

NORTH CAROLINA SUPERIOR COURT, FORSYTH COUNTY

Supplemental Notice regarding pending class action settlement affecting annexed users of the Town of Kernersville, North Carolina's sanitary sewer system

Fasano v. Town of Kernersville and the Winston-Salem – Forsyth County City/County Utilities Commission
(Forsyth County, No. 16 CVS 2801)

The Superior Court authorized this Notice. It is not a solicitation from a lawyer.

- A settlement has been reached in a class action lawsuit about whether the Town of Kernersville (“Kernersville”) and the Winston-Salem – Forsyth County City/County Utilities Commission (“CCUC”) overcharged users of Kernersville’s sewer system from July 1, 2012 to August 1, 2016. The settlement resolves litigation over whether the overcharges violated federal and state law. Kernersville and the CCUC are called “Defendants” in this Notice.
- Se ha llegado a un acuerdo en una demanda colectiva sobre si la ciudad de Kernerville ("Kernersville") y la Comisión de Servicios Públicos de la Ciudad / Condado de Winston-Salem-Forsyth ("CCUC") excesivamente cobro a los usuarios del sistema de alcantarillado de Kernersville desde el 1 de julio de 2012 hasta el 1 de agosto de 2016. El acuerdo resuelve el litigio sobre si los cobros excesivos violaron las leyes federales y estatales. Kernersville y el CCUC se llaman "Demandados" en este Aviso.
- You may be eligible to receive refunds of overcharges, with interest, as part of the settlement.
- The settlement is subject to approval by the North Carolina Superior Court, Forsyth County. Refunds will be provided to eligible participants only if the Court approves the settlement. If you are an eligible Class Member and the Court approves the settlement, then you will receive a refund without the need to take any additional action.
- You have a right to know about the proposed settlement of a class action lawsuit and about your options before the Court decides whether to approve the settlement. You may participate in the Court’s proceedings regarding approval of the settlement, as explained below.
- Your rights with respect to the settlement, and the actions you can take, are explained in this Notice. Please read this Notice carefully. You may also check the settlement website at www.KernersvilleSewerSettlement.com for updates and further details, or call 1 (888) 292-1832.

BASIC INFORMATION

1. Why am I receiving this Notice?

On July 27, 2018, the Honorable Judge Edwin G. Wilson, Jr. entered an Order approving a settlement in the case of Fasano v. Town of Kernersville and the Winston-Salem – Forsyth County City/County Utilities Commission, which provided for, among other things, the repayment of sewer overcharges to the users of the Kernersville sewer system from the period of June 30, 2012 to August 1, 2016. The basis and calculations for the original settlement were based on sewer billing provided by Defendants. That information was used to calculate the appropriate refunds to Class Members. However, after the Court approved the settlement, it was discovered that there were 692 Kernersville sewer users whose data and information had not been previously provided by Defendants to Plaintiffs for calculating the applicable refunds. These users are customers whose real property had been annexed by Kernersville (the “Annexed Class Members”). This proposed settlement and Notice is intended to cover the Annexed Class Members who are entitled to a refund but would not otherwise receive a refund under the previously approved settlement.

The settlement described in this Notice does not affect the \$12.3 million settlement already approved by the Court. Instead, this settlement is a supplement to the already-approved settlement and is intended to ensure that the rights of Annexed Class Members are addressed in substantially the same manner as the rights of other Class Members.

2. What is this lawsuit about?

Kernersville's sewer system is managed by the CCUC. Sewer rates charged to Kernersville sewer users are based on a multiple of the rate charged by the CCUC to users of Winston-Salem's sewer system. As of 2011, the rate multiplier for Annexed Class Members was 1.5x, meaning that for the same volume of sewer service, Kernersville users paid 1.5 times the rate paid by Winston-Salem users. Under a 2011 agreement, Kernersville and the CCUC agreed to reduce the rate multiplier charged to Kernersville users to 1.2x as of June 30, 2012, unless they had reached a new agreement on sewer rates. Defendants did not reach a new agreement by June 30, 2012, but continued to charge the 1.5x rate multiplier to Annexed Class Members, instead of reducing the rate multiplier to 1.2x. Kernersville and the CCUC reached a new written agreement on sewer rates as of August 1, 2016, which ended the damages period for purposes of this lawsuit.

