

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
19-CVS-8602

GREGORY, INC., individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

TOWN OF FUQUAY-VARINA,

Defendant.

**NOTICE OF CLASS ACTION  
AND PROPOSED SETTLEMENT**

**If you paid Water or Sewer Acreage Fees, Impact Fees, Capacity Fees, Fire Line Fees or System Development Fees to the Town of Fuquay-Varina from June 24, 2016 through June 30, 2018, you may be eligible to receive a payment from a Class Action Settlement.**

*The Court has authorized this notice. This is not a solicitation from a lawyer.*

- The class action settlement resolves a lawsuit about water and sewer acreage fees, impact fees, capacity fees, fire line fees, and/or system development fees (herein cumulatively “impact fees”) paid to the Defendant Town of Fuquay-Varina (“the Town”) from June 24, 2016 through June 30, 2018. The lawsuit alleged that the Town unlawfully imposed certain water and/or sewer impact fees without authority from the North Carolina General Assembly.
- The settlement provides for monetary payments over two years in relation to the amount of impact fees paid to the Defendant Town of Fuquay-Varina from June 24, 2016 to June 30, 2018.
- Your rights and options, and the deadlines to exercise them, are explained in this Notice, so **please read this Notice carefully.**
- The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the settlement is approved.

## **IMPORTANT INFORMATION**

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

You received this notice because according to our records, you paid water and/or sewer acreage fees, impact fees, capacity fees, fire line fees, and/or system development fees to the Defendant Town of Fuquay-Varina from June 24, 2016 through June 30, 2018. The Court ordered this notice because you have the right to know about a proposed settlement of this class action, and about your options, before the Court decides whether to approve the settlement. If the Court approves the settlement, and after any objections and appeals are resolved, the Defendant will make the payments that the settlement allows. This notice explains the lawsuit, your legal rights and what benefits are available. The parties who sued are called the “Plaintiffs” or “Class Representatives.” The Town of Fuquay-Varina that was sued is called the “Defendant.” The Honorable Jeffrey B. Foster, a specially appointed North Carolina Superior Court Judge, is overseeing this lawsuit.

### **2. What are the claims and defenses in this case?**

The Plaintiffs contend that the Town of Fuquay-Varina unlawfully imposed water and sewer impact fees without authority from the North Carolina General Assembly. The Plaintiffs are seeking damages and refunds for all individuals, proprietorships, partnerships, corporations, and other entities who (a) from June 24, 2016 through June 30, 2018 (b) paid water or sewer acreage fees, impact fees, capacity fees, fire line fees, and/or system development fees to the Town of Fuquay-Varina. Defendant contends that its actions were lawful, and that Plaintiffs and other natural persons and corporate entities who paid the water and sewer impact fees are not entitled to damages or refunds. The Town denies each of the legal claims made by the Plaintiffs.

### **3. Why is this a class action?**

A class action is a lawsuit in which one or more persons, called Class Representatives, sue on behalf of a “class” of other persons or entities with similar claims. Those other people are called the “class members.” The Court decides all the issues in the lawsuit for all class members, except for those who exclude themselves from the Class. In this Settlement, the Class Representatives have brought the case on behalf of other people and corporate entities who have similar claims and who also paid water and/or sewer acreage fees, impact fees, capacity fees, fire line fees, and/or system development fees to the Town of Fuquay-Varina.

### **4. Why is there a settlement?**

The Court did not decide in favor of the Plaintiffs or Defendant. Instead, the Parties agreed to a settlement. That way, they avoid the cost of trial, and the people affected, the Settlement Class Members, will get compensation. The Settlement is intended to resolve all claims against the Defendant Town of Fuquay-Varina that have been asserted or could have been asserted by Class Members concerning the water and sewer impact fees. The Class Representatives and the attorneys think the settlement is best for the Class Members. The parties agreed that the

settlement is a compromise of disputed claims and Defendant Town does not admit that it did anything wrong.

