

STATE OF MICHIGAN
OAKLAND COUNTY CIRCUIT COURT

DANIEL BRUNET,
individually and as representative of a class of
similarly-situated persons and entities,

Case No. 18-164764-CZ
Hon. Shalina Kumar

Plaintiff,

v.

CITY OF ROCHESTER HILLS,
a municipal corporation,

Defendant.

Gregory D. Hanley (P51204)
Jamie K. Warrow (P61521)
Edward F. Kickham (P70332)
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Royal Oak, MI 48073
(248) 544-1500
Attorneys for Plaintiff and the Class

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Attorneys for Defendant

STIPULATED ORDER AUTHORIZING CLASS NOTICE

At a session of said Court held in the
City of Pontiac, County of Oakland,
State of Michigan on 9/10/2019

PRESENT: HON. SHALINA KUMAR
Circuit Court Judge

This matter having come before the Court upon the stipulation of the parties for entry of an order authorizing the parties to provide notice of the pendency of this action to the members of the

class, and the Court being otherwise advised in these premises:

WHEREAS, on March 18, 2019, the Court entered an order certifying a class consisting of all persons and entities who paid the City of Rochester Hills (the “City”) for water and/or sewage disposal service at any time since March 30, 2012 or which pay the City for water and/or sewage disposal service during the pendency of this action

WHEREAS, MCR 3.501(C) states that “[n]otice shall be given as provided in this subrule to persons who are included in a class action by certification ...” and requires that the Court “determine how, when, by whom, and to whom the notice shall be given; the content of the notice; and to whom the response to the notice is to be sent.”

WHEREAS, the parties have agreed that the form of the Notice attached to this Order as Exhibit 1 complies with the requirements of MCR 3.501;

WHEREAS, the City has maintained records in electronic format sufficient to provide the service addresses of the City’s current water and sewer customers, and shall provide those records to Class Counsel, in electronic format, within 14 days of the entry of this Order so that Class Counsel can provide notice to the class members via U.S. mail; and

WHEREAS, the parties have stipulated to further provide for the publishing of the summary Notice attached as Exhibit 2 in the Oakland Press newspaper on two occasions prior to September 30, 2019.

Pursuant to the parties’ stipulation, and the Court being fully advised in the premises:

IT IS ORDERED that, within 14 days of the entry of this Order, the City shall provide to Class Counsel records in electronic format sufficient to provide the service addresses of the City’s current water and sewer customers so that Class Counsel can provide notice to the class members via U.S. mail.

IT IS FURTHER ORDERED that, within 21 days of Class Counsel’s receipt of the records

identified above, Class Counsel shall disseminate the Notice attached as Exhibit 1 to this Order to the water and sewer service addresses identified in the City's records via U.S. mail.

IT IS FURTHER ORDERED THAT Class Counsel shall arrange for the publication of the Notice attached as Exhibit 2 to this Order in the Oakland Press newspaper on two occasions prior to September 30, 2019.

IT IS FURTHER ORDERED THAT any class member who does not serve a notice of intent to be excluded from the class on or before November 15, 2019 will be bound by the judgment entered in this case.

/s/ Shalina Kumar

Circuit Court Judge
SHALINA KUMAR

BB

STIPULATED TO AND AGREED:

KICKHAM HANLEY PLLC

**MILLER CANFIELD PADDOCK AND
STONE P.L.C.**

By: /s/ Gregory D. Hanley
Gregory D. Hanley (P51204)
Jamie Warrow (P61521)
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By: /s/ Sonal Hope Mithani
Sonal Hope Mithani (P51984)
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Attorneys for Defendant

KH160301

EXHIBIT - 1

LEGAL NOTICE

NOTICE OF CLASS ACTION

TO: All persons and entities which have paid the City of Rochester Hills (the “City”) for Water and/or Sewer Service at any time after March 30, 2012.

You are hereby notified that an action has been commenced in the Oakland County Circuit Court titled *Daniel Brunet v. City of Rochester Hills*, Case No. 2018-164764-CZ, presiding Judge Shalina Kumar, challenging the retail water rates (the “Water Rates”) and the retail sewage disposal rates (the “Sewer Rates”) (collectively the “Rates”) imposed by the City on citizens who draw water from the City’s water supply system and who use the City’s sewer system (the “Lawsuit”). Plaintiff has brought these claims on behalf of themselves and a class of all others similarly situated.

Plaintiff is a water and sewer customer of the City, and seeks to act as a class representative for all similarly situated persons and/or entities that have paid the Rates imposed by the City. Plaintiff, on behalf of a class of similarly situated persons and/or entities, contends that the City has systematically garnered millions of dollars of revenues from its water and sewer customers in excess of its actual costs of providing water and sewer services by incorporating into the Rates at least two items of expenses that are allegedly improper. The first is for fire protection services (the “Fire Service Charge”). The second is to accumulate cash reserves (the “Reserve Charge,” collectively, with the Fire Service Charge, the “Charges”).

