

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO

# If your replacement water heater was installed in San Marcos, California by California Delta Mechanical, Inc., your legal rights could be affected by a class action lawsuit.

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

- A consumer has sued California Delta Mechanical, Inc. ("Delta") as a class action representative over whether it misrepresented and overcharged consumers for San Marcos municipal water heater replacement permits.
- You may be part of this class action if you had a replacement water heater installed by Delta between October 27, 2007 through the present at a location within the City of San Marcos, California.
- Lawyers for the Plaintiff must prove the claims against Delta at a trial set to begin on July 2, 2015. If money or benefits are obtained from Delta, you will be able to ask for a share.
- There is no money available now and no guarantee that there will be in the future. However, your rights are affected and you have a choice to make now.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT:</b>	
<b>DO NOTHING</b>	<p><b>Stay in this lawsuit. Await the outcome. Share in possible money or benefits. Give up certain rights.</b></p> <p>If you do nothing, you will be in the lawsuit. You will keep your right to share in possible money or other benefits that may come from the trial or possible settlement. But, if you do nothing, you will give up the right to sue Delta on your own about the legal claims included in this lawsuit.</p>
<b>ASK TO BE EXCLUDED</b>	<p><b>Get out of this lawsuit. Get no money or benefits. Keep your individual rights.</b></p> <p>If you ask to be excluded, and money or benefits are later awarded or obtained in this lawsuit, you will not be able to share in that. However, you will keep the right to sue Delta on your own about the legal claims included in this lawsuit.</p>

- Your rights and options are explained in this notice. To ask to be excluded, you must act by **February 27, 2015**.

## BASIC INFORMATION

### 1. Why was this notice issued?

This notice was issued because a Court has “certified” this case to proceed to trial as a class action lawsuit and your rights may be affected. If you purchased a water heater and had it installed by Delta at a location within the City of San Marcos, California, you may have legal rights and options in this case before the Court decides whether the claims being made against Delta on your behalf are correct. This notice explains all of these things.

Judge Ronald S. Prager of the California Superior Court for the County of San Diego is overseeing this class action. The case is known as *Cohen v. California Delta Mechanical, Inc.*, Case No. 37-2011-00100174-CU-BT-CTL. The person who sued is called the Plaintiff. The company he sued, California Delta Mechanical, Inc., is called the Defendant or Delta.

### 2. What is a class action?

In a class action, one or more people, called Class Representatives (in this case that person is Danny Cohen), sue on behalf of all people who have similar claims. Together, these people are called a Class or Class members. One court resolves the issues for all Class members, except for those who exclude themselves from the Class.

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

The Court decided that this lawsuit could move toward trial as a class action because it meets the ascertainability and community-of-interest requirements of California Code of Civil Procedure § 382. For example, the Court ruled that the identity of class members can be ascertained through Delta’s own records. The Court also found that common questions of law and fact predominated over any individual questions on some of Plaintiff’s claims under California consumer protection statutes. Lastly, the Court found that Danny Cohen is an adequate representative of the Class and that his counsel, Eppsteiner & Fiorica Attorneys, LLP, are adequate to represent the class and that the claims of the Class Representative are “typical” to the claims of the Class.

## THE CLAIMS IN THE LAWSUIT

### 4. What is the lawsuit about?

The lawsuit claims that Delta allegedly overcharged its customers for water heater permits. For example, the actual cost of a water heater permit in the City of San Marcos is \$10.00, but Delta charged some of its customers \$30.00 for the same permit. Plaintiff alleges that Delta’s practice of overcharging for permits is unconscionable and a material fact Delta was obliged to disclose.

### 5. How does Delta answer?

Delta denies that it knowingly overcharged consumers for San Marcos permits. Delta’s position is that any overcharges that may have taken place were a result of computer errors that have been corrected already.

### 6. Has the Court decided who is right?

No. The Court has not ruled on the merits of the claims. The lawyers for the Plaintiffs will present their claims and the lawyers for Delta will present their defenses at a trial in San Diego that is set to begin on July 2, 2015.

### 7. What are the Plaintiffs asking for on behalf of the Class?

The Plaintiffs are asking for return of the amount of money Delta overcharged for the water heater permits. The Plaintiffs are also asking for a representative plaintiff service award for Danny Cohen as a Class Representative as well as costs and attorneys’ fees to the Class attorneys. For most class members, the amount being asked for is \$20.00 per installed water heater. To the extent Delta has not already set in place systems to prevent

overcharges in the future, Plaintiffs will also seek an order from the Court requiring Delta to establish sufficient systems to prevent alleged overcharges in the future.

#### 8. Is there any money available now?

No. There is no money available now because the Court has not ruled on the merits of the claims. There is no guarantee that money will ever be awarded or obtained.

