

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

In Re Flint Water Cases,

No. 5:16-cv-10444-JEL-MKM
(consolidated)

Hon. Judith E. Levy

Mag. Mona K. Majzoub

Estate of Odie Brown, Deceased,

No. 5:18-cv-10726-JEL-MKM

Plaintiff

v.

Governor Rick Snyder, et al.,

Defendants

**PLAINTIFF’S AMENDED SHORT FORM COMPLAINT
AND JURY DEMAND**

Plaintiff incorporates by reference Plaintiffs’ Master Long Form Complaint and Jury Demand filed in *In Re* Flint Water Cases in the United States District Court for the Eastern District of Michigan, filed as No. 185 on the Master Docket. Pursuant to the Court’s Order permitting Plaintiffs to file a Master Complaint for the Individual Flint Water Cases, the following Short Form Complaint encompasses Plaintiff’s claims as adopted from the Master Long Form Complaint in the above-captioned action.

Plaintiff(s) select and indicate by checking boxes where requested, parties and claims specific to this case. As necessary, Plaintiff(s) include: (a) additional claims against the Defendant(s) listed in paragraph 1, which are set forth in paragraph 10, and the supporting facts for which are alleged in paragraph 12 or on an additional sheet attached to this Short Form Complaint; and/or (b) claims plead against additional defendants not listed in the Master Long Form Complaint, which are set forth in paragraph 13 and the supporting facts for which are alleged in paragraph 14 or on an additional sheet attached to this Short Form Complaint.

Plaintiffs, by and through their counsel, allege as follows:

I. DEFENDANTS

1. Plaintiff(s) name the following Defendants in this action [check only those that apply]:

- Governor Richard D. Snyder
- The City of Flint, a municipal corporation
- Darnell Earley
- Howard Croft
- Michael Glasgow
- Gerald Ambrose
- Jeff Wright
- Dayne Walling
- Daugherty Johnson
- Liane Shekter-Smith
- Daniel Wyant
- Stephen Busch
- Patrick Cook
- Michael Prysby

- Bradley Wurfel
- Nick Lyon
- Adam Rosenthal
- Andy Dillon
- Lockwood Andrews & Newman, P.C.
- Lockwood Andrews & Newman, Inc.
- Leo A. Daly Company
- Rowe Professional Services Company, f/k/a Rowe Engineering, Inc.
- Veolia North America, LLC
- Veolia North America, Inc.
- Veolia Water North America Operating Services, LLC
- Veolia Environmental, S.A.

2. The above-named defendant(s) are sued in those capacities outlined in the Master Complaint. They are named jointly and severally.

II. PLAINTIFFS

3. Plaintiff(s): The Estate of Odie Brown.

4. If brought on behalf of Plaintiff by another person, capacity (*i.e.*, administrator, executor, guardian, conservator, etc.): Cholyanda Brown, Personal Representative.

5. Plaintiff's State of Residence: Michigan.

III. FLINT WATER EXPOSURE

6. Plaintiff (Odie Brown) lived in Flint, Michigan from approximately April 25, 2014 until January 5, 2015. If more than one Plaintiff is named on this Short Form Complaint, list each additional Plaintiff's period of residency in Flint on

an additional sheet, or check the box below if the period of residency is the same for all named Plaintiffs.

Period of Residency in Flint is the same for all named Plaintiffs.

7. (If alleging property damage) Plaintiff(s) owned property in Flint, Michigan from approximately _____ until _____ at the following address: _____ . If Plaintiff(s) owned more than one property in Flint, list each additional property, as well as the dates the property was owned, on an additional sheet. For each property, state which plaintiff owned which property. – N/A.

8. (If alleging economic loss) Plaintiff(s) owned a business in Flint, Michigan from approximately _____ until _____ at the following address: _____ . If Plaintiff(s) owned more than one business in Flint, list each additional business, as well as the dates the business was owned, on an additional sheet. – N/A.

