

CV SECTION 1

**SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO**

FILED
SECOND JUDICIAL DISTRICT
2011 FEB 22 PM 2:35

CHRISTINA VILLA

**RAYMOND ARGUELLO, GREGORY CLAY,
NOVELLA CLAY, BENJAMIN MARQUEZ,
on behalf of themselves and all similarly
situated plaintiffs,**

Juanita M. Duran
SUMMONS (FS) ISSUED

Plaintiffs,

vs.

No. CV **CV 2011 02077**

**CITY OF ALBUQUERQUE, RAY SCHULTZ,
BERNALILLO COUNTY, DAVID LINTHICUM,
and DUNCAN SANCHEZ,**

Defendants.

**CLASS ACTION COMPLAINT FOR THE RECOVERY OF MONEY,
INTEREST ON MONEY CONSEQUENTIAL DAMAGES FROM CONVERSION
OF MONEY AND FOR INJUNCTIVE RELIEF**

Plaintiffs bring this complaint on behalf of themselves and a class of similarly situated individuals against the City of Albuquerque and Chief of Police Ray Schultz and Bernalillo County, David Linthicum and Duncan Sanchez. In support of this complaint, Plaintiffs state as follows:

JURISDICTION AND VENUE

The court has subject matter jurisdiction of this action. Plaintiffs bring these claims under the New Mexico Tort Claims Act and directly under the New Mexico Constitution for injunctive relief. The court has personal jurisdiction over the parties and venue is proper in this district. The defendants are present in Bernalillo County as a matter of law.

PARTIES

1. Plaintiffs are individuals and residents of Bernalillo County, New Mexico.
2. Defendant City of Albuquerque is a municipality within the State of New Mexico.

Ray Schultz is an individual and Chief of Police of the City of Albuquerque. Defendant Bernalillo County is a local political subdivision in the State of New Mexico. Defendant David Linthicum is employed with Bernalillo County. Defendant Duncan Sanchez is employed with Bernalillo County and is the Commander of the Middle Rio Grande Valley Task Force.

FACTUAL BACKGROUND

3. On November 5, 2006, Albuquerque Police Department officers arrested Plaintiff Raymond Arguello and charged him with possession of crack cocaine.

4. APD officers also seized \$2,636.00 in U.S. currency during the arrest.

5. On November 5, 2007, Plaintiff Arguello was sentenced for his crime and judgment was entered on January 14, 2008 in the Second Judicial District Court, Bernalillo County.

6. By order of January 28, 2009, the Honorable Albert S. "Pat" Murdoch ordered that the Albuquerque Police Department return Plaintiff's money. (Copy of order attached as Exhibit 1).

7. Plaintiff Arguello has presented himself to the Albuquerque Police Department for the return of his money, however, the Department has failed and refused to return Plaintiff's money.

8. On May 22, 2008, the "Valley Narcotics Unit" of the City of Albuquerque Police Department executed a search warrant at 211 Abajo SE. (Copy of Police Report attached as Exhibit 2).

9. APD officers seized \$3,610.00 in U.S. currency from Plaintiff Benjamin Marquez.
10. To this date, APD has retained Plaintiff Marquez' money.
11. APD gave Marquez no notice, paperwork or other information as to the disposition of his cash.
12. On August 31, 2009, APD, through the "Westside Narcotics Unit", seized \$3,831.00 from Gregory Clay and Novella Clay.
13. Detective D.B. Irwin notes that he met with Detective Fricke at the Southwest Sub Station and "seized" the (\$3,831.00) for the FBI.
14. The Clays have received no paperwork related to the seizure of their cash.
15. No forfeiture actions have been filed related to the cash seizures.
16. The City of Albuquerque is engaged in a pattern and practice of seizing money and failing to file forfeiture actions on the money or of transferring money unlawfully to the federal government through the use of procedures set up by Bernalillo County and the Middle Rio Grand Valley Task Force MRGVTF.
17. For instance, after an APD seizure on March 14, 2008, APD stated that it is a member of the MRGVTF and requested an equitable share from a federal adoptive forfeiture. (Copy of statement attached as Exhibit 3).
18. The subject of the seizure was \$41,857.31 of U.S. currency, which was seized pursuant to and under the authority of a state court search warrant. (Warrant attached as Exhibit 4).
19. Despite the request by APD to seize U.S. currency from a state district court judge, the currency was not reflected on the return and inventory of the warrant.
20. The currency was seized by C.G. Davis, an Albuquerque Police Department

