

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02197-RPM  
(Consolidated with 10-cv-00629-RPM)  
NATHAN ACKS;  
TIFFANY BRAY;  
CHASE GOLL;  
ELI HARDY;  
AMINAH MASUD;  
IAN MORRISON;  
BLAKE PENDERGRASS;  
KIM SIDWELL; and  
JACOB STERNBERG

Plaintiffs,

v.

CITY AND COUNTY OF DENVER;  
DEBORAH DILLEY, a Commander with the Denver Police Department, in her individual capacity;  
ANTHONY FOSTER, a Sergeant with the Denver Police Department, in his individual capacity; and  
WILLIAM LOVINGIER, Undersheriff with the Denver Police Department, in his individual capacity;

Defendants.

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NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION AND HEARING

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TO: All members of the class certified in the Civil Action known as Acks, et al. v. City and County of Denver, et al., CA No. 09-cv-02197-RPM (D. Colo. Sep. 15, 2009).

**You are hereby notified that a hearing has been scheduled for October 12, 2011, at 10:00 a.m. before the Honorable Judge Richard P. Matsch of the United States District Court for the District of Colorado, in Courtroom A of the Byron White Courthouse, 1823 Stout St., Denver, CO 80257, for consideration of a proposed settlement of the claim which has been brought on your behalf in this action.**

This Notice is not to be understood as an expression of any opinion by the Court as to the merits of any claims or defenses asserted by any party in this litigation. It is sent for the sole purpose of informing you of the pendency of this litigation and the terms of the proposed settlement described herein, so that you may make appropriate decisions with respect thereto.

### **I. BACKGROUND OF SUIT**

A lawsuit was filed in the District Court of the City and County of Denver, Colorado on August 19, 2009 by Nathan Acks, Tiffany Bray, Chase Goll, Eli Hardy, Aminah Masud, Ian Morrison, Blake Pendergrass, and Kim Sidwell (the "Plaintiffs"), and removed to the United States District Court for the District of Colorado on September 15, 2009. The Plaintiffs' lawsuit arose from the arrest of 93 individuals who participated in a protest march on August 25, 2008, in Denver, Colorado during the Democratic National Convention ("DNC"). Thereafter, each of the 93 arrestees was held at an arrest processing site until posting bail or pending a bond hearing.

One claim in the lawsuit, filed on behalf of plaintiffs and the class they represent challenged the legality of decisions pertaining to consultations with attorneys at the arrest processing site. This claim sought (1) a declaration that Defendant had violated Colorado law, C.R.S. § 16-3-404, Duty of Officers to Admit Attorney; and (2) statutory penalties of between \$100 to \$1,000 per Plaintiff under that section. The class included all individuals arrested on the evening of August 25, 2008 at approximately 15<sup>th</sup> Street between Court Street and Cleveland Place and held at the arrest processing site.

On August 26, 2010, Judge Richard P. Matsch of the United States District Court for the District of Colorado certified the class, making you a member and allowing the court to adjudicate the C.R.S. § 16-3-404 claims of all members. As such, you are affected by the proposed settlement.

On May 9, 2011, however, Judge Matsch **dismissed the class's claim.** The Court **concluded,** that the class claim had no legal merit because C.R.S. § 16-1-102 states that all subsections of Title 16 of the Colorado Revised Statutes, including § 16-3-404, **do not apply** to “violations of municipal ordinances.” Because all class members were arrested for “violations of municipal ordinances,” the Court concluded that the protections of § 16-3-404 do not apply to class members’ arrests. **After the Court’s May 9, 2011 Order, the only way for a class member to proceed with the class claim would be to appeal the Court’s decision and find some legal reason for an appellate court to conclude that it was incorrect.**

## **II. PROPOSED SETTLEMENT OF SUIT**

**You are hereby further notified that (1) a settlement of the entire lawsuit has been proposed by the class representatives’ attorneys and attorneys for Defendant Lovingier and the City and County of Denver; (2) the proposed settlement has been submitted to the Court for its approval; (3) if this settlement is approved by the Court, you will obtain only the relief provided in the settlement and you will have no further claim against Defendants Lovingier and the City and County of Denver for allegedly failing to provide you with access to counsel at the arrest processing site on August 25, 2008; and (4) as a class member you have the right to object to the proposed settlement by following the procedure outlined below.**

The settlement primarily addresses the remaining, non-class claims of named plaintiffs Acks, Bray, Goll, Hardy, Masud, Morrison, Pendergrass and Sidwell, which were not dismissed by the court and remain active in the Tenth Circuit Court of Appeals. However, the settlement also releases the class’s right to appeal the C.R.S. § 16-3-404 claim. In return for this release, Defendants have agreed to monetary consideration of \$20 per absent class member and the

Denver Sheriff Department (DSD) has agreed to revise its existing policies to provide that “If a temporary processing facility is to be used by DSD, that facility and its physical capabilities and available DSD resources and personnel will be analyzed to determine if attorney visits are feasible at the facility.” Because the Court has already dismissed the class claim as lacking legal merit, Defendants have not agreed to any further compensation to the class in return for release of the right to appeal or otherwise pursue the dismissed class claim.

### **III. HEARING REGARDING PROPOSED SETTLEMENT AND PROCEDURE FOR OBJECTING TO PROPOSED SETTLEMENT**

At the hearing, any member of the certified class may appear and object to the proposed settlement and to the dismissal with prejudice of each of the claims asserted or which could have been asserted therein against the City and County of Denver. **However, no such person shall be heard at the hearing and no papers or briefs shall be considered, unless the procedure set forth in herein has been followed. You should read the following procedure carefully.** Class members who do not make objections in the manner provided shall be deemed to waive such objections.

If you are satisfied with the proposed settlement, you do not need to take any further action, and you do not need to appear at the hearing. If you object to the proposed settlement, you should take the following steps:

1. On or before September 30, 2011, mail the following to the Clerk of the United States District Court for the District of Colorado, 1929 Stout St., Denver, CO 80294; to John A. Culver at Benezra & Culver, P.C., 274 Union Blvd., #220, Lakewood, CO 80228; and to Thomas S. Rice and Gillian M. Fahlsing at Senter Goldfarb & Rice, L.L.C., 1700 Broadway, Suite 1700, Denver, CO 80290: (a) a written statement advising if you plan to address the Court at the settlement hearing; (b) a written statement of your objections; and (c) any other papers which you propose to submit to the Court, including any legal briefs or memoranda.

You may appear personally or enter an appearance through your own counsel.

2. If you take the first step above, you will have the right to address the Court personally or through your own counsel at the hearing on October 12, 2011, before the Honorable Richard P. Matsch, Judge of the United States District Court for the District of Colorado, in Courtroom A of the Byron White Courthouse, 1823 Stout St., Denver, CO 80257.

If you believe that the relief provided to you for the dismissed class claim under the terms of the proposed settlement is inadequate, you must object in this manner. If you do not follow these procedures, you will be presumed to agree with the proposed settlement and you will be forever barred from bringing any further claim against the City and County of Denver regarding the events of August 25, 2008 which was asserted or could have been asserted in this action.

If you have any questions concerning the proposed settlement or this Notice, you may contact John A. Culver of Benezra & Culver, P.C., 274 Union Blvd., #220, Lakewood, CO 80228, (303) 716-0254.

Dated this 27<sup>th</sup> day of July, 2011.

**BY THE COURT:**

**s/Richard P. Matsch**

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Richard P. Matsch, Senior District Court Judge