

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

LUKE WAID, *et al.*; Individually and
On Behalf of All Others Similarly
Situated,

Plaintiffs,

vs.

GOVERNOR RICHARD D. SNYDER,
et al.,

Defendants.

Case No. 5:16-cv-10444-JEL-MKM

Hon. Judith E. Levy

**Joint Motion for Consolidation of the Class Actions,
Appointment of Interim Co-Lead Class Counsel, and
Appointment of Liaison Counsel for the Individual Actions**

Plaintiffs¹ state as follows for their Motion for Consolidation, Appointment of Interim Co-Lead Class Counsel, and Appointment of Liaison Counsel for the individual actions:

1. For more than a year, litigation has been pending in state and federal court involving personal and property damages claims related to the Flint Water Crisis.

2. Currently, there are 10 class actions related to the Flint Water Crisis pending in this Court.²

¹ This filing is made on behalf of the Plaintiffs in the individual actions as well as the putative class actions listed in Exhibit 1.

² These actions are listed in Exhibit 2.

3. The pending class actions involve common issues of law and fact and, therefore, should be consolidated pursuant to Federal Rule of Civil Procedure 42(a).

4. Also pending in this Court are more than 50 individual actions related to the Flint Water Crisis. Plaintiffs do not seek to consolidate the individual actions. However, Plaintiffs believe that it is in the best interests of all the parties, as well as the Court, for the class actions and individual actions to be coordinated in order to minimize duplication of effort and streamline discovery.

5. Furthermore, pursuant to Federal Rule of Civil Procedure 23(g)(3), Plaintiffs move for Theodore Leopold of Cohen Milstein Sellers & Toll PLLC and Michael Pitt of Pitt McGehee Palmer & Rivers PC to be appointed interim co-lead counsel for the class.

6. Plaintiffs also move for the appointment of an Executive Committee whose membership will be comprised of attorneys named by Interim Co-Lead Class Counsel and who will assist Co-Lead Counsel in prosecuting the Class's case.

7. Finally, Plaintiffs move for Corey Stern of Levy Konigsberg LLP and Hunter Shkolnik of Napoli Shkolnik PLLC to be appointed as liaison counsel for the individual personal injury and property damage cases pending in federal court.

8. Pursuant to the Court's order setting a status conference for July 26, 2017, Plaintiffs will confer with Defendants and provide a proposed schedule for filing a consolidated class action complaint and otherwise managing these cases.³

WHEREFORE, based upon the foregoing and the accompanying Memorandum in Support of this Motion, Plaintiffs respectfully request that the Court enter the [Proposed] Order for Consolidation, Appointment of Interim Co-Lead Class Counsel, and Appointment of Liaison Counsel for the Individual Actions.

Dated: June 9, 2017

Respectfully submitted,

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³ Pursuant to L.R. 7.1, Plaintiffs' counsel conferred with counsel for Defendants and other Class Plaintiffs regarding the relief requested herein. It is Plaintiffs' understanding that the State Defendants do not support Plaintiffs' motion for consolidation but take no position on the question of the appointment of lead counsel for the class or individual actions. Counsel for Defendants Lockwood, Andrews & Newnam, P.C., Lockwood Andrews & Newnam, Inc., and Leo A. Daly Co. (collectively "LAN"), would not consent to the requested relief at this time. Counsel for Defendants Veolia North America, Inc., Veolia North America, LLC, and Veolia Water North America Operating Services, LLC (collectively "Veolia") did not respond to Plaintiffs inquiry prior to the filing of this motion. At this time, Plaintiffs' counsel for all of the actions listed in Exhibit 2 support the requested brief except for one, *Washington, et al. v. Snyder, et al.*, No. 5:16-cv-11247, which, as of the time of this filing, has not taken a position with regard to the motion.

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**Memorandum of Law in Support of Joint Motion for Consolidation of the
Class Actions, Appointment of Interim Co-Lead Class Counsel, and
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STATEMENT OF ISSUES PRESENTED

1. Should the court consolidate the class actions listed in Exhibit 2?
Plaintiffs' answer: Yes.
2. Should the Court appoint Theodore Leopold of Cohen Milstein Sellers & Toll PLLC and Michael Pitt of Pitt McGehee Palmer & Rivers PC as Interim Co-Lead Class Counsel?
Plaintiffs' answer: Yes.
3. Should the Court authorize Interim Co-Lead Class Counsel to appoint an Executive Committee?
Plaintiffs' answer: Yes.
4. Should the Court appoint Corey Stern of Levy Konigsberg LLP and Hunter Shkolnik of Napoli Shkolnik PLLC to serve as Liaison Counsel for the Individual Actions pending in Federal Court?
Plaintiffs' answer: Yes.

