

FIRST JUDICIAL DISTRICT COUNTY OF SANTA FE STATE OF NEW MEXICO

GEORGE ALBIN, et al.,

Plaintiff,

v.

No. D-101-CV-2004-01682

NICHOLAS BAKAS, et al.,

Defendants,

Consolidated with Cause No. D-101-CV-2009-02294 MARTIN HORTON, et al.,

Plaintiff,

v.

TROY VELASQUEZ, et al.,

Defendants.

AND

STATE OF NEW MEXICO COUNTY OF TAOS EIGHTH JUDICIAL DISTRICT Cause No. D-820-CV-2005-00374

PATRICK CORTEZ, et al.,

Plaintiff,

v.

NEW MEXICO DEPARTMENT OF PUBLIC SAFETY, et al.,

Defendants.

Class Action Notice

If a State Police Officer or the New Mexico Department of Public Safety Seized Cash from You from August 25, 2002 to February 18, 2011, You May be Entitled to Return of the Money.

Please Read This Legal Notice Carefully, Your Legal Rights are Affected Whether You Act or Don't Act.

In order to file a claim for seized cash or to opt-out of this settlement, you must file a claim on or before February 17, 2015.

This proposed Class Action Settlement concerns the alleged unlawful seizing of cash by State Police Officers and its retention or transfer to the federal government by the Department of Public Safety ("DPS").

If State Police Officers seized your money or your family's money between the dates of August 25, 2002 to February 18, 2011, you may be legally entitled to the return of that money. Failure to act could compromise your rights. A lawsuit has been brought, and the parties have proposed a settlement.

The Court has certified the following class: "All persons who may have had or have a property interest in cash seized by DPS between August 25, 2002 to February 18, 2011, where the cash was transferred to the federal government by DPS or the cash was or has been retained by DPS. For the purpose of this definition, DPS means the New Mexico Department of Public Safety and its agencies, including the Motor transportation Division and its employees." This settlement is on behalf of the members of the class as defined. Any other person who does not fit in the definition of the class is excluded from this agreement. This settlement is a compromise of disputed claims.

You should contact Horton v. State of New Mexico, c/o Gilardi & Co. LLC, P.O. Box 8060, San Rafael CA 94912-8060, (888) 286-4213, if you have additional questions regarding the settlement or for a copy of the settlement agreement.

The Department of Public Safety denies any wrongdoing and asserts that its actions were lawful and proper.

Your Legal Rights and Options		Due Date
Do Nothing	Unless you “opt-out” (see below), you will be bound by any decision of the Court in this case. You will give up your rights to bring claims against the State of New Mexico for any seizure of any cash from you and/or the failure to pay interest thereon. If you do nothing, you will be bound by the decision of the Court and any claims will be settled and terminated on your behalf pursuant to the terms of the agreement between the parties.	None
File a Claim Form	If you wish to seek the return of money you claim was wrongfully seized, you must make a claim, using the claim form accompanying this Notice.	<u>You may send the attached Claim Form to Gilardi & Co. LLC or file a claim online at www.NMCashSeizureSettlement.com on or before February 17, 2015.</u>
Object	You can write to class counsel to explain why you don’t like the settlement. Any objection should be sent to the Horton v. State of New Mexico, c/o Gilardi & Co. LLC, P.O. Box 8060, San Rafael CA 94912-8060. Your objection should state the particular reasons for your objection and whether you wish to speak or be represented at the fairness hearing on <u>March 13, 2015</u> . The contents of any objection are more fully explained in paragraph 14 of this Notice.	<u>You can write to class counsel to object to this settlement up until February 6, 2015, which is 37 days prior to the fairness hearing.</u>
Go to the Fairness Hearing	You may speak at the hearing when the Court considers the fairness of the settlement. If you or your attorney wishes to speak, you must follow the guidelines in paragraph 14 of this Notice.	March 13, 2015 at 1:30 p.m. in the courtroom of Judge Sarah Singleton. Santa Fe County Courthouse, 225 Montezuma Ave. Santa Fe, NM 87501.
Opt-Out	You can choose to opt-out of the “CLASS” and bring claims on your own. If you decide to “opt-out,” simply fill out the attached opt-out form and return it to class counsel postmarked on or before <u>February 17, 2015</u> . You should also review paragraph nine as it relates to bringing a lawsuit as an individual.	<u>You may send the attached opt-out form to Horton v. State of New Mexico, c/o Gilardi & Co. LLC, P.O. Box 8060, San Rafael CA 94912 on or before February 17, 2015.</u>

- These rights and options and the deadline for each are explained in this Notice
- Although the Court has preliminarily approved the settlement, the Court still has to decide whether to give final approval to the settlement. Payments will be made only if the Court grants final approval.

