

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 7TH JUDICIAL CIRCUIT
GENESEE COUNTY

IN RE: FLINT WATER LITIGATION

No. 17-108646-NO

HON. RICHARD B. YUILLE

**CORRECTED OBJECTIONS BY BOTH THE STATE DEFENDANTS IN THE
MAYS PUTATIVE CLASS ACTION AND THE PEOPLE IN THE *PARENS
PATRIAE* ACTION AGAINST THE VEOLIA AND LAN DEFENDANTS**

These objections are raised by former Governor Snyder, the State of Michigan, and former Treasurer Andy Dillon in case no. 16-106112 (State Defendants) and the People in case no. 16-107576.

That both of these parties (State Defendants and the People) have the same counsel and are involved in this complex litigation in some respects both on the plaintiffs' and defendants' sides further emphasizes the need for the Court to allow counsel for these parties to participate in regularly monthly status conferences and otherwise be exempt from the "lead counsel" arrangement. Otherwise, the same counsel must seek updates from both the plaintiffs' and defendants' side of this litigation. If counsel for the State Defendants and the People were full participants, they would not have to depend on the counsel for adverse parties for information. The Court must rule promptly, ideally before entering a Discovery and Scheduling Order, on State Defendants' pending August 24, 2018 motion to be exempted from the lead counsel arrangement and extend its ruling to the People.

I. Objections of State Defendants.

State Defendants' fundamental objection is that no discovery should proceed until after the Court has ruled on State Defendants' August 22, 2018 dispositive motion. The dispositive motion is purely legal, very straightforward, and is an efficient way for the Court to be free from the unnecessary complications¹ the *Mays* case brings to this litigation. Indeed, the Court must rule on it before allowing discovery to proceed. Burdening State Defendants, whose costs are paid by the taxpayers, with expensive discovery and expert witness obligations will severely prejudice them if it turns out Plaintiffs had not even satisfied the legal threshold to file suit.

Moreover, the plaintiffs in *Mays* have indicated that they plan to try and amend their complaint again rather than respond to the August 22, 2018 dispositive motion. If so, and the Court allows an amendment, the State Defendants will file a dispositive motion to dismiss the *Mays* plaintiffs' amended complaint. No discovery should proceed in *Mays* unless the Court denies that future dispositive motion should it be necessary. Not only that, but as a practical matter, discovery should not commence until it is clear what the operative complaint is. It would not make sense for discovery in *Mays* to be based on an obsolete pleading.

State Defendants also object to every provision of the draft Discovery and Scheduling Order that gives any entity other than the named plaintiffs in the *Mays*

¹ The *Mays* and *Carthan* plaintiffs' February 15, 2019 objections to the draft Discovery and Scheduling Order are just some of the complications presented by the *Mays* case.

action the authority to issues discovery requests to State Defendants apart from ordinary non-party requests. These cases are consolidated, not merged. The interim lead class counsel and lead individual plaintiffs' counsel have deliberately chosen not to sue State Defendants in Genesee County. It would not be lawful for them to submit party discovery requests to a non-party.

To implement these and other objections by State Defendants, State Defendants request that the following language either be added to or removed from the draft submitted on February 11, 2018:

A. Language that should be added.

1. Section 3

A third and fourth paragraph at the end of that section that states:

“Notwithstanding any other provision of this Discovery and Scheduling Order, the plaintiffs in the *Mays* putative class action case may not serve any discovery request on any State Defendant in that case unless the Court denies the State Defendants’ August 22, 2018 dispositive motion (or, if the Court allows the plaintiffs to amend their complaint, a later filed dispositive motion that seeks to dismiss that amended complaint).”

“Notwithstanding any other provision of this Discovery and Scheduling Order, no party in any lawsuit consolidated in these proceeding may submit party discovery requests to State Defendants except the named plaintiffs in the *Mays* putative class action, which is the only lawsuit to which State Defendants are

parties. This paragraph does not affect ordinary non-party discovery available under the Court Rules.”

2. Section 6(a)

A sentence at the end of that paragraph that states: “Notwithstanding any other language in this section, State Defendants can only be served with party requests under this section by the named plaintiffs in *Mays*, and the plaintiffs in *Mays* can only be served with party requests under this section by the named defendants in *Mays*.”

3. Section 9(a)

A sentence at the end of that paragraph that states: “Notwithstanding any other language in this section, State Defendants can only be served with party requests under this section by the named plaintiffs in *Mays*, and the plaintiffs in *Mays* can only be served with party requests under this section by the named defendants in *Mays*.”

4. Section 12(a)

A sentence at the end of that paragraph that states: “Notwithstanding any other language in this section, State Defendants can only be served with party requests under this section by the named plaintiffs in *Mays*, and the plaintiffs in *Mays* can only be served with party requests under this section by the named defendants in *Mays*.”

