

The Honorable Marsha J. Pechman

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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 a/k/a
LUIS RODRIGUEZ,

Defendants.

Case No. CV03-2768P

COMPLAINT OF PLAINTIFF-INTERVENORS

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EEOC v. Eldorado Stone, LLC, et al
Case No. CV03-2768P
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EXHIBIT A
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1 COME NOW plaintiff-intervenors Maria Chavez, Karen Hunt, Andrea Weber, Eva
 2 Cortez, Greg Johnson, and Brady Prouty, by and through their counsel of record, Kenneth R.
 3 Friedman, of the Law Offices of Friedman, Rubin & White, and Terry A. Venneberg, of the Law
 4 Offices of Terry A. Venneberg, Attorney at Law, and, by way of complaint against defendants
 5 Eldorado Stone, LLC, Timothy O'Dell, and Elmer Rodriguez, state and allege as follows:

6 1. Plaintiff-intervenors Maria Chavez, Karen Hunt, Andrea Weber, Eva Cortez, Greg
 7 Johnson, and Brady Prouty are residents of the State of Washington, over the age of eighteen
 8 (18) years, and are in all respects qualified and competent to maintain this action.

9 2. At all relevant times, defendant Eldorado Stone, LLC has continuously been a
 10 corporation doing business in the State of Washington and has continuously had at least 15
 11 employees. At all relevant times, defendant Eldorado Stone has continuously been an employer
 12 engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h)
 13 of Title VII, 42 U.S.C. §§ 2000e-(b), (g) and (h).

14 3. Upon information and belief, defendant Timothy O'Dell is over the age of eighteen
 15 (18) years and has been, at all relevant times, a supervisor at the Carnation, Washington facility
 16 of defendant Eldorado Stone.

17 4. Upon information and belief, defendant Elmer Rodriguez a/k/a Luis Rodriguez is
 18 over the age of eighteen (18) years and was, at all relevant times, a supervisor at the Carnation,
 19 Washington facility of defendant Eldorado Stone. Upon information and belief, the employment
 20 of defendant Rodriguez at defendant Eldorado Stone ended in March 2003.

21 5. Plaintiff Equal Employment Opportunity Commission is the agency of the United
 22 States of America charged with the administration, interpretation, and enforcement of Title VII,
 23 and is expressly authorized to bring this action by Section 706(f)(1) of Title VII, 42 U.S.C.
 24 § 2000e-5(f)(1).

6. The EEOC has alleged in this action that defendant Eldorado Stone engaged in unlawful employment practices at its Carnation, Washington facility in violation of Sections 703(a) and 704(a) of Title VII, 42 U.S.C. § 2000e-2(a) and 3(a), by subjecting Maria Chavez and Karen Hunt to sexual harassment, constructively discharging Karen Hunt, and subjecting Andrea Weber, Eva Cortez, Greg Johnson and Brady Prouty to retaliation for opposing the discrimination directed against Chavez and Hunt.

7. As the "aggrieved persons" in the unlawful employment practices alleged by the EEOC, Chavez, Hunt, Weber, Cortez, Johnson and Prouty (hereinafter "Intervenors") are entitled to intervene in this action, under Section 706(f)(1) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1). Intervenors have satisfied all requirements concerning exhaustion of administrative remedies and all conditions precedent to the institution of their claims.

8. Paragraphs 1 through 10 of the Complaint filed by the EEOC in this action are incorporated by reference as if fully set out herein.

Factual Background

9. Intervenor Karen Hunt began working for defendant Eldorado Stone in 1999. On or about June 10, 2002, Hunt was compelled to resign from her employment at Eldorado Stone by the actions of Elmer Rodriguez, a co-worker. Rodriguez engaged in offensive and unwelcome conduct towards Hunt, serious enough to affect the terms and conditions of her employment. Rodriguez constantly grabbed Hunt and made sexual remarks to her that were very offensive. Rodriguez also came to the residence occupied by Hunt on several occasions, claiming he was "in the vicinity," and tried to hug Hunt. Rodriguez was pushed away by Hunt and told to stop.

10. Hunt complained about Rodriguez's conduct on several occasions to Sandi Gifford, who was her supervisor until May 2002. Gifford, in turn, spoke to defendant Timothy

1 O'Dell, the Plant Manager and her supervisor, about Rodriguez's behavior. Gifford also sent
 2 a letter to Human Resources at Eldorado Stone concerning Rodriguez and his actions. Neither
 3 O'Dell nor anyone in Human Resources took any action to prevent Rodriguez's harassing
 4 conduct, or remedy in any way the sexual harassment being encountered by Hunt. Because of
 5 Rodriguez's continuing harassing conduct, and the failure by defendant Eldorado Stone to
 6 effectively prevent or remedy the harassment after being informed of that conduct, Hunt was left
 7 with no choice but to resign her employment at defendant Eldorado Stone. Hunt was therefore
 8 constructively discharged from her position at defendant Eldorado Stone.

