

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

**JESUS BAEZA, TERESA BAEZA MIRALDA  
and JESUS D. BAEZA CONTRERAS,**  
Plaintiffs,

v.

**No. 2:18-cv-00641 JAP-SMV**

**MARK MUNRO and ELI GOMEZ,**  
Defendants.

**PLAINTIFFS' FIRST AMENDED COMPLAINT**

**COME NOW**, Plaintiffs, Jesus Baeza, Teresa Baeza Miralda and Jesus D. Baeza Contreras, by and through their attorneys Newell Law Firm, Patrick B. McMahon and Dick A. Blenden, and for their First Amended Complaint state the following:

**JURISDICTION ALLEGATION**

1. This action is brought pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988 for the violations of Plaintiff's Constitutional Rights protected by the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States and for Violation of Article 2 Sections 10 and 18 of the Constitution of the State of New Mexico.
2. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, § 143(3), and § 1367. Venue exists under 28 U.S.C. § 1391.

**GENERAL ALLEGATIONS**

3. Plaintiff Jesus Baeza ("Baeza") is a resident of 115 East Park Place, Hobbs, Lea County, New Mexico and operates a business known as LBG Service and Repair, LLC ("LBG") at such address.

4. Teresa Baeza Miralda (“Miralda”) and Jesus Baeza Contreras (“Contreras”) also live at the same address, although neither has anything to do with the operation of LBG.
5. At all times material hereto, Defendants, each of them police officers and employees of the Hobbs Police Department, acted in their official capacities. Suit is brought against them in both their official and individual capacities.
6. On October 28, 2014, a homicide occurred in Hobbs, New Mexico in which Gary Nash was killed during a drive by shooting.
7. Eye witnesses stated the shooter fired from a gold Nissan Maxima. The person eventually charged with the slaying of Gary Nash was a juvenile named Jimmy Thompson (“Thompson”).
8. Police alleged that Thompson was driving a gold Nissan Maxima (“the Maxima”) at the time of the homicide.
9. The Hobbs Police Department, including one or both of the Defendants, were advised Cristina Salazar (“Salazar”), Thompson’s mother, owned a gold Nissan Maxima.
10. On October 29, 2014, the day following the shooting, Officers made contact with Salazar and she advised that the Maxima could not have been involved in the shooting, as it was with LBG being worked on at the time Nash was murdered.
11. Salazar provided Defendants with contact information for Baeza and suggested the Hobbs Police Department contact Baeza to confirm her statement and she also gave permission for the Defendants to examine the Maxima if necessary.
12. However, upon information and belief, neither of the Defendants, nor any other law enforcement officer, attempted to contact Baeza or locate the Maxima to examine it.

13. After the complaint was filed against Thompson, Thompson's attorney, Barry Crutchfield ("Crutchfield"), disclosed Baeza as a witness who would testify that he had custody of the Maxima at the time of the murder.
14. At no time after the disclosure of Baeza as a witness, was any investigation done by the Defendants, or any other law enforcement officers, concerning the nature of his impending testimony.
15. One week before trial, Baeza voluntarily went to the District Attorney's Office in Hobbs, New Mexico with Crutchfield. Baeza disclosed that he would testify that the Maxima was in his custody at the time of the homicide and that particular Maxima could not have been driven by Thompson on the night of the shooting.
16. Baeza voluntarily provided an LBG invoice number "1012" which reflected repairs on a 2000 Nissan Maxima with New Mexico license plate 541-RSY, which matched the vehicle owned by Salazar, for the period from October 6, 2014 through November 10, 2014. The invoice reflected charges of \$2,279.28 for the work performed and that the invoice was paid.
17. The following day, July 25, 2016, the Defendants obtained a facially deficient search warrant in an attempt to intimidate Baeza for coming forward with exculpatory evidence in the *State v. Thompson* matter. (See search warrant and affidavit with attachments A, B, C and D are attached hereto as Exhibit 1).
18. Defendants intentionally styled the search warrant as the *State of New Mexico v. LBG Services and Repair, LLC*, although there is no case where the State of New Mexico was adverse to LBG or Jesus Baeza, and there has never been one.

19. The facts presented in support of the warrant contain no charges or allegations of a crime committed by LBG. In fact, the basis of the warrant are all facts which would be relevant to the investigation of the Nash homicide.
20. The affidavit in support of the search warrant was signed by Defendant Eli Gomez and contained four attachments. The first, Attachment A, identified the places to be searched. The second, Attachment B, identified the persons or property which are the subject of the search. The third, Attachment C, set forth the grounds for issuance of the warrant. Lastly, Attachment D, identified the inventory of items seized in connection with the execution of the search warrant. (*See Exhibit 1*)
21. Defendants intentionally included Plaintiffs' residence in the places to be searched, even though the shop and office of LBG are separate structures. (*See photograph, attached hereto as Exhibit 2*).
22. There is nothing in the warrant that would create a nexus between LBG and the Plaintiffs' residence located on the property or between any crime and the evidence.
23. Defendants intentionally executed the warrant by a weapons drawn entrance into the Plaintiffs' residence, led by Defendant Mark Munro.
24. Upon entering the residence, the Defendants encountered Miralda and Contreras, who were not subjects of the warrant, as they have no affiliation with LBG.
25. Defendants knowingly and intentionally seized every electronic device in the residence, including the personal cellphones of Baeza, Miralda and Contreras, although Attachment B of the warrant clearly limits the seizure to computers, laptops, tablets, iPads, and electronic devices used in conjunction with LBG Services and Repair LLC invoicing, pricing, and parts management.

