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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

TROY KIDD, as Personal Representative of the Estate
of DEBRA KIDD, Deceased, CONNIE TAYLOR,
BRIAN KELSEY, and LARRY BALKNIGHT,

Case No. 16-106199-ND
Hon.

Plaintiffs,

v.

JUDITH A. FULLERTON
P-20455

McLAREN REGIONAL MEDICAL CENTER, a
Michigan Corporation, STEPHEN BUSCH, PATRICK
COOK, MICHAEL PRISBY, ADAM ROSENTHAL,
LIANE SHEKTER-SMITH, BRADLEY WURFEL,
Jointly and Severally,

Defendants.

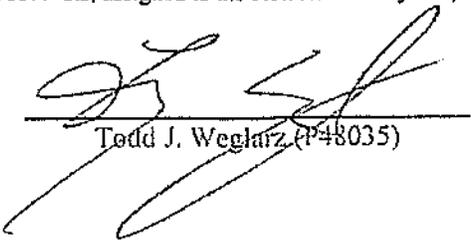
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A TRUE COPY
Genesee County Clerk

COMPLAINT AND JURY DEMAND

There are pending in this Court three cases arising out of the same
transaction or occurrences as alleged in this Complaint:

- *Mays, et al, v City of Flint, et al*, Case No. 16-106112-CZ,
assigned to the Hon Archie Hayman;
- *Shears, et al v Bingaman, et al*, Case No. 14-1-3476-CZ,
assigned to the Hon Archie Hayman;
- *Collins, et al v Governor Rick Snyder, et al*, Case No. 16-
106077-CZ, assigned to the Hon Archie Hayman;



Todd J. Weglarz (P48035)

NOW COME Plaintiffs, by and through their attorneys, Fieger, Fieger, Kenney & Harrington, P.C., and for their Complaint against Defendants, state as follows:

1. Plaintiff TROY KIDD is the lawfully appointed Personal Representative of the Estate of DEBRA KIDD, Deceased.

2. At all times relevant, Plaintiff TROY KIDD and Decedent DEBRA KIDD were residents of the City of Otisville, County of Genesee, State of Michigan.

3. At all times relevant, Plaintiff CONNIE TAYLOR was a resident of the City of Flint, County of Genesee, State of Michigan.

4. At all times relevant, Plaintiff BRIAN KELSEY was a resident of the City of Otisville, County of Genesee, State of Michigan.

5. At all times relevant, Plaintiff LARRY BALKNIGHT was a resident of the City of Flint, County of Genesee, State of Michigan.

6. At all times relevant, Defendant McLAREN REGIONAL MEDICAL CENTER (hereinafter "McLAREN") was and is a Michigan Corporation which owned and operated the McLaren Flint Hospital facility located in Flint, Michigan, and was doing business in the County of Genesee, State of Michigan.

7. At all time relevant, and upon information and belief, Defendant STEPHEN BUSH (hereinafter "BUSH") was a resident of Ingham County, employed by the State of Michigan and working as the Lansing District Office Supervisor for the Michigan Department of Environmental Quality (hereinafter "MDEQ"), and was doing business in the County of Genesee, State of Michigan.

8. At all time relevant, and upon information and belief, Defendant PATRICK COOK (hereinafter "COOK") was a resident of Ingham County, working as a Water Treatment

Specialist and Manager of the Lansing Community Drinking Water Unit of the MDEQ, and was doing business in the County of Genesee, State of Michigan.

9. At all time relevant, and upon information and belief, Defendant MICHAEL PRISBY (hereinafter "PRISBY") was a resident of Genesee County, working as an Engineer assigned to MDEQ District 11 (Genesee County), and was doing business in the County of Genesee, State of Michigan.

10. At all time relevant, and upon information and belief, Defendant ADAM ROSENTHAL (hereinafter "ROSENTHAL") was a resident of Ingham County, working as a Water Quality Analyst at the Lansing District Office of the MDEQ, and was doing business in the County of Genesee, State of Michigan.

11. At all time relevant, and upon information and belief, Defendant LIANE SHEKTER-SMITH (hereinafter "SHEKTER-SMITH") was a resident of Ingham County, working as the Chief of Office of Drinking Water and Municipal Assistance for MDEQ, and was doing business in the County of Genesee, State of Michigan.

12. At all time relevant, and upon information and belief, Defendant BRADLEY WURFEL (hereinafter "WURFEL") was a resident of Ingham County, working as the Director of Communications for MDEQ, and was doing business in the County of Genesee, State of Michigan.

13. The amount of controversy exceeds Twenty-Five Thousand Dollars (\$25,000.00), exclusive of interest, costs and attorney fees.

14. Venue and jurisdiction are properly vested in this Court.

FACTS

15. Each of the individual Plaintiffs and Plaintiff's Decedent contracted Legionnaires' disease shortly after having contact with, and being treated at, Defendant McLaren's Flint Hospital facility.

16. Plaintiffs contracted Legionnaires' disease during the years 2014 and 2015, during the time the City of Flint substituted its safe water supply with that of the highly corrosive and unsafe water from the Flint River.

