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for her First Amended Complaint in Intervention against Defendants states as follows:

1. Plaintiff **in intervention**, Debra Smith (hereinafter "Ms. Smith") is female and at all times relevant hereto was a resident of Bernalillo County, New Mexico. At all times pertinent herein, Ms. Smith was employed by Airborne Express, which was subsequently purchased by Defendant DHL Express (USA) Inc.

2. Defendant DHL Express (USA) Inc. is the agreed to successor corporation of Airborne Express, Inc. and has assumed all its liabilities in relation to this matter as admitted to in its Answer to the First Amended Complaint. DHL Express (USA) Inc. is a doing business in New Mexico with its facility located at 3241 University Blvd. N.E. Albuquerque, New Mexico 87106. Hereinafter in the First Amended Complaint in Intervention, DHL Express (USA) Inc. and Airborne Express, Inc. will hereinafter be referred to as "Airborne Express".

3. Defendant Air One Transport of New Mexico, LLC is a foreign limited liability company registered to and doing business in New Mexico, at its primary business location at 3241 University S.E., Albuquerque, New Mexico. At all relevant times hereto, Air One Transport of New Mexico, LLC was a contractor for Airborne Express, working on site at the Airborne Express facility. Air One Transport of New Mexico LLC's employees worked directly with and in the same physical vicinity with Airborne Express employees.

4. Defendant Air One Transport Group Inc. d/b/a Air One Transport of New Mexico LLC, is a Kansas Corporation, with its principal place of business located in Wichita, Kansas and doing business in New Mexico and upon information and belief the managing member and majority owner of Defendant Air One Transport of New Mexico LLC. At all times relevant to the complaint, Defendant Air One Transport Group, Inc. d/b/a Air One Transport Group of New

Mexico, LLC exercised day-to-day control over the operations of its alter ego, Air One Transport Group of New Mexico, LLC, and Air One Transport Group of New Mexico, LLC essentially functioned as a department of Air One Transport Group, Inc. Upon information and belief, this day-to-day control over operations is indicated herein by common ownership, common management, common use of trademarks and names, common use of employees, common officers and directors, ownership by Air One Transport Group, Inc. of all or most of the stock of Air One Transport of New Mexico, LLC, the performance of inter-related business functions, Air One Transport of New Mexico LLC acting as a marketing arm of the parent corporation, common receipt of instruction by Air One Transport of New Mexico LLC from the parent corporation and the like. Therefore, at all times relevant to the complaint, upon information and belief, the putatively separate entities functioned as an integrated enterprise with integrated operations, centralized control of labor relations, common management, common ownership and the like. As such, the two entities can effectively be addressed by this Court as one. Alternatively, if the Court determines that Air One Transport Group Inc. is not the alter ego of Air One Transport of New Mexico, LLC, that entity has been named as a separate Defendant herein.

5. Where the complaint states "Air One" this it is intended to refer to each individually and in the alternative to both Defendants Air One Transport of New Mexico LLC, and Air One Transport Group Inc. d/b/a Air One Transport of New Mexico LLC.

6. Ms. Smith began working for Airborne Express in 1994 as a Field Services Supervisor. In that position Ms. Smith's direct supervisor was the District Field Service Manager (hereinafter "District Manager"), who reported to the Regional Manager. Ms. Smith was also

responsible for ensuring the completion of work in the dock area performed by Air One employees

7. At the beginning of Ms. Smith's employment, Ms. Smith communicated work issues and concerns with Air One employees, directly to the Air One employees or Air One management. This communication was encouraged and supported by Ms. Smith's supervisor at Airborne Express. Because of the nature of the work and the working conditions, including but not limited to the fact that the physical environment was shared and the co-relationship of Airborne Express and Air One, Air One shared or codetermined matters governing the essential terms and conditions of Ms. Smith's employment. Thus, Air One exercised a significant degree of agreed control over Ms. Smith's working conditions and exercised control through its harassment of her.

8. However, in approximately the end of 2001, beginning of 2002, when the hostile work environment ensued and expanded as explained herein, Ms. Smith's ability to communicate directly to Air One changed and Ms. Smith supervisors and Air One management undermined Ms. Smith's efforts to communicate directly to the Air One employees she worked with. Instead of directing Air One employees to respect and abide by what they were asked to do by Airborne Express management, Air One employees were specifically told by Tom Bump, the Air One manager, that they could ignore Ms. Smith, regarding performance/personnel issues.

9. Through out this time, Air One employees consistently touched Ms. Smith in a sexual manner, used language derogatory to women, profane language, and physically threatening gestures in the workplace specifically including:

- a. Daily, a gang of men would be present at the loading dock area. The men

were physically larger, taller, and were an intimidating presence to Ms. Smith. The men would recount their sexual exploits, real or imagined, (including descriptions of raping women—such as saying they were “holding the bitch down while she screamed”) in excruciating detail. These conversations took place nearly everyday, 4-5 times a day, but increased in frequency after the weekend. The men were particularly obsessed with oral sex, including such comments as there is “pussy juice on my face” and having a “mouthful.” There was no doubt about the sexual nature of these statements. They would make these comments while looking at Ms. Smith, challenging her to respond, and she would tell them to stop;

b. Ms. Smith would confront the group and reprimand them for the comments. Then they would semi-encircle Ms. Smith. They moved near her, often within 2 feet, and make the following statements and gestures:

1. The gang of men would make comments about “we’ll get that bitch;”
2. Grab their crotches, look at her and say “I’ll give you a big one;”
3. Make masturbating gestures and tell her “I have a big one;”
4. Look at her and call her a “fucking bitch;”
5. State “suck my dick,” while making masturbating gestures, glaring at her to dare her to respond.

c. Every day, and until the Defendants constructively terminated Ms. Smith’s position, the gang of men would “accidentally”, but really intentionally, brush against her breasts with their hands and elbows, and rub their penises into her backside on the pretext

of getting by her in a tight space. At the beginning, the behavior included picking Ms. Smith up from behind and/or hugging her too long, but her very visible negative reaction to these intentional touchings led the men to adopt the more deniable behavior. Regarding the behavior the men attempted to deny, including brushing of her breasts and rubbing against her, when Ms. Smith complained or reacted by moving away, the men would often accuse Ms. Smith of overreacting to their "accidental" touches. Nevertheless, the touching behavior happened so frequently that it was clearly intentional and always unwelcome.

d. The men would often (daily or almost daily) take large rolled up tubular packaging materials (3-5 feet in length) and pretend they were penises. They would walk around and masturbate the "penises" and make thrusting motions with them. This habitual behavior was open and notorious and often witnessed by every person in the facility. The men would say the "penis" was their "mother's douche", which actually means "fuck your mother"; and

e. The men would intentionally block Ms. Smith's pathway and not let her pass.

