

IN THE STATE OF MICHIGAN
COURT OF CLAIMS

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,

CLASS ACTION

Case No.16- MM
Hon.

vs.

Governor Rick Snyder, in his official capacity, and
the State of Michigan, acting through the Governor's
Office, Michigan Department of Environmental
Quality, Michigan Department of Health and Human
Services, and Emergency Managers Darnell Earley
and Jerry Ambrose, all in their official capacities,

Defendants.

**VERIFIED CLASS ACTION
COMPLAINT FOR
DECLARATORY RELIEF,
INJUNCTIVE RELIEF,
EQUITABLE RELIEF AND
DAMAGES**

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VERIFIED CLASS ACTION COMPLAINT FOR DECLARATORY RELIEF, INJUNCTIVE RELIEF, EQUITABLE RELIEF AND DAMAGES

This class action is brought pursuant to the due process/fair and just treatment and unjust taking clauses of Mich. Const. Art. 1, § 17 and Art. 10, § 2 against Governor Rick Snyder in his official capacity and the State of Michigan, acting through the Governor's office, and/or the Michigan Department of Environmental Quality ("MDEQ"), and/or Michigan Department of Health and Human Services ("MDHHS") and its official policymakers, and/or Emergency Managers Darnell Early and Jerry Ambrose, all acting in their official capacities and pursuant to customs, policies and/or practices, based on the following allegations:

INTRODUCTORY STATEMENT

1. This class action is pursued on behalf of Flint water users, which include but are not limited to, tens of thousands of residents ("Class") 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 Defendants' deliberately indifferent decision to expose them to the extreme toxicity of water pumped from the Flint River into their homes, schools, hospitals, correctional facilities, workplaces and public places.

2. Defendants, acting through the Governor's office, and/or the Michigan Department of Environmental Quality ("MDEQ"), and/or the Michigan Department of Health and Human Services ("MDHHS") and its official policymakers, and/or Emergency Managers Darnell Early and Jerry Ambrose, all acting in their official capacities and pursuant to customs, policies and/or practices, deliberately deprived Plaintiffs and the Plaintiff Class of the rights and guarantees secured by Article 1. § 17 to the Michigan Constitution in that they deprived Plaintiffs of life, liberty and property without due process of law when they knowingly took from Plaintiffs safe drinking water and replaced it with what they knew to be a highly toxic alternative solely for fiscal purposes.

3. Moreover, Defendants denied Plaintiffs their constitutional right to fair and just treatment during executive investigations as evidenced by the falsifications, deliberate delays and deceptive communications from State Officials who deliberately denied the enormous known risks facing individuals, all of whom are members of the Plaintiff class herein.

4. The evidence of the denial of a fair and just treatment as required by Article 1, Section 17 of the Michigan Constitution is manifest in that State officials engaged in an unconscionable and/or deliberately indifferent fraud against Plaintiffs pursuant to customs, policies and/or practices of Defendant State of Michigan, to wit: Plaintiffs were led to believe by the State, acting through the Michigan

Department of Environmental Quality, the Michigan Department of Health and Human Services and/or the Governor's office, and/or the Flint Emergency Managers Darnell Earley and Jerry Ambrose, and other State officials acting in their official capacities, that the Flint River water was safe to drink and to use for cooking, bathing and other personal uses at a time when these State officials knew the water was in fact not safe.

5. For more than eighteen (18) months, Defendants ignored irrefutable evidence that the water pumped from the Flint River exposed the Plaintiffs and the Plaintiff Class to extreme toxicity, causing serious and dire injury and health hazards, and property damage to the Flint water users.

6. Defendants, in the course of their responsibility to investigate and accurately report the results of that investigation, regularly assured the Flint water users that the water supplied from the Flint River was being properly treated, monitored and tested and was safe to consume and use.

7. It is now clear that Defendants knew these assurances to be false, when they uttered them: Defendants failed to properly sample and monitor the Flint River water. As a result they deliberately delayed and temporized in notifying the public of serious safety and health risks in an effort to conceal the truth from those who were being poisoned and otherwise adversely affected. These deliberately false denials and reassurances regarding the dangers of using Flint River water were as

dangerous as they were arrogant.

8. The massive personal and property injuries experienced by Plaintiffs and Plaintiff Class members, and the ensuing environmental disaster, reaches constitutional proportions because Defendants, acting in their official capacities under color of law, created and increased the risk of prolonged serious and life threatening dangers to Plaintiffs and the Class where none existed before.

9. Defendants made the decision to replace safe water with an alternative that created toxic water and then deceived the Plaintiffs and Plaintiff Class members, thereby violating their constitutional rights by acting in a manner that shocks the conscience and was deliberately indifferent to the those constitutional rights, as well as to the health and well-being of the Plaintiffs and the Class.

