

**INVESTIGATIVE REPORT  
PA07-0007**

**CHARGING PARTY:** Emily Gillette

**RESPONDING PARTY:** Delta Air Lines/Mesa Air Group/Freedom Airlines

**CHARGE:** Public accommodations/breastfeeding

**SUMMARY OF CHARGE:** On November 9, 2006, Emily Gillette filed a charge of discrimination against Delta Air Lines and Mesa Air Group/Freedom Airlines alleging discrimination based on her right to breastfeed her daughter. Specifically, on October 13, 2006, after Ms. Gillette and her husband and daughter boarded Delta Air Lines/Freedom Airlines flight 6160 in Burlington, Vermont bound for New York, Ms. Gillette began to breastfeed her daughter while seated at the back of the plane. The flight attendant asked Ms. Gillette to cover up her daughter's head. When Ms. Gillette refused to do so, the flight attendant had the Gillettes removed from the flight. The pilot would not override the flight attendant's decision and the Gillettes were forced to spend the night in Burlington before departing the next morning.

**SUMMARY OF RESPONSE:** On December 12, 2006, Delta Air Lines ("Delta") filed a response to the charge denying that it discriminated against Ms. Gillette. Specifically, Delta stated that 1.) it permits breastfeeding on its flights; 2.) Mesa Air Group/Freedom Airlines ("Mesa"/"Freedom") took appropriate steps to address the situation; 3.) in accordance with the "Connection Agreement" between Delta and Freedom, Delta has no operational authority or control over Freedom aircraft or its employees, and; 4.) according to the "Connection Agreement," Freedom employees are not agents of Delta Air Lines and therefore the charge against Delta should be dismissed. On December 14, 2006, Mesa Air Group/Freedom Airlines filed a response to the charge denying that it discriminated against Ms. Gillette. Specifically, Freedom stated that 1.) the flight attendant involved in this case acted in a manner contrary to company policy; 2.) Freedom does not have a policy that prohibits breastfeeding on its flights; 3.) the pilot spoke with Ms. Gillette and offered to overturn the flight attendant's decision and

that the offer was declined; and 4.) upon declining the pilot's offer, Freedom provided the Gillettes with accommodations and alternative transportation.

**PRELIMINARY RECOMMENDATION:** This investigative report makes a preliminary recommendation that the Human Rights Commission find that there are **reasonable grounds** to believe that Mesa Air Group/Freedom Airlines discriminated against Ms. Gillette for breastfeeding in violation of 9 V.S.A. §4502(a) and (j) of the Vermont Fair Housing and Public Accommodation Act. This investigative report makes a second preliminary recommendation that the Human Rights Commission find that there are **no reasonable grounds** to believe that Delta Air Lines discriminated against Ms. Gillette for breastfeeding in violation of 9 V.S.A. §4502(a) and (j) of the Vermont Fair Housing and Public Accommodation Act.

### **SUMMARY OF INVESTIGATION:**

#### **Interviews:**

Emily Gillette, 1/29/07  
Leigh Attaway, 10/29/07  
Richard Bengoa, 9/4/07  
Cindy Bevins, 12/26/07  
Christopher Burrows, 10/31/07  
Deborah Connors, 10/29/07  
Anna DaSilva, 10/26/07  
Bobby Kubicki, 10/27/07  
Matthew Poydock, 12/18/07

#### **Documents:**

Charge of Discrimination, 11/9/06  
Response to Charge, 12/12/06 (Delta), 12/14/06 (Freedom)  
Response to request for information from Charging Party, 2/6/07, 4/9/07  
Response to request for information from Respondent, Delta: 8/21/07, 10/24/07; Freedom: 8/13/07, 9/7/07

#### **Elements of the case:**

1. The Charging Party is a member of a protected class (breastfeeding mother)
2. The Charging party made herself available to receive services ordinarily provided by the Responding parties to all members of the public in the manner in which they are ordinarily provided; and
3. The Charging party was denied the same accommodations, advantages, facilities and privileges of the place of public accommodation that similarly situated persons outside the protected class did.

## I. Facts

### A. Background

1. **Earl and Emily Gillette** live in Espanola, New Mexico. At the time of the incident on October 13, 2006, the Gillettes were scheduled to fly from Burlington, Vermont to New York City with their then 22-month old daughter on Delta Air Lines/Freedom Airlines flight 6160.

2. **Leigh Attaway** is a coordinator in the corporate customer care department and **Anna DaSilva** is a customer service representative for Delta Air Lines. At the time of the incident, **Christopher Burrows**, **Deborah Connors**, and **Bobby Kubicki** were customer service agents at the Burlington International Airport for ComAir, an independent company that provides ground handling services under contract with Freedom Airlines. **Richard Bengoa** is a pilot with Freedom Airlines and was the captain of the Freedom Airlines flight on October 13, 2006. **Tammie Kinzie** was the flight attendant.<sup>1</sup> **Matthew Poydock** is a regional manager for Mesa Airlines.

3. Freedom Airlines is a wholly-owned subsidiary of Mesa Air Group, Inc. Mesa Air Group includes Mesa Airlines as well as partnerships with Delta Air Lines (Delta Connection), United Airlines (United Express), USAirways (USAirways Express), and Midwest Airlines. Freedom Airline flights are operated only under the Delta Connection program.

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<sup>1</sup> Ms. Kinzie would not respond to requests for an interview and therefore was not interviewed for this investigation.

4. **Cindy Bevins** is a Transportation Security Administration (TSA) officer who was working at the Burlington International Airport on October 13, 2006.

**B. The chain of events**

Friday, October 13, 2006:

5. **Ms. Gillette:** On Friday, October 13, 2006, Ms. Gillette, her husband, and her then twenty-two month old daughter were scheduled to fly from Burlington, Vermont to New York, New York on Delta Flight 6160 at 6:53 p.m. Due to mechanical problems, the passengers did not board the flight until approximately 9:40 p.m. There were 9 rows of seats in the aircraft and the Gillettes were seated in row 8, seats C and D. Ms. Gillette was in the seat next to the window.

6. Once the Gillettes settled into their seats, Ms. Gillette started to breastfeed her daughter. Ms. Gillette said no skin was showing from her collarbone down and her daughter's head was towards to aisle. The flight attendant, Tammie Kinzie, came over to Ms. Gillette with a blanket in her hand and said to Ms. Gillette, "You need to cover up." Ms. Gillette said, "I'm fine," and Ms. Kinzie replied, "You need to cover up, you are offending me." Ms. Gillette said, "I'm not doing anything wrong and what you're asking me to do is illegal and I won't cover up." Ms. Kinzie said, "It [what I'm asking you to do] is not illegal and you need to cover your child's head." Ms.

Gillette responded, "It is illegal and I'm not doing anything wrong and I will not put a blanket on my child's head."