10. Up and until 2001, whenever Ms. Smith complained to her then District Manager about the behavior, the problem was temporarily resolved. Nevertheless after a few months it would start again. After 2001 and after that manager was replaced with Ted Collins, the new Airborne Express District Manager, the environment rose to the level where Ms. Smith and other female employees felt personally threatened.

11. In approximately the winter of 2001/2002, and because the situation became

intractable, Ms. Smith began verbally reporting the hostile environment to Ted Collins, her new District Manager. In response to an initial complaint, Mr. Collins told her he was surprised there had not been more complaints, and that he had just heard an Air One employee say to another that the employee must have had oral sex the night before because it was still in his beard. Despite Ms. Smith's complaints about language and gestures, and Airborne Express management witnessing the behavior, Airborne Express did nothing to address or stop the behavior after these complaints.

12. It was during this timeframe, when Ms. Smith was originally reporting the harassment to Mr. Collins at Airborne Express, that Tom Bump the Air One manager informed the Air One employees that they could ignore Ms. Smith's direction to them involving personnel issues and their behavior.

13. Because of Airborne Express's inaction and Air One management's directions to ignore Ms. Smith, the employees came to believe as a group that Ms. Smith could be openly defied. As a result, Air One employees increased the amount and intensity of their comments, resulting in the reckless consequence that Ms. Smith was verbally threatened with sexual abuse. Additionally, Airborne Express employees also acted inappropriately as stated herein above and below.

14. Starting in approximately the winter of 2001/2002, when reporting to Mr. Collins, Ms. Smith indicated to him that she was afraid she would be physically hurt because of her complaints. She verbally complained to him regularly from then until August 2002 when she began documenting her complaints. She informed Mr. Collins that Air One employees were constantly saying things such as "fucking bitch" and "fucking cunt." and directing those

comments at her. She also reported that she was afraid of the employees. Ms. Smith further reported that the Air One employees would make masturbating gestures and carry rolled tubes of bubble wrap and say it was someone's mother's douche. Even after Mr. Collins witnessed the behavior himself, the complaints were not addressed and no remedial action was taken. Mr. Collins would laugh when told what was being said, and in violation of Airborne Express' harassment policy, he never reported the language, or took any action to stop the harassment.

15. In August 2002, Ms. Smith began documenting the complaints to Mr. Collins. For example, via e-mail dated October 15, 2002, Ms. Smith reported to Mr. Collins that the word "fuck" was used 10-15 times by a driver when Air One management was present, yet no remedial action was taken by Airborne Express in response even though another e-mail from around this time states that other female employees were complaining.

16. In October 2002, Ms. Smith began to complain in writing to Air One management (supplementing her prior oral complaints). At that time she e-mailed Air One management in Denver and reported that its' employees' language was sexual and excessive and had not been addressed by Air One. She requested that the matter be resolved. Ms. Smith contacted Air One because it had a significant degree of control over important aspects of Ms. Smith's work and governed essential terms and conditions of Ms. Smith's working conditions.

17. Despite the fact that Ms. Smith repeatedly (orally and in writing) informed Airborne Express and Air One management of the harassing behavior, and despite both Airborne Express and Air One management personally witnessing the harassment, nothing was done to address the issue. Instead, upon information and belief, both Airborne Express and Air One management actively encouraged the continued harassment and Tom Bump, the Air One manager,

continued using sexually offensive language himself. Ms. Smith was the victim of pervasive, unwelcome sexual harassment by Air One employees, which was condoned and allowed to continue by Airborne Express and Air One, to the extent that it affected the terms, conditions and privileges of her employment. Despite knowing of the harassment, Airborne Express and Air One failed to take immediate and appropriate action and instead condoned and encouraged the harassment by actively ignoring the complaints and failing to act. Airborne Express then retaliated against Ms. Smith for reporting the harassment.

18. During the entire time Ms. Smith was subjected to a hostile environment, Airborne Express had established written policies against harassment and discrimination, as well as other matters. The sexual harassment policy states sexual harassment will not be tolerated and that "all supervisors have an affirmative duty . . . to protect employees from discrimination and to promptly report such incidents to Human Resources." The discrimination policy provides: "concerns or complaints will be promptly investigated. No one will suffer retaliation for reporting such concerns"

19. Despite the fact that Ms. Smith followed the Airborne Express harassment and discrimination policies and reported the harassment to her supervisor at Airborne Express and also reported the Air One employee's actions to the management at Air One, and despite Airborne Express management (at least Ted Collins and later Robert Allison) and Air One management (at least, Tom Bump) witnessing the behavior, Airborne Express did not follow the policy and no investigation was ever done as required.

20. In the fall of 2002, Ms. Smith insisted that Mr. Collins, Airborne Express District Manager, report the Air One employees' behavior to Airborne Express' Human Resources

department. Mr. Collins stated that if they did, the District and Ms. Smith would be “placed under a microscope”. Ms. Smith insisted that, if the problem was not resolved, she would contact Human Resources herself.

21. Prior to these complaints, Ms. Smith had never been disciplined and always had good performance evaluations. However, on or about November 21, 2002, within weeks of telling Mr. Collins that if he did not do so, Ms. Smith would contact Human Resources about the Air One employees conduct, Mr. Collins retaliated against Ms. Smith and reported her to Human Resources for requesting that an employee “waddle on up here” (to the office). As a result of that complaint, Ms. Smith was reprimanded, in itself an additional act of retaliation.

22. All the persons associated with the Albuquerque facility knew that Ms. Smith was complaining about the sexually charged work environment. On November 21, 2002, Mr. Allison, (at the time a co-worker at Airborne Express and two months later promoted to the District Manager position), called Ms. Smith a “fucking bitch.” After she reported him to the Airborne Express Human Resources Department, Mr. Allison would stand inches from Ms. Smith and would ball his hands into fists and glare at her. This happened most days for at least 2 to 3 months, and continued even after Mr. Allison was made the Airborne Express District manager (taking Mr. Collins’ position). Prior to Mr. Allison’s promotion, at least 10 times, Ms. Smith told Mr. Collins, the Airborne Express District Manager that she did not want to be alone with Mr. Allison because she was afraid of being physically assaulted by him. Nevertheless all Mr. Collins did was laugh at her. Immediately following Airborne Express’s ratification of this particular harassing behavior, an employee cut a finger off a glove and tacked it on the Airborne Express bulletin board, along side a sign that the glove finger was a condom.

23. After Mr. Allison called Ms. Smith a “fucking bitch,” she contacted Human Resources directly. She reported the excessive sexual profanity and gestures, the constant use of the words “fuck,” “fucking bitch,” “fucking cunt,” “suck my dick,” and masturbating gestures by the Air One employees. She also reported the glove finger incident. Ms. Smith also informed Human Resources she had been reporting these types of incidents to Mr. Collins for about one year. Even so, no investigation was commenced. Instead, Airborne Express Human Resources warned Ms. Smith for using the term “waddle” over the intercom and asked her why she did not take the glove finger down immediately.