The issue in this case is whether Kernersville and the CCUC overcharged sewer system customers from July 1, 2012 until August 1, 2016, during which time the rate multiplier should have been 1.2x. On August 1, 2017, the Court entered an Order determining that the failure to reduce the rate multiplier to 1.2x during the relevant time period and the subsequent overcharges constituted a breach of contract and an unconstitutional taking without just compensation in violation of the United States and North Carolina Constitutions.

The Court has certified the Class as Plaintiffs and all other citizens and residents of Kernersville and persons in its outlying (extraterritorial) area, including any businesses, firms, trusts, corporations or any other entity, who received, and paid for, Kernersville sanitary sewer system services at any time between 1 July 2012 and 1 August 2016.

Judge Edwin G. Wilson, Jr., of the North Carolina Superior Court, is in charge of this case. Edward and Debra Fasano, the Kernersville residents that brought this case, have been appointed by the Court as Class Representatives. The Court has appointed H. Brent Helms and Franklin Scott Templeton of Robinson & Lawing, LLP in Winston-Salem, and Alan W. Duncan and Stephen M. Russell, Jr. of Mullins Duncan Harrell & Russell PLLC in Greensboro, as Class Counsel. Garden City Group, LLC has been appointed by the Court as Class Administrator.

3. What are the terms of the settlement?

Defendants have agreed to pay an additional \$172,269.25 into a common fund already under the Court's control. Annexed Class Members will be refunded approximately 84% of the common fund. In turn, the Annexed Class Members will release their claims against Defendants arising from sewer fee overcharges stemming from the rate multiplier during the relevant time period. The settlement also provides that 16% of the common fund will be used to pay the costs of administering the refund process and for the Court to award attorneys' fees and costs to Class Counsel, in an amount to be determined by the Court.

The Court's approval of the settlement will have no impact on the sewer rate that you are currently charged, or on the amount of property taxes or other fees owed by Kernersville residents.

4. What will I get from the settlement?

Each eligible Annexed Class Member is expected to receive 100% of the overcharged sewer fees from July 1, 2012 to August 1, 2016, plus approximately 9% simple interest. The amount of individual refunds will be based on each Annexed Class Members' sewer usage and the period of time that they received sewer services in Kernersville. The Class Administrator cannot advise of the specific amounts due to each Annexed Class Member, so please do not call and ask the Class Administrator for such information.

5. What am I giving up to stay in the Class?

If you do not exclude yourself from the Class by opting out, and the Court approves the settlement, you will not be able to sue the Kernersville or the CCUC regarding the overcharged sewer fees during the relevant time period, and you will be bound by the decisions of the Court in this case.

6. How will I receive my refund?

Refund checks will be mailed to the names and addresses of Annexed Class Members according to data maintained by the CCUC. You do not need to submit any information to receive your refund check. However, if your address has changed, or if an Annexed Class Member has passed away or closed (in the case of a business entity), please contact the Class Administrator, Garden City Group, LLC, at Fasano v. Town of Kernersville, c/o GCG, P.O. Box 10566, Dublin, OH 43017-7266. Please promptly deposit the refund check upon receipt.

7. When will I receive my refund?

Refunds will be mailed to eligible Annexed Class Members as soon as possible after the Court grants final approval of the settlement. In the event there are any appeals from the Court's final approval, those appeals may need to be resolved before any refunds can be distributed.

YOUR OPTIONS

8. How do I get out of the settlement?

If you do not want to receive a refund from this litigation, but want to keep the right to separately sue the Defendants over the legal issues in this case, then you must take steps to get out of this settlement. This is called asking to be excluded from – or “opting out” – of the Class. To opt out of the settlement, you must complete and mail to the Settlement Administrator a letter stating that it is a “Request to Opt Out,” that includes the following: (a) your name, address, telephone number, and email address (if available); (b) the name of the case (*Fasano v. Town of Kernersville, et al.*); (c) an explicit statement of your desire to opt out of this settlement; and (d) your signature, acknowledged by a notary public. You must mail the Request to Opt Out, postmarked no later than 5 November 2018, to the Class Administrator, Garden City Group, LLC at Fasano v. Town of Kernersville, c/o GCG, P.O. Box 10566, Dublin, OH 43017-7266.

9. If I opt out, will I still get a refund from the settlement?

No. If you opt out, you will not receive a refund from this settlement.

