

The Honorable Marsha Pechman

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AT SEATTLE
CLERK U.S. DISTRICT COURT
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

ABIGAY FULGENCIO BELMONTE, a.k.a.
MARIA CHAVEZ; KAREN HUNT;
ANDREA WEBER; EVA CORTEZ;
GREG JOHNSON; and BRADY
PROUTY,

Plaintiff-Intervenors,

vs.

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

Defendants.

Case No. CV03-2768P

03-CV-02768-CMP

FIRST AMENDED COMPLAINT OF PLAINTIFF-INTERVENORS

COMES NOW plaintiff-intervenors Abigay Fulgencio Belmonte, a.k.a. Maria Chavez, Karen Hunt, Andrea Weber, Eva Cortez, Greg Johnson, and Brady Prouty, by and through their counsel of record, Kenneth R. Friedman, of the Law Offices of Friedman, Rubin & White, and Terry A. Venneberg, of the Law Offices of Terry A. Venneberg, Attorney at Law, and by way of complaint against defendants Eldorado Stone, LLC, Eldorado Stone Operations, LLC, Timothy O'Dell and Elmer Rodriguez, and state and allege as follows:

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

2. At all relevant times, defendants Eldorado Stone, LLC, and Eldorado Stone Operations, LLC, have continuously been limited liability companies doing business in the State of Washington and have continuously had at least 15 employees. At all relevant times, defendants Eldorado Stone, LLC, and Eldorado Stone Operations, LLC, have continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e-(b), (g) and (h).

3. At all relevant times, defendants Eldorado Stone, LLC, and Eldorado Stone Operations, LLC, have constituted a "single employer" for purposes of liability for unlawful employment practices under Title VII, 42 U.S.C. §§ 2000e *et. seq.* At all relevant times, defendants Eldorado Stone, LLC, (hereinafter "Eldorado Stone Parent"), and Eldorado Stone Operations, LLC, (hereinafter "Eldorado Stone Operations"), have had an integrated economic relationship, and have exercised common control over employment practices. All references herein to Eldorado Stone Operations as the employer of plaintiff-intervenors shall not constitute a waiver of the allegation, expressly made here, that Eldorado Stone Parent was also an employer of plaintiff-intervenors for purposes of liability under Title VII and other applicable laws.

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

5. Upon information and belief, defendant Elmer Rodriguez is over the age of eighteen (18) years, and was, at all relevant times, a supervisor at the Carnation, Washington facility of defendants Eldorado Stone Parent and Eldorado Stone Operations. Upon information and belief, the employment of defendant Rodriguez at defendant Eldorado Stone Parent and/or Eldorado Stone Operations ended in March 2003.

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

7. The EEOC has alleged in this action that defendants Eldorado Stone Parent and Eldorado Stone Operations engaged in unlawful employment practices at their 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.

8. 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.

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

Factual Background

1 10. Intervenor Karen Hunt began working for Eldorado Stone Corporation in 1999. In 2000, by
2 virtue of a change in the business structure of the Eldorado Stone companies, Hunt's employer became
3 Eldorado Stone Operations. On or about June 10, 2002, Hunt was compelled to resign from her
4 employment at Eldorado Stone Operations by the actions of Elmer Rodriguez, a co-worker. Rodriguez
5 engaged in offensive and unwelcome conduct towards Hunt, serious enough to affect the terms and
6 conditions of her employment. Rodriguez constantly grabbed Hunt, and made sexual remarks to her that
7 were very offensive. Rodriguez also came to the residence occupied by Hunt on several occasions,
8 claiming he was "in the vicinity," and tried to hug Hunt. Rodriguez was pushed away by Hunt, and told
9 to stop.

10 11. Hunt complained about Rodriguez's conduct on several occasions to Sandi Gifford, who was
11 her supervisor until May 2002. Gifford had also complained about Rodriguez, and his sexually harassing
12 conduct towards her. Gifford sent a letter to Human Resources at Eldorado Stone Operations concerning
13 Rodriguez and his actions. Neither O'Dell nor anyone in Human Resources took any action to prevent
14 Rodriguez's harassing conduct, either towards Hunt or Gifford, or remedy in any way the sexual
15 harassment being encountered by Hunt. Because of Rodriguez's continuing harassing conduct, and the
16 failure by defendant Eldorado Stone Operations to effectively prevent or remedy the harassment after
17 being informed of that conduct, Hunt was left with no choice but to resign her employment at defendant
18 Eldorado Stone Operations. Hunt was therefore constructively discharged from her position at defendant
19 Eldorado Stone Operations.

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

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

8 14. Intervenor Andrea Weber, Eva Cortez, Greg Johnson and Brady Prouty were all co-workers
9 of Chavez at the time of her complaint to Eldorado Stone Operations management regarding the August
10 8 incident. On September 4, 2002, the same day that Chavez reported the August 8 incident, Eldorado
11 Stone Operations management, including defendant O'Dell, held a meeting with workers at the Eldorado
12 plant, including Weber, Cortez, Johnson, and Prouty. When the participants in the meeting were asked
13 by Eldorado Stone Operations management about Rodriguez, and what action should be taken regarding
14 his assault on Chavez, Weber, Cortez, Johnson and Prouty all spoke in support of Chavez, and noted
15 Rodriguez's past history of sexually harassing conduct at Eldorado Stone Operations.

