

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

**ARMAND ABRAMS, JAMES BACA, AL
BENAVIDEZ, AMALIA GALLEGOS,
STEPHEN HIGGINS, DAVID SALAS,
JOHN SHEETS, LOISEL SOTELO, and
LEE WHISTLE, on their own behalf and on
behalf of all others similarly situated,**

Plaintiffs,

v.

No. 10-CV-872 MV-RHS

**CITY OF ALBUQUERQUE,
a municipal corporation,**

Defendant.

**NOTICE OF YOUR RIGHT TO PARTAKE IN SETTLEMENT REACHED WITH THE
CITY OF ALBUQUERQUE**

TO: All current and former non-exempt employees of the City of Albuquerque (other than law enforcement personnel covered by Section 7(k) of the FLSA) who worked statutory overtime (as defined below) during the period of July 3, 2010, to July 16, 2010, who made \$14.4263 or more per hour before the pay reduction, and who received an actual pay reduction during this time period due to City budget issues as part of the City's across the board pay reduction.

RE: Your rights under a settlement reached in *Abrams, et al. v. City of Albuquerque*, Case No. 10-CV-872.

► To join the settlement and share in monies recovered, you must complete, sign, and mail a materially complete Claim Form to Youtz and Valdez, P.C. by April 23, 2015. If your Claim Form is not post-marked or received by email by this date, you will not be eligible to receive any a payment pursuant to the settlement. You must mail your Claim Form to:

Youtz and Valdez, P.C.
900 Gold Avenue SW
Albuquerque, New Mexico 87102

Introduction

A settlement has been reached in the above-captioned matter (the "Litigation"), which alleges violations of the Fair Labor Standards Act (FLSA) and New Mexico State Law, based on the City's across the board reduction in its non-exempt employees' hourly rate of pay, effective

July 3, 2010. The United States District Court for the District of New Mexico and approved this Settlement. You are receiving this notice because the City's payroll records indicate that you are a Settlement Class member. The City has agreed to pay \$12,500.00 to settle this action. This notice is designed to inform you of your rights and how you can get a share of the settlement. You must timely submit a materially complete Claim Form to receive a share of the Settlement (unless you already filed a Consent to opt-in to the Litigation).

Who is Included in the Settlement?

This settlement includes all current and former non-exempt employees of the City of Albuquerque (except law enforcement personnel covered by Section 7(k) of the FLSA), who worked statutory overtime (as defined herein) during the period of July 3, 2010, to July 16, 2010, who made \$14.4263 or more per hour before the pay reduction, and who received an actual pay reduction during this time period due to City budget issues as part of the City's across the board pay reduction. "Statutory overtime" is defined as:

(1) For non-public safety employees, actually working over 40 hours in a work week (Sunday through Saturday); OR

(2) For firefighters, actually working over 182 hours in the 24 day work period(s) including July 3 to July 16, 2010.

What is this Litigation About?

Plaintiffs, current and former employees of the City of Albuquerque, sued the City on behalf of a proposed class of similarly situated employees. They allege the City violated the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* ("FLSA"), and New Mexico state law by failing to pay its employees straight time and overtime pursuant to the agreed upon rate of pay. Specifically, Plaintiffs allege that the City unilaterally implemented a pay reduction City-wide without notice to the employees. They allege that City employees performed work with the expectation that they would be paid at one rate but then were given a pay check that represented a lower rate due to the pay reduction. The City of Albuquerque denies that Plaintiffs were not properly compensated and denies any wrongdoing whatsoever.

What Does the Settlement Provide?

The City has agreed to pay \$12,500.00 to settle this case. Settlement Payments will be available to class members who timely submit materially complete Claim Forms or who already filed Consents to opt-in to the Litigation. A complete list of all current and former employees (other than public safety employees) who are eligible to partake in the Settlement is attached as Exhibit 1-A to this notice. A complete list of all current and former firefighters who are eligible to partake in the Settlement is attached as Exhibit 1-B. Exhibits 1-A and 1-B also include the exact amount to which each individual is entitled. You should refer to these Exhibits to ensure you are eligible to participate and to confirm the amount of your Settlement Payment. These payments were calculated using the City of Albuquerque's payroll records. For a more detailed explanation of how they were calculated, please see the Settlement Agreement by calling Class Counsel at (505) 244-1200. **To receive a payment, you must mail your completed Claim Form no later than April 23, 2015 to Youtz & Valdez at the address above, unless you**

already filed a Consent to opt-in to the Litigation. In addition to the payments described above, the Plaintiffs who either already filed a Consent to opt-in to the Litigation, or who submit a Claim Form, will each receive a \$100 incentive payment for their participation in the Litigation. The Settlement affects the federal rights of Settlement Class members who choose to participate. If you submit a Claim Form (or already filed a Consent to opt-in to the Litigation), you will receive a payment and release any and all claims under the FLSA against the City, whether known or unknown, and whether anticipated or unanticipated, that were asserted in, arise out of, or are related to the subject matter of this Litigation (“Released Claims”). If you do not submit a Claim Form (and did not already file a Consent to opt-in to the Litigation), you will not receive a payment, but you will retain any claims or rights which you otherwise would have had against the City. Lawsuits brought under the Fair Labor Standards Act must be filed within two years, or three years in the case of a willful violation by the employer.