5. Section 19

A sentence at the end of that introductory paragraph that states:

“Notwithstanding any other language in this section, State Defendants can only be served with party requests under this section by the named plaintiffs in *Mays*, and the plaintiffs in *Mays* can only be served with party requests under this section by the named defendants in *Mays*.”

6. Section 27

An introductory paragraph preceding paragraph (a) that states:

“Notwithstanding any other language in this section, State Defendants in the *Mays* action are only obligated to provide expert witness reports and disclosures to the named plaintiffs in *Mays*, and the named plaintiffs in *Mays* are only obligated to provide expert witness reports and disclosures to State Defendants in the *Mays* action.”

B. Items that should be deleted.

- 1. Section 5(b)(F) must be deleted. No individual plaintiff has sued State Defendants.**
- 2. Section 5(f) should be deleted.**
- 3. Section 8(a)(F) must be deleted. No individual plaintiff has sued State Defendants.**
- 4. Section 8(e) should be deleted.**
- 5. Section 11(a)(F) must be deleted. No individual plaintiff has sued State Defendants.**

6. Section 11(e) should be deleted.

C. Class Certification.

State Defendants do not support either version of Section 31 in its entirety.

II. Objections of the People.

The People's overriding objection is that the draft Discovery and Scheduling Order does not address the People's lawsuit. The People's suit is neither an individual nor a class action—it is a *parens patrie* action that seeks compensation from the VNA and LAN defendants for the harm they caused the People's interest in public health and welfare.

The *parens patrie* trial will commence at the same time, and proceed concurrently with, the first bellwether trial. It does not require the detailed bellwether selection process and can move forward at a relatively accelerated pace. Additionally, as it is currently drafted, no section of the draft Discovery and Scheduling Order provides for the People to take discovery.

To implement these and other objections by the People, they request that the following language either be added to or removed from the draft submitted on February 11, 2018:

A. Language that should be added.

1. Section 32

Add a Section 32 at the end of the order titled “Discovery in the *Parens Patrie* action (Case No. 16-107576)” that includes the following language: “Discovery in

the *parens patrie* action will proceed as follows: MCR 2.310 requests will follow the same schedule and numerical limits as outlined in Section 6; interrogatories will follow the same schedule and numerical limits as outlined in Section 9; requests for admission will follow the same schedule and numerical limits as outlined in Section 12; testimonial depositions of fact witnesses (party and non-party) will follow the same schedule, numerical limits, and time allocation as outlined in Section 19; and expert discovery will follow the same schedule and numerical limits as outlined in Section 27. Other types of discovery will proceed in accordance with the schedule and numerical limits listed in the relevant section. But under no condition will the People's discovery requests be required to go through Plaintiffs' Lead Counsel and Plaintiffs' Interim Liaison Class Counsel."

"Further regarding testimonial depositions of fact witnesses (party and non-party): the People's time will be allocated on the plaintiffs' side by the People in coordination with, but not subject to, the preferences of Plaintiffs' Lead Counsel and Plaintiffs' Interim Liaison Class Counsel."

"Pretrial motions and filings for the trial in the *parens patrie* action will follow the same schedule as outlined in Section 30. The *parens patrie* trial will commence at the same time, and proceed concurrently with, the first bellwether trial."

III. Objections of both the State Defendants and the People.

Both parties object to, and do not stipulate, to any expansion of the duty to produce information from expert witnesses in Section 29 or any other provision beyond those required by the Federal Rules of Civil Procedure.

Additionally, both parties join in the objection raised both by the putative class plaintiffs in *Mays* and the City Defendants: if this draft Discovery and Scheduling Order is to be entered, it should be coordinated with the federal case management schedule that is currently being drafted in the federal litigation consolidated before Judge Levy. There is no sense in further complicating an already complicated case by entering divergent discovery orders that deal with the same body of information.

CONCLUSION AND RELIEF REQUESTED

Both State Defendants and the People request that the Court not enter the draft Discovery and Scheduling Order. In the alternative, both parties request that the Court hold a hearing on the draft Discovery and Scheduling Order, and not enter the order without first making the changes contained in these objections.

Respectfully submitted,

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Dated: February 15, 2019

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CIRCUIT COURT FOR THE 7TH JUDICIAL CIRCUIT
GENESEE COUNTY

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PROOF OF SERVICE

On February 15, 2019, I sent by e-mail the Corrected Objections by Both the State Defendants in the *Mays* Putative Class Action and the People in the *Parens Patriae* Action Against the Veolia and LAN Defendants to the following parties:

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I declare that the above statement is true to the best of my knowledge,
information, and belief.

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