

**LEGAL NOTICE
NOTICE OF CLASS ACTION**

IF YOU RECEIVED ELECTRIC SERVICE FROM THE LANSING BOARD OF WATER AND LIGHT (“LBWL”), AND PAID THE “FRANCHISE FEES” IMPOSED BY DELTA TOWNSHIP AT ANY TIME BETWEEN JANUARY 1, 2018 AND JUNE 30, 2020 AND WISH TO RECEIVE A CASH REFUND, IF YOU QUALIFY FOR SUCH REFUND, YOU MUST SUBMIT THE ATTACHED CLAIM FORM ON OR BEFORE JANUARY 7, 2021 BY MAILING IT TO _____ OR SUBMITTING AN ELECTRONIC FORM ONLINE AT _____.

IN ORDER TO RECEIVE A CASH REFUND AS PART OF THIS CLASS ACTION SETTLEMENT, YOU ARE REQUIRED TO SUBMIT A WRITTEN CLAIM. IF YOU DO NOT HAVE AN ELECTRIC BILLING ACCOUNT WITH THE LBWL YOU ARE NOT ELIGIBLE TO RECEIVE A PRO RATA SHARE OF THE SETTLEMENT FUND BY CREDIT AND YOU MUST SUBMIT A WRITTEN CLAIM FOR CASH PAYMENT IN ORDER TO RECEIVE ANY PORTION OF THE SETTLEMENT FUND.

PLEASE RETAIN THIS NOTICE

**STATE OF MICHIGAN
EATON COUNTY CIRCUIT COURT**

JANE STEPHENS,
individually and as representative
of a class of similarly-situated
persons and entities,

Plaintiff,

v.

CHARTER TOWNSHIP OF DELTA,
a municipal corporation,

Defendant.

Case No. 19-919-CZ

Hon. John Maurer

Gregory D. Hanley (P51204)
Edward F. Kickham Jr. (P70332)
John J. Premo (P55393)
Kickham Hanley PLLC
32121 Woodward Avenue, Suite 300
Royal Oak, Michigan 48073
Attorneys for Plaintiff

John J. Gillooly (P41948)
Garan Lucow Miller, P.C.
1155 Brewery Park Blvd, Suite 200
Detroit, Michigan 48207

Attorneys for Defendant

ATTN: all persons or entities who/which paid Franchise Fees to Delta Township (the “Township”) through the payment to the LBWL for electric service (“Electric Service”) at any time between January 1, 2018 and June 30, 2020 and who do not request to be excluded from the class pursuant to MCR 3.501(D) (the “Class”).

You are hereby notified that a proposed settlement in the amount of \$2,300,000 has been reached with the Township in a class action lawsuit pending in Eaton County Circuit Court titled *Stephens v. Charter*

Township of Delta, Case No. 2019-919-CZ, Hon. Judge John Maurer presiding (the “Lawsuit”), which challenges the “Franchise Fees” imposed by the Township on citizens whose properties receive electric service from the LBWL between January 1, 2018 and June 30, 2020.

Plaintiff is an individual who owns property in the Township and who has paid the Township’s Franchise Fees. Plaintiff contends on behalf of herself, and others similarly situated, that the Franchise Fees: (a) are not true franchise fees at all, because they are not imposed upon the LBWL for the privilege of using the Township’s infrastructure to provide electric service, but instead are imposed on the end-users of the LBWL’s electric service and therefore generate revenues that are untethered from any legitimate costs the Township incurs to enable the LBWL to provide electric service; (b) constitute unlawful taxes that have been imposed by the Township in violation of the Headlee Amendment to the Michigan Constitution because the Franchise Fees were not approved by the Township’s voters, as required by Section 31 of the Headlee Amendment; (c) are unlawful governmental exactions because the Township is prohibited by Michigan law (the Foote Act, 1905 PA 264, 1915 CL 4841) from imposing any fees as a condition of allowing the LBWL to provide electric service in the Township; and (d) violate equal protection guarantees of the Michigan Constitution (*see* Mich. Constitution 1963, Article 1, § 2) because they are imposed only on Township citizens who are located in those geographical areas of the Township which receive electric service from the LBWL and are not imposed on Township citizens who are located in different geographical areas of the Township which receive their electric service from Consumers Energy.

