more delay in getting the seniority issue resolved so that it later becomes a merger
6 problem. *Id.* at 35:3-25.

7 As further noted in the hearing in front of Judge Lane last week, this dispute is ripe
8 now. *Id.* at 21:3-11. USAPA states, again for the first time its reply, that there is no
9 prejudice to Plaintiffs by a delay. But that is not true. There is extreme prejudice, not
10 only to Plaintiffs, but to all with an interest in the pending merger the longer the seniority
11 list issue goes undecided. Delay only benefits USAPA. That is why it has tried
12 everything it can think of to delay this litigation and will continue to do everything it can
13 cause for further delay.

14 **II. CONCLUSION**

15 For the foregoing reasons, Plaintiffs respectfully ask that the Court deny the motion
16 to extend.

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18 Dated this 8th day of April, 2013.

19 **POLSINELLI SHUGHART, PC**

20 By /s/ Jennifer J. Axel

21 Marty Harper

22 Andrew S. Jacob

23 Jennifer Axel

Attorneys for Plaintiffs

24 **CERTIFICATE OF SERVICE**

25 I hereby certify that on this 8th day of April 2013, I electronically transmitted the
26 foregoing document to the U.S. District Court Clerk’s Office by using the ECF System
27 for filing and transmittal.

28 By /s/ Patricia Klank