

*The Superior Court of California for the County of Santa Clara  
Authorized this Notice*

**NOTICE OF CLASS ACTION CERTIFICATION AND VERDICT**

*Green v. City of Palo Alto*, Case No. 16CV300760  
(Consolidated with Case No. 18CV336237)

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

**Please Read This Notice Carefully – Your Legal Rights are Affected  
Even if You Do Not Act**

Palo Alto Gas Utility Customer:

Miriam Green (hereafter, “Plaintiff”), a customer of Palo Alto’s natural gas utility, has sued the City of Palo Alto (the “City”) on behalf of herself and all others similarly situated, claiming that the City has violated California Constitution article XIII C (“Propositions 26/218”) by imposing rates, fees, and charges for natural gas utility service that are taxes, because the City’s charges exceed the reasonable cost of providing that service, without voter approval. In particular, Plaintiff alleges that the City designs its gas rates to finance annual transfers of money from its gas utility to its general fund for general government services unrelated to the provision of gas service and that the City includes as a cost of service “market-rate” rents for the utility’s use of City property, and that these practices, in the absence of voter approval, violate Propositions 26/218.

During the relevant time period, from September 23, 2015 to June 30, 2019, the City imposed three different sets of gas utility rates. Accordingly, the refunds owed will be allocated among the following classes:

- The 2012 Gas Rate Class: All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between September 23, 2015 and June 30, 2016;
- The 2016 Gas Rate Class: All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2016 and June 30, 2018; and
- The 2018 Gas Rate Class: All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2018 and June 30, 2019.

This case was tried to the Court, and the Court has issued a verdict finding that the City has failed to meet its burden to show that the rates it charges City customers for gas service do not exceed its reasonable costs to serve them. Consequently, the Court held that the City has imposed an illegal tax against gas utility ratepayers and is liable to pay tax refunds in the total amount of \$12,618,510. The City may appeal the Court’s verdict, and that appeal may take several years to be decided.

Class Counsel in this matter intends to seek their fees and costs from the class refunds the Court ordered. Counsel intends to file a motion for attorney’s fees and costs for a third of the total recovery in this matter, or \$4,206,170, plus actual litigation costs of \$31,960. Plaintiff will seek an enhancement award of \$5,000 for her own efforts to win the recovery in this matter. A hearing on Plaintiff’s and Class Counsel’s motion for fees, costs, and the enhancement award is set for May 13, 2021 at 1:30 p.m. in Department 1 of the Superior Court for the County of Santa Clara, Downtown Superior Court Courthouse, 2nd Floor, 191 North First Street, San Jose, CA 95113, the Honorable Sunil R. Kulkarni, presiding.

Because the overcharges were collected as part of the per-unit charges on your gas bills (that is, the part of your bill which depends on the amount of gas you use), refunds will be paid to each class member based on the number of units of gas the class member consumed. The estimated total refund that may be paid to each Class and estimated per therm amount that may be paid to individual Class members, after deducting potential attorneys’ fees, enhancement awards and other costs, are as follows:

**Estimated Refund**

<b>Gas Rate Class:</b>	<b>2012 Class</b>	<b>2016 Class</b>	<b>2018 Class</b>
<b>Total Net Refund:</b>	\$3,305,917	\$3,187,026	\$1,864,397
<b>Refund Per Therm:</b>	\$0.138/Therm	\$0.055/Therm	\$0.060/Therm

Your individual refund is expected to be calculated by multiplying your gas usage by the above per therm amount during the relevant time period(s) within each class. For example, the median customer billed under the City’s G-1(Residential) rate schedule for the 2018 Class (July 1, 2018 and June 30, 2019) can expect a refund of \$24.93. This same customer, if a member of all classes, may receive approximately \$116.95. Individual refund amounts will vary, as refunds will be based on each customer’s gas usage during each class period.

You must now decide whether you wish to remain in the Class (with the option of being heard on the attorney’s fees/costs/enhancement motions), or be excluded from the Class.

## YOUR LEGAL RIGHTS AND OPTIONS

<p><b>Do Nothing – Remain in the Class</b></p>	<p>You may choose to stay in the Class. If you do, and the City’s likely appeal is unsuccessful, you will receive your share of the class recovery. However, you will give up any right to file your own lawsuit against the City separately on the legal issues in this case and, if the City’s likely appeal is successful you could receive nothing.</p> <p>No action is required to remain in the Class.</p>
<p><b>Opt Out – Exclude Yourself from the Class</b></p>	<p>You may opt out of the lawsuit, excluding yourself from the Class. If you do, you will not share in the recovery obtained, but you will be free to pursue your own claims against the City, subject to defenses the City may raise against you, including statute of limitations (timeliness) defenses. If you are considering opting out to pursue your own suit against the City, you should consult a lawyer of your choosing, at your cost.</p> <p><b>To exclude yourself from the Class, you must send a <u>Request to Be Excluded from the Class</u> form to the mailing address in section 14, no later than April 24, 2021.</b> For more information, see section 14 of this Notice.</p>

## BASIC INFORMATION – PLEASE READ

### 1. Why did I get a notice?

This Notice explains that the Court has allowed, or “certified,” this lawsuit to be decided as a class action. If you received notice about this lawsuit from the City of Palo Alto by mail or by email, then the City’s records show that you are a member of one or more of the Classes defined above. Accordingly, you have legal rights and options that you may choose between now, before this case becomes final.

