

STATE OF MICHIGAN  
GENESEE COUNTY CIRCUIT COURT

Melissa Mays, individually and as next friend of three  
minor children C.M.1, C.M.2 and C.M.3, Michael  
Adam Mays, Jacqueline Pemberton,  
Keith John Pemberton, Elnora Carthan, and  
Rhonda Kelso, individually and as next friend of  
one minor child K.E.K, all on behalf of themselves  
and a class of all others similarly situated,

Plaintiffs,

vs.

City of Flint, a municipal corporation, Receivership Transition  
Advisory Board, a municipal agency, Natasha Henderson, Eden  
Victoria Wells, M.D., Stephen Busch, Liane Shekter-Smith, Adam  
Rosenthal, Patrick Cook, Michael Prysby, Bradley Wurfel, Howard  
Croft, Michael Glasgow and Daugherty Johnson, jointly and  
severally,

Defendants.

CLASS ACTION

16-106112-

ARCHIE L. HAYMAN  
Case No 16-

Hon.



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William Goodman P14173  
Julie H. Hurwitz P34720  
Kathryn Broner James (P71374)  
Goodman & Hurwitz, PC  
1394 E. Jefferson Ave.  
Detroit, MI 48207  
313-567-6170  
[bgoodman@goodmanhurwitz.com](mailto:bgoodman@goodmanhurwitz.com)  
[jhurwitz@goodmanhurwitz.com](mailto:jhurwitz@goodmanhurwitz.com)  
[kjames@goodmanhurwitz.com](mailto:kjames@goodmanhurwitz.com)

Michael L. Pitt P24429  
Cary S. McGehee P42318  
Beth M. Rivers P36614  
Peggy Goldberg Pitt P31407  
Pitt McGehee Palmer & Rivers, PC  
117 W. Fourth Street, Suite 200  
Royal Oak, MI 48067  
248-398-9800  
[mpitt@pittlawpc.com](mailto:mpitt@pittlawpc.com)  
[cmcgehee@pittlawpc.com](mailto:cmcgehee@pittlawpc.com)  
[brivers@pittlawpc.com](mailto:brivers@pittlawpc.com)  
[ppitt@pittlawpc.com](mailto:ppitt@pittlawpc.com)

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Trachelle C. Young P63330  
Trachelle C Young & Associates PLLC  
2501 N Saginaw St  
Flint, MI 48505-4443  
810-239-6302  
[trachelleyoung@gmail.com](mailto:trachelleyoung@gmail.com)

Deborah A. La Belle P31595  
Law Offices of Deborah A. La Belle  
221 N Main St Ste 300  
Ann Arbor, MI 48104-1166  
734-996-5620  
[deblabelle@aol.com](mailto:deblabelle@aol.com)

There is pending in this Court two cases arising out of the same transaction or occurrences as alleged in this complaint:

*Shears, et al v Bingaman, et al*, 14-1-3476-CZ, assigned to the Hon. Archie Hayman;

*Collins, et al v Governor Rick Snyder, et al*, 16-106077-CZ, assigned to the Hon. Archie Hayman.

There is a prior action related to this case which was previously dismissed:

*Coalition for Clean Water v City of Flint*, Case No. 15-101900-Cz, assigned to the Hon. Archie Hayman

## **COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTION, DECLARATORY JUDGMENT, AND DAMAGES AND JURY DEMAND**

*In July, 2015, the media leaked an EPA memo entitled "High Lead Levels in Flint, Michigan." Parents worried about the lead poisoning of their children demanded answers from Defendant Brad Wurfel, former spokesperson for the Michigan Department of Environmental Quality.*

*This was his answer.*

*"Let me start here-anyone who is concerned about lead in the drinking water can relax"*

### **Introduction**

1. This class action is brought on behalf of tens of thousands of City of Flint water users ("Class"), which includes but is not limited to, the residence of the City of Flint ("Flint"), who from April 25, 2014 to the present, have experienced and will continue to experience serious personal injury and property damage caused by employees of the City of Flint and State of Michigan who were:

- a) Grossly negligent in making or approving the April 25, 2014 decision to substitute safe water supplied by the City of Detroit with highly corrosive and unsafe water from the Flint River; and
- b) Grossly negligent in monitoring the lead levels of the Flint River water coming out of the individual taps of Flint homes and residences, schools, hospitals, correctional facilities and other places of public locations; as well as the blood lead levels of Flint's children who were exposed to Flint River water after the April 25, 2014

- substitution and the October 16, 2015 re-connection to City of Detroit water; and
- c) Acting in bad faith by assuring Flint water users for many months that the Flint River water was safe to use and consume, when Defendants knew or had reason to believe that these multiple assurances were untrue.

2. The individual Defendants are current or former employees of the State of Michigan (“State”) and/or the City of Flint (“Flint”), and each were responsible for making and/or approving the decision to substitute water sources and/or were required to monitor water lead levels and blood lead levels after the substitution and re-connection or who, in bad faith, assured Flint water users that the Flint River water was safe to consume when they were on actual notice and had reason to believe that the water was in fact unfit for human consumption.

3. The profound and enduring injuries alleged in this Complaint were proximately caused by the named individual Defendants, in concert with each other, all acting within the scope of their employment and authority, as well as with other State and City of Flint public employees and officials who have been granted immunity by legislation (“Immune Public Officials”) and who thus cannot be held legally accountable in this lawsuit for their part in these devastating harms caused by their unlawful, immoral, and unconscionable conduct.

4. Within days of the introduction of Flint River water into the Flint pipelines, the individual Defendants, and the Immune Public Officials acting in concert with them, could see, smell and taste the discolored water flowing from the taps and ignored this initial irrefutable evidence that the water pumped from the Flint River was highly corrosive, not fit for human consumption and dangerous for human use and exposure.

5. These Defendants had been on actual notice since 2011 that, at a minimum, use of the Flint River as the public source of water, without a proper anti-corrosive treatment, would create a condition dangerous to health and property.

6. During the ensuing months after April 25, 2014, evidence mounted that the Flint River water was not only unfit for human consumption but was actually unsafe, causing lead poisoning of Flint's children and other serious medical conditions to Plaintiffs and the entire Plaintiff class.

7. Evidence of the lead poisoning was disclosed in late 2014 or early 2015 by a report of a dramatic spike in elevated blood lead levels in Flint's youngest children as measured by State epidemiologists, with the upward spike coinciding precisely at the same time that Flint's children were exposed to the Flint River water in their homes, schools and other public locations.

8. Also by late 2014 or early 2015, there was yet more evidence that the Flint River water was toxic, when multiple water samples showed extraordinarily high levels of lead, as well as dangerously high levels of Trihalomethanes ("TTHM") and E. Coli bacteria.

9. Evidence that the water was unfit for human exposure and consumption was made clear through the highly publicized media report in October of 2014 that General Motors would no longer use Flint River water in its manufacturing facilities because the highly corrosive nature of the water was ruining its parts and production machinery, resulting in a loss to Flint of \$400,000 a year in revenue when GM rejected the corrosive Flint River water.

10. These individual Defendants, by late 2014 or early 2015, had many reasons to know that the water was in fact toxic, harmful and dangerous, but nonetheless continued to falsely assure the Flint water users that the Flint River water was being properly treated, monitored and tested and that it was safe to consume and use .

11. As the proximate result of the individual Defendants' gross negligence, and the misconduct resulting therefrom, tens of thousands of innocent people, including Plaintiffs and the entire Plaintiff class, used and consumed this unsafe water and were thus seriously and irreparably damaged in their health and property.

## **Jurisdiction and Venue**

12. This court has subject matter jurisdiction over the claims asserted in this lawsuit because Plaintiffs seek compensation in an amount in excess of \$25,000. Indeed, the damages to the Class caused by the wrongful actions and inactions of Defendants in this action are in the 10 of millions and possibly billions of dollars.

13. This Court has personal jurisdiction over each Defendant because the wrongful conduct of each Defendant as alleged in this lawsuit occurred in the State of Michigan, County of Genesee, City of Flint.