24. Within a few days, Ms. Smith also reported to Human Resources that Mr. Allison called her a “fucking bitch” and that she was afraid of him. Within days after Ms. Smith reported Mr. Allison to Airborne Express Human Resources, Mr. Collins threatened Ms. Smith’s job. He told her that she and Mr. Allison had to get along or she should resign.

25. Again in December 2002, Ms. Smith notified Airborne Express’ Human Resources Department that the harassment and retaliation were ongoing and constant and were affecting her emotionally and physically, and making it nearly impossible to function in her work environment.

26. Even after these repeated reports to Airborne Express Human Resources, Air One employees continued their behavior and escalated their offensive conduct. The profanity and gestures increased. Air One employees intentionally did this to threaten Ms. Smith. They would stand physically close to her, and encircle her in a threatening and intimidating manner and taunt her effectively daring her to report them. This escalation was witnessed by Airborne Express and Air One management, who did nothing.

27. In mid-December 2002, Airborne Express’ Mr. Collins told Ms. Smith that

Airborne Express had just prevailed in a lawsuit that established vulgar language was not sexual harassment and that a co-worker (he did not say who it was) had told Mr. Collins that Ms. Smith was setting up Airborne Express for a lawsuit. Mr. Collins later informed Ms. Smith that a contractor had complained that Ms. Smith was difficult to work with.

28. Air One employees' excessive profane language and gestures and physically threatening behavior continued. No investigation was ever done. No one was disciplined. Neither company took any action. Ms. Smith became so emotionally and physically ill from the environment and the lack of response from Airborne Express and Air One that she was forced to take medical leave in the spring of 2003. The leave temporarily helped her medical issues, to some extent. However, after her return, the behavior continued to an extent and degree that caused Ms. Smith's illness to fully return. The leave and the reason for the leave were well-known to all involved in Air One and Airborne Express management.

29. Ms. Smith was retaliated against because of her complaints. The retaliation consisted of at least: 1) Mr. Collins' intimidating remarks and reporting Ms. Smith for the waddle comment (explained above); 2) Ms. Smith being reprimanded by Human Resources for the waddle comment (explained above); 3) Mr. Collins not informing Ms. Smith of the type of interview and presentation expected of her during the interview for the District Manager position (explained below); 4) Ms. Smith being denied the promotion to District Manager (given to Mr. Allison) despite having more experience (explained below); and 5) Ms. Smith having her scheduled changed to one less desirable.

30. After Ms. Smith complained to Airborne Express Human Resources Department and before the interview for District Manager, Mr. Collins informed Ms. Smith the interview

presentation would be verbal. He did not tell her until the day of the interview that they expected a written presentation with graphics. However, Mr. Allison, the other Airborne Express employee in contention for the position, had been informed of this to allow him to properly prepare such a presentation. This comprised a retaliatory incident by Airborne Express senior management.

31. Despite being fully qualified for the position of Airborne Express District Manager, and having more experience, Ms. Smith was denied the promotion (given to Mr. Allison) because of her complaints. Ms. Smith was asked by Jim Cullen, the Airborne Express Regional Manager, in her job interview that if she could not handle the language how could she handle the job. Ms. Smith's reply was "If I get the job, the environment would not be an issue," meaning that with her supervisory authority she would attempt to clean up the involved behavior. This comprised another complaint regarding the involved harassment, this time directly to a senior Airborne Express official. Mr. Cullen's question comprised an admission of the hostile environment and the failure to hire Ms. Smith was an act of retaliation.

32. Also in retaliation for her complaints, once Mr. Allison received the promotion, he changed Ms. Smith's job schedule without business justification to one that was less desirable, and told Ms. Smith she could not contact Air One management and all issues had to go through him.

33. Airborne Express's and Air One's response to Ms. Smith's repeated complaints of offensive sexual language and gestures and other sexual harassment that she endured was entirely hostile. Because of the severe sexual harassment and retaliation, Ms. Smith was forced to endure an intolerable and hostile work environment at Airborne Express and Air One. Airborne Express and Air One failed to eliminate the hostile work environment and instead ratified and

condoned Mr. Collins', Mr. Allison's and Air One's employee's illegal behavior, exacerbating the hostile work environment and Ms. Smith's emotional and physical distress.

34. By the spring of 2003, it was clear to Ms. Smith that Airborne Express and Air One had not taken, and would never take, the action necessary to end the illegal workplace harassment and retaliation. This resulted in her constructive termination from Airborne Express in approximately July 2003. See Attachment 1.

35. Air One was an employer of Ms. Smith, covered by Title VII and the New Mexico Human Rights Act. Air One, because of its on-site presence at Airborne Express, and because of the continuous interaction with Airborne Express employees, has the ability to affect the terms, conditions or privileges of Airborne Express employees' employment. Additionally, Air One shared or codetermined matters governing the essential terms and conditions of Ms. Smith's employment and therefore, had a significant degree of control or joint control over her working conditions. Air One is therefore an employer under the relevant law and tasked with preventing discrimination. By its employees' sexually harassing behavior and its failure to stop the harassment, Air One adversely affected Ms. Smith's terms and conditions of employment, and interfered with her employment relationship. Further because Mr. Smith's complaints only brought increased harassment by the Air One employees, Air One directly retaliated against Ms. Smith.

36. As a result of the sexual harassment, hostile work environment, and retaliation perpetuated by Airborne Express and Air One, Ms. Smith has experienced and continues to experience insomnia, trouble eating, anxiety attacks, depression and other issues. Ms. Smith also received, and continues to receive, counseling and medical care related to the depression and

anxiety experiences because of the treatment she endured.

37. Ms. Smith has met all administrative requirements and exhausted administrative remedies. Ms. Smith received probable cause determinations from the EEOC as to the charges against Airborne Express and Air One on April 5, 2004. See Attachment 2. Ms. Smith has also received an Order of Nondetermination, as to both Airborne and Air One, from the New Mexico Human Rights Department. See Attachment 3. On September 30, 2004 the EEOC filed its complaint herein against the Defendant. 42 U.S.C. §2000e-5 (f) (1) specifies that “the person or persons aggrieved shall have the right to intervene” At this time, Ms. Smith has met all administrative requirements necessary.

