

**FILED**

APR - 8 2005

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
MIDLAND-ODESSA DIVISION**

**ABEL ARMENDARIZ,  
Plaintiff,**

**vs.**

**RIG MOVERS EXPRESS, INC.  
ENDEAVOR ENERGY RESOURCES,  
INC.  
Defendant.**

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**CIVIL ACTION NO. MO05CV010**

**PLAINTIFF, ABEL ARMENDARIZ'S, FIRST AMENDED COMPLAINT  
AND JURY DEMAND**

**TO THE HONORABLE JUDGE OF SAID COURT:**

**NOW COMES** Abel Armendariz, hereinafter called Plaintiff, complaining of and about Rig Movers Express, Inc. and Endeavor Energy Resources, hereinafter called Defendants, and for cause of action shows unto the Court the following:

**PARTIES AND SERVICE**

1. Plaintiff Abel Armendariz, is a citizen of the United States and the State of Texas and resides in Ector County, Texas.
2. Defendant Endeavor Energy Resources, a Limited Liability Company based in Texas, may be served with process by serving the registered agent of said company, Autry C. Stephens, at 110 N. Marienfeld, Suite 200, Midland, Texas 79701, its registered office. Service of said Defendant as described above can be effected by certified mail, return receipt requested. Upon reason and belief, plaintiff would assert that Rig Movers, Inc. is a subsidiary of Defendant Endeavor Energy Resources, thus making service of process unnecessary upon service of the latter.

**JURISDICTION**

3. The action arises under 42 U.S.C. Section 2000e (k) as hereinafter more fully appears.

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4. This Court has supplemental jurisdiction over state law claims discussed below under 28 U.S.C. Section 1367(a) because they arise out of the same case or controversy.

#### **NATURE OF ACTION**

5. This is an action under Title 42 U.S.C. Section 2000e et. seq. and 42 U.S.C. Section 1981 as amended by the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of race and color.

#### **CONDITIONS PRECEDENT**

6. All conditions precedent to jurisdiction have occurred or been complied with: a charge of discrimination was filed with the Equal Employment Opportunity Commission within three hundred days of the acts complained of herein and Plaintiff's Complaint is filed within ninety days of Plaintiff's receipt of the Equal Employment Opportunity Commission's issuance of a right to sue letter.

#### **FACTS**

7. The Plaintiff had been employed by the defendants from approximately September 2001 until his termination on March 29, 2004. During course of said employment, plaintiff was caused to suffer repeatedly from malicious verbal attacks and other acts constituting harassment by supervisor under the employ of Defendant. Defendant's employees supervising plaintiff made racial slurs on a weekly basis referring to plaintiff, an African American, as a 'nigger.' Plaintiff's supervisor also made numerous racial jokes at the expense of plaintiff referring to African Americans as 'monkeys.'

8. The Defendant also forced the plaintiff to commit illegal acts by operating his truck for more continuous hours than federal or state law allowed. Plaintiff was ticketed for being over his hours in his log books and ultimately had his license suspended. The defendants paid to reinstate

his license and forced plaintiff to continue driving in excess of lawful trucking hours. Plaintiff, however, refused to work in violation of law after his license was suspended. When plaintiff refused, defendant discontinued payment to plaintiff on certain hours worked on location and forced plaintiff to go on shorter trucking runs as opposed to long runs. Defendant would also send the plaintiff home which resulted him being without pay. Further, defendant would send plaintiff on overnight jobs, but would refuse to pay him for much of the time he was gone. Defendants actions were due to racial discrimination, as well as plaintiff's refusal to violate the law. On or about March 29, 2004, plaintiff was terminated after he protested non-payment for hours worked.

### **RESPONDEAT SUPERIOR**

9. Whenever in this complaint it is alleged that the Defendants did any act or thing, it is meant that the Defendants' officers, agents, servants, employees, or representatives did such act and/or that at that time such act was done, it was done with the full authorization or ratification of the Defendant or was done in the normal and routine course and scope of employment of Defendants' officers, agents, servants, employees, or representatives.

### **RACE AND COLOR DISCRIMINATION**

10. Defendant, Endeavor Energy Resources, intentionally engaged in unlawful employment practices involving Plaintiff because of his race and color.

11. Defendant, Endeavor Energy Resources, intentionally discriminated against Plaintiff in connection with the compensation, terms, conditions and privileges of employment or limited, segregated or classified Plaintiff in a manner that would deprive or tend to deprive him of any employment opportunity or adversely affect his status because of Plaintiff's race and color in violation of 42 U.S.C. Section 2000e (2)(a).