14. Venue is proper in this Court because the original injury and damage occurred in Genesee County, Defendants reside or conduct business in Genesee County, Plaintiffs reside in Genesee County and many of the occurrences described herein occurred in Genesee County.

## **Parties**

### **A. Plaintiffs**

15. Plaintiff class representatives are residents of Genesee County at all relevant times Flint water users – individuals, home owners, parents and minors – who, since April 25, 2014, were, and continue to be, harmed by highly dangerous conditions and hazards created, caused and prolonged by the individual Defendants' grossly negligent decision to replace safe drinking water supplied by the City of Detroit's water system with the extreme toxicity resulting from water pumped from the Flint River.

### **B. Defendants**

16. Defendant Eden Victoria Wells, M.D. ("Wells"), was at all relevant times herein an agent and employee of the State of Michigan employed by the Michigan Department of Health and Human Services ("MDHHS") ("MDHHS Defendant"), and acting within the scope of her

respective employment and authority.

17. Defendants Stephen Busch, Patrick Cook, Michael Prysby, Bradley Wurfel, Liane Shekter-Smith and Adam Rosenthal are or were at all relevant times herein agents and employees of the State of Michigan employed by the Michigan Department of Environmental Quality (“MDEQ”) (“MDEQ Defendants”), and acting within the scope of their respective employment and authority.

18. Defendants Howard Croft, Michael Glasgow and Daugherty Johnson are or were at all relevant times agents and employees of the City of Flint (“Flint Defendants”), and acting within the scope of their employment and/or authority.

19. Defendant Wells was at all relevant times Chief Medical Executive within the Population Health and Community Services Department of the MDHHS and was acting within the scope of her employment and/or authority. Wells is individually liable because as Chief Medical Executive for the MDHHS she, in a grossly negligent manner, knowingly created, increased and prolonged the hazards because she knew as early as 2014, that there was a highly unusual spike in elevated blood lead levels and cases of Legionella bacteria for Flint water users and, notwithstanding said knowledge and a legal duty to notify the public, failed to do so, and in doing so, in fact concealed these facts from the public.

20. Defendant Stephen Busch (“Busch”) was at all relevant times District Supervisor assigned to the Lansing District Office of the MDEQ and was acting within the scope of his employment and/or authority. Busch is individually liable because as District Office Supervisor of MDEQ he, in a grossly negligent manner, knowingly created, increased and prolonged the hazards by approving the decision to switch the water source when he was on notice of the dangers associated with same.

21. Defendant Busch further falsely reported that anti-corrosive agents had been used to treat the highly corrosive Flint River water and thereby provided assurances to Plaintiffs and the public that the Flint River water was safe when he was on actual notice, and/or had reason to believe, that these assurances were false and/or baseless.

22. Defendant Patrick Cook ("Cook") was at all relevant times Water Treatment Specialist assigned to the Lansing Community Drinking Water Unit of the MDEQ and was acting within the scope of his employment and/or authority. Cook is individually liable because he, as the Lansing Community Drinking Unit manager, in a grossly negligent manner, knowingly created, increased and prolonged the hazards by approving the decision to switch the water source

23. Defendant Cook further failed to properly monitor and test the Flint River water; he falsely reported to the EPA that the Flint River water was treated with anti-corrosive chemicals; and he provided assurances to Plaintiffs and the public that the Flint River water was safe when he was on actual notice, and/or had reason to believe, that these assurances were false and/or baseless.

24. Defendant Michael Prysby ("Prysby") was at all relevant times Engineer assigned to District 11 (Genesee County) of the MDEQ and was acting within the scope of his employment and/or authority. Prysby is individually liable because he, as an Engineer assigned to District 11, in a grossly negligent manner, knowingly created, increased and prolonged the hazards by approving the decision to switch the water source, failed to properly monitor and test the Flint River water and provided assurances to Plaintiffs and the public that the Flint River water was safe when he was on actual notice, and/or had reason to believe, that these assurances were false and/or baseless.

25. Defendant Bradley Wurfel ("Wurfel") was at all relevant times the Director of Communications for MDEQ and was acting within the scope of his employment and/or authority. Wurfel was forced to resign on December 29, 2015 due to his "persistent [negative] tone and

derision” and his “aggressive dismissal, belittlement and attempts to discredit the individuals involved in [conducting independent studies and tests].”

26. Defendant Wurfel is individually liable because as Director of Communications he was responsible for the deliberate, misleading and inaccurate communications that increased and prolonged the hazards, threats and dangers that arose by replacing of safe drinking water with a highly toxic alternative. He further knowingly provided false assurances to Plaintiffs and the public that the Flint River water was safe when he was on actual notice, and/or had reason to believe, that these assurances were false and/or baseless.

27. Defendant Liane Shekter-Smith (“Smith”) was at all relevant times Chief of the Office of Drinking Water and Municipal Assistance for MDEQ and acting within the scope of her employment and/or authority, holding that position until October 19, 2015. During that time she was Chief of Drinking Water for MDEQ. As such, Defendant Smith was grossly negligent in that she knowingly approved of, and thereby participated in, the decisions that created, increased and prolonged the hazards, threats and dangers that arose by replacing of safe drinking water with a highly toxic alternative. She further provided false assurances to Plaintiffs and the entire Plaintiff class that the Flint River water was safe when she was on actual notice that and/or had reason to believe that these assurances were false and/or baseless.

28. Defendant Adam Rosenthal (“Rosenthal”) was at all relevant times a Water Quality Analyst assigned to the Lansing District Office of the MDEQ and acting within the scope of his employment and/or authority.

29. Defendant Rosenthal, as Water Quality Analyst for the MDEQ, was grossly negligent because he knowingly approved of, and thereby participated in, the decisions that created, increased and prolonged the hazards, threats and dangers that arose by replacing of safe drinking water with a highly toxic alternative. He further provided assurances to Plaintiffs and the



entire Plaintiff class that the Flint River water was safe when he was on actual notice and/or had reason to believe that these assurances were false and/or baseless.

30. Defendant Howard Croft ("Croft") was at all relevant times Director of Public Works for the City of Flint and was acting within the scope of his employment and/or authority. Croft is individually liable because he, as Director of Public Works, in a grossly negligent fashion and manner, knowingly approved of and thereby participated in the decisions that created, increased and prolonged the hazards, threats and dangers that arose by replacement of safe drinking water with a highly toxic alternative. He then falsely assured Plaintiffs and the entire Plaintiff class that the Flint River water was safe when he had reason to believe that this assurance was false.

31. Defendant Michael Glasgow ("Glasgow") was at all relevant times the Utilities Administrator for the City of Flint and was acting within the scope of his employment and/or authority. Glasgow is individually liable because he, as Utilities Administrator, in a grossly negligent manner knowingly created, increased and prolonged the hazards of using Flint River water when he provided the MDEQ with misleading and inaccurate reports about the threats and dangers that arose by the replacement of safe drinking water with a highly toxic alternative and assured the Plaintiffs and the entire Plaintiff class that the Flint River water was safe when he was on actual notice, and had reason to believe, that this assurance was false.

32. Defendant Daugherty Johnson ("Johnson") was at all relevant times the Utilities Administrator for the City of Flint and was acting within the scope of his employment and/or authority. Johnson is individually liable because he, as Utilities Administrator, in a grossly negligent manner knowingly approved of, and thereby participated in the decisions, which would not have been made without his agreement, that created, increased and prolonged the hazards, threats and dangers that arose by replacing safe drinking water with a highly toxic alternative while falsely assuring the Plaintiffs and the entire Plaintiff class that the Flint River water was safe when

he was on actual notice, and had reason to believe, that this assurance was false.

33. Defendants Henderson and Receivership Transaction Advisory Board were established by Emergency Manager Ambrose and at all relevant times were in a position to prevent the water shut-offs or void the water bills for useless, toxic, and harmful water.