## **5. How do I know if I am part of the Settlement?**

By receiving this Class Notice, you have been identified as a Settlement Class Member from the Town's records. The Settlement Class is defined as all individuals, proprietorships, partnerships, corporations, and other entities who (a) from June 24, 2016 through June 30, 2018 (b) paid water or sewer acreage fees, impact fees, capacity fees, fire line fees, and/or system development fees to the Town of Fuquay-Varina.

## **6. Are there exceptions to being included?**

Yes. Excluded from the Settlement Class are: Individuals, proprietorships, partnerships, corporations, and other entities who paid impact fees subject to the following agreements: (a) "Development and Infrastructure Agreement" between Bill Clark Homes of Raleigh, LLC and the Town dated October 7, 2014 for the Sunset Glen Subdivision; (b) "Development and Infrastructure Agreement" between Reliabuilt, LLC and the Town dated December 30, 2014 for the Sonoma Springs Subdivision; and (c) "Infrastructure Agreement" between BB-Massengill, LLC and the Town dated June 30, 2016 for the Bentwinds Bluffs Subdivision.

There are no other exceptions to being included in the Settlement Class except for Settlement Class Members who exclude themselves by sending a Request for Exclusion as explained in Question 10 on page 4 below.

## **7. What does the settlement provide?**

If the Settlement is approved, the Town will provide payments to class members who paid water and sewer acreage fees, impact fees, capacity fees, fire line fees, and/or system development fees at any point in time from June 24, 2016 through June 30, 2018. The Town of Fuquay-Varina will establish a Settlement Fund equal to four million seven hundred and fifty thousand dollars (\$4,750,000.00) less attorneys' fees and costs as awarded by the court.

In the event a Settlement Class Member to whom a distribution is due cannot be found during the nine-month period after this Action becomes Final and after the Class Notice Administrator has applied good faith efforts to locate such person, such amount shall revert back to the Common settlement fund to be distributed to Class Members in the same percentages as their Class Member benefits checks from the common fund. In the event all Class Members are made whole (by receiving the full amount paid in fees plus interest of 6% from the date of payment back in settlement funds) and money remains in the settlement fund those funds shall be paid to the Town.

## **8. How and when can I get a payment?**

To get a payment, you do not have to do anything if you are a member of the Settlement Class. A check will be sent to you automatically, if and when the settlement is approved. The Court

will conduct a Fairness Hearing on May 6, 2021, to decide whether to approve the settlement. If the Court approves the settlement, and no appeal is taken, then you will be receiving your payment promptly after that occurs. If an appeal is taken, then resolving it may take some time, perhaps more than a year.

### **9. What am I giving up to get a payment and stay in the Class?**

Unless you exclude yourself, you are staying in the Settlement Class and will be eligible to receive your payment. You can no longer sue, continue to sue, or be a part of any other lawsuit against Defendant Town of Fuquay-Varina involving the legal issues resolved by this settlement during this Settlement Class period. It also means that the Court's orders will apply to you and will legally bind you, and you will give up claims against Defendant as described below in necessarily legally accurate terms:

“[A]ny and all claims, demands, actions, suits and causes of action against The Town [of Fuquay-Varina] and/or their respective officers, employees, attorneys, insurers or agents, whether known or unknown, asserted or unasserted, that any member of the Settlement Class ever had, or could have had, now has or hereafter can, shall or may have, relating in any way to any conduct, act or omission which was or could have been alleged by any or all members of the Settlement Class arising out of or relating to the payment of Impact Fees. These claims include claims for damages or remedies of every kind or character (including without limitation actual, compensatory, punitive, or exemplary), known or unknown, or for compensation of any type or for accounting or reconciliation, reimbursement or statutory remedies or for pre- or post-judgment interest, or for other damages arising from or relating to the Class Member's claims for damages that were asserted or that could have been asserted in the Class Action Litigation, including all claims related to refunds, damages, etc... for the payment of Impact Fees from June 24, 2016 to June 30, 2018.”