PARTIES, JURISDICTION, VENUE AND PROCEDURAL REQUIREMENTS

PLAINTIFFS

10. Plaintiff Class representatives are citizens of the United States and at all relevant times were Flint water users – individuals, home owners, parents and minors, and prisoners - who, since April 25, 2014, were and continue to be exposed to highly dangerous conditions created, caused and knowingly prolonged by Defendants' deliberately indifferent and shocking decision to replace safe drinking water supplied by the City of Detroit's water system with extremely toxic water pumped from the Flint River; and these Defendants' continued failure to remediate

these dangers notwithstanding their knowledge thereof.

11. All Plaintiff Class representatives were exposed to Flint's toxic water in their homes, as well as schools, hospitals, correctional facilities, workplaces and public places throughout the City of Flint.

12. Plaintiffs bring this action on behalf of themselves and others constituting a Class of individuals who sustained personal and/or property injury after April 25, 2014 because of their exposure to the toxic water pumped from the Flint River.

DEFENDANTS

13. Defendant 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 is and was at all relevant times the official policy-maker for Defendant State of Michigan and, as such, was responsible for the management of State government and for the health and welfare of its citizens and residents, and is sued by Plaintiffs and the Class in his official capacity.

14. Defendant State of Michigan operates the Department of Environmental Quality ("MDEQ"). The MDEQ is responsible for overall management and protection of the environmental safety and health of Michigan citizens and residents.

15. Defendant State of Michigan operates the Health and Human Services

("MDHHS"). The MDHHS is responsible for overall management of public assistance, child and family welfare services, and oversees health policy and management.

16. Emergency Managers Darnell Earley and Jerry Ambrose were both appointed to their positions of power within the City of Flint by Defendant State of Michigan, acting through Defendant Snyder in his official capacity, and as such, when these Emergency Managers acted in their official capacities, they acted as the State of Michigan.

17. Defendant State of Michigan, acting through the Governor's office, and/or the MDEQ and its official policy-makers, and/or Emergency Managers Earley and Ambrose, made the final decisions that deliberately created, increased and/or prolonged the hazards, threats and dangers that arose by replacing of safe drinking, washing and bathing water with a highly toxic alternative and failing to take adequate precautionary measures to protect Plaintiffs and Plaintiff Class members.

18. The Michigan Court of Claims has personal jurisdiction over the Defendants herein because MDEQ and MDHHS are agencies of the State of Michigan, the Flint Emergency Managers Earley and Ambrose were at all relevant times hereto official agents/policymakers for of the State of Michigan and Defendant Snyder is an official policymaker for Defendant State.

19. The Michigan Court of Claims also has original jurisdiction over this matter pursuant to MCL § 600.6419, *et seq.* because the claims herein are brought against the State, its departments and officers all acting in their official capacities, all within the meaning of MCL § 600.6419(7).

20. Venue is proper in the Court of Claims pursuant to MCL § 600.6419, *et seq.*

21. Plaintiff certifies that this Complaint is signed and verified by Plaintiffs before an officer authorized to administer oaths pursuant to MCL § 600.6432(1).

22. Pursuant to MCL § 600.6431(1), Plaintiffs designate the following institutions, “departments or officers” of the State “involved in connection” with this claim: Michigan Department of Environmental Quality, the Michigan Department of Health and Human Services, Emergency Managers Earley and Ambrose and the Governor’s Office of the State of Michigan, acting in his official capacity within the scope of his authority.

23. This Complaint is filed within six months of the accrual of Plaintiffs’ claim and satisfies all timeliness requirements of MCL §§ 600.6431 and 600.6452.

Statement of Facts Regarding the Mays Family

24. 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.

25. The Mays family at all relevant times lived in a single family home

built around 1910 on Beecher Street in Flint.

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

27. 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.

28. 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.

29. 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

30. 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.

31. 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.

32. 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.

33. 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

34. 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.

35. 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.

36. 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.

37. 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.

38. 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

39. 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.

40. 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.

41. 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.

42. 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.

43. 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.

44. 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 Defendants' Decision to Replace Safe Drinking Water with a Toxic Alternative

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

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

47. In 2011, Flint government officials commissioned a study 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. A report of the study, entitled *Analysis of the Flint River as a Permanent Water Supply for the City of Flint*, was published in July, 2011.

48. The July 2011 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 into the water from the lead, copper and iron-based water lines.

49. From November 29, 2011 through April 30, 2015, the City of Flint was

governed by Emergency Managers (“EMs”), all appointed by Defendant Governor Rick Snyder.