10. How can I tell the Court my opinion of the settlement?

If you are an Annexed Class Member, you can submit written comments to the Court in support of, or in opposition to, the settlement. A written comment in opposition to a settlement is called an “objection.” To do so, you must send a letter stating that it is a “Comment on Settlement,” that includes the following: (a) your name, address, telephone number, and email address (if available); (b) the name of the case (*Fasano v. Town of Kernersville, et al.*); (c) the reasons you support or object to the settlement, accompanied by any legal support for your comments; (d) a statement of whether you intend to appear at the Final Approval Hearing (see Question 15); and (e) your signature, acknowledged by a notary public. You must mail the Comment on Settlement, postmarked no later than 5 November 2018, to the Class Administrator, Garden City Group, LLC at Fasano v. Town of Kernersville, c/o GCG, P.O. Box 10566, Dublin, OH 43017-7266. If your Comment on Settlement is not postmarked by 5 November 2018, then the Court will not consider your comments. Annexed Class Members are not required to submit comments on the settlement.

If you request to opt out of the settlement (see Question 8), you will not be allowed to submit a comment regarding the settlement, because you will no longer be part of the Class.

11. What is the difference between opting out and objecting?

Objecting is simply telling the Court that you do not like the terms of the settlement, and the reasons why, but you will ultimately receive the benefit of any settlement approved by the Court. You can object to the settlement only if you do

not opt out of the settlement. Opting out of the settlement means telling the Court that you do not want to be part of the settlement and that you do not want to receive a refund from the settlement.

12. What happens if I do nothing at all?

If the Court approves the settlement and you are an eligible Annexed Class Member, you will receive your refund as noted in Questions 4 and 7 above, and you will not be able to pursue a separate lawsuit about these issues.

THE COURT'S FINAL APPROVAL HEARING

13. When and where will the Court decide whether to approve the settlement?

At this time, the Court has not scheduled a Final Approval Hearing for the Annexed Class Members. After the notice period has closed, the Court will make a determination as to whether a Final Approval Hearing is necessary. If a Final Approval Hearing is not necessary, then the Court will render a decision based on the filings submitted to the Court. To find out whether a Final Approval Hearing has been scheduled and the details of such a hearing, please check www.KernersvilleSewerSettlement.com for updates.

14. Do I have to come to the final approval hearing, if a hearing occurs?

No. Class Counsel will answer any questions that the Court may have. If you send a comment supporting or objecting to the settlement, you may, but do not have to come to Court to talk about it. (See Question 10.) As long as you mailed your written comment on time to the proper address, the Court will consider it. You may also attend the hearing in person at your own expense, and may retain your own attorney to attend on your behalf.

15. May I speak at the final approval hearing?

Yes. If you submit a comment in support of or objecting to the settlement, please indicate in your written comment that you wish to speak at the Final Approval Hearing, if a hearing is scheduled. Even if you do not submit a written comment, you may indicate your desire to speak at the hearing, if one is scheduled, by sending a letter stating that it is your "Notice of Intent to Appear." In your letter, you must include the following: (a) your name, address, telephone number, and email address (if available); (b) the name of the case (*Fasano v. Town of Kernersville, et al.*); and (c) your signature. You must mail your Notice of Intent to Appear, postmarked no later than 5 November 2018, to Fasano v. Town of Kernersville, c/o GCG, P.O. Box 10566, Dublin, OH 43017-7266. If you do not submit a Notice of Intent to Appear by 5 November 2018, the Court may not allow you to speak at the hearing, if one is scheduled.

16. Do I need an attorney to represent me at the final approval hearing?

No. Class Counsel has already been appointed to represent the Class and their interests in this matter. If you wish to object to the settlement, then you may want to retain separate counsel at your own expense, but you do not need to do so in order to object in writing or to speak at the final approval hearing.

GETTING MORE INFORMATION

17. How do I get more information?

This Notice summarizes the proposed settlement. More details, and other filings from the lawsuit, are available at www.KernersvilleSewerSettlement.com. If you have additional questions, you can visit the settlement website, call the Class Administrator at 1 (888) 292-1832, or write to the Class Administrator: Fasano v. Town of Kernersville, c/o GCG, P.O. Box 10566, Dublin, OH 43017-7266.

PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE CONCERNING THIS CASE.