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The Court recently issued an order setting a status conference for the purpose of organizing the litigation involving the Flint Water Crisis. Presently pending before this Court are 10 related putative class actions related to the Crisis and more than fifty individual actions alleging that Defendants caused Flint residents and property owners to suffer ruinous damages to their health and property when Defendants recommended, approved, and caused corrosive, lead- and bacteria-contaminated water to serve as the water supply for the City of Flint.

For more than a year, these cases have proceeded on a disaggregated basis resulting in inefficient and duplicative motion practice. While multiple courts and armies of lawyers have briefed and litigated nearly identical procedural and jurisdictional challenges over and over again, the *victims* of this crisis have received no relief. The time to organize this litigation is now. The victims of this crisis do not have time for further delays. The only way to ensure that the Flint Water Crisis litigation proceeds justly and efficiently is to consolidate the class actions, appoint highly qualified and motivated lead counsel for the class, appoint liaison counsel for the individual actions, and coordinate the class cases with the individual actions proceeding in state and federal court.

Plaintiffs' counsel have worked together to organize a proposed leadership structure that enjoys nearly unanimous support. Plaintiffs¹ propose that Theodore

¹ For the purposes of this filing, "Plaintiffs" includes the Plaintiffs in the pending Class Actions and individual actions listed in Exhibit 1.

Leopold of Cohen Milstein Sellers & Toll PLLC and Michael Pitt of Pitt McGehee Palmer & Rivers PC be appointed interim co-lead counsel for the class and Corey Stern of Levy Konigsberg LLP and Hunter Shkolnik of Napoli Shkolnik PLLC be appointed as liaison counsel for the individual personal injury and property damage cases pending in federal court. Since the filing of the first class and individual actions, Mssrs. Leopold, Pitt, Stern, and Shkolnik have performed as *de facto* leaders for the victims of the Flint Water Crisis; they are uniquely qualified to organize and lead this litigation for the following reasons:

- **Expertise:** They have unparalleled expertise in mass torts, class actions, expert issues, civil and constitutional law, and complex litigation.
- **Resources:** Mr. Leopold serves on the Executive Committee of one of the nation's largest class action firms and Mr. Pitt has opened up and maintains an office in Flint where class members can receive information regarding the case. Likewise Mr. Stern and Mr. Shkolnik are partners in nationally-recognized firms specializing in mass torts.
- **Coalition:** Nearly every attorney that has filed a class or individual action supports the proposed leadership structure demonstrating that these attorneys are uniquely capable of building bridges between parties with diversified interests—a critical skill in complex litigation.
- **Investigation and Prosecution:** The proposed leadership team has been at the forefront of this litigation from the beginning, filing the first individual and class action cases and leading the legal battles that have taken place to date.
- **Class Member and Individual Plaintiff Support:** Mr. Leopold has secured the support of the NAACP and Mexican Consulate; under Mr. Pitt's leadership the Flint Water Class Action Legal Team has obtained retainers from the more than 7,000 residents. Similarly Mr. Stern and Mr. Shkolnik represent thousands of residents who have chosen to pursue claims

individually and have been actively pursuing these cases alongside Msrs. Pitt and Leopold.

- **Prior Leadership in the Flint Litigation:** For the past year this proposed team has effectively coordinated counsel in both state and federal court to organize meetings, streamline the litigation process, and present organized and efficient efforts before the various courts where these cases had been disbursed.

Experienced leadership can coordinate the class and individual actions to streamline discovery and ensure that discrete legal and factual issues are presented to the court in a logical fashion. While the proposed leadership for plaintiffs understand that not all issues are aligned, the proposed leadership is committed to moving these cases forward in an efficient and organized fashion.

ARGUMENT

I. The Court Should Conserve Judicial and Class Resources and Consolidate the Pending Class Actions.

A. The Standard for Consolidation.

Pursuant to Federal Rule of Civil Procedure 42, “[i]f actions before the court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay.” Fed. R. Civ. P. 42(a). Courts are afforded broad discretion under this rule to consolidate pending cases. 9 Charles Alan Wright & Arthur R. Miller, Fed. Practice and Procedure § 2385 (2d ed. 1987). The Sixth Circuit has advised courts to consider the following when determining whether to consolidate pending cases:

[W]hether the specific risks of prejudice and possible confusion [are] overborne by the risk of inconsistent adjudications of common factual and legal issues, the burden on parties, witnesses and available judicial resources posed by multiple lawsuits, the length of time required to conclude multiple suits as against a single one, and the relative expense to all concerned of the single-trial, multiple-trial alternatives.

