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FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

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CLERK-ALBUQUERQUE

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiff,)

v.)

DHL Express (USA), Inc., f/k/a Airborne Express, Inc.,)
and Air One Transport Group, Inc., and)
Air One Transport of New Mexico, L.L.C.)

Defendants,)

and)

DEBRA SMITH,)

Plaintiff in)
Intervention,)

v.)

DHL Express (USA) Inc., and Air One Transport)
Group, Inc., d/b/a Air One Transport of New Mexico)
LLC and Air One Transport of New Mexico, LLC,)

Defendants.)

CIV 04-1118 JP/WPL

SECOND AMENDED COMPLAINT

JURY TRIAL DEMANDED

Comes now, Plaintiff, the Equal Employment Opportunity Commission and pursuant to the Initial Pre-trial Report, the Court's ruling that Plaintiff could have until October 3, 2005 to amend (Docket Entry 66, Clerk's Minutes of September 13, 2005) and Rule 15 of the Federal Rules of

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Civil Procedure and hereby amends its Complaint and First Amended Complaint as follows:

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964, as amended and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of sex and retaliation, and to provide appropriate relief to Debra Smith, who was adversely affected by such practices during her employment with Airborne Express, Inc., ("Airborne"). The Commission alleges that Debra Smith was subjected to unwelcome sexual comments and conduct by employees of Defendants Airborne and the Air One Defendants, which created a hostile work environment because of her sex, female. The Commission further alleges that Defendants Air One Transport Group, Inc., and Air One Transport of New Mexico, L.L.C. ("Air One"), as a third party, an employer and an integrated-enterprise subject to Title VII, unlawfully interfered with Ms. Smith's employment by creating a hostile work environment, which adversely affected the terms, conditions and privileges of Smith's employment with her employer, Defendant Airborne. The Commission also alleges Defendant Airborne subjected Ms. Smith to retaliatory discipline and failed to promote her because she opposed the unlawful employment practices of the Defendants.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. §2000e-5 (f)(1) and(3) ("Title VII") and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a.

2. The employment practices alleged to be unlawful were committed within the

jurisdiction of the United States District Court for the District of New Mexico:

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Section 706(f)(1) and (3) of Title VII, 42 U.S.C. §2000e-5(f)(1) and (3).

4. At all relevant times, Defendant Airborne has continuously been doing business in the State of New Mexico, including the City of Albuquerque, and has continuously had at least 15 employees.

5. At all relevant times, Defendant Airborne has continuously been and is now an employer engaged in an industry affecting commerce within the meaning of Section 701(b), (g) and (h) of Title VII, 42 U.S.C. §2000e-(b), (g) and (h).

6. At all relevant times, Defendant, DHL Express (USA), Inc., a Delaware Corporation ("DHL") has:

- a) continuously had at least 15 employees;
- b) continuously been and is now an employer engaged in an industry affecting commerce within the meaning of Section 701(b), (g) and (h) of Title VII, 42 U.S.C. §2000e-(b), (g) and (h); and
- c) merged its business operations with the operations of Defendant Airborne and is therefore, for purposes of this lawsuit a successor corporation who is or may be liable in this action.

7. At all relevant times, Defendants Air One Transport Group, Inc. and Air One Transport of New Mexico, L.L.C., have continuously been doing business in the State of New Mexico, including the City of Albuquerque, and have continuously had at least 15 employees.

8. At all relevant times, Defendants Air One Transport Group, Inc. and Air One Transport of New Mexico, L.L.C., have continuously been and are now an employer engaged in an industry affecting commerce within the meaning of Section 701(b), (g) and (h) of Title VII, 42 U.S.C. §2000e-(b), (g) and (h).

9. At all relevant times, Defendants Air One Transport Group, Inc., Air One New Mexico, L.L.C., and Haggar Enterprises, Inc., and other related entities have been and are now an integrated enterprise with over 800 employees. This integrated enterprise is liable for the violations of Title VII by the Air One Defendants as set forth in this complaint.

STATEMENT OF CLAIMS

10. More than thirty days prior to the institution of this lawsuit, Debra Smith filed charges with the Commission alleging violations of Title VII by Defendants. All conditions precedent to the institution of this lawsuit have been fulfilled.

11. At all relevant times, and under a contractual agreement between Defendants, Air One employees were assigned to work at the Defendant Airborne's Albuquerque facility, the facility where Smith worked.

