

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

CONCERNED PASTORS FOR  
SOCIAL ACTION; MELISSA MAYS;  
AMERICAN CIVIL LIBERTIES  
UNION OF MICHIGAN; and  
NATURAL RESOURCES DEFENSE  
COUNCIL, INC.,

Plaintiffs,

v.

Case No. 16-10277

NICK A. KHOURI, in his official  
capacity as Secretary of Treasury of  
the State of Michigan; FREDERICK  
HEADEN, in his official capacity as  
Chairperson of the Flint Receivership  
Transition Advisory Board;  
MICHAEL A. TOWNSEND, in his  
official capacity as Member of the  
Flint Receivership Transition  
Advisory Board; DAVID MCGHEE,  
in his official capacity as Member of  
the Flint Receivership Transition  
Advisory Board; MICHAEL A.  
FINNEY, in his official capacity as  
Member of the Flint Receivership  
Transition Advisory Board; BEVERLY  
WALKER-GRIFFEA, in her official  
capacity as Member of the Flint  
Receivership Transition Advisory  
Board; NATASHA HENDERSON, in  
her official capacity as City  
Administrator; and CITY OF FLINT,

Defendants.

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Hon.

## COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

### INTRODUCTION

1. The water in Flint, Michigan is not safe to drink. It has not been safe to drink since April 2014, when city and state officials began using the Flint River as a source of drinking water and caused lead to leach into the city's water supply.

2. This case is about the government's failure to comply with the federal law that requires cities to deliver safe drinking water to the public. The Safe Drinking Water Act directs officials who operate water systems to test drinking water for harmful contaminants and to treat the water to control for those contaminants. City and state officials' complete disregard for those requirements is exposing the people of Flint to lead, a powerful toxin that is devastating to the human body.

3. Flint was once a prosperous city with a strong economy built around the automotive industry. But the closing and relocation of automotive plants over the past thirty years hurt the city's economy and tax base, contributing to a shrinking population and resulting in increased unemployment, poverty, and crime. Flint is now a struggling city. More than forty percent of Flint residents live below the poverty level, and more

than a quarter of its working-age residents are unemployed.

4. In November 2011, in response to Flint's budget deficit and mounting debt, Michigan Governor Rick Snyder declared a financial emergency in the city. He stripped local elected officials of all of their authority and installed a state-appointed Emergency Manager to take over and run the city's operations. The Emergency Manager was not removable by Flint voters or otherwise accountable to the Flint electorate.

5. To save the city money, the Emergency Manager and other state officials decided to switch the city's drinking water source from Lake Huron to the Flint River. The Flint River has long been known to residents as a contaminated dumping ground for nearby industries. In making this switch, city and state officials sent Flint River water flowing into the homes, schools, and churches in Flint without following federal requirements for treating and testing drinking water for lead.

6. These decisions have endangered the health of Flint's residents. When run through the city's aging metallic pipes, the corrosive Flint River water ate away at those pipes, causing lead to leach into drinking water. The people of Flint have been exposed and are still being exposed to high levels of lead in their water. In the past two years, the percentage of Flint

children with elevated levels of lead in their blood has doubled and in some areas has nearly tripled.

7. Flint residents began raising concerns about the safety of their drinking water nearly two years ago. Government officials dismissed their concerns and insisted that the water was safe to drink. State officials even disregarded researchers' findings that the water contained dangerously high levels of lead. Not until a national spotlight was focused on Flint did city and state officials belatedly acknowledge a problem.

8. Despite this far-too-late acknowledgement, the problems in Flint have not been fixed. Public trust has been eroded by government officials' efforts to evade responsibility in this crisis. The damage done to city pipes from the Flint River water means that lead will continue to contaminate Flint's drinking water. This contamination poses an ongoing health risk to the city's residents, especially young children, who are most vulnerable to the effects of lead.

9. The harms suffered by Flint residents will not be addressed until city and state officials properly treat Flint's water to control lead, properly test the water for lead contamination, promptly notify residents of testing results, and report their activities to state regulators, all as required

by the Safe Drinking Water Act.

10. Plaintiffs are individuals and citizens' groups whose members live in homes served by Flint's water system. They bring this suit as citizens to ensure that the water provided to their homes will no longer threaten their health, and to address the medical and health harms they have suffered.

### **JURISDICTION AND VENUE**

11. This Court has subject matter jurisdiction over this action pursuant to the Safe Drinking Water Act, 42 U.S.C. § 300j-8(a), and the federal-question jurisdiction statute, 28 U.S.C. § 1331. The Court may award Plaintiffs all necessary injunctive relief pursuant to the Safe Drinking Water Act, 42 U.S.C. § 300j-8(a), (e), and declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

12. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this judicial district, in Flint, Michigan.

13. Plaintiffs have provided Defendants, the Administrator of the U.S. Environmental Protection Agency (EPA), and the Michigan Attorney General with at least sixty days' written notice of the violations of law

alleged here in the form and manner required by the Safe Drinking Water Act. 42 U.S.C. § 300j-8(b); 40 C.F.R. §§ 135.11-.13. A copy of Plaintiffs' November 16, 2015 notice letter is attached as Exhibit A to this Complaint.

### **THE PARTIES**

14. Plaintiffs consist of organizational plaintiffs Concerned Pastors for Social Action (Concerned Pastors), American Civil Liberties Union of Michigan (ACLU-MI), and Natural Resources Defense Council, Inc. (NRDC), and individual plaintiff Melissa Mays.

15. Concerned Pastors is a nonprofit association of religious leaders and congregations from more than thirty predominantly African American churches and ministries in the City of Flint (City) and its surrounding communities. The association was founded nearly fifty years ago to protect the rights of the underserved and improve the lives of the people of Flint. Concerned Pastors has been organizing and advocating for safe drinking water in Flint for nearly two years. Its efforts include holding public rallies and meetings, liaising with state and local elected officials, and distributing thousands of cases of bottled water and water filters to community members. Concerned Pastors is committed to protecting the health of Flint's children and families from the City's contaminated drinking water.

Concerned Pastors is organized under the laws of Michigan and has an office address of 2200 Forest Hill, Flint, Michigan 48504.

16. Plaintiff ACLU-MI is a nonprofit organization founded in 1959. ACLU-MI's mission is to protect the freedoms and rights of all Michigan citizens. Through public education, advocacy, organizing, and litigation, ACLU-MI works to guarantee the benefits of our nation's laws to everyone. ACLU-MI played a significant role in investigating the water problems in Flint while the City was under emergency management and exposing the lead contamination in its drinking water. ACLU-MI has approximately 9,000 members, more than ninety-five of whom live in Flint. ACLU-MI is incorporated under the laws of Michigan and has an office address of 2966 Woodward Avenue, Detroit, Michigan 48201.

