

**LEGAL NOTICE  
NOTICE OF CLASS ACTION**

**IN ORDER TO RECEIVE A REFUND AS PART OF THIS CLASS ACTION SETTLEMENT,  
YOU ARE REQUIRED TO SUBMIT A WRITTEN CLAIM.**

**IF YOU ARE AN ORIGINALLY ASSESSED SANITARY SEWER CUSTOMER THAT PAID THE TOWNSHIP OF BRIGHTON FOR SANITARY SEWER SERVICE AT ANY TIME BETWEEN JUNE 20, 2010 AND JANUARY 31, 2018 AND WISH TO RECEIVE A CASH REFUND IF YOU QUALIFY FOR SUCH REFUND, YOU MUST SUBMIT THE ATTACHED CLAIM FORM ON OR BEFORE MARCH 22, 2018 AND MAIL IT TO KICKHAM HANLEY PLLC AT 32121 WOODWARD AVENUE, SUITE 300, ROYAL OAK, MICHIGAN, 48073 OR EMAIL THE COMPLETED FORM TO [KHTEMP@KICKHAMHANLEY.COM](mailto:KHTEMP@KICKHAMHANLEY.COM).**

**PLEASE RETAIN THIS NOTICE**

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

Dennis Shoner and Barbara Potocki,  
individually, and as representatives of  
a class of similarly-situated persons and entities,

Plaintiffs,

v.

Case No. 16-29165-CZ

Hon. David J. Reader

Charter Township of Brighton,  
a municipal corporation,

Defendant.

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Gregory D. Hanley (P51204)  
Jamie K. Warrow (P61521)  
Edward F. Kickham Jr. (P70332)  
Kickham Hanley PLLC  
32121 Woodward Avenue  
Royal Oak, MI 48073  
Counsel for Plaintiffs

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John K. Harris (P29060)  
Law Offices of Harris & Literski  
Attorneys for Charter Township of Brighton  
123 Brighton Lake Rd., Suite 205  
Brighton, MI 48116

Shawn Head (P72599)  
The Head Law Firm, PLC  
34705 W. Twelve Mile Rd., Ste. 160  
Farmington Hills, MI 48331  
Co-counsel for Plaintiffs

Theodore W. Seitz (P60320)  
Erin A. Sedmak (P78282)  
Dykema Gossett, PLLC  
Co-Counsel for Charter Township of Brighton  
201 Townsend St., Suite 900  
Lansing, MI 48933

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**TO: All persons and entities which have paid the Township of Brighton (the "Township") for sanitary sewage disposal services at any time between June 20, 2010 and January 31, 2018**

You are hereby notified that a proposed settlement in the amount of \$1,500,000 has been reached with the Township of Brighton in a class action lawsuit pending in Livingston County Circuit Court titled *Shoner v. Charter Township of Brighton*, Case No. 16-29165-CZ, presiding Judge David Reader, which challenged a debt service charge (the “Capital Charge”) and an operations and maintenance charge (the “O&M Charge,” collectively, the “Charges”) imposed by the Township on users of its sanitary sewage disposal service. Plaintiffs brought these claims on behalf of themselves and a class of all others similarly situated.

Plaintiffs are individuals who are originally assessed sanitary sewer customer and who have paid the Charges imposed by the Township. Plaintiffs allege that the inclusion of such Charges in the Township’s sewer rates (the “Rates”) are motivated by a revenue-raising and not a regulatory purpose, that they are disproportionate to the Township’s actual costs of providing sanitary sewage disposal services, and that (1) the Charges are therefore unlawful under the Headlee Amendment to the Michigan Constitution and (2) by collecting the Charges the Township has been unjustly enriched. Plaintiffs further claim that the Township has improperly included in the O&M Charges amounts intended to reimburse the Township for attorneys’ fees and other expenses it has incurred and/or paid in connection with this Lawsuit (the “Lawsuit Expenses”). Plaintiffs sought a judgment from the court against the Township that would order and direct the Township to refund all Charges to which Plaintiffs and the class are entitled and any other appropriate relief.

