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14 **UNITED STATES DISTRICT COURT**
 15 **EASTERN DISTRICT OF CALIFORNIA**

17 U.S. EQUAL EMPLOYMENT
 18 OPPORTUNITY COMMISSION,
 19 Plaintiff,

20 vs.

21 KS AVIATION, INC. d/b/a SIERRA
 22 ACADEMY OF AERONAUTICS, XING
 23 KONG AVIATION SERVICE, LLC, and
 Does 1-10 Inclusive,
 24 Defendants.

Case No.: 1:18-cv-00744-NONE-SKO
~~PROPOSED~~ **CONSENT DECREE;**
ORDER

1 I.

2 **INTRODUCTION**

3 Plaintiff U.S. Equal Employment Opportunity Commission (the “EEOC”) and Defendants
4 KS Aviation, Inc. d/b/a Sierra Academy of Aeronautics and Xing Kong Aviation Service, LLC
5 (“Defendants”) hereby stipulate and agree to entry of this Consent Decree (the “Decree”) to fully
6 and finally resolve Plaintiff’s complaint against Defendants in U.S. Equal Employment
7 Opportunity Commission v. KS Aviation, Inc. d/b/a Sierra Academy of Aeronautics et al. and
8 Does 1-10, Inclusive; Civil No. 18-CV-00744-NONE-SKO (the “Action”). On May 31, 2018,
9 Plaintiff filed this Action in the United States District Court for the Eastern District of California,
10 for violation of the Americans with Disabilities Act of 1990 (“ADA”), as amended by the ADA
11 Amendments Act of 2008 (“ADAAA”). On May 23, 2019, Plaintiff filed the First Amended
12 Complaint adding Xing Kong Aviation Service, LLC to the Action. The Action alleged that
13 Defendants unlawfully discriminated and retaliated against Charging Party due to an actual or
14 perceived disability when KS Aviation, Inc. discharged her for taking a medical leave of
15 absence.

16 II.

17 **PURPOSES AND SCOPE OF THE CONSENT DECREE**

18 A. The Decree is made and entered into by and between the EEOC and Defendants
19 and shall be binding on and enforceable against Defendants as well as their officers, directors,
20 agents, successors and assigns. Collectively, the EEOC and Defendants, are referred to herein as
21 the “Parties.”

22 B. The Parties have entered into this Decree for the following purposes:

- 23 1. To provide appropriate monetary and injunctive relief;
- 24 2. To ensure company-wide employment practices in compliance with federal law;
- 25 3. To ensure a work environment free from discrimination on the basis of disability
26 and/or retaliation;
- 27 4. To ensure company-wide training in employment discrimination law; and
- 28 5. To ensure appropriate recording keeping, reporting, and monitoring.

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III.

RELEASE OF CLAIMS

A. This Decree fully and completely resolves all issues, claims and allegations raised by the EEOC against Defendants in this Action.

B. Nothing in this Decree shall be construed to limit or reduce Defendants' obligation to comply fully with the ADA/ADAAA or any other federal employment statute.

C. Nothing in this Decree shall be construed to preclude any party from bringing suit to enforce this Decree in the event that any party fails to perform the promises and representations contained herein.

D. This Decree in no way affects the EEOC's right to bring, process, investigate or litigate other charges that may be in existence or may later arise against Defendants in accordance with standard EEOC procedures.

E. This Decree terminates the conciliation agreement of September 29, 2015 between the EEOC and Defendants concerning Charge Number 846-2013-27609.

IV.

JURISDICTION

A. The Court has jurisdiction over the Parties and the subject matter of this litigation. The Action asserts claims that, if proven, would authorize the Court to grant the equitable relief set forth in this Decree. The terms and provisions of this Decree are fair, reasonable and just. This Decree conforms with the Federal Rules of Civil Procedure and ADA/ADAAA and is not in derogation of the rights or privileges of any person.

B. The Court shall retain jurisdiction of this action during the duration of the Decree for the purposes of entering all orders, judgments and decrees that may be necessary to implement the relief provided herein including but not limited to an extension of the Decree.

1 V.

2 **EFFECTIVE DATE AND DURATION OF DECREE**

3 A. The provisions and agreements contained herein are effective immediately upon
4 the date which this Decree is entered by the Court (the "Effective Date").

