

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BUTLER v. SUFFOLK COUNTY

11-cv-02602 (JS) (GRB)

NOTICE OF PENDENCY OF CLASS ACTION

To: All persons who are or were detainees or inmates in the custody of the Suffolk County Sheriff's Department and housed in the Suffolk County Correctional Facilities ("SCCF") and who were or will be released from SCCF on or after April 5, 2009 (the "Class Period"), and who were damaged thereby (the "Class"), with subclasses for those persons detained in the Riverhead and Yaphank facilities, except for those persons who were or have been housed exclusively in the facility that opened in Yaphank in 2013.

A federal court has authorized this notice. This is not a solicitation from a lawyer.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.
YOUR RIGHTS WILL BE AFFECTED BY A CLASS ACTION LAWSUIT
PENDING IN THIS COURT.

This Notice is being sent pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Eastern District of New York (the "Court") to inform you: (i) of a class action lawsuit that is now pending in the Court under the above caption (the "Action") against Suffolk County (the "Defendant"), and (ii) that the Action has been certified by the Court to proceed as a class action on behalf of the Class.

1. The "Class," as certified by the Court, consists of:

All persons who are or, at any time since April 5, 2009, have been detained and housed in the SCCF.

Excluded from the Class by definition are:

(a) Defendants, (b) the legal representatives, heirs, successors and assigns of any such excluded party, and (c) all persons who were or have been housed exclusively in the facility that opened in Yaphank in 2013.

2. This Notice is directed to you because you may be a member of the Class. If you are a member of the Class, your rights will be affected by this Action. If you do not meet the Class definition, this Notice does not apply to you. If you are uncertain whether you are a member of the Class, contact Class Counsel listed in paragraph 21 below, or your own attorney.

3. This Notice is not an admission by Defendant or an expression of any opinion of the Court concerning the merits of the Action, or a finding by the Court that the claims asserted by the class representatives (named in paragraph 12 below) in this case are valid. This Notice is intended solely to advise you of the pendency of the Action and of your rights in connection with it. There is no settlement or monetary recovery at this time.
4. The Class definition may be subject to change by the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure.

OVERVIEW AND STATUS OF THIS ACTION

5. The SCCF, which include the Riverhead and Yaphank facilities, constitute a jail system in Suffolk County, New York. The Suffolk County Sheriff's Office implements policies at SCCF, including those governing living and housing conditions, grievance procedures, and access to medical and other program services.
6. On May 27, 2011, Plaintiff Rickey Lynch and nineteen others confined in SCCF at Riverhead brought this action *pro se* (advocating on their own behalf, without the representation of a lawyer) against Suffolk County, as well as against the Sheriff of Suffolk County Vincent DeMarco, and undersheriffs Joseph T. Caracappa and John P. Meyerricks (the "Individual Defendants"). The action claimed damages resulting from the allegedly unconstitutional conditions in the jail and requested injunctive relief to improve the conditions at Riverhead. The conditions alleged included ongoing exposure to human waste, mold, rust, vermin, freezing temperatures, and inadequate access to clean drinking water.
7. On November 22, 2011, the Court determined that the appointment of *pro bono* (professional work undertaken voluntarily and without payment) counsel was appropriate and directed the Court's *Pro Se* Office to find counsel willing to represent the Plaintiffs in the Lynch action on a *pro bono* basis.
8. On January 23, 2012, attorneys from Shearman & Sterling LLP were appointed as Plaintiffs' *pro bono* counsel.
9. Of-counsel in this case is the New York Civil Liberties Union ("NYCLU"), which is a non-profit membership organization founded in 1951 as the New York State affiliate of the American Civil Liberties Union.
10. On April 5, 2012, Shearman & Sterling LLP filed the Consolidated Amended Class Action Complaint and sought to represent the interests of all 163 plaintiffs who had filed *pro se* complaints, as well as similarly situated persons, by proceeding as a class action. The Consolidated Amended Complaint asserted four claims:

