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U.S. COURTS

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UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF IDAHO

10 EQUAL EMPLOYMENT OPPORTUNITY
 11 COMMISSION,

12 Plaintiff,

13 MARLON HERRERA,

14 Plaintiff Intervenor

15 v.

16 IDAHO POWER COMPANY,

17 Defendant.
 18

CIVIL ACTION NO. CV 02-409-S-EJL

SECOND AMENDED COMPLAINT

JURY TRIAL DEMAND

19 NATURE OF THE ACTION

20
 21 This is an action under Title VII of the Civil Rights Act of 1964, Title I of the Civil Rights
 22 Act of 1991 and the Age Discrimination in Employment Act to correct unlawful employment
 23 practices on the basis of national origin and age and to provide appropriate relief to Marlon
 24 Herrera, who was adversely affected by such practices. The Equal Employment
 25 Opportunity Commission alleges that Defendant failed to consider Mr. Herrera for
 26 employment because of his national origin, Hispanic and/or age. Plaintiff seeks injunctive
 27 and monetary relief, including pecuniary and nonpecuniary compensatory damages and

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1 punitive damages.

2 3 JURISDICTION AND VENUE

4 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§451, 1331, 1337,
5 1343 and 1345. This action is authorized and instituted pursuant to sections 706(f)(1) and
6 (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. sections 2000e-
7 5(f)(1) and (3) ("Title VII"), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C.
8 §1981a and Section 7(b) of the Age Discrimination in Employment Act of 1967, as
9 amended, 29 U.S.C. §626(b) (the "ADEA"), which incorporates by reference Sections 16(c)
10 and 17 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§216(c) and 217.

11 2. The employment practices alleged to be unlawful were committed within the
12 jurisdiction of the United States District Court for the District of Idaho.

13 PARTIES

14 3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is
15 the agency of the United States of America charged with the administration, interpretation
16 and enforcement of Title VII and the ADEA, and is expressly authorized to bring this action
17 by Section 706(f)(1) of Title VII, 42 U.S.C. §2000e-5(f)(1) and Section 7(b) of the ADEA, 29
18 U.S.C. §626(b), as amended by Section 2 of Reorganization Plan No. 1 of 1978, 92 Stat.
19 3781, and by Public Law 98-532 (1984), 98 Stat. 2705.

20 4. At all relevant times, Defendant Idaho Power Company, an IDACORP
21 Company, ("Defendant") has been an entity continuously doing business in the State of
22 Idaho and has continuously had at least 20 employees.

23 5. At all relevant times, Defendant has continuously been an employer engaged in
24 an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title
25 VII, 42 U.S.C. §§2000e-(b), (g) and (h) and Section 11(b), (g) and (h) of the ADEA, 29
26 U.S.C. §§630(b), (g) and (h).
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CONCILIATION

6. Prior to institution of this lawsuit, the Commission's representatives attempted to eliminate the unlawful employment practices alleged below and to effect voluntary compliance with Title VII and the ADEA through informal methods of conciliation, conference, and persuasion within the meaning of Section 706 of Title VII, 42 U.S.C. § 2000e-5 and Section 7(b) of the ADEA, 29 U.S.C. §626(b).

STATEMENT OF CLAIMS

7. More than thirty days prior to the institution of this lawsuit, Marlon Herrera filed a charge with the Commission alleging violations of Title VII and the ADEA by Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Since November 2, 2000, Defendant engaged in unlawful employment practices at its Idaho sites, in violation of §§ 703(a) of Title VII, 42 U.S.C. §§ 2000e-2(a) and §4(a) of the ADEA, 29 U.S.C. §623(a). The practices include the failure to consider Mr. Herrera for employment because of his national origin and/or age.

9. The effect of the practices complained of in paragraph 8 above has been to deprive Marlon Herrera of equal employment opportunities and were adopted and used intentionally to discriminate against him because of his national origin and age.

10. The unlawful employment practices complained of in paragraph 8 above were willful within the meaning of Section 7(b) of the ADEA, 29 U.S.C. §626(b).

11. The unlawful employment practices complained of in paragraph 8 above were done with malice or with reckless indifference to the federally protected rights of Marlon Herrera.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, successors, agents, assigns, and all persons in active concert or participation with it, from engaging in any other employment practice which discriminates on the bases of national origin or age.

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1 B. Order Defendant to institute and carry out policies, practices, and programs
2 which provide equal employment opportunities for all employees, and which eradicate the
3 effects of its past and present unlawful employment practices.

4 C. Order Defendant to make whole Marlon Herrera by providing appropriate back
5 wages in an amount to be determined at trial, an equal sum as liquidated damages, and
6 prejudgment interest, and other affirmative relief necessary to eradicate the effects of its
7 unlawful employment practices.

8 D. Order Defendant to make whole Marlon Herrera by providing compensation for
9 past and future pecuniary losses resulting from the unlawful employment practices
10 described in paragraph 8 above, including past and future out-of-pocket expenses, in
11 amounts to be determined at trial.

12 E. Order Defendant to make whole Marlon Herrera by providing compensation for
13 past and future nonpecuniary losses resulting from the unlawful practices complained of in
14 paragraph 8 above, including without limitation emotional pain, suffering, and loss of
15 enjoyment of life, in amounts to be determined at trial.

16 F. Order Defendant to pay Marlon Herrera punitive damages for its malicious and
17 reckless conduct described in paragraph 8 above, in amounts to be determined at trial.

18 G. Grant such further relief as the Court deems necessary and proper in the public
19 interest

20 H. Award the Commission its costs of this action.

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JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

DATED this 13th day of June, 2003.

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