17. Since 2011, Defendants have known that the Flint River was a dangerous public source of water in that same was dangerous to health and property without proper biocide and anti-corrosive treatments.

18. On or about April 25, 2014, the City of Flint substituted its safe water supply with the dangerous water supply from the Flint River.

19. From the date of switching over to the Flint River water through the date of re-connection to the Detroit water supply (October 16, 2015), the Flint River water was never treated with anti-corrosive chemical agents.

20. Federal law required that the Flint River water being piped through the city's water distribution system be treated with appropriate anti-corrosive chemical agents.

21. Within days of the introduction of Flint River water into the Flint pipelines, discolored and foul smelling water flowing out of taps was commonplace throughout the city, and it was obvious that the water pumped from the Flint River was not fit for human consumption.

22. 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 the residents of the City of Flint.

23. Shortly after the switch to Flint River water, Defendants were aware of elevated levels of Trihalomethane (THHM), which were caused by elevated amounts of chlorine and organic material in the water.

24. Further evidence that the City of Flint water supply 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.

25. In late 2014 and/or early 2015, a report showed 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.

26. Also by late 2014 and/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.

27. It is well known that corrosive water is a risk factor for the development of Legionella and other bacteria.

28. In February of 2015, when asked by the federal EPA about whether the Flint River water was being treated with anti-corrosive agents, Defendants, specifically BUSCH falsely represented to the EPA that the water was receiving control corrosion treatments when in fact it was known by Defendants no such treatments were being provided.

29. As early as April of 2014, Defendant McLAREN was aware that its water supply at Flint Hospital (which is tapped into the City of Flint water supply) was contaminated with an increased level of Legionella bacteria.

30. Defendant McLAREN has represented that Legionella invaded McLaren Flint Hospital via "brown water", which was delivered by the Flint water system laden with organic matter on which Legionella and other bacteria feast.

31. Legionella has been present in Defendant McLAREN's water supply throughout 2014 and 2015. Very high levels of Legionella were detected from large building samples taken in October of 2015, just before the City re-connected to the Detroit water supply.

32. During the 17 month period that the City of Flint was drawing corrosive water from the Flint River, the state reported 87 cases of Legionnaires' diseases, including nine deaths.

33. State epidemiological reports found more Legionella cases associated with Defendant McLAREN than with any other source of exposure, and a state analysis showed that a high number of those diagnosed with Legionnaires in Flint had been patients at Defendant McLAREN in the 14 days prior to onset of symptoms.

34. The state health department, including Defendants, did not act sooner to alert the public of the Legionnaires' epidemic because its experts had linked the cases to Defendant McLAREN and it was thought the Legionnaires' problem would be resolved if Defendant McLAREN took appropriate actions.

35. The Legionnaires' problem was obviously not resolved as evidenced by the fact that Plaintiffs contracted Legionnaires' disease throughout 2014 and 2015, shortly after presenting to, and being treated by, Defendant McLAREN's Flint Hospital.

PLAINTIFFS CONTRACT LEGIONNAIRES' DISEASE

36. On September 8, 2014, 62 year old Plaintiff CONNIE TAYLOR presented to Defendant McLAREN's Flint Hospital with complaints of epigastric discomfort. She was kept overnight for observation and discharged the following day.

37. A week later, Ms. TAYLOR was re-admitted to McLAREN on September 15, 2014, for flu like symptoms, and was diagnosed with Legionella pneumonia a couple days later.

38. The Legionella pneumonia caused Ms. TAYLOR's kidneys to shut down, necessitating the need for regular dialysis treatments which she will require for the remainder of her life.

39. On September 22, 2014, 61 year old Plaintiff LARRY BALKNIGHT presented to Defendant McLAREN's Flint Hospital with complaints of difficulty breathing. Several days later, he was diagnosed with Legionella pneumonia.

40. Plaintiff BALKNIGHT required a several week admission, after which he was transferred to an acute care facility for an extend rehabilitation admission. Mr. BALKNIGHT continues to suffer from residual complications related to his Legionnaires' pneumonia.

41. On the morning of July 25, 2015, 58 year old Plaintiff's Decedent DEBRA KIDD presented to Defendant McLAREN's Flint Hospital with complaint of persistent headache. Ms. KIDD was treated in the Emergency for several hours before she was discharged later that afternoon.

42. Two days later, Ms. KIDD was gravely ill and admitted to Genesys Regional Medical Center on July 27, 2015 where she was diagnosed with Legionnaires' disease and died therefrom several days later on August 2, 2015.

43. On July 20, 2015, 65 year old BRIAN KELSEY was admitted to McLAREN's Flint Hospital for purpose of being treated for atrial fibrillation. By the end of July, Mr. KELSEY was diagnosed with Legionella pneumonia.

44. Plaintiff KELSEY's Legionella pneumonia became so advanced that he was transferred to Henry Ford Hospital in Detroit for extensive, around the clock treatment in the ICU. Mr. KELSEY miraculously escaped the jaws of death and slowly recovered from his Legionella pneumonia, but not before he was admitted for an extensive period of time. Mr. KELSEY still suffers from residual complications related to the Legionella pneumonia.

