

**IN THE STATE OF MICHIGAN
COURT OF CLAIMS**

ANGEL GUYTON, individually and as next)	
friend of three minor children, G.S., G.A.,)	
and G.D.,)	
KATIE LYNN REYKJALIN, individually)	
and as next friend of one minor child, U.N.P.,)	Case No.
JENNIFER JANSSEN-ROGERS, and)	
BROOKE ROSENBAUM, all on behalf of)	Hon.
themselves and all others similarly situated,)	
)	
Plaintiffs,)	
)	CLASS ACTION
vs.)	
)	
THE MICHIGAN DEPARTMENT OF)	
ENVIRONMENT, GREAT LAKES &)	
ENERGY (EGLE) and ERIC OSWALD,)	
in his official capacity as Director of EGLE's)	
Drinking Water and Environmental Health)	
Division (DWEHD),)	
)	
Defendants.)	

LIDDLE SHEETS COULSON P.C.

STEVEN D. LIDDLE (P45110)

NICHOLAS A. COULSON (P78001)

MATTHEW Z. ROBB (P81665)

Attorneys for Plaintiffs

975 E. Jefferson Ave.

Detroit, Michigan 48207

(313) 392-0015

SLiddle@LSCCounsel.com

NCoulson@LSCCounsel.com

MRobb@LSCCounsel.com

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

This class action is brought pursuant to the due process and unjust taking clauses of the Michigan Constitution, Arts. 1 § 17 and Art. 10, § 2, against the Michigan Department of Environment, Great Lakes, and Energy ("EGLE") and Eric Oswald, in his official capacity as

EGLE's Director of Drinking Water and Environmental Health Division, for affirmative acts taken pursuant to official customs, policies and/or practices, based on the following allegations that caused thousands of Benton Harbor residents to be lead poisoned and deprived of their property rights due to lead contaminated municipal drinking water invading their homes and bodies without consent:

INTRODUCTION

1. It has been less than six years since the declaration of emergency that made the Flint water crisis worldwide news. Unthinkably, here we are again. In the nation's most water-rich state, lead-contaminated municipal water in a majority African American city has once again been pumped into the homes and bodies of thousands of people, including vulnerable children.

2. This case involves the ultimate inexcusable repeat of history. Despite purporting to pass laws that would ensure that such a crisis would not occur again, the State of Michigan, through EGLE, has fostered an utter catastrophe for a community it was charged to protect.

3. Benton Harbor's approximately 10,000 residents have received their water from a municipal system that repeatedly triggered alarms that required specific State action. Yet, only recently, in October 2021, did the State take the shamefully minimal step of telling them to stop drinking the poisonous water.

4. Incredibly, Benton Harbor residents, including Plaintiffs and the putative class, have continued to be charged for toxic, lead-contaminated water that they cannot use, and that—if they did—would further subject them to unacceptable risks of lead poisoning.

5. While the State did not force Benton Harbor to change water sources as it did with Flint, it nevertheless undertook a series of affirmative, deliberate, and conscious acts and decisions directed at Benton Harbor which ultimately caused thousands of people to drink and use knowingly

unsafe, lead-contaminated water from a system it knew had higher lead levels than Flint's ever recorded.

6. The State knew that corrosive water was being sent through the Benton Harbor municipal system's lead piping without adequate corrosion control measures, yet continued to order Benton Harbor to unilaterally apply knowingly ineffective corrosion control measures, sending lead into people's homes and bodies without informing the public about the dangers it knew were flowing through the system.

7. EGLE's actions do not merely constitute faulty or negligent regulatory enforcement. Here, the State unilaterally took over and dictated the corrosion control treatment scheme that Benton Harbor was required to initiate. In so doing, EGLE violated numerous legal requirements, and even after becoming aware that they had violated the law by imposing a corrosion control treatment regime that was either (a) not working or (b) making the lead crisis worse, EGLE continued ordering the expansion of the same phosphate-based corrosion control treatments without conducting or ordering a legally-required optimal corrosion control study. Even worse, the corrosion control treatment scheme ordered by the State was based on a no-bid solicitation of a commercial product from a private vendor, Elhorn Engineering, which the State knew had not followed the Michigan and federal lead and copper rule in developing the proposed treatment.

8. Despite entering the fourth year of actionable levels of lead in the Benton Harbor water system, EGLE and the State of Michigan repeatedly violated their affirmative and mandatory legal obligations under the Safe Drinking Water Act, thereby causing unconstitutional takings of private property and the invasion of Plaintiffs' and the putative Class' right to bodily integrity.