The Township denies that the Charges are improper; denies that it has intentionally or negligently committed any unlawful, wrongful or tortious acts or omissions, violated any constitutional provision or statute, or breached any duties of any kind whatsoever; denies that it is in any way liable to any member of the Class; and states that the claims asserted in the Lawsuit have no substance in fact or law, and the Township has meritorious defenses to such claims; but, nevertheless, has agreed to enter into a Settlement Agreement to avoid further expense, inconvenience, and distraction and risks of burdensome and protracted litigation, and to obtain total and final peace, satisfaction and protection from the claims asserted in the Lawsuit.

There is a subset of the Class that consists of the owners of vacant parcels who have paid, or are paying, the Assessment Charge and Capital Charge for their respective parcels. The Township believes there is a dispute, not raised in Plaintiffs’ pleadings, as to whether, once a structure is constructed on each of the Vacant Parcels, it is the responsibility of the Township or the owner of each respective Vacant Parcels to (a) pay for the costs associated with providing a grinder pump on the Vacant Parcel, and/or (b) pay for the costs associated with connecting the structures on each of the Vacant Parcels to the Sewer System ((a) and (b) are collectively referred hereafter as the “Sewer Connection Expense”).

On January 30, 2018, the Court entered an amended order preliminarily approving the settlement in this matter and certifying the Lawsuit as a class action. You are receiving this Notice because the Township's records indicate that you paid for sanitary sewage disposal services between June 20, 2010 and January 31, 2018 and are therefore a member of the Class and/or the Subclass, as described below.

For settlement purposes, the parties have agreed that the Class includes all persons or entities that are or were the owners or occupiers of the "Originally Assessed Properties" (as defined below) and who/which paid the Township, or incurred fees, for service from the Sewer System at any time between June 20, 2010 and January 31, 2018 (the "Class"). The "Originally Assessed Properties" shall be those properties that comprise the 1029 parcels that were included in the Special Assessment District described in Plaintiffs' First Amended Complaint. The Parties have further stipulated to certification of a subclass, consisting of members of the Class who are the owners of the Vacant Parcels (the "Subclass"). The Class does not include the Township itself or any owner or occupiers of any properties other than the Originally Assessed Properties who/which paid the Township, or incurred fees, for service from the Sewer System. The settlement in this matter is intended to settle all of the claims of the members of the Class ("Class Members") relating to (i) the Assessment Charges, (ii) the Capital Charges, (iii) the O&M Charges, and (iv) the Lawsuit Expenses. The settlement also settles the claims of the Subclass regarding any disputes related to the Sewer Connection Expenses.

The principal terms of the Settlement Agreement are as follows:

For the purposes of the proposed Settlement, the Township expressly denies any and all allegations that it acted improperly, but, to avoid litigation costs, the Township has agreed to create a settlement fund in the aggregate amount of One Million Five Hundred Thousand Dollars (**\$1,500,000**) for the benefit of the Class ("Settlement Amount"). The Settlement Amount will be utilized, with Court approval, to provide refunds to the Class, and to pay Class Counsel an award of attorneys' fees, the total amount of which shall not exceed 33% of the Settlement Amount, and expenses for the conduct of the litigation.

The "Net Settlement Fund" is the Settlement Amount less the combined total of: (a) the attorneys' fees awarded to Class Counsel by the Court; (b) expenses reimbursed pursuant to the terms of the Settlement; (c) out-of-pocket expenses of the Claims-Escrow Administrator, and (d) any incentive awards made by the Court to the class representatives in an amount not to exceed \$10,000.

The Net Settlement Fund shall be used to pay Class Members as described below.