COUNT I
NM Human Rights Act- Gender Discrimination and Sexual Harassment
(Airborne Express and Air One)

38. Ms. Smith incorporates and re-alleges Paragraphs 1 through 37 above as if fully set forth herein.

39. The New Mexico Human Rights Act, NMSA, 1978, Section 28-1-7, makes it an unlawful and discriminatory practice for an employer to discriminate in the terms and conditions or privileges of employment because of a person’s sex. Air One and Airborne Express are both employers covered by the New Mexico Human Rights Act. Ms. Smith was a direct employee of Airborne Express. Air One, as the on-site contractor, had the ability to affect the terms and conditions or privileges of Ms. Smith’s employment by Airborne Express, and directly and intentionally adversely interfered with Ms. Smith’s employment relationship with Airborne Express. Also, Air One shared or codetermined matters governing the essential terms and conditions of Ms. Smith’s employment, and controlled important aspects of her work and

therefore had a significant degree of control over Ms. Smith's working conditions. As a result of the actions in perpetuating a hostile environment, and not addressing the environment after being notified, and the other actions mentioned above, directly and intentionally adversely affected Ms. Smith's working conditions and employment relationship

40. Airborne Express and Air One had a duty by law not to discriminate against Ms. Smith because she is female.

41. Airborne Express and Air One breached their duties to not discriminate against Ms. Smith and violated NMSA 1978, Section 28-1-7, by its aforementioned actions, inactions and omissions, resulting in the unlawful sexual harassment of Ms. Smith and creating and perpetuating a sexually and physically hostile work environment.

42. As a direct result of the aforesaid conduct by Airborne Express and Air One, Ms. Smith has suffered and will continue to suffer physical injury, severe emotional distress, embarrassment, humiliation and loss of employment. Further, as a direct result of the aforesaid conduct by Airborne Express and Air One, Ms. Smith has been prevented from performing her normal daily activities and obtaining the full enjoyment of life and has sustained loss of earnings and medical expenses and will continue to incur other related damages.

43. The conduct of Airborne Express and Air One set forth above was intentional, willful, malicious, reckless, wanton and/or grossly negligent and was undertaken with a total disregard for Ms. Smith's rights and feelings, knowing that its actions or inactions would cause Ms. Smith to suffer severe emotional distress.

WHEREFORE, on Count I, Ms. Smith prays for the entry of judgment in her favor and against Airborne Express and Air One, awarding her compensatory damages, and reasonable

attorney fees, together with pre-judgment interest, post-judgment interest, costs and such further relief as the Court deems proper. When Plaintiff in Intervention uses the term "compensatory damages" herein that term is intended to include at least the following categories of damages:

- a) backpay;
- b) loss of fringe benefits;
- c) loss of future earnings and future lost benefits;
- d) emotional distress damages;
- e) medical and psychological expenses;
- f) future medical and psychological expenses;
- g) loss of household services;
- h) loss of enjoyment of life;
- i) pre and post-judgment interest; and
- j) any other damages which this Court deems fit and proper.

COUNT II

Title VII of the Civil Rights Act 1964, as amended in 1991, 42 U.S.C., 2000, et seq.- Gender Discrimination and Sexual Harassment (Airborne Express and Air One)

44. Ms. Smith incorporates and re-alleges Paragraphs 1 through 43 above as if fully set forth herein.

45. Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C., § 2000e5(f); and 28 U.S.C., et. seq., makes it an unlawful employment practice for an employer to discriminate against any individual in the terms and conditions of her employment because of her sex.

46. Air One and Airborne Express are both employers covered by Title VII. Ms.

Smith was an employee of Airborne Express. Air One, as the on-site contractor, had the ability to affect the terms and conditions or privileges of Ms. Smith's employment, and as a result of the actions in perpetuating a hostile environment, and not addressing the environment after being notified, and the other actions mentioned above, directly and intentionally adversely interfered with Ms. Smith's employment relationship with Airborne Express. Also, Air One shared or codetermined matters governing the essential terms and conditions of Ms. Smith's employment, and controlled important aspects of her work and therefore had a significant degree of control over Ms. Smith's working conditions. As a result the actions perpetuating a hostile environment, and not addressing the environment after being notified, and the other actions mentioned above, directly and intentionally adversely affected Ms. Smith's working conditions and employment relationship

47. The aforementioned actions of Airborne Express and Air One and their employees constitute unlawful sexual harassment, creating a hostile work environment in violation of Title VII, as amended.

48. As a direct result of the aforesaid conduct by Airborne Express and Air One, Ms. Smith has suffered and will continue to suffer physical injury, severe emotional distress, embarrassment, humiliation and loss of employment. Further, as a direct result of the aforesaid conduct by Airborne Express, Ms. Smith has been prevented from performing her normal daily activities and obtaining the full enjoyment of life and has sustained loss of earnings and medical expenses and will continue to incur other related damages.

49. Defendants' actions were intentional, willful, malicious, reckless, wanton, grossly negligent and deliberately indifferent to Ms. Smith's rights and feelings, thereby entitling Ms.

Smith to an award of punitive damages.

WHEREFORE, on Count II, Ms. Smith prays for the entry of judgment in her favor and against Airborne Express and Air One, awarding her compensatory damages, punitive damages and reasonable attorney fees, together with pre-judgment interest, post-judgment interest, costs and such further relief as the Court deems proper.

COUNT III
NM Human Rights Act-Retaliation
(Airborne Express)

50. Ms. Smith incorporates and re-alleges Paragraphs 1 through 49 above as if fully set forth herein.

51. The New Mexico Human Rights Act, NMSA, 1978, Section 28-1-7, makes it an unlawful and discriminatory practice for an employer to retaliate against a person for complaining of acts illegal under the NMHRA and asserting rights protected by the Act.

52. In direct retaliation for complaining of the hostile environment, Ms. Smith suffered adverse employment action, including but not limited to, being unjustly disciplined, changing her scheduled hours to less desirable shifts, being denied a promotion, and intensifying the involved harassment and making the environment so intolerable no reasonable person would stay, thus forcing her to resign.

53. Airborne Express breached its duty to not retaliate against Ms. Smith and violated NMSA 1978, Section 28-1-7, by its aforementioned actions and inaction.

54. As a direct result of the aforesaid conduct by Airborne Express, Ms. Smith has suffered and will continue to suffer physical injury, severe emotional distress, embarrassment,

humiliation and loss of employment. Further, as a direct result of the aforesaid conduct by Airborne Express, Ms. Smith has been prevented from performing her normal daily activities and obtaining the full enjoyment of life and has sustained loss of earnings and medical expenses and will continue to incur other related damages.

55. The conduct of Airborne Express set forth above was intentional, willful, malicious, reckless, wanton and/or grossly negligent and was undertaken with a total disregard for Ms. Smith's rights and feelings, knowing that its actions or inactions would cause Ms. Smith to suffer severe emotional distress.

WHEREFORE, on Count III, Ms. Smith prays for the entry of judgment in her favor and against Airborne Express, awarding her compensatory damages, and reasonable attorney fees, together with pre-judgment interest, post-judgment interest, costs and such further relief as the Court deems proper.