## **2. Where is this lawsuit pending?**

This lawsuit is currently pending in Department 1 of the Santa Clara County Superior Court, before the Honorable Sunil R. Kulkarni. It is titled: *Green v. City of Palo Alto*, Case No. 16CV300760

## **3. What is a class action and who is involved?**

In a class action lawsuit, one or more named parties called “Class Representatives” sue a defendant on behalf of other people who have similar claims against that defendant. Each person is a member of the Class, unless he or she asks to be excluded from the Class before a deadline the court sets. All claims brought on behalf of the Class are resolved for all members of the Class in a single case before a single judge, and all Class members will be bound by the outcome. Entities such as businesses and non-profits can also be members of the Class.

Plaintiff Miriam Green is the Class Representative in this case. The City of Palo Alto is the defendant.

## **4. Why is this lawsuit a class action?**

The Court decided that this lawsuit can proceed as a class action because it meets the requirements of California Code of Civil Procedure, section 382, which governs class actions in California state courts. More information about why the Court is allowing this lawsuit to proceed as a class action can be found in the Court’s order certifying the Class, which is available at [www.phoenixclassaction.com/green-v-palo-alto](http://www.phoenixclassaction.com/green-v-palo-alto).

# **THE CLAIMS IN THE LAWSUIT**

## **5. What is the lawsuit about?**

The trial court has ruled that Palo Alto violated California Constitution article XIII C (“Propositions 26/218”) by imposing, without voter approval, rates, fees, and charges for gas utility service that are more than the reasonable cost of providing that service. In particular, the Court has found that the City designs its gas rates to finance transfers of money from its gas utility to its general fund for general government services unrelated to the provision of gas service, and that this practice violates Propositions 26/218, an initiative amendment to the California Constitution, in the absence of voter approval. The Court has found that the City owes refunds to all ratepayers for the amounts it collected which exceed the City’s reasonable cost of providing gas service.

For more information about the Court's ruling, please review the Court's Statement of Decision re: Phase II Trial, which can be found at [www.phoenixclassaction.com/green-v-palo-alto](http://www.phoenixclassaction.com/green-v-palo-alto).

#### **6. What effect will an appeal have?**

Palo Alto may appeal the Court's decision against it. It has the right to do so. If Palo Alto appeals, the refunds ordered by the Court will be "stayed," meaning that Palo Alto does not need to pay the refunds until the appellate courts decide all appeals. If Palo Alto appeals and is successful, it may not have to pay a refund at all. At this time, it is unknown how long it will take for the appellate courts to decide an appeal or what the result of any appeal will be.

Information and updates on cases appealed in California can be obtained at [www.courts.ca.gov](http://www.courts.ca.gov).

#### **7. Has the Court decided who is correct?**

Yes. The trial court has ruled that the City's gas utility rates exceeded what the City could legally charge. However, as stated in Section 6, above, an appeal might change this decision.

#### **8. Will current rates be impacted?**

No. Palo Alto set new rates for gas service that went into effect after this suit was filed. Because the rates challenged in this lawsuit are different than the rates currently in place, this lawsuit will not impact current gas utility rates.

### **WHO IS IN THE CLASS?**

#### **9. Am I part of the Class?**

The Class includes all Palo Alto gas utility customers who were billed for gas service from September 23, 2015 through June 30, 2019. Any judges assigned to the case, as well as their immediate family members, are excluded from the Class.

If you received a mailed or emailed notice from Palo Alto, according to Palo Alto's records, you are a member of the Class, and unless you ask to be excluded from the Class, you will be bound by the trial court's decision and any decision by the appellate courts in this case. For information on how to be excluded from the Class, see section 14 of this Notice.

If you are unsure whether you are a member of the Class, you can obtain free help by contacting the lawyers representing the Plaintiff in this case at the email or phone number listed in section 11 of this Notice.

## **10. Who is the Class Representative?**

The Court has appointed Plaintiff Miriam Green to serve as the Class Representative. Ms. Green is a customer of Palo Alto's gas utility who was billed for gas utility service during the relevant period.

## **THE LAW FIRMS REPRESENTING THE CLASS**

## **11. Is a law firm representing the Class in this case?**

The Court has appointed the law firms of Kearney Littlefield, LLP and Benink & Slavens, LLP as "Class Counsel." If you remain in the Class, these firms will represent your interests in this case. Class Counsel may be reached by the following methods:

Prescott W. Littlefield, Esq.  
[pwl@kearneylittlefield.com](mailto:pwl@kearneylittlefield.com)  
KEARNEY LITTLEFIELD, LLP  
3051 Foothill Blvd., Suite B  
La Crescenta, CA 91214  
Tel: (213) 473-1900  
Fax: (213) 473-1919

Vincent D. Slavens, Esq.  
[vince@beninkslavens.com](mailto:vince@beninkslavens.com)  
BENINK & SLAVENS, LLP  
8885 Rio San Diego Drive, #207  
San Diego, CA 92108  
Tel: (619) 369-5252  
Fax: (619) 369-5253

## **12. Should I get my own lawyer?**

Because Class Counsel are working on your behalf, you do not need to hire your own lawyer. If you would like a different lawyer to represent you, you may hire one. However, you will have to pay that lawyer yourself.