### **C. Immune Non-Party Public Officials**

34. Rick Snyder is the Governor of the State of Michigan and is invested with executive power pursuant to Art. V, Section 1 of the Michigan Constitution. The Governor, who is and was at all relevant times responsible for the management of state government for the health and welfare of its citizens and residents, is and was at all relevant times an Immune Public Official who acted in concert with Defendants when he knowingly participated in the decisions that created, increased and prolonged the hazards, threats and dangers that arose by replacing safe drinking water with a highly toxic alternative and falsely assuring the Plaintiffs and the entire Plaintiff class that the Flint River water was safe. Governor Snyder was on actual notice, and had reason to believe, that this assurance was false. But for the immunity granted to him by the Michigan Legislature (MCLA section 691.1407), he would be a Defendant in this Genesee County Circuit Court action pursuant to Michigan common law.

35. Daniel Wyant (“Wyant”) was at all relevant times the Director of MDEQ and an Immune Public Official who acted in concert with Defendants when he participated in the decisions that deliberately created, increased and prolonged the hazards, threats and dangers that arose due to the replacement of safe drinking water with a highly toxic alternative and assured the Plaintiffs that the Flint River water was safe when he was on actual notice, and/or had reason to believe, that this assurance was false. But for the immunity granted to him by the Michigan Legislature (MCLA section 691.1407), he would be a Defendant in this Genesee County Circuit Court action pursuant to Michigan common law.

36. Ed Kurtz (“Kurtz”) was the Emergency Manager appointed by the Governor in August 2012, and served in this capacity until July of 2013. Kurtz is and was at all relevant times an Immune Public Official who acted in concert with Defendants during his term as Emergency Manager of Flint when he knowingly and deliberately created, increased and prolonged the hazards, threats and dangers that arose due to the replacement of safe drinking water with a highly toxic alternative. But for the immunity granted to him by the Michigan Legislature (MCLA section 691.1407), he would be a Defendant in this Genesee County Circuit Court action pursuant to Michigan common law.

37. Darnell Earley (“Earley”) was the Emergency Manager appointed by the Governor on November 1, 2013, and served in this capacity until January 12, 2015. Earley is and was at all relevant times an Immune Public Official who acted in concert with Defendants during his term as Emergency Manager of Flint when he knowingly and deliberately created, increased and prolonged the hazards, threats and dangers that arose due to the replacement of safe drinking water with a highly toxic alternative. But for the immunity granted to him by the Michigan Legislature (MCLA section 691.1407), he would be a Defendant in this Genesee County Circuit Court action pursuant to Michigan common law.

38. Gerald Ambrose (“Ambrose”) was the Emergency Manager appointed by the Governor on January 13, 2015 and served in this capacity until April 28, 2015. Ambrose is and was at all relevant times an Immune Public Official who acted in concert with Defendants during his term as Emergency Manager of Flint when he knowingly and deliberately increased and prolonged the hazards, threats and dangers that arose due to the replacement of safe drinking water with a highly toxic alternative. But for the immunity granted to him by the Michigan Legislature (MCLA section 691.1407), he would be a Defendant in this Genesee County Circuit Court action pursuant to Michigan common law..

39. Dayne Walling (“Walling”) was at all relevant times Mayor of Flint from August 4, 2009 until November 9, 2015, until he was unseated by current Mayor Karen Weaver. Walling is and was at all relevant times an Immune Public Official who acted in concert with Defendants during his term as Mayor. Walling approved of, and thereby participated in, the decisions that created, increased and prolonged the hazards, threats and dangers that arose due to the replacement of safe drinking water with a highly toxic alternative and falsely assured the Plaintiffs and the entire Plaintiff class that the Flint River water was safe when he was on actual notice, and/or had reason to believe, that this assurance was false. But for the immunity granted to him by the Michigan Legislature (MCLA section 691.1407), he would be a Defendant in this Genesee County Circuit Court action pursuant to Michigan common law.

#### **Mays Family Allegations**

40. Plaintiff Melissa Mays, age 37, is married to Plaintiff Michael Mays, age 40 and is mother and next friend of three minor children, ages 17, 12, and 11.

41. The Mays family at all relevant times lived in a single family home built around 1910 on Beecher Street in Flint.

42. Plaintiffs Melissa and Michael Mays were the equitable owners of the home located on Beecher Street.

43. During the relevant time period, members of the Mays family, unaware of the nature and extent of the toxicity of the water supplied as a result of the efforts of the Defendants, regularly used the water for drinking, cooking, washing, bathing and clothes washing, in varying extent and levels, for these different purposes.

44. As a proximate result of Defendants’ deliberately indifferent actions, as set forth herein, members of the Mays family have experienced serious physical and emotional injury and

severe and persistent pain and suffering due to their exposure to the toxic water, all currently and into the indefinite future, including but not limited to:

- a. High levels of lead and copper in their bloodstreams, brains, bones and other organs;
- b. Skin lesions and hair loss;
- c. Neurological symptoms and disorders;
- d. Other significant medical injuries; and
- e. Severe emotional and psychological distress.

45. Plaintiffs Melissa and Michael Mays have further experienced property damage in the nature of irreparably damaged service line pipes resulting from the use of Flint River water without use of an anti-corrosive agent; as well, they have sustained substantial loss in the value of their property.

#### **Statement of Facts Regarding the Pemberton Family**

46. Plaintiffs Keith John Pemberton and Jacqueline Pemberton are 67 and 66 years old, respectively, and live on Custer Street in Flint, in a home they own.

47. During the relevant time period, unaware of the nature and extent of the toxicity of the water supplied as a result of the efforts of the Defendants, the Pembertons regularly used the water for drinking, cooking, washing, bathing and clothes washing, in varying extent and levels, for these different purposes.

48. As a further proximate result of Defendants' deliberately indifferent actions, as set forth herein, Plaintiffs Keith and Jacqueline Pemberton have experienced serious physical and emotional injury and severe and persistent pain and suffering due to their exposure to the toxic water, all currently and into the indefinite future, including but not limited to:

- a. High levels of lead and copper in their bloodstreams, brains, bones and other organs;

- b. Skin lesions and hair loss;
- c. Neurological symptoms and disorders;
- d. Chronic and acute abdominal and stomach discomfort;
- e. Other significant medical injuries; and
- f. Severe emotional and psychological distress.

49. Plaintiffs Keith and Jacqueline Pemberton have further experienced property damage in the nature of irreparably damaged service line pipes resulting from the use of Flint River water without use of an anti-corrosive agent; as well, they have sustained substantial loss in the value of their property.

#### **Statement of Facts Regarding Elnora Carthan**

50. Plaintiff Elnora Carthan is a 70 year old widow who lives alone in a home she owns in Flint and where she has lived since 1976.

51. During the relevant time period, unaware of the nature and extent of the toxicity of the water supplied as a result of the efforts of the Defendants, Ms. Carthan regularly used the water for drinking, cooking, washing, bathing and clothes washing, in varying extent and levels, for these different purposes.

52. Finally, in August, 2015, the opportunity arose for her to have her water tested for the presence of lead and other metals, due to the efforts of Virginia Polytechnic Institute and State University ("Virginia Tech"). As a result of the testing, notwithstanding the continuous denials and roadblocks to such testing posed by Defendants herein, she learned that the lead levels in her water vastly exceeded the maximum levels allowed under standards set forth by the federal Environmental Protection Agency ("EPA"), and were, in fact, extremely dangerous.

53. As a proximate result of Defendants deliberately indifferent actions, as set forth herein, Ms. Carthan has experienced serious physical and emotional injury and severe and

persistent pain and suffering due to her exposure to the toxic water, all currently and into the indefinite future, including but not limited to:

- a. Skin lesions and dermatologic pathology;
- b. Neurological symptoms and disorders;
- c. Other significant medical injuries; and
- d. Severe emotional and psychological distress.

54. Plaintiff Ms. Cathan has further experienced property damage in the nature of irreparably damaged service line pipes resulting from the use of Flint River water without use of an anti-corrosive agent; as well, she has sustained substantial loss in the value of their property.