COUNT IV

Title VII of the Civil Rights Act 1964, as amended in 1991, 42 U.S.C., 2000, et seq.-Retaliation (Airborne Express and Air One)

56. Ms. Smith incorporates and re-alleges Paragraphs 1 through 55 above as if fully set forth herein.

57. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C., § 2000e5(f); and 28 U.S.C., et. seq., makes it an unlawful employment practice for an employer to retaliate against an employee who complains of discrimination and/or who asserts the rights provided to them under Title VII.

58. The aforementioned actions of Airborne Express and Air One and their employees

constitute unlawful retaliation in violation of Title VII, as amended.

59. As a direct result of the aforesaid conduct by Airborne Express and Air One, Ms. Smith has suffered and will continue to suffer physical injury, severe emotional distress, embarrassment, humiliation and loss of employment. Further, as a direct result of the aforesaid conduct by Airborne Express and Air One, Ms. Smith has been prevented from performing her normal daily activities and obtaining the full enjoyment of life and has sustained loss of earnings and medical expenses and will continue to incur other related damages.

60. Defendants' actions were intentional, willful, malicious, reckless, wanton, grossly negligent and deliberately indifferent to Ms. Smith's rights and feelings, thereby entitling Ms. Smith to an award of punitive damages.

WHEREFORE, on Count VI, Ms. Smith prays for the entry of judgment in her favor and against Airborne Express and Air One, awarding her compensatory damages, punitive damages and reasonable attorney fees, together with pre-judgment interest, post-judgment interest, costs and such further relief as the Court deems proper.

COUNT V
Intentional Infliction of Emotional Distress
(Airborne Express and Air One)

61. Ms. Smith incorporates and re-alleges Paragraphs 1 through 60 above as if fully set forth herein.

62. Airborne Express and Air One have intentionally chosen not to implement an effective sexual harassment policy with knowledge that the policy in place at the time of Ms. Smith's employment was totally ineffective and meaningless. Airborne Express and Air One's actions and inactions as described above, including the total failure to respond in any way to Ms.

Smith's complaints and the related retaliation, encouraged and permitted male perpetrators, to prey on female employees, such as Ms. Smith.

63. Airborne Express and Air One knew or should have known Ms. Smith and other woman were being sexually harassed and/or discriminated against with no effective means to prevent and/or stop said harassment and knew that Ms. Smith was experiencing severe emotional distress as a result.

64. Airborne Express and Air One's inaction and failure to prevent the sexual harassment of Ms. Smith, and its failure to remedy the harassment once the two employers became aware of the situation, the failure to act in any way, or to remove Mr. Collins or Mr. Allison from the supervision of and/or contact with Ms. Smith, and otherwise perform an adequate and effective investigation of Ms. Smith's claims and the retaliation, were intentional, willful, malicious, reckless, wanton and/or grossly negligent.

65. The conduct of Airborne Express and Air One permitted Tom Bump and male workers to have access to and sexually assault and harass Ms. Smith. This conduct constitutes an intentional infliction of emotional distress upon Ms. Smith and has caused her to suffer severe emotional distress, thereby entitling her to an award of actual, compensatory and punitive damages.

66. The conduct of Airborne Express and Air One set forth above was intentional, willful, malicious, reckless, wanton and/or grossly negligent and was undertaken with a total disregard for Ms. Smith's rights and feelings, knowing that its actions or inactions would cause Ms. Smith to suffer severe emotional distress.

WHEREFORE, on Count V, Ms. Smith prays for the entry of judgment in her favor and

against Airborne Express and Air One, awarding her compensatory damages and punitive damages, together with pre-judgment interest, post-judgment interest, costs and such further relief as the Court deems proper.

COUNT VI
Retaliatory Discharge
(Airborne Express)

67. Ms. Smith incorporates and re-alleges Paragraphs 1 through 66 above as if fully set forth herein.

68. The aforementioned actions and inactions of Airborne Express created a working environment that would have been intolerable to any reasonable employee, was designed to have the effect of causing Ms. Smith to terminate her employment against her will and left Ms. Smith no alternative but to terminate her employment.

69. Ms. Smith reported unlawful sexual harassment and discrimination against women, which is a report on a matter of public concern as evidenced by Title VII and the New Mexico Human Rights Act. Both statutes make discrimination illegal and provide a legal right to report such activities. Ms. Smith reported these illegal actions for herself and to protect others.

70. The refusal of Airborne Express to abide by its legal obligation to protect the rights of Ms. Smith, the refusal to remedy the environment in order to ensure her safety in the workplace and the retaliation, constituted a retaliatory discharge of Ms. Smith's employment with Airborne Express.

71. Therefore, Ms. Smith was wrongfully terminated and constructively discharged by Airborne Express.

72. All of Airborne Express's actions were intentional, willful, malicious, reckless,

wanton, grossly negligent and deliberately indifferent to Ms. Smith's rights and feelings, thereby entitling Ms. Smith to an additional award of punitive damages.

73. As a result of Airborne Express's conduct, Ms. Smith has suffered and will continue to suffer economic damages, embarrassment, humiliation and severe emotional distress, as well as other related damages.

WHEREFORE, on Count VI, Ms. Smith prays for the entry of judgment in her favor and against Airborne Express, awarding her compensatory damages and punitive damages, together with pre-judgment interest, post-judgment interest, costs and such further relief as the Court deems proper.

COUNT VII
Grossly Negligent Supervision and Retention
(Airborne Express and Air One)

74. Ms. Smith incorporates and re-alleges Paragraphs 1 through 70 above as if fully set forth herein.

75. Airborne Express was grossly negligent in supervising and retaining Mr. Collins and Mr. Allison, especially following Ms. Smith's report to Human Resources of the hostile environment, and the fact that nothing was done to prevent Mr. Collins or Mr. Allison from permitting the constant and continual and subsequent harassment of Ms. Smith. Air One was grossly negligent in retaining Tom Bump and other male workers, after they became aware of the hostile work environment and discrimination created by their employees and Tom Bump, who witnessed the Air One employee's behavior and participated himself. At all times Airborne Express and Air One had no effective policy in place to protect female employees, failed to enforce policies designed to protect female employees from predators, failed to adequately

investigate complaints of sexual harassment and take effective remedial action. failed to monitor the activities of its employees following notice of the harassment, failed to adequately investigate and act upon the complaints made by Ms. Smith, and failed to provide adequate training to all employees concerning the prohibition against, the prevention of, and the proper investigation of inappropriate sexual misconduct and failed to act subsequent to Ms. Smith's complaints of a hostile work environment.

76. The aforesaid conduct of Airborne Express and Air One constitutes at least gross negligence and evidences a complete and total disregard for the rights and feelings of all female employees of Airborne Express and Air One, including Ms. Smith.

