

*The Superior Court of California for the County of Los Angeles*

*Authorized this Notice*

**NOTICE OF CLASS ACTION CERTIFICATION**

*Komesar v. City of Pasadena, Case No. BC 677632*

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

**YOU ARE NOT BEING SUED**

**Please Read This Notice Carefully**

Dear Pasadena Water and Power Customer:

Eve Komesar (hereafter, “Plaintiff”), a customer of Pasadena Water and Power, has sued the City of Pasadena on behalf of herself and all others similarly situated, claiming that the City has violated, and continues to violate, California Constitution article XIII C, section 2, subdivision (b) (“Proposition 218”) by imposing fees and charges for its electric utility service in an amount that exceeds the reasonable cost of providing that service, without voter approval. In particular, Plaintiff alleges that Pasadena Water and Power designs its electric rates to generate funding for the City of Pasadena’s annual transfers of money from its light and power fund (its electric utility enterprise fund) to its general fund pursuant to Pasadena City Charter, article XIV, sections 1407-1408, and that this practice, in the absence of voter approval, violates Proposition 218. Among other relief, Plaintiff seeks a refund of all amounts charged that exceed the City of Pasadena’s reasonable cost of providing electric service.

The City of Pasadena denies any wrongdoing. It contends that Pasadena Water and Power’s fees and charges for electric utility service do not exceed the reasonable cost of providing that service. It also claims that Pasadena City Charter, article XIV, sections 1407-1408 provide legal authority for its annual transfer of money from the light and power fund to the general fund, and that because these sections were approved by the voters of Pasadena, they satisfy the requirements of Proposition 218. Finally, it has asserted several defenses that, if proven, could limit or prevent any refund.

This case is being overseen by the Honorable Kenneth R. Freeman in Department 14 of the Los Angeles County Superior Court (hereafter, “the Court”). It is titled: *Komesar v. City of Pasadena, Case No. BC 677632*.

The Court has allowed Plaintiff’s lawsuit to proceed as a class action and defined the “Class” as:

All persons and entities that, from June 1, 2017 through October 29, 2019, were billed by the City of Pasadena’s Department of Water and Power for retail electric service provided under any rate schedule described in Title 13, Chapter 13.04 of the Pasadena Municipal Code. Excluded from the class are: (i) all persons and entities that make a timely election to be excluded from the class; and (ii) any judges assigned to this case, and their immediate family members.

The Court has not yet decided whether the City of Pasadena violated Proposition 218. There is no money currently available for the Class, and there is no guarantee that any money will be available in the future. However, if you meet the definition of the Class set forth above, you are a member of the Class and your legal rights will be affected by this case. You must now decide whether you wish to remain in the Class or instead be excluded from the Class.

**YOUR LEGAL RIGHTS ARE AFFECTED EVEN IF YOU DO NOT ACT**

***Read This Notice Carefully***

You have two choices regarding your participation in this lawsuit: you may do nothing and remain in the Class, or you may ask to be excluded from the Class.

<b>YOUR LEGAL RIGHTS AND OPTIONS</b>	
<b>Do Nothing – Remain in the Class</b>	<p>You may choose to stay in the lawsuit by remaining in the Class. If you remain in the Class, you will be represented by Plaintiff and her attorneys, you will be bound by any decisions of the Court that determine the Class’ legal rights, and you will receive any benefits that may result from a trial or settlement. However, you will give up any right to sue the City of Pasadena separately on the legal claims in the case.</p> <p>No action is required to remain in the Class.</p>
<b>Opt Out – Exclude Yourself from the Class</b>	<p>You may choose to opt out of the lawsuit by excluding yourself from the Class. If you exclude yourself from the Class, you will not be bound by any decisions of the Court that determine the Class’ legal rights, and you will not share in any benefits that may result from a trial or settlement. However, you will retain your right to sue the City of Pasadena separately on the legal claims in the case.</p> <p><b>To exclude yourself from the Class, you must send a <u>Request to Opt Out of Class Action</u> form to the attorneys representing Plaintiff, no later than October 29, 2019. For more information, see section 15 of this Notice.</b></p> <p>If you are considering excluding yourself from the Class, please note that any legal claims you separately assert against the City of Pasadena may be time barred, which would prevent you from securing relief.</p>

## **BASIC INFORMATION – PLEASE READ**

### **1. Why did I get this notice?**

This notice explains that the Court has allowed, or “certified,” this lawsuit to proceed as a class action. Pasadena Water and Power’s records show that you are a member of the Class, based on the class definition set forth above. Accordingly, you have legal rights and options that you may exercise at this time, before the trial takes place, or the case is settled.

