

Merrily Munther (#1908)  
PENLAND MUNTHER GOODRUM, CHARTERED  
The Mallard Building #260  
1161 W. River Street  
P.O. Box 199  
Boise, Idaho 83701  
Telephone (208) 344-4566  
Fax (208) 344-9836  
File No: 5815.08  
Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

AHMAD GOLRANGI, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
ROMAR ELECTRIC, INC., and )  
McALVAIN CONSTRUCTION, INC. )  
 )  
Defendants. )  
\_\_\_\_\_ )

Case No: CIV 04-225-S-BLW  
  
AFFIDAVIT OF MERRILY  
MUNTHER IN SUPPORT OF  
MOTION FOR SUMMARY  
JUDGMENT

STATE OF IDAHO )  
 )ss.  
County of Ada )

I, MERRILY MUNTHER, being first duly sworn on oath depose and state as follows:

1. I am and at all times relevant hereto have been counsel of record for both defendants in this action and in prior administrative proceedings and, as such, have personal knowledge of the matters hereinafter stated.

2. Attached hereto as Exhibits A, B, and C respectively are the Charge of Discrimination filed against McAlvain Construction, Inc., by Plaintiff before the Equal

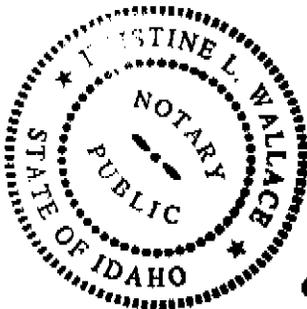
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Employment Opportunity Commission ("EEOC"), the Response of McAlvain Construction, Inc. to that Charge, and the Decision of the EEOC dismissing the charge.

Dated this 1st day of September, 2004.

*Merrily Munther*  
Merrily Munther

SUBSCRIBED and SWORN to before me this 1<sup>st</sup> day of September, 2004.



*Justin L. Wallace*  
Notary Public for Idaho  
Residing in Boise, Idaho  
My Commission Expires: 02/09/05

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on the 1<sup>st</sup> day of September, 2004, caused a true and correct copy of the foregoing to be forwarded with all required charges prepaid, by the method(s) indicated below, in accordance with the Rules of Civil Procedure, to the following person(s):

Chris Kronberg, Esq.  
Bowen & Bailey, LLP  
P.O. Box 1007  
Boise, Idaho 83701-1007  
Facsimile No. (208) 344-9670

Hand Delivery \_\_\_\_\_  
U.S. Mail   X    
Facsimile \_\_\_\_\_  
Overnight Mail \_\_\_\_\_

*Merrily Munther*  
Merrily Munther

EEOC FORM 131 (5/01)

# U. S. Equal Employment Opportunity Commission

**PERSONNEL ADMINISTRATOR  
MCALVAIN CONSTRUCTION, INC.  
5359 W. Gowen Road  
Boise, ID 83709**

PERSON FILING CHARGE

**Ahmad Golrang**

THIS PERSON (check one or both)

Claims To Be Aggrieved

is Filing on Behalf of Other(s)

EEOC CHARGE NO.

**380-2004-01018**

## NOTICE OF CHARGE OF DISCRIMINATION

(See the enclosed for additional information)

This is notice that a charge of employment discrimination has been filed against your organization under:

Title VII of the Civil Rights Act

The Americans with Disabilities Act

The Age Discrimination in Employment Act

The Equal Pay Act

The boxes checked below apply to our handling of this charge:

1.  No action is required by you at this time.

2.  Please call the EEOC Representative listed below concerning the further handling of this charge.

3.  Please provide by **23-FEB-04** a statement of your position on the issues covered by this charge, with copies of any supporting documentation to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.

4.  Please respond fully by \_\_\_\_\_ to the enclosed request for information and send your response to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.

