

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

*Nathan Tyler, et al. v. Suffolk County, et al., Civil Action No. 06-11354-RBC*

**NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT**

*A Federal Court authorized this notice. This is not from a lawyer.*

**If you were held in Building 4 at the Suffolk County House of Correction (South Bay) any time from August 3, 2003, to February 7, 2008, you could get a payment from a class action settlement.**

- Your legal rights will be affected whether or not you do anything in response to this notice. Please read this complete notice carefully.
- If you were held in Building 4 at South Bay between the above dates, you are eligible to participate in the settlement of a class action lawsuit. To participate in the settlement, send a completed Settlement Claim Form, **mailed by September 9, 2010**, to:

Tyler Claims Administrator  
P.O. Box 2007  
Chanhassen, MN 55317-2007

- If you submit a Claim Form and it is approved, you will share in this settlement after deducting attorneys' fees, and the costs and expenses for this case.
- Your payment will be based on the number of days you were held in Building 4 during the class period. For each day you were held, you will get a certain amount of money.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>SUBMIT A CLAIM FORM</b>	You get a payment based on the number of days you were held in Building 4 during the class period (August 3, 2003 - February 7, 2008). Send your completed Claim Form by <b>September 9, 2010</b> .
<b>EXCLUDE YOURSELF</b>	You get <b>no</b> payment. You can file your own lawsuit against Suffolk County for the claims raised in this case. Exclude yourself by <b>September 9, 2010</b> .
<b>OBJECT</b>	Submit a completed Claim Form. Write to the Claims Administrator by September 9, 2010, explaining why you believe the settlement is unfair. Appear in Court at the Fairness Hearing on <b>October 20, 2010</b> .
<b>DO NOTHING</b>	You get <b>no</b> payment. You give up your right to sue for the claims raised in this case.

**BASIC INFORMATION**

**What is this case about?**

The lawsuit challenges the conditions in Building 4 of the Suffolk County House of Correction between August 3, 2003, and February 7, 2008. During this period, inmates were housed in cells without toilets or sinks and had to seek permission from correctional staff to use the bathroom during lock-in periods. The lawsuit alleges that as a result of this system of bathroom access, inmates were forced to urinate and occasionally defecate in containers in their cells. The period covered by the lawsuit ends on the date a new system was installed throughout Building 4 that allows up to a certain number of inmates at a time to release themselves to go to the bathroom.

Plaintiffs Daniel O'Neil and Michael Davis are the class representatives. They are former inmates who were held in Building 4 for some time between August 3, 2003, and February 7, 2008. Plaintiffs O'Neil and Davis brought this case on behalf of themselves and others who were held in Building 4 during the class period. The class period runs from August 3, 2003, to February 7, 2008. The case sought money damages for people who were held in Building 4 during this period.

The Defendants are Suffolk County Sheriff Andrea Cabral and Suffolk County House of Correction Superintendent Gerard Horgan. Defendants deny any wrongdoing or unlawful conduct and deny that the conditions of confinement in Building 4 violated inmates' rights.

**Questions? visit [www.SouthBayClassAction.com](http://www.SouthBayClassAction.com) or call 1-866-233-5640**

## **THE SETTLEMENT BENEFITS – WHAT YOU GET AND HOW TO GET IT**

### **How much will my payment be?**

We do not know the amount of the payments yet. We estimate that each class member will receive at least \$5, and a small group of men who were in Building 4 for the longest time may receive up to \$3,500. The payment you receive will depend on the number of days you were in Building 4 between August 3, 2003, and February 7, 2008. **For each day you were in Building 4 between those dates, you will receive a certain amount of money.**

The total number of days you were in Building 4 during the class period was calculated using records from the Suffolk County House of Correction. If you were held for a part of a day, this counts as a full day.

**The amount you receive per day will depend on how many people return Claim Forms.** Unclaimed settlement money will be distributed among the class members who returned Claim Forms. We estimate that class members who submit claim forms will get at least \$5 for each day. Nobody will receive more than \$3,500 total.

Defendants agreed to pay \$1.5 million to settle this lawsuit. The money will be distributed after payment of attorneys' fees, expenses, and bonus payments. Plaintiffs' attorneys will request that one-third of the settlement fund, which is \$500,000, go to payment of expenses and attorneys' fees. The attorneys have requested a bonus payment of \$20,000 to the two class representatives and \$5,000 to the five class members who testified as witnesses at a deposition.

### **When will I get my payment?**

Checks will not be sent until the settlement is approved by the Court and any appeals are over. Even then, it could be a long time until payment is made. The Commonwealth of Massachusetts, which is paying the settlement for the Defendants, controls when the settlement checks are sent. Because of the poor economy, this may be a long process. You cannot get an advance payment.