5 B. Except as otherwise provided herein, this Decree shall remain in effect for two
6 (2) years after the Effective Date.

7 VI.

8 **MODIFICATION AND SEVERABILITY**

9 A. This Decree constitutes the complete understanding of the Parties with respect to
10 the matters contained herein. No waiver, modification or amendment of any provision of this
11 Decree will be effective unless made in writing and signed by an authorized representative of
12 each of the Parties.

13 B. If one or more provisions of the Decree are rendered unlawful or unenforceable,
14 the Parties shall make good faith efforts to agree upon appropriate amendments in order to
15 effectuate the purposes of the Decree. In any event, the remaining provisions will remain in full
16 force and effect unless the purposes of the Decree cannot, despite the Parties' best efforts, be
17 achieved.

18 C. By mutual agreement of the Parties, this Decree may be amended or modified in
19 the interests of justice and fairness in order to effectuate the provisions herein.

20 VII.

21 **COMPLIANCE AND DISPUTE RESOLUTION**

22 A. The Parties expressly agree that if the EEOC has reason to believe that
23 Defendants have failed to comply with any provision of this Consent Decree, the EEOC may
24 bring an action before this Court to enforce the Decree. Prior to initiating such action, the EEOC
25 will notify Defendants, in writing, of the nature of the dispute. This notice shall specify the
26 particular provision(s) that the EEOC believes Defendants breached. Absent a showing by either
27 party that the delay will cause irreparable harm, Defendants shall have thirty (30) days to attempt
28 to resolve or cure any non-monetary breach. In the event of a monetary breach, the EEOC may

1 petition this Court for resolution and seek all available relief without the need for the EEOC to
2 first notify Defendants of any monetary breach in writing or allow time for Defendants to
3 attempt to resolve or cure any monetary breach.

4 B. After thirty (30) days have passed with respect to any breach, if the Parties have
5 reached no resolution or agreement to extend the time further, the EEOC may petition this Court
6 for resolution of the dispute, seeking all available relief, including an extension of the term of the
7 Decree, the EEOC's costs and any attorneys' fees incurred in securing compliance with the
8 Decree, and/or any other relief the Court deems appropriate.

9 **VIII.**

10 **MONETARY RELIEF**

11 A. In light of the adverse impact of the COVID-19 pandemic on Defendants'
12 operations, Defendants will pay a total of \$10,000.00 ("Settlement Payment") to Charging Party,
13 Norma Garay. The EEOC has full and complete discretion to determine the characterization of
14 such payments as damages, wages or otherwise, and has elected to characterize this Settlement
15 Payment as compensatory damage for emotional distress suffered.

16 B. The EEOC will provide Defendants with a Distribution List containing Charging
17 Party's current address, the amount to be paid, and the classification of such amount to be paid.
18 Within fifteen (15) days of the EEOC providing the Distribution List, the Defendants shall send a
19 check, via first class, in the amount designated in the EEOC's Distribution List, to the Charging
20 Party at the address provided by the EEOC in its Distribution List.

21 C. For this Settlement Payment, no tax withholding shall be made. Defendants shall
22 prepare and distribute a 1099 tax reporting form to the Charging Party. Within three (3) business
23 days of sending the check, Defendants shall submit a copy of the check and any related
24 correspondence to Anna Y. Park, Regional Attorney, U.S. Equal Employment Opportunity
25 Commission, 255 East Temple Street, 4th Floor, Los Angeles, California 90012. To the extent
26 the check needs to be resent, the EEOC will notify Defendants.

1 IX.

2 **GENERAL INJUNCTIVE RELIEF**

3 A. Discrimination based on disability:

4 Defendants, including all officers, executives, managerial and non-managerial
5 employees, and all those in active concert or participation with them, or any of them, are hereby
6 enjoined from: (a) discriminating on the basis of their disability in the workplace and (b)
7 engaging in or being a party to any action, policy or practice that is intended or is known to them
8 to have the effect of discriminating any employee on the basis of their disability.

