

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

DEAN KARCH, on his own behalf
and on behalf of all others
similarly situated,

Plaintiffs,

vs.

CIV 05-0620 MCA/LFG

CITY OF ALBUQUERQUE,
a municipal corporation,

Defendant.

ANSWER TO COLLECTIVE ACTION COMPLAINT

Defendant City of Albuquerque (hereinafter "Defendant City"), by and through Assistant City Attorney Paula I. Forney, answers plaintiff's first amended complaint for money damages (hereinafter "complaint") and affirmatively defends:

1. Defendant City is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the complaint and therefore deny them.

2. The allegations contained in paragraph 2 of the complaint are legal conclusions which therefore require no response.

3. The allegations contained in paragraph 3 of the complaint are legal conclusions which therefore require no response.

4. Defendant City denies the allegations contained in paragraph 4 of the complaint.

5. Defendant City admits the allegations contained in paragraph 5 of the complaint.

6. Defendant City denies the allegations contained in paragraph 6 of the complaint.

7. Defendant City denies the allegations contained in paragraph 7 of the complaint.

8. Defendant City denies the allegations contained in paragraph 8 of the complaint.

9. Defendant City denies the allegations contained in paragraph 9 of the complaint.

10. Defendant City denies the allegations contained in paragraph 10 of the complaint.

11. Defendant City denies the allegations contained in paragraph 11 of the complaint.

12. Defendant City denies the allegations contained in paragraph 12 of the complaint.

13. Defendant City denies the allegations contained in paragraph 13 of the complaint.

14. Defendant City is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the complaint and therefore deny them.

15. Defendant City is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the complaint and therefore deny them.

16. The allegations contained in paragraph 16 of the complaint are legal conclusions which therefore require no response.

17. Defendant City denies the allegations contained in paragraph 17 of the complaint.

18. Defendant City denies the allegations contained in paragraph 18 of the complaint and answers the subparagraphs as follows:

a. The allegations contained in subparagraph a of paragraph 18 are legal conclusions which therefore require no response.

b. Defendant City denies the allegations contained in subparagraph b of paragraph 18.

c. Defendant City denies the allegations contained in subparagraph c of paragraph 18.

d. Defendant City denies the allegations contained in subparagraph d of paragraph 18.

19. The allegations contained in paragraph 19 of the complaint are legal conclusions which therefore require no response.

COUNT I: FAILURE TO SATISFY THE SALARY BASIS TEST

19. Defendant City denies the allegations contained in paragraph 20 of the complaint.

21. Defendant City denies the allegations contained in paragraph 21 of the complaint.

22. Defendant City denies the allegations contained in paragraph 22 of the complaint.

23. Defendant City denies the allegations contained in paragraph 23 of the complaint.

COUNT II: MIS-CLASIFICATION OF STATUS

24. Defendant City denies the allegations contained in paragraph 24 of the complaint.

25. Defendant City denies the allegations contained in paragraph 25 of the complaint.

26. Defendant City denies the allegations contained in paragraph 26 of the complaint.

27. Defendant City denies the allegations contained in paragraph 27 of the complaint.

COUNT III: NON PAYMENT TO EMPLOYEES

CLASSIFIED AS NON-EXEMPT

24.(sic) Defendant City denies the allegations contained in paragraph 24 of the complaint.

25.(sic) Defendant City denies the allegations contained in paragraph 25 of the complaint.

26.(sic) Defendant City denies the allegations contained in paragraph 26 of the complaint.

27.(sic) Defendant City denies the allegations contained in paragraph 27 of the complaint.

CONCLUSION

28. As to the allegations contained in plaintiff's prayers in the unnumbered paragraphs on pages 5 and 6 of the complaint, the City denies that plaintiff is entitled to any relief under the facts and circumstances of this case.

29. All allegations contained in plaintiff's complaint which are not addressed in this answer are hereby specifically denied.

AFFIRMATIVE DEFENSES

1. At all times relevant hereto, Defendant City acted in good faith compliance with the provisions of the Fair Labor Standards Act.

2. This court lacks jurisdiction over actions occurring outside of the applicable statute of limitations.

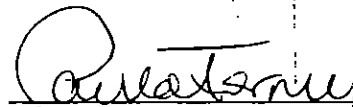
3. A jury trial is available only for those matters specified in the statute.

4. The applicable overtime standard for correctional employees is Section 7K of the Fair Labor Standards Act.

5. All M-series employees are not similarly situated and are not part of the class sought to be identified by plaintiffs.

Respectfully submitted,

CITY OF ALBUQUERQUE
Robert M. White
City Attorney



Paula I. Forney
Assistant City Attorney
P.O. Box 2248
Albuquerque, New Mexico 87103
(505) 768-4500

I hereby certify that a true copy
of the foregoing was mailed to:

Shane C. Youtz
Stephen Curtice
Attorneys for Plaintiffs
420 Central Avenue S.W.
Suite 210
Albuquerque, NM 87102
(505) 244-1200

on this 11th day of



Paula I. Forney
Assistant City Attorney