When and How Will I Receive My Settlement Payment?

Payments will be mailed to former employees of the City on or around May 25, 2015. Payments will be made to current employees of the City, either through the City’s regular payroll or otherwise, in the sole discretion of the City, by the next payroll period following the date when payments are mailed to former employees of the City.

Who Represents the Parties in the Litigation?

Attorneys for Plaintiffs are:

Shane C. Youtz
Stephen Curtice
Youtz and Valdez, P.C.
900 Gold Ave, SW
Albuquerque, NM 87102

The Attorneys for the City of Albuquerque are:

Samantha Hults
City of Albuquerque Legal Department
P.O. Box 2248
One Civic Plaza
Albuquerque, NM 87102

Edward W. Bergmann
Seyfarth Shaw LLP
131 S. Dearborn Street, Suite 2400
Chicago, IL 60603

How Will the Attorneys Be Paid?

If you choose to join this action and be represented by the Plaintiffs’ attorneys listed above, you will not have to pay Plaintiffs’ attorneys out of your own pocket. The City of Albuquerque has agreed to settle this matter for \$12,500. After all Settlement Payments and

incentive awards have been made, Plaintiffs' attorneys will be paid the remainder of the \$12,500.00 for their attorneys' fees, litigation expenses, and costs.

Do the Plaintiffs' and Their Attorneys' Support the Settlement?

Yes. Plaintiffs and Class Counsel support the Settlement. Class Counsel believes this Settlement to be a good result for the Settlement Class, especially in light of the inherent risk of denial of ultimate class certification, the risk of a trial on the merits, and the inherent delays and uncertainties associated with litigation. Based on Class Counsel's experience litigating similar cases, Class Counsel believes that further proceedings in this case, including a trial and probable appeals, would be very expensive and protracted. No one can confidently predict how the various legal questions at issue, including the amount of damages, would ultimately be resolved. Therefore, Class Counsel believes that the Settlement is fair, reasonable, and adequate.

Will Participating in the Settlement Affect My Employment With the City?

No. Federal law prohibits the City from taking adverse action against persons who have exercised their rights under the FLSA to participate in the settlement of this Litigation. The City cannot harass, intimidate or otherwise threaten you for having joined the settlement. If you are currently employed by the City, it cannot terminate your employment or otherwise take action against you solely because of your decision to participate in this case.

What if I have questions?

For more information, call (505) 244-1200 or mail questions to Youtz and Valdez, P.C., 900 Gold Avenue SW, Albuquerque, New Mexico 87102. Please reference "Abrams Settlement."

Dated: March 9, 2015

/s/ Shane Youtz

Shane Youtz

/s/ Stephen Curtice

Stephen Curtice

Youtz and Valdez, P.C.

900 Gold Ave, SW

Albuquerque, NM 87102

(505) 244-1200

Fax: (505) 244-9700

CLAIM FORM

In order for you to join this case, you must complete, sign and mail this form to Youtz and Valdez, P.C., 900 Gold Avenue SW, Albuquerque, NM 87102 by April 23, 2015.

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION:

1. NAME: _____
2. ANY OTHER NAME USED: _____
3. STREET ADDRESS: _____

City State Zip
4. TELEPHONE NUMBER(S): _____
5. SOCIAL SECURITY NUMBER: _____
6. DEPARTMENT WHERE YOU WORKED AT CITY: _____
7. CITY EMPLOYEE ID NUMBER: _____

RELEASE

If you wish to participate in the Settlement and receive a Settlement Payment, you must provide the information requested above, sign and date this Claim Form, and return it to Class Counsel by first class U.S. mail or equivalent, postage paid, postmarked on or before April 23, 2015.

Your Settlement Payment has been calculated based on the information provided by The City of Albuquerque (“City”), and is shown on Exhibit 1-A or 1-B attached to this Notice.

If you wish to participate in the Settlement, please sign below. The undersigned declares under penalty of perjury under the laws of the State of New Mexico that: (i) I have had an opportunity to request and receive a full copy of the Settlement Agreement; (ii) I submit to the personal and exclusive jurisdiction of the United States District Court for the District of New Mexico for purposes of enforcing the Releases; (iii) I am a member of the Settlement Class; and (iv) on behalf of myself and each of my heirs, representatives, successors, assigns, and attorneys, I hereby release the City of Albuquerque as well as agents, servants, employees, administrators, assigns, heirs, agents, affiliates, or officers, fully, finally, and forever settled and released any and all of the Released Claims under the Fair Labor Standards Act, whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts

Signature: _____

Date: _____