#### **Statement of Facts Regarding the Kelso Family**

55. Plaintiff Rhonda Kelso is a 52 year old woman who suffers from several disabilities, including the results of a stroke, spastic paraparesis and bi-polar disorder. She owns her home located in Flint, in which she and her family have lived since 1993.

56. Plaintiff Ms. Kelso lives at the aforementioned home with her minor daughter "K.E.K.," who is 12 years old. K.E.K. is a special needs student in school and suffers from a number of disabilities including, but not limited to hearing impairment, cardiac problems, and developmental delays involving speech and language.

57. During the relevant time period, unaware of the nature and extent of the toxicity of the water supplied as a result of the efforts of the Defendants, Ms. Kelso and her daughter regularly used the water for drinking, cooking, washing, bathing and clothes washing, in varying extent and levels, for these different purposes.

58. As a proximate result of Defendants' deliberately indifferent actions, as set forth herein, Ms. Kelso has also experienced serious physical and emotional injury and severe and persistent pain and suffering due to her exposure to the toxic water, all currently and into the

indefinite future, including but not limited to:

- a. Skin lesions and dermatologic pathology, including hair loss;
- b. Respiratory symptoms and disorders;
- c. Aggravation of the pre-existing conditions and disabilities, referenced above;
- d. Other significant medical injuries; and
- e. Severe emotional and psychological distress, due in part to the injuries and damage caused to her daughter K.E.K., as set forth below.

59. As a proximate result of Defendants' deliberately indifferent actions, as set forth herein, K.E.K. has experienced serious physical and emotional injury due to her exposure to the toxic water, all currently and into the indefinite future, including but not limited to:

- a. Heightened levels of lead in her blood;
- b. Inability to overcome her developmental disorders, particularly speech and language development and, to some extent, a worsening of those disorders;
- c. Aggravation of the pre-existing conditions and disabilities, referenced above; and
- d. Severe psychological and emotional problems.

60. Plaintiff Ms. Kelso has further experienced property damage in the nature of irreparably damaged service line pipes resulting from the use of Flint River water without use of an anti-corrosive agent; as well, she has sustained substantial loss in the value of their property.

#### **Statement of Facts Regarding Lead Levels**

61. From 1964 to 2014, Flint water users received their water from Lake Huron via the Detroit Water and Sewerage Department ("DWSD").

62. During this 50 year span, the Flint water users enjoyed safe, clean, fresh water in their homes, schools, hospitals, businesses and other places of public services.



63. In 2011, Flint government officials commissioned a study by the Lockwood, Andrews and Newman Corporation (“LAN”) to determine if the Flint River could be safely used by the city as the primary source of drinking water for its more than 31,000 users.

64. The report stated that the water from the Flint River was highly corrosive and could not be used safely without an anti-corrosive agent to prevent lead, copper and other heavy metals from leaching from lead, copper and iron based water lines.

65. In 2013, Flint government officials delivered to the MDEQ a copy of the 2011 report that warned that the Flint River water was highly corrosive and could not be used as a primary source of drinking water unless treated with anti-corrosive agents.

66. In March, 2013, although without any real authority or control because Flint was under the control of the Governor appointed Emergency Manager, the Flint City Council approved a resolution to discontinue water service from Detroit and to secure future water service from an alternative regional water authority known as the Karegnondi Water Authority (“KWA”) scheduled to become operational in 2016.

67. In April of 2013, with approval from the State of Michigan Treasurer, Andrew Dillon, Flint Emergency Manager, Ed Kurtz, authorized the switch from the DWSD to KWA.

68. In June of 2013, Kurtz authorized action to prepare the Flint Water Treatment Plant (“FWTP”) in anticipation of using the Flint water as the primary water source.

69. On June 26, 2013, Kurtz signed a Resolution to switch over to the Flint River in April of 2014.

70. In April 2014, although safe water from Detroit remained available on a temporary basis until the KWA became operational two years later, Flint Emergency Manager at the time (Earley) ordered Flint to draw water from the Flint River, even though he, along with others, Defendants herein, knew that the water was highly corrosive and dangerous to people and property

when distributed without proper anti-corrosive treatment.

71. The Flint and MDEQ Defendants herein had been informed by the 2011 report that use of the Flint River water, without a proper anti-corrosive treatment, would create a condition dangerous to health and property.

72. According to the December 23, 2015, State Auditor General Report (“Auditor’s Report”), the City of Flint was testing Flint River quality since 2006 at the Flint Water Treatment Plant; yet Flint never tested Flint River water quality as it came out of the consumers’ taps.

73. Contrary to water quality standards and common sense, Flint failed to evaluate the quality of the Flint River water as it came out of the consumers’ tap before substituting high quality Detroit water with questionable quality Flint River water.

74. Under the Federal Safe Drinking Water Lead and Copper Rule (“LCR”), Flint was required to secure the approval of MDEQ to substitute Flint River as a primary source of drinking water.

75. MDEQ approved Flint Emergency Manager Early’s decision to substitute Detroit water with Flint River water yet failed to require that Flint to determine and establish water quality as it came out of the consumers’ taps.

76. Flint and MDEQ Defendants herein were on actual notice and/or knew that the water supplied by Detroit included corrosion control treatment chemicals which prevented the leaching of lead from lead found in many Flint users water systems.

77. Beginning in April 2014, Flint and MDEQ Defendants herein were fully aware that the required and necessary anti-corrosive agent was not being used during the distribution of Flint River water to Flint residents, families and home owners.

78. Said Defendants herein were thus also fully aware that, as a consequence of the failure to use the required and necessary anti-corrosive agent in the Flint River water, the Plaintiffs

and the entire Plaintiff class were being exposed to toxic levels of lead and other metals and chemicals.

79. According to the 2011 LAN corporation report, it was estimated that the cost of the corrosion control chemicals would have been less than \$100 per day.

80. The MDEQ rules required Flint to conduct two six-month rounds of testing for lead and copper (July-December 2014 and January-June 2015) in homes that were identified as “Tier 1” sample sites (sites with known lead plumbing and/or service lines), for the presence of lead or other heavy metals.

81. Corrosion control chemicals should have been used immediately, as corroborated by the December 2015 “Auditor’s Report,” which expressly criticized the MDEQ because it did not confer with or obtain the approval of the EPA when it decided to delay the use of corrosion control chemicals until after the two rounds of monitoring tests.

82. The Auditor’s Report also established that in accordance with the LCR, all large public water systems, in particular and specifically that of Flint, are required to install and maintain corrosion control treatment for lead and copper water service systems.

83. In the absence of corrosion control treatment, lead levels in the water coming from lead and copper based water systems will rise to unacceptable levels.

84. The MDEQ Defendants neither advised nor demanded that Flint use corrosion control treatment chemicals even though the LCR required these actions both of the MDEQ Defendants and the City of Flint so as to ensure lead free drinking water.

85. The Auditor’s Report also confirmed that the MDEQ in fact received the results of the first round of water sampling tests by March 2015 and that the results disclosed lead levels in excess of the minimal action levels, i.e. 5 parts per billion (“ppb”).

86. Accordingly, MDEQ knew by early March 2015, at the latest, that it could not

achieve two consecutive testing periods below the action level (as required by the LCR protocol) and that therefore these MDEQ Defendants were required to notify Flint to commence and pursue corrosion control treatments.

87. A MDHHS report on the Blood Lead Level Test Results for children 6 years and younger living in Flint Zip Codes 48501-48507, showed a significant and dangerous spike in the blood lead levels during the second and third quarter on 2014.

88. MDHHS knew by late 2014 or early 2015 that Flint children were experiencing elevated blood lead levels and yet failed to report this information and failed to notify the public, and in so doing intentionally concealed critical public health information for more than 10 months.

89. In the summer of 2014, the Flint area experienced a spike in Legionnaires' that resulted in 10 deaths in 18 months.

90. MDHHS was aware of the spike in Legionnaires' disease and that the potential source of the deadly outbreak was the Flint River, however, MDHHS Defendant failed to notify the public of this public health crisis and, in fact, intentionally concealed it.