9 11. Intervenor Maria Chavez began work at defendant Eldorado Stone on or about
 10 August 23, 2001. In May 2002, Rodriguez began to sexually harass Chavez, making
 11 inappropriate sexual remarks to her regarding her breast size, among other topics. Rodriguez's
 12 sexually harassing conduct towards Chavez increased over time. On August 8, 2002, Rodriguez
 13 abducted and assaulted Chavez, driving her to a motel against her will for the purpose of having
 14 sexual relations. When he arrived at the motel, Rodriguez attempted to physically remove
 15 Chavez from the vehicle in which they were riding, sexually fondling and assaulting Chavez in
 16 the process. Only when several motel employees noticed Chavez struggling with Rodriguez did
 17 he stop and drive Chavez home. This event caused Chavez severe emotional trauma.

18 12. On or about August 31, 2002, Chavez filed assault charges with the police
 19 concerning her August 8 encounter with Rodriguez. A restraining order was subsequently
 20 issued against Rodriguez. Chavez reported the incident to her supervisor, Andrea Weber, and
 21 the Plant Manager, defendant O'Dell, on September 4, 2002.

22 13. Intervenors Andrea Weber, Eva Cortez, Greg Johnson and Brady Prouty were all
 23 co-workers of Chavez at the time of her complaint to Eldorado Stone management regarding the
 24 August 8 incident. On September 4, 2002, the same day that Chavez reported the August 8
 25 incident, Eldorado Stone management, including defendant O'Dell, held a meeting with workers
 26

1 at the Eldorado plant, including Weber, Cortez, Johnson, and Prouty. When the participants in
2 the meeting were asked by Eldorado management about Rodriguez and what action should be
3 taken regarding his assault on Chavez, Weber, Cortez, Johnson and Prouty all spoke in support
4 of Chavez, and noted Rodriguez's past history of sexually harassing conduct at Eldorado Stone.

5 14. After speaking with Rodriguez and Chavez, as well as their co-workers in the
6 meeting described above, Eldorado Stone management, including defendant O'Dell, stated that
7 they were unable to conclusively determine whether Chavez's account of the August 8 incident
8 was accurate, and that no action should be taken against Rodriguez. This conclusion was
9 reached in spite of the fact that Eldorado Stone management had been aware of Rodriguez's
10 previous history of sexual harassment, and therefore had knowledge of his propensity to engage
11 in unwelcome sexual overtures towards his female co-workers and subordinates. Eldorado Stone
12 management, including defendant O'Dell, concluded that Rodriguez was "too valuable of an
13 employee to lose," and the incident should be put to rest.

14 15. On September 6, 2002, two days after they had spoken in support of Chavez
15 regarding her complaint against Rodriguez, Weber, Cortez and Prouty were all terminated from
16 their employment by defendant Eldorado Stone and by their supervisor, defendant Timothy
17 O'Dell. On September 17, 2002, after returning from a vacation, Johnson was also terminated
18 from his employment by defendant Eldorado Stone, and by his supervisor, defendant Timothy
19 O'Dell. At the time of their terminations, Weber, Cortez, Prouty and Johnson were all
20 employees in good standing at Eldorado Stone. Cortez and Johnson had recently received
21 "Employee of the Quarter" awards at Eldorado Stone, and Johnson had been given a series of
22 wage increases during his time as an Eldorado Stone employee. Weber, Cortez, Prouty and
23 Johnson were all terminated from their employment at Eldorado Stone as a direct result of, and
24 in retaliation for, their expressions of support for Chavez in her harassment complaint against
25 Rodriguez.

First Cause of Action
Violations of 42 U.S.C. § 2000e-2(a) and -3(a)

16. Paragraphs 1 through 15 as set out above are incorporated by reference herein.

17. From at least January 2002, defendant Eldorado Stone engaged in unlawful employment practices at its facility in Carnation, Washington with reference to the employment of Intervenor by subjecting Maria Chavez and Karen Hunt to sexual harassment, constructively discharging Karen Hunt and subjecting Andrea Weber, Eva Cortez, Greg Johnson and Brady Prouty to retaliation for opposing the discrimination directed against Chavez and Hunt.