- a. Darnell Earley from October, 2013 through January, 2015; and
- b. Jerry Ambrose from January, 2015 through April 30, 2015.

50. On December 2012, Flint was no longer considering the Flint River water as a viable alternative to Detroit water. Only two options were under consideration: continuing on the Detroit system or switching to a new regional water authority known as the Karegondi Water Authority (“KWA”) scheduled to become operational some time in 2016.

51. In 2013, Flint government officials delivered to MDEQ the 2011 report that stated and 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.

52. In March, 2013, the Flint City Council approved a resolution to secure future water service from a new regional water authority known as the Karegnondi Water Authority (“KWA”) scheduled to become operational some time in 2016. Flint City Council never voted on whether to use Flint River water as an interim source of water, pending the availability of KWA water.

53. On April 16, 2013, City of Flint EM Ed Kurtz signed an agreement to switch from DSWD water source to KWA once it becomes available in 2016.

54. On April 25, 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 Darnell Earley, acting within the scope of his authority, ordered Flint to draw water from the Flint River, even though he had actual knowledge from, among other sources, the 2011 report that the water was highly corrosive and dangerous to people and property when distributed without proper anti-corrosive treatment.

55. Defendants Snyder and State, acting through its aforementioned official agencies and agents, had been informed by the 2011 report and were thus on notice that use of the Flint River water, without a proper anti-corrosive treatment, would create a condition dangerous to health and property.

56. Beginning in April 2014, Defendants were fully aware that the required and necessary anti-corrosive was not being used during the distribution of Flint River water to Flint residents, families and home owners, including Plaintiffs and all Plaintiff Class members herein.

57. It has been estimated that the daily cost of the anti-corrosive agent would have been less than \$100.

58. Flint water users, including Plaintiffs and Plaintiff class members, having enjoyed decades of safe, clean and fresh water via the Detroit water system, knew almost immediately after the switch to Flint River water that something was

not right about this new water supply.

**Statement of Facts Regarding Defendants' Knowledge of Toxic Exposure
and Misrepresentations to the Public**

59. Within days after the switch, Defendant State, through its Defendant agencies, departments and/or officials, began receiving complaints from water users, including Plaintiffs and/or Plaintiff Class members, that the water was cloudy and foul in appearance, taste and odor.

60. By August, 2014, Flint water tested positive for *E. coli*. and several "boil water" advisories were issued by the City of Flint through September, 2014.

61. During the next eight (8) months, Flint water users, including Plaintiffs and/or Plaintiff Class members, expressed 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.

62. After eight (8) months of undertaking this failed "experiment," the only reasonable response to the actual knowledge Defendants had about the dangers of the Flint River water, amidst the mounting complaints from Flint residents including Plaintiffs and Plaintiff Class members, would have been to reconnect the Flint water system to the Detroit water system. Instead, Defendants, acting with deliberate indifference, disregarded the knowledge that they had of the dangers and dire consequences of continuing to use the water and ignored the mounting protests.

63. Defendants further went into deliberate denial mode, offered ineffective solutions and continued to falsely reassure the public, including Plaintiffs and Plaintiff Class members, insisting that the water was safe even though they had actual knowledge that the foul taste, odor and appearance was highly likely the result of using the corrosive Flint River water, untreated with the proper anti-corrosive agents, which caused particulate lead other hard metals and Legionnaires' disease to contaminate the water.

64. Beginning almost immediately after the Flint River became the primary source of water for the Flint users in April 2014, Defendant State, acting through its aforementioned agencies and officials, were also on actual notice of elevated levels of Trihalomethanes ("TTHM"), a known carcinogen, in the water and that these levels were above the legal limit.

65. In fact, upon switching to the Flint water, the City of Flint failed the EPA's Locational Running Annual Average ("LRAA") water quality tests on May 21, 2014, August 21, 2014, and November 20, 2014.

66. As a result of these failed tests, the City of Flint was required to send out Violation Notices to all the residents and state that their water system recently violated a drinking water standard and that people who have severely compromised immune systems, infants, or the elderly may be at an increased risk and should seek advice about drinking water from their health providers.

67. After about seven (7) months of elevated TTHM levels, Flint water users finally received a notice in January, 2015 from the City of Flint stating that the water was not in compliance with the federal Safe Drinking Water Act because of unlawful levels of TTHMs.

68. Within a few weeks of the issuance of the TTHM notice, Flint City Council members approached Emergency Manager Earley and demanded that Flint reconnect with Detroit water. Earley refused to do so, despite the urgent requests to do so by members of the City Council.

