

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
MEDFORD DIVISION

**MICHAEL MOSS, et al,**

Civil No. 1:06-cv-3045-CL

Plaintiffs,

**CORRECTED NOTICE OF  
PENDENCY OF CLASS ACTION**

v.

**UNITED STATES SECRET SERVICE of  
the Department of Homeland Security, et al,**

Defendants.

**THIS NOTICE MAY AFFECT YOUR RIGHTS.  
PLEASE READ CAREFULLY.**

**TO:** ALL INDIVIDUALS WHO WERE PART OF THE GROUP ASSEMBLED ON THE SIDEWALK ADJACENT TO AND ACROSS THE STREET FROM THE JACKSONVILLE INN AT 175 EAST CALIFORNIA STREET IN JACKSONVILLE, OREGON, BETWEEN 3RD AND 4TH STREETS ON THE EVENING OF OCTOBER 14, 2004, AT OR ABOUT 7:45 PM, DURING THE VISIT BY THEN PRESIDENT GEORGE W. BUSH, AND WHO ALLEGE THAT THE POLICE ENCIRCLED MEMBERS OF THE GROUP EAST OF 5TH STREET AND RESTRAINED AND PREVENTED MEMBERS OF THE GROUP FROM LEAVING THE AREA

You may be a member of a class described above. If so, your rights may be affected by a lawsuit pending in this Court, Civil Action No. 1:06-cv-3045-CL. The purpose of this Notice is to inform you of:

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Page 1 – CORRECTED NOTICE OF PENDENCY OF CLASS ACTION  
*Moss v. United States Secret Service*, No. 1:06-cv-3045-CL

- The claims raised in the lawsuit and the status of the lawsuit; and
- Your rights and obligations as a result of this lawsuit and what steps you may take in relation to this class action litigation.

## **I. THE LITIGATION**

### **A. Claims and Defenses Raised in Lawsuit.**

Plaintiffs brought this lawsuit on behalf of themselves and others (the "Class") who were present at the campaign appearance of former President George W. Bush in Jacksonville, Oregon on October 14, 2004.

In their complaint, as subsequently amended, Plaintiffs alleged claims against the Secret Service, individual Secret Service Agents, state and local police officers, the City of Jacksonville, and Jackson County, Oregon, under the First, Fourth and Fifth Amendments to the United States Constitution, under the Oregon Constitution and Oregon common law, arising out of the decision to move the Class away from the Jacksonville Inn and from what plaintiffs claim was excessive force that was used to move the Class. After rulings by the trial court, the Court of Appeals for the Ninth Circuit, and the United States Supreme Court, only certain claims and certain Defendants remain in the case. The trial court has now ruled that certain of the remaining claims may proceed as a Class Action.

In the claims that remain for the Class, Plaintiffs assert claims for violation of their rights to be free from unreasonable seizure under the Fourth Amendment to the U.S. Constitution, and for false arrest in violation of Oregon law. Specifically, Plaintiffs allege that that the Class members were unlawfully moved and then unlawfully detained by police.

The remaining Defendants are:

- David Towe, Chief of Police of Jacksonville, Oregon;
- City of Jacksonville, a municipal corporation of the State of Oregon;
- Mike Winters, former Sheriff of Jackson County;

- Jackson County, a municipal corporation of the State of Oregon;
- John Does 2-20, that is, the commanding officers of other law enforcement agencies of public bodies participating in these actions, in their individual and official capacities, known to the identified Defendants, but unknown at this time to Plaintiffs; and
- Municipal Does, the public bodies employing defendants John Does 2-20.

**B. Class Action Ruling – CLAIMS FOR WHICH CLASS CERTIFIED**

The Court has ruled that the claims against Defendants for violation of the Class members' rights to be free from unreasonable seizure under the Fourth Amendment to the U.S. Constitution and for false arrest in violation of Oregon law may be maintained by those Plaintiffs appointed as Class Representatives on behalf of a Class consisting of similarly situated individuals. The Court certified the following Class:

ALL INDIVIDUALS WHO WERE PART OF THE GROUP ASSEMBLED ON THE SIDEWALK ADJACENT TO AND ACROSS THE STREET FROM THE JACKSONVILLE INN AT 175 EAST CALIFORNIA STREET IN JACKSONVILLE, OREGON, BETWEEN 3RD AND 4TH STREETS ON THE EVENING OF OCTOBER 14, 2004, AT OR ABOUT 7:45 PM, DURING THE VISIT BY THEN PRESIDENT GEORGE W. BUSH, AND WHO ALLEGE THAT THE POLICE ENCIRCLED MEMBERS OF THE GROUP EAST OF 5TH STREET AND RESTRAINED AND PREVENTED MEMBERS OF THE GROUP FROM LEAVING THE AREA.

The Court approved Lesley Adams and Michael Moss as Class Representatives, and approved Steven Wilker of the law firm of Tonkon Torp LLP and Arthur Spitzer of the American Civil Liberties Union of Our Nation's Capital as counsel for the class.

The ruling by the United States District Court for the District of Oregon certifying the Class against Defendants means that the final outcome of this lawsuit—whether favorable to Plaintiffs or to Defendants—will apply to all potential class members described in this Notice who do not timely elect to be excluded from the Class (see below).

A trial date for this case has not yet been set.

## II. OPTIONS OF CLASS MEMBERS

If you are a member of the certified Class described above, you have the option of remaining a member of the class or being excluded from the Class. Either choice will have consequences which you should understand before making your decision.

### A. Participation as a Class Member

If you want to remain a member of the Class, you do not need to do anything now. By remaining a member of the Class, any claims you may have against Defendants, for damages arising from Defendants' conduct as alleged by the Class Representatives will be determined in this case and cannot be presented in any other lawsuit.

