

FEB 28 2003

\_\_\_\_ M. RECD \_\_\_\_\_  
LODGED \_\_\_\_\_ FILED *df* \_\_\_\_\_

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

9  
10  
11 Attorneys for Plaintiff in Intervention, Marlon A. Herrera

12 UNITED STATES DISTRICT COURT  
13 FOR THE DISTRICT OF IDAHO

14 EQUAL EMPLOYMENT )  
15 OPPORTUNITY COMMISSION, )

Case No. CV-02-409-S-EJL

16 Plaintiff, )

FIRST AMENDED  
COMPLAINT OF PLAINTIFF  
IN INTERVENTION  
MARLON A. HERRERA

17 and )

18 MARLON A. HERRERA, )

19 Plaintiff Intervenor, )

JURY TRIAL DEMANDED

20 v. )

21 IDAHO POWER COMPANY, )

22 Defendant. )  
23  
24  
25

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

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

## **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., 42 U.S.C. § 1981a and  
6 42 U.S.C. §12101 et. seq.  
7

8       2.     Venue is proper before this Court pursuant to 28 U.S.C. §  
9 1391, as all unlawful employment practices and actions alleged herein  
10 occurred within the jurisdiction of the United States District Court for  
11 the District of Idaho.  
12  
13

14       3.     All prerequisites required by federal and state law have  
15 been satisfied by Plaintiff in Intervention before bringing this action,  
16 including acquisition of (1) the attached Right to Sue letter from the  
17 Idaho State Human Rights Commission; and (2) the attached Right to  
18 Sue letter from the Equal Employment Opportunity Commission  
19 concerning claims under the Americans with Disabilities Act of 1990.  
20 42 U.S.C. §12101 et. seq.  
21  
22  
23

## **PARTIES**

24  
25  
26       4.     This matter was originally commenced by Plaintiff, the  
27 Equal Employment Opportunity Commission ("EEOC").  
28

1           5.     Plaintiff in Intervention, Marlon A. Herrera, is a resident of  
2 the State of Idaho, and has been so during all periods relevant to the  
3 claims herein.  
4

5           6.     At all relevant times to the allegations herein, Defendant  
6 Idaho Power Company, an "IDACORP Company" ("Defendant"), has  
7 been an entity continuously doing business in the State of Idaho, and  
8 has continuously had at least one hundred (100) or more employees.  
9  
10           At all relevant times to the allegations herein, Defendant has  
11 continuously been an employer engaged in an industry affecting  
12 commerce within the meaning of Sections 701(b), (g), and (h) of Title  
13 VII, 42 U.S.C. §§ 2000e-(b), (g), and (h), and is an employer under the  
14 Americans with Disabilities Act, 42 U.S.C. §12101 et. seq. and Idaho  
15 Code, Title 67, Chapter 59.  
16  
17  
18  
19

20           7.     The EEOC has alleged that Defendant subjected Mr.  
21 Herrera to unlawful discrimination on the basis of his national origin,  
22 race, and age. As the aggrieved person in the unlawful practices as  
23 alleged by the EEOC, Mr. Herrera has been granted the right to  
24 intervene in this action by Order of the Court dated February 20, 2003  
25 to assert his individual claims under federal and state laws. Mr.  
26  
27  
28

1 Herrera has satisfied all requirements concerning exhaustion of  
2 administrative remedies and all conditions precedent to the institution  
3 of his claims.  
4

5 8. Paragraphs 1 through 11 of the Complaint filed by the  
6 EEOC against Defendant in this matter are incorporated by reference  
7 as if fully set forth herein.  
8

9  
10 **DEFENDANT'S WRONGFUL CONDUCT**

11 9. Mr. Herrera sought employment with Defendant on  
12 numerous occasions in 2000 and 2001. Mr. Herrera sought positions  
13 with Defendant as a Meter Specialist 1 and/or 2. Mr. Herrera was  
14 highly qualified to perform the duties of such positions as a result of his  
15 approximately twenty (20) plus years of experience performing  
16 electrical meter reading with other employers prior to applying for such  
17 positions with Defendant.  
18  
19  
20  
21

