

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
MEDFORD DIVISION

MICHAEL MOSS, et al,
Plaintiffs,

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

v.

**NOTICE OF PROPOSED
SETTLEMENT OF CLASS ACTION**

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

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION

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 (the "Class").

**IF YOU ARE A MEMBER OF THIS CLASS, PLEASE READ THIS NOTICE
CAREFULLY BECAUSE IT WILL AFFECT YOUR RIGHTS.**

A non-monetary settlement ("Settlement") has been proposed in the class action lawsuit referenced above pending in the United States District Court for the District of Oregon, Civil No. 1:06-cv-3045-CL ("Action"). If the Court gives final approval to the Settlement, the claims of the Class against Jackson County and former Sheriff Mike Winters (the "County Defendants") will be dismissed, with prejudice and without costs or attorney fees to either Plaintiffs or the County Defendants.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		
EXCLUDE YOURSELF	You may seek to exclude yourself from the Settlement. If you do, however, the County Defendants reserve all of their defenses against any claim you might pursue. Excluding yourself is the only option that allows you to ever bring or maintain your own lawsuit against the County Defendants regarding the allegations in the Action ever again.	Deadline: November 16, 2017

OBJECT	You may write to the Court about why you object to (<i>i.e.</i> , don't like) the Settlement and think it shouldn't be approved. Filing an objection does not exclude you from the Settlement.	Deadline: November 16, 2017
GO TO THE FAIRNESS HEARING	The Court will hold a "Fairness Hearing" to consider the Settlement. You are entitled to attend the Fairness Hearing whether or not you have filed an objection. If you have filed an objection, you may, but are not required to, speak at the Fairness Hearing about your objection to the Settlement. If you intend to speak at the Fairness Hearing, you must also include as part of your objection a "Notice of Intention to Appear" to the Court and the parties' attorneys indicating your intent to do so.	Hearing Date: December 14, 2017, at 3:00 pm
DO NOTHING	You will also give up your right to object to the Settlement and you will not be able to be part of any other lawsuit about the legal claims in this case.	N/A

1. Why did I get this notice?

You received this Notice because a Settlement has been reached in this Action. According to available records you may be a member of the Class. This Notice explains the nature of the Action, the general terms of the proposed Settlement, and your legal rights and obligations. To obtain more information about the Settlement, including information about how you can see a copy of the Settlement Agreement, see Section 13 below.

2. What is this lawsuit about?

The named plaintiffs brought this lawsuit on behalf of themselves and others who were present at the campaign appearance of former President George W. Bush in Jacksonville, Oregon on October 14, 2004. In their amended complaint, 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 remained in the case. The trial court then ruled that only certain of the remaining claims could proceed as a Class Action and certified the Class. The individual plaintiffs are the Representative Plaintiffs for the Class.

In the claims that remained for the Class, the 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, including the County

Defendants. The County Defendants deny that they violated the legal rights of the Class members.

3. Why is there a settlement?

Following nearly 10 years of litigation concerning the legal sufficiency of the claims and whether Plaintiffs could proceed as a Class, including review of some of the claims by the U.S. Supreme Court, in 2016, the remaining parties completed discovery, including taking the depositions of all remaining individual plaintiffs and defendants, county sheriff's office personnel, state police officers, and other witnesses to the events at issue. After completing discovery, Class Counsel and counsel for the County Defendants discussed and ultimately agreed to the terms of a non-monetary settlement of all claims of the Plaintiffs, including the Class claims, against the County Defendants. The Representative Plaintiffs who have pursued these claims for nearly 11 years have signed the Settlement Agreement.

The core of the Action concerned law enforcement officials' response to individuals and groups engaging in political speech activity. While Plaintiffs did seek awards of damages in pursuing this action, they also sought declaratory and injunctive relief, with the primary aim of changing the way police respond to individuals engaging in political protests. As set forth in the Settlement Agreement, the County Defendants have adopted a new policy regarding the County's handling of activity protected by the First Amendment. The County also has disbanded its Mobile Response Team ("MRT"). These changes and the new policy reduce the chance of future violations, or perceived violations, of individuals' First Amendment and Fourth Amendment rights, and related rights under the Oregon constitution and Oregon common law. The Settlement Agreement reflects the judgment of the Representative Plaintiffs and Class Counsel that continuing to pursue their claims against the County Defendants is no longer warranted given the changed circumstances, including the retirement of Sheriff Winters, the disbanding of the County MRT and the adoption of the County's revised First Amendment policy. Given the earlier rulings in the case by this Court, the court of appeals and the Supreme Court, along with the facts developed through discovery, the Representative Plaintiffs and Class Counsel believe that no further purpose would be served by continuing to litigate against the County Defendants.

4. How do I know if I am included in the Settlement?

The Court has decided that everyone who fits the following description is a Class member for purposes of the Class claims and proposed Settlement: 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.

5. Will the Class lawyers or Representatives receive any compensation under the Settlement?

No. Under the terms of the settlement, no payment will be made to any party. The Representative Plaintiffs will not receive any benefit under the Settlement that is different from any other Class member.

6. How will I be affected if the Court approves the Settlement?

If the Court approves the proposed Settlement, unless you exclude yourself from the Settlement, you will be releasing your claims against the County Defendants. This generally means that you will not be able to file a lawsuit, continue prosecuting a lawsuit, or be part of any other lawsuit against the County Defendants concerning the events of October 14, 2004 alleged in the Action.