### **How can I get a payment?**

Fill out the Claim Form and mail it to the Claims Administrator. A Claim Form is included with this notice and can also be downloaded at [www.SouthBayClassAction.com](http://www.SouthBayClassAction.com). **Mail your Claim Form by September 9, 2010 or your claim will be denied. You must complete the entire double-sided Claim Form and include your Social Security Number and signature.**

The settlement check will be written to your name and Social Security Number, and sent to your mailing address. If you move, you must write to the Claims Administrator with your new address or the check will be sent to your old address.

### **Why could I get less money than other people?**

The amount of money you receive is based on the number of days you were in Building 4 during the class period. For each day you were in, you will receive a certain amount of money. We estimate that you will receive at least \$5 a day. If you were in Building 4 for a short time, you will not receive as much money as someone who was in for a longer time.

### **If I owe child support or taxes or other debts, will I have to pay them?**

Yes. Before you get paid, outstanding child support and IRS/DOR tax liens, as well as other debts you owe to the Commonwealth of Massachusetts, may be taken from your share of the settlement. The money will be applied to your lien or debt, and will reduce the amount you owe. As a result, you will receive a smaller payment from this settlement, and in some cases you will not receive any payment from this settlement.

### **Will I have to pay taxes on my payment?**

You may have to pay taxes on your payment. You may have to pay taxes even if some or all of the money goes to pay child support, taxes, or other debts. You should consult your tax preparer when you file your tax returns. The Commonwealth of Massachusetts will send you a 1099 Form. (If you have questions about backup withholding, Form W-9 or Form 1099, call your tax preparer or IRS Information Reporting Program Customer Service, toll free at 866-455-7438, 8:30 a.m. to 4:30 p.m., Monday through Friday.)

### **What claims will be released by this settlement?**

This settlement resolves all claims concerning bathroom access for men housed in Building 4 from August 3, 2003, to February 7, 2008. If you were housed in Building 4 during this time, you cannot later sue Suffolk County over this issue, unless you exclude yourself from this lawsuit, also called "opting-out."

### **Why does the Claim Form ask for the name of someone who will know how to contact me?**

The Claim Form asks for the name and contact information of someone who will always know how to reach you to try to ensure that you receive any money you are owed from the settlement. If you move after submitting a Claim Form, you must send the Claims Administrator your new address.

## WHO IS IN THE SETTLEMENT

### **What is a class action and who are class members?**

In a class action, one or more people, called Class Representatives (in this case, Daniel O’Neil and Michael Davis), sue on behalf of all people who have similar claims. All of the people who had similar experiences are known as Class Members; together they are called the Class. One court resolves legal claims for all Class Members.

### **How do I know if I am a Class Member and part of the Settlement?**

You are a Class Member if you were held in Building 4 at Suffolk County House of Correction at any time between August 3, 2003, and February 7, 2008.

### **What if I was held in Building 4 before August 3, 2003?**

The class period starts August 3, 2003. In Massachusetts, a case must be filed within a certain time period; this is called the statute of limitations. The law allows a person to bring a claim within three years after his or her rights were violated. This case was filed on August 3, 2006, so the class period begins three years before that date, or August 3, 2003. If the only time you were in Building 4 was before August 3, 2003, it may be too late to bring a lawsuit. If you were in Building 4 both before and during the class period, then any time you were in before August 3, 2003, is not part of this lawsuit and will not be included in calculating your share of the settlement.

### **What if I was held in Building 4 after February 7, 2008?**

The class period ends on February 7, 2008, the date when Suffolk County began using the Cell Push Button System to improve bathroom access in all units in Building 4. If the only time you were in Building 4 is after this date, you are not part of this lawsuit. If you were in Building 4 both during and after the class period, then any time you were in after February 7, 2008, is not part of this lawsuit and will not be included in calculating your share of the settlement.

### **What if I am still unsure about whether I am part of the Settlement?**

If you are still unsure whether you are a member of the class – perhaps because you do not remember when you were housed in Building 4 – you may fill out and return a Claim Form. You will receive a notification from the Claims Administrator approving or denying your claim.

### **What if I am currently incarcerated? Where will you send my payment?**

The Commonwealth of Massachusetts will send your check to the address you indicate on your Claim Form, including jails and prisons. We suggest that you provide an outside address if possible.

### **How do I submit a Claim Form for a deceased Class Member?**

In **Step One** of the Claim Form, put the class member’s name and your contact information. In **Step Three**, sign your own name and write your relationship to the class member. **You must provide documentation that an estate has been established in accordance with the law and that you are the duly appointed administrator or executor, including a W-9 form.** You may speak to an attorney or probate court for more information on this process.

### **Who makes the final decision about who qualifies as a Class Member?**

The Claims Administrator will use the computerized booking records kept by the Suffolk County Sheriff’s Department to determine whether you are a class member. If the records do not show that you were in Building 4 during the class period, your claim will be denied. You can appeal by sending the Claims Administrator documentation and information regarding the dates you believe you were held in Building 4. A decision of the Claims Administrator can be appealed to the judge.

