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SPOKANE COUNTY CLERK



**SUPERIOR COURT OF
WASHINGTON
FOR SPOKANE COUNTY**

NO. 17-2-02507-5

JOHN E. DURGAN, individually and as class representative for all others similarly situated; class representative for all others similarly situated; and KRISTOPHER J. KALLEM, individually and as class representative for all others similarly situated;

**ORDER GRANTING PLAINTIFFS'
MOTION TO APPROVE CLASS
NOTICE PLAN**

Plaintiff

VS.

CITY OF SPOKANE, a municipal corporation in and for the State of Washington.

Defendant

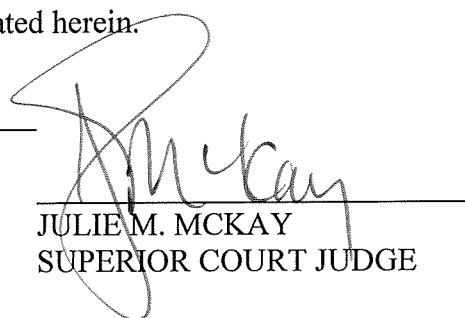
The matter came before the Court on August 17, 2018, at 9:00 a.m. on Plaintiffs' Motion to Approve Class Notice Plan before the Honorable Julie M. McKay. The Court having reviewed the pleadings and files herein; and the Court having heard arguments of counsel; now, therefore,

IT IS HEREBY ORDERED that Plaintiffs' Motion to Approve Class Notice Plan is GRANTED as follows:

1. The form and content of Plaintiffs' proposed "Notice to Class" and proposed "Short Form Notice to Class" attached hereto as Appendices A and B are approved;

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2. The deadline for class members to “opt out” shall be no later than 90 days from the date of this Order;
 3. Notice is to be provided through Defendant, City of Spokane to:
 - a. All current City of Spokane water utility customers who are billed by U.S. Mail by inserting notice in the form of Appendix B in the next possible regularly-scheduled utility mailing, with copying costs of the notice to be at Plaintiffs’ expense. The U.S. Mail cost over and above standard postage for the City’s regular utility mail costs to be at the Plaintiff’s expense (i.e. the amount of increased postage based upon the addition of a tri-fold insert). Standard postage for the water utility billing remains Defendant, City of Spokane’s cost. and;
 - b. All current water utility customers billed electronically by attaching notice in the form of Appendix A as a PDF attachment to the next possible regularly-scheduled utility e-mailing.
 4. Class counsel is authorized to provide notice to unknown class members by publication of notice in the form of Appendix A in the Spokesman-Review and/or the Cheney Free Press, the Pacific Northwest Inlander, the Valley News Herald, or other “official publication” serving Spokane County, to be accomplished at Plaintiffs’ expense.
 5. Within 10 days of notice by either mail, e-mail or publication (whichever notice occurs first) Defendant, City of Spokane, shall post and maintain an “internal” link to www.classaction.dunnandblack.com within the City of Spokane’s website under the Public Works & Utilities and Water sections.
 6. The Court’s written ruling is incorporated herein.

Dated: Dec 4, 2018



JULIE M. MCKAY
SUPERIOR COURT JUDGE

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DECLARATION OF SERVICE


On December 4, 2018, a copy of the Order was e-mailed and mailed to the parties

listed below:

Robert A Dunn	Michael F Connelly	Salvatore J Faggiano
Bil Childress	Megan Christine Clark	Elizabeth Louise Schoedel
Dunn & Black PS	Etter McMahon Lamberson Van	City of Spokane
111 N Post St Ste 300	Wert & Oresk	808 W Spokane Falls Blvd
Spokane, WA 99201-4911	618 W Riverside Ave Ste 210	Fl 5
bdunn@dunnandblack.com	Spokane, WA 99201-5048	Spokane, WA 99201-3333
bchildress@dunnandblack.com	mfc@ettermcmahon.com	eschoedel@spokanecity.org
	mclark@ettermcmahon.com	sfaggiano@spokanecity.org

I certify under penalty of perjury under the laws of the state of Washington that the forgoing is true and correct.