IV. INJURIES

9. Plaintiff(s) allege(s) the following injury(ies) (and subcategory of injur(ies) as a result of use of and/or exposure to Flint River Water:

- Personal injury
 - Lead Poisoning
 - Legionella
 - Other (please specify below or on additional sheet)

Death caused by Legionella; Medical Expenses; Funeral & Burial Expenses; Conscious Pain & Suffering; Heirs-at-Law Loss of Decedent's Society and Companionship.

- Property damage
- Economic loss
- Emotional damage

V. CLAIMS/COUNTS

10. The following claim(s) asserted in the Master Long Form Complaint, and the allegations with regard thereto in the Master Long Form Complaint, are adopted in this Short Form Complaint by reference:

- Count I: 42 U.S.C. §1983 – 14th Amendment, Substantive Due Process – State Created Danger
- Count II: 42 U.S.C. §1983 – 14th Amendment, Substantive Due Process – Bodily Integrity
- Count III: 42 U.S.C. §1983 – 5th and 14th Amendments, Equal Protection of the Law – Race Based
- Count IV: 42 U.S.C. §1983 – 5th and 14th Amendments, Equal Protection of the Law – Wealth Based
- Count V: 42 U.S.C. §1985(3) – Invidious Racial Animus
- Count VI: MCL 37.2302 – Violation of Public Service Provisions of ELCRA
- Count VII: Gross Negligence

- Count VIII: Punitive Damages
- Count IX: Professional Negligence (LAN PC, LAN Inc, and LAD)
- Count X: Professional Negligence (Rowe)
- Count XI: Professional Negligence (Veolia LLC, Veolia Inc., Veolia Water and Veolia S.A.)
- Count XII: Fraud (Veolia LLC, Veolia Inc., Veolia Water and Veolia S.A.) If alleging fraud, state with specificity the allegations supporting the cause of action (use an additional sheet if necessary):

- Count XXIII: Others [Specify Below]

See attached Addendum – Exhibit A

11. Unless otherwise noted, the above-checked Claims/Counts are only applicable to those Defendants against whom each Claim/Count referenced in the Master Long Form Complaint applies to therein.

12. If additional claims against the Defendants identified in the Master Long Form Complaint are alleged in paragraph 10, the facts supporting these allegations must be pleaded. Plaintiff asserts the following factual allegations against the Defendants identified in the Master Long Form Complaint:

See attached Addendum – Exhibit A.

13. Plaintiffs assert the following additional claims and factual allegations against other Defendants (must name defendant and its alleged citizenship):

Defendant McLaren Regional Medical Center / McLaren Flint Hospital, Michigan citizenship.

Hurley Defendants (City of Flint Board of Hospital Managers, Norb Birchmeier, and Ann Newell, Michigan citizenship.

14. If additional Defendants are identified in paragraph 13, the facts supporting these allegations must be pleaded. Plaintiff asserts the following factual allegations against the Defendants identified paragraph 13:

See attached Addendum - Exhibit A.

WHEREFORE, Plaintiffs pray for relief as set forth in the Plaintiffs' Master Long Form Complaint in *In Re Flint Water Cases* in the United States District Court for the Eastern District of Michigan.

Dated: September 9, 2019 /s/ Todd J. Weglarz (P48035)

ADDENDUM – ATTACHMENT A

1. Defendant public officials and private engineering corporations, caused a catastrophic public health crisis beginning in April 2014 by exposing the population of the City Flint and those who used the water of the City of Flint, to contaminated Flint River water as a source of usable water. The contaminated drinking water exposed Odie Brown to the deadly *legionella* bacteria which caused her death on January 9, 2015, after being a patient at McLaren Regional Medical Center and Hurley Hospital located in Flint.