77. Airborne Express and Air One reasonably knew or should have known that if it ignored complaints of sexual harassment and failed to act in any manner to investigate and remedy a hostile work environment, harm to female employees would likely be caused by such conduct and/or by the actions and omissions of Airborne Express and/or Air One in failing to prevent or effectively respond to such conduct.

78. As a direct result of the aforesaid conduct of Airborne Express and/or Air One, Ms. Smith has suffered and will continue to suffer physical injury, severe emotional distress, embarrassment, humiliation and loss of employment. Further, as a direct result of the aforesaid conduct, Ms. Smith has been prevented from performing her normal daily activities and obtaining the full enjoyment of life and has sustained loss of earnings and medical expenses and will continue to incur other related damages.

79. The actions of Airborne Express and Air One were willful, malicious, reckless, wanton and/or grossly negligent, thereby entitling Ms. Smith to an award of punitive damages.

WHEREFORE, on Count VII, Ms. Smith prays for the entry of judgment in her favor and against Airborne Express and Air One, awarding her compensatory damages and punitive damages, together with pre-judgment interest, post-judgment interest, costs and such further relief as the Court deems proper.

COUNT VIII
Breach of Contract
(Airborne Express)

80. Ms. Smith incorporates and re-alleges Paragraphs 1 through 79 above as if fully set forth herein.

81. Plaintiff was employed by Airborne Express under a written, oral and/or implied contract of employment that was modified and re-enforced by certain policies, practices, assurances and other express and implied statements of Airborne Express. Among these explicit policies were policies that banned gender discrimination and harassment, mandated immediate and thorough investigation of gender discrimination and harassment complaints, and prompt discipline when such complaints were validated. In said contract, it was implicitly agreed that Plaintiff would not be impeded in her job duties, and that she would be terminated only for cause. Plaintiff entered into said contract, *inter alia*, to secure peace of mind and financial stability, and refrained from seeking employment elsewhere in reliance thereon.

82. At all times material hereto, Plaintiff performed her obligations under her contract with Airborne Express. Airborne Express breached its express and implied contractual commitments to Plaintiff by constructively terminating her employment without proper cause, allowing gender discrimination and harassment, failing to timely conduct investigations, and

failing to discipline and supervise those who harassed and discriminated against Ms. Smith.

83. At the time the parties entered into the contract, as alleged herein above, it was known and understood, and within the reasonable contemplation of the parties, that in the event of a breach, Plaintiff would suffer present and future loss of earnings as a foreseeable and probable result thereof.

84. As a direct and proximate result of Airborne Express's breach of the contract, Plaintiff in fact has suffered loss of wages and benefits, the full extent and nature of which are presently unknown to her.

WHEREFORE, on Count VIII, Ms. Smith prays for the entry of judgment in her favor and against Airborne Express, awarding her compensatory damages, together with pre-judgment interest, post-judgment interest, costs and such further relief as the Court deems proper.

COUNT IX
Breach of Covenant of Good Faith and Fair Dealing
(Airborne Express)

85. Ms. Smith incorporates and re-alleges Paragraphs 1 through 84 above as if fully set forth herein.

86. Plaintiff and Airborne Express entered into a written, oral and/or implied employment contract upon her hire and during the term of Plaintiff's employment. The basic terms of the agreement provided that Plaintiff's employment would be secure as long as her performance was satisfactory, that Plaintiff would not be impeded in her performance or career expectations, that Plaintiff would not be terminated without good cause, and that Plaintiff would earn agreed-upon wages and fringe benefits.

87. Plaintiff undertook and continued employment, and duly performed all of the conditions of the employment agreement to be performed by her until prevented from further performance by Airborne Express. Plaintiff had at all times been ready, willing and able to perform all of the conditions of the agreement to be performed by her.

88. From the time she reported the gender discrimination and harassment, Airborne Express breached the covenant of good faith and fair dealing by constructively terminating her, by failing to investigate, by failing to follow its own policy prohibiting harassment, by failing to act in any way to stop and prevent sexual harassment and discrimination, by retaliating against her when she complained, and by failing to secure her suitable employment where she would not be subjected to such discrimination.

89. Plaintiff performed all conditions precedent to Airborne Express's performance of its obligations under the contract. Plaintiff's performance was at all times satisfactory.

90. The law imposed duties on Airborne Express, in connection with the employment agreement, to act fairly and in good faith towards Plaintiff. Airborne Express covenanted to give full cooperation to Plaintiff in her performance under the employment agreement and to refrain from any act which would prevent or impede any of the conditions of the employment agreement from being performed, which would deny the employment agreement or which would prevent Plaintiff from receiving the benefits of the employment agreement, or would harm Plaintiff in connection with the performance of her duties pursuant that contract, or prevent Plaintiff from securing damages for such harms. Airborne breached this covenant by allowing gender discrimination and harassment, failing to timely conduct investigations, and failing to discipline and supervise those who harassed and discriminated against Ms. Smith.

91. At the time the parties entered into the covenant, as alleged herein above, it was known and understood and within the reasonable contemplation of the parties that in the event of a breach, Plaintiff would suffer loss of earnings and economic damage. As a direct and proximate result of Airborne Express's conduct, Plaintiff has suffered loss of earnings and economic damage in an amount according to proof but exceeding the jurisdictional minimum of this Court.

WHEREFORE, on Count IX, Ms. Smith prays for the entry of judgment in her favor and against Airborne Express, awarding her compensatory damages and punitive damages, together with pre-judgment interest, post-judgment interest, costs and such further relief as the Court deems proper.

COUNT X
**Tortious Interference With Contractual,
Business, And Employment Relations
(Air One)**

92. Ms. Smith incorporates and re-alleges Paragraphs 1-91 above as if fully set forth herein.

93. Air One and its agents, principals, and employees intentionally interfered with Ms. Smith's performance of her assigned job with Airborne Express by the sexual harassment, retaliation and other harassment that it daily inflicted upon Ms. Smith. These behaviors occurred even though Air One and its agents, principals and employees each had explicit, direct knowledge of the fact that Ms. Smith had an on-going contractual, business and/or employment relationship with Airborne Express.

94. Because of the interference by Air One, and because of the emotional and physical

distress of encountering the violent, sexual, retaliatory, defamatory and oppressive work atmosphere on a daily basis which was created in substantial part by Air One and its agents, principals and employees. Ms. Smith's relations with Airborne Express were substantially compromised to the extent that Airborne Express lost faith in her substantial management capabilities.

95. As the involved interference increased, and as Ms. Smith's emotional and physical distress also increased due to the daily violent, sexual, retaliatory, defamatory and oppressive work atmosphere created in substantial part by Air One and its agents, principals and employees, Ms. Smith's relations with Airborne Express got substantially worse, and the Airborne Express workers began to openly criticize and ignore Ms. Smith as well.

