

HONORABLE MARSHA PECHMAN

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03-CV-02768-ANS

FILED ENTERED
LODGED RECEIVED
MAR 22 2004 MR
AT SEATTLE
CLERK U.S. DISTRICT COURT
BY WESTERN DISTRICT OF WASHINGTON DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

and

MARIA CHAVEZ, KAREN HUNT,
ANDREA WEBER, EVA CORTEZ, GREG
JOHNSON, and BRADY PROUTY,

Plaintiff-Intervenors,

vs.

ELDORADO STONE, LLC, TIMOTHY
O'DELL, and ELMER RODRIGUEZ,

Defendant.

Civil Action No. CV03 2768-P

DEFENDANT ELMER
RODRIGUEZ'S ANSWER TO
COMPLAINT OF PLAINTIFF-
INTERVENORS

NOW COMES DEFENDANT ELMER RODRIGUEZ ("Defendant"), by and through his
attorneys, Dorsey & Whitney LLP, to answer Plaintiff-Intervenors' Complaint as follows:

DEFENDANT ELMER RODRIGUEZ'S ANSWER TO
COMPLAINT OF PLAINTIFF-INTERVENORS -1-
CV03 2768-P

ORIGINAL

DORSEY & WHITNEY LLP
U.S. BANK BUILDING CENTRE
1420 4TH AVENUE, SUITE 1400
SEATTLE, WASHINGTON 98101
PHONE: (206) 403-8800
FAX: (206) 903-8820

COMPLAINT OF PLAINTIFF-INTERVENORS

1
2 1. Defendant is without sufficient information to form a belief as to the allegations
3 in this paragraph and on that basis denies them.

4 2. Defendant is without sufficient information to form a belief as to the allegations
5 in this paragraph and on that basis denies them.

6 3. Defendant admits that Timothy O'Dell is over the age of 18. Defendant is
7 without sufficient information to form a belief as to the remaining allegations in this paragraph
8 and on that basis denies them.

9 4. Defendant admits that he is over the age of 18 and was employed at the Carnation,
10 Washington facility from September 13, 1999 to March 12, 2003 and that his final position was
11 Assistant Plant Manager, plant 2. Defendant is without sufficient information to form a belief as
12 to the remaining allegations in this paragraph and on that basis denies them.

13 5. This paragraph contains a legal conclusion to which no response is required.

14 6. Defendant is without sufficient information to form a belief as to the allegations
15 in this paragraph and on that basis denies them.

16 7. This paragraph contains a legal conclusion to which no response is required.

17 8. Defendant was not a party to this action at the time of the EEOC's Complaint
18 against Eldorado Stone, LLC. Defendant has no obligation to respond to any allegations
19 contained within the EEOC's complaint against another party.

20 **FACTUAL BACKGROUND**

21 9. Defendant is without sufficient information to form a belief as to Karen Hunt's
22 employment history with Eldorado Stone and on that basis denies these allegations. Defendant
23 admits that he has been to the residence of Karen Hunt. Defendant denies the remaining
24 allegations in this paragraph of the Complaint.
25

1 10. Defendant denies engaging in any harassing conduct. Defendant is without
2 sufficient information to form a belief as to the allegations in this paragraph and on that basis
3 denies them.

4 11. Defendant admits that Maria Chavez began her employment at Eldorado Stone
5 Operations LLC on or about August 3, 2001. Defendant further admits that on or about August
6 8, 2002, he and Chavez drove to a motel and he drove Chavez home. Defendant denies the
7 remaining allegations in this paragraph.

8 12. Defendant admits that Maria Chavez filed police charges and obtained a
9 restraining order against him in or about September 2002. Defendant is without sufficient
10 information to form a belief as to the remaining allegations in this paragraph and on that basis
11 denies them.