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

25 16. On September 6, 2002, two days after they had spoken in support of Chavez regarding her
26 complaint against Rodriguez, Weber, Cortez and Prouty were all terminated from their employment by

defendant Eldorado Stone Operations and by their supervisor, defendant Timothy O'Dell. On September 17, 2002, after returning from a vacation, Johnson was also terminated from his employment by defendants Eldorado Stone, and by his supervisor, defendant Timothy O'Dell. At the time of their terminations, Weber, Cortez, Prouty and Johnson were all employees in good standing at Eldorado Stone Operations. Cortez and Johnson had recently received "Employee of the Quarter" awards at Eldorado Stone Operations, and Johnson had been given a series of wage increases during his time as an Eldorado Stone Operations employee. Weber, Cortez, Prouty and Johnson were all terminated from their employment at Eldorado Stone Operations as a direct result of, and in retaliation for, their expressions of support for Chavez in her harassment complaint against Rodriguez.

17. Defendant Eldorado Stone Parent thereafter conducted an investigation of the sexual harassment complaint made by Chavez against Rodriguez. Defendant Eldorado Stone Parent concluded that Rodriguez's behavior towards Chavez on or about August 8, 2002 was "completely unacceptable." Defendant Eldorado Stone Parent also concluded that Rodriguez's "activities were in direct contrast with the commitment of this company to ensure all employees can work in an environment free of harassment." Defendant Eldorado Stone Parent concluded that Rodriguez should be demoted as a result of his conduct towards Chavez; Rodriguez decided to resign from Eldorado Stone Parent in lieu of accepting his demotion.

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

18. Paragraphs 1 through 17 as set out above are incorporated by reference herein.

19. From at least January 2002, defendants Eldorado Stone Parent and Eldorado Stone Operations engaged in unlawful employment practices at the Eldorado Stone 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. .

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20. The unlawful employment practices engaged in by defendants Eldorado Stone Parent and Eldorado Stone Operations 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.

21. As a direct and proximate result of the violations of 42 U.S.C. § 2000e-2(a) and -3(a) by defendants Eldorado Stone Parent and Eldorado Stone Operations, 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 defendants Eldorado Stone Parent and Eldorado Stone Operations, 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.

22. Defendants Eldorado Stone Parent and Eldorado Stone Operations are also liable for an assessment of punitive damages, due to its violations of 42 U.S.C. § 2000e(2)(a) and -(3)(a), and their 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

23. Paragraphs 1 through 22 as set out above are incorporated by reference herein.

24. 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.

25. 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..."

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

27. 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 Operations, violated RCW 49.60.180, and is civilly liable for said violation.

28. As a direct and proximate result of the violation of RCW 49.60.180 by defendants Eldorado Stone Parent and Eldorado Stone Operations, Intervenor Hunt has incurred and will to 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 Parent, Eldorado Stone Operations and Rodriguez, Intervenor Chavez has incurred and will to 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

29. Paragraphs 1 through 28 as set out above are incorporated by reference herein.

30. 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.

31. 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

1 Eldorado Stone Parent, Eldorado Stone Operations and Timothy O'Dell violated RCW 49.60.210, and
2 are each civilly liable for said violations.

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

8 Fourth Cause of Action
9 Assault and Battery

10 33. Paragraphs 1 through 32 as set out above are incorporated by reference herein.

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

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

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

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

26 38. As a direct and proximate result of the assault and battery committed by defendant
27 Rodriguez, Intervenor Chavez and Hunt have incurred and will to 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

39. Paragraphs 1 through 38 as set out above are incorporated by reference herein.

40. Defendant Eldorado Stone Operations 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.

41. Defendant Eldorado Stone Operations breached its duty to exercise reasonable care in the hiring and retention of defendant Rodriguez. Defendant Eldorado Stone Operations either knew or should have known of defendant Rodriguez's unfitness for a supervisory position at the time of his appointment, and was negligent in continuing to retain defendant Rodriguez in a supervisory position after it was reported that he was sexually harassing employees at Eldorado Stone Operations.

42. As a direct and proximate result of the negligence of defendant Eldorado Stone Operations in the hiring and retention of defendant Elmer 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.

Sixth Cause of Action
Negligent Supervision

43. Paragraphs 1 through 42 as set out above are incorporated herein by reference.

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

45. Defendant Eldorado Stone Operations breached its duty to exercise reasonable care in the supervision of defendant Elmer Rodriguez. Defendant Rodriguez presented a risk of harm to others, including Intervenor Hunt and Chavez. Defendant Eldorado Stone Operations knew, or in the exercise

of reasonable care, should have known, that defendant Rodriguez presented a risk of harm to others, including Intervenor Hunt and Chavez.

46. As a direct and proximate result of the negligence of defendant Eldorado Stone Operations in supervising defendant Elmer 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.

WHEREFORE Intervenor Abigay Fulgencio Belmonte, a.k.a. Maria Chavez, Karen Hunt, Andrea Weber, Eva Cortez, Greg Johnson and Brady Prouty pray for the following relief to be granted:

1. That Intervenor be awarded damages against defendants Eldorado Stone Parent, Eldorado Stone Operations, O'Dell and Rodriguez in an amount to be proven at trial.

2. That punitive damages be assessed against defendants Eldorado Stone Parent and Eldorado Stone Operations in favor of Intervenor in an amount to be proven at trial.

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

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

DATED this 1st day of July, 2004.

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2 This will certify that I caused the foregoing
3 to be electronically filed on July 1, 2004, with the court
4 using the CM/ECF system which will send
5 notification of such filing to:
6 Gregory A. Hendershott, Esq.
7 Carmen M. Flores, Esq.

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/s/ Terry A. Venneberg