2. The Government Defendants, as well as Defendant McLaren Regional Hospital (“McLaren”), and the Hurley Defendants, knew as early as the summer and fall of 2014 that there was a significant increase in reported cases in Genesee County of fatal and life threatening non-fatal illnesses caused by the exposure to *legionella* bacteria beginning in May 2014 and that the likely source of the increase in illness was the introduction of Flint River water as a drinking water source. These government officials, acting in concert with Defendant McLaren and Defendant Hurley, exacerbated the crisis by concealing the increased risk of exposure to the deadly *legionella* bacteria, failing to take effective remedial action to eliminate it, failing to advise and warn, and then lying about it to cover up their misconduct.

3. *McLaren and Hurley failed to provide its patients with safe water:* McLaren and Hurley, like many other facilities in Flint, were available to be used

by those members of the public, as its patients, where they typically would have exposure to the public water supplied by the City of Flint. Beginning in April, 2014, McLaren's and Hurley's source of water came from the Flint Water Treatment Plant ("FWTP") which utilized water from the Flint River. By the summer and fall of 2014, McLaren and Hurley were aware that there had been a substantial increase in the number of fatal and non-fatal cases of Legionnaires' Disease and the increase coincided with the introduction of Flint River water as a source of drinking, washing, and cleaning water for the Flint population. McLaren and Hurley were aware that Legionella and other contaminating agents were in the water supply, and McLaren and Hurley had a duty to provide safe water to its patients. McLaren and Hurley negligently, grossly negligently and/or deliberately failed to take proper steps to provide safe water for its patients.

4. McLaren and Hurley failed to inform their patients of the known risks associated with exposure to the Flint River water while they were patients at its facility: By the summer and fall of 2014, McLaren and Hurley knew of risks associated with exposure to the deadly legionella bacteria emanating from use of the Flint River water and yet failed to inform its patients, in particularly Odie Brown and her family, of those risks.

PARTIES

PLAINTIFF

5. Odie Brown was sixty-five years old when she died of Legionella Pneumonia on January 9, 2015. Ms. Brown was diagnosed with Legionella Pneumonia on December 25, 2014, and had several prior hospital contacts before then, including admission to McLaren on September 10, 2014, and from September 17, 2014 through September 18, 2014. Ms. Brown was subsequently hospitalized at Hurley Hospital from September 19, 2014 through September 29, 2014; October 2, 2014 through October 9, 2014; November 17, 2014 through December 10, 2014; and December 19, 2014 through January 5, 2015.

6. Cholyonda Brown, Decedent's daughter, is the Personal Representative for the Estate of Odie Brown, and sues in that capacity.

7. Decedent Odie Brown was at all times herein a resident of the City of Flint, Michigan and between April 25, 2014 and January 9, 2015, suffered personal injuries as a result of exposure to the City of Flint's water, in particular as a result of exposure to the *legionella* bacteria within said Flint water, while a patient at Defendant McLaren Hospital located in Flint, Michigan, and /or while a patient at Hurley Hospital, located in Flint, Michigan.

GOVERNMENT DEFENDANTS

8. Defendant Rick Snyder is the Governor of the State of Michigan ("Governor") is sued in his individual capacity for compensation for the Plaintiffs,

insofar as his deliberate conduct violated the Plaintiff's rights to due process and to equal protection of the law, as secured by the Fourteenth Amendment to the United States Constitution. Daniel Wyant ("Wyant") was Director of MDEQ and is sued in his individual capacity, acting under color of law, because he participated in the decisions that deliberately created, increased and prolonged the public health crisis at issue in this case and participated in the concealment of the harm. In particular he participated in the concealment the presence of *legionella* and of its grave danger.

9. Andy Dillon ("Dillon") was Treasurer for the State of Michigan and is sued in his individual capacity because, acting under color of law, along with the Governor, Jeff Wright, Dayne Walling and Edward Kurtz, caused harm to Odie Brown when they developed an interim water delivery plan in June 2013 which favored the predominately white Genesee County water users and discriminated against the water users in Flint, a predominantly African American community.

10. Adam Rosenthal ("Rosenthal") was a Water Quality Analyst assigned to the Lansing District Office of the MDEQ. Rosenthal is sued in his individual capacity because, as Water Quality Analyst for MDEQ, acting under color of law, he approved and participated in, the decisions that deliberately created, increased and prolonged the public health crisis and the exposure to *legionella* at issue in this case and participated in the concealment of the harm his department caused Plaintiff.