Cantrell v. GAF Corp., 999 F.2d 1007, 1011 (6th Cir. 1993) (quoting *Hendrix v. Raybestos-Manhattan, Inc.*, 776 F.2d 1492, 1495 (11th Cir. 1985)). In addition, “[c]are must be taken that consolidation does not result in unavoidable prejudice or unfair advantage.” *Id.*

Geared toward increasing the efficient allocation of judicial resources, consolidation is proper especially when multiple proceedings “would be largely duplicative.” *See Central States, SE. & SW. Area Pension Fund v. Smeltzer Enters., Inc.*, No. 08-cv-50180, 2009 WL 3672120, at *1 (E.D. Mich. Oct. 30, 2009). Even where “each of the separate cases may involve factual and legal issues which are separate and distinct from those presented in the others,” consolidation may still allow for a more orderly and efficient proceeding, and avoid the risks of inconsistent rulings, where the primary subject matter of the lawsuits is the same. *Young v. Hamric*, No. 07-cv-12368, 2008 WL 2338606, at *4 (E.D. Mich. June 4, 2008). Courts frequently consolidate cases like this one, in which consolidation will increase the efficiency and manageability of the cases, and the plaintiffs support consolidation. *See, e.g., In re Delphi ERISA Litig.*, 230 F.R.D. 496, 498 (E.D. Mich. 2005); *Am. Bridge Mfg. Co. v. Water Toebe Const.*

Co., No. 08-cv-14315, 2010 WL 3245292, at *1 (E.D. Mich. Aug. 17, 2010).

B. The Standards for Consolidation are Easily Satisfied Here.

All factors weigh in favor of consolidation. The Pending Class Actions² involve substantially overlapping defendants, factual allegations, and causes of action, all of which relate to the same toxic water disaster. Discovery in each of these related matters will focus on the roles of the City of Flint Defendants, the State of Michigan Defendants, and the Professional Engineering Defendants in contaminating the Flint water supply in 2014 and 2015.

Indeed, allowing these 10 largely overlapping Pending Actions to proceed unconsolidated would lead precisely to the inefficiencies that Rule 42(a) was designed to avert—duplicative motions, chaotic discovery, and a severe risk of inconsistent rulings. Given that this litigation is more than a year old, these concerns are far from hypothetical: failing to consolidate the actions early has resulted in *four* separate appeals to the Sixth Circuit, the simultaneous briefing of more than 25 motions to dismiss in the class actions alone, and with discovery about to begin in the state actions, a serious risk of disordered discovery.

Notably, mass torts and class actions are particularly well-suited for consolidation because consolidation avoids the need for fragmented pretrial proceedings and minimizes the expenditure of time and money—issues that are

² See Exhibit 2 listing actions to be consolidated.

uniquely relevant in complex class actions and mass torts such as these. *See, e.g., In re Dow Corning Corp.*, 211 B.R. 545, 574 (Bankr. E.D. Mich. 1997).³

Moreover, where a large set of actions involve a single issue that may be dispositive of the litigation, many courts have permitted consolidation along with separate issue trials in order to maximize efficient adjudication:

Many courts have in fact permitted separate issue trials when the issue first tried would be dispositive of the litigation. The courts do so because the efficiency of the trial proceedings is greatly enhanced when a small part of the case can be tried separately and resolve the case completely.

In re Bendectin Litig., 857 F.2d 290, 317 (6th Cir. 1988).

Judge O'Meara previously declined to consolidate the class actions, choosing instead to address whether the Court had jurisdiction over each, separate case. Order Denying Mot. to Stay, *Mays v. Snyder*, 15-cv-14002-JCO-MKM (E.D. Mich., filed June 18, 2016), ECF No. 118. However, the Sixth Circuit has now definitively held that this court has jurisdiction over this case⁴ and will soon address whether certain federal causes of action may proceed against the various governmental defendants.⁵ There is no reasoned basis for taking the time and resources to apply these rulings to each class action separately. Consolidating the

³ *See also Braynina v. Prof'l Claims Bureau, Inc.*, No. 14-cv-6402, 2015 WL 3971410, at *1 (E.D.N.Y. June 30, 2015); *In re Plumbing Fixtures*, 308 F. Supp. 242, 244 (J.P.M.L. 1970).

⁴ Opinion and Judgment, *Davenport v. Lockwood, Andrews & Newnam, P.C.*, 17-1200 (6th Cir., filed Apr. 25, 2017), ECF No. 20.

⁵ *See Boler v. Earley*, 16-01684 (6th Cir. May 13, 2016) and *Mays v. Snyder*, 17-1144 (6th Cir. Feb. 6, 2017).

class actions now will allow Plaintiffs to submit a single, consolidated class complaint which Defendants can then answer or attempt to dismiss at one time.