- i. a claim on behalf of the pretrial detainees in SCCF for violation of the Constitution's prohibition of cruel and inhuman treatment under the Fourteenth Amendment;
 - ii. a claim on behalf of all sentenced prisoners in SCCF for violation of the Constitution's prohibition of cruel and inhuman treatment under the Eighth Amendment;
 - iii. a claim on behalf of the pretrial detainees in SCCF for violation of the New York Constitution's due process clause; and
 - iv. a claim on behalf of all Plaintiffs for negligence and ministerial negligence arising under New York common law.
11. On May 17, 2012, the Plaintiffs moved for class certification.
12. On March 19, 2013, the Court in the Eastern District of New York granted the Plaintiffs' motion for class certification. The Court also ordered that the Plaintiffs' attorneys of record, Shearman & Sterling LLP and NYCLU, be appointed class counsel. The Court certified the following classes and subclasses:
 - i. an Injunctive Class comprised of all persons who, now or at any time in the future, are or will be detainees or prisoners in the custody of the Suffolk County Sheriff's Department and housed in SCCF, with separate subclasses for those persons detained in Riverhead and Yaphank.
 1. The Injunctive Class and subclasses are only certified to seek declaratory and injunctive relief.
 2. Mack Butler and Dashaun Sims were appointed as class representatives for the Riverhead Injunctive Subclass.
 3. Clyde Lofton and Paul Alver were appointed as class representatives for the Yaphank Injunctive Subclass.
 - ii. a Damages Class comprised of all persons who are or were detainees or prisoners in the custody of the Suffolk County Sheriff's Department and housed in SCCF on or after April 5, 2009, with separate subclasses for those persons detained in Riverhead and Yaphank.
 1. The Damages Class and subclasses are certified to seek any and all monetary relief available to the class.
 2. Kevin King was appointed as the class representative for the Riverhead Damages Subclass.
 3. Rickey Lynch was appointed as the class representative for the Yaphank Damages Subclass.

13. The Court later amended the class definitions to exclude all persons who were or have been housed exclusively in the new facility in Yaphank that opened in 2013.
14. The trial in this action has not yet been scheduled by the Court.

YOUR RIGHTS AS A CLASS MEMBER

15. A class action is a type of lawsuit in which one or several individuals prosecute claims on behalf of all members of a group of similarly situated persons to obtain monetary or other relief for the benefit of the entire group. Class actions avoid the necessity of each member of a class having to file his or her own separate lawsuit to obtain relief. Class actions are used to decide legal and factual issues that are common to all members of a class.
16. If you are or were a detainee or prisoner in the custody of the Suffolk County Sheriff's Department and housed in SCCF and were or will be released from SCCF on or after April 5, 2009, and were damaged thereby, and you were not excluded from the Class by definition, then you are a member of the Class. If you are a member of the Class, you have the right to decide whether to remain a member of the Class. ***If you choose to remain a member of the Class, you do not need to do anything at this time.*** If you are a member of the Class and wish to be excluded from the Class, you must request exclusion in accordance with the procedure set forth in paragraph 18 below. Your decision is important for the following reasons:
 - i. **If you choose to remain a member of the Class**, you will be bound by all past, present and future orders and judgments in the Action, whether favorable or unfavorable. If any money is awarded to the Class, either through a settlement or a judgment of the Court, you will be eligible to receive a share of that award. However, if you remain a member of the Class, you may not pursue a lawsuit on your own behalf with regard to any of the issues in this Action. Pursuant to Rule 23(e)(4) of the Federal Rules of Civil Procedure, it is within the Court's discretion whether to allow a second opportunity to request exclusion from the Class if there is a settlement or judgment in the Action. Please note that if you remain a member of the Class, you will not be personally responsible for Class Counsel's attorneys' fees or costs. Class Counsel voluntarily agreed to represent the Class on a *pro bono* basis without payment. As a member of the Class you will be represented by Class Counsel. You may remain a member of the Class and elect to be represented by counsel of your own choosing. If you do retain separate counsel, you will be responsible for those attorneys' fees and expenses and such counsel must enter an appearance on your behalf by filing a Notice of Appearance with the Court and mailing it to Class Counsel at the addresses set forth in paragraph 21 below on or before April 12, 2017.
 - ii. **If you choose to be excluded from the Class**, you will not be bound by any judgment in this Action, nor will you be eligible to share in any recovery that might be obtained in this Action. You will retain any right you have to