All Class Members may participate in the settlement of this case by receiving from the Net Settlement Fund a cash distribution payment. To qualify to receive a distribution of cash via check (a "Payment") from the Net Settlement Fund, Class Members will be required to submit sworn claims (the

“Claims”) which identify their names, addresses, and the periods of time in which they paid the Charges in order to participate in the Settlement. Class Members who submit Claims will hereafter be referred to as the “Claiming Class Members.” The Claiming Class Members will be required to submit those claims so that they are received by the Claims-Escrow Administrator no later than March 22, 2018. A claim form is enclosed with this Notice.

The Claims-Escrow Administrator shall calculate each Claiming Class Member’s pro rata share of the Net Settlement Fund (the “Pro Rata Share”). Only those Class Members who paid for sewer service during the Class Period and submit a timely Claim are entitled to distribution of a Pro Rata Share of the Net Settlement Fund. The size of each Claiming Class Member’s Pro Rata Share shall be determined by (1) calculating the total amount of O&M Charges and Capital Charges the Claiming Class Member paid during the Class Period and then (2) dividing that number by the total amount of O&M Charges and Capital Charges paid during the Class Period by all Claiming Class Members and then (3) multiplying that fraction by the amount of the Net Settlement Fund.

In addition to the refund and assignment of claims described above, the parties have agreed that Effective February 1, 2018, the Township shall cease charging the Class the Capital Charges and shall not impose upon the Class any further Capital Charges or any other charge to recover, in full or in part, the principal, interest, and administrative costs of retiring the debt incurred for the construction of the Sewer System.

The Township has also agreed that its General Fund shall reimburse the Sewer Fund for attorney fees in the amount of \$300,000.

The parties also agreed that the Township shall issue a one-time credit in the amount of \$3,800 to the owners of each of the Vacant Parcels that are required in the future to connect a new structure on their Vacant Parcel to the Sewer System. This credit will be issued at such time as a permit is issued to each of the owners of the Vacant Parcels to connect their Vacant Parcels to the Sewer System and will be applied to the Sewer Connection Expense.

The parties agreed that the Township otherwise retains its discretion to adjust rates and charges for all users of the Sewer System in accordance with Michigan law. The Township may not levy a tax or other assessment against property owners or sewer customers to finance, in whole or in part, the Settlement Fund (unless such tax or assessment receives voter approval), nor may the Township include as a recoverable cost in the setting of the Rates, any amounts that the Township’s General Fund has contributed to the Settlement Fund.

The Settlement Fund shall be financed solely from current assets of the Township's General Fund as follows and the Township has agreed to make the \$1,500,000 payment to the Settlement Fund from the General Fund for the following reasons:

i. The Township represents that it has previously loaned the Sewer System \$2,385,832 from the Township's General Fund to assist the Sewer System in paying its outstanding sewer bond obligations, its O&M expenses, and Capital Reserve Fund contributions (the "Township Loan").

ii. There are at least 401 REUs for the Sewer System that have not been allocated to new users, and the current fee for each new REU is \$10,260.

iii. The Township Board is willing to have the Township's General Fund contribute cash to the Township's Sewer Fund in exchange for the Township's General Fund obtaining the right to receive the REU charges (currently \$10,260 per REU) for 401 of the REUs to be allocated in the future to new users.

iv. The flow of funds in connection with the transfer of the right to receive payment for the 401 REUs is set forth below.

v. As part of the transfers described herein, the Township Loan to the Sewer Fund and all accrued interest are being paid in full.

The flow of funds for the \$1,500,000 payment to the Settlement Fund shall be as follows:

i. The Township's General Fund shall purchase from the Sewer Fund 401 REUs of excess capacity at the cost of \$10,260 per REU for a total purchase price of \$4,114,260.

ii. The outstanding balance of the Township Loan of \$2,385,832 shall be deducted from the \$4,114,260 purchase price identified above, leaving a net payment to the Sewer Fund of \$1,728,428, and resulting in the Township Loan being paid in full.

iii. \$1,500,000 of the \$1,728,428 net payment to the Sewer Fund shall be paid to the Settlement Fund, and the balance of \$228,428 shall remain in the Sewer Fund.