69. At this same time, representatives of DWSD expressed a readiness to re-establish a relationship with Flint and offered to waive the \$4 million re-connect fee in order to do so. EM Earley, acting within the scope of his official authority, rejected this initiative, and with deliberate indifference to the short- and long-term known health consequences. In so doing, he continued to mislead Flint residents to believe that their water was safe.

70. On January 20, 2015, citizen protests mounted fueled in part by encouragement from environmental activist Erin Brockovich and her associate, water expert Bob Bowcock. These advocates offered advice and assistance to the protesting Flint water users due to the serious concerns about the health risks they presented by this toxic water.

71. On January 13, 2015, EM Earley left his position as Emergency

Manager and was replaced by EM Ambrose.

72. On January 29, 2015, the Detroit Director of Water offered EM Ambrose another opportunity to protect Plaintiffs and the Plaintiff Class from known dangers and to use Detroit water and agreed to waive the \$4 million reconnection fee so as to allow Flint to switch back to Detroit water.

73. Notwithstanding Detroit's offer, EM Ambrose rejected it and with deliberate, indeed reckless, indifference continued to mislead Flint residents to believe that their water was safe.

74. On February 17, 2015, Flint water users 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 Flint residents, including Plaintiffs and Plaintiff Class.

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

76. In June 24, 2015, EPA representative Miguel Del Toral wrote a detailed memo outlining numerous dangerous problems with the water being pumped from the Flint River including unacceptable levels of lead. This report was shared with, among others, MDEQ's Chief of Office of Drinking Water and Municipal Assistance, Diane Shekter-Smith, MDEQ's Water Treatment Specialist, Patrick

Cook, MDEQ's District Supervisor, Stephen Busch and MDEQ's Engineer assigned to District 11 (Genesee County), Michael Prysby.

77. Nonetheless, Defendants failed to undertake any measures to effectively address any of the dangers identified by EPA Agent Del Toral.

78. By July 2015, multiple agencies within Defendant State of Michigan, including the Governor's Office and MDEQ, had actual notice of high lead exposure and other dangers, including Legionnaires' disease associated with Flint water.

79. Yet, MDEQ official Brad Wurfel appeared on public radio on July 10, 2015, and advised listeners that Flint water was safe and that it was not causing "any broad problem" with lead leaching into residential water.

80. On July 22, 2015, Defendant Governor Rick Snyder's chief of staff, Dennis Muchmore, admitted in an email to Michigan Department of Health and Human Services officials, "I'm frustrated by the water issue in Flint... I really 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.)"

81. On July 24, 2015, MDEQ official Brad Wurfel responded to Mr. Muchmore's concerns, saying, "In terms of near-future issues, the bottom line is that residents of Flint do not need to worry about lead in their water supply, and DEQ's

recent sampling does not indicate an imminent health threat from lead or copper.”

82. As specified in more detail below, indeed, Defendants herein did not sympathize with the plight of Flint residents; rather, they created and prolonged it.

**Statement of Facts Regarding High Lead Test Results,
Despite Inaccurate Testing Methodology**

83. By late 2014 or early 2015, the MDHHS was aware from its own data that there was dramatic increase in the percentage of Flint children with elevated blood lead level readings from blood drawn during the second and third quarters of 2014, and that reports of Legionnaires’ disease was on the rise during the same period of time.

84. The MDHHS knew that these elevated blood lead levels, and an increase on reports of Legionnaires’ disease found in its own database correlated with the introduction of the corrosive Flint River water into the Flint water distribution system.

85. These conditions created a Health Emergency. The MDHHS failed to report to the MDEQ, Governor’s Office, EPA or the Flint community that it had discovered a Health Emergency in its own data.

86. Dr. Mona Hanna-Attisha, in the summer of 2015, using data available to her from Hurly Hospital, observed a similar spike in the percentage of Flint children with elevated blood lead levels from blood drawn in the second and third

quarter of 2014. She published her study in an effort to alert the community about the health risks associated with drinking Flint River water.

87. The MDHHS, in response to media reports of the Health Emergency implicit in Dr. Hanna-Attisha's data, almost immediately accused Dr. Hanna-Attisha of providing false information to the public.

88. The MDEQ and the Governor's office accepted the MDHHS's statements that Dr. Anna-Attisha's data was incorrect.

89. After media representatives demonstrated that Dr. Hann-Attisha's data conclusions were correct, the MDHHS re-evaluated its own data and admitted that Dr. Hanna-Attisha data and conclusions were correct and that its own data confirmed Dr. Hanna-Attisha's conclusions.

90. By early 2015, the State of Michigan, acting through MDEQ, knew that Flint residents were being exposed to particulate lead on a daily basis. Moreover, MDEQ representatives, acting in their official capacities, were on actual notice that inaccurate test results were providing false assurance to residents about the true lead levels in the water.