The Township sought to have this Lawsuit dismissed by filing a motion for summary judgment in lieu of answering the complaint. Instead of dismissing Plaintiff’s Lawsuit, in an Opinion and Order dated February 3, 2020, Judge Maurer denied the Township’s motion and declared that the Franchise Fees were unlawful taxes imposed in violation of the Headlee Amendment to the Michigan Constitution. Judge Maurer dismissed Plaintiff’s claims made under the Foote Act and denied the Township’s motion regarding Plaintiff’s Equal Protection claim.

The Township maintained and continues to maintain that the Township’s imposition of the Franchise Fees is proper and not unlawful, and thus denies Plaintiff’s claims and contends that it should prevail in the Lawsuit. The Township filed an appeal to the Michigan Court of Appeals as to Judge Maurer’s ruling that the Franchise Fees are unlawful taxes and contends that it should ultimately prevail in the Lawsuit. Plaintiff filed a cross-appeal regarding her claim under the Foote Act.

You are receiving this Notice because the Township’s records indicate that you paid the LBWL for electrical service between January 1, 2018 and June 30, 2020 and thus paid the Franchise Fees and are therefore a member of the class.

For settlement purposes, the parties have agreed that the Class will consist of all persons or entities who/which paid Franchise Fees to the Township through the payment to the LBWL for electric service at

any time between January 1, 2018 and June 30, 2020 (the “Class”). This Agreement is intended to settle all of the claims of the Class.

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 **Two Million Three Hundred Thousand Dollars (\$2,300,000.00)** for the benefit of the Class (the “Settlement Amount”). The Settlement Amount will be utilized, with Court approval, to pay refunds or provide credits 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, Kickham Hanley PLLC, (d) any incentive award made by the Court to the class representative in an amount not to exceed \$20,000 and (e) the “Opt-Outs” Pro Rata Shares as defined below.

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

Each Class Member’s share in the Net Settlement Fund shall be referred to herein as his, her or its “Pro Rata Share,” and each Class Member’s Pro Rata Share of the Net Settlement Fund will be distributed via a refund payment or credit.

All Class Members may participate in the Settlement by receiving from the Net Settlement Fund a cash distribution Payment or Credit (as defined in Paragraph 10 of the Settlement Agreement). To qualify to receive a distribution of cash via check (a “Payment”) from the Net Settlement Fund, Class Members are required to submit sworn claims (the “Claims”) which identify their names, addresses, and the periods of time in which they paid Electric Charges to the LBWL 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 are required to submit those claims no later than January 7, 2021 (the “Claims Period”).

The Claims-Escrow Administrator shall calculate each Class Member’s pro rata share of the Net Settlement Fund (the “Pro Rata Share”). Only those Class Members who paid the LBWL for Electric Service during the Class Period and submit a timely Claim are entitled to distribution by a cash Payment of a Pro Rata Share of the Net Settlement Fund. The Pro Rata Shares of the Net Settlement Fund for Class Members who/which do not submit a timely claim will be distributed by the Claims-Escrow Administrator returning those funds to the Township at least three (3) days prior to the Settlement Date (as defined in the Settlement Agreement) to be used solely to fund and provide credits on the Electric Service accounts in the amount of those Class Members’ Pro Rata Shares. Any Credit will attach to the account associated

with the Electric Charges and will remain until Electric Charges accrued after the Settlement Date exceed the amount of the Credit. The Township shall cause the LBWL to apply the Credits as of the Settlement Date. **For this reason, it is very important for any Class Member who paid Electric Charges but does not have a current electric service billing account to submit a Claim. If a Class Member does not have a current electric service billing account, it will not be possible for the Township to apply credit. The only way for Class Members without current electric service billing accounts to receive a portion of the Net Settlement Fund is for them to file a Claim.**

The size of each Class Member's Pro Rata Share shall be determined by (1) calculating the total amount of Electric Charges the Class Member paid during the Class Period and then (2) dividing that number by the total amount of Electric Charges the Township, through the LBWL, collected from Class Members during the Class Period and then (3) multiplying that fraction by the amount of the Net Settlement Fund.

The Township may not levy a tax or other assessment against property owners or electric customers to finance, in whole or in part, the Settlement Fund (unless such tax or assessment receives voter approval). The Settlement Fund shall be financed solely from current assets of the Township's General Fund.

The Class Members shall release the Township as stated below and as provided in Paragraph 26 of the Settlement Agreement.