5.  EEOC has a Mediation program that gives parties an opportunity to resolve the issues of a charge without extensive investigation or expenditure of resources. If you would like to participate, please say so on the enclosed form and respond by **23-FEB-04** to **Cheryl A Milner, ADR Program Assistant, at (206) 220-6937**  
If you **DO NOT** wish to try Mediation, you must respond to any request(s) made above by the date(s)

For further inquiry on this matter, please use the charge number shown above. Your position statement, your

**Cheryl A. Milner,  
ADR Program Assistant**  
*EEOC Representative*

Telephone: **(206) 220-6937**

**Seattle District Office  
909 First Avenue  
Suite 400  
Seattle, WA 98104**

Enclosure(s):  Copy of Charge

### CIRCUMSTANCES OF ALLEGED DISCRIMINATION

RACE  COLOR  SEX  RELIGION  NATIONAL ORIGIN  AGE  DISABILITY  RETALIATION  OTHER

See enclosed copy of charge of discrimination.

Date

**Feb 02, 2004**

Name / Title of Authorized Official

**Jeanette M. Laino,  
District Director**

Signature

# EXHIBIT A



Merrily Munther (#1908)  
PENLAND MUNTHER GOODRUM, CHARTERED  
The Mallard Building #260  
1161 W. River Street  
P.O. Box 199  
Boise, Idaho 83701  
Telephone (208) 344-4566  
Fax (208) 344-9836  
File No: 5597.00003  
Attorneys for Romar Electric Co., Inc.

**BEFORE THE U. S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

AHMAD GOLRANGI,	)	Case No: 380-2004-01018
	)	
Charging Party,	)	
	)	MCALVAIN CONSTRUCTION INC.'S
vs.	)	RESPONSE TO
	)	CHARGE OF DISCRIMINATION
MCALVAIN CONSTRUCTION, INC.,	)	
	)	
Respondent.	)	
	)	
	)	
	)	

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COMES NOW the Respondent, McAlvain Construction, Inc., and for response to the Charge of Discrimination filed in this matter states as follows:

1. Respondent denies each and every allegation of the Charge of Discrimination except and only as specifically admitted herein.
2. Respondent has insufficient knowledge or information upon which to base a belief as to the truth of the allegations that the CP was terminated on September 15, 2003, or that the CP is a journeyman wireman and was hired by Romar Electric for a project on or about June 23, 2003 and therefore deny said allegations.

3. Respondent admits that an employee of McAlvain Construction complained to the general foreman for Romar Electric about the conduct of the CP on the job and in the course of that conversation referred to the CP as a "fucking Iranian."

4. Respondent is without sufficient knowledge or information upon which to base a belief as to the truth of the allegation that the CP was terminated because of his national origin, and therefore denies said allegation.

#### STATEMENT OF POSITION

**The Charging Party was not an employee of Respondent. Respondent could not and did not terminate his employment. The comment of Respondent's employee was inappropriate but was an isolated remark and did not in and of itself affect the terms and conditions of the CP. The remark was prompted by the inappropriate conduct of the CP in effecting a work stoppage. Respondent is not responsible for the termination by its subcontractor of one of its employees; the Respondent is entitled to require a subcontractor to remove from the project any employee who is disrupting work on the project as was the CP.**

By way of background, Respondent is a general contractor which subcontracts electrical and drywall work, *inter alia*, to other contractors on its commercial and industrial construction projects.

On this job, the drywall subcontractor's workers were behind in their work, causing a potential slowdown in the work of others. Accordingly, Respondent had assigned managers to the job, including Allan Lane, for the specific purpose of getting the drywall work caught up and

the project back on track. This was the background to the events which transpired on September 12, 2003.