91. Within days after the April 25, 2014 switch, Flint Defendants began receiving complaints from water users, including some or all of the Plaintiffs herein, that the water was cloudy and discolored in appearance and foul in taste and odor.

92. Within weeks after the April 25, 2014 switch, water users, including some or all of the Plaintiffs herein, were reporting to the Flint Defendants that they were experiencing hair loss, rashes, vomiting and other physical maladies.

93. The Flint Defendants knowingly used seriously flawed testing and notification methods, including but not limited to:

- a. Instructing water users to pre-flush the system before drawing a water sample;

- b. Failing to positively identify Tier 1 sample sites (sites with known lead plumbing and/or service lines);
- c. Failing to include at least 50% Tier 1 homes in the sample study;
- d. Failing to use the same testing sites from one test to the next (the second round of testing covered only 13 sites which had been tested in the first round;
- e. “Cherry-picking” the sites to be tested by excluding the homes that had tested with the highest parts per billion during the first round from being re-tested in the second round), thereby rejecting without cause those homes with elevated lead level readings; and
- f. Failing to notify residents, including Plaintiffs and the entire Plaintiff class, when elevated levels were found.

94. The aforementioned flawed testing and notification methods were knowingly designed by the Flint Defendants to under-report the dangerously high lead levels in the drinking water.

#### **Statement of Facts Regarding Other Toxins**

95. In August of 2014, Flint violated the National Primary Drinking Water Regulations Maximum Contaminant Level (“MCL”) for E. Coli bacteria.

96. In September 2014, Flint again violated the National Primary Drinking Water Regulations for MCL.

97. In November of 2014, these Defendants recognized and were on actual notice of the need to assess the factors contributing to high Trihalomethane (“THM”) levels following the water source change.

98. Beginning almost immediately after the Flint River became the primary source of water for the Flint users, the MDEQ and Flint officials were aware of elevated and unlawful levels of Trihalomethanes (“THM”).

99. After about 7 months of elevated THM levels, Flint water users belatedly

received a notice in January, 2015 from Flint stating that the water was not in compliance with the federal Safe Drinking Water Act because unlawful levels of TTHMs.

100. In January 2015, within a few weeks of the issuance of the TTHM notice, Flint City Council member Eric Mays, other Flint Council members and Flint citizens, including Plaintiffs herein, outraged over the poor quality water approached Emergency Manager Earley, and demanded that Flint reconnect with Detroit water.

101. Earley refused to act as requested by members of the City Council.

102. Despite this actual knowledge and duty to act, these Defendants did nothing to correct these problems and failed to advise Plaintiffs and the entire Plaintiff class of the dangers presented by these levels.

#### **Statement of Facts Regarding Defendants' Gross Negligence**

103. During the ensuing months, there was mounting and irrefutable evidence that the Flint River water was not only unfit for human consumption but was actually harming users, including causing the lead poisoning of Flint's children, and Legionnaires' disease.

104. In late 2014 or early 2015, a dramatic spike in elevated blood lead levels in Flint's youngest children in the third quarter of 2014 was identified by the Michigan Department of Health and Human Services ("MDHHS").

105. This aforementioned spike meant that by the third quarter of 2014, the percent of Flint children with known elevated blood lead level tests rose from 2.5% to about 7%.

106. This upward spike coincided precisely with the exposure of Flint's children to the toxic water of the Flint River, in their homes, schools and other public locations.

107. That the aforementioned spike occurred at the time of the exposure to the Flint River water, constituted clear and certain notice that a major health emergency confronted the children of Flint.

108. In the summer of 2014, a dramatic spike in Legionnaires' disease occurred that resulted in 10 deaths in 18 months.

109. That the aforementioned spike occurred at the time of the exposure to the Flint River water, constituted clear and certain notice that a major health emergency confronted the children of Flint.

110. On or about August of 2015, Dr. Mona Hanna-Attisha, a pediatrician from Hurley Hospital in Flint, produced a similar study showing a similar spike in elevated blood lead levels for the children of Flint.

111. For reasons which as yet remain undisclosed, the MDHHS and MDEQ did not publically discuss, let alone reveal, this serious health emergency until after the disclosure of Dr. Hanna-Attisha's report.

112. Another example of the irrefutable nature of the evidence that the water was unfit for human exposure and consumption, and Defendants' knowledge thereof, was the highly publicized media report in October 2014 that General Motors refused to continue using Flint River water in its manufacturing facilities due to the highly corrosive nature of the water that was ruining its parts and production machinery.

113. Over the course of the next eight (8) months, Flint water users continued to express their concerns about water quality in multiple ways including letters, emails and telephone calls to Flint and MDEQ officials, the media and through well publicized demonstrations on the streets of Flint.

114. What was known immediately – i.e. that it was dangerous to switch the water from Detroit to the Flint River – became yet more obvious after eight (8) months of engaging in this reckless exercise.

115. Thus, by the end of 2014, at the latest, the only reasonable response to the mounting

complaints and alarming data was to reconnect the Flint water system to the Detroit water system.

116. Instead, Defendants herein and the Immune Public Officials deliberately ignored the protests, went into deliberate and dangerous denial, offered ineffective solutions and continued to falsely reassure and insist that the water was safe even though they knew that the foul taste, odor and appearance was attributable to the highly corrosive Flint River water, untreated with the proper anti-corrosive agents, which caused particulate lead, Legionella bacterial and other toxins to contaminate and befoul the water.

117. By January of 2015, representatives of the Detroit Water and Sewerage Department (“DWSD”) expressed interest in re-establishing a relationship with Flint and offered to waive the \$4 million re-connect fee.

118. Earley, acting in concert with the named Defendants herein, rejected this initiative, and deliberately continued to mislead Flint residents to believe that their water was safe.

119. On or about January 13, 2015, Earley left his position as Emergency Manager and was replaced by Emergency Manager Ambrose.

120. On or about January 29, 2015, Detroit Director of the DWSD offered to Emergency Manager Ambrose another opportunity to protect Plaintiffs and the Plaintiff Class from known dangers and to use Detroit water.

121. Notwithstanding DWSD’s overture, Emergency Manager Ambrose, acting in concert with named Defendants herein, rejected this offer, and deliberately continued to mislead Flint residents to believe that their water was safe.

122. On or about February 17, 2015, Flint water users, including some or all the Plaintiffs herein, staged public demonstrations demanding that Flint re-connect with Detroit. Once again Ambrose refused to restore Detroit water for Flint water users and deliberately continued to endanger Plaintiffs and Plaintiff Class.



123. In February, 2015 the MDEQ Defendants knew from discussions with the federal EPA in February that some Flint residents were being exposed to high levels of particulate lead on a daily basis.

124. Moreover, MDEQ representatives, including named MDEQ Defendants, knew that inaccurate and false test results were providing equally false assurance to residents about the true lead levels in the water.

125. On or about February 27, 2015, Defendant Busch falsely told the EPA that the Flint River water was receiving corrosion control treatments.

126. On or about March 25, 2015, the Flint City Council voted to re-connect to Detroit's water system. Ambrose rejected this vote and continued to refuse to re-connect the Flint system back to the Detroit water system.

127. Immune Public Official Wyant falsely asserted that the Flint River water was being treated with corrosion control.

128. On or about May 6, 2015, employees from EPA Region 5 arrived in Flint and began sampling the water for elevated lead levels.

129. The EPA samples disclosed the following dangerously high lead levels:

- a. A home on Bryant Street yielded samples with high lead results. 22 parts per billion or "ppb";
- b. Other Bryant Street readings were 104 ppb;
- c. A home on Browning Avenue presented 22 ppb;
- d. Another house on Alvord Street home was measured at 42 ppb.

130. Lead levels above 15 ppb are alarming.

131. The EPA found lead levels from the Flint River water as high as 13,500 ppb which is twice that required in order to classify as hazardous waste.