7. Ms. Kinzie walked away. Within three minutes a Delta ticket agent,<sup>2</sup> Bobby Kubicki, came on board and said, "I'm so sorry but the flight attendant is having you removed from the flight." The Gillettes both said, "What?" and Ms. Gillette said, "My family is waiting in New York. We haven't done anything wrong. Please let us go to New York." Mr. Gillette said, "I'm not getting off this flight." Mr. Kubicki pleaded with the Gillettes and said, "Please just get off and I'll work the matter." The Gillettes agreed to do so and Mr. Kubicki helped the Gillettes gather their belongings. As they proceeded down the aisle, a woman (with whom Ms. Gillette had spoken in the terminal prior to boarding the flight) asked, "Where are you going?" Ms. Gillette told her, "We're getting kicked off the plane for breastfeeding." Ms. Gillette started to cry at this point.

8. At the front of the plane Ms. Kinzie was standing at the cockpit door. Ms. Gillette said to her, "How could you do something so mean and hurtful? What you did shamed me and embarrassed me." Ms. Kinzie put her hand towards Ms. Gillette's face and said, "Just get off the plane." The pilot and co-pilot were turned around in their seats and overheard this

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<sup>2</sup> Ms. Gillette mistakenly identified Mr. Kubicki, Mr. Burrows, and Ms. Connors as Delta ticket agents; as stated above, they all work for ComAir under contract with Freedom Airlines.

conversation.<sup>3</sup> Ms. Gillette said to them, "Please help me, I haven't done anything wrong." They did not respond and turned away. The Gillettes disembarked from the aircraft.

9. Mr. Kubicki walked the Gillettes to the entrance of the terminal. Another Delta ticket agent, Christopher Burrows, came down and appeared angry that the Gillettes were being removed from the plane. Both Mr. Kubicki and Mr. Burrows said they would try to fix the situation. Mr. Kubicki and Mr. Burrows went back to the plane and when they returned, one went to call Delta.<sup>4</sup> Meanwhile, the Gillettes stood on the tarmac at the entrance to the terminal for about 20 minutes. During that time, Ms. Gillette called her father in New York to inform him about what was happening. Ms. Gillette also called Delta Air Lines and was told that Delta could not do anything at that time except record the fact that the Gillettes were being removed from the airplane.

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<sup>3</sup> Mr. Kubicki said that he did not overhear this conversation. Mr. Bengoa told this investigation that he did not recall seeing the Gillettes disembark from the airplane. He said that at that time he was outside talking with the fueller and dealing with the maintenance issue and did not know what was happening until he saw the Gillettes later at the gate (see below).

<sup>4</sup> Ms. Gillette could not recall clearly who called Delta but believes that it was Mr. Burrows who went to call Delta at this point in time. Mr. Burrows said Mr. Kubicki made some telephone calls that night but could not recall if Mr. Kubicki tried to call Delta. Mr. Kubicki said that he did not call Delta that evening but that while he was documenting the incident on the Gillettes' passenger name record, someone from Delta called from Salt Lake City. Mr. Kubicki did not know how Delta had found out about the incident. Mr. Kubicki told the Delta person that he was going to document everything on Ms. Gillette's passenger name record and explained what had happened. Mr. Kubicki asked the Delta person if she could make arrangements for the Gillettes to fly to New York the next morning and she said she could take care of that matter.

10. Subsequently, Mr. Kubicki or Mr. Burrows returned and told the Gillettes, "I'm sorry, you're not getting back on the plane. Please come upstairs and we'll figure out what to do." They went inside the terminal to the gate counter. At some point while the Gillettes were at the gate counter, another [ComAir] ticket agent, Ms. Connors, became involved in making arrangements for the Gillettes to stay over night in Burlington.

11. In addition, one of the Transportation Security Administration (TSA) staff, Cindy Bevins, came over and inquired into the situation. According to Ms. Gillette, Ms. Bevins was very supportive and advised the Gillettes to write everything down. While Ms. Bevins was conversing with the Gillettes, the co-pilot,<sup>5</sup> Mr. Bengoa, walked up to the gate counter. Ms. Bevins asked Mr. Bengoa if the Gillettes could re-board the airplane. Mr. Bengoa said, "I'm sorry this happened. I have two kids and my wife breastfed both of them." Mr. Bengoa went on to admit that Ms. Kinzie's actions were wrong but stated that while he had authority over the cockpit, the flight attendant had authority over the cabin and that he could not override her decision;<sup>6</sup> he did not offer to allow the Gillettes to re-board the

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<sup>5</sup> Ms. Gillette thought that Mr. Bengoa was the co-pilot; as stated above, he was the captain for the flight that night.

<sup>6</sup> Mr. Bengoa stated that he did not say specifically who has authority over the cockpit and cabin. He said that he only commented on how the flight attendant is trained to deal with the cabin while the pilots handle the front of the plane.

airplane.<sup>7</sup>

12. The Gillettes were at the gate counter for approximately 40 minutes while Mr. Kubicki, Mr. Burrows, and Ms. Connors made arrangements for a hotel room, meal vouchers, transportation to the hotel, and airplane tickets for the next day. The first Delta flight to New York the next morning was booked and nothing was available until the afternoon. The Gillettes said that they needed to leave in the morning and that they did not want to fly on Delta. The ground crew then told Ms. Gillette that it would be easier for her to call the Delta 800 number to make arrangements to fly on another airline. Ms. Gillette called Delta from the ticket counter, explained what had happened, and made arrangements for a flight on another airline the following morning. Ms. Gillette did not leave the airport until sometime after midnight.

13. **Mr. Bengoa:** Before Mr. Bengoa went out to the gate counter, Ms. Kinzie told him that she had just removed some passengers from the plane. Mr. Bengoa asked why, and Ms. Kinzie told him that Ms. Gillette had been non-compliant when she (the flight attendant) asked Ms. Gillette to

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<sup>7</sup> In its initial response to the Charge, Mesa Air Group stated that “while standing at the gate ticket counter, the Captain of Flight 6160 was asked by a TSA agent in the presence of the Charging Party whether he would permit the Charging Party and her family to re-board the aircraft. The captain replied, ‘yes,’ but the Charging Party refused to re-board the aircraft indicating she would not fly with the same flight attendant.” During their interviews with this investigation, Ms. Gillette, Ms. Bevins, and Mr. Bengoa all stated that Mr. Bengoa did not, in fact, offer the Gillettes the opportunity to re-board the airplane. See statements below. Ms. Bevins and Ms. Gillette both said that Ms. Gillette did not say that she would not get back on the airplane with the same flight attendant on board. Mr. Kubicki was also at the gate counter at this time but because he was focusing on closing the flight, he did not overhear this conversation between Ms. Gillette, Ms. Bevins, and the pilot.



cover up while breastfeeding her daughter. At that point, Mr. Bengoa thought the Gillettes had been disruptive in some fashion as that usually is the only reason why someone would be removed from a flight (as opposed to breastfeeding).<sup>8</sup>

14. Mr. Bengoa then spoke to the Gillettes at the gate counter and apologized. Ms. Gillette was upset and crying and told Mr. Bengoa that she had been quiet and simply breastfeeding her daughter and that there was no reason why she should have been removed from the aircraft. Mr. Bengoa did not speak further with the Gillettes.