18. The unlawful employment practices engaged in by defendant Eldorado Stone constitute a violation of 42 U.S.C. § 2000e-2(a), which prohibits the discharge of any individual, or discrimination against any individual with respect to terms and conditions of employment, because of such individual's sex, and a violation of 42 U.S.C. § 2000e-3(a), which prohibits discrimination against any employee because they have opposed an unlawful employment practice, or because they have assisted or participated in any investigation, proceeding or hearing concerning an unlawful employment practice.

19. As a direct and proximate result of the violations of 42 U.S.C. § 2000e-2(a) and -3(a) by defendant Eldorado Stone, Intervenor Hunt, Weber, Cortez, Johnson and Prouty have incurred and will continue to incur damages for lost wages and benefits, loss of earning capacity, emotional distress, pain and suffering, humiliation, inconvenience and loss of enjoyment of life, as well as other special and general harm, in an amount to be proven at trial. As a direct and proximate result of the violation of 42 U.S.C. § 2000e-2(a) by defendant Eldorado Stone, Intervenor Chavez has incurred and will continue to incur damages for emotional distress, pain and suffering, humiliation, inconvenience, and loss of enjoyment of life, as well as other general harm, in an amount to be proven at trial.

20. Defendant Eldorado Stone is also liable for an assessment of punitive damages, due to its violations of 42 U.S.C. § 2000e(2)(a) and -(3)(a), and its malicious and reckless conduct in doing so, in an amount to be proven at trial.

Second Cause of Action
Violations of RCW 49.60.180

21. Paragraphs 1 through 20 as set out above are incorporated by reference herein.

22. Jurisdiction of this court is invoked for this claim, and all claims brought under the laws of the State of Washington, under provisions of 28 U.S.C. § 1367.

23. RCW 49.60.180 provides in pertinent part that "it is an unfair practice for any employer... to discriminate against any person in compensation or in other terms or conditions of employment because of... sex..."

24. By subjecting Intervenor Chavez and Hunt to different terms and conditions of employment based on their sex, defendant Eldorado Stone violated RCW 49.60.180, and is civilly liable for said violations.

25. By subjecting Intervenor Chavez to different terms and conditions of employment based on her sex, defendant Elmer Rodriguez, as Chavez's supervisor at Eldorado Stone, violated RCW 49.60.180, and is civilly liable for said violation.

26. As a direct and proximate result of the violation of RCW 49.60.180 by defendant Eldorado Stone, Intervenor Hunt has incurred and will continue to incur damages for lost wages and benefits, loss of earning capacity, emotional distress, pain and suffering, humiliation, inconvenience and loss of enjoyment of life, as well as other special and general harm, in an amount to be proven at trial. As a direct and proximate result of the violation of RCW 49.60.180 by defendants Eldorado Stone and Rodriguez, Intervenor Chavez has incurred and will continue to incur damages for emotional distress, pain and suffering, humiliation, inconvenience and loss of enjoyment of life, as well as other general harm, in an amount to be proven at trial.

Third Cause of Action
Violations of RCW 49.60.210

27. Paragraphs 1 through 26 as set out above are incorporated by reference herein.

28. RCW 49.60.210 provides in pertinent part that, "It is an unfair practice for any employer... to discharge, expel or otherwise discriminate against any person because he or she has opposed any practices forbidden by this chapter, or because he or she has filed a charge, testified, or assisted in any proceeding under this chapter."

29. By discharging Intervenor Weber, Cortez, Johnson and Prouty for opposing the discrimination encountered by Intervenor Chavez, and for assisting Intervenor Chavez in bringing a complaint concerning that discrimination to the attention of defendant Eldorado Stone, defendants Eldorado Stone and Timothy O'Dell violated RCW 49.60.210, and are each civilly liable for said violations.

30. As a direct and proximate result of the violation of RCW 49.60.210 by defendants Eldorado Stone and Timothy O'Dell, Intervenor Weber, Cortez, Johnson, and Prouty have incurred and will continue to incur damages for lost wages and benefits, loss of earning capacity, emotional distress, pain and suffering, humiliation, inconvenience and loss of enjoyment of life, as well as other special and general harm, in an amount to be proven at trial.

Fourth Cause of Action
Assault and Battery

31. Paragraphs 1 through 30 as set out above are incorporated by reference herein.

32. As described above, on or about August 8, 2002, defendant Rodriguez physically assaulted Intervenor Chavez in attempting to pull her out of his vehicle into a motel room for the purpose of having sexual relations. During this physical assault, defendant Rodriguez also made sexual contact with Intervenor Chavez, touching her inappropriately for the purpose of sexual gratification.

