

ORIGINAL

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FEB 25 2004 MR
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY _____ 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,

Defendants.

CIVIL ACTION NO. CV03 2768-P

**ANSWER TO COMPLAINT OF
PLAINTIFF-INTERVENORS**



03-CV-02768-ANS

NOW COMES DEFENDANTS ELDORADO STONE, LLC and TIMOTHY O'DELL
("Defendants"), by and through their attorneys, Dorsey & Whitney LLP, to answer Plaintiff-
Intervenor's Complaint as follows:

1 **COMPLAINT OF PLAINTIFF-INTERVENORS**

2 **ANSWER TO PARAGRAPH 1:** Defendants admit that the Plaintiff-Intervenors are
3 over the age of 18 years. Defendants are without sufficient information to form a belief as to the
4 remainder of the allegations in this paragraph and on that basis deny them.

5 **ANSWER TO PARAGRAPH 2:** Defendant Eldorado Stone, LLC denies the
6 allegations in paragraph 2 of Plaintiff's Complaint for the reasons set forth below. Defendant
7 Eldorado Stone, LLC objects that the phrase "at all relevant times" is vague under the facts of
8 this case. Defendant Eldorado Stone, LLC is a limited liability company headquartered in San
9 Marcos, California. Eldorado Stone, LLC has been the employer of employees at the Carnation,
10 Washington facility only since January 1, 2003. Therefore, the only Plaintiff-Intervenor ever
11 employed by the Defendant is Maria Chavez, whose employment by Defendant post-dates the
12 material allegations in the Complaint. The employer of employees at the Carnation, Washington
13 facility from June 2000 through December 31, 2002, was Eldorado Stone Operations, LLC.
14 Prior to June 2000, the employer at the Carnation, Washington facility was Eldorado Stone
15 Corporation. Defendant Eldorado Stone LLC admits that it is currently doing business in
16 Washington and that it has at least 15 employees. In the interest of cooperation and expediency,
17 Defendant Eldorado Stone LLC will provide available information from predecessor employers
18 in its answer to the Complaint. However, Defendant Eldorado Stone LLC denies that it was the
19 employer at the Carnation facility prior to January 1, 2003. Defendant Eldorado Stone LLC
20 denies any liability for acts of Eldorado Stone Corporation and/or Eldorado Stone Operations,
21 LLC, or their agents/employees.

22 **ANSWER TO PARAGRAPH 3:** Defendants incorporate by reference their answer to
23 paragraph 2 of the Complaint. Defendants admit that Timothy O'Dell is over the age of 18 and
24 has been a supervisor at the Carnation, Washington facility since January 1996.

1 subject to any unwelcome conduct by Mr. Rodriguez. Defendants further deny that Ms. Hunt
2 was compelled to resign from her employment due to the actions of Mr. Rodriguez.

3 **ANSWER TO PARAGRAPH 10:** Defendants incorporate by reference their answer to
4 paragraph 2 of the Complaint. Defendants are without sufficient information to form a belief
5 with regard to conversations between Ms. Hunt and Ms. Gifford, who was a lead worker and not
6 Ms. Hunt's supervisor, and on that basis deny those allegations. Defendants admit that Ms.
7 Gifford mentioned to Mr. O'Dell that Mr. Rodriguez went to Ms. Hunt's residence, but deny that
8 the comment could be reasonably construed as a complaint. Defendants deny that Ms. Hunt was
9 employed by Defendant Eldorado Stone, LLC and the remaining allegations in this paragraph.

10 **ANSWER TO PARAGRAPH 11:** Defendants incorporate by reference their answer to
11 paragraph 2 of the Complaint. Defendants admit that Ms. Chavez began working at the
12 Carnation, Washington facility of Non-Defendant Eldorado Stone Operations, LLC on or about
13 August 23, 2001. Defendants deny the remaining allegations in this paragraph.

14 **ANSWER TO PARAGRAPH 12:** Defendants incorporate by reference their answer to
15 paragraph 2 of the Complaint. Defendants are without sufficient information to form a belief
16 regarding the allegations concerning police charges and/or a restraining order, and on that basis
17 deny them. Defendants admit that Ms. Chavez made a complaint to Ms. Weber and Mr. O'Dell
18 on or about September 4, 2002, but deny that Ms. Weber, a lead worker, was Ms. Chavez's
19 supervisor, and further deny that the incident occurred as Ms. Chavez reported it.

20 **ANSWER TO PARAGRAPH 13:** Defendants incorporate by reference their answer to
21 paragraph 2 of the Complaint. Defendants admit that Andrea Weber, Eva Cortez, Greg Johnson,
22 and Brady Prouty were co-workers of Ms. Chavez at the time of her complaint to Non-Defendant
23 Eldorado Stone Operations, LLC regarding the alleged August 8 incident. Defendants further
24 admit that a meeting was held between Non-Defendant Eldorado Stone Operations, LLC
25 management and workers at Plant 2, including Weber, Cortez, Johnson, and Prouty. Defendants

1 are without sufficient information to form a belief as to whether Weber, Cortez, Johnson and
2 Prouty "all spoke in support of Chavez," and on that basis deny that allegation. Defendants are
3 also without sufficient information to form a belief as to whether Weber, Cortez, Johnson and
4 Prouty all "noted Rodriguez's past history of sexually harassing conduct," and on that basis deny
5 the allegation. Defendants further deny that Mr. Rodriguez had a past history of sexually
6 harassing conduct.