By consolidating these cases⁶ and appointing Interim Co-Lead Class Counsel, the parties and the Court can take the first step towards resolving these many disputes about a common set of facts in an orderly and judicious manner. Consolidation for pretrial purposes is consistent with Rule 42(a) and will promote conservation of the parties' resources, judicial economy, and the efficient and expeditious prosecution of this litigation. Accordingly, Plaintiffs respectfully submit that the Court should grant the motion for consolidation.

II. Appointment of Interim Co-Lead Class Counsel is Appropriate and Will Facilitate the Efficient Litigation of this Matter.

Federal Rule of Civil Procedure 23(g)(3) provides that “[t]he court may designate interim counsel to act on behalf of the putative class before determining whether to certify the action as a class action.” Fed. R. Civ. P. 23(g)(3). Similarly, the *Manual for Complex Litigation* (4th ed. 2009) (“*Manual*”) recommends that the Court select and authorize one or more attorneys to act on behalf of other counsel and their clients early in complex litigation. Counsel so designated “assume a

⁶ In addition to the pending class actions listed in Exhibit 2, there are also several individual suits pending before the Court involving the Flint Water Crisis. Plaintiffs believe that the best course of action is for these individual cases to be coordinated with the consolidated class action so that discovery can proceed in tandem. This will also help facilitate coordination with the state-court actions.

responsibility to the court and an obligation to act fairly, efficiently, and economically in the interests of all parties and parties' counsel.” *Manual* § 10.22.

Appointment of interim class counsel at this time will define the roles and responsibilities of the different plaintiffs' law firms presently in these cases, will encourage those so appointed to zealously invest their time and financial resources in the litigation, will eliminate doubt about their role in the litigation should additional related cases be filed, and will avoid distracting and protracted leadership contests if other related cases are later filed. Absent such an appointment—and as illustrated by the evolution of the cases thus far—the future of the Class's claims could perilously be shaped not by the most qualified attorneys but rather by the attorneys who happen to reach a given issue first.

Critically, several related individual cases are proceeding to discovery in state court.⁷ By appointing leadership for the class cases now, this Court ensures that discovery proceeds in tandem to the greatest extent possible. For these reasons, and in order to promote order out of the potential procedural chaos associated with the litigation of multiple class cases at the same time, courts in this circuit routinely designate interim lead counsel *before* dispositive motion practice.⁸

⁷ Case Management Order, *In re Flint Water Litig.*, 17-108646-NO (Mich. Cir. Ct., Genesee Cty., Nov. 16, 2016)

⁸ See, e.g., *In re Packaged Ice Litig.*, No. 08-md-01952, 2009 WL 1518428, at *4 (E.D. Mich. June 1, 2009) Order Appointing Interim Lead and Liaison Counsel for the Direct Purchaser Actions, *In re: Auto. Wire Harness Systems Antitrust Litig.*, No. 12-md-02311 (E.D. Mich. Mar. 9, 2012), ECF No. 60; Order for

III. Mr. Leopold and Mr. Pitt Stand Out as Most-Qualified to Represent the Class's Interests.

Federal courts apply the same standards for appointing interim class counsel as when selecting class counsel at the class certification stage.⁹ Therefore, the Court may consider the following factors in appointing interim class counsel:

i) the work that counsel has done in identifying or investigating potential claims in the action; ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; iii) counsel's knowledge of the applicable law; and iv) the resources that counsel will commit to representing the class.

Fed. R. Civ. P. 23(g)(1)(A). The Federal Rules also provide that the Court "may also consider other matter[s] pertinent to counsel's ability to fairly and adequately represent the interests of the class." *In re Delphi ERISA Litig.*, 230 F.R.D. 496, 498 (E.D. Mich. 2005); *accord* Fed. R. Civ. P. 23(g)(1)(B). These factors weigh in favor of appointing Mr. Leopold and Mr. Pitt as Co-Lead Counsel.

A. Proposed Co-Lead Counsel Are Experienced Class Litigators With Extensive Knowledge of the Relevant Law.

Proposed Co-Lead Counsel each has extensive class action experience and substantive expertise. Indeed, they have successfully litigated some of the most complex private class action cases in the last two decades. Their collective and respective individual litigation experience amply demonstrates that Proposed Co-

Appointment of Interim Class and Liaison Counsel, *The Shane Group, Inc., et al. v. Blue Cross Blue Shield of Mich.*, No. 2:10-cv-14360 (E.D. Mich. May 29, 2012), ECF No. 69.

⁹ See, e.g., *Ross v. Jack Rabbit Servs., LLC*, No. 3:14-CV-00044-TBR, 2014 WL 2219236 at *5 (W.D. Ky. May 29, 2014); *In re Delphi ERISA Litig.*, 230 F.R.D. 496, 498 (E.D. Mich. 2005).