132. On or about June 24, 2015, EPA representative Miguel Del Toral wrote a detailed memo entitled “*High Lead Levels in Flint, Michigan-Interim Report*,” outlining numerous dangers and hazards associated with the water being pumped from the Flint River, including unacceptable levels of lead and the failure of the Flint Defendants to properly monitor and test the water.

133. This report was shared with MDEQ defendants Shekter-Smith, Cook, Busch and Prysby.

134. In June 2105, Flint violated the National Primary Drinking Water Regulations for total TTHMs.

135. During the spring and summer of 2015, Professor Marc Edwards (“Professor Edwards”) and other experts from Virginia Tech tested 277 drinking water samples and found that 10% of the samples had lead levels of 25 parts per billion (ppb), substantially in excess of the federal action level of 15 ppb.

136. On or about July 9, 2015, the ACLU of Michigan issued a new public report and video presentation discussing the lead in Flint water concerns and noting that the lead content of the water at one Flint home was 13,200 ppb, a level considered to be “hazardous waste.”

137. Professor Edwards was quoted as saying “I have never in my 25-year career seen such outrageously high levels going into another home in the United States.”

138. On or about July 22, 2015, Dennis Muchmore, the Chief of Staff for Governor Snyder, wrote to a top MDHSS official stating that “I’m frustrated by the water issue in Flint. I don’t think people are getting the benefit of the doubt. Now they are concerned and rightfully so about the lead level studies they are receiving... These folks are scared and worried about the health impacts and they are basically getting blown off by us (as a state we’re just not sympathizing with their plight.)”

139. Professor Edwards also determined that the Flint River water was 19 times more corrosive than the water pumped from Lake Huron by the Detroit water system and that without corrosion control treatment, lead was leaching out from the lead based service lines at alarming rates.

140. On or about September 2, 2015, Professor Edwards published the results of his studies described above.

141. Almost immediately, widespread public demands to re-connect Flint to the Detroit water system started to be made to the Defendants from, among others, the following national, regional and local public interest groups:

- a. The ACLU of Michigan;
- b. The Natural Resources Defense Council;
- c. The Michigan Chapter of the National Conference of Black Lawyers;
- d. The Michigan/Detroit Chapter of the National Lawyers Guild;
- e. The NAACP-Michigan State Conference;
- f. The Michigan Nurses Association;
- g. The Democracy Defense League Water Task Force;
- h. Water You Fighting For;
- i. Concerned Pastors for Social Action; and
- j. Coalition for Clean Water and other similar public interest groups.

142. At the same time, public interest groups investigating the growing crisis noted that Flint did not have records of which users had or did not have lead service pipes or plumbing despite the fact that Flint was required by Federal law to maintain these records so that Flint and the MDEQ could alert those users who were most at risk and that proper testing could be carried out.

143. The absence of these required records resulted in the MDEQ and Flint failing to carry out proper water quality/lead tests and seriously increasing the risk of harm to many Flint water users, all with the knowledge of Defendants herein.

144. In addition, Dr. Hanna-Attisha of Hurley Hospital demonstrated and publicly disclosed a dramatic and dangerous spike in elevated blood lead levels in a large cohort of Flint children corresponding with the time of exposure to the highly corrosive Flint River water. Her disturbing results were published in August 2015.

145. MDHHS epidemiologists became aware of a dramatic third quarter 2014 spike in its own blood lead level statistics revealed in late 2014 or early 2015, but chose to remain silent about this potential Health Emergency involving the children of Flint. This dramatic and abrupt spike coincided with the children's equally abrupt exposure to the Flint River water.

146. By early 2015 this disturbing data was shared with the MDEQ Defendants, who failed to timely disclose this vital information to the public but rather continued to falsely misrepresent the evidence of lead poisoning caused by the Flint River water as revealed in the documented elevated blood lead levels of Flint's children.

147. An example of this type of public statement designed to mislead the public is found in a MDEQ document entitled "*DEQ Frequently Asked Questions, Water Lead Levels in the City of Flint, September, 2015*" which stated:

**"Are there other ways the city monitors for lead exposure?"**

The County Health Departments, overseen statewide by the Michigan Department of Health and Human Services, *regularly monitors blood levels* in children throughout Michigan communities. *The leading cause of lead poisoning is exposure to lead paint.*

Blood lead level testing results for the 12-month period just after the City of Flint changed its water source (May 2014 – April 2015) *showed no significant change* in the pattern of blood lead levels in Flint, compared to the previous three years. This data *suggests the recent change in water source by the City of Flint has not*

*contributed to an increase in lead exposure throughout the community.”*  
(Emphasis added)

148. Nor did the MDHHS Defendant or representatives take any action to correct the misrepresentations of its data by the MDEQ and steadfastly contributed to the misrepresentation and cover-up until late 2015 when, in response to mounting public pressure, it finally acknowledged that there was a correlation between the spike and the exposure to Flint River water.

149. On or about September 25, 2015, Defendant Wurfel falsely advised media and the public that MDHHS officials have re-examined its blood lead level data and the MDHHS statistics do not show the same upward trend documented by Dr. Hanna-Attisha.

150. On or about September 28, 2015, Defendant Wurfel stated publically that the Flint water crisis was becoming “near-hysteria” because of Dr. Hanna-Attisha’s report. He said that he wouldn’t call her reports “...irresponsible. I would call them unfortunate.” Defendant Wurfel finished his remarks that day by falsely stating that “Flint’s drinking water is safe in that it’s meeting state and federal standards.”

151. On or about September 29, 2015, Defendant Wurfel referred to EPA Del Toral as a “rogue employee.”

152. Also on September 29, 2015, the Genesee County Health Department issued a “*Public Health Advisory for People Using the Flint City Water Supply with the Flint River as the Source,*” (“Advisory”), which stated in pertinent part: “recent data provided by Hurley Hospital Researchers has indicated that a significant increase in blood lead levels has occurred in children since the switch to Flint River water. The County Health Officer has requested that the Michigan Department of Health and Human Services (MDHSS) provide the County specific data to support its claim that state data is more comprehensive and does not show a significant increase. To date, the MDHHS has failed to confirm the geographic area included in their finding.”

153. The Advisory did not state unequivocally that the unfiltered water was unsafe to drink; rather, it said that if a filter was not available, “then it’s best to let the water run for at least five minutes before using it...”

154. On or about October 2, 2015, Defendant Wurfel finally admitted that a year of water testing demonstrated that the Flint River water system exceeded the limits for levels of corrosion, thereby triggering the need for the use of corrosion control chemicals.

155. By October 10, 2015, Defendant Wurfel publically acknowledged that the MDHHS and Dr. Hanna-Attisha reports showed a spike in blood lead levels, but he continued to deny that there was a significant correlation between the spike and the exposure to Flint River water.

156. By late September, 2015, reconnecting to the Detroit water system was the only reasonable option to even begin to protect the health and safety of the Flint water users Flint. Yet the State deliberately chose not to proceed in this fashion.

157. Instead, on or about October 2, 2015, State officials announced that the State would appoint a Flint Water Advisory Task Force and would provide water filters designed to eliminate the lead in the water to Flint water users.

158. On or about October 8, 2015, Immune Public Official Snyder recognized that he could no longer pretend that the water from the Flint River was safe. He finally ordered Flint to re-connect with the Detroit water system which contained corrosion control chemicals.

159. The re-connect took place on or about October 16, 2015.

160. On or about October 8, 2015, Flint’s Eisenhower and Freeman Elementary Schools, along with Brownell/Holmes STEM Academies exceeded 15 ppb for lead -- the safety standard set by the federal government. Students and staff were ordered to drink bottled water only.

161. On or about October 19, 2015, MDEQ Defendant Liane Shekter-Smith was removed from her position for cause and reassigned to non-vital role.

162. On or about November 13, 2015, a federal class action lawsuit, asserting violations of the United States Constitution and brought pursuant to 42 U.S.C. §1983, seeking damages and equitable relief was filed by the Plaintiffs in this action, on their own behalf and as representatives of the Plaintiff class, (U.S. District Court Case No. 15-14002).