### B. Exclusion from the Class Action

If you want to be excluded from this class action, you may do so by filing a timely request for exclusion. A request for exclusion form is included with this notice. You must return the completed request for exclusion form to the address below, by mail or other delivery method. If mailed, the mailing must be postmarked or received on or before December 31, 2015. If delivered by other method, the request for exclusion must be received on or before December 31, 2015. The request should be addressed to:

Steven M. Wilker  
Tonkon Torp LLP  
888 SW Fifth Avenue, Suite 1600  
Portland, OR 97204

If you submit a valid and timely request for exclusion, you will be excluded from the class. You will be free, if you wish, to pursue whatever legal rights you may have, if any, against Defendants at your own expense and on your own behalf. The statute of limitations in this case was suspended until the Court entered the order certifying the Class. If you wish to file a claim on your own behalf, you must do so before the statute of limitations expires. Counsel for the parties in this case believe that the deadline is January 6, 2016.<sup>1</sup> Nevertheless, you should

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<sup>1</sup> At the time this action was filed on July 6, 2006, there remained 100 days until October 14, 2006, the date two years after the events at issue and the presumptive date by which an action.

rely on the specific advice of your own attorney regarding the timeliness of any claim. Any claim filed after expiration of the limitations period may be barred by the statute of limitations.

### **III. RIGHTS AND OBLIGATIONS OF CLASS MEMBERS**

If you remain a member of the class action:

1. The Court-approved Class Representatives, Lesley Adams and Michael Moss, and Class Counsel, Steven Wilker and Arthur Spitzer, will act as your representatives and lawyers for the presentation of the allegations against Defendants. If you desire, you may also appear by your own attorney. You may also seek to intervene individually and may advise the Court if at any time you believe that you are not being fairly and adequately represented by the Class Representatives and by Class Counsel.

2. Your participation in any recovery which may be obtained from Defendants through trial or settlement will depend on the results of this lawsuit. Any settlement of the class claims must be approved by the court as fair and reasonable. If no recovery is obtained for the Class, you will be bound by that result also.

### **IV. FURTHER PROCEEDINGS**

As mentioned above, Defendants deny that their actions violated federal or state law. There will be additional pre-trial proceedings, which are likely to last at least several months, before a trial date will be set.

### **V. CLAIMS FOR WHICH CLASS NOT CERTIFIED**

In granting Plaintiffs' Motion for Class Certification in part, the Court also denied the Motion in part, declining to certify a class for purposes of Plaintiffs' claims alleging the use of excessive force in violation of the Fourth Amendment and for assault and battery under Oregon common law. If you were subjected to the use of excessive force in connection with the forced movement of the crowd on October 14, 2004, and you want to pursue a claim for injuries

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had to be filed under the statute of limitations, ORS 12.110(1). The 100th day after September 28, 2015 is January 6, 2016.



you sustained as a result of such excessive force, you will need to pursue such claims in an individual lawsuit. The statute of limitations for any such claims was suspended until the Court entered its Order denying in part the motion for class certification on September 28, 2015. If you wish to file a claim on your own behalf, you must do so before the statute of limitations expires. Counsel for the parties in this case believe that the deadline is January 6, 2016. Nevertheless, you should rely on the specific advice of your own attorney regarding the timeliness of any claim. Any claim filed after expiration of the limitations period may be barred by the statute of limitations. Defendants contend that a different ten year limitation, the "statute of ultimate repose" has already passed, so as to bar any new claim by an individual plaintiff. Plaintiffs disagree. The court has not decided this issue. Although any such individual claims cannot be pursued as part of the class action, you may contact the lawyer listed below to discuss possible representation for such an individual claim.

#### **VI. ADDITIONAL INFORMATION**

Any questions you have concerning the matters contained in this Notice (and any corrections or changes of name or address) should NOT be directed to the Court but should be directed to:

Steven M. Wilker  
Tonkon Torp LLP  
888 SW Fifth Avenue, Suite 1600  
Portland, OR 97205  
Telephone: 503-221-1440  
Email: [MossClassAction@tonkon.com](mailto:MossClassAction@tonkon.com)

You may, of course, seek the advice and guidance of your own attorney if you desire.

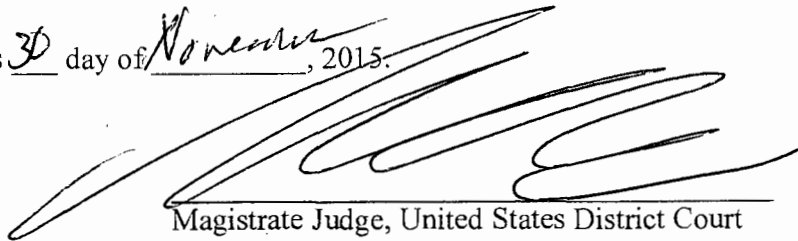
#### **VII. PLEADINGS AND OTHER RECORDS**

The pleadings and other records in this litigation may be examined and copied at any time during regular office hours at the office of the Clerk, United States District Court for the District of Oregon. You may also obtain these documents from Class Counsel at the address listed above.

**VIII. REMINDER AS TO TIME DEADLINE**

If you wish to be excluded from the class on whose behalf this action is being maintained, you must send your request for exclusion to Steven M. Wilker, Tonkon Torp LLP, 888 SW Fifth Avenue, Suite 1600, Portland, OR 97204, by mail or other delivery method. If mailed, the mailing must be postmarked or received on or before December 31, 2015. If delivered by other method, the request for exclusion must be received on or before December 31, 2015.

DATED this 30 day of November, 2015.



Magistrate Judge, United States District Court