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

This lawsuit is currently pending in Department 14 of the Los Angeles County Superior Court, before the Honorable Kenneth R. Freeman. It is titled: *Komesar v. City of Pasadena*, Case No. BC 677632.

### **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 makes a timely request to be excluded from the Class. All claims brought on behalf of the Class are resolved in a single case before a single court for all members of the Class, who will be bound by the judgment. Entities such as businesses and non-profits can also be members of the Class.

Plaintiff Eve Komesar is the Class Representative in this case. The City of Pasadena 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.PWPElectricRatesAction.com](http://www.PWPElectricRatesAction.com).

## **THE CLAIMS IN THE LAWSUIT**

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

Plaintiff claims that the City of Pasadena has violated, and continues to violate, California Constitution article XIII C, section 2, subdivision (b) (“Proposition 218”) by imposing fees and charges for its electric utility service that exceed the cost of providing that service, without voter approval. In particular, she alleges that the City of Pasadena designs its electric rates to generate funding for the City of Pasadena’s annual transfers of money from its light and power fund to its general fund pursuant to Pasadena City Charter, article XIV, sections 1407-1408; and that this practice, in the absence of voter approval, violates Proposition 218. Amongst other relief, she seeks a refund of all amounts charged that exceed the City of Pasadena’s reasonable cost of providing electric service.

For more information about Plaintiff’s allegations and claims, please review Plaintiff’s complaint, which can be found at [www.PWPElectricRatesAction.com](http://www.PWPElectricRatesAction.com).

### **6. How does the City of Pasadena answer?**

The City of Pasadena denies any wrongdoing. It contends that Pasadena Water and Power’s fees and charges for electric utility service do not exceed the reasonable cost of providing that service. In particular, it claims that Pasadena City Charter, article XIV, sections 1407-1408 authorize annual transfers of money from the light and power fund to the general fund; that these provisions were approved multiple times by Pasadena voters; and that accordingly, the City of Pasadena may design its fees and charges for electric utility service in a manner that ensures the transfers are funded, without violating Proposition 218. It has also asserted a number of procedural defenses that, if proven, could limit or prevent any refund.

For more information about the City’s allegations and defenses, please review the City of Pasadena’s answer to the complaint, which can be found at [www.PWPElectricRatesAction.com](http://www.PWPElectricRatesAction.com).

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

No. The Court has not yet decided whether the City of Pasadena or Plaintiff is correct, nor has it entered judgment in favor of any party. By certifying the case as a class action, the Court is not expressing any opinion regarding the merits of Plaintiff’s claims. Those claims will be resolved by the Court at trial or by a motion, or by the parties if a settlement is reached.

### **8. What is the Plaintiff asking for?**

Plaintiff seeks a refund of all amounts of Pasadena Water and Power’s electric fees and charges that exceed the reasonable cost of providing electric service; a declaration

from the Court that those fees and charges are “taxes” that require voter approval under Proposition 218; and a judgment preventing the further collection of electric fees and charges that exceed the reasonable cost of providing electric service unless and until the City of Pasadena obtains voter approval of those fees and charges.

#### **9. Is there money available now?**

No. Because the Court has not yet determined whether the City of Pasadena has violated Proposition 218, there is no money available for members of the Class at this time. There is also no guarantee that money or other benefits will be obtained. If at some point money is available, either after trial or as the result of a settlement, members of the Class who have not requested exclusion will be sent instructions for how they may receive a share.

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

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

The Class includes all persons and entities that, from June 1, 2017 through October 29, 2019, were billed by Pasadena Water and Power for retail electric service provided under any rate schedule described in Title 13, Chapter 13.04 of the Pasadena Municipal Code. Any judges assigned to the case, as well as their immediate family members, are excluded from the Class.