15. A TSA agent (Ms. Bevins) was standing with the Gillettes. The TSA agent asked Mr. Bengoa if he could overrule the flight attendant's decision. Mr. Bengoa said yes he could but did not say anything more. Ms. Gillette heard this and said that she did not want to go on that flight or with that flight attendant.<sup>9</sup> Mr. Bengoa said that he did not specifically offer re-boarding to the Gillettes but felt that an offer had been made when he told

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<sup>8</sup> Christopher Pappaioanou, Director of Legal Affairs for Freedom Airlines, stated that the Freedom flight attendant manual says that the only time passengers should be removed are in instances where there is a threat or assault or intimidation of a flight crew member, or when a passenger does not comply with a request that would affect the safety of the flight. If and when this happens, the flight attendant is supposed to notify the flight crew and wait for instructions from the flight crew. According to David Seiler, senior attorney for Delta, Delta's policy is that the captain has the final authority about decisions to remove passengers from airplanes.

<sup>9</sup> As stated above, both Ms. Bevins and Ms. Gillette said that Ms. Gillette did not make this statement.

the TSA agent that he could overrule Ms. Kinzie's decision.<sup>10</sup> Since there were no extra flights attendants, Mr. Bengoa returned to the airplane.

16. When Mr. Bengoa got back on the aircraft he asked Ms. Kinzie what had happened and if the Gillettes had been loud or unsafe. Ms. Kinzie said, "no," but that Ms. Gillette had refused to cover herself while breastfeeding. Mr. Bengoa asked if the Gillettes had accused or threatened the flight attendant. Ms. Kinzie said no, that Ms. Gillette simply had not obeyed her order. At that point Mr. Bengoa did not say anything further. He did not want to start a conflict with Ms. Kinzie as they needed to get the airplane off the ground.

17. The next day, Mr. Bengoa spoke with Ms. Kinzie's supervisor and told the supervisor that what Ms. Kinzie had done was wrong. The flight supervisor followed through with Ms. Kinzie. Mr. Bengoa eventually received a call from the chief pilot who called to ask what had happened. There was an internal investigation for which Mr. Bengoa made the following statement:

This was on flight 6160 from BTW [sic] to JFK. Passengers were on board and the fueller came to the flight deck to advise me that the single point was not pumping any fuel, I went out to the wing with him to try and solve the problem. I then went to the terminal to call maintenance to ask for advise [sic], the station supervisor was at the ticket counter at that time. Supervisor went to the aircraft and I followed a couple of

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<sup>10</sup> According to Mr. Bengoa, only the captain has the authority to remove someone from a flight. The flight attendant is supposed to come to the captain with any problems. A flight attendant can provide input but the captain has final authority. The passenger has to be on the airplane when this happens; in this case, Mr. Bengoa said that the flight attendant overstepped her authority by having the Gillettes removed from the airplane.

seconds after that, when I got within a [sic] ear from the aircraft I heard Tammie Kinsley [sic] calling the supervisor because she wanted a passenger to be deplaned. I had flown with Tammie before, and I held high respect for her, since she had always made sound decisions and was very professional, so there was no question in my mind that if she had to deplane a passenger it would have been for good reason. By the time I boarded the aircraft, the supervisor was already in the back asking the passenger to deplane. I overheard her, the passenger, with a broad voice complaining to the supervisor and beginning to cry. I went to the flight deck with Tammie and asked to explain what was happening. Tammie said that while she was walking to the back this lady was breast feeding, she gave her a standard Delta blanket to cover herself and she refused, I asked Tammie if the passenger was being rude or otherwise unsafe to have her on board. She replied that she did not want that passenger on board. At this point I did not want to go against her judgment because of a risk that the passenger may become a hazard in flight. I then went to the ticket counter to speak with maintenance control and with the station supervisor. That same passenger was standing at the ticket counter. I apologized to her and told her that I respect the decision making of my crew. She was very polite and courteous and did not strike me as someone that would be a threat of any kind, she said that she told the flight attendant that she was not going to cover her baby's face, specially with a commonly used blanket. She was standing next to a TSA agent, the agent asked me if I could let her back on board, to which I replied yes, but the passenger then said she would not want to fly with that same flight attendant.

18. **Mr. Kubicki:** Mr. Kubicki was asked by Ms. Kinzie to remove the Gillettes from the aircraft. When Mr. Kubicki asked why, Ms. Kinzie said she had asked Ms. Gillette to cover her baby up while breastfeeding and that Ms. Gillette had refused to do so. Mr. Kubicki generally has to carry out the orders of the flights attendants and pilots so he boarded the airplane and asked the Gillettes to leave the airplane in accordance with the flight attendant's request. Ms. Gillette started to cry and asked Mr. Kubicki if he

could override the flight attendant's decision and he said that he could not. The Gillettes then disembarked from the aircraft.<sup>11</sup>

19. Mr. Kubicki apologized to the Gillettes multiple times.<sup>12</sup> It was cold and windy that night and the Gillettes had to stand out on the tarmac to wait for their pink tag items (items such as strollers, which are stowed in baggage as passengers board the airplane). Mr. Kubicki then told the Gillettes that they could go inside and wait while he retrieved their pink tag items. Mr. Kubicki then had to tend to closing up the flight before assisting the Gillettes. Mr. Kubicki did everything he was authorized to do for the Gillettes and explained what they could do in terms of hotel accommodations, meal vouchers, transportation, and re-booking on a new flight in the morning. Ms. Connors and Mr. Burrows assisted with these tasks for the Gillettes.

20. **Mr. Burrows:** Mr. Burrows initially went to the gate to assist Mr. Kubicki with the flight business. Mr. Burrows then saw the Gillettes coming off the airplane. He asked if there was a problem and Mr. Gillette said that the flight attendant wanted them off the plane because Ms. Gillette was breastfeeding their daughter. Ms. Gillette said that the flight attendant was offended by her breastfeeding. Mr. Burrows then boarded the aircraft and

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<sup>11</sup> At some point, Mr. Kubicki spoke with the pilot about the situation. While Mr. Kubicki could not recall exactly what the pilot said, he indicated to Mr. Kubicki that his "hands were tied" and could not override the decision of the flight attendant.