11. Stephen Busch ("Busch") was District Supervisor assigned to the Lansing District Office of the MDEQ. Busch is sued in his individual capacity

because, as District Office Supervisor of MDEQ, acting under color of law, he deliberately created, increased and prolonged the public health crisis and the exposure to *legionella* at issue in this case and participated in the concealment of the harm his department caused Plaintiff.

12. Patrick Cook (“Cook”) was at all relevant times a Water Treatment Specialist assigned to the Lansing Community Drinking Water Unit of the MDEQ. Cook is sued in his individual capacity because, acting under color of law, as Water Treatment Specialist District of MDEQ, he approved of, and thereby participated in, the decisions that deliberately created, increased and prolonged the public health crisis and the exposure to *legionella* at issue in this case and participated in the concealment of the harm his department caused Plaintiff.

13. Michael Prysby (“Prysby”) was an Engineer assigned to District 11 (Genesee County) of the MDEQ. Prysby is sued in his individual capacity because, as Engineer assigned to District 11, acting under color of law, he approved of, and thereby participated in the decisions that deliberately created, increased and prolonged the public health crisis and the exposure to *legionella* at issue in this case and participated in the concealment of harm his department caused Plaintiff.

14. Bradley Wurfel (“Wurfel”) was the Director of Communications for MDEQ. Wurfel is sued in his individual capacity because, as Director of Communications for MDEQ, acting under color of law, he was responsible for the deliberately misleading and inaccurate communications that increased and prolonged

the public health crisis and the exposure to *legionella*, at issue in this case and for making false statements and providing false assurances which caused harm to Plaintiff.

15. Jeff Wright (“Wright”) has been the Genesee County Drain Commissioner since 2001. Wright is sued in his individual capacity because, acting under color of law, as the Genesee Country Drain Commissioner, he conspired with other Defendants to deprive Plaintiffs of their civil and constitutional rights and participated in and/or aided and abetted others to violate Plaintiffs’ rights to full and equal enjoyment of public services as guaranteed under the Michigan Elliot Larsen Civil Rights Act and the Equal Protection Clause of the 14th Amendment, as well as the 13th Amendment of the United States Constitution.

16. Edward Kurtz (“Kurtz”) was the Emergency Manager of Flint appointed by the Governor in August 2012 and served in this capacity until July 2013. Kurtz is sued in his individual capacity because, acting under color of law, during his term as Emergency Manager of Flint, he deliberately created, increased and prolonged the public health crisis and the risk exposure to *legionella* at issue in this case and participated in the concealment of the harm he caused Plaintiff. Kurtz is also sued because he conspired with other Defendants to deprive Plaintiff of her civil and constitutional rights and participated in or aided and/or abetted others to violate Plaintiff’s rights to full and equal enjoyment of public services as guaranteed under the ELCRA and the Equal Protection Clause of the 14th Amendment, as well as the 13th Amendment of the United States Constitution.

17. Darnell Earley (“Earley”) was the Emergency Manager of the City of Flint appointed by the Governor on November 1, 2013 and served in this capacity until January 12, 2015. Earley is sued in his individual capacity because, during his term as Emergency Manager of Flint, acting under color of law, he deliberately created, increased and prolonged the public health crisis and the exposure to *legionella* at issue in this case and participated in the concealment of the harm he caused Plaintiff. Earley is also sued because he conspired with other Defendants to deprive Plaintiff of her civil and constitutional rights and participated in and/or aided and abetted others to violate Plaintiff’s rights to full and equal enjoyment of public services as guaranteed under the ELCRA and the Equal Protection Clause of the 14th Amendment, as well as the 13th Amendment of the United States Constitution.