Lead Counsel have experience litigating class actions and a superior knowledge of the relevant law. *See* Rule 23(g)(1)(A)(ii-iii); *Manual* § 10.224.

Theodore Leopold of Cohen Milstein: For over 45 years, Cohen Milstein, an 88-lawyer firm based in Washington, D.C. and five other cities, has been one of the nation’s leading plaintiffs’ class action firms.¹⁰ The firm has litigated some of the nation’s most complex class cases and has recovered billions of dollars in damages for injured plaintiffs, including many successful class actions in this district. In March of this year, the National Law Journal named Cohen Milstein to its Plaintiffs Hot List for the sixth year in a row. In January 2016, Law360.com named Cohen Milstein the “Class Action Practice Group of the Year, following its designation in July 2015 of Cohen Milstein as one of the “Most Feared Plaintiffs Firms” for the third year in a row.

The Cohen Milstein lawyer charged with leading this litigation—Theodore J. Leopold—brings considerable expertise to the table. Mr. Leopold, a member of the firm’s Executive Committee, serves as Chair of the Catastrophic Injury and Managed Care practices and Co-Chair of the Consumer Protection & Unsafe Products practice group, and has been litigating complex product liability and catastrophic injury suits for nearly thirty years. Indeed, for the tenth consecutive year he was selected for inclusion in The Best Lawyers in America. Mr. Leopold’s

¹⁰ A copy of the Cohen Milstein Résumé is attached as Exhibit 3.

extensive experience has directly benefited his clients. For example, in 2010, he obtained a \$131 million jury verdict against the Ford Motor Company, the ninth-largest verdict against an automobile company in U.S. history.

Mr. Leopold is the past president of Public Justice, a national organization headquartered in Washington, D.C. that fights for justice through precedent-setting and socially significant individual and class action litigation. He is consistently recognized by leading publications such as Super Lawyers and The Best Lawyers in America. In addition, he has been nominated for “Trial Lawyer of the Year” by the Public Justice Foundation for his ground breaking litigation involving the managed care industry, and his work has been featured in the National Law Journal’s “Top Verdicts of the Year.”

Mr. Leopold leads a team of highly qualified attorneys including multiple former federal law clerks as well as an expert on environmental and toxic torts who currently teaches a course on the subject at George Washington School of Law. The Cohen Milstein attorneys working on this case are joined by co-counsel with extensive experience and specialized expertise. Vineet Bhatia and Stephen Morrissey—partners at Susman Godfrey LLP, a preeminent class-action and trial boutique—have more than twenty years’ experience each successfully litigating and trying cases for plaintiffs. Neal Weinfield, an attorney specializing in environmental law, has technical expertise relevant to cases involving engineering

companies. Likewise, Esther Berezofsky is a nationally recognized expert in environmental litigation having served at the helm of many notable cases including the Toms River case involving contaminated drinking water. Finally, Peretz Bronstein—a founding partner of Bronstein, Gewirtz & Grossman, LLC—is counsel to Village Shores and has been diligently working to protect landlord interests in Flint, Michigan. He is a graduate of Harvard Law School with 30 years of experience with complex litigation, including both prosecuting and defending class actions—experience that cannot help but inure to the Class’s benefit.

Michael Pitt of Pitt McGehee: As the Royal Oak firm of Pitt McGehee Palmer and Rivers enters into its 25th year of operation, its core skills and reputation as exceptional trial counsel has grown considerably.¹¹ The Firm’s trial counsel are all born and raised in Michigan and have established their careers as leaders of Michigan’s civil justice trial bar. It is this homegrown expertise which gives the Firm its strength and has allowed it to effectively try scores of complex cases before Michigan juries in State and Federal courts securing favorable verdicts for the Firm’s clients. The Firm has in the past expended over a million dollars in cost in a single case demonstrating that it has the ability and willingness to help finance expensive litigation of this type. Pitt McGehee has extensive experience in class action litigation and the Firm has successfully handled

¹¹ A copy of the Mr. Pitt’s Résumé is attached as Exhibit 4.

numerous civil rights class actions in state and federal court obtaining millions in recoveries. Additionally, the Firm handles its own appellate work and has substantial experience litigating appeals in Michigan.

Mr. Pitt's extraordinary work has been recognized by his peers during his 43 years of work as a trial attorney including the Distinguished Service Award from the State Bar of Michigan, Labor and Employment Section, 2017; Champion of Justice Award from the State Bar of Michigan, 2015; Trial Lawyer of the Year from the Federal Bar Association, 2009; Trial Lawyer of the Year from Public Justice Foundation, 2008; Trial Lawyer of the Year from the National Lawyers Guild, 2009; Leader in the Law Award from Michigan Lawyers Weekly, 2015; Best Lawyers of America every year from 1989 to 2017. Finally, Mr. Pitt served as the President of the Michigan Association for Justice (MTLA) from 2004-2005.