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 Plaintiff's claims. **This request for exclusion must be received no later than January 7, 2020 and mailed to: Kickham Hanley PLLC, 32121 Woodward Avenue, Suite 300, Royal Oak, Michigan 48073 or emailed to khtemp@kickhamhanley.com.**

All potential Class Members who/which timely request exclusion from the Class (the "Opt-Outs") shall be barred from receiving recovery under the Settlement and the Opt-Outs' Pro Rata shares of the Net Settlement Fund will be deducted from the Net Settlement Fund. Upon the Settlement Date, the Claims-Escrow Administrator shall remit to the Township the amount of money from the Net Settlement Fund that would otherwise be refunded or credited to the Opt-Outs.

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 via a Refund or Credit. **Again, however, where a Class Member does not have a current electric billing account, it will not be possible for the Township to apply any credit. The**

only way for Class Members without current billing accounts to receive a portion of the Net Settlement Fund is for them to file Claims.

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 Township in this Lawsuit is a question you should ask your own attorney. Class Counsel cannot and will not advise you on this issue.

Pursuant to the Order of the Court dated September 29, 2020, a Settlement Hearing will be held in the Eaton County Circuit Court, 1045 Independence Blvd # 200, Charlotte, MI 48813 at 2:30 pm on February 18, 2021, to determine whether the proposed Settlement as set forth in the Settlement Agreement dated September 23, 2020, is fair, reasonable, and adequate and should be approved by the Court, whether the Lawsuit should be dismissed pursuant to the Settlement, whether counsel for Plaintiffs and the Class should be awarded fees and expenses, and whether the Class Representative should receive an incentive award. If you wish to view the hearing remotely, you may view a live stream of the hearing on Youtube by visiting <https://tinyurl.com/deltasettlement>. 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 January 7, 2021, such Class member serves by first class mail written objections that set forth the name of this matter as defined in the Notice, the objector's full name, address and telephone number, an explanation of the basis upon which the objector claims to be a Class Member, all grounds for the objection including any known legal support for the objection, the number of times in which the objector has objected to a class action settlement in the past five years and a caption of each case in which an objection was filed, the identity of all counsel representing the objector at the hearing, a statement confirming whether the objector intends to appear and/or testify at the hearing (along with a disclosure of all testifying witnesses) and the signature of the objector (not just the objector's attorney) upon each of the following attorneys:

Gregory D. Hanley
Kickham Hanley PLLC
300 Balmoral Centre
32121 Woodward Avenue
Royal Oak, Michigan 48073

Counsel for Plaintiff

and

John J. Gillooly (P41948)
Garan Lucow Miller, P.C.
1155 Brewery Park Blvd, Suite 200
Detroit, Michigan 48207

Counsel for Defendant

and has filed said notice, objections, papers and briefs, as to the settlement with the Clerk of the Eaton County Circuit Court. 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.

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 Eaton County, Michigan. You may also view the Settlement Agreement and other important court documents at 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, IN WRITING OR BY EMAIL TO KHTEMP@KICKHAMHANLEY.COM, NOT BY TELEPHONE, identified as Attorneys for Plaintiffs, above. **DO NOT CONTACT THE COURT, THE CLERK OF THE COURT, THE DEFENDANT OR THE ATTORNEYS FOR DEFENDANT.**

On the Settlement Date, each member of the Class 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:

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, 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 the date of this Final Order and Judgment concerning the Township's or the LBWL's assessment or collection of the Franchise Fees. 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 hereby; (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.

IN ORDER TO RECEIVE A CASH REFUND AS PART OF THIS CLASS ACTION SETTLEMENT, YOU ARE REQUIRED TO SUBMIT A WRITTEN CLAIM. IF YOU DO NOT HAVE AN ELECTRIC BILLING ACCOUNT WITH THE LBWL YOU ARE NOT ELIGIBLE TO RECEIVE A PRO RATA SHARE OF THE SETTLEMENT FUND BY CREDIT AND YOU MUST SUBMIT A WRITTEN CLAIM IN ORDER TO RECEIVE ANY PORTION OF THE SETTLEMENT FUND.

IF YOU RECEIVED ELECTRIC SERVICE FROM THE LANSING BOARD OF WATER AND LIGHT (“LBWL”), AND PAID THE “FRANCHISE FEES” IMPOSED BY DELTA TOWNSHIP AT ANY TIME BETWEEN JANUARY 1, 2018 AND JUNE 30, 2020 AND WISH TO RECEIVE A CASH REFUND, IF YOU QUALIFY FOR SUCH REFUND, YOU MUST SUBMIT THE ATTACHED CLAIM FORM ON OR BEFORE JANUARY 7, 2021 BY MAILING IT TO _____ OR SUBMITTING AN ELECTRONIC FORM ONLINE AT _____.