17. Plaintiff NRDC is an international, nonprofit environmental organization. NRDC engages in research, advocacy, and litigation to protect public health and reduce the exposure of all communities to toxic substances. NRDC's work includes advocacy aimed at ensuring that all Americans have access to safe and affordable drinking water that is free from dangerous contaminants. Founded in 1970, NRDC has more than 294,000 members nationwide, including more than 8,600 members who

reside in Michigan, eighty of whom live in Flint. NRDC is incorporated under the laws of New York and is headquartered at 40 West 20th Street, New York, New York 10011.

18. Concerned Pastors, ACLU-MI, and NRDC bring this action on behalf of their members. Members of these organizations are residents of Flint whose homes are served by the City's water system (Water System). These members and their families live, work, recreate, attend church, and go to school in buildings that receive Flint's water.

19. Members of Concerned Pastors, ACLU-MI, and NRDC living in Flint are harmed, and will continue to be harmed, by Defendants' violations of the Safe Drinking Water Act unless this Court grants the requested relief. These members are harmed, and will continue to be harmed, because they have an increased risk of exposure to elevated levels of lead in their drinking water.

20. High levels of lead have been found in drinking water in homes and schools throughout Flint. Members of Concerned Pastors, ACLU-MI, and NRDC are reasonably fearful of exposure to lead from their drinking water. They are concerned about their health and the health of their children, including potential long-term developmental problems.



21. Because of these members' reasonable concerns about lead exposure, they use bottled water and/or install water filters in their homes to minimize their risk. Members of these organizations would prefer to use unfiltered tap water that they purchase from the Water System, rather than having to incur additional costs and inconvenience to use bottled water and/or install water filters. These filters, if not used, changed, and maintained regularly and properly, can stop working or even make lead problems worse. Members also have visited and will continue to visit doctors to have their blood tested for lead.

22. Members of Concerned Pastors, ACLU-MI, and NRDC are harmed by these and other actions they are taking to protect themselves and their families from Flint's water. Their injuries will be redressed by an order requiring Defendants to monitor and control for lead in Flint's drinking water in accordance with the Safe Drinking Water Act and to comply with the Act's reporting and notification requirements. Such an order will enable members to make informed decisions about whether their tap water is safe to drink and will remediate the dangerous conditions and health risks that the members continue to be exposed to as a result of Defendants' continued noncompliance.

23. Plaintiff Melissa Mays and her husband live in Flint with their three sons, ages eleven, twelve, and seventeen. From when she moved to Flint in 2002 until September 2014, Ms. Mays and her family used tap water supplied by the Water System for drinking and cooking. In September 2014, after the City issued a temporary advisory instructing all residents to boil their drinking water, Ms. Mays and her family stopped drinking Flint's water. In January 2015, Ms. Mays and her family stopped cooking with the City's water.

24. Ms. Mays is concerned about her health and the health of her family. She is harmed because she and her family have an increased risk of exposure to elevated levels of lead in their drinking water. She is reasonably fearful that she and her family have been exposed and will continue to be exposed to lead if they drink and cook with Flint's water. She is harmed, and will continue to be harmed, by Defendants' violations of the Safe Drinking Water Act, unless this Court grants the requested relief.

25. Ms. Mays' concerns have caused her to stop using Flint's water for drinking and cooking, to minimize her risk of exposure to lead. Although Ms. Mays would use her home's tap water if it were safe to

drink, Ms. Mays' reasonable fears about lead in her tap water have forced her to purchase water filters and bottled water for herself and her family and to visit doctors routinely to monitor her family's health. Ms. Mays has been forced to take these actions, including incurring considerable costs and inconvenience, to protect herself and her family from lead in Flint's drinking water.

26. Ms. Mays' injuries will be redressed by an order requiring Defendants to monitor and control for lead in Flint's drinking water and report information in accordance with the Safe Drinking Water Act.

27. Defendant Nick A. Khouri is sued in his official capacity as Secretary of Treasury of the State of Michigan. He oversees and manages the City's operations while the City remains under state control. Pursuant to his authority under the Michigan Local Financial Stability and Choice Act, *see* Mich. Comp. Laws § 141.1561(2), Defendant Khouri must approve amendments to the City budget, including amendments resulting from large contracts the City enters. He or his designee must also sit on the Flint Receivership Transition Advisory Board (Board), a group of state-appointed officials presently monitoring the City. *Id.* §§ 141.1552(3), .1563(2). Defendant Khouri is an operator of the Water System within the

meaning of the Safe Drinking Water Act.

28. Defendant Frederick Headen is sued in his official capacity as Chairperson of the Board, and Defendants Michael A. Townsend, David McGhee, Michael A. Finney, and Beverly Walker-Griffea are sued in their official capacities as Members of the Board. The Board directs the City's affairs alongside city officials. The Board must approve certain contracts and all resolutions, ordinances, and budget amendments adopted by the City Council before they can take effect, including those concerning the operations of the Water System. Defendants Headen, Townsend, McGhee, Finney, and Walker-Griffea are operators of the Water System within the meaning of the Safe Drinking Water Act.

29. Defendant Natasha Henderson is sued in her official capacity as the City Administrator of Flint. She directs and supervises the day-to-day operations of the City, including the operations of the Water System. Flint's Emergency Manager appointed Defendant Henderson to her position. Defendant Henderson is an operator of the Water System within the meaning of the Safe Drinking Water Act.

30. Defendant City of Flint is the owner and an operator of a "public water system" as defined by the Safe Drinking Water Act. 42 U.S.C.

§ 300f(4); 40 C.F.R. § 141.2. A public water system is a system that provides drinking water through pipes to at least twenty-five people, and includes water collection, treatment, storage, and distribution facilities. 42 U.S.C. § 300f(4); 40 C.F.R. § 141.2. As an owner and operator of a public water system, the City is also a “supplier of water.” 42 U.S.C. § 300f(5); 40 C.F.R. § 141.2. The Water System is a large public water system for purposes of the Act. 40 C.F.R. § 141.2.

## FACTS

### Harmful effects of lead

31. Lead can harm nearly all of the body’s functions and organs, and is particularly damaging to the nervous system.

32. Young children are especially vulnerable to lead. Lead exposure in children can cause a wide array of problems, but is most harmful to a child’s developing brain. Even low levels of lead exposure during childhood can result in lower intelligence, poorer academic performance, developmental delays, attention deficits, impulsivity, and other behavioral problems. Some of these effects appear to be irreversible.

33. Lead can pass from a pregnant woman to her developing baby, which can cause the baby to be born premature or underweight, and can

harm the baby's brain. Lead can also pass from nursing mothers to their babies through breastmilk.

34. Exposure to lead also harms adults, including by causing nerve disorders, decreased kidney function, reproductive problems, and gastrointestinal damage. Adults exposed to lead may also suffer from muscle and joint pain, memory and concentration problems, and high blood pressure.

35. Lead is uniquely harmful because, after it enters the bloodstream, it is distributed throughout the body just like iron and calcium. It settles in bones, where it interferes with the production of blood cells and the absorption of calcium. Calcium is necessary for muscle and nerve function, and for bone growth in children. Lead may remain stored in bones for years, from where it can be reabsorbed into blood during times of physiological change, including stress, pregnancy, lactation, broken bones, and advanced age.

