

STATE OF MICHIGAN
OAKLAND COUNTY CIRCUIT COURT

JUDY KISH and
JOYCE BANNON,
individually, and as representatives
of a class of similarly-situated persons
and entities,

Case No. 2015-149751-CZ
Hon. Leo Bowman

Plaintiffs,

v.

CITY OF OAK PARK,
a Michigan municipal corporation,

Defendant.

Gregory D. Hanley (P51204)
Jamie K. Warrow (P61521)
Edward F. Kickham Jr. (P70332)
Kickham Hanley PLLC
32121 Woodward Avenue, Suite 300
Royal Oak, MI 48073
(248) 544-1500
Attorneys for Plaintiffs

John Gillooly (P41948)
Garan Lucow Miller PC
1155 Brewery Park Boulevard, Suite 200
Detroit, MI 48207
(313)446-5501
Attorney for Defendant

STIPULATED ORDER AUTHORIZING CLASS NOTICE

At a session of the Oakland County Circuit Court
held in the City of Pontiac, State of Michigan
on this 23rd day of November, 2016

PRESENT: HONORABLE LEO BOWMAN
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 April 5, 2016, the Court entered an order certifying a class consisting of all persons and entities who paid the City of Oak Park (the "City") the debt service charge (the "Kuhn Facility Debt Charge") and/or the stormwater disposal charge (the "Stormwater Charge,"

collectively, the "Charges") which are Charges assessed against the City by the Oakland County Water Resources Commission, that the City assesses upon users of its water and sanitary sewage disposal services after October 22, 2009.

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 and content of the Notice attached to this Order as Exhibit 1 complies with the requirements of MCR 3.501;

WHEREAS, the City has maintained records sufficient to provide the service addresses of the class members who are current water and sewer customers, and has provided those records to Plaintiffs' counsel so that Plaintiffs' counsel can provide notice to the class members via first class U.S. mail; and

WHEREAS, the parties have stipulated to further provide for the publishing of the summary *Oakland Press and Detroit Free Press* Notice attached as Exhibit 2 in the ~~Oakland Press~~ newspapers on two occasions prior to December 11, 2016.

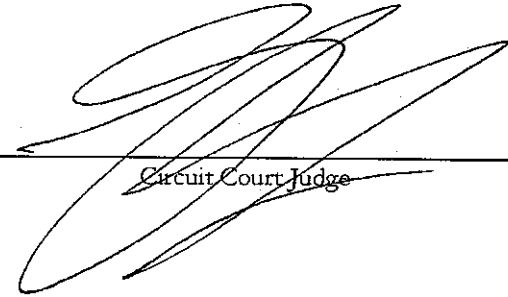
Pursuant to the parties' stipulation, and the Court being fully advised in the premises:

IT IS ORDERED that, within 14 days of the entry of this Order, Plaintiffs shall disseminate the Notice attached as Exhibit 1 to this Order to the members of the class identified as current water and sewer customers in the City's records via U.S. mail.

IT IS FURTHER ORDERED THAT Plaintiffs shall arrange for the publication of the *Oakland Press and Detroit Free Press* Notice attached as Exhibit 2 to this Order in the ~~Oakland Press~~ newspapers on two occasions prior to December 11, 2016.

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 December 31, 2016 will be bound by the judgment

entered in this case.


Circuit Court Judge *

STIPULATED AND AGREED:

KICKHAM HANLEY PLLC

By: /s/ Gregory D. Hanley
Gregory D. Hanley (P51204)
Jamie K. Warrow (P61521)
32121 Woodward Avenue, Suite 300
Royal Oak, Michigan 48073
(248) 544-1500
Attorneys for Plaintiffs

GARAN LUCOW MILLER PC

By: /s/ John Gillooly
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(313)446-5501
Attorney for Defendant

KH148319

EXHIBIT - 1

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STATE OF MICHIGAN
OAKLAND COUNTY CIRCUIT COURT

JUDY KISH and
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1155 Brewery Park Boulevard, Suite 200
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(313)446-5501
Attorney for Defendant

**LEGAL NOTICE
NOTICE OF CLASS ACTION**

TO: All persons and entities which have paid the City of Oak Park (the "City") for water and sanitary sewage disposal services at any time after October 22, 2009.