Detective, and transferred to the federal government for adoptive forfeiture. (Report attached as Exhibit 5).

21. The City of Albuquerque has engaged in a repeated pattern of seizing money from citizens and transferring the money to the federal government for adoptive forfeiture.

22. Bernalillo County is the lead agency for the MRGVTF and, through its employees Linthicum and Sanchez, the County has established policies and procedures by which the MRGVTF members, including APD and Bernalillo County transfer cash seized by local law enforcement to the federal government. Plaintiff Clay's cash was transferred to the federal government under the direction and supervision of Bernalillo County and its employees.

FACTUAL ALLEGATIONS COMMON TO THE CLASS

23. New Mexico law provides that any seized cash by law enforcement officers must be placed in an interest bearing account with the district court clerk. State law also requires that a forfeiture complaint be filed within thirty (30) days of seizure of cash or that the law enforcement officer return the cash to the person from whom they seized the cash.

24. Also, state law authorizes only the seizure of cash that was subject to forfeiture under state law. Forfeiture under state law requires that the forfeiture action be prosecuted with the criminal action and that forfeiture is only achieved with a criminal conviction of the owner of the cash. In addition, state law protects innocent owners from forfeitures.

25. During the class period, the Defendants have seized, held, or transferred, after seizure, large amounts of cash and property in violation of state law and have failed to safeguard the cash and property as required under state law.

26. Defendants have a policy of ignoring state law by failing to deposit seized money

with the district court clerk and failing to return money seized to its rightful owners.

27. On April 7, 2005, Gabriel Gutierrez instituted a class action, in Gutierrez v City of Albuquerque, CV-2005-02801.

28. The class action complaint against the City of Albuquerque alleged similar facts as herein. The Plaintiffs herein came within the description of the class alleged in the Gutierrez claim.

29. The Gutierrez class action is pending.

30. Any applicable statute of limitations has been tolled due to the pendency of the class action in Gutierrez.

31. On December 7, 2006, Daniel Apodaca instituted a class action in Apodaca v Bernalillo County, CV-2006-10246, this class action is pending. The claims asserted in Apodaca, against Bernalillo County, are similar to the claims asserted herein.

32. A class in Apodaca was certified up to and including incidents before September 21, 2009. This action against Bernalillo County seeks certification of a class against Bernalillo County from August 31, 2009 to the present.

33. This action seeks certification of a class of Plaintiffs against the City of Albuquerque whose money was seized and transferred to the federal government fro two years prior to the filing of the Gutierrez complaint and seeks certification of class against the Bernalillo County Defendants from August 31, 2009 to the present.

34. The class of Plaintiffs is so numerous that the joinder of all is impracticable.

35. There are questions of law and fact common to the class. Specifically, the policies that Defendants City of Albuquerque and Bernalillo County and their employees have put in place related to seizure and forfeiture of money and property; the policies Defendants'

employees followed in seizing and forfeiting money and property; and whether these policies violated state law. These common issues predominate.

36. The claims and defenses of the class are typical of the claims and defenses of the representative parties. Plaintiffs will fairly and adequately represent the interest of the class.

37. Maintenance of this action as a class would avoid inconsistent or varying adjudications with respect to the individual members and avoid the risk that any adjudication of Plaintiffs' claims would impair or impede the rights of other members.

