

1 KENNETH R. O'BRIEN, Bar No. 072128  
 LITTLER MENDELSON  
 2 A Professional Corporation  
 2520 Venture Oaks Way, Suite 390  
 3 Sacramento, CA 95833.4227  
 Telephone: 916.830.7200

4 Attorneys for Defendant  
 5 AMERICAN AIRLINES LONG TERM  
 6 DISABILITY PLAN FOR FLIGHT  
 ATTENDANTS

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 8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA

10 BRIAN HAGERTY,  
 11 Plaintiff,  
 12 v.  
 13 AMERICAN AIRLINES LONG TERM  
 14 DISABILITY PLAN,  
 15 Defendant.

Case No. CV 09 3299 BZ

**DEFENDANT'S REQUEST TO STRIKE  
 PLAINTIFF'S PAPERS IN OPPOSITION  
 TO DEFENDANT'S MOTION FOR  
 SUMMARY JUDGMENT AND  
 ALTERNATIVE REQUEST FOR  
 ADDITIONAL TIME TO FILE REPLY  
 PAPERS IN SUPPORT OF MOTION FOR  
 SUMMARY JUDGMENT AND/OR  
 SUMMARY ADJUDICATION OF CLAIMS**

Date: August 31, 2010  
 Time: 1:30 p.m.  
 Ctrm: G, 15th Floor  
 Judge: Hon. Bernard Zimmerman

1 Pursuant to the Court's Order Scheduling Court Trial and Pretrial Matters, filed on  
2 February 2, 2010 (Dock. # 34), the last day for the hearing of dispositive motions was established as  
3 August 25, 2010. (Dock. # 34, p. 1.) Defendant's Motion for Summary Judgment was filed on  
4 July 21, 2010 noticing the hearing thereon for August 25, 2010. (Dock. # 37, p. 1.) On the same  
5 day, the Clerk issued its Clerk's Notice Continuing Hearing Date of Defendant's Motion for  
6 Summary Judgment to August 31, 2010, and specifically ordered in bold lettering that "the **briefing**  
7 **schedule shall remain the same.**"<sup>1</sup> Accordingly, the last date on which Plaintiff's Opposition to the  
8 Motion for Summary Judgment, if any, could have been filed was August 4, 2010. (Local Rule 7-  
9 3(a). Plaintiff failed to file any opposition on August 4, 2010.

10 Instead, Plaintiff filed his numerous and lengthy opposition papers on August 9, 2010  
11 after 5:00 p.m..

12 Under the current scheduling deadlines, Defendant's Reply Papers in support of its  
13 motion would have to be filed by Wednesday, August 11, 2010. Due to Plaintiff's late filing of his  
14 opposition papers, Defendant has been deprived of the full time it would otherwise have to analyze  
15 Plaintiff's Opposition and reply thereto. Accordingly, Defendant respectfully requests the Court to  
16 STRIKE Plaintiff's Opposition papers in their entirety, and ALTERNATIVELY requests that the  
17 Court grant Defendant additional time to file its Reply papers in support of the motion up through  
18 and including August 17, 2010, which will be two weeks before the Court's hearing on said motion.

19 Dated: August 10, 2010

Respectfully submitted,

21 /s/ Kenneth R. O'Brien  
22 KENNETH R. O'BRIEN  
23 LITTLER MENDELSON  
24 A Professional Corporation  
25 Attorneys for Defendant  
26 AMERICAN AIRLINES LONG TERM  
27 DISABILITY PLAN

28 <sup>1</sup> The Court's Local Rules specifically contemplate that an order continuing a hearing date on a motion may also retain the briefing schedule already in effect. (Local Rule 7-7(d).)

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**IT IS SO ORDERED.**

~~Plaintiff's Opposition Papers to Defendant's Motion for Summary Judgment are STRICKEN as untimely filed,~~

~~[ALTERNATIVELY]~~ Plaintiff's position is not well taken. In the interests of justice,

Defendant may have up through and including August 17, 2010 to file its Reply papers.

Dated: August 11, 2010



HON. BERNARD ZIMMERMAN  
UNITED STATES MAGISTRATE JUDGE