### **10. What If I Do Not Want to Be in the Class?**

If you do not want a payment from this settlement and/or you want to keep the right to sue or continue to sue the Town of Fuquay-Varina, as part of any other lawsuit, about the legal issues in this case, then you must take steps to get out. This is called excluding yourself from or “opting out” of the class. To exclude yourself, you must send a letter that contains all of the following:

- Your name, current address, and phone number;
- The approximate date of the payment of the Impact Fees;
- A statement that you want to be excluded from the Settlement Class and the Settlement in *Gregory, Inc., et. al v. Town of Fuquay-Varina*, Wake County File No. 19-CVS-8602; **and**
- Your signature (or your lawyer's signature).

You cannot exclude yourself on the phone or by email. If you ask to be excluded, you will not get any settlement payment, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. In lieu of sending a letter that contains the above identified information, a form entitled “Request for Exclusion” is available at [www.Fuquay-VarinaImpactFeeSettlement.com](http://www.Fuquay-VarinaImpactFeeSettlement.com).

You must file your Request for Exclusion with the Clerk of Superior Court, Wake County Courthouse at 316 Fayetteville Street, Raleigh, N.C. 27601, and mail copies of your Request for Exclusion *postmarked by **April 30, 2021***, to Town of Fuquay-Varina Impact Fee Class Action – Exclusions, 575 Military Cutoff Rd., Suite 102, Wilmington, N.C. 28405 and postmarked by the same date to the following:

William G. Wright  
Shipman & Wright, LLP  
575 Military Cutoff Rd  
Suite 106  
Wilmington, N.C. 28405

Dan Hartzog  
Hartzog Law Group, LLP  
1903 N. Harrison Avenue  
Suite 200  
Cary, N.C. 27513

**11. If I do not exclude myself, can I sue the Town of Fuquay-Varina for the same thing later?**

No. Unless you exclude yourself, you give up the right to ever sue the Town of Fuquay-Varina for the claims that this settlement resolves, including claims relating to the settled claims that are presently unknown. If you have a pending lawsuit against the Town of Fuquay-Varina concerning impact fees, you should speak to your lawyer in that lawsuit immediately. You must exclude yourself from *this* Class and Settlement to continue your own lawsuit. Any exclusion request postmarked after the deadline will not be valid, and the sender will be a Settlement Class Member and bound by the settlement and release.

**12. If I exclude myself, can I get money from this settlement?**

No. If you exclude yourself, you will not get a payment from this settlement. But you may sue or continue to sue Town of Fuquay-Varina solely on your own behalf.

**13. If I want to object to the Settlement, how do I tell the Court about my objection?**

If you are a Settlement Class Member and do not exclude yourself and you want to object to the Settlement, you can tell the Court you do not like the Settlement or some part of it. You can give reasons why you think the Court should not approve the Settlement. The Court will consider your views. To object, you must file and send a letter that contains all of the following:

- Your name, current address, phone number and fax number (if applicable);
- The name of the lawsuit, *Gregory, Inc. v. Town of Fuquay-Varina*, Wake County File No. 19-CVS-8602;
- A statement of the reasons why you object, including any legal support you wish to bring to the Court's attention;
- Copies of any documents you believe support your objection, if any;
- Your intention to appear at the Fairness Hearing if you or your attorneys want to speak;
- The identity of any witnesses you intend to present, and copies of any exhibits you intend to introduce at the Fairness Hearing; **and**
- Your signature (or your lawyer's signature).

You must file your objection with the Clerk of Superior Court, Wake County Courthouse at 316 Fayetteville Street, Raleigh, N.C. 27601 no later than **April 30, 2021** and mail your objection ***postmarked by April 30, 2021***, to Town of Fuquay-Varina Impact Fee Class Action – Objections, 575 Military Cutoff Rd., Suite 102, Wilmington, N.C. 28405 and to the following by the same date:

William G. Wright  
Shipman & Wright, LLP  
575 Military Cutoff Rd,  
Suite 106  
Wilmington, N.C. 28405

Dan Hartzog  
Hartzog Law Group, LLP  
1903 N. Harrison Avenue  
Suite 200  
Cary, N.C. 27513

#### **14. What is the difference between objecting and excluding myself?**

Objecting is the way to tell the Court if there is something that you do not like about the Settlement. You can object only if you stay in the Class and the Settlement. Excluding yourself is the way to tell the Court that you do not want to be part of the Class and Settlement, and that you want to keep the right to file your own lawsuit. If you exclude yourself, you cannot object because the Settlement no longer affects you.