Plaintiff asserts that the City’s inclusion of the Charges in its Rates: (a) violates a Michigan statute, MCL 141.91, because the Charges constitute disguised “taxes” that have been imposed after January 1, 1964; (b) renders the Rates unreasonable under Michigan common law principles; (c) violates another Michigan statute, MCL 141.118, because the City does not impose a public fire protection charge upon itself, but instead, imposes the entire cost of public fire protection upon its water customers; and (d) violates another Michigan statute, MCL 123.141(3), because the City is selling water to Plaintiff and the Class at a retail rate in excess of the City’s actual cost of providing water service. Plaintiff seeks a judgment from the Court against the City which would order and direct the City to disgorge and refund all water and sewer Overcharges to which Plaintiff and the class are entitled and enjoin the City from overcharging in the future.

The City maintains that the inclusion of the Fire Service Charge and the Reserve Charge in its Rates is proper and lawful. Thus, the City denies the Plaintiff’s claims, denies that it has overcharged its customers, denies that any portion of its charges are unreasonable or a “tax” under Michigan law, and denies that the

Plaintiff and those similarly situated have been harmed. The City contends that it should prevail in the Lawsuit. **The Court has made no rulings concerning the merits of the Lawsuit at this time.**

On March 18, 2019, the Court entered an order certifying the Lawsuit as a class action. You are receiving this Notice because the City's records indicate that you paid the City for water and/or sewer service at any time after March 30, 2012 and are therefore a member of the class.

No financial consequences will be suffered by class members if Plaintiff loses, except that all class members will be barred from bringing an individual action against the City alleging the claims contained in Plaintiff's complaint.

The City has not filed a counterclaim against Plaintiff or the class.

If you have paid the City for water and/or sewer service between March 30, 2012 and the present, then you are a member of the class.

If you are a member of the class, you will be bound by any judgment entered in this action, whether the judgment is favorable or unfavorable to the class.

Class members who wish to exclude themselves from the Lawsuit may write to Class Counsel, stating that they do not wish to participate in the Lawsuit and that they wish to retain their right to file a separate action against the City. **This request for exclusion must be postmarked no later than November 15, 2019 and mailed to: Kickham Hanley PLLC, 32121 Woodward Avenue, Royal Oak, Michigan 48073.**

Whether to remain a member of this class or to request exclusion from this class action to attempt to pursue a separate lawsuit at your own expense without the assistance of the Plaintiff in this Lawsuit is a question you should ask your own attorney. Class counsel cannot and will not advise you on this issue.

If you are a class member, you have the right to intervene in this action as a named party. If you choose to intervene you may become liable for costs and will have similar rights and responsibilities as Plaintiff. Further, you may have counsel of your own choosing and class counsel will not be obligated to represent you.

For a more detailed statement of the matters involved in the Lawsuit, 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 Oakland County, Michigan. You also may review certain of the Lawsuit documents at **www.kickhamhanley.com**.

Should you have any questions with respect to this Notice you should raise them with your own attorney or direct them to counsel for the Class, **IN WRITING, NOT BY TELEPHONE**, identified as Attorneys for Plaintiff and the Class, below. **DO NOT CONTACT THE COURT OR CLERK OF THE COURT, OR ATTORNEYS FOR DEFENDANT.**

Attorneys for Plaintiff and the Class:

Gregory D. Hanley (P51204)
Edward F. Kickham Jr. (P70332)
KICKHAM HANLEY PLLC
32121 Woodward Avenue, Suite 300
Royal Oak, MI 48073
khtemp@kickhamhanley.com

KH160303

EXHIBIT - 2

LEGAL NOTICE

NOTICE OF CLASS ACTION

TO: All persons and entities who/which have paid the City of Rochester Hills (the “City”) for Water and/or Sewer Service at any time after March 30, 2012.

You are hereby notified that an action has been commenced in the Oakland County Circuit Court titled *Daniel Brunet v. City of Rochester Hills*, Case No. 2018-164764-CZ, presiding Judge Shalina Kumar, challenging the retail water rates (the “Water Rates”) and the retail sewage disposal rates (the “Sewer Rates”) (collectively the “Rates”) imposed by the City on citizens who draw water from the City’s water supply system and who use the City’s sewer system (the “Lawsuit”). Plaintiff has brought these claims on behalf of themselves and a class of all others similarly situated.

Plaintiff is a water and sewer customer of the City, and seeks to act as a class representative for all similarly situated persons and/or entities that have paid the Rates imposed by the City. Plaintiff, on behalf of a class of similarly situated persons and/or entities, contends that the City has systematically garnered millions of dollars of revenues from its water and sewer customers in excess of its actual costs of providing water and sewer services by incorporating into the Rates at least two items of expenses that are allegedly improper. The first is for fire protection services (the “Fire Service Charge”). The second is to accumulate cash reserves (the “Reserve Charge,” collectively, with the Fire Service Charge, the “Overcharges”). Plaintiff asserts that the City’s inclusion of the Overcharges in its Rates: (a) violates the MCL 141.91; (b) renders the Rates unreasonable under Michigan common law principles; (c) violates MCL 141.118; and (d) violates MCL 123.141(3).