Mr. Pitt is part of the Flint Water Class Action Legal Team Legal team, a powerhouse of experienced civil litigators. The Pitt firm has committed four partners to the team including, in addition to Mr. Pitt, Cary McGehee, Beth Rivers, and Peggy Goldberg Pitt. The internationally recognized Class Action/Mass Tort firm of Weitz & Luxenberg of NYC has committed extensive resources to this matter including attorneys John Broaddus and Robin Greenwald of NYC, former Assistant Attorney General in the Environmental Section of the U.S. Department of Justice, Paul Novak, a former Michigan Assistant Attorney General who has led

several class actions, and Greg Stamatopoulos of Detroit. Additional members of the Flint Water Class Action Legal Team include: William Goodman and Julie Hurwitz of Goodman & Hurwitz, Detroit are experienced trial litigators; Deborah LaBelle of the Law Firm of Deborah LaBelle, Ann Arbor has handled multiple class actions and is responsible for two multi-party trials on behalf of women sexually abused in prison resulting in verdicts of more than \$50 million and reaching a historic \$100 million settlement with the State of Michigan; Brian McKeen of Brian McKeen and Associates, Detroit is recognized nationwide as an expert in medical malpractice and causation; Trachelle Young of Flint is recognized in the Flint community as a fierce trial advocate and has been an activist from the very beginning of the Water Crisis; Cynthia Lindsey of Detroit has for decades litigated cases in courts around the state of Michigan; Teresa Bingman of Okemos has worked in government positions including the Granholm Administration and adds this unique knowledge on the operation of state government; and Shermane Sealy of Farmington Hills is an experienced trial attorney.

The victims of the Flint Water Crisis deserve class counsel with the knowledge and experience to protect their interests; Mr. Leopold and Mr. Pitt, along with the exceptional attorneys they lead, are well-qualified to do just that.

B. Proposed Co-Lead Class Counsel Have the Resources Necessary to Pursue This Case in an Efficient but Tenacious Manner.

As with any complex class action, the issues in these cases will require substantial expert analysis, and discovery is likely to entail millions of documents and scores of depositions over the course of years. Counsel chosen to prosecute the plaintiff class's claims must be able to dedicate significant resources to the case. *See* Fed. R. Civ. P. 23(g)(1)(A)(iv); *Manual* § 10.224.

Proposed Co-Lead Counsel have the necessary roster of talented attorneys and capable professional staff, and the monetary resources, to advance the class's interests efficiently and aggressively and to pursue all necessary avenues of discovery. This case will likely require counsel to expend millions of dollars in expenses and attorney time in organizing and preparing such a complex and far-reaching case for trial. Given the extensive resources required to litigate a complex case such as this, and to maximize the proposed class's chances of success, it is imperative that counsel with substantial resources be appointed.

No other counsel possesses the resources or depth of expertise available to Proposed Co-Lead Counsel. This case alleges misconduct on the part two large engineering firms, one with international reach as well as numerous governmental agencies and employees. To ensure that the class's interests are sufficiently protected, it is critical that firms with significant resources be placed at the helm of

this litigation.¹² Together, the two Proposed Co-Lead Counsel comprise a leadership structure equal to the challenges the plaintiffs will face in this litigation, while ensuring that the actions progress in the most efficient manner.

C. Courts Favor Private Ordering in Selecting Class Counsel.

Nearly every attorney to file a class action, as well as several prominent attorneys and organizations, support the appointment of Mr. Leopold and Mr. Pitt as Co-Lead Counsel for the class. The Manual for Complex Litigation provides that, efforts of plaintiffs' counsel to coordinate activities between themselves should be "encouraged." *Manual* § 10.22. Likewise, the Manual explains that "private ordering"—or the process in which plaintiffs' attorneys agree on a leadership structure privately—is "[b]y far the most common" method by which leadership is determined in class actions. *Id.* at § 21.272.

Private ordering serves the Class's interests for two important reasons. First, where all or nearly all class counsel agree to support a certain leadership structure it is more likely that those same supporting attorneys will gladly work on the case under that leadership structure. Second, the mere fact that proposed co-lead counsel were able to amass a coalition of support suggests that they will ably coordinate with various parties in the case. Mr. Leopold and Mr. Pitt are the only

¹² See, e.g., *Parkinson v. Hyundai Motor Am.*, No. CV06-345AHS(MLGX), 2006 WL 2289801, at *3 (C.D. Cal. Aug. 7, 2006) (appointing interim class counsel that had "more experience and greater resources to commit to representing any class that may be certified.").

proposed class counsel with a broad base of support—a factor that weighs heavily in their favor in determining class leadership.