18. Dayne Walling (“Walling”) was Mayor of Flint from August 4, 2009 until November 9, 2015 when he was unseated by Karen Weaver. Walling is sued in both his individual and official capacities. He is individually liable insofar as he personally approved of, and thereby participated in, the decisions that deliberately created, increased and prolonged the public health crisis and the exposure to *legionella*, acting under color of law, and participated in the concealment of the harm he caused Plaintiff. Walling is also sued because he conspired with other Defendants to deprive Plaintiff of her civil and constitutional rights and participated in and/or aided and abetted others to violate Plaintiff’s rights to full and equal enjoyment of public services as guaranteed under the ELCRA and the Equal Protection Clause of the 14th

Amendment, as well as the 13th Amendment of the United States Constitution. Additionally, as Mayor, he was a final policymaker for the Defendant City of Flint, and as such his actions, decisions, and judgments constituted customs, policies, and/or practices of the Defendant City of Flint.

19. Howard Croft (“Croft”) was Director of Public Works for the City of Flint. Croft is sued in his individual capacity because, as Director of Public Works, acting under color of law, he approved of, and thereby participated in, the decisions that deliberately created, increased and prolonged the public health crisis and the exposure to *legionella*, at issue in this case and participated in the concealment of the harm he caused Plaintiff.

20. Michael Glasgow (“Glasgow”) was Utilities Administrator for the City of Flint. Glasgow is sued in his individual capacity because as Utilities Administrator, acting under color of law, he deliberately created, increased and prolonged the public health crisis at issue in this case and participated in the concealment of the harm he caused Plaintiff.

21. Daugherty Johnson (“Johnson”) was the Utilities Administrator for the City of Flint. Johnson is sued in his individual capacity because, as Utilities Administrator, acting under color of law, he approved of, and thereby participated in the decisions that deliberately created, increased and prolonged the public health crisis and the exposure to *legionella* at issue in this case and participated in the concealment of the harm he caused Plaintiff.

22. Defendants Kurtz, Earley and Ambrose as Emergency Managers, acted in both their individual capacities and as agents of the State of Michigan, and their official capacities as policy makers for Defendant City of Flint within the meaning of *Monell*, and as such their actions constituted customs, policies and/or practices of the Defendant City of Flint.

23. At all relevant times hereto, the conduct of Defendants Walling, Croft, Glasgow and Johnson was pursuant to the customs, policies and/or practices of Defendant City of Flint.

HURLEY DEFENDANTS

24. At all times relevant, Defendant City of Flint is a municipal corporation which owned, operated, and managed Hurley Hospital, located in the City of Flint.

25. Because Defendant Earley was the state appointed emergency manager for Defendant City of Flint from November of 2013 through the date of Decedent's death, Defendant Earley was also responsible for the operation and management of Hurley Hospital during said time.

26. At all times relevant, Defendant Norb Birchmeier ("Birchmeier"), was the Director of Facilities and Support Services for Hurley Hospital, and oversaw and was responsible for ensuring that the hospital's water supply was safe and clean for its invitees and patients, including Odie Brown.

200. At all times relevant, Defendant Ann Newell, was the Infection Control Manager at Hurley Hospital, and was also responsible for ensuring that the hospital's water supply was safe and clean for its invitees and patients, including Odie Brown.

27. Because the City of Flint was confronted with a multi-million dollar deficit and other financial issues, Defendant Earley wanted to quickly increase revenues for the city.

28. At the time of Earley's appointment, The City of Flint's two biggest assets were the city's water system and Hurley Hospital.

29. Within weeks of his appointment, Defendant Earley hired an accounting firm to value the city's water system and Hurley Hospital, so that the sale of these assets could be explored as a means to getting the city out of debt.

30. A water system and hospital infiltrated with corrosive water and legionella bacteria would have a significantly diminished value and would seriously jeopardize Defendant Early's plans to sell these assets.

DEFENDANT McLAREN REGIONAL MEDICAL CENTER

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

32. At all times relevant, Defendant McLaren owned, operated, and controlled the McLaren Flint Hospital facility and the water supply therein, which was used within the hospital for workers, medical staff, visitors, and patients.