163. Shortly after the aforementioned federal cause of action was filed, Flint Defendant Croft resigned.

164. On or about December 10, 2015, Flint announced that it was increasing the amount of corrosion control chemicals to be added to the Detroit water which already contained these chemicals. The stated purpose was to accelerate the build-up of interior bio-scales to prevent more lead from leaching into the water.

165. Flint said that “it should take between two (2) and six (6) months [after Detroit water is re-connected] to see reductions in lead levels in Flint water.”

166. On or about December 29, 2015, a special Task Force assigned by Immune Public Official Snyder (“Governor’s Task Force”) issued its preliminary report which concluded, among other things, that:

- a. “... we are particularly concerned by recent revelations of MDHSS’s apparent early knowledge of yet, silence about, elevated blood lead levels detected among Flint’s children.”
- b. “The City of Flint’s water customers-fellow Michigan citizens-were needlessly and tragically exposed to toxic levels of lead through their drinking supply.”
- c. “The Flint water crisis never should have happened.”
- d. “We believe the primary responsibility for what happened in Flint rests with the Michigan Department of Environmental Quality (MDEQ). Although many individuals and entities at state and local levels contributed to creating

and prolonging the problem, MDEQ is the government agency that has responsibility to ensure safe drinking water in Michigan. It failed in that responsibility and must be held accountable for that failure.”

- e. “The federal Lead and Copper Rule (LCR) is central to what happened in Flint, because that rule, at least theoretically to the Flint River is designed to prevent lead and copper contamination of drinking water. The federal LCR calls for ‘optimized corrosion control treatment,’ which the MDEQ did not require in the switch to Flint River...The decision not to require [corrosion control treatment], made at the direction of MDEQ, led directly to the contamination of the Flint water system.”
- f. “Throughout 2015, as the public raised concerns and as independent studies and testing were conducted and brought to the attention of MDEQ, the agency’s response was often one of aggressive dismissal, belittlement, and attempts to discredit these efforts and the individuals involved...the MDEQ seems to have been more determined to discredit the work of others-who ultimately proved to be right-than to pursue its own oversight responsibility.”

167. On or about December 29, 2015, Governor Snyder accepted responsibility on behalf of the State, including but not limited to the named MDEQ and MDHHS Defendants herein, and apologized for the governmental failures and harm caused by these failures.

168. On or about December, 29, 2015, Defendant Wyant resigned as Director of MDEQ and Defendant Wurfel resigned as its Communications Director.

169. On or about January 5, 2016, Governor Snyder, weeks after being requested by Flint Mayor Karen Weaver, finally declared a state of emergency because of the elevated lead levels in the Flint drinking water.

170. From January 5, 2016 through January 9, 2016, national media outlets reported that bottled water was not being made readily available in Flint and that the Emergency Relief was a complete failure because the State was not meeting the immediate needs of the people of Flint who were without a readily available supply of safe drinking water.

171. On or about January 10, 2015, the Michigan State Police, in response to national media reports, said it would finally go door to door to deliver bottled water.



172. Among the other serious harm caused by the conduct Defendants and Immune Public Officials herein, the prolonged exposure of the highly corrosive water without adequate anti-corrosive agents has irreparably damaged the approximately 15,000 sets of lead and copper plumbing throughout the City of Flint, all of which must now be replaced.

173. Flint is currently in a State of Emergency: Mayor Karen Weaver declared a State of Emergency on December 14, 2015. On January 4, 2016, the Genesee County Commissioners declared a State of Emergency. On January 5, 2016 Governor Snyder declared a State of Emergency. On January 13, 2016, the Governor activated the Michigan National Guard to assist the people of Flint. On January 14, 2016, the Governor asked the President Barak Obama and the Department of Homeland Security, Federal Emergency Management Agency (FEMA) to declare Flint a Major Disaster. On January 16, 2016, FEMA issued an emergency declaration to assist the people of Flint.

#### **Class Allegations**

174. This action is brought by the named Plaintiffs on behalf of individuals who from April 25, 2014 to present were exposed to toxic Flint water and experienced an injury to their person or property or who in the future will be so injured.

175. The number of individuals who have been injured by exposure to toxic Flint water is in the tens of thousands. The number of class members is sufficiently numerous to make class action status the most practical method for Plaintiffs to secure redress for injuries sustained and class wide equitable relief.

176. There are questions of law and fact raised by the named Plaintiffs' claims common to, and typical of, those raised by the Class they seek to represent.

177. The violations of law and resulting harms alleged by the named Plaintiffs are typical of the legal violations and harms suffered by all Class members.

178. Plaintiff Class representatives will fairly and adequately protect the interests of the Plaintiff class members. Plaintiffs' counsel are unaware of any conflicts of interest between the class representatives and absent class members with respect to the matters at issue in this litigation; the class representatives will vigorously prosecute the suit on behalf of the Class; and the class representatives are represented by experienced counsel. Plaintiffs are represented by attorneys with substantial experience and expertise in complex and class action litigation involving personal and property damage.

179. Plaintiffs' attorneys have identified and thoroughly investigated all claims in this action, and have committed sufficient resources to represent the Class.

180. The maintenance of the action as a class action will be superior to other available methods of adjudication and will promote the convenient administration of justice. Moreover, the prosecution of separate actions by individual members of the Class could result in inconsistent or varying adjudications with respect to individual members of the Class and/or one or more of the Defendants.

181. Defendants have acted or failed to act on grounds generally applicable to all Plaintiffs, necessitating declaratory and injunctive relief for the Class.

**Count I: Gross Negligence**  
**Plaintiffs v All Individual Flint (Croft, Glasgow, and Johnson) and**  
**MDEQ Defendants.**

182. Plaintiffs incorporate by reference all the preceding allegations set forth above as though stated in full herein.

183. The individual Flint and MDEQ Defendants engaged in grossly negligent conduct defined as conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

184. These Defendants were grossly negligent in making or approving the decision to substitute safe water supplied by the City of Detroit with highly corrosive and unsafe water from the Flint River.

185. This conduct was so reckless as to demonstrate a substantial lack of concern for whether an injury occurred, insofar as these Defendants knew from experience, training and many other reliable sources that the water from the Flint River was highly corrosive and required corrosion control treatment in order for avoid lead poisoning of the Flint water users who received their water from water systems which had lead or copper in the delivery lines.

186. Despite this knowledge, these Defendants deliberately and willfully failed to take any action to prevent or ameliorate the harm, including but not limited to the institution of any such corrosion control treatment.

187. These Defendants were grossly negligent in monitoring the water quality both after the substitution in April 2014 and again after the re-connection to City of Detroit water in October 2015.

188. This conduct was so reckless as to demonstrate a substantial lack of concern for whether an injury occurred, insofar as these Defendants knew from experience, training and many other reliable sources that the monitoring protocols after the substitution were not consistent with the LCR or standard operating and as a result it was likely that the elevated lead levels in the water would be under-reported or not reported at all.

189. The Defendants' conduct was grossly negligent after the re-connection to City of Detroit water in October 2015 because Defendants continued to knowingly permit Flint water users, including Plaintiffs and the entire Plaintiff class, to be exposed to dangerous water when they knew that the Detroit water was still not safe to use, and/or fail to effectively provide alternative sources of safe water and/or fail to adequately distribute or utilize water filters designed

to make the water safer.

190. The proximate cause of Plaintiffs injuries to person and property, as set forth in more detail in Paragraphs set forth above, was the exposure to the toxic and lead contaminated water and but for the gross negligence of Defendants as alleged in this Complaint, Plaintiffs would not have been so harmed.

191. The aforementioned injuries proximately caused to Plaintiffs, and the Plaintiff class, arising from Defendants' gross negligence are severe and in some instances permanent, entitling Plaintiffs to an award of damages for both the economic harm caused by exposure to the toxic water as well as the severe physical and mental impairments, pain and suffering, emotional distress, outrage, humiliation and mental anguish, all as set forth above.

