

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 07-cv-00753-MSK-BNB

ALEXANDER L. TRUJILLO, et al.,

Plaintiffs,

v.

THE CITY OF COLORADO SPRINGS,

Defendant.

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**DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS'  
AMENDED COMPLAINT**

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COMES NOW Defendant, the City of Colorado Springs, by and through the Office of the City Attorney and Baker and Hostetler, LLP, and hereby submits the following answer and affirmative defenses to Plaintiffs' Amended Complaint:

**ANSWER**

**General Allegations**

1. The City admits the allegations contained in Paragraph 1.
2. The City admits the allegations contained in Paragraph 2.
3. The City admits the allegations contained in Paragraph 3.
4. The City denies the allegations contained in Paragraph 4.

**Factual Background**

5. The City admits that Plaintiffs seek declaratory judgment, back pay for unpaid wages and unpaid overtime compensation, liquidated damages and other relief under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, et seq.

and breach of contract, damages and equitable relief as supplemental claims under Colorado law. However, the City denies Plaintiffs are entitled to such relief.

6. The statement in Paragraph 6 contains a legal statement that cannot be admitted or denied, therefore no response is given. To the extent that any allegations in this claim imputes liability to the City, the same are denied.
7. The City denies the allegations contained in Paragraph 7.
8. The City denies the allegations contained in Paragraph 8.

#### **Jurisdiction and Venue**

9. The City admits in Paragraph 9 that Plaintiffs claim that jurisdiction has been invoked. However, the City reserves the right to assert jurisdictional defenses.
10. The City admits the allegations in Paragraph 10.

#### **The Plaintiffs**

11. The City admits the allegation in Paragraph 11 that Mr. Trujillo has been employed as a Police Officer by the City since 1981. The City is without knowledge or information sufficient to form a belief as to the allegation that he is a resident of Colorado Springs, CO, therefore the same is denied.
12. The City admits the allegations contained in Paragraph 12.
13. The City admits the allegations contained in Paragraph 13.
14. The City admits the allegations contained in Paragraph 14.
15. The City admits the allegation in Paragraph 15 that Mr. Doolittle has been employed as a Police Officer by the City since 1997. The City is without knowledge or information sufficient to form a belief as to the allegation that he is a resident of Woodland Park, CO, therefore the same is denied.

16. The City admits the allegations contained in Paragraph 16 as to Plaintiffs Trujillo, Henrichsen, Lucero, Romar and Doolittle.
17. The City is without knowledge or information sufficient to form a belief as to the allegation that Knollhoff is a resident of Colorado Springs, CO, therefore the same is denied. The City denies that Knollhoff has been employed as a Police Officer by the City since 1977. Rather, Knollhoff began his employment with the City in 1997. The City admits that Knollhoff attained the rank of sergeant in May 2003 and has held the rank since that time.
18. The City admits that Martin is a resident of Colorado Springs, CO, and has been employed as a Police Officer since 1981. The City denies that Martin attained the rank of sergeant in June 1990. Rather, he attained the rank in 1991. The City admits that upon being promoted to sergeant, he has continuously held that rank.
19. The City admits that Plaintiffs Amended Complaint refers to Plaintiffs Knollhoff and Martin as “Sergeants” of the Police Department.
20. In regard to paragraph 20 of the Amended Complaint, the City admits that some Plaintiffs, as sworn police officers of the City of Colorado Springs, held varied patrol positions or different support positions including, for example, traffic, motor officers, airport services, and other assignments; and that Plaintiff Sergeants, who are also sworn police officers, have performed exempt executive and administrative duties as part of their varied assignments. The City denies all other allegations not expressly admitted in response to paragraph 20.
21. The City denies the allegations contained in paragraph 21.
22. The City denies the allegations contained in Paragraph 22.