26. Defendants intentionally executed the warrant in a manner inconsistent with what was authorized by the Court, as there is no indication Defendants made any effort to distinguish which electronics were being used in conjunction with LBG's invoicing, pricing, and parts management and those which were not.
27. Defendants intentionally seized devices they knew or should have known were not used in conjunction with LBG's invoices, pricing, and parts management, such as the personal cellphones of the Plaintiffs and the personal iPad of Miralda.
28. Defendants intentionally failed to limit the scope of data retrieval from the devices they seized in an effort to find evidence of wrongdoing on the part of the Plaintiffs. In fact, Defendant Munro told Baeza the Defendants would be searching the devices for just that, any evidence of wrongdoing.
29. At no point was Baeza compelled to talk to the prosecution in the Thompson case. He went to the Assistant District Attorney voluntarily.
30. Baeza went to the prosecution to prevent Thompson from being sent to prison for a murder he could not have committed according to the State's theory of the case.
31. Defendants obtained this warrant with the intention of intimidating Plaintiffs because Baeza provided exculpatory evidence which negatively impacted the foundation of the State's case.
32. Baeza felt at all times the actions of the Defendants were designed to influence his testimony in the *State of New Mexico v. Jimmy Thompson* matter.
33. The conduct of these Defendants in their investigation, including obtaining a facially deficient search warrant, and the broad and wrongful execution of that search warrant

was so unlawful as to subject them to liability pursuant to the laws of the State of New Mexico.

34. Notice was timely given pursuant to the Tort Claims Act of New Mexico.

### **COUNT I**

#### **FOURTH AMENDMENT AND FOURTEENTH AMENDMENT VIOLATION**

35. Plaintiffs incorporate paragraphs one through thirty-four as if each were fully set forth herein.

36. Plaintiffs have and had a Fourth Amendment and Fourteenth Amendment right to be secure in their persons, houses, papers, and effects, against unreasonable search and seizures.

37. Under the facts of this case, no reasonably competent law enforcement officers could have believed the search of Plaintiffs' residence and seizure of Plaintiffs' property was reasonable under the circumstances.

38. The intentional use of a facially invalid search warrant and seizure of property outside the scope of the defective warrant by Defendants was not justified or privileged under clearly established law and constituted an unreasonable search and seizure under the Fourth Amendment.

39. More specifically, because Defendants could not have reasonably believed the Plaintiffs' residence or the personal electronics located therein were in any way related to LBG's possession of the Maxima or was used for LBG's invoicing, pricing and parts management, Defendants' search and seizure violated the Plaintiffs' clearly established Fourth Amendment Rights.

**COUNT II**

**FIFTH AMENDMENT AND FOURTEENTH AMENDMENT VIOLATION**

40. Plaintiffs incorporate paragraphs one through forty-five as if each were fully set forth herein.
41. Plaintiffs have and had a Fifth Amendment and Fourteenth Amendment right to not be deprived of life, liberty, or property without due process of law.
42. Defendant intentionally styled a search warrant *State of New Mexico v. LBG Service and Repair, LLC*, No. H14-03571 when there is in fact no case where the State of New Mexico is or was ever adverse to LBG or Baeza.
43. Defendant intentionally captioned the warrant for the sole purpose of intimidating Plaintiffs and conveying the impression to Baeza that the State of New Mexico was not prosecuting his business because he offered exculpatory evidence in the Thompson case.
44. Defendants intentionally deprived Plaintiffs of procedural and substantive due process which constitutes a violation of Plaintiffs' Fifth and Fourteenth Amendment rights.

**COUNT III**

**STATE LAW CLAIMS**

45. Plaintiffs incorporate paragraphs one through 44 as if each were fully set forth herein.
46. As required by Section 41-4-16 of the Tort Claims Act, the Defendants were given timely notice of their claim by letter dated October 21, 2016.
47. The Defendants failed to properly investigate the Nash murder by failing to examine or secure the vehicle the Maxima, which the State claimed was driven by Thompson in the drive by shooting of Nash.

48. Defendants obtained a facially invalid search warrant based on incorrect and inaccurate information and presented a warrant to the Honorable Mark Sanchez, District Judge, which reflects a case which did not exist. The fact there was no case styled State v. LBG Service and Repair, LLC was never brought to the attention of Judge Sanchez.

49. If the actions of Defendants described above were not intentional, reckless or undertaken with deliberate indifference, they were negligent.

50. These acts and commissions caused harm to the Plaintiffs and Plaintiffs are entitled to compensatory damages.

**WHEREFORE**, Plaintiffs pray this Court enters judgment in their favor and awards them compensatory damages, punitive damages, attorney's fees and for such other and further relief as may be deemed equitable and just.

Respectfully Submitted,

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By: /s/ Michael Newell  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing pleading was served to all counsel of record via the Court's Mandatory Electronic Filing System, which caused all parties of record to be served by electronic means on this 5<sup>th</sup> day of March, 2019.

/s/ Michael Newell

**Michael Newell**