

# UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

*Munguia-Brown, et al., v. Equity Residential, et al.*, Case No. 4:16-cv-01225-JSW-MEJ

**If you are or were a tenant of an Equity Residential property in California at any time from September 3, 2010 to October 23, 2017, and your lease said that you could be charged a late fee of 5% of your outstanding balance or \$50, whichever is greater, and you were charged a late fee during that time, this class action lawsuit may affect your rights.**

A federal court authorized this notice. This is not an advertisement. You are a potential class member in this lawsuit. **PLEASE READ THIS NOTICE ENTIRELY.**

- Four former Equity Residential tenants in California have brought a class action lawsuit against Equity Residential and its subsidiaries (“Defendants”), arguing that Equity Residential’s “5% or \$50” late fee policy violates California law.
- The Court has ruled that the lawsuit can proceed as a “class action” on behalf of two “classes” of tenants. According to Equity Residential’s records, you are potentially a member of the following class:

All Equity Residential tenants in California from September 3, 2010 until October 23, 2017 who were charged one or more late fee(s) under Equity Residential’s standard late fee provision: 5% of the outstanding balance owed (capped at 5% of the total amount of monthly recurring charges) or \$50, whichever is greater.

- The Court has not yet decided whether Equity Residential did anything wrong, and Defendants contend their late fee policy complies with the law. There is no money available to you now, and no guarantee there will be. However, your legal rights are affected, and **you have two options at this point:**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
<b>REMAIN PART OF THE CLASS (REQUIRES NO ACTION BY YOU AT THIS TIME)</b>	<b>Stay in this lawsuit. Keep right to recover money in this case. Give up right to bring your own case.</b> By doing nothing, you keep the possibility of getting money or benefits that may come from a trial or a settlement in this case. But you may give up the right to bring your own independent lawsuit against Equity Residential challenging its late fee policy.
<b>ASK TO BE EXCLUDED FROM THIS CASE (REQUIRES ACTION BY AUGUST 20, 2018)</b>	<b>Exclude yourself from this lawsuit. Get no benefits from it. Keep the right to bring your own case.</b> If you ask to be excluded, you cannot recover any money through this case. But you will keep the right to bring your own case against Equity Residential challenging its late fee policy.

**Si necesita esta noticia en Español, favor de contactar el administrador de la Clase o los abogados de la Clase en Cuestion 12.**

## BASIC INFORMATION

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

Equity Residential’s records show that you lived at an EQR property in California between September 3, 2010 and October 23, 2017, and that you were charged at least one late fee under the “5% or \$50” late fee provision in Equity Residential’s standard lease. The Court has allowed, or “certified,” a class action lawsuit on behalf of tenants who were charged such fees. You have legal rights and options that you may exercise before the Court holds a trial. A trial may be necessary to decide whether the claims being made against Equity Residential are valid. The Honorable Jeffrey S. White, a Judge in the United States District Court for the Northern District of California, is overseeing this lawsuit. The case is called *Munguia-Brown, et al., v. Equity Residential, et al.*, Case No. 4:16-cv-01225-JSW-MEJ (N.D. Cal.).

### 2. What is this lawsuit about?

This lawsuit is about whether the late fees that Equity Residential and its subsidiaries charge to tenants in California comply with California law. Specifically, Plaintiffs claim that Equity Residential violated California Civil

Code Section 1671(d), which governs certain fees in residential leases. Plaintiffs allege, among other things, that the late fee amount was not based upon a reasonable endeavor by Equity Residential to estimate and recover the actual costs incurred when tenants pay their rent late. Defendants contend that the late fee provision is lawful. The Court has not yet decided whether Equity Residential violated the law.

You can read the Plaintiffs' Complaint at [www.equitylatefees.com](http://www.equitylatefees.com). (The case also includes a separate class that covers tenants who lived in Equity Residential's Woodland Park property in East Palo Alto and who were parties to leases with a prior landlord, rather than parties to Equity Residential's lease.)