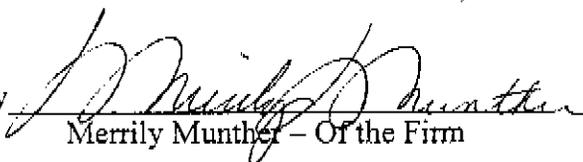
At about 2:00 p.m. on September 12<sup>th</sup>, Allan Lane was working at the electrical panel/meter room located on the first floor of the PA3 project when he heard yelling. Allan and the drywall foreman Terry B. went to see what was happening. The CP had told the drywall employees to stop their work while he and some of the other electricians shared a birthday cake. The drywall employees had been instructed to work in that area and told this to the CP. The CP insisted that the drywall employees cease working because it was too noisy for them to enjoy their break. The drywall foreman told his employees to get back to work, but the CP would not budge. Mr. Lane told the CP that the "rockers" didn't have to stop working just because the CP was taking a break and that the CP did not have the right to stop the progress of the job just because he was taking a break. Instead of moving the cake to another room or contacting his own foreman about the dispute, the CP threatened to cut off the power to the drywall employees' equipment. Mr. Lane left the room and called Romar's general foreman on his cell phone and told him what was happening. The foreman asked who was causing the trouble, and Mr. Lane responded, "get that fucking Iranian out of here or I will." Mr. Lane did not know the names of the electricians on the job. He was frustrated by the work stoppage prompted by the CP and he spoke in anger. He did not direct his comment to the CP.

The CP's national origin had nothing to do with the request by Respondent's superintendent to get the CP off the job. He would have insisted that any subcontractor whose employee was impeding the progress of the job get that employee off the job, regardless of his or her national origin. The conduct in which the CP engaged occurred before the remark by the

general contractor's employee and the CP's conduct was what prompted the comment. While Respondent concedes the comment was inappropriate, it was the CP's conduct, and not his national origin, which prompted the request for his removal. There were individuals of many ethnic origins on this project, and the national origin of a subcontractor's employees is not a factor in Respondent's hiring of subcontractors or in its insistence that all employees on the job work harmoniously and in the best interests of the project.

Dated this 23rd day of February, 2004.

PENLAND MUNTHER GOODRUM, CHTD.

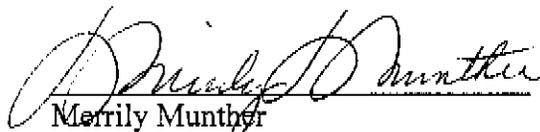
By   
Merrily Munther - Of the Firm

### CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 23rd day of February, 2004, I caused a true and correct copy of the foregoing to be forwarded with all required charges prepaid, by the method(s) indicated below, in accordance with the Rules of Civil Procedure, to the following person(s):

E. Frances Palmer  
Enforcement Supervisor  
U.S. EEOC  
Seattle District Office  
909 First Avenue, Suite 400  
Seattle WA 98104-1061

Hand Delivery	_____
U.S. Mail	<u>  X  </u>
Facsimile	_____
Overnight Mail	_____

  
Merrily Munther

## DISMISSAL AND NOTICE OF RIGHTS

To: **Ahmad Golrangi**  
**18787 State Highway 78**  
**Melba, Idaho 83641**

From: **Seattle District Office**  
**909 First Avenue**  
**Suite 400**  
**Seattle, WA 98104**

On behalf of person(s) aggrieved whose identity is  
 CONFIDENTIAL (29 CFR § 1601.7(a))

EEOC Charge No.	EEOC Representative	Telephone No.
380-2004-01018	<b>Karen McCoskey,</b> Investigator	(206) 220-6853

## THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- The facts alleged in the charge fall to state a claim under any of the statutes enforced by the EEOC.
- Your allegations did not involve a disability as defined by the Americans with Disabilities Act.
- The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.
- Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.
- While reasonable efforts were made to locate you, we were not able to do so.
- You were given 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.
- The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- Other (briefly state)

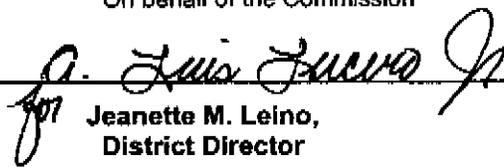
## - NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

**Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act:** This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this Notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

**Equal Pay Act (EPA):** EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

  
 Jeanette M. Leino,  
 District Director

MAR 26 2004

Enclosure(s)

(Date Mailed)

cc: **Merrily Munther**  
**PENLAND MUNTHUR GOODRUM**  
**MCALVAIN CONSTRUCTION, INC.**  
**The Mallard Building, Suite 260**  
**1161 West River Street**  
**Post Office Box 199**  
**Boise, Idaho 83701**

**EXHIBIT C**