22 10. During all periods relevant to these claims, Mr. Herrera  
23 was over the age of forty (40), and he is a minority by virtue of being a  
24 Hispanic and Native American. Upon information and belief,  
25 Defendant also regarded Mr. Herrera as disabled under federal and  
26 state laws. Upon further information and belief, Defendant regarded  
27  
28

1 Mr. Herrera as a union sympathizer and "union seed" who was seeking  
2 to obtain employment in order to infiltrate Defendant's workforce and  
3 organize a union.  
4

5 11. Despite his superior experience and qualifications,  
6 Defendant hired less qualified, less experienced non-minority  
7 applicants under the age of 40 to fill the positions of Meter Specialist  
8 sought by Mr. Herrera. As a result of (1) Mr. Herrera's age, race,  
9 and/or national origin, (2) Defendant's regard of Mr. Herrera as  
10 disabled, and/or (3) Defendant's regard of Mr. Herrera as a Union  
11 sympathizer and "union seed" who was affiliated with a labor  
12 organization, Defendant willfully and intentionally refused to invite Mr.  
13 Herrera to certain job interviews and to hire him for positions for which  
14 he was actually interviewed. Defendant willfully (1) hired less qualified  
15 and experienced white males under the age of 40, (2) hired less  
16 qualified and experienced males who were not regarded as having a  
17 disability under federal and state laws, and (3) hired less qualified and  
18 experienced males who were not regarded as having union beliefs and  
19 sympathies that were detrimental to Defendant's business interests.  
20  
21  
22  
23  
24  
25  
26  
27

28 These actions and practices of Defendant relating to the race/national

1 origin of Mr. Herrera were in violation of Section 703(a) of Title VII, 42  
2 U.S.C. §§ 2000e-2(a), and in violation of the race discrimination  
3 prohibitions of 42 U.S.C. § 1981. In addition, such actions and  
4 practices concerning race, national origin, and age discrimination were  
5 in violation of Idaho Code, Title 67, and Chapter 59. Defendant's  
6 perception and regard of Mr. Herrera as having a disability, and its  
7 actions and practices in regard thereto, was in violation of the  
8 Americans with Disabilities Act, 42 U.S.C. §12101, et. seq. and Idaho  
9 Code, Title 67, Chapter 59. Further, Defendant's actions and practices  
10 with regard to discriminating against Mr. Herrera in hiring due to  
11 Defendant's beliefs that Mr. Herrera was a union sympathizer and  
12 "union seed" was in violation of Idaho's right to work laws set forth in  
13 Idaho Code, Title 44, Chapter 20 et. seq.

14  
15  
16  
17  
18  
19  
20 12. Defendant's actions have deprived Mr. Herrera of equal  
21 employment opportunities under federal and state anti-discrimination  
22 laws, and upon information and belief were with reckless disregard to  
23 Mr. Herrera's rights under federal and state laws, and were willfully  
24 and intentionally done with the purpose to discriminate against Mr.  
25  
26  
27  
28 Herrera because of his race, national origin, age, perceived disability

1 and/or his perceived union sympathies and affiliations with a labor  
2 organization. Because the EEOC has asserted claims of  
3 discrimination under the ADEA on behalf of Mr. Herrera against  
4 Defendant, Mr. Herrera does not assert individually any federal ADEA  
5 claims as per 29 U.S.C. § 626(c)(1).  
6  
7

8 13. Upon information and belief, the unlawful employment  
9 practices complained of above were done with malice or with reckless  
10 indifference to the statutorily protected rights of Mr. Herrera. Such  
11 actions and practices by Defendant have caused economic and non-  
12 economic damages to Mr. Herrera, which amount will be proven at  
13 trial.  
14  
15  
16

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff in Intervention, Marlon A. Herrera,  
19 respectfully requests that the Court enter the following relief:  
20  
21

22 A. Granting a permanent injunction enjoining Defendant, its  
23 officers, employees, agents, successors and all persons in active  
24 concert or participation with it from engaging in any employment  
25 practices which discriminate against Mr. Herrera on the basis of  
26 national origin, race, age, perceived disability and union beliefs;  
27  
28