23. The City admits the allegations in Paragraph 23 to the extent that in a seven day period the Plaintiffs typically are scheduled to work forty-hours, consisting of four (4) ten (10) hour shifts. However, the City denies that the (7) seven named Plaintiffs always work this schedule.
24. The City is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24, therefore the same are denied.
25. The City admits that the current Sworn Policy and Procedural Manual states that compensation for overtime shall comply with all federal, state and/or local rules and regulations. As to any other allegations in this paragraph, the same are denied.
26. The City denies the allegations contained in Paragraph 26.
27. The City denies the allegations contained in Paragraph 27.
28. The City denies the allegations contained in Paragraph 28.
29. The City denies the allegations contained in Paragraph 29.
30. The City denies the allegations contained in Paragraph 30.
31. The City denies the allegations contained in Paragraph 31.
32. The City denies the allegations contained in Paragraph 32.
33. The City denies the allegations contained in Paragraph 33.
34. The City denies the allegations contained in Paragraph 34.
35. The City denies the allegations contained in Paragraph 35.
36. The City denies the allegations contained in Paragraph 36.
37. The City denies the allegations contained in Paragraph 37.
38. The City denies the allegations contained in Paragraph 38.

- 39. The City denies the allegations contained in Paragraph 39.
- 40. The City denies the allegations contained in Paragraph 40.
- 41. The City denies the allegations contained in Paragraph 41.
- 42. The City denies the allegations contained in Paragraph 42.
- 43. The City denies the allegations contained in Paragraph 43.
- 44. The City denies the allegations contained in Paragraph 44.
- 45. The City denies the allegations contained in Paragraph 45.
- 46. The City denies the allegations contained in Paragraph 46.

**Collective Action Allegations**

- 47. The City denies the allegations contained in Paragraph 47.
- 48. The City admits that Plaintiffs in Paragraph 48 seek to bring this action on their own behalf and on behalf of others but deny that the Plaintiffs or other past or present, are similarly situated police officers. The City also denies that Plaintiffs are entitled to class action and/or collective action status. The City reserves the right to assert any and all defenses involving this issue.

**Class Action Allegations**

- 49. The City admits that Plaintiffs in Paragraph 49 seek to bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of all current and former Police Officers of the City of Colorado Springs. However, the City denies that Plaintiffs are entitled to class action status. The City reserves the right to assert any and all defenses involving this issue. The City also denies that Plaintiffs have been required to work off-the-clock, and/or have not received all due overtime compensation.

50. The City denies the allegations contained in Paragraph 50.
51. The City denies the allegations contained in Paragraph 51.
52. The City denies the allegations contained in Paragraph 52.
53. The City denies the allegations contained in Paragraph 53.
54. The City denies that the Class representatives will fairly and adequately protect the interests of the Class. As to any other allegations contained in paragraph 54, they are beyond the knowledge of the City. To the extent that any allegation in his paragraph imputes liability to the City, the same are denied.
55. The City denies the allegations contained in Paragraph 55.
56. The City denies the allegations contained in Paragraph 56.
57. The City denies the allegations contained in Paragraph 57.

**First Claim for Relief**  
**(Violation of the FLSA- Off-the-Clock Work)**

58. Paragraph 58 is simply a restatement of other allegations contained in the Amended Complaint. The City, therefore, responds to those paragraphs in the same manner as it has to the paragraphs which they restate.
59. The City denies the allegations contained in Paragraph 59.
60. The City denies the allegations contained in Paragraph 60.
61. The City denies the allegations contained in Paragraph 61.
62. The City denies the allegations contained in Paragraph 62.

**Second Claim for Relief**  
**(Violation of the FLSA-Compensatory Time Requirements)**

63. Paragraph 63 is simply a restatement of other allegations contained in the Amended Complaint. The City, therefore, responds to those paragraphs in the same manner as it has to the paragraphs which they restate.
64. The City denies the allegations contained in Paragraph 64.
65. The City denies the allegations contained in Paragraph 65.
66. The City denies the allegations contained in Paragraph 66.
67. The City denies the allegations contained in Paragraph 67.
68. The City denies the allegations contained in Paragraph 68.