36. People can be exposed to lead by breathing air containing lead particles or by ingesting water, food, or dust contaminated with lead.

37. Children and adults who have been exposed to lead may not immediately show symptoms. The effects of exposure often do not appear

for years, even long after measures of lead levels in blood have returned to normal.

38. There is no safe level of lead in blood.

Lead in drinking water

39. Water sources vary in terms of their chemical properties. When water displays certain characteristics including an acidic pH, it is considered corrosive.

40. Corrosive water dissolves metals from metallic pipes at a high rate. This can cause lead contained in pipes and the solder joining pipes to leach into drinking water in significant amounts. *See* 56 Fed. Reg. 26,460, 26,463, 26,466 (June 7, 1991). This leaching can continue indefinitely. *Id.* at 26,466.

41. The amount of lead that leaches into drinking water depends heavily on the corrosivity of the source water. *Id.*

42. Over the past several decades, drinking water has become a more significant source of lead exposure, as regulation has reduced the risk of lead exposure from other sources such as lead paint and leaded gasoline. Infants who rely on formula may receive more than eighty-five percent of their exposure to lead from drinking water. *Id.* at 26,470.

43. There is no safe level of lead in drinking water.

The Safe Drinking Water Act's approach to controlling lead in drinking water

44. The Safe Drinking Water Act (the Act), 42 U.S.C. § 300 *et seq.*, is the federal law that protects Americans from harmful contaminants in their drinking water.

45. To achieve this goal, the Act requires owners and operators of public water systems to test their water for specified contaminants, treat the water to control for those contaminants, and provide certain reports and notices to customers and regulators. *See, e.g.*, 42 U.S.C. § 300g-1; 40 C.F.R. §§ 141.22-.26, .31, .61-.66, .151, .201. Each of these steps is essential to reducing lead levels in tap water and informing the public about the health risks posed by their drinking water. *See* 42 U.S.C. § 300g-1(b)(1)(A).

46. The Act also requires public water systems to control for lead. The requirements for controlling lead in drinking water are set forth in regulations issued under the Act known as the Lead and Copper Rule (the Rule). 40 C.F.R. §§ 141.80-.91.

47. EPA is charged with issuing regulations to implement the Safe Drinking Water Act and enforcing the Act's requirements if states fail to do



so. 42 U.S.C. § 300g-2. Almost every state, including Michigan, has been delegated primary responsibility for ensuring that public water systems comply with the Act's requirements. The Michigan Department of Environmental Quality (MDEQ) is responsible for enforcing the Safe Drinking Water Act in Michigan. *See* Mich. Comp. Laws § 325.1003.

*Corrosion control*

48. EPA promulgated the Lead and Copper Rule in 1991. *See* 56 Fed. Reg. at 26,460. The Rule requires public water systems to treat drinking water to control the leaching of lead from pipes and solder. *See* 40 C.F.R. § 141.80(b), (d).

49. The Rule directed all large public water systems to identify and implement an "optimal" treatment program to reduce corrosion of lead pipes and solder by January 1, 1997. *Id.* § 141.81(d)(4). "[O]ptimal corrosion control treatment" is defined as the treatment that minimizes lead concentrations in consumers' tap water. *Id.* § 141.2. It often involves adding chemicals to the water to reduce its corrosivity and control its effect on leaded pipes and solder.

50. Certain treatment chemicals, such as phosphates, inhibit corrosion. They work by forming a protective coating inside of water pipes.

This protective coating develops over many years. The coating helps slow the corrosion of leaded pipes and solder, reducing the amount of lead that leaches into drinking water. When highly corrosive water that is not treated with an inhibitor flows through leaded water pipes, this protective coating is destroyed, increasing the amount of lead that enters into drinking water. Corrosive water can irreversibly damage water pipes.

51. Once a water system has optimized its corrosion control treatment program, it is required by the Rule to “continue to operate and maintain optimal corrosion control treatment.” 40 C.F.R. § 141.82(g).

*Tap water monitoring*

52. The Rule also requires water systems to conduct periodic monitoring for lead in household tap water. *Id.* § 141.86. Monitoring for lead at consumers’ taps is necessary to measure lead levels in drinking water. This is because lead can enter the water after it leaves the water system’s treatment plant, as it travels through pipes towards consumers’ homes.

53. The Rule’s tap water monitoring requirements are designed to test for lead under worst-case conditions, including by testing at homes that are most at risk for elevated lead levels. Homes are at high risk if they

contain lead plumbing or if they are served by lead service lines. 56 Fed. Reg. at 26,514; *see* 40 C.F.R. § 141.86(a). Service lines are pipes that connect household plumbing to the main water distribution pipe in the street. In older water distribution systems, such as the system in Flint, these service lines often are made of lead.

54. Monitoring at high-risk homes is critical to ensuring that elevated lead levels in drinking water are detected, because lead is not distributed uniformly throughout a water system. 56 Fed. Reg. at 26,514. Instead, lead pieces may break away from a lead service line and travel into a customer's home without dissolving and spreading evenly throughout the water in the distribution system. These lead pieces result in intermittent but large spikes in the water's lead levels. Even a single sample showing elevated levels of lead indicates that these dangerous lead pieces may be present more widely in the system.

55. Targeting high-risk homes thus makes it more likely that a water system will detect whether lead is breaking off or leaching from the Water System's pipes or solder. Such targeting also helps water systems and regulators determine whether a system has minimized lead levels in drinking water by operating an optimized corrosion control treatment

program. *Id.*

56. The Rule requires public water systems serving more than 100,000 people to collect a set of at least 100 tap water samples twice each year. 40 C.F.R. § 141.86(c), (d)(1). Water systems serving between 10,001 and 100,000 people must collect at least sixty tap water samples twice each year. *Id.* A water system has six months to collect each set of tap water samples. *Id.*

57. Each time a water system completes a six-month monitoring period, it must calculate whether more than ten percent of the samples collected have a lead concentration greater than 15 parts per billion (ppb). *See id.* §§ 141.80(c), .90(a)(1)(iv). EPA found that lead levels of 15 ppb or less were representative of effective corrosion control treatment. 56 Fed. Reg. at 26,490. EPA concluded that when more than ten percent of tap water samples collected by a water system exceed this 15 ppb threshold, known as the “lead action level,” additional treatment of drinking water would be “appropriate to protect public health.” *Id.* at 26,491.

58. If more than ten percent of samples collected during a monitoring period have a lead concentration in excess of the lead action level (15 ppb), the water system must take additional steps to protect its

customers from lead exposure. 40 C.F.R. §§ 141.84(a), .85-.86; 56 Fed. Reg. at 26,478. These steps include identifying and reporting to the state the number of lead service lines in the water system, 40 C.F.R. § 141.90(e); replacing a portion of the system's infrastructure with pipes and solder that are "lead free" as defined by the Safe Drinking Water Act, *id.* § 141.84; conducting additional monitoring of the system's source water to determine whether additional treatment is needed, *id.* §§ 141.83, .88(b); and conducting additional tap water monitoring, *id.* § 141.86(d)(4)(vi)(B).