12 13. Defendant admits that the intervenors were co-workers of Chavez at the time of
13 her complaint. Defendant denies that he had a past history of sexually harassing conduct.
14 Defendant is without sufficient information to form a belief as to the remaining allegations in
15 this paragraph and on that basis denies them.

16 14. Defendant admits that he met with Roger Sideris and Tim O'Dell on September 4,
17 2002. Defendant denies a previous history of sexual harassment. Defendant further denies that
18 the conclusion was reached that no action should be taken against him to the extent that being
19 instructed to stay away from Ms. Chavez is an action against him. Defendant is without
20 sufficient information to form a belief as to the remaining allegations in this paragraph and on
21 that basis denies them.

22 15. Defendant is without sufficient information to form a belief as to the allegations
23 in this paragraph and on that basis denies them.
24
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FIRST CAUSE OF ACTION

VIOLATIONS OF 42 U.S.C. § 2000E-2(A) AND -3(A)

16. Defendant incorporates by reference his answers to paragraphs 1 through 15 as set out above.

17. Defendant is without sufficient information to form a belief as to the allegations in this paragraph and on that basis denies them.

18. This paragraph contains a legal conclusion to which no response is required.

19. Defendant is without sufficient information to form a belief as to the allegations in this paragraph and on that basis denies them.

20. Defendant is without sufficient information to form a belief as to the allegations in this paragraph and on that basis denies them.

SECOND CAUSE OF ACTION

VIOLATIONS OF RCW 49.60.180

21. Defendant incorporates by reference his answers to paragraphs 1 through 20 as set out above.

22. This paragraph contains a legal conclusion to which no response is required.

23. Defendant admits the allegation in this paragraph.

24. Defendant is without sufficient information to form a belief as to the allegations in this paragraph and on that basis denies them.

25. Defendant denies the allegations in this paragraph.

26. Defendant denies that he violated RCW 49.60.180. Defendant is without sufficient information to form a belief as to the remaining allegations in this paragraph and on that basis denies them.

THIRD CAUSE OF ACTION

VIOLATIONS OF RCW 49.60.210

27. Defendant incorporates by reference his answers to paragraphs 1 through 26 as set out above.

28. Defendant admits the allegation in this paragraph.

29. Defendant is without sufficient information to form a belief as to the allegations in this paragraph and on that basis denies them.

30. Defendant is without sufficient information to form a belief as to the allegations in this paragraph and on that basis denies them.

FOURTH CAUSE OF ACTION

ASSAULT AND BATTERY

31. Defendant incorporates by reference his answers to paragraphs 1 through 30 as set out above.

32. Defendant denies the allegations in this paragraph.

33. Defendant admits that he has been to the residence of Karen Hunt. Defendant denies the remaining allegations in this paragraph of the Complaint.

34. Defendant denies the allegations in this paragraph.

35. Defendant denies the allegations in this paragraph.

36. Defendant denies the allegations in this paragraph.

FIFTH CAUSE OF ACTION

NEGLIGENT HIRING AND RETENTION

37. Defendant incorporates by reference his answers to paragraphs 1 through 36 as set out above.

38. This paragraph contains a legal conclusion to which no response is required.

39. Defendant denies he was unfit for a supervisory position at the time of his appointment or at any time during his tenure as supervisor at Eldorado Stone. Defendant denies he sexually harassed any employee at Eldorado Stone. Defendant is without sufficient information to form a belief as to the remaining allegations in this paragraph and on that basis denies them.

40. Defendant denies the allegations in this paragraph.

SIXTH CAUSE OF ACTION

NEGLIGENT SUPERVISION

41. Defendant incorporates by reference his answers to paragraph 1 through 40 as set out above.

42. This paragraph contains a legal conclusion to which no response is required.

43. Defendant denies the allegations in this paragraph.

44. Defendant denies the allegations in this paragraph.

DEFENSES AND AFFIRMATIVE DEFENSES

AS AND FOR A SEPARATE DEFENSE OR AFFIRMATIVE DEFENSE TO EACH AND EVERY CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendant alleges:

1. Plaintiffs' (which term when used herein refers to the Plaintiff-Intervenors unless otherwise specified) claims are barred by the equitable doctrines of laches, estoppel, unclean hands, and acquiescence.