**Third Claim for Relief**  
**(Breach of Contract)**

69. Paragraph 69 is simply a restatement of other allegations contained in the Amended Complaint. The City, therefore, responds to those paragraphs in the same manner as it has to the paragraphs which they restate.
70. The City denies the allegations contained in Paragraph 70.
71. The allegations in Paragraph 71 are merely a restatement of the allegations contained in Paragraph 25 of the Amended Complaint, therefore the City responds in the same manner as it has to Paragraph 25, which it restates. As to any other allegations in Paragraph 63, the same are denied.
72. The City denies the allegations contained in Paragraph 72.
73. The City denies the allegations contained in Paragraph 73.
74. The City denies the allegations contained in Paragraph 74.

**Fourth Claim for Relief**  
**(Promissory Estoppel)**

75. Paragraph 75 is simply a restatement of other allegations contained in the Amended Complaint. The City, therefore, responds to those paragraphs in the same manner as it has to the paragraphs which they restate.
76. The City denies the allegations contained in Paragraph 76.
77. The City denies the allegations contained in Paragraph 77.
78. The City denies the allegations contained in Paragraph 78.

**Fifth Claim for Relief**  
**(Implied Contract)**

79. Paragraph 79 is simply a restatement of other allegations contained in the Amended Complaint. The City, therefore, responds to those paragraphs in the same manner as it has to the paragraphs which they restate.
80. The City admits to the allegations in Paragraph 80 to the extent that pursuant to the employer-employee relationship, services have been provided by the (7) seven named Plaintiffs to the City. As to other allegations in Paragraph 80, the same are denied.
81. The City denies the allegations contained in Paragraph 81.
82. The City admits the allegations in Paragraph 82 to the extent that pursuant to the employer-employee relationship, the (7) seven named Plaintiffs provided services to the City and the City provided compensation for said services. As to any other allegations in Paragraph 82, the same are denied.
83. The City denies the allegations contained in Paragraph 83.

**Sixth Claim for Relief**  
**(Unjust Enrichment)**

84. Paragraph 84 is merely a restatement of other allegations contained in the Amended Complaint. The City, therefore, responds to those paragraphs in the same manner as it has to the paragraphs which they restate.
85. To the extent that Paragraph 85 is mainly a restatement of the allegations in Paragraph 80 of the Amended Complaint, the City responds in the same manner as it has to Paragraph 80, which it restates. As to any other allegations in Paragraph 85, the same are denied.
86. To the extent that Paragraph 86 is merely a restatement of the allegations in Paragraph 82 of the Amended Complaint, the City responds in the same manner as it has to Paragraph 82, which it restates. Any other allegations in Paragraph 86 are specifically denied.
87. The City denies the allegations contained in Paragraph 87.

**Seventh Claim for Relief**  
**(Declaratory Judgment)**

88. Paragraph 88 is simply a restatement of other allegations contained in the Amended Complaint. The City, therefore, responds to those paragraphs in the same manner as it has to the paragraphs which they restate.
89. The City denies the allegations contained in Paragraph 89.
90. The City denies the allegations contained in Paragraph 90.
91. The City denies the allegations contained in Paragraph 91.
92. The City denies the allegations contained in Paragraph 92.

**General Denial**

Any allegations set forth in Plaintiffs' Amended Complaint not expressly admitted herein are denied.