59. As part of these additional steps, water systems must also offer to sample the tap water of any customer who requests it, *id.* § 141.85(c), and educate the public about the risks of lead and ways consumers can reduce their exposure to lead in drinking water, *id.* § 141.85(b).

60. A water system may reduce the number of tap water samples it collects and the frequency of its monitoring if it meets certain criteria for two consecutive monitoring periods. First, less than ten percent of tap water samples collected during each monitoring period may exceed the lead action level. *Id.* § 141.86(d)(4)(ii). Second, the water system must show that it is maintaining optimal corrosion control treatment. It can show this by maintaining prescribed values for certain water-quality indicators,

including pH and other measures of the water's corrosivity. *Id.*; *see id.*  
§ 141.82(f).

61. If each of these conditions is met for two consecutive monitoring periods, a state may allow the water system to reduce its monitoring frequency to once per year, and may reduce the required number of samples. *Id.* § 141.86(d)(4)(ii). If the water system continues to meet these conditions for additional monitoring periods, the water system may become eligible to reduce its monitoring frequency further, to once every three years. *Id.* § 141.86(d)(4)(iii).

62. If, for any monitoring period, the water system exceeds the lead action level, or if water-quality monitoring shows problems with the system's corrosion control treatment, the water system must resume collecting a set of tap water samples every six months. *Id.*  
§ 141.86(d)(4)(vi)(B).

63. The Lead and Copper Rule requires water systems to report detailed information about their tap water monitoring to the state enforcement agency. *Id.* § 141.90. Water systems must also notify customers of the individual results of tap water samples collected from their homes. *Id.* § 141.85(d)(1)-(2).

64. EPA promulgated the Lead and Copper Rule because it understood the harmful effects that lead-contaminated drinking water can have on citizens. *See* 56 Fed. Reg. at 26,463-66, 26,467-71. The Rule's requirements are intended to force public water systems to remain vigilant about the possible infiltration of lead into drinking water, and to take critical steps in the event of contamination. *See id.* at 26,481-82.

#### State control over Flint

65. In November 2011, pursuant to Michigan's Local Financial Stability and Choice Act, Governor Snyder declared a financial emergency in Flint and placed the City in a state-controlled receivership.

66. A receivership is a process whereby local government officials are stripped of authority in favor of state-appointed personnel. Those state appointees control the local government's finances and operations. *See* Mich. Comp. Laws §§ 141.1549(1)-(2), .1551(1), .1552. Among the purposes of the receivership is to "assure the provision of necessary government services essential to public health, safety, and welfare." *Id.* § 141.1543(a).

67. After placing the City into receivership, Governor Snyder appointed an Emergency Manager to govern all of the City's operations. *See id.* §§ 141.1542(q), .1549(2). Through this appointment, Governor Snyder

removed authority from Flint's elected Mayor and City Council. The Emergency Manager served at the pleasure of the Governor and could not be removed by Flint voters. *Id.* § 141.1549(3)(d).

68. From November 2011 to April 2015, Flint had four successive emergency managers. The emergency managers were vested with "broad powers" to address the City's financial emergency. These powers included the authority to revise the City's budget; make, approve, or disapprove any contract; supervise heads of city departments; and exercise the powers of "any officer, employee, [or] department . . . of the local government, whether elected or appointed." *Id.* §§ 141.1552(1)(b), (g), (n), (ee), .1549(2). The power of the emergency managers was "superior to and supersede[d]" that of the City's employees, departments, and elected officials. *Id.* § 141.1552(1)(ee).

69. In early 2015, the Emergency Manager hired Defendant Natasha Henderson as City Administrator. The Emergency Manager gave Defendant Henderson full authority to direct and supervise the day-to-day operations of the City, including directing the head of the Department of Public Works and managing the operations of the Water System. The Utilities Department is located within the Department of Public Works and



is responsible for the supply and maintenance of water services.

Defendant Henderson also must approve and cosign with the Mayor all contracts entered into, modified, or terminated by the City.

70. Since her appointment, Defendant Henderson has directed the operation of the Water System. For instance, she has managed the City's purchases of water meters, plumbing supplies, and chemicals to treat Flint River water at Flint's Water Treatment Plant. In March 2015, she decided that the City could hire a contractor to provide emergency leak detection services for the Water System, and allowed the City to accept a \$900,000 state grant to pay for water-leak surveys. In April 2015, Defendant Henderson decided that the City could enter into a contract with consultants to provide design, procurement, and construction services to the Water Treatment Plant to install a new filter system.

71. On April 28, 2015, the Emergency Manager informed Governor Snyder that Flint's financial emergency had been rectified. *See Mich. Comp. Laws § 141.1562(1)*. Governor Snyder then removed the Emergency Manager and, in his place, appointed the Receivership Transition Advisory Board to manage the City's affairs alongside city officials for the duration of Flint's receivership. *See id.* § 141.1563(1). The Board's members now

include Defendants Frederick Headen, Michael A. Townsend, David McGhee, Michael A. Finney, and Beverly Walker-Griffea.

72. The Board has had authority over the operations of the City since its creation last spring. It must approve all ordinances and resolutions adopted by the City Council before they take effect, and must approve purchases and contracts over \$75,000. The City Administrator advises and reports to the Board. She is required to submit regular reports to the Board regarding her activities and the overall operation of the City. Approval of the Board is also required before the Mayor or City Council can change the responsibilities of the City Administrator.

73. Since its formation, the Board has made a number of decisions directing the operation of the Water System. For example, in August 2015, the Board decided that the City could enter into a multi-year environmental monitoring services contract with a testing laboratory and decided to allow the City to purchase chemicals to be used to treat water at Flint's Water Treatment Plant. In October 2015, the Board decided whether the City could purchase water distribution pipe repair parts for use in maintaining the Water System.

74. The Board is the primary but not exclusive state entity that

manages the City's operations during the City's receivership. The State Treasurer, Defendant Nick A. Khouri, also manages aspects of the City's operations. For example, during the pendency of the City's receivership, orders by the Emergency Manager may be amended only by the Board, but the State Treasurer's approval is also required. Similarly, the Mayor and City Council cannot amend the budget that was adopted by the Emergency Manager without approval of both the Board and the State Treasurer.

75. The State Treasurer also exerts control over the Water System, including by having the final authority to decide whether the Water System can make large operational changes that involve budget amendments. For instance, on information and belief, in early 2014, the State Treasurer decided whether the City could expend more than \$3 million to upgrade its Water Treatment Plant to allow the City to use the Flint River as its primary drinking water source. The State Treasurer also exercised final decision-making power over the Water System's choices about where to get its drinking water.

