

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
EASTERN DIVISION**

**GARY COVINGTON, on behalf of  
himself and all others similarly situated**

**PLAINTIFF**

**v.**

**No. 2:12-cv-123-DPM**

**ULESS WALLACE, HERMAN HALL, and  
NEAL BYRD, all in their official capacities**

**DEFENDANTS**

**ORDER**

1. The parties' jointly proposed changes to the draft notice, *see attached*, are fine. The Court applauds the overall improvements in clarity. We still need to fill in the blanks and craft an exclusion form. The Court also needs to decide the particulars of notice. Joint report covering all this ground due by 23 January 2015.

2. The Court didn't intend to set a deadline for an interim fee petition. Covington can file one whenever he chooses. His motions to extend time, *No 145 & 146*, are denied without prejudice as moot.

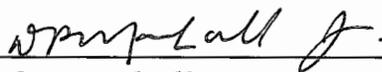
3. The liability issues are set for trial the week of 9 March 2015. Any trial in the related excessive-force case will go first, then this case. The City Defendants' objection to bifurcating liability and damages is overruled. Bifurcation makes good sense. FED. R. CIV. P. 42(b). Pretrial disclosure sheets,

motions in limine, proposed jury instructions, and all other pretrial filings are due by 6 February 2015.

\* \* \*

Motions, *No 145 & 146*, denied without prejudice as moot.

So Ordered.

  
\_\_\_\_\_  
D.P. Marshall Jr.  
United States District Judge

  
\_\_\_\_\_  
7 January 2015

## NOTICE TO COVINGTON CLASS MEMBERS

Field Code Changed

To: All pretrial detainees at the Phillips County Jail who were denied a prompt first appearance ~~in the three years before this case was filed~~ since on 22 June 2009<sup>12</sup>.

You may be eligible for compensation.

### 1. Class Action Claims

Your rights may be affected by this Class Action. Gary Covington has brought this lawsuit against Phillips County and the City of Helena-West Helena. He alleges that the County and the City failed to provide a prompt first appearance in court (within 72 hours of arrest) to pretrial detainees at the County jail. Covington claims the City and the County violated the U.S. Constitution. He seeks damages for himself and others who were allegedly denied a prompt first appearance. The Court has held Phillips County liable for its violation of the Constitution, and will set the matter for a trial on damages owed. The City denies that it violated the Constitution and denies any liability to Covington and other pretrial detainees. The Court will hold a trial to resolve the City's potential liability.

### 2. Location of Lawsuit

This Class Action is pending in the United States District Court for the Eastern District of Arkansas. The purpose of this Notice is to tell you about the Class claim described in paragraph 1. This Notice is sent for the sole purpose of informing you that this case is pending—so you can decide whether to participate in this case or not.

### 3. Attorney Fees & Costs

If Covington wins, then the Court will be asked to approve payment of litigation expenses and attorney fees to the Class Attorney. Expenses and fees may be deducted from the total amount of recovery or they may be awarded separately by the Court. No other fees or costs will be charged to Class members. If the City wins, you will not be responsible for paying any costs or attorney's fees. Importantly, the City and the County have assured the Court there will be no retaliation.

#### **4. Class Representatives & Class Attorney**

The Court has approved Gary Covington as Class Representative. The Court has also approved a Class Attorney. He is

Luther Sutter  
SUTTER & GILLHAM, P.L.L.C.  
Attorneys at Law  
Post Office Box 2012  
Benton, Arkansas 72018  
(501) 315-1910

If you decide to remain a member of the Class and wish to communicate with the Class Attorney, you may do so by writing to him.

#### **5. Election by Class Members: Opt Out or Remain in the Class**

If you are a member of the Covington Class, as described in paragraph 1, you must choose whether to remain a member of this Class Action and have the Class Representative and Class Attorney identified in paragraph 4 represent you. Your decision will have important consequences.

A. If you come within the class of persons described in paragraph 1, you will automatically become a Covington Class Member unless you ask to be excluded from the Class in the manner indicated below. If you want to be a Class Member, you are not required to do anything at this time. By remaining a Class Member, any claims you have against the County or the City for damages will be decided in this case and cannot be presented in any other lawsuit. As a member of the Covington Class, you will be bound by any result obtained by the Class Representative, whether favorable or unfavorable.

B. If you choose to be excluded from the Covington Class, you must mail a written request to \_\_\_\_\_ postmarked on or before \_\_\_\_\_. By making this election to be excluded: You will not be bound by any decision in this lawsuit; you may present any claims you have against the County or the City by filing your own lawsuit; or you may seek to intervene in this lawsuit through your own counsel.

#### **6. Rights and Obligations of Class Members**

If you remain a member of this Class:

A. Gary Covington will act as your Class Representative and Luther Sutter of Sutter & Gillham, P.L.L.C. will act as your Class Attorney for the presentation of the claims against the City and the County. If you desire, you may appear at any proceeding in person or by an attorney you have selected. You

Draft Notice  
17 December 2014

may also seek to intervene individually and may advise the Court if at any time you consider that you are not being fairly and adequately represented by the Class Representative or Class Attorney.

B. Your participation in any recovery that may be obtained from the County or the City through trial or settlement will depend on the results of the lawsuit. If no recovery is obtained for the Class, you will be bound by that result too.

C. You will be entitled to notice and an opportunity to be heard regarding any proposed settlement or dismissal of the Class claims. For this reason, and to participate in any recovery, you are requested to notify \_\_\_\_\_ of your full name and current address.

## 7. Further Proceedings

Pretrial and trial proceedings remain to be done in this case. You may communicate with the Class Attorney if you have evidence you believe would be helpful to the establishment of the Covington Class claims, and you may be asked by the parties to provide information relevant to the case.

## 8. Contact Information

Any questions you have concerning the matters contained in this Notice should not be directed to the Court. They should be directed in writing to \_\_\_\_\_. You may write to the Claims Administrator at \_\_\_\_\_. Additionally, you may learn more about the Class Action online at \_\_\_\_\_ or by calling ~~1-501-315-1910888-287-1637~~. The pleadings and other records in this case may be examined and copied at any time during regular office hours at the office of the Clerk of the United States District Court, 600 West Capitol Avenue, Little Rock, Arkansas.

## 9. Reminder as to Time Limit

If you wish to be excluded from the Covington Class described in paragraph 1, return the completed Exclusion Form to \_\_\_\_\_, by mail postmarked on or before \_\_\_\_\_. [Form Missing]