WHAT IS THIS NOTICE ABOUT?

1. Why did I get this Notice?

You have been mailed this Notice because government records indicate that the Department of Public Safety seized money from you or a family member between the dates of August 25, 2002 to February 18, 2011.

2. Why has this Notice been issued?

Before the Court decides to give final approval to the settlement, as a potential class member, you have a right to know about:

- A proposed settlement of this class action; and,
- All of your options.

This Notice explains:

- The lawsuit;
- The settlement;
- Your legal rights;
- What benefits are available;
- Who is eligible; and,
- How the payments, if settlement is approved, will be distributed to class members.

3. What is the lawsuit about?

The lawsuit claims that New Mexico State police officers seized John Albin’s money during a search of his vehicle after he was accused of committing an offense under New Mexico’s Controlled Substances Act. The Department of Public Safety kept John Albin’s money in accordance with its policy and then transferred it to the federal government.

George Albin, the representative of the estate of John Albin, filed this lawsuit to seek the return of John Albin’s money and for interest on his money. George Albin asserted that there were a number of similarly situated plaintiffs and has asked the Court permission to

represent the interests of all of those plaintiffs. George Albin asserted that the Department of Public Safety had a policy or practice of unlawfully retaining money seized from people under suspicion of criminal activity and alleged that this was illegal.

The parties have proposed a settlement in this class action. Defendants deny any wrongdoing or illegal conduct from money seized between the dates of August 25, 2002 and February 18, 2011, and the settlement does not mean that the Defendant admits that it has done anything wrong or illegal.

4. What is a class action?

In a class action, one or more person(s) called the class representative(s) sue on behalf of a group of people who have similar claims and are known as the class members. A court then resolves the issues for all class members, except for those who have excluded themselves from the class. First Judicial District Judge Singleton is in charge of this class action.

The person who brought this case is called the Plaintiff and the Department of Public Safety and employees of the Department of Public Safety are the Defendants.

5. How do I know if I am a class member?

You may be a member of the class if:

- You were the owner or have a claim to ownership of money that State Police Officers seized from your residence, car, belongings or person between the dates of August 25, 2002 to February 18, 2011.
- A claim of ownership can include money that was seized from you, your spouse, children or other relatives, or money seized from a shared residence.

THE SETTLEMENT BENEFITS

6. What does the Settlement provide?

The State of New Mexico has agreed to create a class fund of \$5,000,000.00 to settle class damages, excluding any claims to interest that class members may have had.

Those funds will be distributed as follows:

- If you file the claim for funds attached to this Notice, class counsel will present that claim to the State for objection to payment. If the State objects to paying your claim, then an agreed upon Special Master will determine whether you are entitled to the seized funds.
- If the Special Master finds that you are entitled to reimbursement from the class fund, then your claim will be paid as described below. If the Special Master finds that you are not entitled to reimbursement from the class fund, you are excluded from the class settlement, but can still bring an individual claim with your own attorney.
- All qualifying claims will be submitted to the Risk Management Division at the conclusion of the claims period. The Risk Management Division will then distribute funds to qualifying class members. If, after attorney fees and costs are deducted, there are sufficient funds to pay all approved class member's claims, the Risk Management Division shall pay all of the claims in full. If, however, there are more approved claims than money available in the fund, the fund shall be divided on a pro rata basis to the class members, based on the percentage of the total approved claims to the available funds.
- In exchange for the payment of your claim, you are releasing the State of New Mexico from all liability claims and damages claims related to and flowing from the class allegation that the State of New Mexico had a policy and practice of unlawfully seizing and retaining money in its evidence account and/or turning over the money to the federal government.

