

1 Keller W. Allen, ISB No. 5021
2 ALLEN & McLANE, P.C.
3 The Paulsen Center, Suite 421
4 421 W. Riverside Avenue
5 Spokane, WA 99201
6 Telephone: (509) 777-2211
7 Facsimile: (509) 777-2215
8 E-Mail: kwa@allenmclane.com

U.S. DISTRICT COURT
U.S. BANKRUPTCY COURT
DISTRICT OF IDAHO

FEB 27 2003

____ M. REC'D ____
LODGED _____ FILED 2

9 Attorneys for Plaintiff in Intervention, Marlon A. Herrera

11 UNITED STATES DISTRICT COURT
12 FOR THE DISTRICT OF IDAHO

13 EQUAL EMPLOYMENT)
14 OPPORTUNITY COMMISSION,)

15)
16 Plaintiff,)

17 vs.)

18)
19 IDAHO POWER COMPANY,)

20 Defendant.)

21 _____)
22 MARLON A. HERRERA,)

23)
24 Plaintiff in Intervention.)
25 _____)

Case No. CV02-409-S-EJL

COMPLAINT BY PLAINTIFF
IN INTERVENTION
MARLON A. HERRERA

JURY TRIAL DEMANDED

26 Plaintiff in Intervention, Marlon A. Herrera, alleges as follows:
27
28

29 COMPLAINT BY PLAINTIFF IN INTERVENTION
30 MARLON A. HERRERA – Page 1
Y:\pamm\Herrera\USDC Complaint.doc\

Allen & McLane, P.C.
421 W. Riverside Avenue, Suite 421
Spokane, WA 99201
Telephone: (509) 777-2211
Fax: (509) 777-2215

JURISDICTION AND VENUE

1
2 1. This Court has jurisdiction over the subject matter of this
3
4 complaint in intervention pursuant to 28 U.S.C. §§ 1331, 1343, 1367,
5 42 U.S.C. § 1981, 42 U.S.C. § 2000e et. seq., and 42 U.S.C. § 1981a.
6

7 2. Venue is proper before this Court pursuant to 28 U.S.C. §
8 1391, as all employment practices and actions alleged herein occurred
9
10 within the jurisdiction of the United States District Court for the District
11 of Idaho.
12

13 3. All prerequisites required by federal and state law have
14
15 been satisfied by Plaintiff in Intervention before bringing this action,
16
17 including acquisition of the attached Right to Sue letter from the Idaho
18 State Human Rights Commission.
19

PARTIES

20 4. This matter was commenced by Plaintiff, the Equal
21
22 Employment Opportunity Commission ("EEOC").
23

24 5. Plaintiff in Intervention, Marlon A. Herrera, is a resident of
25
26 the State of Idaho, and has been during all periods relevant to the
27
28 claims herein.
29

1 6. At all relevant times to the allegations herein, Defendant
2 Idaho Power Company, an "IDACORP Company" ("Defendant"), has
3 been an entity continuously doing business in the State of Idaho, and
4 has continuously had at least one hundred (100) or more employees.
5 At all relevant times to the allegations herein, Defendant has
6 continuously been an employer engaged in an industry affecting
7 commerce within the meaning of Sections 701(b), (g), and (h) of Title
8 VII, 42 U.S.C. §§ 2000e-(b), (g), and (h).
9

10 7. The EEOC has alleged that Defendant subjected Mr.
11 Herrera to unlawful discrimination on the basis of his national origin
12 and age. As the aggrieved person in the unlawful practices as alleged
13 by the EEOC, Mr. Herrera is entitled to intervene as a matter of right in
14 this action to assert his individual national origin/race discrimination
15 claims pursuant to 42 U.S.C. § 2000e-5(f)(1). Mr. Herrera has
16 satisfied all requirements concerning exhaustion of administrative
17 remedies and all conditions precedent to the institution of his claims.
18

19 8. Paragraphs 1 through 11 of the complaint filed by the
20 EEOC against Defendant in this matter are incorporated by reference
21 as if fully set forth herein.
22

DEFENDANT'S WRONGFUL CONDUCT

1
2 9. Mr. Herrera sought employment with Defendant on
3
4 numerous occasions in 2000 and 2001. Mr. Herrera sought positions
5 with Defendant as a Meter Specialist 1 and/or 2, and he was highly
6
7 qualified to perform the duties of such positions as a result of his
8
9 approximately twenty (20) plus years of experience performing
10
11 electrical meter reading with other employers prior to applying for such
12
13 positions with Defendant.

14 10. During all periods relevant to these claims, Mr. Herrera
15
16 was over the age of forty (40) and is a minority by virtue of being a
17
18 Hispanic and Native American, and he was protected from age and
19
20 national origin/race discrimination in employment by federal and state
21
22 statutes.

