

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

PAUL DARROUGH, on behalf of himself
and all others similarly situated

PLAINTIFF

v.

No. 4:18CV00113 JLH

MARK GOBER, individually and in his
official capacity; and JOHN DOES 1-10

DEFENDANTS

OPINION AND ORDER

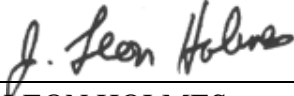
Paul Darrough brings this action against Mark Gober, individually and in his official capacity as Sheriff of Drew County, Arkansas. Darrough alleges that he was arrested without probable cause, beaten, and denied a prompt first appearance. He asserts claims for excessive force and violation of his rights to due process. He also seeks to represent a class of persons who, within three years prior to the commencement of this action, were denied a first appearance by Gober and who have been incarcerated in the Drew County jail. He has now filed a motion for class certification.

Federal Rule of Civil Procedure 23(a) provides that a person may sue on behalf of a class if the class is so numerous that joinder of all members is impracticable, there are questions of law or fact common to the class, the claims or defenses of the representative parties are typical of the claims or defenses of the class, and the representative parties will fairly and adequately protect the interests of the class.

In response to the motion for class certification, Gober has submitted the uncontested affidavit of Susan Potts, along with records of Darrough's arrest and first appearance. Pursuant to a bench warrant, Darrough was arrested on May 10, 2017, at 12:30 p.m. He appeared before a judge for his first appearance on May 12, 2017. Thus, he was provided a timely first appearance. *Cf. Hayes v. Faulkner County, Ark.*, 388 F.3d 669 (8th Cir. 2004), and Ark. R. Crim. P. 8.1.

Based upon the facts in the Potts' affidavit, Darrough is not a member of the class that he seeks to represent and his claims are, therefore, not typical of the class. *In Re Milk Products Litigation*, 195 F.3d 430, 436 (8th Cir. 1998). Nor can he adequately represent the class. *Id.* The motion for class certification is therefore DENIED. Document #10.

IT IS SO ORDERED this 1st day of June, 2018.



J. LEON HOLMES
UNITED STATES DISTRICT JUDGE