7. How do I exclude myself from the Settlement?

You may exclude yourself from the Class and the Settlement. If you want to be excluded, you must send a letter or postcard stating: **(a)** the name and docket number of the Action: "Moss v. Secret Service, Civil No. 1:06-cv-3045-CL"; **(b)** your full name, address, and telephone number (email address optional); and **(c)** a statement that you do not wish to participate in the Settlement. The letter or postcard must be postmarked no later than November 16, 2017, and mailed to Class Counsel at:

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

If you timely request exclusion from the Class, you will be excluded from the Class, you will not be bound by the judgment entered in the Action, and you will not be precluded from prosecuting any timely, individual claim against the County Defendants based on the conduct complained of in the Action, on your own behalf or through an attorney of your choosing at your own expense.

8. How do I tell the Court that I do not like the Settlement?

At the date, time, and location stated in Section 11 below, the Court will hold a Fairness Hearing to determine if the Settlement is fair, reasonable, and adequate.

If you wish to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, you must submit a written objection no later than (*i.e.*, postmarked by) November 16, 2017 to Class Counsel at the address noted in section 7 above.

The written objections must state: **(a)** the name and docket number of the Action: "Moss v. Secret Service, Civil No. 1:06-cv-3045-CL"; **(b)** your full name, address, and telephone number (email address optional); **(c)** the words "Notice of Objection" or "Formal Objection"; **(d)** in clear and concise terms, the reasons for your objection and any legal and factual arguments supporting your objection; and **(e)** facts showing that you are a Class member.

The written objection must be signed and dated, and must include the following language immediately above your signature and date: "I declare under penalty of perjury under the laws of the United States of America that the foregoing statements regarding class membership are true and correct to the best of my knowledge."

You may, but need not, submit your objection through counsel of your choice. If you do make your objection through an attorney, you will be responsible for your personal attorney's fees and costs.

IF YOU DO NOT TIMELY MAKE YOUR OBJECTION, YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS AND WILL NOT BE ENTITLED TO SPEAK AT THE FAIRNESS HEARING.

If you submit a written objection, you may appear at the Fairness Hearing, either in person or through personal counsel hired at your expense, to object to the Settlement. You are not required, however, to appear. If you, or your attorney, intend to make an appearance at the Fairness Hearing, you must include on your timely and valid written objection a statement substantially similar to "Notice of Intention to Appear".

If you intend to appear at the Fairness Hearing through counsel, you must also identify the attorney(s) representing you who will appear at the Fairness Hearing and include the attorney(s) name, address, phone number, e-mail address, and the state bar(s) to which counsel is admitted. Also, if you intend to request the Court to allow you to call witnesses at the Fairness Hearing, such request must be made in your written objection, which must also contain a list of any such witnesses and a summary of each witness's expected testimony.

9. What is the difference between excluding myself from and objecting to the Settlement?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Settlement. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

10. What is the Fairness Hearing?

The Court has preliminarily approved the Settlement and will hold a hearing to decide whether to give final approval to the Settlement. The purpose of the Fairness Hearing will be for the Court to determine whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class.

11. When and where is the Fairness Hearing?

On December 14, 2017 at 3:00 PM, a hearing will be held on the fairness of the proposed Settlement. At the hearing, the Court will be available to hear any objections and arguments concerning the proposed Settlement's fairness. The hearing will take place before the Honorable Ann Aiken, United States District Judge for the District of Oregon at the James A. Redden United States Courthouse, 310 West Sixth Street, Medford, Oregon 97501-2710. The hearing

may be postponed to a different date or time or location without notice. If you have submitted an objection to the Settlement, Class Counsel will notify you of any change to the date, time or location of the hearing. If you do not object to the Settlement, but wish to be advised of any change in the date, time or location of the hearing, you must make a specific request for notice of any such change to Class Counsel at the address noted in section 7 above. If the date, time or location of the Fairness Hearing changes, you will not be informed of the change unless you have submitted an objection or made a specific request for notice. To facilitate timely notice, it is recommended that you provide Class Counsel with your email address.

12. May I speak at the Fairness Hearing?

At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the Settlement. You may attend, but you do not have to. As described above in Section 8, you may speak at the Fairness Hearing only if (a) you have timely served and filed an objection, and (b) you have timely and validly provided a Notice of Intention to Appear. If you have requested exclusion from the Settlement, however, you may not speak at the Fairness Hearing

13. How do I get more information?

To see a copy of the Settlement Agreement, the Court's Preliminary Approval Order and the operative complaint filed in the Action, please write to Class Counsel at the address listed in section 7 above, or by email to MossClassAction@tonkon.com.

This description of this Action is general and does not cover all of the issues and proceedings that have occurred. In order to see the complete file you should visit www.pacer.gov or the Clerk's office at James A. Redden United States Courthouse, 310 West Sixth Street, Medford, Oregon 97501-2710. The Clerk will tell you how to obtain the file for inspection and copying at your own expense.

**ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION MAY BE
ADDRESSED TO CLASS COUNSEL AT THE ADDRESS GIVEN ABOVE, OR AT
MossClassAction@tonkon.com**

**DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE
LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE.**

DATED: October 16, 2017.

/s/ Ann Aiken

Honorable Ann Aiken
United States District Judge