<sup>12</sup> Mr. Kubicki said that he was angry that the Gillettes were denied boarding. At the time, he had no knowledge about Freedom and Delta's (unwritten) policies about breastfeeding on flights.

asked Ms. Kinzie if there was an issue with the Gillettes. Ms. Kinzie told Mr. Burrows that Ms. Gillette was breastfeeding on the plane and that she did not want that on her plane. Mr. Burrows then spoke with Captain Bengoa and asked him if he knew what was going on in the cabin. Captain Bengoa said, "Yes," and Mr. Burrows said, "You're going to let her bump off a passenger after waiting for 5 hours because of this?" Mr. Burrows asked if the flight attendant was allowed to do that and the pilot said that if the flight attendant feels threatened or unsafe, she has the right to throw someone off the plane. Mr. Burrows then asked the captain if he agreed with the decision and the captain said he did not agree with the flight attendant's call but that he had to go with what she said because it was her cabin.<sup>13</sup>

21. Mr. Burrows then got off the aircraft and took the Gillettes (who were still standing outside on the tarmac at the terminal entrance) into the terminal. While the Gillettes spoke with Mr. Kubicki, Mr. Burrows went through the computer system to find out if there were any guidelines or policies to find a way to correct the situation for the Gillettes. Ms. Gillette was upset and crying at this point. Upon finding no guidelines or policies, Mr. Burrows told the Gillettes that he would assist them in finding a hotel and meal vouchers for the evening and took the Gillettes out to the ticket counter.

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<sup>13</sup> At the time Mr. Burrows did not know there were any laws regarding breastfeeding nor did

22. **Ms. Connors:** Either Mr. Kubicki or Mr. Burrows called Ms. Connors to let her know that someone was being removed from the flight. Ms. Connors then walked down to the gate and Mr. Kubicki and Mr. Burrows explained the situation. Ms. Connors was at the gate counter when the pilot got off the plane. She heard him say that he understood Ms. Gillette's feelings because his wife breastfed their children and that if it were up to him, they would not have this problem but that he had to defer to the flight attendant's decision. Ms. Connors did not hear the pilot offer the Gillettes an opportunity to re-board the flight. Ms. Connors did not think the Gillettes needed her assistance at the time so she returned to the ticket counter. She did not speak with the Gillettes at that point. Later that evening, Ms. Connors assisted the Gillettes with finding hotel accommodations and alternative transportation arrangements for the next day.

23. **Ms. Bevins:** As Ms. Bevins approached the gate counter, she noticed that Ms. Gillette was visibly upset and on the verge of tears. As Ms. Bevins was asking one of the airline representatives about the status of the flight, Ms. Gillette turned to Ms. Bevins and stated that she was asked to get off the flight because she refused to cover her nursing child's head as directed by the flight attendant. Ms. Bevins advised the Gillettes to write everything down.

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he know the Freedom Airlines policy about breastfeeding on flights.

24. When the pilot came to the gate counter, Ms. Bevins asked the pilot if the Gillettes could re-board the plane. The pilot stated that it was not his call but rather the flight attendant's call and that she had authority over what was allowed within the cabin. The pilot said that he was very sorry and that he could not understand why the flight attendant acted as she had given that she had small children of her own.

Saturday, October 14, 2006:

25. **Ms. Gillette:** The next morning, after the Gillettes arrived in New York, Ms. Gillette called the Delta corporate office and spoke with Anna DaSilva. Ms. Gillette explained what had happened the day before. According to Ms. Gillette, Ms. DaSilva seemed appalled by what happened. Ms. DaSilva said, "It's Saturday, there is no one here. Let me take this to my supervisor and I'll get back to you first thing Monday morning."

26. **Ms. DaSilva:** Ms. DaSilva told Ms. Gillette that she could not give her (Ms. Gillette) any information until she spoke with her supervisor.

Monday, October 16, 2006:

27. **Ms. Gillette:** Ms. DaSilva called Ms. Gillette on Monday and told Ms. Gillette that she (Ms. DaSilva) had spoken with her supervisor and was told that Ms. Gillette needed to call Freedom Airlines. Ms. Gillette said, "You're telling me that Delta doesn't take responsibility for this?" Ms. DaSilva replied, "There are certain instances that Delta deals with and there are a couple of exceptions and this is one of them." Ms. DaSilva gave Ms.

Gillette the address and telephone number for Freedom Airlines. She also told Ms. Gillette that the only way to submit a formal complaint would be to do so in writing<sup>14</sup> and that Ms. Gillette would not be able to speak with anyone else higher up in the chain of command via telephone.<sup>15</sup>

28. Ms. Gillette subsequently called Freedom Airlines and spoke with someone named Melissa Bergee. Ms. Gillette explained what had happened and requested to speak with a supervisor. According to Ms. Gillette, Ms. Bergee seemed sympathetic and connected Ms. Gillette to Ed Gomes' voice mail.<sup>16</sup> Ms. Gillette left Mr. Gomes a voice mail message with a brief description of what had transpired in Burlington. Mr. Gomes never returned Ms. Gillette's telephone call.

29. **Ms. DaSilva:** Ms. DaSilva spoke with her supervisor about Ms. Gillette's situation. They looked at their corporate customer care policy for information about what to do about a problem with a connection carrier. The policy said to refer the passenger to the specific carrier if a carrier employee was involved. Ms. DaSilva then called Ms. Gillette back and told (Ms. Gillette) that under the circumstances (action by an employee of a connection carrier) Ms. Gillette needed to call Freedom Airlines.

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<sup>14</sup> Ms. DaSilva did not recall saying this to Ms. Gillette.

<sup>15</sup> Ms. DaSilva could not recall if Ms. Gillette asked to speak with her supervisor. According to Ms. DaSilva, customer representatives do not generally escalate calls (pass them on to a supervisor). Customer representatives try to handle all calls and if they are not able to handle the call, the customer is referred to the website or corporate office.

<sup>16</sup> Mr. Gomes is the Vice President of Customer Service for Mesa Airlines.



Wednesday, October 18, 2006:

30. **Ms. Gillette:** Ms. Gillette went on-line and obtained Mr. Gomes' and Michael Lotz's e-mail addresses.<sup>17</sup> Ms. Gillette sent the following message to both men:

On Friday night I was removed from one of your flights traveling from Burlington, VT to New York, La Guardia, for breastfeeding my 21 month old baby in a discreet manner. Ticketed through Delta, I have been in touch with them throughout the weekend and this week. On Monday morning I left a message with Ed Gomes. As it is now Wednesday afternoon and I have received zero communication back regarding the issue, I wanted to write and clearly go on record that I have AGAIN made contact with your office.

Please note this email is record of my SECOND attempt to contact your airline.

31. Ms. Gillette did not receive a response from Mr. Gomes and Mr. Lotz's e-mail message was returned. That same day, Ms. Gillette received an e-mail message from Matthew Poydock, a regional manager for Mesa Airlines, stated the following:

First off, let me apologize for the manner in which you were treated. This is not at all the norm for our passengers to be treated. I attempted to contact you at the telephone number provided, however it was for a company called Restaurant Solutions. I chose not to leave a message, due to the nature of the incident. I wanted to ensure this message would be reaching you.