96. Ultimately the involved interference directly caused Airborne Express to constructively terminate Ms. Smith as detailed above. The loss of the job, as well as the underlying harassment and interference directly caused Ms. Smith substantial damages including causing her to seek medical and psychological attention, and causing her to move across country to find replacement employment and the like.

97. The involved harassment and interference were without excuse or privilege, and were knowing, reckless, intentional, purposeful, and taken with the improper motive to end Ms. Smith's on-going employment by Airborne. As such, Ms. Smith is entitled to punitive, as well as compensatory damages.

WHEREFORE, on Count X, Ms. Smith prays for the entry of judgment in her favor and against Air One, awarding her compensatory damages and punitive damages, together with pre-judgment interest, post-judgment interest, costs and such further relief as the Court deems proper.

COUNT XI
Prima Facie Tort
(Air One)

98. Ms. Smith incorporates and re-alleges Paragraphs 1 through 97 above as if fully set forth herein.

99. Airborne Express management and employees and Air One management and employees all condoned the unlawful sexual harassment. The defendants collectively encouraged the continued hostile environment. Air One failed to investigate the complaints regarding its employees and management, and failed to take any action designed to prevent continued harassment. Air One mirrored the response by Airborne Express, the Company that held its contract. Indeed, both companies acted to preserve their contractual relations and cause as little disagreement and discord as possible, with the direct result of minimizing and ignoring Ms. Smith's complaints and the complained-of harassing acts. The acts of Air One were taken with the motive of unreasonably and without privilege absolutely preferring Air One's own economic interests over Ms. Smith's physical, emotional and economic integrity.

100. The acts of Air One as set forth herein, constitute a prima facie tort as the acts of Air One were taken with the express understanding that Air One's behavior would harm and continue to harm Ms. Smith, such harm did result, and the involved acts were taken without legal excuse or justification, and were improper in all regards.

101. As a direct and proximate result of Air One's, Plaintiff has suffered and will continue to suffer pain and suffering, and extreme and severe mental anguish and emotional distress; she has incurred and will continue to incur medical expenses for treatment by psychotherapists and other health professionals, and for other incidental expenses; and she will

continue to suffer a loss of earnings and job opportunities. Plaintiff is thereby entitled to general and compensatory damages in amounts to be proven at trial.

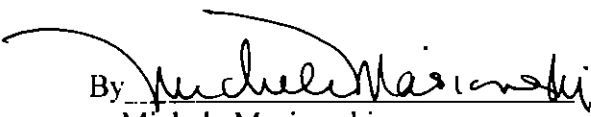
102. Air One's conduct as described herein was malicious and oppressive, and done with a conscious disregard of Plaintiff's rights.

WHEREFORE, on Count XI, Ms. Smith prays for the entry of judgment in her favor and against Air One, awarding her compensatory damages and punitive damages, together with pre-judgment interest, post-judgment interest, costs and such further relief as the Court deems proper.

JURY TRIAL DEMANDED

Plaintiff in intervention, Debra Smith, requests a jury trial on all matters raised herein in her First Amended Complaint in Intervention.

Respectfully submitted,

By 
Michele Masiowski
Diane Garrity
Serra, Garrity & Masiowski, LLC
P.O. Box 8177
Santa Fe, New Mexico 87504
(505) 983-6956

George Geran, Esq.
Law Offices of George Geran
625 Franklin Avenue
Santa Fe, NM 87505
(505) 983-1085

Attorneys for Plaintiff in Intervention

**MICHELE
MASIOWSKI**

ATTORNEY AT LAW

July 8, 2003

Mr. Aaron Roser
District Manager
Airborne Express
3241 University S.E.
Albuquerque, NM 87106

Dear Mr. Roser:

As you know this firm represents Ms. D. Smith regarding her complaint of discrimination, subsequent retaliation perpetrated on her by Airborne for filing that complaint, and any causes of action related thereto. Please be advised that we consider Ms. Smith to have been constructively discharged by Airborne. Ms. Smith repeatedly reported serious violations of your sexual harassment policy. Despite these reports, Airborne failed to investigate and to take any corrective action. Even after Ms. Smith was forced to file a discrimination charge, in an effort to remedy the situation and to protect herself, Airborne still failed to take any remedial measures.

Due to the emotional distress caused by the situation, Ms. Smith felt that taking time off from the environment, would enable her to recoup and to return to work. However, when she did return to the work place, the harassment and hostile environment was worse. The hostile environment was so severe and pervasive that no reasonable person would be expected to tolerate it. Your position was essentially, that if you are employed at Airborne, you better be able to work in this hostile offensive environment. Ms. Smith was forced to leave her position for her health. Airborne's lack of action to correct the hostile environment, forced Ms. Smith out of her job and was also retaliation. Once the EEOC investigation is completed, in addition to Title VII and NM Human Rights Act causes of action, any complaint will also contain a cause of action for constructive discharge.

Sincerely,



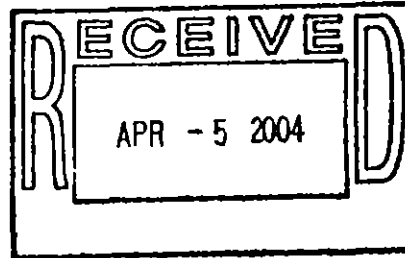
Michele Masiowski

cc: client
EEOC

644 DON GASPAR AVENUE, SANTA FE, NM 87505
(505)820-7667 MAMASIOWSKI@EARTHLINK.NET



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Houston District Office



1919 Smith, 7th Floor
Houston, Tx 77002-8049
PH: (713) 209-3320
TDD: (713) 209-3439
FAX: (713) 209-3381
LEGAL: (713) 209-3401

Charge Number: 390-2003-00683

Debra Smith
36 Fourth Avenue
Bluffton, SC 29910

Charging Party

Airborne Express
3101 Western Avenue
P.O. Box 662
Seattle, WA 98111-0662

Respondent

DETERMINATION

Under the authority vested in me by the Commission, I issue the following determination as to the merits of the above cited charge, filed under Title VII of the Civil Rights Act of 1964, as amended, and the Age Discrimination in Employment Act of 1967, as amended.

All requirements for coverage have been met. Charging Party alleges that she was subjected to harassment because of her sex, age and retaliated against by being disciplined and denied a promotion.

Respondent denies the allegations.

Based on the evidence, it is reasonable to believe that Charging Party was subjected to a sexually hostile work environment. Respondent failed to take Charging Party's complaints seriously and did not take appropriate actions to ensure a work environment free of sexual misconduct. It is also reasonable to believe that Charging Party was retaliated against for complaining about the hostile work environment. No finding is made as to other issues raised in the charge filed by Charging Party.

Upon finding there is reasonable cause to believe a violation has occurred, the Commission will attempt to eliminate the alleged unlawful practice by informal methods of conciliation. Therefore, the Commission now invites the parties to join with it in reaching a just resolution of this matter.

