

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT  
IN AND FOR MARION COUNTY, FLORIDA

DISCOUNT SLEEP OF OCALA, LLC d/b/a  
MATTRESS WAREHOUSE, individually,  
and as a Representative of a Class of all  
similarly situated others, and DALE W.  
BIRCH, individually and as a  
Representative of a Class of all similarly  
situated others,

Case No.: 2014 CA 000426

Plaintiffs,

Class Representation

v.

CITY OF OCALA, FLORIDA, a political  
subdivision of the State of Florida,

Defendant.

**NOTICE OF CLASS ACTION**

**To All Potential Members of the Following Class:** all persons who paid the City a Fire Service User Fee on or after February 20, 2010 (the "Class").

**THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY.**

**YOU HAVE NOT BEEN SUED.**

Utility customers of the City of Ocala have sued alleging the City of Ocala levied illegal taxes in the form of a Fire Service User Fee (the "Fire Fee"), which were charged as part of each utility customer's monthly utility bill (the "Lawsuit").

This Lawsuit is a class action on behalf of all City of Ocala utility customers who have paid a Fire Fee since February 20, 2010.

The Court has not yet decided whether the City of Ocala did anything wrong. There is no money available now, and no guarantee there will be. However, your legal rights are affected, and you must decide now whether to remain a member of the Class or opt out of the Class.

Your options are explained in this notice. To opt out, you must act on or before July 1, 2018.

Unless this case is resolved by settlement, Class Counsel must prove the claims against the City of Ocala. If money or benefits are obtained from the City of Ocala, you will be notified on how to obtain your share of the recovery.

Any questions not answered by this Notice of Class Action (the "Notice") should be directed to Class Counsel and not the Court.

## **WHY THIS NOTICE WAS SENT TO YOU**

The City of Ocala indicated you were or are an in-city utility customer of the City of Ocala and are a member of the Class. This notice is sent to you pursuant to Florida Rule of Civil Procedure 1.220(d)(2), which requires all members of the Class who can be identified and located be provided with certain information regarding the Lawsuit and their rights.

## **BACKGROUND OF THE LAWSUIT**

Plaintiffs, Discount Sleep of Ocala, LLC d/b/a Mattress Warehouse and Dale W. Birch, sued the City of Ocala on February 20, 2014. The Plaintiffs allege the City charged Fire Fees in violation of the Florida Constitution and Florida law. The Plaintiffs ask the Court to declare the Fire Fees unconstitutional and order the City of Ocala refund, to the fullest extent allowed under the law, Fire Fees it has unlawfully collected from February 20, 2010.

The City of Ocala denies the allegations, believes the Fire Fees are lawful and claims it properly collected all fire fees. There is no guarantee money or benefits will ever be obtained. If they are, you will be notified about how to obtain your share of the recovery.

## **CLASS CERTIFICATION**

On January 5, 2018, the Fifth District Court of Appeal determined this Lawsuit is appropriate as a class action. The class is defined as:

**all persons who paid the City a Fire User Fee on or after February 20, 2010.**

The estimated number of Class Members exceeds 50,000. Discount Sleep of Ocala, LLC d/b/a Mattress Warehouse and Dale W. Birch (the "Class Representatives") are the Class Representatives. The Class Representatives seek relief on behalf of themselves and all Class Members. Bowen|Schroth is class counsel.

## **RIGHT TO SEPARATE COUNSEL**

You have the right to hire your own attorney and unless you retain your own counsel to enter an appearance on your behalf, you will be represented by Class Counsel should you decide to stay in the class. If you choose to hire your own attorney, you may have to pay that attorney.

## **ATTORNEY FEES**

As a Class Member, you will not be directly charged by Class Counsel to represent you in this Lawsuit. In the event of a judgment in favor of the Class in this Lawsuit, Class Counsel will apply to the Court for payment of reasonable attorneys' fees and costs which will either be deducted from the funds recovered before net proceeds are distributed to the Class Members or paid directly by the City of Ocala.

**YOUR OPTIONS**

The Court has not decided the merits of the Lawsuit. The purpose of this Notice is to advise you of the existence of this Lawsuit and how it may affect your rights. You have to decide whether to stay in the Class or ask to be excluded, and you have to decide this on or before July 1, 2018. Your options regarding this lawsuit are as follows:

<b>Do Nothing</b>	<p>By doing nothing, you will remain a member of the Class. Your interests will be represented by Class Counsel and you will be bound by the outcome of this Lawsuit. In the event of a favorable judgment, you will share in the recovery. In the event of an unfavorable judgment, you will be precluded from bringing the same or similar claims against the City of Ocala on your own behalf. The Judgment, whether favorable or not, will include all members who do not request exclusion. You will be entitled to notice of and an opportunity to be heard regarding any proposed settlement or dismissal of this Lawsuit. You will be entitled to share in settlement proceeds obtained on behalf of the Class.</p> <p><b>If you want to remain a member of the Class, you should NOT sign the "Request for Exclusion From Class" form.</b></p>
<b>Opt Out</b>	<p>By opting out of the Class, your interests will not be represented by Class Counsel and you will not be bound by the outcome of this Lawsuit unless you seek to intervene in this Lawsuit. In the event of a favorable judgment, you will not share in the recovery. In the event of an unfavorable judgment, you may still assert the same or similar claims you may have against the City of Ocala, if any. You will not be entitled to notice of or an opportunity to be heard regarding any proposed settlement or dismissal of the Lawsuit. You will not be entitled to share in any settlement proceeds obtained on behalf of the Class.</p> <p>If you want to be excluded from the Class, you must complete the enclosed form ("Request for Exclusion From Class") and return it by mail, <b>postmarked no later than July 1, 2018</b>, to:</p> <p style="text-align: center;">Bowen Schroth 600 Jennings Avenue Eustis, Florida 32726</p> <p>If you request exclusion on behalf of any person or entity other than yourself, you must state your legal authority to execute the request on behalf of that other person or entity.</p>

**FURTHER COURT PROCEEDINGS**

This Lawsuit is not presently set for trial. You may communicate with Class Counsel if you have any evidence you believe would be helpful to establish the Class claims, and you may be asked by the parties to provide information relevant to the case.

If it becomes necessary to hold a trial in order to resolve this class action, there is no guarantee the Plaintiffs will win, or they will get any money for the Class. You do not need to attend the

trial. Class Counsel will present the case for the Plaintiffs, and the City of Ocala will present its case. You or your own attorneys are welcome to attend any future court proceedings at your own expense. Any member who does not request exclusion may make a separate appearance on or before July 1, 2018.

**ADDITIONAL INFORMATION**

If the Plaintiffs obtain any money or benefits as a result of this class action, you will be notified about how to participate in the recovery. We do not know how long this will take.

Any questions you have concerning the matters contained in this Notice should NOT be made to the Court, but should be directed in writing to:

Bowen|Schroth  
600 Jennings Avenue  
Eustis, Florida 32726

**REMINDER AS TO TIME LIMIT**

If you wish to be excluded from the Class, you must return a completed "Request for Exclusion From Class" form to Class Counsel by mail **postmarked no later than July 1, 2018**.

Dated: March \_\_, 2018

BY ORDER OF THE COURT  
FIFTH JUDICIAL CIRCUIT IN AND FOR  
MARION COUNTY, FLORIDA