76. Flint remains under the management of the Board and State Treasurer. The Mayor and City Council are stripped of all authority except as "specifically authorized in writing by the emergency manager" prior to

the elimination of his position last spring. Mich. Comp. Laws § 141.1549(2). The Mayor and City Council are powerless to change any decisions made by the Emergency Manager until one year after Governor Snyder terminates the City's receivership.

Changes in Flint's drinking water supply

77. Flint's Water System provides drinking water to nearly 100,000 people. The Water System includes the Flint Water Treatment Plant and more than 600 miles of water distribution pipes.

78. The Water System also has approximately 32,900 service line connections, points where household and building plumbing connect to main water distribution pipes. At least 15,000 of these connections are through lead service lines.

79. For decades prior to 2014, the Water System purchased pretreated or "finished" drinking water from the Detroit Water and Sewerage Department (Detroit), which draws water from Lake Huron.

80. "Finished" water is water that is ready to be delivered to customers for consumption without further treatment. *See* 40 C.F.R. § 141.2. The Water System received finished water from Detroit and distributed it through its pipes and service lines to customers. Detroit treated the water

with orthophosphate to reduce the amount of lead leaching from pipes and solder.

81. In March 2013, partially in response to rising water rates charged by Detroit, the City Council voted to join the Karegnondi Water Authority (KWA), a newly formed water supply system. The KWA plans to build a new pipeline to distribute Lake Huron water directly to mid-Michigan communities, including Flint. The KWA pipeline is scheduled for completion in June 2016.

82. The City Council's vote to join the KWA was not immediately effective because the City was in state receivership. Only the Emergency Manager and the State Treasurer had the power to authorize the City to enter into a contract to join the KWA. *See Mich. Comp. Laws* § 141.1552(1)(g), (3). The Emergency Manager authorized the KWA contract on March 29, 2013.

83. On April 16, 2013, after evaluating various options for the City's drinking water supply, the State Treasurer also authorized the KWA contract.

84. Although Detroit sought to avoid losing Flint as a customer, the Emergency Manager rejected Detroit's final offer to renegotiate rates.

Detroit then terminated its existing contract with Flint. Pursuant to the contract, the termination was scheduled to take effect a year later, in April 2014. This was at least eighteen months before the new KWA pipeline was expected to be ready.

85. Although Detroit offered to negotiate a short-term contract to supply drinking water to Flint during the interim period, the Emergency Manager declined Detroit's proposals.

86. In early 2014, the Emergency Manager and state officials decided that the Water System would use the Flint River as a primary drinking water source until the KWA pipeline was completed.

87. The Flint River suffers from significant water-quality problems. Industrial waste and agricultural runoff have contributed to excessive contamination. Fish in the River contain mercury, a potent neurotoxin, and polychlorinated biphenyls (PCBs), which are carcinogens. Swimming is not recommended in the River after rain due to elevated levels of bacteria.

88. Before switching to the Flint River as a water source, the Water System had not treated its own water on a regular basis for nearly fifty years. It had never undertaken the analysis required by the Safe Drinking Water Act to identify and understand how a water system optimizes

corrosion control treatment for drinking water. The Water Treatment Plant's staff had not previously been responsible for managing the treatment of water to control corrosion of lead pipes and solder.

89. In 2011, outside consultants for the City analyzed whether the Flint River could be used as the City's permanent primary source of drinking water. The consultants concluded that the Flint Water Treatment Plant would need about \$50 million in upgrades to equipment and systems to assure reliable delivery of safe drinking water to customers. Nonetheless, the Water System did not perform all of the recommended upgrades in advance of distributing Flint River water to customers' homes in 2014.

90. On April 29, 2014, the Water System began pumping Flint River water through the System's distribution pipes and into customers' taps.

91. The Water System did not treat the river water at all to reduce its corrosivity and minimize the leaching of lead from pipes and solder into customers' drinking water.

The effects on customers' drinking water

92. In the months following the Water System's switch to the Flint River, customers reported that their tap water was discolored, laden with

sediment, and foul-smelling. Customers also reported skin rashes, hair loss, and vomiting after drinking and/or bathing in the water.

93. In the summer of 2014, testing conducted by the Water System showed elevated levels of total coliform bacteria, bacteria found in soil and in human and animal waste, in Flint's drinking water. The City was forced to issue boil-water notices to some of its customers.

94. To control the high levels of total coliform bacteria, the Water System increased its use of disinfectants.

95. In December 2014, MDEQ notified the Water System that it was in violation of the Safe Drinking Water Act after high levels of total trihalomethanes – byproducts of disinfection – were detected in the water. Trihalomethanes can cause serious health problems, including an increased risk of cancer.

96. Despite these Safe Drinking Water Act violations, city and state officials continued to tell Flint residents that their water was safe to drink.

97. Because the Water System had begun using a new water source, MDEQ instructed the System to conduct lead tap water monitoring for two six-month periods, gathering one hundred samples per period. MDEQ had the authority to require one hundred samples, even though in



2014 Flint's population had fallen below 100,000 for the first time since the 1920s. *See* 40 C.F.R. §§ 141.81(b)(iii), .86(d)(vii). The Water System initiated the first six-month monitoring period in July 2014, and the second in January 2015.

98. To collect these samples, the Water System instructed customers to flush their taps for at least five minutes and then allow the water to sit for at least six hours before drawing the sample. This practice, known as "pre-flushing," is intended to minimize the amount of lead captured in the sample and results in an under-reporting of the concentration of lead in drinking water.

99. Even though the Water System engaged in practices that underestimate lead concentrations in drinking water, certain tap water samples still returned high levels of lead. In February 2015, at least one customer's water contained lead concentrations of more than 100 ppb, more than six times the lead action level of 15 ppb. Subsequent testing at the same home revealed lead levels of nearly 400 ppb. Medical records showed that the blood lead level of the customer's child had more than tripled since the Water System began using Flint River water.

100. That customer, concerned about the high levels of lead in her

water, contacted EPA. After learning of her test results, staff in EPA's regional office told MDEQ that the results raised significant concerns about the corrosion of lead pipes within the Water System. An EPA Regulations Manager later wrote a memo raising a "serious concern" about the high lead levels detected in the Water System's drinking water and the System's failure to use any treatment to mitigate lead leaching from pipes and solder. EPA shared the memo with MDEQ.

101. By February 26, 2015, the Water System, state officials, and EPA staff were all aware of sampling results showing high levels of lead in Flint's drinking water. No one notified Flint residents.

102. In March 2015, in response to growing complaints from the community, the City Council voted to do "all things necessary" to end the use of the Flint River as a water source. This vote had no effect, because the City remained under the control of state-appointed officials. The Emergency Manager refused to approve the City Council's vote, asserting that Flint's tap water was safe to drink and calling the elected officials' effort to return to Detroit water "incomprehensible."

103. In July 2015, the Water System sent a letter to its customers stating that their tap water was safe to drink and in compliance with all

Safe Drinking Water Act requirements. The Water System nonetheless advised elderly residents, infants, and those with a severely compromised immune system to consult their doctors before drinking the water.