7. When will I get my money?

If you qualify for the settlement, you will receive your settlement check within six (6) months after the Court grants final approval of the settlement.

8. Who will pay for the cost of administering the Settlement?

All costs of administering this settlement will be paid from the \$5,000,000.00 fund the State of New Mexico established.

9. Am I giving anything up in the Settlement?

If you accept and are approved for this settlement you will be unable to sue the State of New Mexico for any claims involving the seizure of your funds between the dates of August 25, 2002 and February 18, 2011 and any claim for interest that you may have.

10. May I sue the State myself?

You may have an individual claim against the State of New Mexico only if you opt-out of the settlement. If you opt-out you will not receive any benefit of this settlement. You may wish to consult an attorney about filing a claim against the State.

THE LAWYERS REPRESENTING MEMBERS OF THE CLASS

11. Do I have a lawyer in this case?

The court has approved Kennedy, Kennedy & Ives, formally known as the Kennedy Law Firm, 1000 Second Street NW, Albuquerque, NM 87102, (505) 244-1400 to represent the class in this matter. They are “class counsel” and will represent all persons who do not opt-out of the class. You may hire your own attorney at your own cost.

12. How will the Class Counsel be paid?

At the final fairness hearing, class counsel will request a fee of 33% of the Class Fund.

APPROVING THE SETTLEMENT

13. When and where will the Court decide whether to approve the settlement and attorneys’ fees?

The Court has set a hearing on March 13, 2015 at 1:30 p.m. in the courtroom of The Honorable Sarah Singleton at the Santa Fe County Courthouse, 225 Montezuma Ave, Santa Fe, NM 87501. At this hearing, Judge Singleton will consider whether the settlement is fair, reasonable and adequate. If there are any objections, the Court will consider them. After the hearing, the Court will issue its ruling. It is not known how long the Court will take to issue its ruling. Class counsel can process claims only after the Court has approved the settlement.

OBJECTING TO THE SETTLEMENT

14. How do I tell the Court if I don’t like the Settlement?

If you are a class member, you can tell the Court you don’t like the settlement or some part of it. This is called objecting to the settlement.

To object, you or your lawyer must send a letter to class counsel that includes all of the following:

- The name and title of the lawsuit, Albin v. State of New Mexico, D-101-CV-2009-02294;
- A statement of each objection you have and a summary of the basis for the objections;
- A description of any law or case supporting the objections;
- A statement of whether or not you or your lawyer will ask to appear at the fairness hearing to talk about your objections, and, if so, how long you will need to present your objections;
- The names of any witnesses you or your lawyer intend to call at the fairness hearing to testify. If you or your lawyer intend to have a witness testify as an expert, your letter must disclose (i) the subject matter on which the witness will testify; (ii) the conclusions and opinions of the witness and the basis therefore; (iii) the qualifications of the witness; and (iv) any reports prepared by the witness about the settlement; and
- Copies of any documents you or your lawyer will present at the fairness hearing.

Your objection letter and other materials must be postmarked by February 6, 2015 to Horton v. State of New Mexico, c/o Gilardi & Co. LLC, P.O. Box 8060, San Rafael CA 94912-8060. Kennedy, Kennedy & Ives will submit any objections to the Court at least five days prior to the fairness hearing.

15. Do I have to come to the fairness hearing?

No. Class counsel will answer any questions the court might have. However, you may come, at your own expense. If you sent a written objection, you do not have to come to Court to talk about it. As long as you properly and timely submitted your written objection, the Court will consider it. You may also have your lawyer attend, but it is not necessary.

16. May I speak at the fairness hearing?

You will not be heard unless you have submitted your comments or objections as provided in paragraph 14. You must state in your submission that you wish to be heard.

GETTING MORE INFORMATION

If you are unsure about your rights or have further questions about the proposed settlement, you may contact the settlement administrator:

Horton v. State of New Mexico, c/o Gilardi & Co. LLC, P.O. Box 8060, San Rafael CA 94912-8060, by phone at (888) 286-4213, or email info@NMCashSeizureSettlement.com. You may view court documents and view frequently asked questions at the website www.NMCashSeizureSettlement.com. DO NOT CALL THE COURT. The court will be unable to answer questions beyond what is stated in this Notice.