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<sup>17</sup> In a written document from Ms. Gillette, she stated that she called Freedom Airlines to obtain the e-mail addresses for Mr. Gomes and Mr. Lotz. Mr. Lotz is the President and Chief Executive Officer for Mesa Air Group.

I am very interested in hearing the details of what happened so we may ensure what you endured does not happen to anyone in the future.

Please feel free to contact me at anytime.

My office number is 303-348-4537. My email address is [matthew.poydock@mesa-air.com](mailto:matthew.poydock@mesa-air.com)

Thursday, October 19, 2006:

32. **Ms. Gillette:** Ms. Gillette e-mailed Mr. Poydock and said that she would call him.

Monday, October 23, 2006:

33. **Ms. Gillette:** Ms. Gillette called Mr. Poydock in the morning and left a voice mail message. Mr. Poydock subsequently called back, told Ms. Gillette that he and his wife had just had a baby, that he was very sorry, and took responsibility on behalf of Mesa Airlines. Mr. Poydock also told Ms. Gillette that no investigation had occurred but that he would contact Ms. Gillette as soon as he spoke with the pilots, flight attendant, and ticket agents.<sup>18</sup>

34. That same day, Lee Attaway (from Delta) attempted to reach Ms. Gillette and left a message indicating she (Ms. Attaway) had called.

35. **Mr. Poydock:** Ed Gomes asked Mr. Poydock to call Ms. Gillette. Ms. Gillette explained what happened but then Mr. Poydock started to "zone out" as he handles United Express flights, not Delta Connection/Freedom Airlines flights. Mr. Poydock tried to explain to Ms. Gillette that he did not

handle Delta Connection/Freedom Airlines flights but she was upset and he could not get a word in edgewise. Mr. Poydock apologized and said that Mesa was responsible for the incident. He could not recall if he told Ms. Gillette that he would call her back but does not think he did so since he generally does not handle Delta Connection/Freedom Airlines flight issues. At the end of the call Mr. Poydock told Ms. Gillette that he would find someone to handle the situation but could not recall if he said that person would call Ms. Gillette back.

36. Mr. Poydock then spoke with Craig McDaniel (the person responsible for Delta Connection issues). Mr. Poydock did not know what Mr. McDaniel did at that point.<sup>19</sup>

Wednesday, October 25, 2006:

37. **Ms. Gillette:** Ms. Attaway called Ms. Gillette again and apologized on behalf of Delta Air Lines for what had transpired on the Freedom Airline flight. Ms. Gillette noted that she had been ticketed on Delta and that the flight was a "code share" between the two airlines. According to Ms. Gillette,

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<sup>18</sup> According to Ms. Gillette, Mr. Poydock initially said that he would call her back in a couple of weeks. Ms. Gillette said, "That's too long" and Mr. Poydock then said he would call Ms. Gillette back that Friday. Mr. Poydock never called Ms. Gillette back.

<sup>19</sup> According to Mr. Pappaioanou, Kinley Chamber, the new Vice President for in-flight department, normally would have been the person to call Ms. Gillette. Ms. Chamber was involved in the investigation of the incident but apparently no one told her she should handle the complaint and call Ms. Gillette. Because of the publicity, Mesa wanted only corporate counsel to be in touch with Ms. Gillette. Mr. Pappaioanou did not contact Ms. Gillette. Once Mesa receives a letter from an attorney on behalf of a customer, Mesa will not respond directly to the customer.

Ms. Attaway then became defensive and said that the employee and aircraft were owned and operated by Freedom Airlines. Ms. Attaway further stated that she had submitted a complaint to both airlines on Monday, October 23, and that Freedom Airlines would be contacting Ms. Gillette. Ms. Gillette told Ms. Attaway that she had already spoken with Freedom Airlines and asked what responsibility Delta was willing to take for what had happened. Ms. Attaway stated again that it was not a Delta flight and that while it was in part Delta's responsibility, Freedom Airlines would investigate the issue and deal with the flight attendant.

38. Ms. Gillette told Ms. Attaway that she felt the problem was larger than one flight attendant and including breaking the law, violating her personally, and that both airlines were negligent for not having a policy protecting a passenger's right to breastfeed. Ms. Gillette also told Ms. Attaway that she expected a "higher call to action than just an undisclosed reprimand of one of their employees and that it was the responsibility of the airlines to guide their employees with rules of conduct." Ms. Attaway then asked Ms. Gillette what she wanted and Ms. Gillette said that she wanted to see both airlines create a written policy regarding breastfeeding. Ms. Gillette also said that she wanted the chance to have a new trip with her family as her sister had flown (to New York) from England and her parents had flown in from Colorado for a family reunion that weekend in New York. Ms. Attaway then asked Ms. Gillette if she had been given two flight vouchers at

the time of the incident. Ms. Gillette responded affirmatively but stated that she did not accept the two vouchers as appropriate compensation. Ms. Attaway asked Ms. Gillette again what she wanted. Ms. Gillette then asked Ms. Attaway what Delta was prepared to do. Ms. Attaway offered Ms. Gillette two more flight vouchers. Ms. Gillette declined the offer, stating that she had been "kicked off" a flight, shamed, and had had her rights violated. Ms. Gillette further stated that she was unwilling to make a decision without consulting her husband and attorney. At that point, Ms. Attaway seemed surprised and said that she did not know that Ms. Gillette had consulted with an attorney. Ms. Attaway said that she would provide the information from Ms. Gillette to the appropriate departments at Delta and that someone from Freedom would be in touch. Ms. Gillette said that she expected to hear back from both airlines. Ms. Attaway then said she could be in touch again but that she did not know when because she did not know how long the "internal process" would take.

39. Fifteen minutes later Ms. Attaway called Ms. Gillette back but Ms. Gillette did not pick up the phone.

40. **Ms. Attaway:** Ms. Attaway called Ms. Gillette after receiving information about Ms. Gillette's complaint from another department at Delta. Ms. Attaway apologized for the incident. Ms. Gillette wanted to know what Delta was going to do about the matter and Ms. Attaway advised Ms. Gillette that she would forward the complaint to the appropriate department for

review.<sup>20</sup> Ms. Gillette stated that she wanted Delta to have a policy in writing stating that a woman has the right to breastfeed on flights. Ms. Attaway told Ms. Gillette that there is no specific written policy and that all she could do was to refer the request to the appropriate business unit at Delta to decide whether to create a written policy. Ms. Attaway offered Ms. Gillette additional travel certificates (\$400 vouchers for tickets had already been given to the Gillettes on October 13, 2006) and Ms. Gillette refused the offer. When Ms. Gillette told Ms. Attaway that she (Ms. Gillette) was going to file a discrimination lawsuit against Delta, Ms. Attaway could no longer address Ms. Gillette's concerns.<sup>21</sup> Once the conversation with Ms. Gillette ended, Ms. Attaway forwarded the complaint to Freedom Airlines.