### MEMBERS OF THE CLASS

#### 9. How do I know if I am part of the Class?

You are included in the class if you are a person or entity who had a water heater replaced in the City of San Marcos, California and whom California Delta Mechanical, Inc. charged more than the actual cost of a water heater permit and which persons or entities also paid California Delta Mechanical, Inc. separate permit processing fees, from October 27, 2007 through the date of class notice.

### YOUR RIGHTS AND OPTIONS

#### 10. What happens if I do nothing at all?

If you do nothing, you are choosing to stay in the Class. If the Plaintiffs win or lose at trial, you will be legally bound by all orders and judgments of the Court, and you will not be able to sue or continue to sue Delta in a different case over the legal claims that are included in this lawsuit. If the Plaintiffs obtain money or other benefits from Delta at trial or as the result of a settlement, you will not be able to ask for a share.

#### 11. What happens if I exclude myself?

If you exclude yourself from the Class you: (1) will not be legally bound by the Court's judgments; (2) will keep all rights you may have to sue Delta for the legal claims included in this lawsuit; and (3) will not be able to get any money or benefits from this lawsuit if any are awarded or obtained as a result of the trial or any settlement.

#### 12. How do I ask to be excluded?

To exclude yourself, fill out the enclosed Request for Exclusion OR send a letter that states you want to be excluded from *Cohen v. California Delta Mechanical, Inc.*, Case No. 37-2011-00100174-CU-BT-CTL. Include your name, address, telephone number, and signature. You must mail your exclusion request so that it is postmarked by **February 27, 2015** to Class Counsel at the following address:

Stuart M. Eppsteiner  
Andrew P. Fiorica  
Andrew J. Kubik  
Eppsteiner & Fiorica Attorneys, LLP  
12555 High Bluff Drive, Suite 155  
San Diego, CA 92130

### THE LAWYERS REPRESENTING YOU

#### 13. Do I have a lawyer in this case?

Yes. The team of lawyers representing the Class includes Stuart M. Eppsteiner, Andrew P. Fiorica and Andrew J. Kubik of Eppsteiner & Fiorica Attorneys, LLP. These lawyers have experience handling similar cases. More information about these lawyers is available at [www.eppsteiner.com](http://www.eppsteiner.com).

#### 14. Should I get my own lawyer?

You do not have to get your own lawyer if you choose to be a member of the Class because Class Counsel is representing you and all the other members of the Class. If you want someone other than Class Counsel to represent you or to advise you separately, you may get your own lawyer at your own expense.

#### 15. How will the lawyers be paid?

If Class Counsel obtains money or benefits for the Class, they will ask the Court for fees and expenses. If the Court grants their request, the fees and expenses will be paid separately by Delta. You will not personally have to pay any of these fees and expenses.

### THE TRIAL

#### 16. How and when will the Court decide the case?

The case will be decided at a trial that is set to begin on July 2, 2015. The trial will take place in Department 72 of the Superior Court of California, County of San Diego, Hall of Justice, located at 330 W. Broadway, San Diego, CA 92101. The trial may be moved to a different date or time without additional notice. You may call class counsel at 858-350-1500 for updates.

#### 17. Do I have to come to Court?

You do not have to come to Court unless you choose to do so. Class Counsel will present the case for the Plaintiffs and the lawyers for Delta will present their defenses. It is possible you may be subpoenaed as a witness by either party to appear at trial. You and/or your own lawyer may appear in Court for this case at your own expense.

#### 18. Will I get money after the trial?

If Class Counsel obtains money or benefits as a result of the trial or a settlement, a new notice will be issued about how to ask for a share and about any other options you may have at that time. Updated information about the case may be posted on [www.eppsteiner.com](http://www.eppsteiner.com).

### GETTING MORE INFORMATION

#### 20. Is more information about the lawsuit available?

More information about the lawsuit is available by visiting [www.eppsteiner.com](http://www.eppsteiner.com), calling 858-350-1500.

**REQUEST FOR EXCLUSION FROM THE CLASS  
IN  
*Cohen v. California Delta Mechanical, Inc.,*  
Case No. 37-2011-00100174-CU-BT-CTL**

My name is \_\_\_\_\_ [please print clearly].

My address is: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

My phone number is: \_\_\_\_\_

I want to be excluded from the class in ***Cohen v. California Delta Mechanical, Inc., Case No. 37-2011-00100174-CU-BT-CTL.***

\_\_\_\_\_  
Signature

**This exclusion request must be postmarked by February 27, 2015 to Class Counsel at the following address:**

Stuart M. Eppsteiner  
Andrew P. Fiorica  
Andrew J. Kubik  
Eppsteiner & Fiorica Attorneys, LLP  
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