#### **15. Do I have a lawyer in this case?**

Yes. The Court has approved class counsel to represent the Class. You will not be charged by these lawyers. You do not need to hire your own lawyer. If you want to hire your own lawyer, you will have to pay that lawyer. Your Class Counsel are:

Gary K. Shipman & William G. Wright  
Shipman & Wright, LLP  
575 Military Cutoff Road, Suite 106  
Wilmington, N.C. 28405  
Phone: 800-762-1990  
Fax: 910-762-6752

Jim Scarbrough, John Scarbrough, & Madeline J. Trilling  
Scarbrough, Scarbrough & Trilling, PLLC  
137 Union Street South  
Concord, N.C. 28025  
Facsimile: 704-782-3116

James R. DeMay  
Ferguson, Hayes, Hawkins & DeMay, PLLC  
45 Church St. South  
Concord, N.C. 28025  
Facsimile: (704) 784-3211

**16. How will the lawyers be paid?**

Class Counsel will ask the Court to approve attorneys' fees and reimbursement of expenses not to exceed one-third (1/3) of the value of the Settlement fund. The Court will determine the amount of fees and expenses to award. Class Counsel will also request that \$5,000 be paid to each of the Class Representatives who helped the lawyers on behalf of the whole Class.

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

The Court will hold a Fairness Hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you do not have to. The hearing will be held via WebEx at 2:00 p.m. on May 6, 2021. At this hearing, the Court will consider all the objections, if any, and will consider whether the settlement is fair, reasonable, and adequate. The Court will listen to people who have filed timely written objections and have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel. At the conclusion of the Hearing or after the Hearing, the Court will decide whether to approve the settlement.

**18. Do I have to come to the hearing?**

No. You do not have to come to the Fairness Hearing. Class Counsel will answer questions the Court may have. But you are welcome to come at your own expense. If you send an objection, you do not have to come to the Hearing for the Court to consider it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

**19. May I speak at the hearing?**

You may ask the Court for permission to speak at the hearing if you object to the settlement or an award of attorneys' fees. To do so, you must serve a written objection within the deadline set out in Question 13 above, and your objection must state that you (or your lawyer) intend to appear at the Hearing. You can find how to serve an objection, and the due date for serving the objection, in Question 13 on pages 5 and 6 of this Notice. You cannot speak at the hearing if you excluded yourself from the class.

**20. Are more details about the lawsuit and Settlement available?**

This Notice only summarizes this Action and the Settlement. More details are in the Complaint, as Amended, the Answers filed by Defendants, the Preliminary Approval Order and in the Settlement Agreement. You can get copies of these documents, in addition to the Order Granting Preliminary Approval of the Settlement by visiting [www.fuquayvarinainimpactfeesettlement.com](http://www.fuquayvarinainimpactfeesettlement.com). You can also look at the documents filed in this Action at the Office of the Clerk of Superior Court, General Court of Justice, located at the Wake County Courthouse at 316 Fayetteville Street, Raleigh, N.C. 27601.

**21. How do I get more information?**

You can get more information or have questions answered by calling the offices of Class Counsel toll-free:

Shipman & Wright, LLP  
575 Military Cutoff Road, Suite 106  
Wilmington, NC 28405  
Phone: 800-762-1990

You can also visit the settlement website, [www.fuquayvarinainimpactfeesettlement.com](http://www.fuquayvarinainimpactfeesettlement.com).

PLEASE DO NOT CONTACT THE COURT.

Approved by Order entered on February 18, 2021 by the Honorable Jeffrey B. Foster.