Dated: December 4, 2018


Lisa Gurkowski,
Judicial Assistant to Julie M. McKay,
Superior Court Judge

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

JOHN E. DURGAN, individually and as)
class representative for all others similarly) NO. 17-2-02507-5
situated; TAWNDI L. SARGENT,)
individually and as class representative for) **NOTICE TO CLASS**
all others similarly situated; and)
KRISTOPHER J. KALLEM, individually)
and as class representative for all others)
similarly situated,)
Plaintiffs,)
v.)
CITY OF SPOKANE, a municipal)
corporation in and for the State of)
Washington,)
Defendant.)

This Notice may affect your rights and has been approved by the Court. Please read it carefully.

TO: All current and former water utility customers of the City of Spokane who paid "OUTSIDE CITY" water rates.

1. What is this Notice about?

You are receiving this notice because you have been identified as a current or former water utility customer who received and paid City of Spokane ("Defendant") water utility bills that were assessed at an "OUTSIDE CITY" customer classification and water rate schedule for which the above three Spokane County residents ("Plaintiffs") allege the City of Spokane unlawfully overcharged. The City denies Plaintiffs' claims and asserts numerous defenses. The Court has not yet decided the claims or defenses being asserted.

A lawsuit against the City was certified as a class action by Spokane County Superior Court Judge Julie M. McKay on May 25, 2018.

The purpose of this notice is to advise you that you have been identified as a potential member of the certified class. You have the choice as to whether or not you wish to participate in this lawsuit. If you **want** to participate in the lawsuit, you do not need to do anything else at this time. You will automatically be a part of the case and will receive more information in the future. If you **do not want** to participate in the lawsuit, you **must** either (a) hand deliver or mail a **Request to Be Excluded** form by mail to Class Counsel (identified below), or (b) send the **Request to Be Excluded** form to Class Counsel by email.

The **Request to Be Excluded** form must be delivered, transmitted, or postmarked on or before _____, 20__ . A Request to Be Excluded form is attached to this Notice as **Exhibit A**.

2. What is the lawsuit about?

Plaintiffs John E. Durgan, Tawndi L. Sargent, and Kristopher J. Kallem allege that (1) the City unlawfully overcharged unreasonable and unjustified OUTSIDE CITY water rates and (2) Plaintiffs and all other others similarly situated are entitled to a refund of all amounts that the City overcharged.

3. What is a class action?

A “class action” is a lawsuit in which a class representative is allowed to bring claims on behalf of a group of similarly situated “Class Members.” In a class action, the final outcome of the lawsuit (whether positive or negative) will apply equally to all individuals who fall within the class definition, described below, unless they exclude themselves from the class by the Court-established deadline.

4. Who is in the certified class?

The Court has decided that the following people are potential members of the class:

All current and former residents and businesses of Spokane County, Washington who (1) are or were at all times material hereto water utility customers of the Defendant City located outside the City’s limits and within the City’s water service area, and (2) were charged by and required to pay to the City higher water services rates (i.e., “Outside City” water services rates) than water utility customers located within the City’s limits were charged by and required to pay to the City.

5. Who will represent the class?

The Court appointed Plaintiffs John E. Durgan, Tawndi L. Sargent, and Kristopher J. Kallem as “Class Representatives.” The Court appointed the law firm of Dunn & Black, P.S. at 111 N. Post St., Suite 300, Spokane, Washington 99201 as “Class Counsel.”

6. What do I need to do to take part in the class action?

If you want to participate in the class action against the City of Spokane, and you want to have the above-named Plaintiffs and Class Counsel represent your interests, you are not required to do anything at this time.