D. Proposed Co-Lead Class Counsel’s Investigation Greatly Inures to the Class’s Benefit.

The first factor under Rule 23(g)(1)(A) focuses on the work that counsel has done to advance the litigation. This factor strongly favors the appointment of Proposed Co-Lead Class Counsel who have already performed extensive work in identifying and investigating the claims as well as researching the applicable law.

Indeed, Mr. Pitt and his coalition of attorneys have been on the ground in Flint since November 2015 when he filed the first case and class action arising out of the Flint Water Crisis. Mr. Pitt has been tireless in his effort to protect the class’s interests, simultaneously pursuing relief in state court, federal court, the Michigan Court of Claims, and a federal torts claims act claim against the EPA representing 1,700 Flint water consumers. Mr. Pitt represents the *only* Plaintiff group to file an administrative claim under the Federal Tort Claims Act against the Environmental Protection Agency—and—the *only* Plaintiff group that organized, wrote and filed an *amicus* brief in the Sixth Circuit regarding the dismissal of the Eastern District of Michigan’s *Boler* class action on jurisdictional grounds. Perhaps most importantly, Mr. Pitt’s extensive research and investigation into the applicability of sovereign immunity to the governmental actors recently bore fruit in the form of a favorable opinion from the Michigan Court of Claims denying in

part the State Defendants Motion to Dismiss and allowing the substance of the Flint Water Class Action Legal Team claims to proceed.

Likewise, Mr. Leopold has been at the forefront of the investigation into the professional engineering companies' misconduct. Mr. Leopold's *Gilcreast* and *Davenport* Complaints aptly demonstrates the extent of his work to date: no other complaint on file contains the level of detail demonstrated by these filings. Additionally, Mr. Leopold has hired engineering and scientific experts to analyze the engineering companies' conduct. Indeed, so extensive was Mr. Leopold's pre-filing investigation that has served as a template for several follow-on filings.

Finally, Proposed Co-Lead Class Counsel have retained eminent medical and scientific experts regarding lead poisoning and other bacterial and toxic exposures to assist them with the medical and scientific issues in this litigation. Proposed Co-Lead Class Counsel have access to and will retain, as needed, experts in neuropsychiatry, property damage, water chemistry, exposure assessment, toxicology, economics, vocational assessment, and any other areas of expertise which are needed.

E. The Proposed Leadership Structure Enjoys Substantial Class Support.

Proposed Co-Lead Class Counsel have substantial support among class members. Specifically, Mr. Leopold has partnered with the Flint Chapter of the NAACP and counsel for the Mexican Consulate to ensure that these organizations'

clients have ready access to Class Counsel. Likewise, under Mr. Pitt's leadership, his coalition of attorneys have obtained thousands of signed retainers from the more than 7,000 Flint residents. Moreover, counsel representing hundreds of landlords have similarly indicated their support for Proposed Co-Lead Counsel. This broad base of support will ensure that every member of the class has quick access to counsel.

IV. Proposed Co-Lead Class Counsel Request that the Court Appoint an Executive Committee.

When the Flint Water Crisis came to light, many of Michigan's and this Country's best and brightest attorneys showed up to help make Flint's residents whole. Given the complexities of this case and the substantial expertise provided by these attorneys, Plaintiffs request that the Court appoint an Executive Committee whose membership will be named by Co-Lead Class Counsel.¹³

V. Proposed Co-Lead Class Counsel Request that the Court Appoint Counsel to Serve as Liaison Counsel to the Individual Actions.

Plaintiffs also believe it would be productive to appoint counsel charged with coordinating the individual suits pending in federal court. Plaintiffs propose that the Court appoint Corey Stern of Levy Konigsberg LLP and Hunter Shkolnik of Napoli Shkolnik PLLC to this coordinating role as they have played a leading

¹³ This proposed leadership group supports appointment of a very experienced and talented team of individuals to comprise a well-rounded Executive Committee including such notable class action, mass tort, and environmental litigators as Stephen Morrissey, Peretz Bronstein, Paul Novak, and Esther Berezofsky.

role in organizing, prosecuting, and coordinating the individual actions to date and each represent hundreds of plaintiffs in this litigation.

Corey Stern of Levy Konigsberg: Corey M. Stern is a Partner at Levy Konigsberg (“LK”), a firm with 25 attorneys and offices in New York, New Jersey and Georgia.¹⁴ The firm is recognized nationally for handling complex cases, including those involving children that have suffered permanent brain damage from lead poisoning. With over 30 years of experience in litigating lead poisoning cases, LK has achieved landmark verdicts and legal rulings and pioneered liability theories and damages models now accepted by courts throughout the country. Mr. Stern manages LK’s lead poisoning practice and personally represents thousands of children in various states across the country.