All payments for the REUs purchased by Sewer System customers of the 401 REUs described above shall be paid to the General Fund to reimburse the General Fund for the full \$4,114,260 transferred pursuant to the above, and thereafter proceeds from the sale of any additional REUs for the Sewer System shall be deposited into the Sewer Fund.

The Claiming Class Members shall release the Township as provided below.

Class Members who wish to exclude themselves from the Settlement may write to the Administrator, stating that they do not wish to participate in the Settlement and that they wish to retain

their right to file an action against the Township. This proposed settlement should not be interpreted, in any way, as suggesting that the claims alleged against the Township have legal or factual merit. The Township has challenged the validity of Plaintiffs' claims and many of the substantive legal and factual issues have not been resolved. **This request for exclusion must be postmarked no later than March 22, 2018 and mailed to: Kickham Hanley PLLC, 32121 Woodward Avenue, Suite 300, Royal Oak, Michigan 48073.**

By remaining a Class Member, you will be bound by the terms of the proposed settlement and will be barred from bringing a separate action against the Township for the claims asserted in the Lawsuit at your own expense through your own attorney. You will, however, receive your pro rata share of the Net Settlement Fund if submit a timely claim and you do not request exclusion from the Class. If you were to successfully pursue such a separate action to conclusion, recovery might be available to you which is not available in this class action settlement. Whether to remain a member of this class or to request exclusion from this class action to attempt to pursue a separate action at your own expense without the assistance of the City in this Action is a question you should ask your own attorney. Class Counsel cannot and will not advise you on this issue.

Pursuant to the Amended Preliminary Approval Order of the Court dated January 30, 2018, a Settlement Hearing will be held in the Livingston County Circuit Court, at 9:30 a.m., on April 26, 2018, to determine whether the proposed Settlement as set forth in the Settlement Agreement dated January 22, 2018, is fair, reasonable, and adequate and should be approved by the Court, whether the Lawsuit should be dismissed pursuant to the Settlement and whether counsel for Plaintiff Class should be awarded counsel fees and expenses. At the Settlement Hearing, any member of the Class may appear in person or through counsel and be heard to the extent allowed by the Court in support of, or in opposition to, the fairness, reasonableness and adequacy of the proposed Settlement. However, no Class member will be heard in opposition to the proposed Settlement and no papers or briefs submitted by any such Class member will be accepted or considered by the Court unless on or before March 22, 2018 such Class member (i) files with the Clerk of the Court notice of that person's intention to appear, proof of class membership, written objections that indicate the basis for such opposition, and any supporting papers and briefs; and (ii) serves by first class mail copies thereof upon each of the following attorneys:

**Attorneys for Plaintiffs**

Gregory D. Hanley  
Jamie K. Warrow  
Edward F. Kickham Jr.  
Kickham Hanley PLLC  
32121 Woodward Avenue  
Royal Oak, MI 48073

**Attorneys for Defendant**

John K. Harris  
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Attorneys for Charter Township of Brighton  
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Farmington Hills, MI 48331  
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Theodore W. Seitz (P60320)  
Erin A. Sedmak (P78282)  
Dykema Gossett, PLLC  
Co-Counsel for Charter Township of Brighton  
201 Townsend St., Suite 900  
Lansing, MI 48933

Any Class member who does not make and serve written objections in the manner provided above shall be deemed to have waived such objections and shall be forever foreclosed from making any objections (by appeal or otherwise) to the proposed Settlement.

