

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

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CLERK-ALBUQUERQUE

PATRICK CHAVEZ, TODD BARTLETT,)	
JEANNINE CHAVEZ, RUDY CAMPOS,)	
MICHAEL COCCHIOLA, ROBERT)	
GUTIERREZ, FORTINO ORTEGA, and)	
MICHAEL TOYA, on behalf of themselves and)	
all other City employees who have been paid)	
overtime that was improperly determined under)	
29 U.S.C.A. Sec. 207(a)(1) (Section 7(a)(1),)	CIV-02-0562 JH/ACT
)	
Plaintiffs,)	
)	
v.)	
)	
CITY OF ALBUQUERQUE,)	
)	
Defendant.)	

ANSWER TO SECOND AMENDED COMPLAINT

NOW COMES Defendant CITY OF ALBUQUERQUE, by its attorneys, and for its answer to Plaintiffs' second amended states as follows:

1. Defendant City admits that the named plaintiffs are present or former City employees but denies the remaining allegations of paragraph 1 of the Second Amended Complaint.
2. Defendant City admits the allegations of paragraph 2 of the Second Amended Complaint except to deny that Patrick Chavez is a fire fighter. Defendant City states that Patrick Chavez is a paramedic lieutenant.
3. Defendant City admits that this action is purportedly brought under 29 U.S.C. § 216(b) but denies the remaining allegations of paragraph 3 of the Second Amended Complaint.
4. Defendant City denies the allegations of paragraph 4 of the Second Amended Complaint.

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5. Defendant City admits that paragraph 5 of the Amended Complaint contains a partial quotation from the City's merit system ordinance, the whole of which the court can take judicial notice.

6. Defendant City admits that paragraph 6 contains a partial quotation from the City's Personnel Rules & Regulations, the whole of which the court can take judicial notice.

7. Defendant City admits in regard to paragraph 7 of the Second Amended Complaint that the regular work week for employees covered by collective bargaining agreements is generally set forth in the applicable collective bargaining agreement. Defendant admits the allegations of the second sentence of paragraph 7 of the Second Amended Complaint except for employees covered by § 7(k) of the Fair Labor Standards Act. Defendant City denies the remaining allegations of paragraph 7 of the Second Amended Complaint.

8. Defendant City denies the allegations of paragraph 8 of the Second Amended Complaint and states that non-exempt employees are entitled to overtime compensation pursuant to the specific provisions of the FLSA applicable to them.

9. Defendant City states that paragraph 9 of the Second Amended Complaint contains legal conclusions and arguments which do not require an answer.

10. Defendant City denies the allegations of paragraph 10 of the Second Amended Complaint.

11. Defendant City denies the allegations of paragraph 11 of the Second Amended Complaint.

12. Defendant City denies the allegations of paragraph 12 of the Second Amended Complaint.

13. Defendant City denies the allegations of paragraph 13 of the Second Amended Complaint.

14. Defendant City denies the allegations of paragraph 14 of the Second Amended Complaint.

15. Defendant City denies the allegations of paragraph 15 of the Second Amended Complaint.

16. Defendant City admits that it, pursuant to the Fair Labor Standards Act, performs alternative calculations and pays the higher amount of the two calculations which in no case is lower than the amount required by the Act and is often higher than the amount the Act requires. Defendant City denies the remaining allegations of paragraph 16 of the Second Amended Complaint.

17. Defendant City denies the allegations of paragraph 17 of the Second Amended Complaint.

18. Defendant City admits that it has one payroll system applicable to non-exempt employees but denies the remaining allegations of paragraph 18 of the Second Amended Complaint.

19. Defendant City admits a collective action was certified by the court relative to the calculation of overtime payments to non-exempt City employees on December 14, 2004 but no notice has as yet been sent out. Defendant City denies the remaining allegations of paragraph 19 of the second amended complaint.

20. Defendant City denies the allegations of paragraph 20 of the Second Amended Complaint.

WHEREFORE Defendant City denies that Plaintiff are entitled to any relief and requests that the Second Amended Complaint be dismissed with prejudice and it be awarded its attorneys fees, costs and such other relief as the court shall deem appropriate.

FIRST AFFIRMATIVE DEFENSE

The Court is without jurisdiction over any claims occurring outside the applicable statute of limitations under the Fair Labor Standards Act as applied to the named and opt-in plaintiffs.

SECOND AFFIRMATIVE DEFENSE

Defendant City, at all times relevant to this case, has acted in good faith compliance with the Fair Labor Standards Act.

THIRD AFFIRMATIVE DEFENSE

Patrick Chavez is exempt under Section 13(a)(1) of the Fair Labor Standards Act.

FOURTH AFFIRMATIVE DEFENSE

Patrick Chavez is not similarly situated to non-exempt employees or former employees of Defendant City.

FIFTH AFFIRMATIVE DEFENSE

Employees subject to Section 7(k) of the Fair Labor Standards Act are not similarly situated to employees who are not subject to that section.

SIXTH AFFIRMATIVE DEFENSE

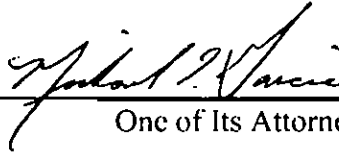
Plaintiffs complaint in whole or part fails to state a claim upon which relief can be granted.

WHEREFORE Defendant City denies that Plaintiff are entitled to any relief and requests that the Second Amended Complaint be dismissed with prejudice and it be awarded its attorneys fees, costs and such other relief as the court shall deem appropriate.

DATED: June __, 2006

Respectfully submitted,

CITY OF ALBUQUERQUE

By 
One of Its Attorneys

Edward W. Bergmann
SEYFARTH SHAW LLP
55 East Monroe Street
Suite 4200
Chicago, Illinois 60603
(312) 346-8000

Jerry A. Walz
Walz and Associates
12009 N. Highway 14
Cedar Crest, NM 87008
(505) 281-3414

Michael Garcia
Assistant City Attorney
CITY OF ALBUQUERQUE
One Civic Plaza, 11th Floor
Albuquerque, NM 87103
(505) 768-4500

CERTIFICATE OF SERVICE

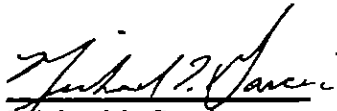
Edward Bergmann, an attorney, certifies that he caused a true and correct copy of the foregoing *ANSWERS TO SECOND AMENDED COMPLAINT* to be served upon:

Sam Bregman
Attorneys for Plaintiffs
111 Lomas Blvd., NW, Suite 230
Albuquerque, NM 87102
(505) 761-5700
tblf@bregmanlawfirm.com

THE BRANCH LAW FIRM
Rick Sandoval
2025 Rio Grande Blvd., NW
Albuquerque, NM 87104
(505) 243-3500
(505) 243-3534 (Fax)
rsandoval@branchlawfirm.com

Paul Livingston
Attorney for Minority Plaintiffs
P.O. Box 250
Placitas, NM 87043
(505) 771-4000
living@rt66.com

by email and by having same placed in a properly addressed, postage prepaid envelope and deposited in the U.S. Mail this 8 day of June, 2006.



Michael I. Garcia