## **13. How will Class Counsel be paid?**

Class Counsel have entered into a contingency fee agreement with Plaintiff. Class Counsel intend to seek their fees and reimbursement for costs advanced that cannot be recovered from the City from the refunds the Court orders.

Class Counsel will move for attorney's fees and costs for a third of the total recovery in this matter, or \$4,206,170, plus actual litigation costs of \$31,960. In addition, Plaintiff will seek an enhancement award of \$5,000 for her efforts to secure the recovery in this matter.

A hearing on the motion for fees, costs, and the enhancement award is set for May 13, 2021 at 1:30 p.m. in Department 1 of the Superior Court for the County of Santa Clara, Downtown Superior Court Courthouse, 2nd Floor, 191 North First Street, San Jose, CA 95113, the Honorable Sunil R. Kulkarni, presiding.

## YOUR RIGHTS AND OPTIONS

### 14. Do I need to do anything now?

You must decide now whether you want to remain in the Class.

#### (a) NO ACTION REQUIRED to remain in the Class

You do not need to do anything to remain in the Class. If you do not take any action, you will automatically become a member of the Class on **April 24, 2021**.

#### (b) ACTION REQUIRED to be excluded from the Class

To exclude yourself from the Class, you must send a completed *Request to Be Excluded from the Class* form to the following address:

**Attn: Prop 26 Class Exclusion Request  
c/o Phoenix Settlement Administrators  
PO Box 7208  
Orange, CA 92863**

This form can be downloaded and printed from:  
[www.phoenixclassaction.com/green-v-palo-alto](http://www.phoenixclassaction.com/green-v-palo-alto).

**IT MUST BE POSTMARKED NO LATER THAN APRIL 24, 2021 TO BE VALID. ANY LATE REQUESTS TO BE EXCLUDED FROM THE CLASS WILL NOT BE ACCEPTED.** Class Counsel will submit to the Court all forms received before the deadline.

If you are considering excluding yourself from the Class, any legal claims that you make against the City separately may be barred by statutes of limitation (that is, come too late), which would prevent you from securing relief.

### 15. What are the risks if I remain in the Class?

If you stay in the Class, you will be bound by the decisions of the Court and any judgment entered in the case, as well as the result of any appeal. This means that even if the courts of appeals ultimately determine the City is not liable and reverse the decision of the trial court, you will not be able to pursue a separate lawsuit against the City based on the same claims the Plaintiff has alleged against the City for the Class.

### 16. What are the benefits if I remain in the Class?

If you stay in the Class, you do not have to sue on your own for any of the claims Plaintiff has brought against the City in this case. If the City decides not to appeal the trial court's judgment, the full recovery is affirmed by the appellate courts or a different recovery is ordered after an appeal, you will be entitled to a proportionate share of that recovery.

**17. Do I have to come to the trial or any hearings?**

No. You do not have to come to the trial or to any hearings in this case. Class Counsel and Plaintiff will represent you. You are welcome to come at your own expense.

**18. Can I attend the hearing for attorney's fees/enhancement award?**

Yes. A hearing on the motion for fees, costs, and the enhancement award is set for **May 13, 2021 at 1:30 p.m.** in Department 1 of the Superior Court for the County of Santa Clara, Downtown Superior Court Courthouse, 2nd Floor, 191 North First Street, San Jose, CA 95113, the Honorable Sunil R. Kulkarni, presiding. If you choose to remain in the Class, you may attend the hearing and be heard.

Please be advised that, due to the COVID-19 pandemic, physical access to the Court is limited. As of the date of this notice, appearances in Department 1 are limited to remote appearances via telephone or video. If you wish to view or participate in the hearing, you should visit the Court's webpage ([www.scscourt.org](http://www.scscourt.org)) to learn of access restrictions due to the pandemic.

**19. Has the case settled?**

No.

**20. Will I get money or other benefits from this case?**

If the trial court's judgment becomes final, you will receive a refund. However, as explained above, the City may appeal the trial court's judgment. If it does, your recovery, if any, will depend on the result of any appeal. It is now unknown when and how the appellate courts will decide any appeal.

**GETTING MORE INFORMATION**

More information, relevant documents, and a ***Request to Be Excluded from the Class*** form can be viewed and downloaded at [www.phoenixclassaction.com/green-v-palo-alto](http://www.phoenixclassaction.com/green-v-palo-alto). If you have any questions, you may contact Class Counsel by any of the methods identified in section 14 of this Notice.

***Please do not contact the Judge or the Court.***