

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

FILED  
UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

PATRICK CHAVEZ, JEANNINE CHAVEZ,  
RUDY CAMPOS, MICHAEL COCCHIOLA,  
and FORTINO ORTEGA  
on behalf of themselves and all other  
City employees who have been paid  
overtime that was improperly determined  
under 29 U.S.C.A. § 207(a)(1) (Section  
7(a)(1) of the Fair Labor Standards Act),

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CLERK ALBUQUERQUE

Plaintiffs,

v.

CIV 02-0562 JH/ACT

CITY OF ALBUQUERQUE

Defendant.

**DEFENDANT'S ANSWER TO PLAINTIFFS'  
FIRST AMENDED COMPLAINT FOR VIOLATION OF THE  
FAIR LABOR STANDARDS ACT**

COMES NOW Defendant, City of Albuquerque, by and through its counsel of record  
Jerry A. Walz, Walz & Associates, Michael Garcia, assistant city attorney and Edward  
Bergmann, Seyfarth Shaw LLP, hereby answers Plaintiffs' First Amended Complaint as follows:

1. Defendant admits the allegations of paragraph 1 of Plaintiffs' First Amended Complaint.
2. Defendant admits the allegations of paragraph 2 of Plaintiffs' First Amended Complaint.
3. Defendant admits the allegations of paragraph 3 of Plaintiffs' First Amended Complaint.
4. Defendant admits the allegations of paragraph 4 of Plaintiffs' First Amended Complaint.

5. Defendant admits the allegations of paragraph 5 of Plaintiffs' First Amended Complaint.

6. Defendant admits the allegations of paragraph 6 of Plaintiffs' First Amended Complaint.

7. Defendant admits the allegations of paragraph 7 of Plaintiffs' First Amended Complaint except to deny that any overtime wages are due to plaintiffs.

8. Defendant admits that Patrick Chavez is a Fire Department lieutenant but denies the remaining allegations of paragraph 8 of Plaintiffs' First Amended Complaint.

9. Defendant admits that Jeannine Chavez was a police dispatcher for the Police Department and was terminated on or about October 5, 2004 but denies the remaining allegations of paragraph 9 of Plaintiffs' First Amended Complaint.

10. Defendant admits that Rudy Campos is a corrections officer for the Department of Corrections but denies the remaining allegations of paragraph 10 of Plaintiffs' First Amended Complaint.

11. Defendant admits that Michael Cocchiola is a fire fighter for the Fire Department but denies the remaining allegations of paragraph 11 of Plaintiffs' First Amended Complaint.

12. Defendant admits that Fortino Ortega is a field technician for the Public Works Department but denies the remaining allegations of paragraph 12 of Plaintiffs' First Amended Complaint.

13. Defendant admits that this action is purportedly brought as a collective action under the Fair Labor Standards Act but denies that it has violated

the Act, and denies that Patrick Chavez is an appropriate class representative, and denies that any of its employees have not been compensated for overtime in accordance with the Act and denies the remaining allegations of paragraph 13 of Plaintiffs' First Amended Complaint.

14. Defendant denies the allegations of paragraph 14 of Plaintiffs' First Amended Complaint.

15. Defendant admits it is subject to the Fair Labor Standards Act but denies that it has violated the Act as alleged in the Complaint and denies the remaining allegations of paragraph 15 Plaintiffs' First Amended Complaint.

16. Defendant denies the allegations of paragraph 16 of Plaintiffs' First Amended Complaint except to admit that non-exempt employees are entitled to overtime compensation as provided by the applicable provisions of the Act.

17. Defendant admits it is subject to the Act but denies the remaining conclusionary allegations of paragraph 17 of Plaintiffs' First Amended Complaint.

18. Defendants deny the allegations of paragraph 18 of Plaintiffs' First Amended Complaint.

19. Defendant admits it is subject to the Act but denies the conclusionary allegations of paragraph 19 of Plaintiffs' First Amended Complaint.

20. Defendant denies the allegations of paragraph 20 of Plaintiffs' First Amended Complaint.

21. Defendant admits as to paragraph 21 of Plaintiffs' First Amended Complaint that this case can proceed as a collective opt in action pursuant to the Act as to similarly situated non-exempt plaintiffs, but denies any violation of the Act as alleged in the Complaint and denies that Patrick Chavez is an appropriate class representative and denies that plaintiffs covered by §7(k) of the Act are appropriate class representatives for non-exempt employees not covered by §7(k) of the Act.

22. Defendant denies the allegations of paragraph 22 of Plaintiffs' First Amended Complaint.

WHEREFORE, Defendant denies that Plaintiffs are entitled to any relief and requests that this case be dismissed and that Defendant be awarded costs and attorney fees.

#### **AFFIRMATIVE DEFENSES**

##### **FIRST AFFIRMATIVE DEFENSE**

The Defendant has acted at all times in good faith compliance with the Fair Labor Standards Act.

##### **SECOND AFFIRMATIVE DEFENSE**

Plaintiff Patrick Chavez is exempt from the requirements of the Fair Labor Standards Act under § 13(a)(1) (29 U.S. 213(a)(1)) of the Act.

##### **THIRD AFFIRMATIVE DEFENSE**

To the extent that the complaint seeks to include periods beyond the applicable statute of limitations under the Fair Labor Standards Act, the Court has no jurisdiction over those claims.

##### **FOURTH AFFIRMATIVE DEFENSE**

The consents obtained in whole or in part and filed in this lawsuit have been obtained in a manner that is not in compliance with the statutory authority and therefore should be stricken.

**FIFTH AFFIRMATIVE DEFENSE**

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

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs subject to §7(k) of the Fair Labor Standards Act are entitled to overtime compensation only as provided under that Section.

**SEVENTH AFFIRMATIVE DEFENSE**

As none of the Plaintiffs have filed consent forms as required by 29 USC § 256, they are not parties to this case or properly before the court.

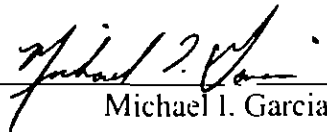
WHEREFORE, Defendant denies that Plaintiffs are entitled to any relief and requests that this case be dismissed and it be awarded its costs and attorneys fees.

DATED: January 20, 2005

Respectfully submitted,

CITY OF ALBUQUERQUE

By

  
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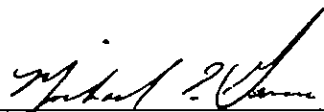
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**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that he caused a copy of DEFENDANT'S ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT to be served upon the following counsel of record by Federal Express, postage prepaid, this 20<sup>th</sup> day of January 2005

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