7 **ANSWER TO PARAGRAPH 14:** Defendants incorporate by reference their answer to
8 paragraph 2 of the Complaint. Defendants admit that they stated they were unable to
9 conclusively determine whether Chavez' account of the August 8 incident was accurate.
10 Defendants deny the remaining allegations in this paragraph.

11 **ANSWER TO PARAGRAPH 15:** Defendants incorporate by reference their answer to
12 paragraph 2 of the Complaint. Defendants admit that Ms. Weber, Ms. Cortez, and Mr. Prouty
13 were terminated on September 6, 2000 by Non-Defendant Eldorado Stone Operations LLC.
14 Defendants are without sufficient information to form a belief as to whether they had "spoken in
15 support" of Chavez and on that basis deny the allegation. Defendants also admit that Mr.
16 Johnson was terminated on September 17, 2002 by Non-Defendant Eldorado Stone Operations,
17 LLC. Defendants object that the phrase "employees in good standing" is vague and ambiguous
18 and on that basis deny the allegation that Ms. Weber, Ms. Cortez, Mr. Prouty, and Mr. Johnson
19 were employees in good standing. Defendants admit that Ms. Cortez and Mr. Johnson received
20 employee of the quarter awards from Non-Defendant Eldorado Stone Operations, LLC.
21 Defendants also admit that Mr. Johnson had received wage increases. Defendants deny the
22 remaining allegations in this paragraph.

1 **FIRST CAUSE OF ACTION**

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

3 **ANSWER TO PARAGRAPH 16:** Defendants incorporate by reference their answers to
4 paragraphs 1 through 15 as set out above.

5 **ANSWER TO PARAGRAPH 17:** Defendants incorporate by reference their answer to
6 paragraph 2 of the Complaint. Defendants deny the allegations in this paragraph.

7 **ANSWER TO PARAGRAPH 18:** Defendants incorporate by reference their answer to
8 paragraph 2 of the Complaint. Defendants deny the allegations in this paragraph.

9 **ANSWER TO PARAGRAPH 19:** Defendants incorporate by reference their answer to
10 paragraph 2 of the Complaint. Defendants deny the allegations in this paragraph.

11 **ANSWER TO PARAGRAPH 20:** Defendants incorporate by reference their answer to
12 paragraph 2 of the Complaint. Defendants deny the allegations in this paragraph.

13 **SECOND CAUSE OF ACTION**

14 **VIOLATIONS OF RCW 49.60.180**

15 **ANSWER TO PARAGRAPH 21:** Defendants incorporate by reference their answers to
16 paragraphs 1 through 20 as set out above.

17 **ANSWER TO PARAGRAPH 22:** This paragraph contains a legal conclusion to which
18 no response is required.

19 **ANSWER TO PARAGRAPH 23:** Defendants admit the allegation in this paragraph.

20 **ANSWER TO PARAGRAPH 24:** Defendants incorporate by reference their answer to
21 paragraph 2 of the Complaint. Defendants deny the allegations in this paragraph.

22 **ANSWER TO PARAGRAPH 25:** Defendants incorporate by reference their answer to
23 paragraph 2 of the Complaint. Defendants deny the allegations in this paragraph.

24 **ANSWER TO PARAGRAPH 26:** Defendants incorporate by reference their answer to
25 paragraph 2 of the Complaint. Defendants deny the allegations in this paragraph.

1 **THIRD CAUSE OF ACTION**

2 **VIOLATIONS OF RCW 49.60.210**

3 **ANSWER TO PARAGRAPH 27:** Defendants incorporate by reference their answers to
4 paragraphs 1 through 26 as set out above.

5 **ANSWER TO PARAGRAPH 28:** Defendants admit the allegation in this paragraph.

6 **ANSWER TO PARAGRAPH 29:** Defendants incorporate by reference their answer to
7 paragraph 2 of the Complaint. Defendants deny the allegations in this paragraph.

8 **ANSWER TO PARAGRAPH 30:** Defendants incorporate by reference their answer to
9 paragraph 2 of the Complaint. Defendants deny the allegations in this paragraph.

10 **FOURTH CAUSE OF ACTION**

11 **ASSAULT AND BATTERY**

12 **ANSWER TO PARAGRAPH 31:** Defendants incorporate by reference their answers to
13 paragraphs 1 through 30 as set out above.

14 **ANSWER TO PARAGRAPH 32:** Defendants incorporate by reference their answer to
15 paragraph 2 of the Complaint. Defendants deny the allegations in this paragraph.

16 **ANSWER TO PARAGRAPH 33:** Defendants incorporate by reference their answer to
17 paragraph 2 of the Complaint. Defendants deny the allegations in this paragraph.

18 **ANSWER TO PARAGRAPH 34:** Defendants incorporate by reference their answer to
19 paragraph 2 of the Complaint. Defendants deny the allegations in this paragraph.