9 B. Retaliation:

10 Defendants, including all officers, executives, managerial and non-managerial
11 employees, and all those in active concert or participation with them, or any of them, are hereby
12 enjoined from implementing or permitting any action, policy or practice with the purpose of
13 retaliating against any current or former employee of Defendants, because he or she has in the
14 past, or during the term of this Decree:

- 15 1. Opposed any practice made unlawful under ADA/ADAAA;
16 2. Filed a charge of discrimination alleging such practice;
17 3. Participated in any manner in an internal or external investigation or proceeding relating
18 to this case or any claim of a violation of ADA/ADAAA;
19 4. Was identified as a possible witness or claimant in this action;
20 5. Asserted any right under this Decree; or
21 6. Sought and/or received any relief in accordance with this Decree.

22 X.

23 **SPECIFIC INJUNCTIVE RELIEF**

24 A. Full-Time Human Resources Manager/Coordinator

25 The current full-time Human Resources Manager/Coordinator (“HRM”) will oversee all
26 aspects of Defendants’ EEO processes in an effort to provide a discrimination free workplace.
27 The HRM will be responsible for, including, but not limited to, the implementation of anti-
28 discrimination policies, complaint procedures, a centralized tracking system for discrimination

1 and/or retaliation complaints, and live, annual EEO training for all of Defendants' employees,
2 including, management, supervisors, and human resources personnel.

3 Defendants shall bear all costs associated with the retention of the HRM and the performance
4 of his/her/its duties. If the HRM must be replaced during the duration of the Decree, the Parties
5 shall engage in discussion over the designation of a new HRM.

6 **B. Policies and Procedures**

7 Defendants shall review, revise, distribute, and implement their policies and procedures
8 against discrimination and retaliation prohibited by the ADA/ADAAA (the "Policy"). The
9 Policy shall include:

10 1. Clear objective criteria which expressly prohibits discrimination on the basis of race,
11 color, national origin, sex, religion, age, disability, genetic information or any other protected
12 category;

13 2. Assurance that employees who make complaints of discrimination and/or retaliation or
14 who provide information related to such complaints will be protected against retaliation;

15 3. Assurance that properly trained human resources personnel and appropriate management
16 officials are involved in the discrimination complaint investigation process;

17 4. A clearly described complaint process that provides accessible and confidential avenues
18 of complaint with contact information including name, address, and telephone number of persons
19 both internal (i.e. human resources or management official) and external to Defendants (i.e. the
20 EEOC and/or DFEH) to whom employees may report discrimination and retaliation, including a
21 written statement that the employee may report the discriminatory or retaliatory behavior to
22 designated persons outside their chain of management;

23 5. Assurance that Defendants will protect the confidentiality of discrimination and/or
24 retaliation complaints to the extent practicable;

25 6. A complaint process that provides a prompt, thorough, and impartial investigation;

26 7. A procedure for communicating with the complainant in writing regarding the status of
27 the complaint/investigation, results of the investigation, and any remedial action taken;

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1 8. Assurance that Defendants will take prompt and appropriate corrective action when they
2 determine that discrimination and/or retaliation occurred; and

3 9. Assurance that Defendants' disciplinary policies hold employees and managers
4 accountable for failing to take appropriate action or for engaging in conduct prohibited under this
5 Decree.

6 The Policy shall be distributed to each and every of Defendants' permanent employee on an
7 annual basis, including management/supervisors. It shall also be included in any relevant policy
8 or employee manuals distributed to employees by Defendants. Defendants shall collect
9 acknowledgments from each employee who receives the Policy. Throughout the term of this
10 Decree, Defendants shall also post the Policy in a place that is conspicuous and accessible to all
11 employees in a legible font that is a minimum of 15 points in size.

12 C. Training

13 All of Defendants' employees shall be required to attend an intensive training program of at
14 least two (2) hours with regard to compliance under Title VII, ADA, ADAAA, and Retaliation.
15 The training shall be conducted once per year prior to each anniversary of the Effective Date of
16 this Decree. Each training session shall be scheduled on company time, for a period of no less
17 than two (2) hours dedicated every year, with a focus on Title VII, ADA, ADAAA, and
18 Retaliation.