91. On February 26, 2015, the Environmental Protection Agency ("EPA") sent an e-mail to the MDEQ specifically asking it to provide details about the optimized corrosion control treatment, if any, the Flint Water Treatment Plant ("FWTP") was using.

92. On February 27, 2015, in an e-mail, Defendant State, acting through the MDEQ, falsely informed the EPA that the City of Flint had an optimized corrosion control program in place, when in fact MDEQ was on actual notice and was well aware that it did not.

93. On March 30, 2015, MDEQ notified the FWTP of the first of two consecutive six-month lead/copper sampling results showing that the lead action levels were unacceptably elevated.

94. These lead levels, according to the first round of the six-month sampling results, were above 5 ppb and therefore exceeded acceptable and safe levels.

95. As a result of these unacceptable levels, Defendant State, acting through the MDEQ and its officials, had the legal duty to notify the FWTP to immediately commence optimized corrosion control treatment.

96. Yet, Defendant State, acting through the MDEQ and its officials, acting with deliberate indifference, failed to notify the FWTP that it was required to undertake optimized corrosion control treatment; thus, no such treatment was implemented.

97. In addition, Defendant State, acting through the MDEQ and its officials, failed to verify that only tier 1 sample sites – i.e. those in the highest risk category for high lead levels – were selected by the FWTP in the two rounds of six-month

samples, as they were required to do.

98. Finally, in November of 2015, the FWTP admitted that it could not ensure that all testing sites were tier 1. It further admitted that the water samples came from the random distribution of 175 testing bottles without regard for whether the homes were at risk for high lead levels, i.e. were tier 1 sited, as required by the Federal Lead and Copper Rule (“LCR”).

99. Meanwhile, during the spring and summer of 2015, Professor Marc Edwards (“Professor Edwards”), and other experts from Virginia Polytechnic Institute, 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 5 ppb.

100. 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.

101. When Professor Edwards published the results of his studies, in September of 2015, the public demanded that Defendants re-connect to the Detroit water system intensified.

102. Dr. Mona Hanna-Attisha MD, (“Dr. Hanna-Attisha”), a pediatrician from Hurley Hospital in Flint, noted and 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 of 2015.

103. Thus, while Defendants reported false lead/copper testing data during the time that Flint water was sourced from the Flint River, even the flawed testing methodology showed unsafe levels of lead in Flint. Plus, scientifically valid testing from other sources confirmed that lead exposure was recklessly prevalent.

Statement of Facts Regarding Eventual Return to Detroit Water System

104. On October 1, 2015, faced with overwhelming evidence that the water was unsafe to use and a source of lead poisoning for the children of Flint and other vulnerable persons, including Plaintiffs and Plaintiff Class members, Genesee County Health Officials issued a public health emergency advising Flint residents not to drink the tap water.

105. Although reconnecting to the Detroit water system was the only reasonable option to protect the health and safety of the Flint water users, and this option should have been exercised within weeks of the first appearance of the foul water, Defendants deliberately chose not to do so. Instead, on October 2, 2015, State officials announced that the State would provide water filters to Flint water users in a useless gesture to superficially ameliorate the problem.

106. On October 8, 2015, Defendant Snyder recognized that he could no longer deny that the water from the Flint River was unsafe and toxic. He finally

ordered Flint to re-connect with the Detroit water system.

107. On October 16, 2015, Detroit City Water began to flow to Flint water users.

108. However, based on information and belief, due to the prolonged exposure of contaminated water without adequate anti-corrosive agents, Plaintiffs and Plaintiff Class members were further exposed to toxic water, which exposure continues until such time that pipes and services lines that were damaged by corrosive water from the Flint River can be replaced.

Class Allegations In Compliance with MCR 3.500

109. 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 and/or property and/or who in the future will be so injured.

110. The number of injured 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.

111. 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.

112. 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.

113. 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.

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

115. 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.

116. Defendants have acted or failed to act on grounds generally applicable to all Plaintiffs, necessitating legal relief for the Class, including but not limited to an award of damages to fully compensate the Class for all of the damages it has sustained past, present and future.

Count I:
Michigan Constitution, Article 1§ 17
Substantive Due Process – State Created Danger:
All Defendants

117. The due process clause of Art 1, § 17 of the Michigan Constitution provides that the state may not deprive a person of life, liberty or property without due process of law.