45. As a direct and proximate result of the conduct of Defendants, Plaintiffs and Plaintiff's Decedent have suffered extensive injuries and damages including, but not limited to, the following:

- a. Unnecessary contraction of Legionnaires' disease;
- b. Unnecessary to contaminated water;
- c. Death (Plaintiff KIDD);
- d. Conscious pain and suffering prior to death (Plaintiff KIDD);
- e. Loss of Decedent's society and companionship (Plaintiff KIDD);
- f. Physical pain and suffering, past, present, and future;
- g. Medical expenses, past, present, and future;
- h. Severe and continuing mental anguish and emotional depression;
- i. Fright and shock;
- j. Embarrassment, humiliation and/or mortification;
- k. Inability to experience social pleasures and enjoyment;

- l. Loss of earning capacity;
- m. Any other damages revealed during the course of discovery.

COUNT I

PRESMISES LIABILITY – DEFENDANT McLAREN

46. Plaintiff hereby reincorporates each and every allegation contained in Paragraphs 1 through 45 as if fully stated herein.

47. Defendant owed a duty to Plaintiffs to exercise reasonable and ordinary care to prevent Plaintiffs from an unreasonable risk of harm caused by dangerous conditions on Defendant's premises, and to warn of such conditions of which it knew, or should have known, existed.

48. Defendant breached said duty and was negligent in one or more of the following ways:

- a. Exposing its patients, including Plaintiffs, to a water supply contaminated with Legionella bacteria;
- b. Exposing its patients, including Plaintiffs, to air treatment systems and cooling systems contaminated with Legionella bacteria;
- c. Failing to properly, regularly, and routinely, check its water supply, air treatment and cooling systems for the presence of Legionella bacteria;
- d. Failing to implement appropriate disinfection safeguards to all air treatment and cooling systems to prevent colonization with Legionella;
- e. Failing to warn its patients, including Plaintiffs, of the presence of Legionella found in the hospital's water supply;
- f. Any other breaches revealed during the course of discovery.

49. As a direct and proximate result of Defendants' negligence, Plaintiffs have suffered the injuries and damages as more particularly described above.

WHEREFORE, Plaintiffs respectfully requests this Honorable Court to enter judgment against Defendants, jointly and severally, in an amount in excess of \$25,000.00, together with interest, costs, attorney fees, and exemplary damages.

COUNT II

GROSS NEGLIGENCE

**(DEFENDANTS BUSCH, COOK, PRISBY,
ROSENTHAL, SHEKTER-SMITH & WURFAL)**

50. Plaintiff hereby reincorporates each and every allegation contained in Paragraphs 1 through 49 as if fully stated herein.

51. At all times relevant, Defendants BUSCH, COOK, PRISBY, ROSENTHAL, SHEKTER-SMITH & WURFAL were acting within their course and scope of employment and/or authority with the MDEQ.

52. At all times relevant, Defendants BUSCH, COOK, PRISBY, ROSENTHAL, SHEKTER-SMITH and/or WURFAL were grossly negligent in that he / she / they knowingly created, increased, and prolonged the hazards within and caused by the Flint River water by approving the decision to switch from the Detroit to the Flint River water supply, by failing to properly monitor and test the Flint River water, by failing to provide and administer anti-corrosive treatment to the water, by failing to warn and advise Plaintiffs and the public of the Legionella at McLaren, and by providing assurances to Plaintiffs and the public that the Flint

River water safe when he / she / they were on actual notice, and/or had reason to believe, that these assurances were false and/or baseless.

53. Defendants were grossly negligent in that their conduct was so reckless as to demonstrate a substantial lack of concern for whether an injury occurred, insofar as Defendants knew from experience, training, and multiple other reliable sources, including federal law and regulations, that the water from Flint was highly corrosive and required corrosion control treatment in order to prevent the leaching of lead into, and proliferation of bacteria including Legionella within the water and delivery lines.

54. Defendants were grossly negligent in that their conduct was so reckless as to demonstrate a substantial lack of concern for whether an injury occurred, insofar as Defendants knew there was Legionella contamination found in both Defendant McLaren's water supply, as well as at other places connected to Defendants' water supply.

55. Despite this knowledge, Defendants recklessly, deliberately, and/or willfully failed to take any action to prevent or ameliorate the harm, including, but not limited to, the institution of any corrosion control treatment, the institution of bacterial treatment, the cessation of delivery of water known to be contaminated and dangerous, and/or at a bare minimum, alerting and warning the public of said dangers and hazards.

56. As a direct and proximate result of Defendants' negligence, Plaintiffs have suffered the injuries and damages as more particularly described above.

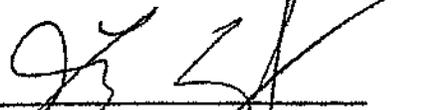
WHEREFORE, Plaintiffs respectfully requests this Honorable Court to enter judgment against Defendants, jointly and severally, in an amount in excess of \$25,000.00, together with interest, costs, attorney fees, and exemplary damages.

A JURY TRIAL IS HEREBY DEMANDED

Dated: February 1, 2016

Respectfully submitted,

Fieger, Fieger, Kenney & Harrington, P.C.



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