19 Such training shall be mandatory.

20 1. Said training shall include coverage of subjects of equal employment opportunity rights
21 and responsibilities, including, but not limited to, Title VII's prohibitions against discrimination
22 on all bases protected under Title VII, prohibitions against discrimination on all bases protected
23 under ADA and ADAAA, Defendants' Policy for reporting alleged incidents of discrimination
24 and/or retaliation and handling complaints of disability-based discrimination and/or retaliation,
25 and Defendants' commitment to non-discriminatory conduct;

26 2. Said training shall include a detailed discussion on the prohibition against retaliation and
27 expected conduct once complaints are received;

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1 3. The training of managerial employees shall additionally include training on how to
2 recognize discrimination and/or retaliation, how to take preventative and corrective measures
3 against such discrimination and/or retaliation, how to properly handle and investigate complaints
4 of discrimination and/or retaliation in a neutral manner;

5 4. Individuals responsible for investigating complaints of discrimination including
6 retaliation shall receive additional training on how to investigate such complaints;

7 5. For the remainder of the term of this Decree, all new employees and all employees
8 recently promoted from a staff/hourly to a managerial position shall receive the managerial or
9 staff/hourly employee training, as appropriate, within thirty (30) days of hire or promotion; and

10 6. All employees required to attend such training shall verify their attendance in writing.

11 Defendants shall give the EEOC a minimum of ten (10) business days' advance written
12 notice of the date, time and location of each training program provided pursuant to this Decree.

13 Defendants further agree that an EEOC representative may attend any such training program.

14
15 D. Record Keeping

16 Defendants shall establish a record-keeping procedure that provides for the centralized
17 tracking of discrimination and/or retaliation complaints and the monitoring of the investigations
18 and resolutions of such complaints. The records to be maintained shall include:

19 1. All documents generated in connection with any complaint, investigation into, or
20 resolution of every complaint of discrimination and/or retaliation for the duration of the Decree
21 and the identities of the parties involved;

22 2. All forms acknowledging employees' receipt of the Policy as required under this Decree;
23 and

24 3. All documents verifying the occurrence of all training sessions and names and positions
25 of all attendees for each session as required under this Decree;

26 Defendants will make the aforementioned records available to the EEOC for inspection
27 and copying within ten (10) business days following a written request by EEOC.

1 E. Notice to Employees

2 Within ten (10) business days after the Effective Date of this Decree, and throughout the term
3 of this Decree, Defendants shall post the notice attached to the Decree as Exhibit A, in at least
4 one clearly visible location frequented by employees. The notice shall remain posted for the
5 duration of the decree.

6 F. Reporting

7 Defendants shall provide the EEOC with the following reports:

8 At each anniversary of the Effective Date of this Decree, Defendants shall submit to the
9 EEOC a report which contains:

- 10 1. A copy of the Policy;
- 11 2. A summary of the procedures and record-keeping methods developed for centralized
12 tracking of discrimination complaints and the monitoring of such complaints; and
- 13 3. A statement confirming that the required notices pertaining to this Decree and the
14 discrimination policies have been posted.

15
16 Defendants shall also provide the following reports annually throughout the term of this
17 Decree beginning one year from the Decree's Effective Date:

- 18 1. The attendance lists of all attendees for all training sessions required under this Decree
19 that took place in the previous year;
- 20 2. Acknowledgements of receipt of the Policy for all employees hired during the previous
21 year; and
- 22 3. A description of all discrimination and/or retaliation complaints made since the
23 submission of the immediately preceding report hereunder. This description shall include the
24 names of the individuals alleging disability based discrimination and/or retaliation, the nature of
25 the claim, the names of the alleged perpetrators, the dates of the alleged discrimination and/or
26 retaliation, a brief summary of how each complaint was resolved, and the identity of the
27 person(s) who investigated or resolved each complaint, If no results have been reached as of the
28 time of the report, the result shall be included in the next report.

1 Defendants shall provide a report to the EEOC detailing any changes of the procedures or
2 record-keeping methods for centralized tracking of discrimination complaints and the monitoring
3 of such complaints within thirty (30) days before implementing such changes.

4
5 All reports under this Paragraph shall be directed to: Anna Y. Park, Regional Attorney, U.S.
6 Equal Employment Opportunity Commission, 255 E. Temple Street, 4th Floor, Los Angeles, CA
7 90012.

8 **XI.**

9 **COSTS OF ADMINISTRATION AND IMPLEMENTATION**
10 **OF CONSENT DECREE**

11 Defendants shall bear all costs associated with the administration and implementation of
12 their obligations under this Consent Decree.