118. These Defendants, acting through the Governor’s office, and/or the Michigan Department of Environmental Quality (“MDEQ”), and/or the Michigan Department of Health and Human Services (“MDHHS”) and its official policymakers, and/or Emergency Managers Darnell Early and Jerry Ambrose, all acting in their official capacities and pursuant to customs, policies and/or practices, deliberately withdrew water that was safe for drinking, cooking, washing and bathing from Plaintiffs and the Plaintiff Class. They deliberately exposed Plaintiffs and the Plaintiff Class to dangerous, unsafe and untreated (or inadequately treated) Flint River water without regard to their knowledge that such exposure could and would result in widespread permanent serious damage, including Legionnaires’ disease and the irreversible lead poisoning of children and other vulnerable persons.

119. This conduct was culpable in the extreme.

120. Defendants’ conduct in exposing Flint residents to toxic water was so

egregious and so outrageous that it shocks the conscience. Defendants had time for deliberation in their decisions to expose Flint residents to toxic water, and their decision to do so was made with deliberate indifference to the known serious medical risks.

121. Plaintiffs and Plaintiff Class Members were foreseeable victims of the decision to replace safe water with a toxic alternative.

122. The decisions and actions that deprived Plaintiffs and the Plaintiff Class of clean and healthy water and to replace that water with toxic, unhealthy and unsafe water constituted affirmative acts, pursuant to customs, policies and/or practices of the State of Michigan, that caused and/or increased the risk of harm, both property damage, as well as physical and emotional injury, to Plaintiffs and Plaintiff Class.

123. At all times herein Defendant State of Michigan/MDEQ/MDHHS officials acted under color of law, in their official capacities and pursuant to the customs, policies and/or practices of Defendant State of Michigan.

124. As a direct and proximate result of the unconstitutional acts of Defendants as alleged in this Complaint, Plaintiffs and Plaintiff Class members have experienced, and will continue to experience into the future:

- a. Serious and in some cases life threatening and irreversible bodily injury; and
- b. Substantial economic losses in the nature of medical expenses, lost wages.

125. Plaintiffs and Plaintiff Class members are entitled to an award of non-economic damages in the nature of pain and suffering, embarrassment, outrage, mental anguish, fear and mortification, and stress related physical symptoms such as sleepiness, gastro-intestinal discomfort, neuropathy, dermatological disorders, hair loss and other related symptoms.

126. Plaintiffs and Plaintiff Class members have experienced property damage to their homes and places of business in the nature of lost property value and seek damages to remediate the permanent damage caused by the use of corrosive water without proper anti-corrosive treatment.

Count II:
Michigan Constitution, Article 1 § 17
Substantive Due Process – Bodily Integrity
All Defendants

127. The due process clause of Art 1, § 17 of the Michigan Constitution includes an implied right to bodily integrity.

128. Defendants, acting through the Governor's office, and/or the Michigan Department of Environmental Quality ("MDEQ"), and/or the Michigan Department of Health and Human Services ("MDHHS"), and its official policymakers, and/or Emergency Managers Darnell Early and Jerry Ambrose, all acting in their official capacities and pursuant to customs, policies and/or practices, violated Plaintiffs' and Plaintiff Class members' right to bodily integrity, insofar as:

- a. Defendants had a duty to protect Plaintiffs and Plaintiff Class

members from a foreseeable risk of harm from contaminated water;

- b. Defendants knew of the serious medical risks associated with exposure to contaminated water;
- c. Defendants failed, with deliberate indifference, to protect Plaintiffs and Plaintiff Class members from the known risks associated with exposure to contaminated water; and
- d. Plaintiffs and Plaintiff Class members suffered bodily harm as a result of their exposure to contaminated water.

129. Defendants' conduct in exposing Flint residents to toxic water was so egregious and so outrageous that it shocks the conscience. Defendants had time for deliberation in their decisions to expose Flint residents to toxic water, and their decision to do so was made with deliberate indifference to the known serious medical risks.

130. As a direct and proximate result of the unconstitutional acts of Defendants, acting through the Governor's office, and/or the Michigan Department of Environmental Quality ("MDEQ"), and/or the Michigan Department of Health and Human Services ("MDHHS"), and its official policymakers, and/or Emergency Managers Darnell Early and Jerry Ambrose, all acting in their official capacities and pursuant to customs, policies and/or practices, as alleged in this Complaint, Plaintiffs and Plaintiff Class members have experienced and will continue to experience into the future:

- a. Serious and in some cases life threatening and irreversible bodily injury; and

- b. Substantial economic losses in the nature of medical expenses, lost wages.

131. Plaintiffs and Plaintiff Class members are entitled to an award of non-economic damages in the nature of pain and suffering, embarrassment, outrage, mental anguish, fear and mortification, and stress related physical symptoms such as sleepiness, gastro-intestinal discomfort, neuropathy, dermatological disorders, hair loss and other related symptoms.