Plaintiff seeks a judgment from the Court against the City which would order and direct the City to disgorge and refund all water and sewer Overcharges to which Plaintiff and the class are entitled and enjoin the City from overcharging in the future.

The City maintains that the inclusion of the Fire Service Charge and the Reserve Charge in its Rates is proper and lawful. Thus, the City denies the Plaintiff’s claims, denies that it has overcharged its customers, denies that any portion of its charges are unreasonable, and denies that the Plaintiff and those similarly situated have been harmed. The City contends that it should prevail in the Lawsuit. **The Court has made no rulings concerning the merits of the Lawsuit at this time.**

On March 18, 2019, the Court entered an order certifying the Lawsuit as a class action. If you paid the City for water and/or sewer service at any time after March 30, 2012, you are a member of the class.

No financial consequences will be suffered by class members if Plaintiff loses, except that all class members will be barred from bringing an individual action against the City alleging the claims contained in Plaintiff's complaint. The City has not filed a counterclaim against Plaintiff or the class. If you are a member of the class, you will be bound by any judgment entered in this action, whether the judgment is favorable or unfavorable to the class.

Class members who wish to exclude themselves from the Lawsuit may write to Class Counsel, stating that they do not wish to participate in the Lawsuit and that they wish to retain their right to file a separate action against the City. **This request for exclusion must be postmarked no later than November 15, 2019 and mailed to: Kickham Hanley PLLC, 32121 Woodward Avenue, Royal Oak, Michigan 48073.**

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Should you have any questions with respect to this Notice you should raise them with your own attorney or direct them to counsel for the Class, **IN WRITING, NOT BY TELEPHONE**, identified as Attorneys for Plaintiff and the Class, below. **DO NOT CONTACT THE COURT OR CLERK OF THE COURT, OR ATTORNEYS FOR DEFENDANT.**

Attorneys for Plaintiff and the Class:

Gregory D. Hanley (P51204)

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Kim Plets

From: truefilingadmin@truefiling.com
Sent: Thursday, September 12, 2019 2:57 PM
To: Kim Plets
Subject: E-NOTICE: Servicing Notification for 2018-164764-CZ

The document listed below has been filed and is being electronically served to you for case **2018-164764-CZ** for **OAKLAND COUNTY 6TH CIRCUIT COURT** by **C. Tucker (OAKLAND COUNTY 6TH CIRCUIT COURT)** from **OAKLAND COUNTY 6TH CIRCUIT COURT**.

- Document Title: CC - Order - 2018-164764-CZ - STO - STIP/ORDER FILED - 9/10/2019 12:26:41 PM
- Case Number: 2018-164764-CZ
- Description: BRUNET, DANIEL,, VS. ROCHESTER HILLS CITY
- Link: [Click to download document](#)

The following people were electronically served this document.

- Edward Kickham
- Caroline Giordano
- John Staran
- Sonal Hope Mithani
- Gregory Hanley
- Kimberly Plets
- Irene Dieters
- Christopher Olson
- Katie Witkowski
- C. Tucker (OAKLAND COUNTY 6TH CIRCUIT COURT)

If you are unable to view the document using the hyperlink above, please copy and paste the entire URL into a web browser's address bar.

<https://eservices.truecertify.com/?loc=OAK-KADJNC-9B86DD2F&key=KAJ>

Thank you,

OAKLAND COUNTY 6TH CIRCUIT COURT

Kim Plets

From: info@truefiling.com
Sent: Tuesday, September 10, 2019 12:27 PM
To: Kim Plets
Subject: TrueFiling: Service Notification - MI Oakland County 6th Circuit Court - Case No. 2018-164764-CZ

The following document(s) listed below are being electronically served to you for case **2018-164764-CZ** by **Edward Kickham** from the **MI Oakland County 6th Circuit Court**.

- Document Title: Rochester Order Authorizing Class Notice (KH160301x9ECC1)
Link: [Click to download document](#)
Or Copy and Paste: <https://mifile-efsp-prod-southcentralus.azurewebsites.net/openfiling/9360035a-8da6-46d1-a714-08d735fbc035/recipient/a8189200-28b3-442d-f6fc-08d735fbc8ff/download>

The following people were served the above document(s):

- Caroline Giordano - e-Serve giordano@millercanfield.com
- Christopher Olson - e-Serve colson@olsonpllc.mygbiz.com
- Edward Kickham - e-Serve ekickhamjr@kickhamhanley.com
- Gregory Hanley - e-Serve GHANLEY@KICKHAMHANLEY.COM
- Irene Dieters - e-Serve idieters@hsc-law.com
- John Staran - e-Serve jstaran@hsc-law.com
- Katie Witkowski - e-Serve witkowski@millercanfield.com
- Kimberly Plets - e-Serve kplets@kickhamhanley.com
- Sonal Hope Mithani - e-Serve mithani@millercanfield.com

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