

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

**ANTOINETTE GONZALES, et al.,**

**Plaintiffs,**

**vs.**

**Case No. CIV-2010-0645 JB/RLP**

**CITY OF ALBUQUERQUE, et al.,**

**Defendants.**

**and**

**J. MICHAEL BARNES,  
CELIA LOVELAND,  
CAROL McCOY, and  
DONNA SAYA,**

**Intervenors,**

**MOTION TO INTERVENE**

**COME NOW INTERVENORS**, supervisors at the City of Albuquerque's 311-Citizen Contact Center (311-CCC), and move to intervene as a matter of right pursuant to Rule 24(a), Fed. R. Civ. Proc., and in the alternative, for permissive intervention pursuant to Fed. R. Civ. Proc. 24(b), stating as reasonable grounds therefore:

1. Intervenors are 311-CCC supervisors who are currently employed by the City.
2. Intervenors have exactly the same employment arrangements, working conditions, and job duties as Plaintiff Antoinette Gonzales had before Defendant Esther Tenenbaum terminated her employment.

3. Intervenor's claims arise from the same set of facts, occurrences, circumstances and transactions as the Plaintiffs in this case. Intervenor's claims involve the same legal issues as those already presented in this case by the Plaintiffs.

4. With respect to the primary issue in this case, whether or not the employees at the 311-CCC had (and have now) a protected property interest in their employment, Intervenor has reviewed the Plaintiffs' and the City's contentions on that subject, the Court's decision denying class certification, and the deposition testimony of Defendant Esther Tenenbaum, and has concluded that despite their status as current employees they share Plaintiffs' claim to a property interest in their employment.

5. Additionally, like Plaintiff Antoinette Gonzales, Intervenor has been misclassified as "exempt" from the provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 207, et seq.

6. Intervenor is entitled to relief, including overtime pay calculated at the rate of time-and-a-half of their regular rate of pay, liquidated damages, and costs and attorney's fees.

7. Because relief under the provisions of the FLSA requires employees or former employee to individually and expressly "opt in" to the lawsuit pursuant to 29 U.S.C. §216, Intervenor's interests will not be represented in this case unless intervention is allowed.

8. In accordance with the Court's Order denying class action certification and granting leave to join additional plaintiffs (doc. 69), Plaintiffs have given Notice of

Joinder of two additional Plaintiffs as of September 20, 2010, (doc. 72), and allowance of intervention at this time will not cause any additional delay or prejudice to Defendants.

9. If intervention is not allowed Intervenors will have to file a separate lawsuit to assert their claims for relief under the Fair Labor Standards Act and to vindicate their claim to a protected property interest in their employment. Filing a separate lawsuit would entail additional and unnecessary delay and expense of time, effort, and judicial resources.

10. Opposing counsel have been contacted and state that they oppose the granting of this motion.

11. In accordance with Rule 24(c), this Motion is accompanied by a pleading setting for the claims for which intervention is sought.

**WHEREFORE**, the Court is requested to grant Intervenors' motion to intervene.

Respectfully submitted,

*s/ Paul Livingston*

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I hereby certify that this Motion is being filed electronically through the Court's CM/ECF system and that opposing counsel will receive copies electronically on or before September 22, 2010.

*s/ Paul Livingston*

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Paul Livingston