2. Plaintiffs are estopped by reason of their own conduct, acts or omissions from recovering against Defendant on any purported claim for relief contained herein.

3. Defendant at all times relevant hereto exercised reasonable care to prevent and/or identify any form of unlawful discrimination, harassment and/or retaliation; that if any unlawful discrimination, harassment and/or retaliation did exist, Defendant exercised reasonable care to promptly correct any form of unlawful discrimination and/or retaliation; and that Plaintiffs

1 unreasonably failed to take advantage of any preventative or corrective opportunities provided by
2 the employer or to avoid harm otherwise.

3 4. If it is determined that Plaintiffs have certain rights under the Company's benefit
4 plan, such claims are pre-empted by ERISA.

5 5. Plaintiffs' claims are barred by the applicable statute of limitations.

6 6. Plaintiffs have failed to exhaust administrative remedies.

7 7. Plaintiffs have failed to mitigate damages.

8 8. All actions taken by Defendant were in good faith.

9 9. Plaintiffs' damages are barred by the doctrine of comparative fault.

10 10. Plaintiffs' recovery of damages must be reduced by the amounts received from
11 collateral sources.

12 11. Plaintiffs' claims are preempted by the laws of Workers' Compensation.

13 **RESERVATION**

14 Defendant reserves the right to add defenses and affirmative defenses, to add
15 counterclaims and third-party defendant, and to argue legal theories in addition to or in lieu of
16 those specifically identified herein, as the facts in this matter may warrant, including without
17 limitation additional or further facts hereafter disclosed through discovery.

18 **PRAYER FOR RELIEF**

19 Defendant prays for the following relief:

20 A. That the Complaint be dismissed with prejudice and without an award of
21 damages, costs, or fees of any kind to Plaintiffs;

22 B. That Defendant be awarded reasonable attorneys' fees and costs; and

23 C. That Defendant be awarded such other relief as this Court deems appropriate, just,
24 and equitable.

1 DATED this 22 day of March, 2004.

2 DORSEY & WHITNEY LLP

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5 GREG A. HENDERSHOTT, WSBA #27838

6 DICK CLINTON, WSBA #2167

7 U.S. Bank Centre

8 1420 Fifth Avenue, Suite 3400

9 Seattle, WA 98101-4010

10 Telephone: (206) 903-8800

11 Facsimile: (206) 903-8820

12 Attorneys for Defendant

13 ELDORADO STONE, LLC, Timothy O'Dell
14 and Elmer Rodriguez
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PROOF OF SERVICE

On March 22, 2004, I served the within **DEFENDANT ELMER RODRIGUEZ'S ANSWER TO COMPLAINT OF PLAINTIFFS-INTERVENORS** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope, addressed as follows:

Terry A. Venneberg
Attorney at Law
625 Commerce Street, Suite 460
Tacoma, WA 98402
Fax: (253) 572-3662

Carmen Flores
U.S. Equal Employment
Opportunity Commission
Seattle District Office
909 First Avenue, Suite
400
Seattle, WA 98104

Via Facsimile and U.S. Mail

Via Personal Messenger

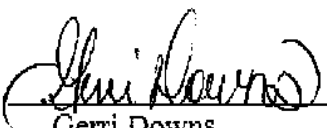
Kenneth R. Friedman
Friedman, Rubin & White
1126 Highland Avenue
Bremerton, WA 98337
Fax: (360) 782-4358

Via Facsimile and U.S. Mail

Executed on March 22, 2004, at Seattle, WA.

I declare that the statements above are true to the best of my information, knowledge, and belief.

Date: March 22, 2004

Signature: 
Name: Gerri Downs