33. At all times relevant, the water supply within Defendant McLaren constituted a public water supply triggering the requirements under the Michigan Safe Drinking Water Act.

34. Defendant McLaren, like many other facilities in Flint, was open to the public.

35. Beginning in April, 2014, McLaren's source of water came from the FWTP which utilized water from the Flint River.

36. Shortly after the switch, Defendant McLaren was aware that the water supply at McLaren Flint Hospital was contaminated with an increased level of Legionella.

37. Defendant McLaren was aware that the McLaren Flint Hospital water supply was a dangerous source of water because it did not have proper biocide and anti-corrosive agents.

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

39. By the summer and fall of 2014, McLaren, through its agents and representatives, was well aware that there was a significant increase in the number of fatal and non-fatal cases of Legionnaires Disease and the increase coincided precisely

with the introduction of Flint River water as a source of drinking water for the Flint population. McLaren was also aware of an increase in the number of its own patients diagnosed with Legionella in the summer and fall of 2014. McLaren had a duty to provide safe water to its patients. McLaren negligently failed to take proper steps to provide safe water for its patients.

40. By the summer and fall of 2014, McLaren had sufficient knowledge of the risks associated with exposure to the deadly *legionella* bacteria emanating from use of the Flint River water and the use of its own hospital water supply, and yet failed to take corrective action and deliberately failed to so inform its patients of this serious risk of injury and/or death.

41. By December of 2014, all Genesee County hospitals, including McLaren and Hurley, were aware that the hospitals were receiving an uptick in Legionnaires' cases.

42. Throughout 2014 and 2015, the water supply provided to McLaren Flint Hospital was known to be toxic, and Defendant McLaren had knowledge that multiple water samples resulted in extraordinarily high levels of lead, as well as dangerously high levels of Trihalomethanes (TTHM) and e Coli bacteria.

43. Unsafe levels of Legionella were present in Defendant McLaren's water supply throughout 2014 and 2015.

44. Though Defendant McLaren was aware that McLaren Flint Hospital's water supply was tainted with the presence of unsafe levels of Legionella bacteria,

Defendant McLaren never notified or warned the general public or hospital invitees of same.

45. Beginning in June 2013 and continuing through April 25, 2014, the state created a dangerous public health crisis and vastly increased the risk of exposure to *legionella* for the users of Flint tap water when it, Kurtz and Earley ordered and set in motion the use of highly corrosive and toxic Flint River water knowing that the FWTP was not ready.

46. For at least a year prior thereto, the State, Kurtz, Early, and the City of Flint knew that using the Flint River water was dangerous and could cause serious public health issues, including the exposure to *legionella*.

47. It was well known to these defendants that the corrosive water of the Flint River, not having been properly treated would result in the corrosion of pipes, such that dangerous bacteria, in particular *legionella*, would leach into drinking water in Flint.

48. In June of 2014, a meeting was held by the Genesee County Health Department, which was attended by Hurley (by Newell, upon information and belief) and McLaren. During this meeting, concern about Legionella being found in the water supply was discussed, as were the increasing numbers of Legionella cases coming into hospitals.

49. On August 14, 2014, Flint's water tested above legal limits for total coliform and E. coli bacteria, an early warning regarding the likely release of *legionella*. The City issued boil water advisories on August 16, 2014 and September 5, 2014 in response but never advised, warned, or informed as to the likelihood, let alone possibility, of a release of *legionella*.

50. Yet all of the Government Defendants, including the McLaren and Hurley Defendants, remained silent and failed to announce, let alone warn the public, Plaintiff in particular, so that Flint water could be avoided and, with it, *legionella*.

51. Prior to Odie Brown's exposure to *legionella* bacteria, State officials met with McLaren representatives to discuss the ongoing threat to public health posed by the *legionella* bacteria in the Flint River water.

