

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

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**No. CIV 00-1656 JP/RLP**

**THE NEW MEXICO DEPARTMENT  
OF PUBLIC SAFETY,**

**Defendant.**

**ANSWER TO THE COMPLAINT**

For its answer and affirmative defenses to the United States of America's Complaint, the New Mexico Department of Public Safety ("DPS") states:

1. DPS admits that the action is brought on behalf of the United States and involves claims allegedly arising under 42 U.S.C. § 2000(e), *et seq.*, but denies that it has violated the statutory provision in any manner.
2. DPS admits the jurisdictional allegations of paragraph 2.
3. DPS admits the jurisdictional allegations of paragraph 3.
4. DPS admits the jurisdictional allegations of paragraph 4.
5. DPS denies the factual allegations contained in paragraphs 5, 5(a) and 5(b).
6. DPS denies the factual allegations of paragraph 6 of the Complaint regarding the timeliness of Lt. Menefee's EEOC Charge No. 390-97-1118, and admits that Lt. Menefee alleged that she had been discriminated against on the basis of her gender in that charge. DPS denies the remaining allegations of the Complaint regarding the EEOC's investigation, its conclusions, and its conciliation attempts. DPS admits that the EEOC referred this matter to the Justice

Department.

7. DPS denies the factual allegations of paragraph 7 of the Complaint.

### **AFFIRMATIVE DEFENSES**

#### **First Affirmative Defense**

Plaintiff's claims are barred by Lt. Menefee's failure to comply with the administrative and procedural requirements of 42 U.S.C. § 2000(e), *et seq.*

#### **Second Affirmative Defense**

Plaintiff's claims are barred by DPS' exercise of reasonable care to prevent and promptly correct any sexually harassing behavior and barred by Lt. Menefee's unreasonable failure to take advantage of any prevention or correction opportunities provided by DPS or to otherwise avoid harm.

#### **Third Affirmative Defense**

Plaintiff's claims are barred to the extent they rely on alleged incidents of harassment against Lt. Menefee that DPS neither knew about nor should have known about.

#### **Fourth Affirmative Defense**

Plaintiff's claims are barred by failure to comply with applicable statutes of limitations.

#### **Fifth Affirmative Defense**

To the extent Plaintiff seeks to recover damages under 42 U.S.C. § 1981(a), Plaintiff's Complaint fails to state a claim upon which relief may be granted in this litigation.

#### **Sixth Affirmative Defense**

Plaintiff's claims are barred under the doctrine of laches.

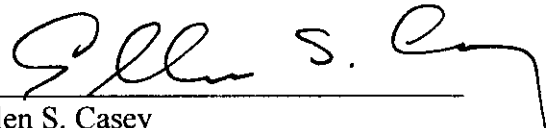
WHEREFORE, having fully answered the Complaint, DPS requests this Court to dismiss

the Complaint in its entirety, and for such other relief as it deems just and proper.

Respectfully submitted,

HINKLE, HENSLEY,  
SHANOR & MARTIN, L.L.P.

By:

  
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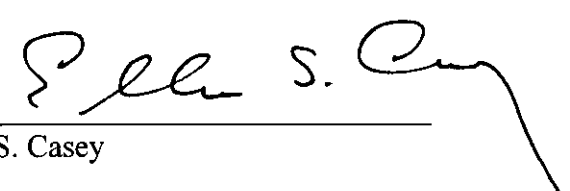
Attorneys for Defendant, New Mexico  
Department of Public Safety

**CERTIFICATE OF SERVICE**

I hereby certify that I did on this 25<sup>th</sup> day of January, 2001, cause the original and one true and correct copy of the Answer to the Complaint in the above-referenced matter to be served via first-class mail postage prepaid to:

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Ellen S. Casey