104. During the next two months, in response to intensifying citizen concerns about lead in the City's drinking water, researchers from Virginia Polytechnic Institute and State University (Virginia Tech) collected more than 250 tap water samples from homes in Flint. More than ten percent of the samples collected contained lead at levels over 25 ppb, well above the Lead and Copper Rule's action level for lead of 15 ppb. *See* 40 C.F.R. § 141.80(c)(1). Some samples collected by the Virginia Tech researchers contained lead levels more than ten times greater than the lead action level.

105. In response to these findings, state officials asserted that Virginia Tech's sampling showed far higher lead levels than sampling conducted by the Water System. Those officials questioned the reliability of Virginia Tech's results, and insisted that the City's water contained lead levels within allowable limits.

106. On September 24, 2015, a Flint pediatrician released the findings of a study showing that the proportion of Flint children with elevated blood lead levels had doubled since the Water System began

using the Flint River as a drinking water source. State officials and Governor Snyder's office attempted to discredit the pediatrician's data, calling her work "unfortunate" in a time of "near-hysteria." MDEQ continued to insist that Flint's water was safe to drink.

107. The following day, the City of Flint issued a Lead Advisory suggesting that residents flush their taps for at least five minutes prior to drinking the water; use only cold water for drinking, cooking, and making baby formula; and install water filters certified for lead removal. The Lead Advisory did not tell residents that Flint's water was unsafe to drink.

108. The Board of Commissioners in Genesee County, where Flint is located, issued a Public Health Advisory a few days later, also urging Flint residents to use filters certified to remove lead before drinking tap water, or to drink bottled water.

109. On September 30, 2015, Governor Snyder for the first time acknowledged that the City's water supply "appears" to have increased lead levels.

110. The Genesee County Board of Commissioners declared a Public Health Emergency in Flint on October 1, 2015. It advised Flint residents not to drink water from the Water System unless it had been run through a

filter certified to remove lead or tested to confirm the water does not contain elevated lead levels.

111. That same day, Plaintiffs submitted a petition to EPA asking it to issue an emergency order pursuant to its authority under the Safe Drinking Water Act. *See* 42 U.S.C. § 300i(a). Plaintiffs asked EPA to take immediate action to address the danger to Flint residents from lead in their water. EPA did not act.

112. In early October, tap water sampling conducted by MDEQ showed that three Flint schools had tap water with lead levels that exceeded the action level. Subsequent testing confirmed elevated lead levels in drinking water at seven of Flint's schools.

113. In mid-October, following a request from the City Administrator, the Board decided that the City could amend its budget to allow the Water System to return to Detroit's water supply. The same day, the Board also decided that the City Administrator could enter into agreements with Detroit and other local entities to execute the switch back to Detroit's water.

114. On information and belief, the State Treasurer then approved the budget appropriation for Flint to return to Detroit's water supply.

115. On October 16, 2015, the Water System resumed using Detroit's pretreated Lake Huron water as its drinking water.

116. After Flint's return to Detroit water, the water in Flint did not become safe to drink. The Water System's extended failure to treat the Flint River water with phosphates – combined with the highly corrosive nature of the water – had stripped the protective coating from the inside of the Water System's pipes and service lines. As this coating had taken years to build up, the damage to the Water System's infrastructure cannot be reversed right away, if ever, even though the System is again receiving water from Detroit pretreated with corrosion-inhibiting chemicals. This damage is allowing lead to continue to leach into Flint's drinking water.

117. In early December 2015, the Water System began supplementing Detroit's water treatment by adding more phosphates to further reduce the corrosivity of the water and control for the corrosion of lead pipes and solder.

118. Two weeks later, on December 14, 2015, Flint Mayor Karen Weaver declared a State of Emergency in Flint.

119. On January 5, 2016, Governor Snyder declared a State of Emergency in Genesee County. The next week, Governor Snyder activated

the National Guard and requested help from the federal government to address the lead-contamination crisis.

120. Days later, President Obama declared a federal emergency in Flint, authorizing the Federal Emergency Management Agency to provide disaster relief.

121. On January 21, 2016, EPA issued an Emergency Administrative Order declaring that the lead contamination in Flint posed an imminent and substantial endangerment to human health, and directing the City, the State of Michigan, and MDEQ to take certain remedial measures. EPA's action came nearly a year after it was first made aware of sampling results showing high levels of lead in Flint's drinking water, and nearly four months after Plaintiffs submitted a petition to the agency asking it to act under its emergency authority. While the City has stated it will comply with EPA's order, Michigan and MDEQ have challenged EPA's legal authority to require some of the actions that EPA demands.

122. Despite awareness at the local, state, and federal levels of the lead-contamination crisis in Flint, tap water distributed from the Water System remains unsafe to drink.

The Water System is failing to maintain optimal corrosion control treatment

123. The Water System is no longer “operat[ing] and maintain[ing] optimal corrosion control treatment” as required by the Lead and Copper Rule. 40 C.F.R. § 141.82(g).

124. Prior to the Water System’s switch to the Flint River as a drinking water source, Detroit treated water delivered to Flint’s customers to control the leaching of lead from pipes and solder.

125. In the early 1990s, Detroit conducted a multi-year study to determine the optimal approach to controlling lead in its system’s drinking water. The study evaluated water-quality data and information about the system’s pipe materials; identified and analyzed feasible treatment methods to control corrosion; and designed and pilot-tested the treatment alternatives. Detroit determined that its water should be treated with orthophosphate to optimize corrosion control, and, with MDEQ’s approval, began implementing that treatment. The Water System coordinated with Detroit to ensure the System’s compliance with the Lead and Copper Rule’s requirement to implement an optimal corrosion control treatment program. The Water System relied on Detroit to treat the water with



orthophosphate before delivering the finished water to Flint. On information and belief, through Detroit's orthophosphate treatment, the Water System was able to minimize the amount of lead leaching from pipes and solder.

126. By coordinating with Detroit, the Water System optimized its corrosion control treatment program as of January 1999. The Water System's cooperation with Detroit did not exempt it from the Lead and Copper Rule's requirements, including the requirement to maintain optimal corrosion control treatment. *See* 56 Fed. Reg. at 26,497-98.

127. From April 29, 2014, when the Water System began distributing Flint River water, through at least October 16, 2015, the Water System failed to maintain optimal corrosion control treatment because it did not treat the river water with corrosion-inhibiting chemicals or any other form of treatment to minimize the amount of lead leaching from the System's pipes and solder.

128. Flint River water is highly corrosive. It is significantly more corrosive than water from Lake Huron. Because Flint River water is highly corrosive, the Water System's use of the river water without treatment to control corrosion destroyed the protective coating that had built up inside

the System's pipes and solder. The absence of this protective coating caused dangerous amounts of lead to enter Flint's drinking water.