52. On January 21, 2015, State officials including Defendants Snyder, Dillon, Lyon, Wells, and others ordered water coolers to be installed in State buildings operating in Flint. The Government Defendants were concerned that this action, if it became widely known by the public, would reveal their vulnerability to accusations of dishonesty because they had been advising the residents of Flint that it was safe to drink the tap water and at the same time arranging for alternative water sources for the State employees who were working in Flint.

53. Prior to Plaintiff's Legionella exposure, the Government Defendants and McLaren suspected and knew that the Flint River water was associated with the

significant increase in Legionella cases for both the county and McLaren, during the summer and fall of 2014.

54. On January 27, 2015, the City of Flint and McLaren were placed on formal notice by the Genesee County Health Department (“GCHD”) that there was an association between the outbreak of Legionnaires’ Disease and the commencement of the use of Flint River water. Once again, Defendants did nothing about the impending health catastrophe.

55. Prior to Plaintiff’s exposure to Legionella, James Henry of the GCHD was concerned that he was being stonewalled by the State and City in accessing public health information about the Legionnaires Disease outbreak in Genesee County. The concealment of the public health emergency by City and State officials – Defendants herein – was shocking and unconscionable.

56. Prior to Plaintiff’s exposure to Legionella, the Defendants knew that the extreme public health emergency involved lead poisoning, contamination of the water supply with deadly *legionella* bacteria and other metals, minerals, and microbes, and a host of other dire health problems.

57. On March 25, 2015, Flint City Council voted to re-connect to Detroit’s water system. Governor Snyder’s appointed Emergency Manager, Gerald Ambrose, deliberately exacerbated the severe public health dangers and hazards by rejecting this vote of the City Council.

58. As a result of the failure to properly treat water from the Flint River, corrosive water was delivered throughout the Flint Water System. The water crisis in Flint caused an outbreak of Legionnaires Disease. As explained above and in the Master Complaint, the presence of *legionella* was a direct and proximate result of the switch to the Flint River as a water source and related conduct.

COUNT XIII

NEGLIGENCE-McLAREN HOSPITAL

59. At all times relevant, Defendant McLaren owned, operated, and controlled the premises at McLaren Flint Hospital and the water supply therein, which was used within the hospital for workers, medical staff, visitors, and patients of said hospital facility.

60. McLaren had a duty to provide safe water to its patients.

61. At all times relevant, Plaintiff's Decedent Odie Brown was an invitee at Defendant's McLaren Flint Hospital.

62. At all times relevant, the contaminated water system in Defendant's McLaren Flint Hospital constituted an unreasonably dangerous, peculiar, and defective condition on the premises.

63. At all times relevant, Defendant, as possessor and owner of the McLaren Flint Hospital, owed to Odie Brown the duty to exercise ordinary care to protect an

invitee from unreasonable risks known to Defendant or that should have been known to Defendant with the exercise of ordinary care.

64. Defendant McLaren, as possessor and owner of the McLaren Flint Hospital, owed to Odie Brown the duty to inspect the premises to discover possible dangers of which it was not aware.

65. At all times relevant, Defendant McLaren did know, or in the exercise of reasonable care should have known, and had the affirmative duty to inspect the premises and become aware of the unreasonably dangerous, peculiar, and defective condition, particularly the contaminated water system, and the duty to warn Plaintiff's Decedent Odie Brown and make the condition safe, which Defendant negligently failed to do.

66. At all times relevant, Defendant McLaren owed to Plaintiff's Decedent Odie Brown the following duties, by illustration and not limitation, and breached the same by:

- a. Failing to provide its patients with safe water;
- b. Exposing its patients, including Decedent, to a water supply contaminated with Legionella bacteria;
- c. Exposing its patients, including Decedent, to air treatment systems, cooling systems, and/or ventilation systems, contaminated with Legionella bacteria;
- d. Failing to comply with the state regulations applicable to public water supplies;

- e. Failing to properly, regularly, and routinely, check its water supply, air treatment systems, cooling systems, and/or ventilation systems, for the presence of Legionella bacteria;
- f. Failing to implement appropriate disinfection safeguards to its water supply, air treatment systems, cooling systems, and/or ventilations systems, to prevent colonization, mitigate colonization, and/or remove colonization of Legionella;
- g. Failing to warn its patients, including Plaintiffs' Decedent, of the presence of Legionella found in the hospital's water supply;
- h. Failing to make safe the contaminated water supply of which Defendant was aware or in the exercise of reasonable care should have been aware;
- i. Any other breaches revealed during the course of discovery.

