

HONORABLE MARSHA PECHMAN

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

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

ELDORADO STONE, LLC, and
ELDORADO STONE OPERATIONS, LLC,

Defendant,

and

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

Plaintiff-Intervenors,

v.

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

Defendants.

CIVIL ACTION No. CV03-2768P

**ANSWER OF DEFENDANTS
ELDORADO STONE, LLC AND
ELDORADO STONE
OPERATIONS, LLC TO FIRST
AMENDED COMPLAINT OF THE
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION**

1 Now comes Defendants Eldorado Stone, LLC and Eldorado Stone Operations, LLC
2 (“Defendants”) by and through their attorneys, Dorsey & Whitney LLP, to answer Plaintiff’s
3 complaint as follows:

4 NATURE OF THE ACTION

5 Defendants admit that Plaintiff is bringing this action under Title VII of the Civil Rights
6 Act of 1964 and Title I of the Civil Rights Act of 1991, but deny the material allegations.

7 JURISDICTION AND VENUE

- 8 1. This paragraph contains a legal conclusion to which no response is required.
- 9 2. This paragraph contains a legal conclusion to which no response is required.
- 10 3. This paragraph contains a legal conclusion to which no response is required.
- 11 4. Defendants deny the allegations contained in this paragraph.
- 12 5. Defendants deny the allegations contained in this paragraph.
- 13 6. Defendants admit that Ms. Chavez, Ms. Hunt, Ms. Weber, Ms. Cortez, Mr.
14 Johnson, and Mr. Prouty filed charges of discrimination with the Equal Employment Opportunity
15 Commission against Eldorado Stone Operations, LLC, and against Eldorado Stone, LLC. The
16 remainder of this paragraph contains a legal conclusion to which no response is required.

- 17 7. Defendants deny the allegations contained in this paragraph.
- 18 8. Defendants deny the allegations contained in this paragraph.
- 19 9. Defendants deny the allegations contained in this paragraph.
- 20 10. Defendants deny the allegations contained in this paragraph.

21 DEFENSES AND AFFIRMATIVE DEFENSES

22 AS AND FOR A SEPARATE DEFENSE OR AFFIRMATIVE DEFENSE TO EACH
23 AND EVERY CAUSE OF ACTION SET FORTH IN THE COMPLAINT, the Defendants
24 allege:
25

1 11. Plaintiff's (which term when used herein refers to the Plaintiff and the individual
2 claimants unless otherwise specified) claims are barred by the equitable doctrines
3 of laches, estoppel, and acquiescence.

4 12. Plaintiff is estopped by reason of the conduct, acts or omissions of the individual
5 claimants from recovering against Defendants on any purported claim for relief
6 contained herein.

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

14 14. If it is determined that Plaintiff has certain rights under the Company's benefit
15 plan, such claims are pre-empted by ERISA.

16 15. Plaintiff's claims are barred by the applicable statute of limitations.

17 16. Plaintiff has failed to exhaust administrative remedies.

18 17. The alleged wrongdoing, if any, occurred outside the course and scope of
19 employment and therefore cannot be imputed to the employer.

20 18. Plaintiff has failed to mitigate damages, if any, including by, without limitation,
21 refusing offers of reinstatement (for claimants Ms. Weber, Mr. Prouty, Ms.
22 Cortez, and Mr. Johnson).

23 19. Plaintiff's claims are barred by the doctrine of after-acquired evidence.

24 **RESERVATION**

25 Defendants reserve the right to add defenses and affirmative defenses, to add

1 counterclaims and third-party defendants, and to argue legal theories in addition to or in lieu of
2 those specifically identified herein, as the facts in this matter may warrant, including without
3 limitation additional or further facts hereafter disclosed through discovery.

4 PRAYER FOR RELIEF

5 Defendants pray for the following relief:

6 A. That the Complaint be dismissed with prejudice and without an award of
7 damages, costs, or fees of any kind to Plaintiff;

8 B. That Defendants be awarded reasonable attorneys' fees and costs; and

9 C. That Defendants be awarded such other relief as this Court deems appropriate,
10 just, and equitable.

11
12 DATED this 24th day of June, 2004.

13 DORSEY & WHITNEY LLP

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15
16 s/Gregory A. Hendershott
17 GREG A. HENDERSHOTT WSBA #27838
18 RICHARD M. CLINTON, WSBA #2167
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Telephone: (206) 903-8800
21 Facsimile: (206) 903-8820

22 Attorneys for Defendants
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CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Carmen Flores carmenm.flores@eeoc.gov,

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Terry Allen Venneberg tavlaw@qwest.net

s/Gregory A. Hendershott
Gregory A. Hendershott