

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

BRAD M. PATRICK
individually, and as representative
of a class of similarly-situated persons
and entities,

Plaintiff,

Case No. 2017-003018-CZ
Hon. Jennifer Faunce

v.

CITY OF ST. CLAIR SHORES,
a Michigan municipal corporation,

Defendant.

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

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Clark Hill PLC
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(517) 318-3015
Attorneys for Defendant

AMENDED STIPULATED ORDER AUTHORIZING CLASS NOTICE

At a session of said Court held in the
City of Mt. Clemens, County of Macomb,
State of Michigan on 11/09/18

PRESENT: HON. Jennifer M. Faunce
Circuit Court Judge

This matter having come before the Court upon stipulation of the parties for entry of an amended 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 May 14, 2018, the Court entered an order certifying a class consisting of all persons and entities who paid or incurred the City of St. Clair Shores' (the "City") stormwater service charge (the "Stormwater Charge") the City imposes on owners of real property (a) at any time after August 15, 2016 (as to Count I of Plaintiff's Complaint) and/or (b) at any time after August 15, 2011 (as to Counts II through V of Plaintiff's Complaint). The time periods set by the court are solely for purposes of defining potentially eligible class members.

WHEREAS, on September 27, 2018, the Court entered a Stipulated Order Authorizing Class Notice;

WHEREAS, on October 18, 2018, the Court entered an Opinion and Order granting in part Plaintiff's Motion for Summary Disposition as to Count I of his complaint, violation of the Headlee Amendment; denying Plaintiff's Motion for Summary Disposition as to Counts II and III of his complaint; and denying Defendant's Motion for Summary Disposition. The Court's October 18, 2018 Opinion and Order caused a material change in the posture of this action, which in turn requires an amendment to the form of the notice to the Class;

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 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 class members who are current water and sewer customers, and has provided those records to Plaintiff's counsel, in electronic format, so that Plaintiff's counsel can provide notice to the class members via first class U.S. mail; and

WHEREAS, Plaintiff caused the summary Notice attached as Exhibit 2 to the Court's September 27, 2018 Stipulated Order Authorizing Class Notice to be published on two occasions in the Macomb Daily newspaper, as required under the September 27, 2018 Order;

WHEREAS, the Notice that was published in the Macomb Daily newspaper contained substantially all of the material information regarding the status of this action, and directed Class members to Class Counsel's website for further information, and was, together with the mailed notice required under this Order, sufficient to provide notice to the Class under MCR 3.501(C);

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

IT IS ORDERED that, within 21 days of the entry of this Order, 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 any class member who does not serve a notice of intent to be excluded from the class on or before January 7, 2019 will be bound by the judgment entered in this case.



Circuit Court Judge

11/09/2018

/S/ JENNIFER M. FAUNCE
/S/ JENNIFER M. FAUNCE
CIRCUIT COURT JUDGE, P43816

So stipulated:

KICKHAM HANLEY PLLC

By: /s/ Gregory D. Hanley
Gregory D. Hanley (P51204)
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By: /s/ Ronald A. King
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Attorneys for Defendant

KH156752

EXHIBIT - 1

STATE OF MICHIGAN
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Lansing, MI 48906-4328
(517) 318-3015
Attorneys for Defendant

**LEGAL NOTICE
NOTICE OF CLASS ACTION**

TO: All persons and entities who/which have paid the City of St. Clair Shores (the "City") for water and sanitary sewage disposal services at any time after August 15, 2011.

An action has been commenced in the 16th Judicial Circuit Court (Macomb County) titled *Patrick v. City of St. Clair Shores*, Case No. 2017-003018-CZ, presiding Judge Jennifer Faunce (the "Lawsuit"), challenging mandatory stormwater service charges (the "Stormwater Charges") the City imposes upon owners of real property. Plaintiff brought these claims on behalf of himself and a class of all others similarly situated.

Plaintiff is an individual who owns property in the City and who has paid the Stormwater Charges imposed by the City. Plaintiff contends that: (a) the Stormwater 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 Stormwater Charges violate the Prohibited Taxes By Cities And Villages Act, MCL 141.91 because the Stormwater Charges are not ad valorem taxes, but are taxes imposed, levied, or collected after January 1, 1964; (c) the Stormwater Charges are unlawful because they are unreasonable; (d) the City has been unjustly enriched by the collection and retention of the Stormwater Charges and/or is required to refund the Stormwater Charges under a theory of assumpsit; and (e) that Plaintiff and those similarly situated have been harmed by the City's collection and retention of the Stormwater Charges.

Plaintiff seeks a judgment from the Court against the City that would order and direct the City to refund all Stormwater Charges to which Plaintiffs and the class are entitled and any other appropriate relief. The City maintains that the City's imposition of the Stormwater Charges is proper and not unlawful. 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 May 14, 2018, Judge Faunce entered an 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's stormwater service charges at some time after August 15, 2011 and is, therefore, a member of the class.

On October 18, 2018, the Court entered an Opinion and Order granting in part Plaintiff's Motion for Summary Disposition as to Count I of his complaint, violation of the Headlee Amendment; denying Plaintiff's Motion for Summary Disposition as to Counts II and III of his complaint; and denying Defendant's Motion for Summary Disposition.

No financial consequences will be suffered by class members if Plaintiff loses. However, if Plaintiff loses, 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 paid or incurred the City's stormwater service charges at any time between August 15, 2011 to present, then you are a member of the class.

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**

January 7, 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 may inspect the Lawsuit documents during regular business hours at the Office of the Clerk for the 16th Judicial Circuit Court (Macomb County) at 40 N. Main Street, Mt. Clemens, MI 480843. 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 Plaintiff and the class:

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