132. Plaintiffs and Plaintiff Class members have experienced property damage to their homes and places of business in the nature of lost property value and seek damages to remediate the permanent damage caused by the use of corrosive water without proper anti-corrosive treatment.

**Count III:
Michigan Constitution, Article 1§ 17
Substantive Due Process – Denial of Fair and Just Treatment in Investigations
All Defendants**

133. Defendants, acting through the Governor’s office, and/or the Michigan Department of Environmental Quality (“MDEQ”), and/or the Michigan Department of Health and Human Services (“MDHHS”), and its official policymakers, and/or Emergency Managers Darnell Early and Jerry Ambrose, all acting in their official capacities and pursuant to customs, policies and/or practices, denied Plaintiffs their constitutional right to fair and just treatment during executive investigations as evidenced by the flawed investigation and testing, falsifications, deliberate delays

and deceptive communications from Defendant State Officials who deliberately minimized the enormous known risks facing individuals.

134. The evidence of the denial of a fair and just treatment as required by Article 1, Section 17 of the Michigan Constitution is manifest in that State officials, including named Defendants herein, engaged in an unconscionable fraud against Plaintiffs: Plaintiffs were led to believe by Defendant State, acting through the Governor's office, and/or the Michigan Department of Environmental Quality ("MDEQ"), and/or Michigan Department of Health and Human Services ("MDHHS"), and its official policymakers, and/or Emergency Managers Darnell Early and Jerry Ambrose, all acting in their official capacities and pursuant to customs, policies and/or practices, that the Flint River water was safe to drink and use for cooking, bathing and other personal uses at a time when these State officials, all acting in their official capacities and pursuant to customs, policies and/or practices of Defendant State, knew the water was not in fact safe.

135. Plaintiffs and Plaintiff Class members are entitled to an award of non-economic damages in the nature of pain and suffering, embarrassment, outrage, mental anguish, fear and mortification, and stress related physical symptoms such as sleepiness, gastro-intestinal discomfort, neuropathy, dermatological disorders, hair loss and other related symptoms.

136. Plaintiffs and Plaintiff Class members have experienced property

damage to their homes and places of business in the nature of lost property value and seek damages to remediate the permanent damage caused by the use of corrosive water without proper anti-corrosive treatment.

Count IV:
Cause of Action: Violation of Article 10 § 2
Unconstitutional Taking of Property
Plaintiff Property Owners and Users:
All Defendants

137. Article 10, § 2 of the Michigan Constitution requires that “[p]rivate property shall not be taken for public use without just compensation.”

138. This claim is brought by Plaintiff property owners and/or users who had water service lines susceptible to damage caused by corrosive water and which were rendered unsafe even after the corrosive water was discontinued.

139. The actions of the Defendants were a substantial cause of the decline of the Plaintiffs’ and Plaintiff Class members’ property values and ordinary uses of their property.

140. These Defendants deliberately substituted of safe drinking water with a known toxic alternative and their continued decision not to use anti-corrosive agents to prevent the foreseeable deterioration and/or destruction of the Plaintiffs’ water service lines, thereby rendered them unsafe for future use even after the corrosive water was discontinued.

141. The Defendants took affirmative actions that directly targeted those

properties with water service lines susceptible to damage caused by corrosive water, thereby rendering those properties unsafe, even after the corrosive water was discontinued.

142. As direct and proximate result of Defendants' unconstitutional taking of Plaintiffs' properties, Plaintiffs and Plaintiff Class members have experienced substantial loss of value and ordinary use and enjoyment of their properties.

143. The injury to Plaintiff and Plaintiff Class member property owners is unique or special because this group of Plaintiffs had water service lines susceptible to damage by corrosive water and which were rendered unsafe even after the corrosive water was discontinued.

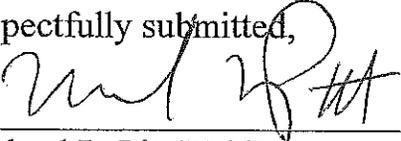
RELIEF REQUESTED

Accordingly, plaintiffs request the following relief from the court:

- a. An order certifying this case as a Class Action;
- b. An order declaring the conduct of defendants unconstitutional;
- c. An order of equitable relief to remediate the harm caused by Defendants' official unconstitutional conduct, including repairs of property, establishment of a medical monitoring fund and appointing a monitor to oversee the water operations of Flint for a period of time deemed appropriate by this Court;
- d. An order for an award of full compensatory damages for those injuries and damages sustained by class representatives and all class members;
- e. An order for an award of actual reasonable attorney fees and litigation expenses;

- f. An order for all such other relief the court deems reasonable, equitable and just under the circumstances.