**AGAIN, IN ORDER TO RECEIVE A REFUND AS PART OF THIS CLASS ACTION SETTLEMENT, YOU ARE REQUIRED TO SUBMIT A WRITTEN CLAIM.**

**IF YOU ARE AN OWNER OF AN ORIGINALLY ASSESSED PROPERTY AND PAID THE CHARTER TOWNSHIP OF BRIGHTON FOR SEWER SERVICE AT ANY TIME BETWEEN JUNE 20, 2010 AND JANUARY 31, 2018 AND WISH TO RECEIVE A CASH REFUND IF YOU QUALIFY FOR SUCH REFUND, YOU MUST SUBMIT THE ATTACHED CLAIM FORM ON OR BEFORE MARCH 22, 2018 AND MAIL IT TO KICKHAM HANLEY PLLC AT: 32121 WOODWARD AVENUE, SUITE 300, ROYAL OAK, MICHIGAN 48073 OR EMAIL THE COMPLETED FORM TO KHTEMP@KICKHAMHANLEY.COM.**

For a more detailed statement of the matters involved in the Lawsuit, including the terms of the proposed Settlement, you are referred to papers on file in the Lawsuit, which may be inspected during regular business hours at the Office of the Clerk of Circuit Court for Livingston County, Michigan. You may also view the Settlement Agreement and other important court documents at [www.kickhamhanley.com](http://www.kickhamhanley.com).

Should you have any questions with respect to this Notice of the proposed settlement of the Lawsuit generally, you should raise them with your own attorney or direct them to counsel for the Class, identified as Attorneys for Plaintiffs, above, *IN WRITING OR BY EMAIL TO KHTEMP@KICKHAMHANLEY.COM, **NOT BY TELEPHONE.** DO NOT CONTACT THE COURT, THE CLERK OF THE COURT, THE DEFENDANT OR THE ATTORNEYS FOR DEFENDANT.*

On the Settlement Date, each Class Member who has not timely requested exclusion therefrom shall be deemed to have individually executed, on behalf of the Class Member and his or her heirs, successors and assigns, if any, the following Release and Covenant Not To Sue, and the Final Order and Judgment to be entered by the Court in connection with the approval of this Settlement shall so provide:

In executing the Release and Covenant Not To Sue, each Class Member, on behalf of himself, herself or itself, and his, her or its parents, subsidiaries, affiliates, members, shareholders, predecessors, heirs, administrators, officers, directors, successors, assigns, and any person the Class Member represents, intending to be legally bound hereby, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby absolutely, fully and forever releases, relieves, remises and discharges the Township, and each of its successors and assigns, present and former agents, elected and appointed officials, representatives, employees, insurers, affiliated entities, attorneys and administrators, of and from any and all manner of actions, causes of action, suits, debts, accounts, understandings, contracts, agreements, controversies, judgments, consequential damages, compensatory damages, punitive damages, claims, liabilities, and demands of any kind or nature whatsoever, known or unknown, which arise from the beginning of time through January 31, 2018 concerning the Township's imposition and collection of the (i) the Assessment Charges, (ii) the Capital Charges, (iii) the O&M Charges, (iv) the Sewer Connection Expenses, and (v) Lawsuit Expenses. This release is intended to include all claims that were asserted or could have been asserted in the Lawsuit concerning the Township's imposition and collection of the (i) the Assessment Charges, (ii) the Capital Charges, (iii) the O&M Charges, (iv) the Sewer Connection Expenses, and (v) Lawsuit Expenses with the exception of claims to enforce the terms of this Settlement Agreement. In executing the Release and Covenant Not to Sue, each Class Member also covenants that: (a) except for actions or suits based upon breaches of the terms of this Agreement or to enforce rights provided for in this Agreement, he, she or it will refrain from commencing any action or suit, or prosecuting any pending action or suit, in law or in equity, against the Township on account of any action or cause of action released whereby; (b) none of the claims released under the Release and Covenant Not To Sue has been assigned to any other party; and (c) he, she or it accepts and assumes the risk that if any fact or circumstance is found, suspected, or claimed hereinafter to be other than or different from the facts or circumstances now believed to be true, the Release and Covenant Not To Sue shall be and remain effective notwithstanding any such difference in any such facts or circumstances. The foregoing shall not affect the claims of any Class Member alleging that their individual sewer bills were calculated in error on the basis of facts or circumstances unique to such class member and not based on the claims that were or could have been asserted by the Class in the Lawsuit.

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