20 **ANSWER TO PARAGRAPH 35:** Defendants incorporate by reference their answer to
21 paragraph 2 of the Complaint. Defendants deny the allegations in this paragraph.

22 **ANSWER TO PARAGRAPH 36:** Defendants incorporate by reference their answer to
23 paragraph 2 of the Complaint. Defendants deny the allegations in this paragraph.
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1 **FIFTH CAUSE OF ACTION**

2 **NEGLIGENT HIRING AND RETENTION**

3 **ANSWER TO PARAGRAPH 37:** Defendants incorporate by reference the answers to
4 paragraphs 1 through 36 as set out above.

5 **ANSWER TO PARAGRAPH 38:** Defendants incorporate by reference their answer to
6 paragraph 2 of the Complaint. This paragraph contains a legal conclusion to which no response
7 is required.

8 **ANSWER TO PARAGRAPH 39:** Defendants incorporate by reference their answer to
9 paragraph 2 of the Complaint. Defendants deny the allegations in this paragraph.

10 **ANSWER TO PARAGRAPH 40:** Defendants incorporate by reference their answer to
11 paragraph 2 of the Complaint. Defendants deny the allegations contained in this paragraph.

12 **SIXTH CAUSE OF ACTION**

13 **NEGLIGENT SUPERVISION**

14 **ANSWER TO PARAGRAPH 41:** Defendants incorporate by reference the answers to
15 paragraph 1 through 40 as set out above.

16 **ANSWER TO PARAGRAPH 42:** Defendants incorporate by reference their answer to
17 paragraph 2 of the Complaint. This paragraph contains a legal conclusion to which no response
18 is required.

19 **ANSWER TO PARAGRAPH 43:** Defendants incorporate by reference their answer to
20 paragraph 2 of the Complaint. Defendants deny the allegations in this paragraph.

21 **ANSWER TO PARAGRAPH 44:** Defendants incorporate by reference their answer to
22 paragraph 2 of the Complaint. Defendants deny the allegations contained in this paragraph.
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DEFENSES AND AFFIRMATIVE DEFENSES

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2 AS AND FOR A SEPARATE DEFENSE OR AFFIRMATIVE DEFENSE TO EACH
3 AND EVERY CAUSE OF ACTION SET FORTH IN THE COMPLAINT, the Defendants
4 allege:

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

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

10 3. Defendants at all times relevant hereto exercised reasonable care to prevent and/or
11 identify any form of unlawful discrimination, harassment and/or retaliation; that if any unlawful
12 discrimination, harassment and/or retaliation did exist, Defendants exercised reasonable care to
13 promptly correct any form of unlawful discrimination and/or retaliation; and that Plaintiffs
14 unreasonably failed to take advantage of any preventative or corrective opportunities provided by
15 the employer or to avoid harm otherwise.

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

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

19 6. Plaintiffs have failed to exhaust administrative remedies.

20 7. The alleged wrongdoing, if any, occurred outside the course and scope of any of
21 Defendant's employees' employment with Defendant.

22 8. Plaintiffs have failed to mitigate damages, if any, including by, without limitation,
23 refusing offers of reinstatement (for claimants Ms. Weber, Mr. Prouty, Ms. Cortez, and Mr.
24 Johnson).

25 9. All actions taken by Defendants were in good faith.

1 10. Plaintiffs' claims and/or damages are barred by the doctrine of comparative fault.

2 **RESERVATION**

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

7 **PRAYER FOR RELIEF**

8 Defendant prays for the following relief:

- 9 A. That the Complaint be dismissed with prejudice and without an award of
10 damages, costs, or fees of any kind to Plaintiffs;
- 11 B. That Defendant be awarded reasonable attorneys' fees and costs; and
- 12 C. That Defendant be awarded such other relief as this Court deems appropriate, just,
13 and equitable.

14 DATED this 25th day of February, 2004.

15 DORSEY & WHITNEY LLP

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19 GREG A. HENDERSHOTT, WSBA #27838
20 RICHARD M. CLINTON, WSBA #2167
21 KANDIS BALDWIN, WSBA #33069
22 U.S. Bank Centre
23 1420 Fifth Avenue, Suite 3400
24 Seattle, WA 98101-4010
25 Telephone: (206) 903-8800
Facsimile: (206) 903-8820

Attorneys for Defendant
ELDORADO STONE, LLC,

PROOF OF SERVICE

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On February 25th, 2004, I served the within **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:

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

Equal Employment Opportunity Commission via _____
Office of the General Counsel
1801 "L" Street NW
Washington, D.C. 20507

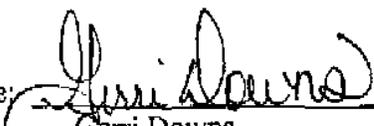
Ken Friedman
Friedman, Rubin & White
1126 Highland Avenue
Bremerton, Washington 98336

Terry A. Venneberg
Attorney at Law
625 Commerce Street, Suite 460
Tacoma, WA 98402

Executed on February ____, 2004, at Seattle, WA.

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

Date: February 25th, 2004

Signature: 
Name: Gerri Downs