129. Since October 16, 2015, when the Water System resumed distributing water from Detroit, the Water System has failed to maintain optimal corrosion control treatment because it has not minimized the concentration of lead at customers' taps. 40 C.F.R. § 141.2.

130. The corrosivity of the river water damaged the Water System's infrastructure, including by destroying the protective coating that had formed inside the System's water pipes over many years. As a result of this damage, the Water System is not currently maintaining optimal corrosion control treatment. On information and belief, because of this damage to the Water System's infrastructure, additional chemical treatment of Detroit's pretreated water is necessary to implement an optimal corrosion control treatment program.

131. On information and belief, the Water System's failure to treat the river water to control corrosion has caused and continues to cause dangerous levels of lead to enter customers' tap water.

132. The Water System plans to switch water sources again in summer of 2016. The Water System will use Lake Huron water distributed

through the KWA pipeline as its new water source.

133. After this switch, the Water System will be required to treat the Lake Huron water to control for the corrosion of lead pipes and solder.

134. On information and belief, the Water System has not gathered or analyzed background water chemistry information about the new KWA water source; has not evaluated corrosion control treatment options for the new KWA water source; has not conducted pilot-scale tests using lead pipes extracted from the System to determine the effectiveness of different corrosion control treatment alternatives; and has not procured the specialized equipment or developed the equipment operating skills necessary to maintain an optimal corrosion control treatment program.

135. On information and belief, the Water System's failure to maintain optimal corrosion control treatment is likely to continue until the System switches to the new KWA water source, and is likely to continue or recur when the System switches to the new KWA water source.

The Water System is failing to comply with the Lead and Copper Rule's monitoring requirements

136. The Water System is not monitoring for lead contamination in accordance with the Lead and Copper Rule. As a result, the Water System

cannot promptly or reliably detect elevated lead levels in its drinking water.

*Sampling site selection*

137. Before a water system begins monitoring for lead at household taps, it must identify a pool of targeted sampling sites. 40 C.F.R.

§ 141.86(a)(1). The sampling pool must target homes that have a high risk of lead contamination. *See id.* § 141.86(a)(3)-(8). For water systems like Flint's that regularly serve more than twenty-five people, this means that the sampling pool must, if possible, consist of single-family homes that are served by a lead service line and/or contain lead pipes or copper pipes with lead solder installed after 1982. *Id.* § 141.86(a)(3).

138. The pool must also be large enough to ensure that the water system can collect the required number of samples during each monitoring period. *Id.* § 141.86(a)(1).

139. During each monitoring period, a water system must collect the minimum required number of samples from homes that are part of the system's sampling pool. *Id.*

140. A water system that contains lead service lines must also collect half of its samples from homes served by a lead service line, and half from

homes that contain lead pipes or copper pipes with lead solder. *Id.*

§ 141.86(a)(8). If a water system cannot identify a sufficient number of homes served by lead service lines, then it must collect samples from all homes it has identified as being served by lead service lines. *Id.*

141. In addition to the tap water samples collected from the water system's targeted sampling pool, the system may collect more samples from homes not included in its pool at a customer's request. Those customer-requested samples do not count towards the system's minimum number of required samples under the Rule. *See id.* § 141.86(a)(1), (c). Customer-requested samples generally must, however, be included when the water system calculates whether more than ten percent of its total collected samples exceed the lead action level of 15 ppb.

142. After the Water System began using the Flint River as a water source, it collected household tap water samples during two six-month monitoring periods, between July and December 2014 and between January and June 2015. The Water System serves a sufficient number of single-family homes with a lead service line or lead pipes that its sampling pool must consist entirely of such homes.

143. During its July–December 2014 and January–June 2015

monitoring periods, the Water System requested that city employees volunteer to submit tap water samples, without regard to whether those employees lived in homes served by a lead service line or containing lead pipes.

144. At least six city employees submitted tap water samples during the City's January–June 2015 monitoring period. On information and belief, the Water System included these samples as part of its monitoring for lead without verifying or even inquiring whether these samples came from homes that are served by a lead service line or contain lead pipes.

145. The City's Utilities Administrator, Michael Glasgow, has stated that the Water System “throw[s] bottles out everywhere” to collect the required number of tap water samples, without regard to whether the homes from which samples are collected are served by a lead service line or contain lead pipes.

146. From July 2014 to the present, the Water System has not targeted and is not targeting homes at high risk of contamination when monitoring for lead.

147. Prior to the July–December 2014 monitoring period, the Water System did not identify a pool of targeted sampling sites large enough to

ensure that it could collect the number of tap water samples required by the Lead and Copper Rule. The Water System also failed to identify a targeted pool prior to the beginning of the January-June 2015 monitoring period.

148. The Water System did not select all of the sampled homes from an existing sampling pool during either monitoring period.

149. The Water System does not have comprehensive, reliable information identifying the locations of its more than 15,000 lead service lines. On information and belief, the Water System has not consistently used and does not consistently use the records it may have concerning the locations of lead service lines to confirm that its samples are collected from homes with lead service lines.

150. On information and belief, for monitoring conducted from July 2014 through the present, the Water System has not ensured or verified and is not ensuring or verifying that half of its samples are collected from homes served by a lead service line, and that half of its samples are collected from homes that have lead pipes or copper pipes with lead solder. Because of its lack of knowledge of where its lead service lines are located, the Water System cannot reliably ensure that during each

monitoring period, it collects at least half of its samples from homes served by a lead service line.

151. On information and belief, the Water System has yet to identify a pool of targeted tap water sampling sites that meet the high-risk criteria set forth in the Lead and Copper Rule and is large enough to ensure that the System can collect the required number of tap water samples during future monitoring periods.

152. On information and belief, the Water System will continue to monitor for lead in household tap water without using an existing, sampling pool of high-risk sites to select the homes from which it collects samples.

*Sampling sites across monitoring periods*

153. During each monitoring period, the Lead and Copper Rule requires water systems to collect samples from the same homes. 40 C.F.R. § 141.86(b)(4). If the water system cannot gain entry into a previously sampled home, or if a previously sampled home no longer fits the Rule's high-risk criteria, then the system may collect a sample from another home in its sampling pool. *Id.* The home selected as a replacement sampling site must be located near the previously sampled home and meet the same



high-risk criteria. *Id.*

154. For the January–June 2015 monitoring period, the Water System collected tap water samples from only thirteen of the one hundred homes used during the previous six-month monitoring period. Each of these thirteen sampling sites had lead levels below the lead action level during the previous monitoring period.

155. On information and belief, during the January–June 2015 monitoring period, for any homes sampled during the previous monitoring period into which the Water System could no longer gain entry or that no longer met the Rule’s high-risk criteria, the System did not collect tap water samples from other homes selected from an existing sampling pool that were located nearby and met the same high-risk criteria.

156. On information and belief, the Water System is failing and/or will continue to fail to collect tap water samples at the same homes from which it collected samples during previous monitoring periods. The Water System is also failing and/or will continue to fail to replace homes in its sampling pool when necessary with homes that are nearby and meet the same high-risk criteria.