38. Defendants have acted on grounds generally applicable to the class in general.

COUNT I - CONVERSION

39. The Plaintiffs incorporate the preceding paragraphs by reference herein.

40. Defendants, in setting policy and in seizing property and cash of class members, have acted illegally and contrary to law. The seizures and forfeitures have been an intentional taking of property belonging to others with no lawful authority.

41. Defendants and class Defendants converted the property and cash from the Plaintiff class members to the exclusion of the property interests of the Plaintiff class members.

42. Plaintiffs and class members have been damaged in the loss of their property and cash, loss of use of their property and cash, and in payment of attorney fees and costs in the recovery and attempted recovery of their property and cash. Each of the class members have been damaged, at a minimum in a nominal amount for the interest value of the seized cash.

COUNT II - VIOLATION OF THE NEW MEXICO FORFEITURE ACT AND THE NEW MEXICO CONSTITUTION

43. The Plaintiffs incorporate the preceding paragraphs by reference herein.

44. Article II, Section 10 of the New Mexico Constitution prohibits the state and its employees from unreasonably seizing property of persons. Article II, Section 18 of the New Mexico Constitution requires the state to provide due process prior to the deposition of seized property. The New Mexico Forfeiture Law and the cases interpreting it require local police agencies comply with the procedural aspect of the act. The Act is also jurisdictional, meaning that the cash seized is subject to the jurisdiction of state courts. Transfers of cash to the federal government must be accomplished only through compliance with the jurisdictional aspects of state law.

45. The taking, holding, and transferring of Plaintiffs' property and the property of the class constituted unreasonable seizures. The disposal of their property deprived Plaintiffs and the class of due process.

46. Plaintiffs and the class have been damaged as a result of the actions of Defendants.

47. The legislature has waived sovereign immunity for law enforcement officers' violations of the New Mexico Constitution pursuant to Section 41-4-12.

COUNT III - VIOLATION OF STATE CRIMINAL STATUTES

48. The Plaintiffs incorporate the preceding paragraphs by reference herein.

49. In taking the cash from Plaintiffs without probable cause and ignoring state law requiring its deposit in interest bearing accounts, Defendants' employees have violated a number of state criminal statutes.

50. The state laws that Defendants violated include larceny, robbery and receiving stolen property.

51. Defendant City of Albuquerque and Bernalillo County's employees committed the

crimes of larceny by allowing its employees to seize cash and transfer it to the federal government rather than placing the money into an interest bearing account as required by law.

COUNT IV - VIOLATION OF NMSA 29-1-1

52. The Plaintiffs incorporate the preceding paragraphs by reference herein.

53. Defendant City of Albuquerque and Bernalillo County's law enforcement officers had a duty under NMSA 29-1-1 to investigate all acts of crime brought to their attention.

54. Through their policy or de facto policy of allowing police to take assets from people without probable cause, Defendant City of Albuquerque and Bernalillo County law enforcement officers failed in their duties to investigate criminal acts.

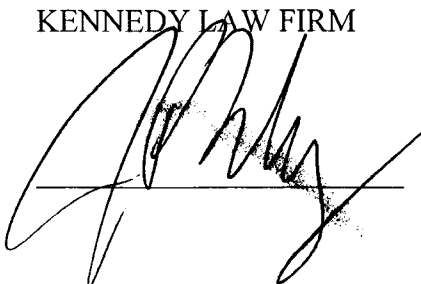
55. Also, Defendant City of Albuquerque and Bernalillo County had actual knowledge or imputed knowledge that the holding and transferring of Plaintiffs' cash was unlawful. Instead of investigating the criminal act, the Defendants authorized the seizure of the cash and the transfer of the money to the federal government.

56. The Defendants' failure to investigate this criminal act resulted in the seizure of the cash and its placement in evidence.

WHEREFORE, Plaintiffs and the class request compensatory damages in an amount to compensate the class, plus interest and costs. Plaintiffs also request that the court permanently enjoin Defendants from seizing and holding property and cash or transferring property in violation of state law.

Respectfully submitted,

KENNEDY LAW FIRM

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