67. As a direct and proximate result of the above described breaches of duty by defendant McLaren, Plaintiff's Decedent Odie Brown, and the heirs-at-law to Decedent's Estate, suffered injuries and damages including the following:

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

COUNT XIV

**GROSS NEGLIGENCE & 1983 – 14th Am CLAIM
HURLEY DEFENDANTS BIRCHMEIER, NEWELL, CITY OF FLINT**

68. Hurley Medical Center / Hospital was open, accessible, and available to the public, which would be exposed to water provided by that facility.

69. Defendant Birchmeier, as the Hospital's Director of Facilities and Support Services, oversaw and was responsible for ensuring that the hospital's water supply was safe and clean for its invitees and patients, including Odie Brown.

70. Defendant Newell, the Hospital's Infection Control Manager, was also responsible for ensuring that the hospital's water supply was safe and clean for its invitees and patients, including Odie Brown.

71. Prior to Plaintiff's Decedent's exposure to Legionella bacteria while a patient at Hurley Hospital in the fall and/or winter of 2014, the Hurley Defendants knew:

- a. Beginning in April, 2014, Hurley's source of water came from the FWTP which utilized water from the Flint River, which was known to be contaminated with legionella bacteria and other hazardous chemicals and bacteria known cause and/or be associated with the proliferation of legionella;
- b. Hurley Hospital (as well as McLaren Flint Hospital) was / were physically located at the end of Flint's water distribution system, thereby increasing the risk of legionella in the hospital's water supply;
- c. The increased temperature of the Flint River water in the water distribution system further increased the risk of legionella in the hospital's water supply;
- d. The increased stagnation and retention period of the hospital's water supply further increased the risk of legionella;

- e. There was a substantial increase in the number of fatal and non-fatal cases of Legionnaires Disease both in the county and at Hurley and McLaren hospitals, and that the increase coincided with the introduction of Flint River water as a source of drinking water for the Flint population
- f. They were not providing any type of testing, inspecting, remediation, correction, or treatment of the hospital's water supply to prevent or control the presence of hazardous chemicals and bacteria, including legionella bacteria;
- g. They were not advising or warning its hospital patients and visitors of the hospital's contaminated and hazardous water and the risk of legionella the patient will be subjected to be visiting Hurley Defendants' Hospital

72. By the summer and fall of 2014, Hurley had sufficient knowledge of the risks associated with exposure to the deadly *legionella* bacteria emanating from use of the Flint River water and its own hospital water supply, and accordingly had a duty to take corrective action and so inform its patients of this serious risk of injury, but failed to take proper corrective action or inform its patients of the hidden risks and hazards of the legionella which was present in its water hospital.

73. Hurley Defendants' failure to inspect, test, correct, and treat its hospital water supply which was known to be contaminated with hazardous substances, including legionella bacteria and/or was known to be at significant risk for legionella bacteria, amounted to a reckless disregard for whether injury result to Plaintiff's Decedent and therefore was gross negligence as defined under MCL 691.1407, which caused Plaintiff and Plaintiff's Decedent to experience the injuries and damages as enumerated and set forth in Paragraph 191 above.

74. Plaintiff further submits that the Hurley Defendants, as employees and/or agents of a municipally owned hospital, were acting under color of law, and thus their actions and inactions as described above likewise amount to violations of the 14th Amendment of the U.S. Constitution and §1983 for violation of Plaintiff's Decedent's body integrity, equal protection of the law, state created danger, and denial of access to judicial remedies, as set forth in the above federal counts for the Government Defendants.

Respectfully submitted,

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