According to Pasadena Water and Power’s records, you are a member of the Class, and unless you ask to be excluded from the Class, you will be bound by any decisions of the Court that determine the Class’ legal rights. For information on how to be excluded from the Class, see section 15 of this Notice.

If you are not sure 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 addresses or phone numbers listed in section 12 of this Notice.

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

The Court has appointed Plaintiff Eve Komesar to serve as the Class Representative. Ms. Komesar is a customer of Pasadena Water and Power who was billed for electric utility service during the relevant period.

## THE LAW FIRMS REPRESENTING THE CLASS

### 12. 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:

Thomas A. Kearney, Esq.  
[tak@kearneylittlefield.com](mailto:tak@kearneylittlefield.com)  
Prescott W. Littlefield, Esq.  
[pwl@kearneylittlefield.com](mailto:pwl@kearneylittlefield.com)  
KEARNEY LITTLEFIELD, LLP  
3436 N. Verdugo Rd., Suite 230  
Glendale, CA 91208  
Tel: (213) 473-1900  
Fax: (213) 473-1919

Vincent D. Slavens, Esq.  
[vince@beninkslavens.com](mailto:vince@beninkslavens.com)  
Eric J. Benink, Esq.  
[eric@beninkslavens.com](mailto:eric@beninkslavens.com)  
BENINK & SLAVENS, LLP  
550 West C Street, Suite 530  
San Diego, CA 92101  
Tel: (619) 369-5252  
Fax: (619) 369-5253

### 13. 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.

### 14. How will Class Counsel be paid?

Class Counsel have entered into a contingency fee agreement with Plaintiff. This means that they are advancing all costs and fees in this case and will be paid or reimbursed only if there is a recovery. If there is no recovery, Class Counsel will not be paid and/or reimbursed.

If Plaintiff prevails or the case settles, Class Counsel will ask the Court to issue an order providing for the payment or reimbursement of their fees and costs, either by deducting the fees and costs from any money obtained for the Class or by directing the City of Pasadena to pay those fees and costs. The Court must approve any such request. The City of Pasadena can, and may, oppose any request that it be ordered to pay Class Counsel’s fees and costs.

## YOUR RIGHTS AND OPTIONS

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

At this time, you must decide whether or not you wish 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 October 29, 2019.

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

To exclude yourself from the Class, you must send a completed *Request to Opt Out of Class Action* form to the following address:

**KEARNEY LITTLEFIELD, LLP  
Attn: Pasadena Class Exclusion Request  
3436 N. Verdugo Rd., Suite 230  
Glendale, CA 91208**

This form can be downloaded and printed from [www.PWPElectricRatesAction.com](http://www.PWPElectricRatesAction.com). **IT MUST BE POSTMARKED NO LATER THAN OCTOBER 29, 2019 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, please note that any legal claims that you separately assert against the City of Pasadena may be time barred, which would prevent you from securing relief.

### 16. 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. This means that even if you do not receive any money or benefits as a result of your participation in this case, you will not be able to pursue a separate lawsuit against the City of Pasadena on your own that raises the same claims Plaintiff has alleged on behalf of the Class.

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

If you stay in the Class, you do not have to sue the City of Pasadena on your own for any of the claims that Plaintiff has brought against the City of Pasadena on behalf of the Class. If there is a recovery, either after trial or as a result of a settlement, you may be entitled to a share of that recovery.

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

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

**19. Has a trial date been set?**

No trial date has been set.

**20. Has the case settled?**

No settlement has been reached.

**21. Will I get money after trial or settlement?**

There is no guarantee that money or benefits will be obtained, and even if they are obtained, there is no guarantee as to when that will occur. If you stay in the Class and Plaintiff obtains money or benefits for the Class after trial or as a result of a settlement, you will be notified about how to participate in the recovery.

**GETTING MORE INFORMATION**

A copy of this Notice, the Complaint, the Answer to the Complaint, the order certifying the class, and the ***Request to Opt Out of Class Action*** form can be viewed and downloaded at [www.PWPElectricRatesAction.com](http://www.PWPElectricRatesAction.com). If you have any questions, you may contact Class Counsel by any of the methods identified in section 12 of this Notice.

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