

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

**JOE RIVERA on his own behalf and
on behalf of all others similarly situated,**

Plaintiff,

v.

**McCOY CORPORATION d/b/a
McCOY’S BUILDING SUPPLY,**

Defendant.

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CASE NO. 2:15-CV-00003-SMV-CG

DEFENDANT’S ORIGINAL ANSWER

Defendant McCoy Corporation d/b/a McCoy’s Building Supply (“Defendant” or “McCoy’s”) files this Original Answer to Plaintiff’s Collective Action Complaint (“the Complaint”).

JURISDICTION AND VENUE

1. Paragraph 1 of the Complaint contains jurisdictional allegations to which admission or denial is not required.

2. Paragraph 2 of the Complaint contains jurisdictional allegations to which admission or denial is not required.

3. Paragraph 3 of the Complaint contains venue allegations to which admission or denial is not required.

PARTIES

4. McCoy’s is without information sufficient to admit or deny the allegations contained in Paragraph 4 of the Complaint.

5. Paragraph 5 of the Complaint states a legal conclusion and therefore does not contain any factual allegations to which admission or denial is required.

6. McCoy's admits the allegations in Paragraph 6 of the Complaint.

7. McCoy's admits the allegations in Paragraph 7 of the Complaint.

8. Paragraph 8 of the Complaint states a legal conclusion and therefore does not contain any factual allegations to which admission or denial is required.

FACTS

9. McCoy's admits the allegations in Paragraph 9 of the Complaint.

10. McCoy's admits the allegations in Paragraph 10 of the Complaint.

11. McCoy's admits the allegations in Paragraph 11 of the Complaint.

12. McCoy's admits the allegations in Paragraph 12 of the Complaint.

13. McCoy's denies the allegations in Paragraph 13 of the Complaint.

14. McCoy's admits that Plaintiff at times worked over 40 hours in a given week as an Assistant Store Manager. McCoy's is without information sufficient to admit or deny the remaining allegations in Paragraph 14 of the Complaint.

15. McCoy's denies the allegations in Paragraph 15 of the Complaint.

16. McCoy's admits that it has designated at least one position at each of its stores to be filled by an Assistant Store Manager. McCoy's denies that it employed a person in each of these positions at all times since January 5, 2012. McCoy's denies the remaining allegations in Paragraph 16 of the Complaint.

17. McCoy's admits the allegations in Paragraph 17 of the Complaint.

18. McCoy's admits the allegations in Paragraph 18 of the Complaint.

19. McCoy's admits that Assistant Store Managers at its stores, at times, may work over 40 hours in a given week as an Assistant Store Manager. McCoy's denies the remaining allegations in Paragraph 19 of the Complaint.

20. McCoy's denies the allegations in Paragraph 20 of the Complaint.

21. McCoy's denies the allegations in Paragraph 21 of the Complaint.

22. McCoy's denies the allegations in Paragraph 22 of the Complaint.

COLLECTIVE ACTION ALLEGATIONS

23. Paragraph 23 of the Complaint states a legal conclusion and therefore does not contain any factual allegations to which admission or denial is required. To the extent Plaintiff or any alleged collective action member alleges that McCoy's participated in any illegal or wrongful conduct with respect to Plaintiff or any alleged collective action member, or that McCoy's violated any statutes, those allegations are denied. McCoy's further denies that Plaintiff is a proper collective action representative or that collective action treatment is appropriate.

24. McCoy's denies the allegations in Paragraph 24 of the Complaint including without limitation that Plaintiff is an appropriate collective action representative, that Plaintiff is "similarly situated" to other Assistant Store Managers at McCoy's, or that collective action treatment is appropriate.

25. Paragraph 25 of the Complaint states a legal conclusion and therefore does not contain any factual allegations to which admission or denial is required. To the extent Plaintiff or any alleged collective action member alleges that McCoy's participated in any illegal or wrongful conduct with respect to Plaintiff or any alleged collective action member, or that McCoy's violated any statutes, those allegations are denied. McCoy's further denies that

Plaintiff is a proper collective action representative or that collective action treatment is appropriate.

26. McCoy's denies the allegations in Paragraph 26 of the Complaint including without limitation that Plaintiff is an appropriate collective action representative, that Plaintiff is "similarly situated" to other Assistant Store Managers at McCoy's, or that collective action treatment is appropriate.