Thursday, October 26, 2006:

41. **Ms. Gillette:** Ms. Attaway called Ms. Gillette again and stated that Delta would no longer be in touch with Ms. Gillette and reiterated that Freedom would be in touch with Ms. Gillette. Ms. Attaway also asked if litigation had been filed against Delta but Ms. Gillette said she was not prepared to answer any questions at that time.

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<sup>20</sup> Ms. Attaway told this investigation that generally, when Delta receives a complaint about a connection partner employee, Delta forwards the complaint to the connection partner to handle, in this case, Freedom Airlines.

<sup>21</sup> Ms. Attaway told this investigation that generally, once a passenger has stated that he/she has contacted an attorney and is planning to file suit against Delta, she and other customer care representatives are not allowed to comment further.

42. **Ms. Attaway:** Freedom Airlines advised Delta that it would handle any further correspondence with Ms. Gillette so Ms. Attaway told Ms. Gillette that Delta would not be in touch again about the matter.<sup>22</sup>

### **C. Additional information**

#### Follow-up actions by Mesa Air Group/Freedom Airlines:

43. Subsequent to the national attention given to Ms. Gillette's experience on October 13, 2006, Freedom Airlines issued a press release on November 17, 2006 disclaiming any policy prohibiting breastfeeding on its aircraft and expressing its apologies to the Gillette family:

Mesa Air Group, Inc. would like to issue the following clarification following media reports regarding difficulties experienced by a passenger aboard a Freedom Airlines flight. The statement by our Company spokesman on November 14, 2006 incorrectly described the Company's position regarding passengers' breastfeeding their children on Company aircraft. "So there is no confusion, I would like to let folks know that we firmly support mothers' right to nurse their children on board our aircraft. We have no company policies whatsoever that hinder breastfeeding in any way," said Jonathan Ornstein, Mesa's Chairman and Chief Executive Officer. "In this instance, a flight attendant who was relatively new to her job made an unfortunate and incorrect decision. We would like to again offer our apologies to the family involved in this incident and reassure our passengers and the traveling public that this matter has been addressed as a training opportunity for all of our frontline employees," continued Mr. Ornstein. "As the father of two children, I understand the sensitive nature of this incident and

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<sup>22</sup> David Seiler, senior attorney for Delta stated that Delta does not cut off conversation with customers unless the customer states that he/she had contacted an attorney. At that point, the matter is turned over to the legal department, or as in a case involving an employee of a connection partner, the matter is handed over to the connection partner as it is the connection partner's responsibility to handle the situation with its employee. Delta felt the flight attendant's action was a mistake and a violation of Delta policy. The Connection Agreement between Delta and Freedom explicitly states that Freedom complies with the laws related to air travel and discrimination. See below.

would like to express my commitment to educating our employees on this topic."

44. In addition, Mesa Air released a crew memo to all flight attendants emphasizing that Mesa permits breastfeeding on its aircraft. Mesa has also added the memo to its flight attendant training for new hires.

#### Connection Agreement

45. The pertinent sections of the Connection Agreement between Delta Air Lines and Freedom Airlines/Mesa Air Group states the following:

This Delta Connection Agreement (this "Agreement"), dated and effective the 6<sup>th</sup> day of March, 2006 (the "Effective Date"), is between Delta Air Lines, Inc., whose principal address is 1030 Delta Boulevard, Atlanta, Georgia 30320 ("Delta"), Freedom Airlines, Inc. ("Operator"), a wholly-owned subsidiary of Mesa Air Group, Inc. holding a certificate of Public Convenience and Necessity issued by the Federal Aviation Administration ("FAA"), whose principal address is 410 North 44<sup>th</sup> Street, Suite 700, Phoenix, Arizona 85008 and Mesa Air Group, Inc. ("Parent"), parent company and sole shareholder of Operator, whose principal address is 410 North 44<sup>th</sup> Street, Suite 700, Phoenix, Arizona 85008.

WHEREAS, Delta operates the Delta Connection program; and

WHEREAS, Operator desires for Delta to perform and provide various marketing, schedule and fare related, and other services for Operator in connection with the Delta Connection program; and

WHEREAS, Delta is willing to perform and provide various marketing, schedule and fare related, and other services for Operator in connection with the Delta Connection program; and



WHEREAS, this Agreement will enhance the ability of Operator and Delta to serve the public and the communities that they serve or may choose to serve.

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual undertakings set for herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Delta and Operator, intending to be legally bound, hereby agree to enter into this Agreement as follows:

ARTICLE 1. FARES AND RULES PUBLICATION.

A. Delta Connection program and Appointment of Delta as Agent. Operator hereby appoints Delta as its agent to publish its fares, schedules and related information under Delta's two letter flight designator code in city pairs specified by Delta on the twelve (12) 37-seat DHC-8-100 turbo-prop aircraft set forth on Exhibit A attached hereto (collectively, the "Aircraft"), and Delta hereby accepts such appointment. Delta hereby grants Operator the authority to operate as a Delta Connection carrier, and Operator hereby accepts such grant, to conduct air transportation operating the Aircraft utilizing certain services together with certain trademarks and service marks owned by Delta or which Delta has the right to use, all as provided herein.

\* \* \* \* \*

ARTICLE 5. CUSTOMER SERVICES.

A. Operator will handle all customer related services in connection with the Delta Connection flights in a professional, businesslike and courteous manner. In order to ensure a high level of customer satisfaction for the Delta Connection flights, Operator will (i) establish and maintain customer handling procedures and policies that are substantially similar to those utilized by Delta ("Customer Service Policies") and (ii) establish, maintain and enforce employee conduct, appearance and training standards and policies that are substantially similar to those used by Delta.

\* \* \* \* \*

ARTICLE 12. INDEPENDENT CONTRACTORS; LIABILITY PROVISIONS.

A. Operator shall act as an independent contractor. The employees, agents and/or independent contractors of Operator engaged in performing any of the services Operator is obligated to perform pursuant to this Agreement shall be employees, agents and independent contractors of Operator for all purposes and under no circumstances shall employees, agents and independent contractors of Operator be deemed to be employees, agents or independent contractors of Delta. In its performance of obligations under the Agreement, Operator shall act, for all purposes, as an independent contractor and not as an agent for Delta. Delta shall have no supervisory power or control over any employees, agents or independent contractors engaged by Operator in connection with Operator's performance of its obligations hereunder, and all complaints or requested changes in procedure shall, in all events, be transmitted by Delta to a designated representative of Operator.