### **3. What is a class action and who is involved?**

In class action lawsuits, one or more people called "Class Representatives" sue on behalf of other people who have similar claims. The people together are a "Class" or "Class Members." The Class Representatives are called the Plaintiffs. The persons or entities they sue (in this case, Equity Residential and certain of its subsidiaries) are called the Defendants. One court resolves the issues for all Class Members. The Court has appointed the Plaintiffs' lawyers (names and contact information below) to represent the Class.

### **4. What are the Plaintiffs asking for?**

The Plaintiffs are asking the Court to find that Equity Residential's "5% or \$50" late fee provision is unlawful, and to require Equity Residential to return all late fees that its California tenants paid under that provision. Equity Residential will have an opportunity to try to reduce the amount that it must return by the amount of any "actual costs" it can prove it incurred as a result of Class Members' late payments of rent. Equity Residential cannot recover money from Class Members as a result of this lawsuit.

Plaintiffs also seek recovery of attorneys' fees, the costs of bringing the lawsuit, and interest. The Court has not yet ruled on the merits of any of the positions taken by Plaintiffs or Equity Residential.

### **5. Is there any money available now?**

No money is available now because the Court has not yet decided whether Equity Residential did anything wrong, and the parties have not settled the case. There is no guarantee that money or benefits will ever be obtained as a result of this case. If they are, you will be notified, and will be given information about any monetary award to which you may be entitled.

## **WHO IS INCLUDED IN THE LAWSUIT**

### **6. The two classes of tenants**

This case covers two classes of tenants who were subject to two different late fee policies.

You are receiving this notice because you are a potential member of the "Standard Late Fee Class," which consists of tenants who were charged a late fee described in the standard Equity Residential lease: "5% of the outstanding balance, or \$50, whichever is greater" between September 3, 2010 and October 23, 2017.

The second class consists of tenants who had non-EQR leases while living at the Woodland Park Property in East Palo Alto, California when it was owned by Equity Residential from December 1, 2011 to February 2016. These tenants were charged a flat \$50 late fee. This class is called the "Woodland Park Preexisting Lease Class."

### **7. Can I be part of this lawsuit?**

We believe you are a member of the Standard Late Fee Class. You will automatically be included as a member of this class unless you take affirmative steps to exclude yourself from this case. This class consists of people who: (1) lived at an Equity Residential property in California between September 3, 2010 and October 23, 2017; and (2) were charged at least one late fee under Equity Residential's "5% or \$50, whichever is greater" late fee provision. Both current and former tenants can be part of this lawsuit.

### **8. I'm still not sure if I am included.**

If you are still not sure whether you are included, you can get free help by calling, writing, or emailing the lawyers in this case, at the phone number or addresses listed below in Paragraph 12.

## YOUR LEGAL RIGHTS AND OPTIONS

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

If you do nothing, you will automatically be included as a member of the Standard Late Fee Class, which means that you will keep the possibility of getting money from this lawsuit. If you remain part of the class and the Plaintiffs obtain money as a result of either a trial or a settlement, you will be notified about how to obtain any share to which you may be entitled. If you do nothing now, regardless of whether the Plaintiffs win or lose, you will not be able to sue the Defendants as part of any other lawsuit about the late fee charges at issue in this lawsuit. You will also be legally bound by all orders and judgments of the Court as to the Standard Late Fee Class. If Plaintiffs lose the case, you will not be penalized or have to pay anything to Equity Residential as a result.

### 10. Why would I ask to be excluded?

You have the right to exclude yourself from this lawsuit. This is also called “opting out” of the class. If you exclude yourself, you won’t get any money from this lawsuit even if Plaintiffs obtain it as a result of a trial or settlement. You will keep the right to pursue your own claims with lawyers of your own choice, provided you pursue those claims within certain legal deadlines. If you do exclude yourself so that you can start your own lawsuit against Equity Residential, you should talk to your own lawyer right away to determine any deadlines you have.