12. Since at least November 2001, Defendant Airborne has engaged in unlawful employment practices at its Albuquerque, New Mexico facility in violation of Section 703(a) of Title VII, 42 U.S.C. §§2000e-2(a) because of sex. These practices include:

- a) the harassment of Debra Smith because of her sex, female, which created a hostile work environment; and
- b) the failure to take immediate and appropriate corrective action.

13. As described below, since at least November 2001, Defendants Air One Transport Group, Inc., and Air One Transport of New Mexico, L.L.C., have engaged in unlawful employment practices at Airborne's Albuquerque, New Mexico facility in violation of Section 703(a) of Title VII, 42 U.S.C. §§2000e-2(a) by creating a hostile work environment for Ms. Smith because of her sex, female, which interfered with Smith's employment opportunities and adversely affected the terms, conditions and privileges of Smith's employment with Defendant Airborne. These unlawful employment practices include:

- a.) interference with Debra Smith's employment opportunities with her employer by subjecting her to offensive comments and conduct because of her sex, female; and
- b) interference with Debra Smith's employment opportunities with her employer by Defendant Air One's failure to take immediate and appropriate corrective action.

14. Since at least November 2002, Defendant Airborne has engaged in unlawful retaliatory employment practices at its Albuquerque, New Mexico facility in violation of Section 704(a) of Title VII, 42 U.S.C. §§2000e-3(a). These retaliatory practices include:

- a) subjecting Debra Smith to disciplinary action and adverse terms, conditions and privileges of employment after she expressed opposition to and made complaints about unlawful employment practices; and

- b) failing to promote Debra Smith on or about February 2003 because she opposed the unlawful employment practices to which she was subjected.

15. The effect of the practices complained of in paragraphs 12 - 13 above has been to deprive Debra Smith of equal employment opportunities and otherwise adversely affect their status as employees because of her sex, female.

16. The effect of the practices complained of in paragraph 14 above has been to deprive Debra Smith of equal employment opportunities and otherwise adversely affect her status as an employee because of her opposition to unlawful employment practices.

17. The unlawful employment practices complained of in paragraphs 12, 13 and 14 above were intentional.

18. The unlawful employment practices complained of in paragraphs 12, 13 and 14 above were done with malice and/or reckless indifference to the federally protected rights of Debra Smith.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendants DHL, Airborne and Air One, their officers, successors, assigns and all persons in active concert or participation with them, from engaging in harassment of employees because of sex and any other employment practice which discriminates on the basis of sex.

B. Grant a permanent injunction enjoining Defendants DHL and Airborne, their officers, successors, assigns and all persons in active concert or participation with it, from engaging in any employment practice which discriminates or retaliates against any individual because of the individual's opposition to perceived unlawful employment practices and/or because the individual

filed a charge, testified, assisted, or participated in an investigation or proceeding under Title VII.

C. Order Defendants DHL, Airborne and Air One to institute and carry out policies, practices and programs which provide equal employment opportunities for women and for those who oppose perceived unlawful employment practices and/or file charges, testify, assist or participate in an investigation or proceeding under Title VII, and which eradicate the effects of its past and present unlawful employment practices.

D. Order Defendants DHL and Airborne to make whole Debra Smith by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to rightful place promotion of Debra Smith or front pay in lieu of rightful place promotion or placement.

E. Order Defendants DHL, Airborne and Air One to make whole Debra Smith by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraphs 12, 13 and 14 above, in amounts to be determined at trial.

F. Order Defendants DHL, Airborne and Air One to make whole Debra Smith by providing compensation for past and future non pecuniary losses resulting from the unlawful practices complained of in paragraphs 12, 13 and 14 above, including but not limited to, emotional pain, suffering, inconvenience, mental anguish, humiliation, loss of enjoyment of life, and other non pecuniary losses, in amounts to be determined at trial.

G. Order Defendants DHL, Airborne and Air One to pay Debra Smith punitive damages for its malicious and/or reckless conduct described in paragraphs 12, 13 and 14 above, in amounts to be determined at trial.

H. Grant such further relief as the Court deems necessary and proper in the public interest.

I. Award the Commission its costs in this action.

JURY TRIAL DEMANDED

The Commission requests a jury trial on all questions of fact raised by its First Amended Complaint.

DATED this 3rd day of October 2005

Respectfully submitted,

JAMES L. LEE
Deputy General Counsel

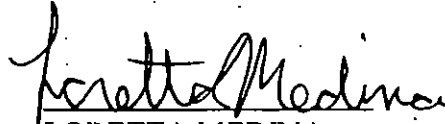
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