\* \* \* \* \*

C. Operator and Parent, jointly and severally, shall be liable for and hereby agrees fully to defend, release, discharge, indemnify, and hold harmless Delta and its affiliates, and each of their respective directors, officers, employees and agents (each, a "Delta Indemnitee") from and against any and all claims, demands, damages, liabilities, suits, judgments, actions, causes of action, losses, costs and expenses of any kind, character or nature whatsoever (in each case whether groundless or otherwise), including reasonable attorneys' fees, costs and expenses in connection therewith and expenses of investigation and litigation thereof, which may be suffered by, accrued against, charged to, or recoverable from any Delta Indemnitee in any manner arising out of, connected with, or attributable to this Agreement, the performance, improper performance, or nonperformance of any and all obligations to be undertaken by Operator pursuant to this Agreement, the loss, theft, use, misuse or misappropriation of Traffic Documents, or the operation, non-operation, or improper operation of Operator's aircraft, equipment or facilities at any location, excluding only claims, demands, damages, liabilities, suits, judgments, actions, causes of action, losses, costs and expenses resulting from the

gross negligence or willful misconduct of Delta, its affiliates, and their respective directors, officers, agents or employees.

\* \* \* \* \*

E. Operator and Delta agree to comply with all lawful rules, regulations, directives and similar instructions of appropriate governmental, judicial and administrative entities including, but not limited to, airport authorities, the Federal Aviation Administration and the Department of Transportation (and any successor agencies) with respect to operations covered by this Agreement.

\* \* \* \* \*

ARTICLE 15. OPERATIONS OF OPERATOR AS A DELTA CONNECTION CARRIER.

\* \* \* \* \*

B. Operator acknowledges and agrees that participation in the Delta Connection program obligates Operator to offer and maintain a professional, high quality level of service in terms of schedules, customer service and the like.

\* \* \* \* \*

ARTICLE 16. REPRESENTATIONS AND WARRANTIES.

A. Representations; Warranties and Covenants of Operator and Parent. Operator and Parent each represents and warrants to Delta as of the date hereof as follows:

\* \* \* \* \*

(5) Compliance. All air transportation services performed pursuant to this Agreement or otherwise shall be conducted in full compliance with all applicable statutes, orders, rules, regulations and notifications, whether now in effect or hereafter promulgated, of all governmental agencies having jurisdiction over its operations, including, but not limited to, the FAA, D"OD, and DOT. Operator's compliance with such governmental statutes, orders, rules, regulations and notifications will be the sole and exclusive obligation of Operator and Parent, and Delta

will have no obligation, responsibility, or liability, whether direct or indirect, with respect to such matters.

\* \* \* \* \*

## II. Analysis

The Vermont Fair Housing and Public Accommodations Act, 9 V.S.A.

§4502(a) and (j) provide:

(a) An owner or operator of a place of public accommodations or an agent or employee of such owner or operator shall not, because of . . . . [the] sex . . . . of any person, refuse, withhold from or deny to that person any of the accommodations, advantages, facilities and privileges of the place of public accommodation.

\* \* \* \* \*

(j) Notwithstanding any other provision of law, a mother may breastfeed her child in any place of public accommodation in which the mother and child would otherwise have a legal right to be.

Ms. Gillette alleges that Delta Air Lines and Mesa Air Group/Freedom Airlines discriminated against her based on her right to breastfeed her daughter. Specifically, on October 13, 2006, after Ms. Gillette and her husband and daughter boarded Delta Air Lines/Freedom Airlines flight 6160 bound for New York, Ms. Gillette began to breastfeed her daughter while seated at the back of the plane. The flight attendant asked Ms. Gillette to cover up her daughter's head. When Ms. Gillette refused to do so, the flight attendant had the Gillettes removed from the flight. The pilot would not override the flight attendant's decision and the Gillettes were forced to

spend the night in Burlington before departing the next morning. In order to sustain her burden of proof under 9 V.S.A. §4502(a) and (j), Ms. Gillette must show by a preponderance of the evidence that:

1. She is a member of a protected class (breastfeeding mother)
2. She made herself available to receive services ordinarily provided by the Responding parties to all members of the public in the manner in which they are ordinarily provided; and
3. She was denied the same accommodations, advantages, facilities and privileges of the place of public accommodation that similarly situated persons outside the protected class did.

If Ms. Gillette is able to establish a prima facie case of discrimination, Delta Air Lines and Mesa Air Group/Freedom Airlines must present a legitimate non-discriminatory reason for their actions. If Delta Air Lines and Mesa Air Group/Freedom Airlines do so, Ms. Gillette must show by a preponderance of the evidence that their reasons were pretext, and that the actual reasons for their actions were discriminatory.

It is undisputed that Ms. Gillette is a member of a protected class as she was breastfeeding at the time of the incident on October 13, 2006. Moreover, Ms. Gillette and her family made themselves available to receive flight services ordinarily provided by Delta Air Lines and Mesa Air Group/Freedom Airlines to all members of the general public. Finally, as the facts show, when Ms. Gillette was denied boarding on flight 6160, she was denied the same accommodations, advantages, facilities and privileges enjoyed by similarly situated persons outside her protected class.

For the most part, the basic facts of the incident are undisputed by all parties. Ms. Kinzie had the Gillettes removed from the plane because Ms. Gillette was breastfeeding her daughter, contrary to the (unwritten) policies of both Delta Air Lines and Mesa Air Group/Freedom Airlines. In addition, both airlines assert that the captain has final authority over decisions to remove passengers from flights. The major point in dispute revolves around what Captain Bengoa did or did not do on October 13, 2006.

While at the gate counter prior to departure, Captain Bengoa contends that when Ms. Bevins asked him if he could override the flights attendant's decision to remove the Gillettes from the airplane, in the presence and within earshot of the Gillettes, Mr. Bengoa stated that he *could* override the decision of Ms. Kinzie and that in saying so he was, in effect, offering re-boarding to the Gillettes. Mr. Bengoa further stated that the Gillettes declined the offer to re-board when Ms. Gillette stated that she did not want to re-board the aircraft with Ms. Kinzie on board. In contrast, Ms. Gillette, Ms. Bevins, Mr. Kubicki, Mr. Burrows, and Ms. Connors all stated that Captain Bengoa said that he could *not* override the decision of the flight attendant. In fact, Freedom Airlines policy states that the captain has the final authority over decisions to remove passengers from the aircraft. Furthermore, Mr. Bengoa admitted that Ms. Kinzie overstepped her authority when she had the Gillettes removed from the airplane.