COUNT I
(Alleging FLSA Violations)

27. Paragraph 27 of the Complaint is an incorporation paragraph and therefore admission or denial is not required.

28. Paragraph 28 of the Complaint states a legal conclusion and therefore does not contain any factual allegations to which admission or denial is required. To the extent Plaintiff or any alleged collective action member alleges that McCoy's participated in any illegal or wrongful conduct with respect to Plaintiff or any alleged collective action member, or that McCoy's violated any statutes, those allegations are denied.

29. McCoy's admits the allegation in Paragraph 29 of the Complaint.

30. Paragraph 30 of the Complaint states a legal conclusion and therefore does not contain any factual allegations to which admission or denial is required.

31. McCoy's denies the allegations in Paragraph 31 of the Complaint.

32. McCoy's denies the allegations in Paragraph 32 of the Complaint.

COUNT II
(Alleging MWA Violations)

33. Paragraph 33 of the Complaint is an incorporation paragraph and therefore admission or denial is not required.

34. McCoy's denies the allegations in Paragraph 34 of the Complaint.

35. Paragraph 35 of the Complaint states a legal conclusion and therefore does not contain any factual allegations to which admission or denial is required.

36. Paragraph 36 of the Complaint states a legal conclusion and therefore does not contain any factual allegations to which admission or denial is required.

37. McCoy's denies the allegations in Paragraph 37 of the Complaint.

PRAYER FOR RELIEF

McCoy's denies that Plaintiff or any alleged collective action members are entitled to recovery or judgment in this case, and denies that he or they are entitled to any of the relief requested in the Prayer for Relief, paragraphs (A) through (E).

McCoy's further denies each statement in the Complaint not specifically admitted, denied, or otherwise controverted.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief may be granted.
2. The claims, in whole or in part, are barred by the applicable statute of limitations.
3. The claims, in whole or in part, are barred by failure to mitigate damages.
4. Plaintiff's claims are barred in whole or in part because Plaintiff and the alleged group of persons he purports to represent are exempt from the overtime requirements under the relevant statutes.

5. The claims are disputed in good faith by McCoy's and are subject to the "bona fide dispute" defense applicable to the claims asserted.

6. Any and all claims for liquidated damages are barred because McCoy's actions with regard to Plaintiff and any alleged collective action member were at all times in good faith, for good cause, without any intent to wrongfully deprive Plaintiff and any alleged collective

action member of any wages and/or compensation owed to him/her, and were based on a reasonable belief that McCoy's was and is in compliance with all applicable wage and compensation requirements.

7. Any compensation to which Plaintiff and any alleged collective action member may have been entitled has been paid or tendered.

8. The claims are barred by the doctrine of accord and satisfaction.

9. Because liability and/or damages, if any, to each member of the group Plaintiff purports to represent may not be determined by a single jury or on a group-wide basis, allowing this action to proceed as a collective action would violate McCoy's right under the Seventh and Fourteenth Amendments to the United States Constitution.

10. Plaintiff is not similarly situated to other potential members of the group he purports to represent, and Plaintiff is therefore an inadequate representative of the alleged group of persons whom he purports to represent.

11. Pending further investigation, some or all of the claims are barred by the doctrine of laches, waiver, estoppel, and/or unclean hands.

12. McCoy's specifically reserves the right to amend this answer by way of adding additional affirmative defenses as additional facts are obtained through future investigation and discovery.

McCOY's PRAYER FOR RELIEF

WHEREFORE, having fully answered Plaintiff's Complaint, and having asserted its affirmative defenses in this action, McCoy's prays for the following relief:

- That the Complaint be dismissed in its entirety with prejudice and without costs, fees or interest of any kind assessed against McCoy's;

- That McCoy's be awarded reasonable expenses incurred in defending against the Complaint, including costs and attorneys' fees; and
- That McCoy's be granted such other and further relief as this Court deems just and equitable.

Dated this 30th day of January, 2015.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record herein by way of:

- U.S. Mail, First Class
- Certified Mail
- Facsimile
- Federal Express
- Hand Delivery
- ECF (electronically to the registered participants as identified on the Notice of Electronic Filing (NEF))

on this 30th day of January, 2015, to wit:

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