**AFFIRMATIVE DEFENSES**

1. Plaintiffs have failed to state any claims upon which relief may be granted.
2. At all times, the City's actions were lawful, justified and made in good faith.
3. Plaintiffs' claims are barred in whole or in part by the applicable statute of limitations.
4. Plaintiffs' claims for recovery of overtime compensation and liquidated damages, if any, are limited to the time period of two years, or in the alternative three years, from the date the Plaintiffs' Complaint was filed.
5. Plaintiffs are not entitled to liquidated damages under 29 U.S.C. § 260, since, at all times relevant and material herein, the City acted in good faith and had reasonable grounds for believing that it did not violate the provisions of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*
6. Plaintiffs' Fair Labor Standards Act claims are barred in whole or in part by the Portal-to-Portal Act because all actions taken in connection with each Plaintiff's compensation were done in "good faith" and in conformity with and in reliance upon written administrative regulations, orders, rulings, approvals, interpretations, administrative practices, and/or enforcement policies of the U.S. Department of Labor.

7. To the extent that a putative class member is an exempt employee under the Fair Labor Standards Act white-collar exemptions (administrator, executive, and/or professional), such person is not entitled to overtime compensation.
8. Sergeants are exempt employees under the Fair Labor Standards Act white collar exemptions (administrative, executive, and/or professional) and therefore are not entitled to overtime compensation and were properly classified by the City as exempt employees.
9. Without admitting that any violations of the Fair Labor Standards Act have occurred, the *de minimis* rule applies to any such violations.
10. Plaintiffs have failed to state a claim upon which relief may be granted because, among other reasons, Plaintiffs were compensated for all appropriate wages for all hours worked.
11. Those Plaintiffs who were entitled to overtime compensation as required by the Fair Labor Standards, were either paid or provided compensatory time in accordance with the FLSA and its overtime rate.
12. Those Plaintiffs who are not exempt from the FLSA, did not accrue compensatory time in excess of the amount permitted by the FLSA.
13. Plaintiffs are not entitled to overtime wages for work time that was used for personal reasons that have no connection with the City's business.
14. Plaintiffs' claims are barred in whole or in part to the extent that the work they performed falls within exemptions, exclusions, exceptions, or credits provided for in Section 7 of the FLSA, 29 U.S.C. §207.

15. Plaintiffs are partially exempt from the overtime requirement of the Fair Labor Standards Act as the City adopted a 7(k) work schedule of twenty-eight days for employees involved in law enforcement activities pursuant to 29 U.S.C. §207(k).
16. The Plaintiffs are estopped from bringing a cause of action under the Fair Labor Standards Act or from receiving time and one-half for all hours worked because, among other things, to the extent they worked overtime, they voluntarily, and without the City's knowledge, under-reported their hours of work, accepted the denominated rate of pay, and/or failed to comply with the prevailing terms, conditions, policies, and procedures governing their employment, including the policies and procedures governing overtime.
17. The application of the Fair Labor Standards Act to the City of Colorado Springs, a municipality, is an impermissible and unconstitutional interference with the functions of the City as a local government body in contravention of the Tenth Amendment of the United States Constitution.
18. The Plaintiffs unreasonably delayed commencement of this action so that their recovery, if any, should be barred or reduced under the doctrine of laches.
19. Plaintiffs' claims are barred by the principles of res judicata, collateral estoppel and waiver.
20. Plaintiffs' claims are barred by the doctrine of accord, satisfaction and release.
21. No contract, implied or expressed, existed between the City and Plaintiffs.
22. Plaintiffs' contractual claims are barred by the Statute of Frauds, and absence of consideration, and/or lack of mutual obligation.

23. Should this Court find that a contract was entered into between the City and Plaintiffs, the Plaintiffs breached the contract.
24. Although the City denies the existence of any valid contract, Plaintiffs failed to satisfy the condition precedent that they obtain supervisor approval before performing any alleged overtime hours claimed in this civil action.
25. The alleged contract is not valid or enforceable inasmuch as it either conflicts with or otherwise does not satisfy the City's Charter, Code, and other municipal laws.
26. The City asserts that Plaintiffs have failed to exhaust applicable administrative and/or contractual remedies including, without limitation, the requirement to file a formal complaint relating to an act, omission, or situation involving the interpretation and misapplication of written or verbal policy, procedure, or established practice.
27. Any alleged contract is ultra vires and void.
28. Should this Court find that a contract was entered into between the City and Plaintiffs, the alternative remedy of promissory estoppel is not applicable.
29. The City did not make a promise to Plaintiffs regarding their employment which it should have reasonably expected to induce action by Plaintiffs. Plaintiffs did not reasonably rely upon statements/representations allegedly made by the City. Nor is there an existence of circumstances such that justice can be avoided only by enforcement of the alleged promise.
30. The Plaintiffs are barred from seeking equitable relief because they have an adequate remedy at law.