In addition, in his written statement for the investigation conducted by Freedom Airlines Mr. Bengoa stated that “[he] asked [Ms. Kinzie] if the passenger was being rude or otherwise unsafe to have her on board. [Ms. Kinzie] replied that she did not want that passenger on board. At this point [he] did not want to go against [Ms. Kinzie’s] judgment because of a risk that the passenger may become a hazard in flight . . . [He] apologized to [Ms. Gillette] and told her that [he] respect[s] the decision making of [his] crew. [Ms. Gillette] was very polite and courteous and did not strike [him] as someone that would be a threat of any kind.” During his interview with this investigation, Mr. Bengoa stated that when returned to the airplane, he asked Ms. Kinzie if the Gillettes had been disruptive or threatening. Ms. Kinzie said no, that Ms. Gillette simply had not obeyed her order. Mr. Bengoa did nothing further at that point. The next day, Mr. Bengoa spoke with Ms. Kinzie’s supervisor and told the supervisor that what Ms. Kinzie had done was wrong. In making these statements, Mr. Bengoa provides ample evidence to indicate that there was no valid reason for removing the Gillettes from the airplane. Yet Mr. Bengoa took no action to assert his authority as captain to override the decision of Ms. Kinzie.

Clearly, two violations occurred on October 13, 2006. First, Ms. Kinzie overstepped her authority and violated Freedom Airlines’ and Delta Air Lines’ policies about breastfeeding on flights (unwritten) and about removing passengers from airplanes (written) when she had the Gillettes removed

from flight 6160. Second, Captain Bengoa failed to enforce the Freedom Airlines policy about a captain's final authority regarding passenger removal when he refused to override Ms. Kinzie's decision. Neither Delta nor Freedom is able to offer a legitimate, non-discriminatory reason for Ms. Kinzie's and Mr. Bengoa's actions. Ms. Gillette appears to have established a prima facie case of discrimination.

Unfortunately, in the wake of this incident and the subsequent publicity it received, neither Delta Air Lines nor Mesa Air Group/Freedom Airlines handled Ms. Gillette's complaint in a helpful, responsive, or conciliatory manner. This matter might have easily been resolved with clear and responsive communication with Ms. Gillette, public apologies, additional compensation for the embarrassment and inconvenience to the Gillettes, and conciliatory discussions about the possibility of establishing written policies and training for Freedom Airlines employees regarding breastfeeding on Freedom Airline flights. What happened instead was a series of curtailed or failed communications with Ms. Gillette and her attorney. It should be noted, however, that Freedom Airlines did issue a public apology in a press release on November 17, 2006, distributed a memo regarding breastfeeding on flights to all its flight attendants, and has incorporated the issue into its training manual for newly hired flight attendants.



### **Delta Air Lines liability:**

The Connection Agreement between Delta Air Lines and Mesa Air Group/Freedom Airlines clearly states that Freedom Airlines and its employees are not agents of Delta Air Lines but rather independent contractors in carrying out its duties as a Delta Connection partner. Moreover, the Connection Agreement states that Delta “shall have no supervisory power or control over any employees, agents or independent contractors engaged by Operator in connection with Operator’s performance of its obligations hereunder, and all complaints or requested changes in procedure shall, in all events, be transmitted by Delta to a designated representative of Operator.” Because of the terms contained in the Connection Agreement between Delta Air Lines and Mesa Air Group/Freedom Airlines, this investigation believes that there are no reasonable grounds to believe that Delta Air Lines discriminated against Ms. Gillette.

**PRELIMINARY RECOMMENDATION:** This investigative report makes a preliminary recommendation that the Human Rights Commission find that there are reasonable grounds to believe that Mesa Air Group/Freedom Airlines discriminated against Ms. Gillette for breastfeeding in violation of 9 V.S.A. §4502(a) and (j) of the Vermont Fair Housing and Public Accommodation Act. This investigative report makes a second preliminary recommendation that the Human Rights Commission find that there are no

**reasonable grounds** to believe that Delta Air Lines discriminated against Ms. Gillette for breastfeeding in violation of 9 V.S.A. §4502(a) and (j) of the Vermont Fair Housing and Public Accommodation Act.

\_\_\_\_\_  
Tracey Tsugawa, Investigator

\_\_\_\_\_  
Robert Appel, Executive Director

\_\_\_\_\_  
Date



3. The following vote was taken on a motion to find that there are reasonable grounds to believe that Mesa Air Group/Freedom Airlines, two of the Respondents, illegally discriminated against Emily Gillette, the Charging Party, in public accommodations on the basis of breast feeding in violation of 9 V.S.A. §4502(a) and (j) of the Vermont Fair Housing and Public Accommodations Act.

Joseph Benning, Chair For  Against  Absent  Recused

Nathan Besio For  Against  Absent  Recused

Shirley Boyd-Hill For  Against  Absent  Recused

Mary Marzec-Gerrior For  Against  Absent  Recused

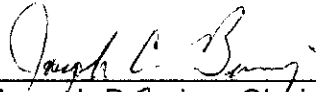
Donald Vickers For  Against  Absent  Recused

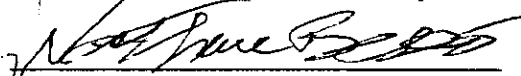
Entry: Reasonable grounds  Motion failed


4. Because the Human Rights Commissioners found that there are reasonable grounds to believe that Mesa Air Group/ Freedom Airlines, two of the Respondents, illegally discriminated against Emily Gillette, the Charging Party, in violation of the Vermont Fair Housing and Public Accommodations Act, a final attempt to resolve this part of Charge No. PA07-0007 through settlement shall be completed by September 26, 2008 .

Dated at Montpelier, Vermont this 27<sup>th</sup> day of March 2008.

By: VT HUMAN RIGHTS COMMISSION

  
\_\_\_\_\_  
Joseph Behning, Chair

  
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Nathan Besio

  
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Shirley Boyd-Hill

  
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Mary Marzec-Gerrion

  
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Donald Vickers



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Joseph Benning, Chair For  Against  Absent  Recused

Nathan Besio For  Against  Absent  Recused

Shirley Boyd-Hill For  Against  Absent  Recused

Mary Marzec-Gerrior For  Against  Absent  Recused

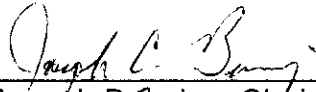
Donald Vickers For  Against  Absent  Recused

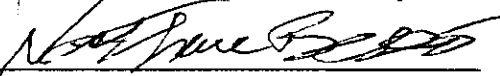
Entry: Reasonable grounds  Motion failed

4. Because the Human Rights Commissioners found that there are reasonable grounds to believe that Mesa Air Group/ Freedom Airlines, two of the Respondents, illegally discriminated against Emily Gillette, the Charging Party, in violation of the Vermont Fair Housing and Public Accommodations Act, a final attempt to resolve this part of Charge No. PA07-0007 through settlement shall be completed by September 26, 2008 .

Dated at Montpelier, Vermont this 27<sup>th</sup> day of March 2008.

By: VT HUMAN RIGHTS COMMISSION

  
\_\_\_\_\_  
Joseph Behning, Chair

  
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Mary Marzec-Gerrion

  
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