Mr. Stern, who is licensed in Michigan, among other states, has regularly traveled to Flint, Michigan during the past two years, getting to know his clients to better understand their struggles and damages they have sustained, speaking and educating the public at community events, and advocating on behalf of the more than two thousand children who were poisoned as a result of the Flint Water Crisis and who are represented by Mr. Stern and his firm. From the beginning, Mr. Stern has led LK’s efforts in Flint, MI including the

¹⁴ A copy of the Levy Konigsberg Résumé is attached as Exhibit 5.

firm's commitment to filing individual cases on behalf of lead poisoned children in light of the significant damages suffered by each child.

On November 15, 2016, Mr. Stern was appointed by the Honorable Richard Yuille as "Lead Counsel" for all plaintiffs maintaining claims in the Circuit Court of Genesee County for personal injuries and property damage sustained as a result of the Flint Water Crisis. Since that time, Mr. Stern has coordinated the state court litigation on behalf of individual plaintiffs and their counsel, as well as proposed putative class representatives and their counsel. Mr. Stern has been the primary conduit between plaintiffs and defense counsel, and has served as the principal channel between the individual plaintiffs and the Court.

As Lead Counsel for plaintiffs in Genesee County, Mr. Stern has developed meaningful relationships with lawyers for the plaintiffs, as well as sustainable, productive, respectful and healthy working relationships with counsel for the defendants. Mr. Stern's approach to coordinating the litigation in state court has centered on inclusion, transparency, candor, efficiency and pragmatism, which he hopes to continue in the federal court litigation.

Hunter Shkolnik of Napoli Shkolnik: Hunter J. Shkolnik is a founding Partner at Napoli Shkolnik PLLC¹⁵ (NS), a law firm with over 200 employees, 55 lawyers, and offices in New York, New Jersey, Pennsylvania, Illinois, California,

¹⁵ A copy of the Napoli Shkolnik Résumé is attached as Exhibit 6.

Delaware, Texas, and Florida. The firm is recognized nationally for handling complex product liability, and other significant class action and mass tort actions and possesses ample resources in terms of personnel and funding with which to prosecute this case in a timely and efficient manner.

NS is heavily involved in litigations requiring client representation all over the country for drug, product and other toxic exposures; as well as consumer class actions. Mr. Shkolnik has presented and published extensively in such areas as class actions, ethics in class actions, toxic tort, trial practice, drug and medical device litigation, medical malpractice, automobile, substantial truck product liability, expert witness preparation, and *Daubert* hearings.

Mr. Shkolnik has had the privilege of serving as court-appointed Co-Lead Counsel and as a member of the Plaintiffs' Steering Committee in many complex multidistrict proceedings in the United States which are summarized in the attached Napoli Shkolnik Resume. From these experiences, he has learned how important it is to have strong leadership, supported by a diverse steering committee, with highly skilled lawyers with the knowledge and skill set to address the demands presented in massive litigations like the present action. It would be his privilege to apply his experience to the plaintiffs' benefit here, and, if appointed, Mr. Shkolnik will commit his time and resources along with those of his law firm.

Mr. Shkolnik has been appointed by state and federal courts throughout the country to serve as lead counsel, liaison counsel, and/or a member of the plaintiffs' steering committee in class actions and mass-torts including in more than 8 high-profile MDLs. He has also been appointed to MDL trial teams, MDL negotiating teams, and participated in negotiating over \$2 billion in MDL-related settlements. Finally, he has also been appointed to a variety of MDL Federal and MDL State Coordination Committees. These appointments and opportunities have provided him with the knowledge and ability to be an effective Liaison Counsel here.

Mr. Shkolnik has a proven track record of working well with others in the many class and mass tort actions where he has been appointed to leadership positions. In all these positions, Mr. Shkolnik has succeeded in maintaining the highest standards of decorum, cooperation, and collegiality among plaintiff and defense counsels alike. His skill, experience, and resources render him a superb candidate to lead the effort to coordinate the individual actions.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court issue an order consolidating the pending class actions, appointing Theodore Leopold and Michael Pitt of Pitt McGehee Palmer & Rivers PC as Interim Co-Lead Class Counsel, and appointing Corey Stern of Levy Konigsberg LLP and Hunter Shkolnik of Napoli Shkolnik PLLC as liaison counsel for the individual cases.

Dated: June 9, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2017, I filed the forgoing **Joint Motion for Consolidation of the Class Actions, Appointment of Interim Co-Lead Class Counsel, and Appointment of Liaison Counsel for the Individual Actions and Memorandum of Law in Support** with the Clerk of Court using the ECF system which will send notice of such filing to all parties of record.

Dated: June 9, 2017

/s/ Emmy L. Levens

Emmy L. Levens

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