23 11. Despite his superior experience and qualifications,
24
25 Defendant hired less qualified, less experienced non-minority
26
27 applicants under the age of 40 to fill the positions of Meter Specialist
28
29 sought by Mr. Herrera. As a result of his age and/or race/national
30
31 origin, Defendant failed to provide employment to Mr. Herrera. These
32
33 actions and practices of Defendant relating to the race/national origin

1 of Mr. Herrera were in violation of Section 703(a) of Title VII, 42 U.S.C.
2 §§ 2000e-2(a), and in violation of the race discrimination prohibitions
3 of 42 U.S.C. § 1981. In addition, such actions and practices
4 concerning race/national origin and age discrimination were in violation
5 of Idaho Code, Title 67, Chapter 59.
6

7
8 12. The effect of Defendant's actions set forth above has been
9 to deprive Mr. Herrera of equal employment opportunities under
10 federal and state anti-discrimination laws, and upon information and
11 belief were adopted and used intentionally to discriminate against him
12 because of his race/national origin and/or age. Because the EEOC
13 has asserted claims of discrimination under the ADEA on behalf of Mr.
14 Herrera against Defendant, Mr. Herrera does not assert individually
15 any federal ADEA claims as per 29 U.S.C. § 626(c)(1).
16

17
18 13. Upon information and belief, the unlawful employment
19 practices complained of above were done with malice or with reckless
20 indifference to the statutorily protected rights of Mr. Herrera. Such
21 actions and practices by Defendant have caused economic and non-
22 economic damages to Mr. Herrera, which amount will be proven at
23 trial.
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5
6
7
8
9
10
11

13
14

16
17
18
19

20
21
22
23
24
25

26
27
28

1 F. For such other relief as the Court deems necessary and
2 proper.

3
4 DATED this 16 day of OCTOBER, 2002.

5 ALLEN & McLANE, P.C.

6
7 Keller W. Allen
8 Keller W. Allen, ISB No. 5021
9 Attorney for Plaintiff in Intervention
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25 day of February, 2003, I caused to be served a true and correct copy of the foregoing on the following:

Damien A. Lee	<u> X </u> U.S. Mail
Equal Employment	<u> </u> Overnight Mail
Opportunity Commission	<u> </u> Hand Delivery
Federal Office Building	<u> </u> Facsimile
909 First Avenue, Suite 400	
Seattle, WA 98104-1061	

Attorney for Plaintiff EEOC

Candy Wagahoff Dale	<u> X </u> U.S. Mail
Hall, Farley, Oberrecht &	<u> </u> Overnight Mail
Blanton, P.A.	<u> </u> Hand Delivery
PO Box 1271	<u> </u> Facsimile
Boise, ID 83701	

Attorneys for Defendant Idaho Power Company


Keller W. Allen

COMMISSIONERS:
Estella Zamora, President
Hyong K. Pak, Vice President
Vernon Baker
Eloy Chaves
Ruthie Johnson
Stephen M. Maloff
Clarisse M. Maxwell
William L. Swift
Sandra Twiggs



IDAHO HUMAN RIGHTS COMMISSION

NOTICE OF ADMINISTRATIVE DISMISSAL AND RIGHT TO SUE

P.O. BOX 83720
OWYHEE PLAZA, FOURTH FLOOR
1109 MAIN STREET, STE. 400
BOISE, IDAHO 83720-0040
(208) 334-2873
FAX 334-2664
TDD/TTY (208) 334-4751
TOLL FREE NO. 1-888-249-7025
E-MAIL: inquiry@ihrc.state.id.us
Leslie R. Goddard, Director

Keller W. Allen
Allen & McLane, PC
421 W. Riverside Ave
Spokane, WA 99201

The Idaho Power Company
Human Resources Dept
P. O. Box 70
Boise, ID 83707

October 1, 2002

RE: Marlon Herrera vs. Idaho Power Company
Complaint Nos.: DAAD-7-0102-275; 380A200330

The above complaint filed with the Human Rights Commission is hereby dismissed pursuant to the Commission's Rules and Procedures for the following reason.

- ☐ Complainant has requested administrative dismissal/notice of right to sue.
- ☐ Failure of the Complainant to cooperate with the Commission in the processing of the case, including failure to answer interrogatories.
- ☐ Inability to locate Complainant.
- ☐ Investigation indicates that the case was not timely filed or is otherwise not jurisdictional.
- ☐ The Complainant has filed a suit in either state or federal court alleging the same unlawful practices.
- ☐ The facts alleged in the administrative complaint do not appear to violate the Human Rights Act.
- ☐ The Complainant has requested that the complaint be withdrawn.
- ☒ Other: This case was handled by the EEOC. IHRC has been notified of EEOC's administrative closure.

This dismissal terminates the Commission's handling of the above-referenced complaint. This is also Complainant's Notice of Right to Sue under the Human Rights Act. If Complainant intends to sue the Respondent(s) named in the charge, **a lawsuit must be filed in district court within ninety (90) days of the date of this notice. Otherwise, Complainant's right to sue under the Human Rights Act is lost.**

Oct. 1, 2002
Date

Leslie R. Goddard
Leslie R. Goddard
Director