7. What happens if I participate in the class action?

If you participate in the class action, you will be bound by any court decision in the case, whether favorable or unfavorable. This means that you will share in any recovery the class obtains through trial or settlement. This also means that you will lose any right to pursue similar claims for this time period if the court rules against the class. You will not be responsible to pay for costs or fees for Class Counsel, but these amounts may be taken out of any recovery in the case. If you choose to participate in the class action, you may also hire your own lawyer, but at your own expense. If you choose to be included in the class, the City is not permitted to retaliate against you in any way because of your participation in this case.

8. Can I exclude myself from the class action?

Yes. If you do not want to be a member of the class in this lawsuit, you can opt out. If you want to be excluded, you must communicate your decision to opt out to Class Counsel by using the Request to Be Excluded form attached as **Exhibit A** to this Notice. The Request to Be Excluded form must be either: (a) hand delivered or mailed and postmarked on or before _____, 20__ , to:

**Water Class Litigation
Dunn & Black, P.S.
111 N. Post St., Suite 300
Spokane, WA 99201**

Or (b) sent by email transmitted on or before _____, 20__ to Shellie Garrett at sgarrett@dunnandblack.com.

9. What happens if I exclude myself from the class action?

If you exclude yourself from the class action, you will not be affected or bound by any rulings, judgment, or settlement in the case. You will retain your rights under the law and are free to pursue any possible claims on your own. This also means that you will not share in any recovery that might be paid to class members as a result of this lawsuit.

10. What is the time limit for requesting exclusion?

If you want to be excluded from this class action lawsuit, you must return to Class Counsel a completed **Request to Be Excluded** form no later than _____, 20__ . A **Request to Be Excluded** form is attached as **Exhibit A**.

11. Can anyone retaliate against me for participating or excluding myself?

No one is permitted to retaliate against you in any way because you chose to participate in or exclude yourself from this class action.

12. How can I obtain further information?

DO NOT CONTACT THE COURT FOR INFORMATION. Any questions you have concerning this Notice or any changes of name or address may be directed to Class Counsel:

**Water Class Litigation
Dunn & Black, P.S.
111 N. Post St., Suite 300
Spokane, WA 99201
Phone: (509) 455-8711
(Shellie Garrett, Paralegal, sgarrett@dunnandblack.com)**

You may also seek the advice of your own attorney if you desire.

Pleadings and other records in this litigation may be examined and copied at any time during regular office hours at the Office of the Clerk, Spokane County Superior Court, 1116 W. Broadway Ave., Spokane, WA 99201.

DATED at Spokane, Washington this _____ day of September, 2018.

EXHIBIT A

REQUEST TO BE EXCLUDED FROM THE CLASS

Please carefully read the attached Notice of Class Action and Right to Request Exclusion from the Class before filling out this form.

If you want to **exclude** yourself from the class certified in this lawsuit, please sign and date this form and return it to Class Counsel on or before _____, 20__.

The Request to be Excluded must be either:

- (a) Hand delivered or mailed and postmarked on or before _____, 20__, to:

**Water Class Litigation
Dunn & Black, P.S.
111 N. Post St., Suite 300
Spokane, WA 99201**

Or

- (b) Sent by email, transmitted on or before _____, 20__, to Shellie Garrett at sgarrett@dunnandblack.com.

I want to be **excluded** from the class that has been certified in the case of Durgan, et al. v. City of Spokane, Spokane County Superior Court Cause No. 17-2-02507-5.

PRINT NAME: _____

SIGNATURE: _____

ADDRESS: _____

EMAIL: _____

DATED: _____

To: All current and former water utility customers of the City of Spokane who paid “OUTSIDE CITY” water rates.

This Notice may affect your rights and has been approved by the Court. Please read it carefully.

What is this notice about? You are receiving this notice because you have been identified as a current or former water utility customer of the City of Spokane (“Defendant”) who received and paid water bills assessed at an “OUTSIDE CITY” customer classification and water rate for which three Spokane County residents (“Plaintiffs”) allege the City unlawfully overcharged. The City denies these claims. This lawsuit against the City was certified as a class action by Spokane County Superior Court Judge Julie M. McKay on May 25, 2018. The purpose of this notice is to advise you that (a) you have been identified as a potential member of the class, and that (b) you have the choice as to whether or not you wish to participate in this lawsuit.