1 B. Granting Mr. Herrera back pay, front pay and lost benefits,  
2 plus interest, in an amount to be determined at trial;  
3

4 C. Granting judgment against Defendant for punitive damages  
5 as allowed under federal and state laws in an amount to be  
6 determined at trial;  
7

8 D. Granting judgment for past and future nonpecuniary  
9 damages, including, without limitation, emotional pain, suffering,  
10 stress, and loss of enjoyment of life, in amounts to be determined at  
11 trial;  
12  
13

14 E. For reasonable attorney fees and costs incurred by Mr.  
15 Herrera in prosecuting this action;  
16

17 F. For an award of monetary damages to offset any adverse  
18 tax consequences attributable to any back pay, front pay, and  
19 attorney's fee award and/or recovery; and  
20

21 /////

22 /////

23 /////


24 /////



1 G. For such other relief as the Court deems necessary and  
2 proper.  
3

4 DATED this 26 day of February, 2003.

5 ALLEN & McLANE, P.C.  
6

7   
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 26 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

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE

(Issued on request)

To: Marlon A. Herrera

c/o Keller W. Allen

ALLEN & MCLANE, PC

421 West Riverside Avenue

Spokane, WA 99201

☐

On behalf of a person aggrieved whose identity is *CONFIDENTIAL*

(29 C.F.R. 1601.7(a))

From:

EEOC/Seattle District Office

909 First Avenue, Rm 400

Seattle, WA 98104-1061

Charge Number

380A200330

EEOC Representative

Kari Thompson, Investigator

Telephone Number

(206) 220-6852

**TO THE PERSON AGGRIEVED:** This is your NOTICE OF RIGHT TO SUE. It is issued at your request. If you intend to sue the respondent(s) named in your charge, YOU MUST DO SO WITHIN NINETY (90) DAYS OF YOUR RECEIPT OF THIS NOTICE: OTHERWISE YOUR RIGHT TO SUE IS LOST.

☒

More than 180 days have expired since the filing of this charge.

☐

Less than 180 days have expired since the filing of this charge, but I have determined that the Commission will be unable to complete its process within 180 days from the filing of the charge.

☐

With the issuance of this NOTICE OF RIGHT TO SUE, the Commission is terminating its process with respect to this charge.

☐

It has been determined that the Commission will continue to investigate your charge.

☐

**ADEA:** While Title VII and the ADA require EEOC to issue this notice of right to sue before you can bring a lawsuit, you may lawsuit you may sue under the Age Discrimination in Employment Act (ADEA) any time 90 days after your charge was filed until

☐

**Because EEOC is closing your case,** your lawsuit under the ADEA must be brought within 90 days of your receipt of this notice. Otherwise, your right to sue is lost.

☐

**EEOC is continuing its investigation.** You will be notified when we have completed action and, if our notice will include notice of right to sue under the ADEA.

☐

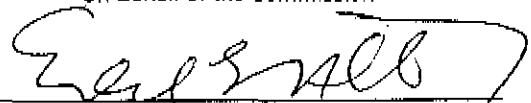
**EPA:** While Title VII and the ADA require EEOC to issue this Notice of Right to Sue before you can bring a lawsuit, you already lawsuit you already have the right to sue under the Equal Pay Act (EPA) (You are not required to complain to any enforcement agency before bringing an EPA suit in court). EPA suits must be brought within 2 years (3 years for willful violations) of the alleged EPA underpayment.

I certify that this notice was mailed on the date set out below.

2/21/03

(Date Mailed)

On Behalf of the Commission

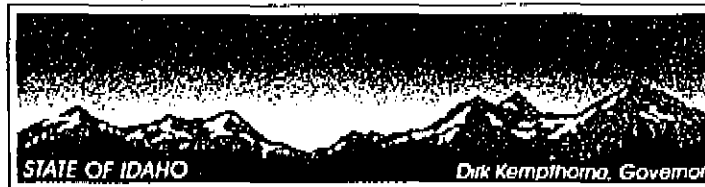


JEANETTE M. LEINO, DISTRICT DIRECTOR  
(Typed Name & Title of Commission Official)

cc: Idaho Power Corporation

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@lhrc.state.id.us](mailto:Inquiry@lhrc.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