Respectfully submitted,

By: 

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Dated: January 15, 2016

DESIGNATION OF INSTITUTION OF THE STATE INVOLVED IN CLAIM

Pursuant to MCL § 600.6431(1), Plaintiff designates the following institutions or agencies of the state "involved in connection" with this claim:

Governor's Office

Michigan Department of Environmental Quality

Michigan Department of Health and Human Services

SIGNATURE AND VERIFICATION OF COMPLAINT BY PLAINTIFF

Pursuant to MCL § 600.6431(1), Plaintiff hereby signs and verifies this First Class Action Complaint before an officer authorized to administer oaths:

Signed: *Melissa Mays*
Melissa Mays

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

State of: *Michigan*

County of: *Genesee*

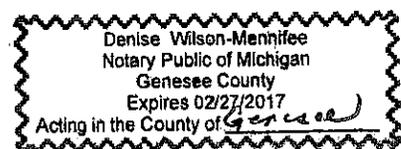
The foregoing instrument was acknowledged before me this *13th* day of *Jan* by Melissa Mays.

Signature of Notary Public: *Denise Wilson-Mennifee*

Title or Rank: *Notary*

Serial Number, if any: _____

My Appointment Expires: *02/27/2017*



Pursuant to MCL § 600.6431(1), Plaintiff hereby signs and verifies this First Class Action Complaint before an officer authorized to administer oaths:

Signed: 
Michael Mays

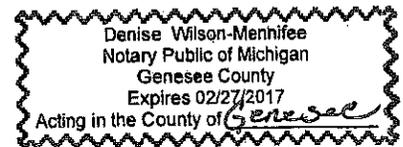
CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

State of: Michigan

County of: Genesee

The foregoing instrument was acknowledged before me this 13th day of JAN. by Michael Mays.

Signature of Notary Public: 
Title or Rank: Notary Public
Serial Number, if any: _____
My Appointment Expires: 02/27/2017



Pursuant to MCL § 600.6431(1), Plaintiff hereby signs and verifies this First Class Action Complaint before an officer authorized to administer oaths:

Signed: *Jaqueline Pemberton*
Jacqueline Pemberton

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

State of: Michigan

County of: Genesee

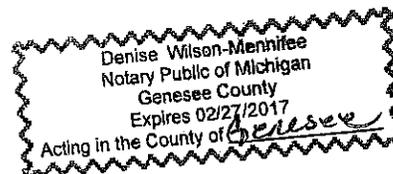
The foregoing instrument was acknowledged before me this 13th day of Jan. by Jaqueline Pemberton.

Signature of Notary Public: *Denise Wilson-Mennifee*

Title or Rank: Notary Public

Serial Number, if any: _____

My Appointment Expires: 02/27/2017



Pursuant to MCL § 600.6431(1), Plaintiff hereby signs and verifies this First Class Action Complaint before an officer authorized to administer oaths:

Signed: Keith John Pemberton
Keith John Pemberton

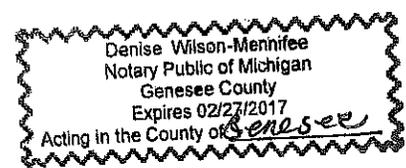
CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

State of: Michigan

County of: Genesee

The foregoing instrument was acknowledged before me this 13th day of JAN. by Keith John Pemberton.

Signature of Notary Public: Denise Wilson-Mennifee
Title or Rank: Notary
Serial Number, if any: _____
My Appointment Expires: 02/27/2017



Pursuant to MCL § 600.6431(1), Plaintiff hereby signs and verifies this First Class Action Complaint before an officer authorized to administer oaths:

Signed: Elnora Cathan
Elnora Cathan

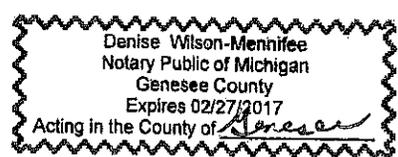
CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

State of: Michigan

County of: Genesee

The foregoing instrument was acknowledged before me this 13th day of JAN. by Elnora Cathan

Signature of Notary Public: Denise Wilson-Mennifee
Title or Rank: Notary Public
Serial Number, if any: _____
My Appointment Expires: 02/27/2017



Pursuant to MCL § 600.6431(1), Plaintiff hereby signs and verifies this First Class Action Complaint before an officer authorized to administer oaths:

Signed: *Rhonda Kelso*
Rhonda Kelso

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

State of: *Michigan*

County of: *Genesee*

The foregoing instrument was acknowledged before me this *13th* day of *Jan.* by Rhonda Kelso

Signature of Notary Public: *Denise Wilson-Menhifee*
Title or Rank: *Notary Public*

Serial Number, if any: _____

My Appointment Expires: *02/27/2017*