individually pursue any legal rights that you may have against any Defendants with respect to the claims asserted in the Action. Please refer to paragraphs 18-20 below if you would like to be excluded from the Class.

17. Members of the Class will be eligible to participate in any recovery that might be obtained in the Action. While this Notice is not intended to suggest any likelihood that the class representatives or members of the Class will recover any such damages, should there be a recovery, members of the Class will be required to support their requests to participate in the distribution of any such recovery by demonstrating their membership in the Class.

HOW TO BE EXCLUDED FROM THE CLASS

18. If you wish to be excluded from the Class, you must specifically request exclusion in accordance with the following procedures. To exclude yourself from the Class, you must send a letter by First Class Mail stating that you “request exclusion from the Class in *Butler v. Suffolk County*, 11-CV-02602 (JS) (GRB).” Your request must (i) state the name, address and telephone number of the person requesting exclusion; (ii) state the name and location of the facility of which you are or were a detainee or prisoner; and (iii) be signed by the person requesting exclusion or an authorized representative. You must mail your exclusion request, postmarked by no later than April 12, 2017, to:

Butler v. Suffolk County Class Administrator
Post Office Box 779
Tallahassee, FL 32302-0779

You cannot exclude yourself from the Class by telephone or by e-mail. A request for exclusion shall not be effective unless it (i) contains all of the information called for by this paragraph and (ii) is postmarked by the date stated above, or is otherwise accepted by the Court.

19. If your request for exclusion complies with the requirements set forth above, you will not be bound by any judgment in this Action, nor will you be eligible to share in any recovery that might be obtained in this Action.
20. Do not request exclusion from the Class if you wish to participate in this Action as a member of the Class.

CLASS COUNSEL

21. As a member of the Class, you will be represented by Class Counsel, who are:

Daniel H.R. Laguardia
Melissa J. Godwin
Elizabeth J. Stewart

Erin Harrist
**NEW YORK CIVIL
LIBERTIES UNION**
125 Broad Street
New York, NY 10004
212-607-3300
eharrist@nyclu.org

SHEARMAN & STERLING LLP

599 Lexington Avenue
New York, NY 10022
212-848-4000
melissa.godwin@shearman.com

22. As noted above, unless you elect to retain your own personal lawyer, by remaining in the Class, you will not subject yourself to any direct obligations to pay the costs of the litigation.

PLEASE KEEP YOUR ADDRESS CURRENT

23. To assist the Court and the parties in maintaining accurate lists of Class members, you are requested to mail notice of any changes in your address to:

Butler v. Suffolk County Class Administrator
Post Office Box 779
Tallahassee, FL 32302-0779

24. If this Notice was forwarded to you by the postal service, or if it was otherwise sent to you at an address that is not current, you should immediately contact Shearman & Sterling LLP at the address above or by calling 212-848-8023 and provide your correct address. If Shearman & Sterling LLP does not have your correct address, you may not receive notice of important developments in this Action.

WHERE YOU CAN FIND ADDITIONAL INFORMATION

25. This Notice gives only a summary of the lawsuit and the claims asserted by the class representatives. For more detailed information regarding the Action, you may contact Class Counsel, the Class Administrator, or visit www.suffolkjailslawsuit.com.

PLEASE DO NOT CALL OR WRITE THE COURT.

Dated: December 9, 2016

BY ORDER OF THE COURT:
United States District Court
for the Eastern District of New York