The Water System is failing to comply with the Lead and Copper Rule's reporting requirements

157. The Lead and Copper Rule requires water systems to report to state regulators all tap water sampling results for lead, including the location or "site" where each sample was collected. 40 C.F.R.

§ 141.90(a)(1)(i). For each sampling site, the water system must also report the basis on which the site was selected for the system's sampling pool, including whether the site is served by a lead service line or contains lead pipes. *Id.*; *see id.* § 141.86(a)(3)(i)-(ii).

158. If a water system does not collect tap water samples from the same sites across monitoring periods, the water system must mark or "designate" each site that was not sampled during the previous monitoring period, and explain why the sampling site changed. *Id.* § 141.90(a)(1)(v).

159. These requirements ensure that the water system is sampling in high-risk homes, and prevent the system from purposely avoiding sampling sites that have yielded high lead results in past monitoring periods.

160. The Water System is not accurately reporting to MDEQ whether its sampling sites are served by lead services lines or contain lead

pipes. For at least six tap water samples collected between July 1, 2014, and June 30, 2015, the Water System falsely reported to MDEQ that the sites were served by lead service lines, when in fact they were not.

161. On information and belief, the Water System does not have accurate information to identify whether its sampling sites are served by lead service lines or contain lead pipes. The Water System is likely to continue to fail to accurately report whether its sampling sites are served by lead service lines or contain lead pipes.

162. The Water System also is not reporting required information to MDEQ when the System fails to sample the same sites across monitoring periods.

163. For both the July–December 2014 and January–June 2015 monitoring periods, the Water System did not use the same sampling sites as in the previous monitoring periods. The Water System did not designate for MDEQ each new sampling site from which it collected a tap water sample during these monitoring periods. The Water System did not adequately explain—and in some cases, did not explain at all—the changes in its sampling sites from one monitoring period to the next.

164. The Water System is likely to continue its practice of not

designating each new sampling site from which it collects a tap water sample. The Water System is also likely to continue its practice of failing to explain changes in its sampling sites from previous monitoring periods.

The Water System is failing to comply with the Lead and Copper Rule's notification requirements

165. The Lead and Copper Rule requires water systems to notify the individuals residing at each sampling site of their tap water sampling results for lead. 40 C.F.R. § 141.85(d)(1). A water system must provide this notice "no later than 30 days after the system learns of the tap monitoring results." *Id.* § 141.85(d)(2).

166. On information and belief, for monitoring conducted from July 1, 2014, through June 30, 2015, the Water System failed to notify individuals residing at each sampling site of their tap water sampling results for lead within thirty days after the System learned of the results.

167. On information and belief, for monitoring conducted from July 1, 2015, through the present, the Water System is continuing to fail to notify individuals residing at each sampling site of their tap water sampling results for lead within thirty days after the System learns of the results.

**FIRST CLAIM FOR RELIEF**

**(Violations of the Safe Drinking Water Act's requirement to operate and maintain optimal corrosion control treatment, 40 C.F.R. §§ 141.81-.82)**

168. Plaintiffs incorporate by reference all of the preceding paragraphs.

169. Since April 2014, Defendants have violated and continue to violate the Safe Drinking Water Act and its implementing regulations by failing to operate and maintain optimal corrosion control treatment. 40 C.F.R. § 141.82(g).

**SECOND CLAIM FOR RELIEF**

**(Violations of the Safe Drinking Water Act's requirements for monitoring tap water for lead, 40 C.F.R. § 141.86)**

170. Plaintiffs incorporate by reference all of the preceding paragraphs.

171. Since April 2014, Defendants have violated and continue to violate the Safe Drinking Water Act and its implementing regulations by failing to comply with the Act's requirements to monitor household tap water for lead, including:

- a. the requirement to identify a pool of targeted sampling sites prior to monitoring, 40 C.F.R. § 141.86(a)(1);

- b. the requirement to select homes for sampling from an existing sampling pool, *id.*;
- c. during each monitoring period, the requirement to collect half of the samples from homes served by a lead service line and half of the samples from homes containing lead pipes or copper pipes with lead solder, *id.* § 141.86(a)(8); and
- d. the requirement to collect samples from the same homes or replacement homes that meet the Rule's criteria across monitoring periods, *id.* § 141.86(b)(4).

**THIRD CLAIM FOR RELIEF  
(Violations of the Safe Drinking Water Act's reporting requirements, 40 C.F.R. § 141.90)**

172. Plaintiffs incorporate by reference all of the preceding paragraphs.

173. Since April 2014, Defendants have violated and continue to violate the Safe Drinking Water Act and its implementing regulations by failing to comply with the reporting requirements for monitoring household tap water for lead, including:

- a. the requirement to report the results of all tap water samples, including the location of each sampled home and the high-risk

criteria under which the home was chosen for the water system's sampling pool, 40 C.F.R. § 141.90(a)(1)(i); and

- b. the requirement to designate any home that was not sampled during the previous monitoring periods and explain why the homes sampled have changed, *id.* § 141.90(a)(1)(v).

**FOURTH CLAIM FOR RELIEF  
(Violations of the Safe Drinking Water Act's notification requirements, 40 C.F.R. § 141.85)**

174. Plaintiffs incorporate by reference all of the preceding paragraphs.

175. Since April 2014, Defendants have violated and continue to violate the Safe Drinking Water Act and its implementing regulations by failing to comply with the requirement that water systems notify customers of the individual results of tap water samples collected and tested for lead within thirty days after the water system receives the results. 40 C.F.R. § 141.85(d)(1), (d)(2).

**REQUEST FOR RELIEF**

Plaintiffs respectfully request that this Court enter judgment against Defendants as follows:

- A. Declaring that all Defendants are in violation of their

obligations under the Safe Drinking Water Act and its implementing regulations;

B. Enjoining all Defendants from ongoing and future violations of the Safe Drinking Water Act and its implementing regulations, including but not limited to the treatment, monitoring, reporting, and notification requirements of the Lead and Copper Rule;

C. Ordering that Defendants take all such actions as may be necessary, and all such actions as the Court may deem appropriate, to remedy these violations, comply with the Safe Drinking Water Act and its implementing regulations, and mitigate the harm caused by Defendants' violations of the Lead and Copper Rule's treatment, monitoring, reporting, and notification requirements.

D. Ordering that Defendants promptly complete full replacement of all lead service lines in the Water System at no cost to customers of the Water System, including replacement of those portions of the lead service lines that are privately owned, to the extent the Water System is able to obtain permission from the owner of the line after notifying the owner and offering to replace the owner's portion of the line at the Water System's expense;



E. Granting appropriate equitable relief to mitigate the health and medical risks and harm resulting from Defendants' violations;

F. Awarding Plaintiffs their reasonable costs and attorneys' fees; and

G. Granting such other and further relief as the Court deems just and proper.

Dated: January 27, 2016

Respectfully submitted,

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