31. The City has not been unjustly enriched at the expense of Plaintiffs. Nor does good conscience demand that additional payment be made to Plaintiffs.
32. The Plaintiffs' equitable relief is barred in whole or part under the doctrine of unclean hands. Plaintiffs submission of overtime reports did not set forth the overtime for which compensation is now sought. Plaintiffs' claims are barred due to Plaintiffs' other acts and omissions, including but not limited to their knowledge, acquiescence, consent, approval, ratification, participation, and/or failure to notify the City of the acts complained of in this action.
33. The Plaintiffs failed to mitigate their losses, if any, and as a result their claims must be reduced or discharged in their entirety.
34. Plaintiffs' claimed damages against the City are speculative and therefore may not be recovered.
35. The Plaintiffs' claims are not representative of a class of similarly related employees so that this action cannot be properly brought as a collective action under the Fair Labor Standards Act.
36. This action cannot be maintained as a collective or class action because the allegations, facts, and defenses relating to Plaintiffs will not support a collective or class action.
37. This action cannot be maintained as a collective or class action because, during the Plaintiffs' employment at the City, they were not similarly situated to each other and to any other employees, and there is no commonality between Plaintiffs' circumstances, individually and collectively, and those of any other employees of the City.

38. This action cannot be maintained as a collective or class action because Plaintiffs and/or their counsel are not adequate representatives for the proposed collective and class action.
39. This action cannot be maintained as a collective or class action because Plaintiffs have failed to identify any uniform policy that facially creates an overarching unlawful pay practice in violation of the overtime pay requirements of the FLSA.
40. Should the Court certify this matter as a collective or class action, it will violate the City's constitutional right to due process.
41. Should the Court certify this matter as a collective or class action, the City reasserts each of these affirmative defenses with respect to each class member or person filing a consent to this action.
42. To the extent any of the state causes of action lies in tort or could lie in tort, regardless of whether that may be the type of action or the form of relief chosen by the Plaintiffs, such claim is barred by the Colorado Governmental Immunity Act.
43. To the extent any of the state causes of action lies in tort or could lie in tort, regardless of whether that may be the type of action or the form of relief chosen by the Plaintiffs, they failed to serve a notice of claim on the City in order to comply with the Colorado Governmental Immunity Act.
44. Plaintiffs' claims for attorneys' fees on any class action claim are limited by Colo. Rev. Stat. § 24-10-114.5.
45. The City reserves the right to add additional affirmative defenses as discovery and the law disclose.

**WHEREFORE**, Defendant respectfully requests that the Court: (a) dismiss Plaintiffs' Amended Complaint with prejudice; (b) deny Plaintiffs' demands and prayer for relief as stated in their Complaint; (c) award Defendant costs and reasonable attorneys' fees incurred in defense of this action; and (d) grant such other and further relief as the Court deems just and proper.

Dated this 28<sup>th</sup> day of June, 2007.

Respectfully Submitted,

PATRICIA K. KELLY  
City Attorney/Chief Legal Officer  
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**CERTIFICATE OF SERVICE (PACER)**

I hereby certify that I have electronically filed a true copy of the foregoing **DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' AMENDED COMPLAINT** this 28<sup>th</sup> day of June, 2007, to the United States District Court for the District of Colorado by and through the PACER Electronic Filing System and have designated notification of the filing to the following:

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