### **How did the lawyers in this case find me and how can I protect my privacy?**

On admission into the House of Correction, you gave your name and address. This information was given to the lawyers in this case. They will do everything they can to protect your privacy. The Commonwealth of Massachusetts will use this information to process the claims. Only the lawyers, the Claims Administrator, and the Commonwealth will know your name.

### **What should I do if I do not want to participate?**

If you do not want to participate, you can either exclude yourself or do nothing. If you do nothing, you will not be a Class Member and you will **not** receive a payment. You will be barred from filing a case on these claims in the future.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

### **If I exclude myself, can I get money from this settlement?**

No. You will not be legally bound by the settlement, so you can bring your own lawsuit. The lawyers in this case will **not** represent you. If you exclude yourself, do not send in a Claim Form and do not object to the settlement.

Questions? visit [www.SouthBayClassAction.com](http://www.SouthBayClassAction.com) or call 1-866-233-5640

### **How do I get out of this settlement?**

To exclude yourself from the settlement, you must mail a letter saying that you want to be excluded from *Tyler v. Suffolk County, et al., 06-11354*. Be sure to include your name, address, telephone number, and sign the letter. You must mail your exclusion request by **September 9, 2010** to the Claims Administrator at Tyler Claims Administrator, P.O. Box 2007, Chanhassen, MN 55317-2007. The Claims Administrator will file your notice with the court and send copies to the lawyers. You cannot exclude yourself by phone or e-mail.

### **If I do not exclude myself, can I sue Suffolk County for the same thing later?**

No. Unless you exclude yourself, you give up the right to sue Suffolk County for the claims that this settlement resolves.

## **OBJECTING TO THE SETTLEMENT**

### **What if I think the proposed settlement is not fair?**

If you object to the proposed settlement, you or a lawyer on your behalf must state your objections to the Court in a letter sent to the Claims Administrator, by September 9, 2010, and appear at the Fairness Hearing on October 20, 2010 to present your objections. If you wish to claim money, you must submit a valid Claim Form by the September 9, 2010 deadline even if you object to the settlement.

## **THE COURT'S FAIRNESS HEARING**

### **What is a Fairness Hearing?**

The Court will hold a hearing to decide whether to approve the settlement. The Court will consider whether the settlement is fair, reasonable and adequate. The Court will decide whether to approve the request for attorneys' fees, expenses, and the bonuses to class representatives and to class members who had their depositions taken.

### **When and where is the hearing?**

The hearing will be at 11:00 a.m. on October 20, 2010 in Courtroom 23 at the U.S. District Court of Massachusetts, 1 Courthouse Way, Suite 2300, Boston, MA 02210.

### **Do I have to come to the hearing? May I or my lawyer speak at the hearing?**

You do not have to go to the hearing unless you object to the settlement. The lawyers for the Plaintiffs will answer all the Court's questions. If you want to explain an objection to the Court, you must attend the hearing or hire a lawyer to attend for you.

## **THE LAWYERS IN THIS CASE**

### **Who are the lawyers in this case?**

The lawyers for the Plaintiffs and the class are Howard Friedman and David Milton, Law Offices of Howard Friedman P.C., 90 Canal Street, 5th Floor, Boston, MA 02114. Defendants Suffolk County, Sheriff Andrea Cabral, and Superintendent Gerard Horgan are represented by Ellen M. Caulo, Kathleen M. Cawley, and Allen Forbes, Suffolk County Sheriff's Department, 200 Nashua Street, Boston, MA 02114.

### **How will the lawyers be paid?**

The lawyers will ask the Court to set aside one-third of the total \$1.5 million settlement amount, or \$500,000, for payment of expenses *and* attorneys' fees. The expenses include costs incurred during the lawsuit as well as expenses related to settlement including paying the Claims Administrator. After Plaintiffs' attorneys are reimbursed for these expenses, the remainder of the \$500,000 will go toward attorney's fees. Plaintiffs' lawyers fees will therefore be an amount less than one-third of the total settlement amount.

## **OTHER INFORMATION**

If you wish to view the Court file or a copy of the proposed settlement agreement, you may go to the Clerk of the U.S. District Court of Massachusetts, 1 Courthouse Way, Suite 2300, Boston, MA 02210 during business hours. You can also view case documents at [www.SouthBayClassAction.com](http://www.SouthBayClassAction.com).

To obtain more information, write to the Claims Administrator at Tyler Claims Administrator, P.O. Box 2007, Chanhassen, MN 55317-2007; call toll-free 1-866-233-5640; or visit [www.SouthBayClassAction.com](http://www.SouthBayClassAction.com).

**IMPORTANT:** Please do not call the Court or the attorneys directly with questions about this lawsuit or the settlement. All questions regarding this lawsuit or the settlement should be addressed to the Claims Administrator.