An action has been commenced in 6th Judicial Circuit Court (Oakland County) titled *Kish v. City of Oak Park*, Case No. 2015-149751-CZ, presiding Judge Leo Bowman, challenging the inclusion of two charges assessed against the City by the Oakland County Water Resources Commission ("OCWRC"), specifically a debt service charge (the "Kuhn Facility Debt Charge") and a stormwater disposal charge (the "Stormwater Charge," collectively, the "Charges"), in the calculation of the water and sewer rates the City assesses upon the users of its water and sanitary sewage disposal services. Plaintiffs brought these claims on behalf of themselves and a class of all others similarly situated.

Plaintiffs are individuals who are water and sanitary sewer customers and who have paid the Charges imposed by the City. Plaintiffs contend that: (a) the Charges are not proper user fees, but taxes wrongfully imposed by the City to raise revenue in violation of the Headlee Amendment to the Michigan constitution of 1963; (b) the Charges violate the Prohibited Taxes By Cities And Villages Act, MCL 141.91

because the Charges are not ad valorem taxes, but are taxes imposed, levied, or collected after January 1, 1964; (c) the Charges violate the County Public Improvement Act ("CPIA"), MCL 46.171 *et seq.*, because the City Charges its water and sewer customers for stormwater disposal service based upon tap water usage; (d) the Charges violate the Michigan Drain Code, MCL 280.1 *et seq.*, because the City is financing its share of the costs of drain construction projects through imposing "user fees"; (e) the Charges violate the City's own charter and ordinances because they are unreasonable and unlawful; (f) the City has been unjustly enriched by the collection and retention of the Charges; and (g) that Plaintiffs and those similarly situated have been harmed by the City's collection and retention of the Charges.

Plaintiffs seek a judgment from the Court against the City that would order and direct the City to refund all Charges to which Plaintiffs and the class are entitled and any other appropriate relief.

The City maintains that the inclusion of the Charges in the calculation of the City's rates is proper and not unlawful. The City, thus, denies that the Charges are not proper users fees and states that the Charges are assessed in the rates in order to reimburse the OCWRC and not to raise revenue; denies that the Charges violate the Prohibited Taxes by Cities and Villages Act because the charges are not a tax; denies that the Charges violate the County Public Improvement Act ("CPIA") because the CPIA allows a municipality to assess charges for sewage and sewage disposal services based upon water usage; denies that the Charges violate the Michigan Drain Code, denies that the Charges violate the City's Charter and ordinances; denies that the City has been unjustly enriched by collecting money to reimburse the City for payment of these Charges to OCWRC; and denies that the plaintiffs and those similarly situated have been harmed. The City contends that it should prevail in the lawsuit and has filed a motion for summary disposition to dismiss the Complaint in its entirety.

The Court has made no rulings concerning the merits of the lawsuit at this time, although the City has filed a motion to dismiss the lawsuit which is currently pending before the Court.

On April 5, 2016, Judge Bowman entered a stipulated order certifying the lawsuit as a class action. You are receiving this notice because the City's records indicate that an individual or entity owning or residing at this property address paid the City for water and sewer service at some time after October 22, 2009 and is, therefore, a member of the class.

No financial consequences will be suffered by class members if Plaintiffs lose. However, if Plaintiffs lose, all class members will be barred from bringing an individual action against the City alleging the claims contained in Plaintiffs' complaint.

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

If you paid the City for water service and/or sewer service at any time between October 22, 2009 to present, then you are a member of the class.

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Clerk

If you are a member of the class, you are bound by any judgment entered in this action, whether the judgment is favorable or unfavorable to the class, unless you exclude yourself from the lawsuit.

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 December 31, 2016 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 Plaintiffs 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 Plaintiffs. 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 may inspect the lawsuit documents during regular business hours at the Office of the Clerk for the 6th Judicial Circuit Court (Oakland County) at 1200 North Telegraph, Pontiac, Michigan. You may also find additional information concerning the lawsuit 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 OR BY EMAIL, NOT BY TELEPHONE**, to the attorneys for Plaintiffs and the class, below. **DO NOT CONTACT THE COURT OR CLERK OF THE COURT, OR ATTORNEYS FOR DEFENDANT.**

Attorneys for Plaintiffs and the class:

Gregory D. Hanley (P51204)
Jamie Warrow (P61521)
Edward F. Kickham Jr. (P70332)
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Royal Oak, Michigan 48073
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KH148318

EXHIBIT - 2

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LEGAL NOTICE

NOTICE OF CLASS ACTION

TO: All persons and entities which have paid the City of Oak Park (the "City") for water and sanitary sewage disposal services at any time after October 22, 2009.

