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U.S. DEPARTMENT OF TRANSPORTATION  
OFFICE OF HEARINGS  
WASHINGTON, D.C.

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DOCKETS

~~2004 JUL 8 P 2 02~~

IN THE MATTER OF  
MARIANNA, INC.

FAA Case No. 2001SO720048  
FAA Docket NO. CP03SO0049  
(Civil Penalty Action)

DMS NO. FAA-2003-16638 -6

**RECEIVED**  
FEB 13 2004  
**HEARING DOCKET**

Judge Burton S. Kolko

**MARIANNA, INC.'S ANSWER AND AFFIRMATIVE DEFENSES**

Respondent, Marianna, Inc. ("Marianna") answers Plaintiff's Complaint in like-numbered paragraphs as follows:

I.

1. Marianna admits the allegations contained in paragraph 1 of the FAA's Complaint.

II.

2. Marianna denies that it knowingly offered to United Parcel Service a fiberboard box containing hazardous materials for transportation by air as alleged in paragraph 2 of the FAA's Complaint.
3. Marianna admits the allegations contained in paragraph 3 of the FAA's Complaint.
4. Marianna admits the allegations contained in paragraph 4 of the FAA's Complaint.

5. Marianna lacks sufficient knowledge to admit or deny the allegations contained in paragraph 5 of the FAA's Complaint and, therefore, denies them.
6. Marianna denies that paragraph 1 references a fiberboard box or that the fibreboard box contained six (6) 16-oz. plastic containers of Acetone Nail Polish Remover as alleged in paragraph 6 of the FAA's Complaint. Marianna denies all further allegations contained in paragraph 6 of the FAA's Complaint.
7. The allegations contained in paragraph 7 of the FAA's Complaint are legal conclusions to which no response is required, however, Marianna admits this allegation.
8. The allegations contained in paragraph 8 of the FAA's Complaint are legal conclusions to which no response is required, however, Marianna admits this allegation.
9. Marianna admits the allegations contained in paragraph 9 of the FAA's Complaint.
10. Marianna admits the allegations contained in paragraph 10 of the FAA's Complaint.
11. Marianna admits the allegations contained in paragraph 11 of the FAA's Complaint.
12. Marianna admits the allegations contained in paragraph 12 of the FAA's Complaint.

13. Marianna admits the allegations contained in paragraph 13 of the FAA's Complaint.
14. Marianna admits the allegations contained in paragraph 14 of the FAA's Complaint.
15. Marianna admits the allegations contained in paragraph 15 of the FAA's Complaint.
16. Marianna admits the allegations contained in paragraph 16 of the FAA's Complaint.

III.

17. Marianna admits the allegation contained in paragraph 17, subpart m of the FAA's Complaint. Marianna denies the allegations contained in paragraph 17, subparts a, b, c, d, e, f, g, h, i, j, k, l, n, o, and all other allegations contained in paragraph 17 of the FAA's Complaint.
18. The allegations contained in paragraph 18 of the FAA's Complaint are legal conclusions to which no response is required and, therefore, Marianna denies them.
19. Marianna denies the allegations contained in paragraph 19 of the FAA's Complaint.
20. As to the unnumbered paragraphs of the FAA's Complaint, Marianna denies all allegations contained in those paragraphs.

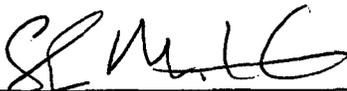
**ANSWER AND AFFIRMATIVE DEFENSES**

1. The FAA's claims are barred by the doctrine of Laches.

2. Marianna has taken corrective action with respect to any alleged statutory or regulatory violations.
3. The FAA failed to assess an appropriate penalty, to the extent any penalty should be assessed.

DATED this 12<sup>th</sup> day of February, 2004.

By: \_\_\_\_\_

  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served this 12<sup>th</sup> day of February, 2004 via U.P.S. Overnight mail and facsimile to the following:

Honorable Burton S. Kolko  
DOT, Administrative Law Judge  
Office of Hearings, —20, Room 5411  
400 Seventh Street, SW  
Washington, DC 20590  
**202-366-7536**

Hearing Docket - Original and 1 copy  
FAA, AGC-10  
800 Independence Ave., SW  
Room 924A  
Washington, DC 20590  
**202-267-5690**

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By:   
\_\_\_\_\_  
Shane M. Keith