

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 (the "City Settlement Agreement") 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 the City of Jacksonville and Police Chief David Towe (the "City Defendants") will be dismissed, with prejudice and without costs or attorney fees to either Plaintiffs or the City Defendants.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>		
<b>EXCLUDE YOURSELF</b>	You may seek to exclude yourself from the Settlement. If you do, however, the City 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 City Defendants regarding the allegations in the Action ever again.	Deadline: July 20, 2018

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>		
<b>OBJECT</b>	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: July 20, 2018
<b>GO TO THE FAIRNESS HEARING</b>	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: August 20, 2018
<b>DO NOTHING</b>	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 City 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 City Defendants. The City 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 2014, the remaining parties completed discovery in 2016, 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 Jackson County and former Sheriff Mike Winters (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 County Defendants (the "County Settlement Agreement"). This Court approved the County Settlement Agreement following a fairness hearing on December 14, 2017, by order issued on January 8, 2018. Separately, class counsel and counsel for the City Defendants also agreed to settle the case as against the City Defendants on a walk-away basis with each side bearing its own fees and costs. The Representative Plaintiffs who have pursued these claims for more than 11 years have signed the Settlement Agreement with the City Defendants (the "City Settlement Agreement"), and the court has preliminarily approved of its terms.

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 approved County Settlement Agreement, the County Defendants adopted a new policy regarding the County's handling of activity protected by the First Amendment. The County also disbanded its Mobile Response Team ("MRT"). 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 City Defendants, litigation which would be difficult in light of the previous rulings. The City Settlement Agreement reflects the judgment of the Representative Plaintiffs and class counsel that continuing to pursue their claims against the City Defendants is no longer warranted given the changed circumstances.

### **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 City 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 City 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 July 20, 2018, 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 City 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 City Settlement Agreement or the proposed Settlement, you must submit a written objection no later than (*i.e.*, postmarked by) July 20, 2018 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 August 20, 2018 at 4:00 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 of the U.S. District Court 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