To ask to be excluded, you must send an “Exclusion Request” in the form of a letter sent by mail stating that you want to be excluded from the Class in this case. The letter must include your name, address, telephone number, and signature. You must mail this letter postmarked by **August 20, 2018** to the Claims Administrator at the following address:

Equity Residential Claims Administrator  
P.O. Box 404041  
Louisville KY, 40233-4041

### 11. What is the deadline to ask to be excluded?

If you do not want to participate in the Standard Late Fee Class, then you must postmark the Exclusion Request letter by **August 20, 2018**.

## THE LAWYERS REPRESENTING THE CLASS

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

The Court appointed the Plaintiffs’ lawyers in this case to represent the Classes (“Class Counsel”). Those lawyers are: Goldstein, Borgen, Dardarian & Ho in Oakland, California; Community Legal Services in East Palo Alto, California; and Nicholas & Tomasevic, LLP, in San Diego, California. The Court determined that these attorneys are qualified to represent the interests of the Classes in this lawsuit. More information about these firms, their practices, and their lawyers’ experience is available on their websites: [www.gbdhlegal.com](http://www.gbdhlegal.com), [www.clsepa.org](http://www.clsepa.org), and [www.nicholaslaw.org](http://www.nicholaslaw.org).

The following attorneys from the firms are handling the case, and you may contact them with any questions you have about the case:

Linda M. Dardarian, Esq.  
Megan Ryan, Esq.  
Katharine Fisher, Esq.  
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(619) 325-0496

**13. Should I get my own lawyer?**

You may if you want, but you do not need to hire your own lawyer, because Class Counsel represent the Class of which you are a member. For example, you can hire a lawyer to appear in Court for you if you want someone other than Class Counsel to speak for you. If you hire your own lawyer, you will be responsible for the charges that lawyer requires you to pay for representing you.

**14. How will Class Counsel get paid?**

If Plaintiffs prevail at trial, Class Counsel will ask the Court to require Equity Residential to pay their attorneys' fees and expenses. If there is a settlement of this case, Class Counsel will request either that Defendants pay the fees and expenses, or that the Court allow a portion of the settlement fund to be used to pay attorneys' fees and costs. Any such award of attorneys' fees would be subject to Court approval. You will not have to pay Class Counsel any fees or expenses out of your own pocket.

**THE NEXT STEPS IN THE LAWSUIT**

**15. What happens next in the lawsuit?**

Unless the case is resolved by a settlement or legal ruling, Class Counsel will have to prove the Plaintiffs' claims and damages at a trial. If the Plaintiffs prevail, Defendants will have an opportunity to try to prove that damages should be reduced, or "offset," by the "actual costs" Defendants have borne as a result of late payments by Class Members. Defendants cannot recover any money from you in this case. The trial has not been scheduled yet. It will take place in the United States District Court for the Northern District of California, 1301 Clay Street, Oakland, CA 94612. During the trial, the Judge will hear all of the evidence to help him reach a decision about whether the Plaintiffs or Defendants are right about the claims in the lawsuit.

**16. Do I have to come to the trial?**

You do not need to appear in court or otherwise participate in the trial to be a Class Member or to be eligible for a monetary recovery should the Plaintiffs prevail on their claims. However, it is possible that an extremely small percentage of the class members may be called to testify as a witness in either a deposition or a trial. You are welcome to attend any trial at your own expense.

**17. Will I get money after the trial?**

If the Class obtains money or benefits as a result of a trial or settlement, members of the Class will be notified about how they may qualify to receive a portion of any money or benefits obtained. We do not know how long this will take.

**GETTING MORE INFORMATION**

**18. How can I get additional information?**

You can visit the website [www.equitylatefees.com](http://www.equitylatefees.com) where you will find the Court's Order Certifying the Class, the Plaintiffs' Complaint, and Defendants' Answer to the Complaint. You may also contact Class Counsel at any time by calling, writing, or emailing them at the contact information in Paragraph 12, above.

**PLEASE DO NOT CALL OR WRITE THE JUDGE OR CLERK OF THE COURT. DIRECT ALL INQUIRIES TO CLASS COUNSEL OR AN ATTORNEY OF YOUR OWN CHOOSING.**

*By order of the United States District Court for the Northern District of California*