If you **want** to participate in the lawsuit, you do not need to do anything else at this time. You will automatically be a part of the case and will receive more information in the future.

If you **do not want** to participate in the lawsuit, you **must** complete the **Request to Be Excluded** printed on the back of this Notice and return it to Class Counsel (identified below) on or before _____, 20__.

What is the lawsuit about? Plaintiffs allege that (1) the City unlawfully overcharged unreasonable and unjustified OUTSIDE CITY water rates, and that (2) Plaintiffs and all other others similarly situated are entitled to money damages including a refund of all amounts overcharged by the City. This lawsuit is known as *Durgan, et al. v. City of Spokane*, Spokane County Superior Court Cause No. 17-2-02507-5.

What is a class action? A “class action” is a lawsuit in which a “Class Representative” is allowed to bring claims on behalf of a group of similarly situated “Class Members.” In a class action, the final outcome of the lawsuit (whether positive or negative) applies to everyone in the class that does not “opt out” of the class.

Who is in the certified class? All current and former residents and businesses of Spokane County, Washington who: (1) are or were at all times material hereto water utility customers of the Defendant City located outside the City’s limits and within the City’s water service area and (2) were charged by and required to pay to the City higher water services rates (i.e., “Outside City” water services rates) than water utility customers located within the City’s limits were charged by and required to pay to the City.

Who will represent the class? The court-appointed “Class Representatives” are Plaintiffs John E. Durgan, Tawndi L. Sargent, and Kristopher J. Kallem. The Court-appointed “Class Counsel” is Dunn & Black, P.S.

What happens if I participate in the class action? If you participate in the class action, you will: (a) be bound by the final outcome of the lawsuit, whether positive or negative; (b) share in any recovery the class obtains; and (3) lose any right to pursue similar claims if the court rules against the class. You will not have to pay any costs or fees for Class Counsel, but these amounts may be taken out of any recovery in the case. If you choose to participate in the class action, you may hire your own lawyer, at your own expense.

Can I exclude myself from the class action? Yes. To “opt out” of the class action, you must return a completed **Request to Be Excluded** to Class Counsel on or before _____, 20__ by (a) hand delivery or U.S. Mail to *Water Class Litigation, Dunn & Black, P.S., 111 N. Post St., Suite 300, Spokane, Washington 99201*; or (b) by email to Shellie Garrett at sgarrett@dunnandblack.com.

What happens if I “opt out”? If you exclude yourself from the class action, you **will not** (1) be bound by the final outcome of the lawsuit, whether positive or negative; or (2) share in any recovery the class obtains, but you **will** retain any right to pursue similar claims on your own if the court rules against the class.

How can I get more information? Any questions about this Notice may be directed to Class Counsel. Additional information is available at www.classaction.dunnandblack.com. Pleadings and other records in this litigation are available at the Office of the Clerk, Spokane County Superior Court, 1116 W. Broadway Ave., Spokane, WA 99201.

REQUEST TO BE EXCLUDED FROM THE CLASS

Please carefully read the Notice of Class Action and Right to Request Exclusion from the Class before filling out this form.

If you want to **exclude** yourself from the class certified in this lawsuit, please sign and date this form and return it to Class Counsel on or before _____, 20__.

The Request to be Excluded must be either:

- (a) Hand delivered or mailed and postmarked on or before _____, 20__ to:

**Water Class Litigation
Dunn & Black, P.S.
111 N. Post St., Suite 300
Spokane, WA 99201**

Or

- (b) Sent by email, transmitted on or before _____, 20__ to Shellie Garrett at sgarrett@dunnandblack.com.

I want to be **excluded** from the class that has been certified in the case of Durgan, et al. v. City of Spokane, Spokane County Superior Court Cause No. 17-2-02507-5.

PRINT NAME: _____

SIGNATURE: _____

ADDRESS: _____

EMAIL: _____

DATED: _____