13 **XII.**

14 **COSTS AND ATTORNEYS' FEES**

15 Each party shall bear its own costs of suit and attorneys' fees.

16 **XIII.**

17 **MISCELLANEOUS PROVISIONS**

18 A. During the term of this Decree, Defendants shall assure that each of their officers,
19 managers, first line supervisors, site superintendents and human resources personnel is aware of
20 any term(s) of this Decree which may be related to his/her job duties.

21 B. During the term of this Decree, Defendants shall provide any potential successor-
22 in-interest with a copy of this Decree within a reasonable time of not less than thirty (30) days
23 prior to the execution of any agreement for acquisition or assumption of control. Defendants
24 shall inform the EEOC of any such acquisition, assumption of control, or other material change
25 in corporate structure within thirty (30) days after the closing of any transaction for acquisition
26 or assumption of control of any or all of Defendants' facilities.

1 C. Unless otherwise stated, all notices, reports and correspondence
2 required under this Decree shall be delivered to the attention of Anna Y. Park, Regional
3 Attorney, U.S. Equal Employment Opportunity Commission, 255 East Temple Street, 4th Floor,
4 Los Angeles, CA, 90012; facsimile number (213) 894-1301.

5 D. The Parties agree to entry of this Decree and judgment subject to final approval
6 by the Court.

7 All parties, through the undersigned, respectfully apply for and consent to this entry of this
8 Consent Decree Order.

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10 Respectfully submitted,

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12 U.S. EQUAL EMPLOYMENT
13 OPPORTUNITY COMMISSION

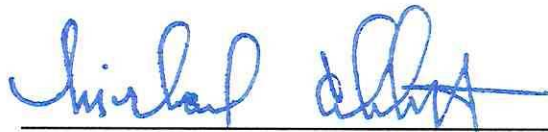
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15 Date: 11/12/2020

16 By: Anna Y. Park
17 Attorney for Plaintiff EEOC

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19 KS AVIATION, INC.
20 XING KONG AVIATION SERVICE, LLC

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22 Date: 11/6/2020

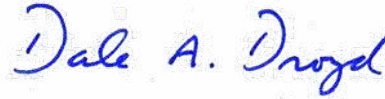
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24 By: Michael Lee Abbott
25 Attorney for Defendants
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ORDER

The provisions of the foregoing Consent Decree are hereby approved and compliance with all provisions thereof is HEREBY ORDERED.

November 19, 2020



Date: _____

Dale A. Drozd
The Honorable United States District Judge

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**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Fresno Local Office**

Notice of Entry of Consent Decree

This Notice is posted pursuant to a Consent Decree entered by the federal court in U.S. Equal Employment Opportunity Commission v. KS Aviation Inc. et al., Case No. 18-CV-00744-NONE-SKO, settling a lawsuit filed by the U.S. Equal Employment Opportunity Commission (“EEOC”).

In its suit, the EEOC alleged that KS Aviation discriminated and retaliated against an employee due to an actual or perceived disability when it discharged her for taking a medical leave of absence, in violation of the Americans with Disabilities Act of 1990, as amended by the Americans with Disabilities Amendments Act of 2008.

To resolve this lawsuit, the parties have entered into a Consent Decree which requires KS Aviation, Inc. et al. to:

- 1) provide monetary relief to the employee who experienced discrimination on the basis of disability and retaliation;
- 2) forbid discrimination on the basis of disability and retaliation in the future;
- 3) review, revise and redistribute their policies and procedures regarding discrimination on the basis of disability and retaliation; and
- 4) provide training to management and employees regarding discrimination on the basis of disability and retaliation.

KS Aviation, Inc. et al. are committed to complying with federal anti-discrimination and anti-retaliation laws in all respects. They will not tolerate discrimination, and will not tolerate retaliation against any employee because of the filing of a charge of discrimination, giving testimony or assistance, or participation in any manner in any investigation.

The EEOC enforces federal laws against discrimination in employment regarding disability, race, color, religion, national origin, sex, pregnancy, and age. If you believe you have been discriminated against, you may contact the EEOC at:

**U.S. Equal Employment Opportunity Commission
Robert E. Coyle Federal Courthouse, 2500 Tulare Street, Suite 2601
Fresno, CA 93721
Telephone: 1-800-669-4000**

The EEOC charges no fees and can speak languages other than English.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED

This Notice must remain posted for 2 years from the effective date of the Consent Decree and must not be altered, defaced or covered by any other material.