33. In the period immediately prior to her constructive discharge on June 10, 2002, Intervenor Hunt was constantly grabbed by defendant Rodriguez in the workplace. Defendant Rodriguez also went to Intervenor Hunt's home and made bodily contact with her in attempting to hug her, even following her into her bedroom to do so. Intervenor Hunt made it clear to defendant Rodriguez that his consistent attempts to make bodily contact with her were not welcome.

34. By attempting to unlawfully use force or inflict bodily injury on Intervenor Chavez and Hunt, accompanied by the apparent present ability to give effect to the attempt, defendant Rodriguez committed an assault upon Intervenor Chavez and Hunt, and is civilly liable for the same.

35. By intentionally bringing about an offensive contact with Intervenor Chavez and Hunt, defendant Rodriguez committed a battery upon Intervenor Chavez and Hunt, and is civilly liable for the same.

36. As a direct and proximate result of the assault and battery committed by defendant Rodriguez, Intervenor Chavez and Hunt have incurred and will continue to incur damages for emotional distress, pain and suffering, humiliation, inconvenience and loss of enjoyment of life, as well as other general harm, in an amount to be proven at trial.

Fifth Cause of Action
Negligent Hiring and Retention

37. Paragraphs 1 through 36 as set out above are incorporated by reference herein.

38. Defendant Eldorado Stone owed a duty to its employees, including Intervenor Chavez and Hunt, to exercise reasonable care in the hiring and retention of supervisory personnel, including defendant Elmer Rodriguez.

39. Defendant Eldorado Stone breached its duty to exercise reasonable care in the hiring and retention of defendant Rodriguez. Defendant Eldorado Stone either knew or should

1 have known of defendant Rodriguez's unfitness for a supervisory position at the time of his
 2 appointment, and was negligent in continuing to retain defendant Rodriguez in a supervisory
 3 position after it was reported that he was sexually harassing employees at Eldorado Stone.

4 40. As a direct and proximate result of the negligence of defendant Eldorado Stone in
 5 the hiring and retention of defendant Elmer Rodriguez, Intervenor Chavez and Hunt have
 6 incurred and will continue to incur damages for emotional distress, pain and suffering,
 7 humiliation, inconvenience and loss of enjoyment of life, as well as other general harm, in an
 8 amount to be proven at trial.

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 10 **Sixth Cause of Action**
Negligent Supervision

11 41. Paragraphs 1 through 40 as set out above are incorporated herein by reference.

12 42. Defendant Eldorado Stone owed a duty to its employees, including Intervenor
 13 Hunt and Chavez, to exercise reasonable care in the supervision of its employees, including
 14 defendant Elmer Rodriguez.

15 43. Defendant Eldorado Stone breached its duty to exercise reasonable care in the
 16 supervision of defendant Elmer Rodriguez. Defendant Rodriguez presented a risk of harm to
 17 others, including Intervenor Hunt and Chavez. Defendant Eldorado Stone knew or, in the
 18 exercise of reasonable care, should have known that defendant Rodriguez presented a risk of
 19 harm to others, including Intervenor Hunt and Chavez.

20 44. As a direct and proximate result of the negligence of defendant Eldorado Stone in
 21 supervising defendant Elmer Rodriguez, Intervenor Chavez and Hunt have incurred and will
 22 continue to incur damages for emotional distress, pain and suffering, humiliation, inconvenience
 23 and loss of enjoyment of life, as well as other general harm, in an amount to be proven at trial.

24 WHEREFORE Intervenor Chavez, Hunt, Weber, Cortez, Johnson and Prouty pray for
 25 the following relief to be granted:
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 27
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1 1. That Intervenor be awarded damages against defendants Eldorado Stone, O'Dell
2 and Rodriguez in an amount to be proven at trial.

3 2. That punitive damages be assessed against defendant Eldorado Stone in favor of
4 Intervenor in an amount to be proven at trial.

5 3. That Intervenor be awarded costs, interest and attorneys' fees, as provided by
6 applicable law, including, but not limited to, 42 U.S.C. § 1988.

7 4. That such and other further relief as this court may deem appropriate be granted.

8 DATED this 4th day of December 2003.

9
10
11 By:  

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12 FRIEDMAN, RUBIN & WHITE

13
14
15 By: 

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16 Attorneys for Plaintiff-Intervenor