192. Each Plaintiff and Plaintiff class member who owned or had a property interest in Flint real estate has had their property damaged and should be properly compensated for the loss of use and value including replacement of plumbing or service lines as necessary.

Accordingly, Plaintiffs demand judgment against these Defendants in the amounts to which they are found to be entitled to.

**Count II: Intentional Misconduct Fraud and Assault and Battery and Intentional  
Infliction of Emotional Distress  
Plaintiffs v All Individual Flint (Croft, Glasgow, and Johnson) and MDEQ Defendants**

193. Plaintiffs incorporate by reference all the preceding allegations set forth above as though stated in full herein.

194. The duties of these Defendants to provide Plaintiffs with accurate assurances was not a discretionary governmental function but rather was ministerial in nature.

195. These Defendants were acting in bad faith in falsely assuring Flint water users for many months that the Flint River water was safe to consume and use when Defendants were on

actual notice, and had reason to believe, that these multiple assurances were untrue.

196. The conduct of these Defendants was intentional insofar as each Defendant intended to provide false assurances to Plaintiffs and intended Plaintiffs to rely on these false assurances and each Defendant was substantially certain that each person who relied on the false assurance would suffer a harm.

197. The conduct of these Defendants:

- a. Was extreme and outrageous; and
- b. Was intentional or so reckless that any reasonable person would know that emotional distress would result.

198. Defendants intentionally and/or recklessly inflicted emotional distress on the Plaintiffs through, among other things, the following extreme, outrageous and shocking behavior:

- a. Inflicting physical danger, assault, battery, disease and illness for no acceptable purpose;
- b. Disseminating lies and falsehoods as set forth, in detail above;
- c. Concealing and covering up, as set forth in detail above;

199. The conduct of these Defendants also amounted to an assault and battery because each Defendant without the consent of Plaintiffs put into motion a known harmful substance (untreated Flint River water) and it was substantially certain that Plaintiffs would be harmed in their person by exposure to said harmful substance.

200. The aforementioned injuries proximately caused to Plaintiffs, and the Plaintiff class, as fully set forth above, arising from Defendants' intentional, extreme, outrageous and/or reckless conduct, are severe and in some instances permanent, entitling Plaintiffs to an award of damages for both the economic harm caused by exposure to the toxic water as well as the severe physical and mental impairments, pain and suffering, emotional distress, outrage, humiliation and

mental anguish, all as set forth above.

201. Each Plaintiff who owned or had a property interest in Flint real estate has had their property damaged and should be properly compensated for loss of use and value.

Accordingly, Plaintiffs demand judgment against these Defendants in the amount they are found to be entitled to.

**Count III: Immediate and Long-term Injunctive and Declaratory Relief to Terminate Residential Water Shut-offs v. City of Flint, Receivership Transition Advisory Board and Natasha Henderson, City Administrator**

202. Plaintiffs incorporate by reference all the preceding allegations set forth above as though stated in full herein.

203. Throughout the period of time, from April 25, 2014 to the present, these Defendants, in particular Defendants Flint, the Receivership Transition Advisory Board and Henderson have threatened Plaintiffs, and all Flint water users (all class members herein) with shutting off their tap water due to the Plaintiffs' failure to pay Defendants for toxic and harmful water, pursuant to Flint Ordinance 46-52.1(h).

204. Indeed, in many instances, such shut-offs have been accomplished by these Defendants.

205. **Irreparable Harm** – As a result, these Plaintiffs have suffered and/or are threatened with immediate irreparable harm, as follows: the loss of all tap water and, as a result the ability to drink, cook with, wash, bathe and flush and cleanse toilets; and the consequent severely negative health effects resulting therefrom.

206. **Likelihood that Plaintiffs will Prevail** – This Court can take judicial notice that virtually every major public official of the State of Michigan – from the Governor to the Michigan Attorney General to the Mayor of Flint – have admitted the toxic nature of the water, the public

role in creating, concealing and prolonging these wrongs and the fact that the foul water for which these Defendants seek to charge Plaintiffs and in the event of failure to pay, shut off their tap water, is an extremely defective – indeed harmful – product.

207. Should the Court not take such judicial notice, Plaintiffs stand ready to expeditiously prove the same.

208. **Harm to the Public** – The severely compromised public health to the people of Flint, including the Plaintiffs and their Class, will be even more seriously damaged if the threatened water shut-offs are not prevented and those that have taken place, not rescinded. This will occur through, among other things, the spread of disease and the further weakening of the health of Flint residents, including but not limited to the Plaintiffs and their Class.

209. **Balancing the Harm to the Parties** – If the situation of water shut-offs and threatened shut-offs is allowed to continue, Plaintiffs and their class will suffer the harms set forth above, not to mention the severe emotional distress that has resulted and will continue to result therefrom. This is balanced against Defendants being required to conduct their public duties without shutting off the public’s water.

Accordingly, Plaintiffs ask that is Court issue both injunctive and declaratory relief, to wit:

a Preliminary Injunction that:

- a. enjoins Defendants for issuing, mailing, sending, publishing or threatening water shut-offs to Flint water users and/or residents; and
- b. rescinds all water shut-offs to Flint water users and/or residents from April 25, 2014 to the present.

Plaintiffs further ask that this Court issue a Declaratory Judgment that finds as follows:

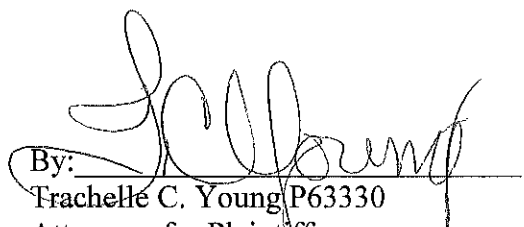
- a. that all water supplied to Plaintiffs and their Class between April 25, 2014 and the present has been harmful and unfit for use and is therefore defective, dangerous and unsafe;
- b. that “water service” provided by Defendants was not provide in good faith and was therefore incompetent and improper water service; and

- c. that, as a result, Defendants may not lawfully charge the Plaintiffs for their use of said water; and
- d. that all bills, charges, invoices and accounts for water supplied by Defendants to Plaintiffs are null and void.

Respectfully submitted,

Michael L. Pitt P24429  
Cary S. McGehee P42318  
Beth M. Rivers P36614  
Peggy G. Pitt P31407  
Attorneys for Plaintiffs  
Pitt McGehee Palmer & Rivers, PC  
117 W. Fourth Street, Suite 200  
Royal Oak, MI 48067  
248-398-9800  
[mpitt@pittlawpc.com](mailto:mpitt@pittlawpc.com)  
[cmcgehee@pittlawpc.com](mailto:cmcgehee@pittlawpc.com)  
[brivers@pittlawpc.com](mailto:brivers@pittlawpc.com)

William Goodman P14173  
Julie H. Hurwitz P34720  
Kathryn Bruner James (P71374)  
Attorneys for Plaintiffs  
Goodman & Hurwitz, PC  
Kathryn Bruner James P71374  
1394 E. Jefferson Ave.  
Detroit, MI 48207  
313-567-6170  
[bgoodman@goodmanhurwitz.com](mailto:bgoodman@goodmanhurwitz.com)  
[jhurwitz@goodmanhurwitz.com](mailto:jhurwitz@goodmanhurwitz.com)  
[kjames@goodmanhurwitz.com](mailto:kjames@goodmanhurwitz.com)

By:   
Trachelle C. Young P63330  
Attorneys for Plaintiffs  
Trachelle C Young & Associates PLLC  
2501 N Saginaw St  
Flint, MI 48505-4443  
810-239-6302  
[trachelleyoung@gmail.com](mailto:trachelleyoung@gmail.com)

Deborah A. La Belle P31595  
Attorneys for Plaintiffs  
Law Offices of Deborah A. La Belle  
221 N Main St Ste 300  
Ann Arbor, MI 48104-1166  
734-996-5620  
[deblabelle@aol.com](mailto:deblabelle@aol.com)

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