An action has been commenced in 6th Judicial Circuit Court (Oakland County) titled *Kish v. City of Oak Park*, Case No. 2015-149751-CZ, presiding Judge Leo Bowman, challenging the inclusion of two charges assessed against the City by the Oakland County Water Resources Commission ("OCWRC"), specifically a debt service charge (the "Kuhn Facility Debt Charge") and a stormwater disposal charge (the "Stormwater Charge," collectively, the "Charges"), in the calculation of the water and sewer rates the City assesses upon the users of its water and sanitary sewage disposal services. Plaintiffs brought these claims on behalf of themselves and a class of all others similarly situated.

Plaintiffs are individuals who are water and sanitary sewer customers and who have paid the Charges imposed by the City. Plaintiffs contend that: (a) the Charges are not proper user fees, but taxes wrongfully imposed by the City to raise revenue in violation of the Headlee Amendment to the Michigan constitution of 1963; (b) the Charges violate the Prohibited Taxes By Cities And Villages Act, MCL 141.91 because the Charges are not ad valorem taxes, but are taxes imposed, levied, or collected after January 1, 1964; (c) the Charges violate the County Public Improvement Act ("CPIA"), MCL 46.171 *et seq.*, because the City Charges its water and sewer customers for stormwater disposal service based upon tap water usage; (d) the Charges violate the Michigan Drain Code, MCL 280.1 *et seq.*, because the City is financing its share of the costs of drain construction projects through imposing "user fees"; (e) the Charges violate the City's own charter and ordinances because they are unreasonable and unlawful; (f) the City has been unjustly enriched by the collection and retention of the Charges; and (g) that Plaintiffs and those similarly situated have been harmed by the City's collection and retention of the Charges.

Plaintiffs seek a judgment from the court against the City that would order and direct the City to refund all Charges to which Plaintiffs and the class are entitled and any other appropriate relief.

The City maintains that the inclusion of the Charges in the calculation of the City's rates is proper and not unlawful. The City, thus, denies that the Charges are not proper users fees and states that the charges are assessed in the rates in order to reimburse the OCWRC and not to raise revenue; denies that the Charges violate the Prohibited Taxes by Cities and Villages because the Charges are not a tax; denies that the Charges violate the County Public Improvement Act ("CPIA") because the CPIA allows a municipality to assess charges for sewage and sewage disposal services based upon water usage; denies that the Charges violate the Michigan Drain Code; denies that the Charges violate the City's Charter and ordinances; denies that the City

has been unjustly enriched by collecting money to reimburse the City for payment of these Charges to OCWRC; and denies that the Plaintiffs and those similarly situated have been harmed. The City contends that it should prevail in the lawsuit and has filed a motion for summary disposition to dismiss the Complaint in its entirety.

The court has made no rulings concerning the merits of the lawsuit at this time, although the City has filed a motion to dismiss the lawsuit which is currently pending before the Court.

On April 5, 2016, Judge Bowman entered a stipulated order certifying the lawsuit as a class action. In addition to mailing notices to individuals or entities whom the City's records indicate paid the City for water and sewer service at some time after October 22, 2009, Plaintiffs have caused this notice to be published in order to provide an additional form of notice to class members.

For a more detailed statement of the matters involved in the Lawsuit and the rights of the class members, including the right to exclude themselves by providing notice of such exclusion by December 31, 2016, 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 documents of the Lawsuit 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 OR BY EMAIL, 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 Plaintiffs and the Class:

Gregory D. Hanley (P51204)
Jamie Warrow (P61521)
Edward F. Kickham Jr. (P70332)
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KH148317

Kim Plets

From: no-reply@tylerhost.net
Sent: Wednesday, November 23, 2016 2:29 PM
To: Kim Plets
Subject: Service Notification of Filing Case(KISH,JUDY,, VS OAK PARK CITY) Document Code:(STO) Filing Type:(EFS) Repository ID(8a6a811358906a47015892d505a42be9)

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No Firm Specified
Gregory D. Hanley