12. Defendant, Endeavor Energy Resources, intentionally classified Plaintiff in a manner

that deprived him of an equal employment opportunity that was provided to other non-black employees similarly situated in violation of 42 U.S.C. Section 2000e (2)(a).

13. Defendant, Endeavor Energy Resources, also violated Plaintiff's rights under 42 U.S.C. Section 1981.

#### **HOSTILE WORK ENVIRONMENT**

14. Defendants violated Title VII of the Civil Rights Act of 1964 by creating a hostile work environment by repetitive use of racial slurs and also by firing him because of his race.

#### **REFUSAL TO PERFORM ILLEGAL ACTS**

15. Defendant required plaintiff to engage in unlawful trucking operation by driving the company truck longer than lawfully allowed as detailed in the fact portion of plaintiff's complaint. Plaintiff reasonably and in good faith believed that such an act was illegal. When Defendant refused to engage in such practices and informed his employer he would not do so, plaintiff suffered cut backs in his hours and ultimately was terminated for refusing to commit illegal acts under Texas, federal or municipal law. As a proximate result of plaintiff's refusal to commit what plaintiff believed to be an illegal act, plaintiff was terminated. Plaintiff suffered damages for which Plaintiff herein sues.

#### **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS BY ENDEAVOR ENERGY RESOURCES AND RIG MOVERS**

16. Defendant Endeavor Energy Resources intentionally or recklessly harassed the plaintiff in the form of racial slurs. Defendant's conduct was extreme and outrageous and proximately caused Plaintiff severe emotional distress. Plaintiff suffered damages for which Plaintiff herein sues.

#### **DAMAGES**

17. Plaintiff sustained the following damages as a result of the actions and/or omissions of Defendant described hereinabove:

- a. Actual damages;

- b. Back pay from the date that Plaintiff was denied equal pay for equal work and interest on the back pay in an amount to compensate Plaintiff as the Court deems equitable and just;
- c. All reasonable and necessary Attorney's fees incurred by or on behalf of Plaintiff in pursuit of this suit;
- d. All reasonable and necessary costs incurred in pursuit of this suit;
- e. Emotional pain;
- f. Expert fees as the court deems appropriate;
- g. Front pay in an amount the Court deems equitable and just to make plaintiff whole;
- h. Loss of earnings in the past
- i. Loss of earning capacity which will in all probability, be incurred in the future;
- j. Loss of benefits
- k. Mental anguish in the past; and
- l. Mental anguish in the future.

#### **EXEMPLARY DAMAGES**

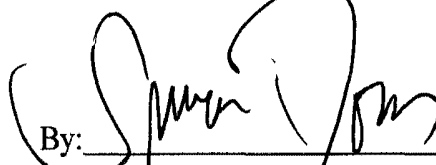
18. Plaintiff would further show that the acts and omissions of Defendants complained of herein were committed with malice or reckless indifference to the protected rights of the Plaintiff. In order to punish said Defendants for engaging in unlawful business practices and to deter such actions and /or omissions in the future, Plaintiff also seeks recovery from Defendants for exemplary damages.

#### **PRAYER**

**WHEREFORE, PREMISES CONSIDERED**, Plaintiff, Abel Armendariz, respectfully prays

that the Defendant be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendant for damages in an amount within the jurisdictional limits of the Court; together with interest as allowed by law; costs of court; and such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,



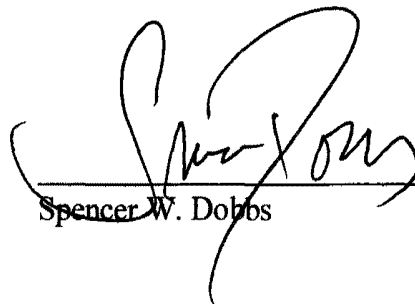
By: \_\_\_\_\_  
Spencer Dobbs  
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426 N. Texas  
Odessa, Texas 79761  
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Attorney for Plaintiff, Abel Armendariz

**PLAINTIFF HEREBY DEMANDS TRIAL BY JURY**

**CERTIFICATE OF SERVICE**

I certify that on April 8, 2005, a true and correct copy of Plaintiff's First Amended Complaint was served by certified mail, return receipt requested on C.H. Hal Brockett, Jr., P.O. Box 1841, Midland, Texas 79702.



Spencer W. Dobbs