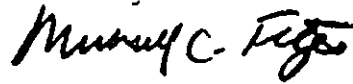
If Respondent declines to discuss settlement or when for any other reason a settlement acceptable to the District Director is not obtained, the District Director will inform the parties



and advise them of the court enforcement alternatives available to the aggrieved parties. A Commission Representative will contact each of the parties to begin conciliation.

On Behalf of the Commission

4/1/04
Date



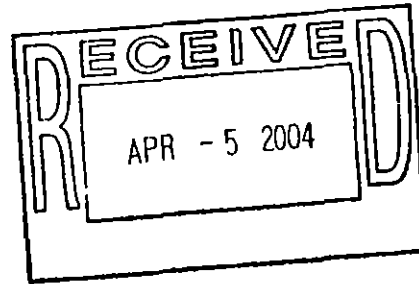
Michael Fetzer
Acting Director

cc: Michele Masiowski
Serra, Garrity & Masiowski, LLC
440 Cerrillos Road, Suite 4
Santa Fe, NM 87501



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
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Houston, TX 77002-8049
(713) 209-3320
TTY (713) 209-3439
FAX (713) 209-3381



Charge Number: 390-2003-00684

Debra Smith
36 Fourth Avenue
Bluffton, SC 29910

Charging Party

Air One of New Mexico
3241 University S.E.
Albuquerque, NM 87106

Respondent

DETERMINATION

Under the authority vested in me by the Commission, I issue the following determination as to the merits of the above cited charge, filed under Title VII of the Civil Rights Act of 1964, as amended.

All requirements for coverage have been met. Charging Party alleges that while working with Respondent's employees at Airborne Express's Albuquerque, New Mexico facility, she was subjected to daily vulgar, offensive, and sexually charged comments and actions by Respondent's employees and retaliated against because of her sex.

Respondent denies the allegations.

Based on the evidence, it is reasonable to believe Charging Party was subjected to a sexually hostile work environment. Respondent failed to take Charging Party's complaints seriously and did not take appropriate actions to ensure a work environment free of sexual misconduct. The Commission makes no finding on the other issues alleged in the charge.


Upon finding there is reasonable cause to believe a violation has occurred, the Commission will attempt to eliminate the alleged unlawful practice by informal methods of conciliation. Therefore, the Commission now invites the parties to join with it in reaching a just resolution of this matter.

If Respondent declines to discuss settlement or when for any other reason a settlement acceptable to the District Director is not obtained, the District Director will inform the parties and advise them of the court enforcement alternatives available to the aggrieved parties.

A Commission Representative will contact each of the parties to begin conciliation.

On Behalf of the Commission

4/1/04
Date


Michael Fetzner
Acting Director

cc: Michele Masiowski
Serra, Garrity & Masiowski, LLC
440 Cerrillos Road, Suite 4
Santa Fe, NM 87501

BILL RICHARDSON
GOVERNOR

CONROY CHINO
SECRETARY



FRANCIE CORDOVA
Human Rights Director

OFFICE OF THE SECRETARY
401 BROADWAY, N.E.
P.O. BOX 1928
ALBUQUERQUE, N.M. 87103
(505) 841-8409
(505) 841-8491 FAX

STATE OF NEW MEXICO
DEPARTMENT OF LABOR
HUMAN RIGHTS DIVISION
1596 Pacheco Street
Santa Fe, New Mexico 87505-3979

(505) 827-6838
1-800-566-9471
(505) 827-6878 FAX

AMENDED

ORDER OF NONDETERMINATION

February 08, 2005

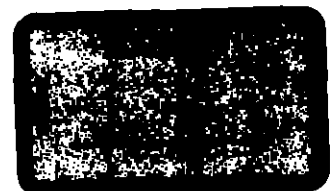
Ms. Debra Smith
36 Fourth Avenue
Bluffton, SC 29910

RE: Debra Smith vs. Airborne Express
EEOC# 390-2003-00683

Dear Ms. Smith:

As authorized by Section 28-1-10 (D) of the New Mexico Human Rights Act and the Work Sharing Agreement between the Equal Employment Opportunity Commission and the New Mexico Human Rights Division, this letter constitutes an Order of Nondetermination as to your complaint. In accordance with Mitchell-Carr, Smith, Vaughn and Herrera v. Office and Professional Employees International Union Local 251, 1999-NMSC-025, ¶ 10, 127 N.M. 282, this Order of Nondetermination is issued to afford you the right to pursue your complaint under the Human Rights Act in state district court.

By issuing this Order of Nondetermination, the division has closed this complaint administratively, with prejudice. Therefore, you may not file this complaint with this division. You may obtain a new trial; however, by appealing this Order of Nondetermination to the proper district court. According to Section 28-1-13 (A) of the New Mexico Human Rights Act, you have thirty (30) days from the date of service of this Order of Nondetermination to file notice of appeal in the district court of the county where the alleged discriminatory practice occurred or where the respondent does business. Section 28-1-13 (A) of the Act also requires that you serve a copy of the notice of appeal personally or by certified mail, return receipt requested, at the last known address of all parties. You also must serve a copy of the notice of appeal on the division



Order of Nondetermination

Page 2

office in Santa Fe. To properly serve the parties, you must comply with any other service of process requirements set forth in the New Mexico Rules of Civil Procedure at 1-004.

IF YOU DO NOT FILE A NOTICE OF APPEAL WITH THE APPROPRIATE DISTRICT COURT WITHIN THIRTY (30) DAYS OF SERVICE OF THIS ORDER, AND IF YOU DO NOT PROPERLY SERVE THE NOTICE, YOUR RIGHT TO APPEAL THIS ORDER OF NONDETERMINATION TO THE DISTRICT COURT WILL EXPIRE.

If you have any question concerning this Order of Nondetermination, you may contact the Human Rights Division at 827-6838.

Sincerely,



Francie Cordova
Director

cc: Airborne Express

BILL RICHARDSON
GOVERNOR

CONROY CHINO
SECRETARY

OFFICE OF THE SECRETARY
401 BROADWAY, N.E.
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STATE OF NEW MEXICO
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HUMAN RIGHTS DIVISION
1596 Pacheco Street
Santa Fe, New Mexico 87505-3979

FRANCIE CORDOVA
Human Rights Director

(505) 827-6838
1-800-366-9471
(505) 827-6878 FAX

AMENDED

ORDER OF NONDETERMINATION

February 08, 2005

Ms. Debra Smith
36 Fourth Avenue
Bluffton, SC 29910

RE: Debra Smith vs. Air One of New Mexico
EEOC# 390-2003-00684

Dear Ms. Smith:

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Order of Nondetermination

Page 2

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If you have any question concerning this Order of Nondetermination, you may contact the Human Rights Division at 827-6838.

Sincerely,



Francie Cordova
Director

cc: Air One of New Mexico