9. On December 18, 2019, an EGLE engineering supervisor acknowledged to a colleague that EGLE's "usual course of action to achieve compliance" would have "include[ed] escalated enforcement and stipulated penalties[.]" The EGLE supervisor warned that "if we continue the pattern of allowing them to miss deadlines and request extensions, then the water system remains vulnerable and we are potentially culpable if a problem occurs."¹ Unfortunately, the State chose the latter course, with all its attendant culpability.

10. This action is brought to hold the State accountable for its callous and conscience-shocking violations of the rights its own constitution bestows upon the people of Benton Harbor.

PARTIES

11. Plaintiffs are citizens of the State of Michigan and were and are users of Benton Harbor's municipal water system. On an ongoing basis since at least 2018, Plaintiffs have been subjected to lead contamination in their drinking water.

12. Plaintiff Angel Guyton is an individual and a citizen of Michigan. She resides at 371 East Britain Avenue, Benton Harbor, Michigan 49022 with her three minor children, G.S., G.A., and G.D.

13. Plaintiff Katie Lynn Reykjalín is an individual and a citizen of Michigan. She resides at 1682 Colfax Avenue, Benton Harbor, Michigan 49022 with her minor child, U.N.P.

14. Plaintiff Jennifer Janssen-Rogers is an individual and a citizen of Michigan. She resides at 544 Columbus Avenue, Benton Harbor, Michigan 49022.

15. Plaintiff Brooke Rosenbaum is an individual and a citizen of Michigan. She resides at 6095 Erie Street, Coloma, Michigan 49038, and she owns and operates a business located at 420 East Main Street, Benton Harbor, Michigan 49022.

¹ 12/18/2019 e-mail from Michael Bolf to drinking water division director Eric Oswald.

16. Defendant EGLE is an agency of the State of Michigan charged with “protect[ing] Michigan’s environment and public health by managing air, water, land, and energy resources.” It is comprised of 14 divisions, including a Drinking Water and Environmental Health division.

17. Defendant Eric Oswald is, and at all relevant times has been, the Director of EGLE’s Drinking Water and Environmental Health Division (DWEHD). DWEHD oversees Michigan’s public water supplies to ensure safe drinking water, including through enforcement of the State of Michigan’s Lead and Copper Rule. DWEHD is involved in source water protection, operator certification and training, water well construction, registration of water well drilling contractors, assisting local health departments in conducting drinking water quality investigations, approving and licensing the handling of domestic septage, and oversight of the on-site wastewater program. In his role as Director, Mr. Oswald is the chief policymaker for DWEHD and holds final authority for decisions made within the authority of the DWEHD.

18. Defendants EGLE and Mr. Oswald, acting in his official capacity as Director of DWEHD, took affirmative actions and made the final decisions that deliberately authorized, created, increased, and/or prolonged the hazards, threats, and dangers that arose through a deliberate course of action that materially differed from what was necessary, appropriate, and legally required to protect the residents of Benton Harbor, including Plaintiffs and the entire putative Class, from the preventable and nonconsensual invasion of their bodies and properties with lead contaminated water.

JURISDICTION, VENUE, AND COURT OF CLAIMS PROCEDURAL REQUIREMENTS

19. The Michigan Court of Claims has personal jurisdiction over Defendant EGLE because EGLE is an agency of the State of Michigan.

20. The Michigan Court of Claims has personal Defendant Eric Oswald in his official capacity as Director of DWEHD because he is an official policymaker for Defendant EGLE charged with the acts and authorizations alleged herein.

21. This Court has original, exclusive jurisdiction over these claims pursuant to MCL 600.6419, which seek monetary, equitable, and declaratory relief from departments of the State of Michigan, and its departments and officers all acting in their official capacities within the meaning of MCL § 600.6419(7), arising from violations of the Michigan Constitution.

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

23. Pursuant to MCL § 600.6401(2)(b), Plaintiffs provide this Complaint as their detailed statement regarding the nature of their claims and, to the extent possible under the extenuating circumstances, the items of damage alleged to be sustained as the result of the State's actions.

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

25. Pursuant to MCL § 600.6431(1), Plaintiffs designate the following institutions, "departments or officers" of the State "involved in connection" with this claim: the Michigan Department of Environment, Great Lakes, and Energy (EGLE), and the Director of EGLE's Drinking Water and Environmental Health Division (DWEHD), all acting in their official capacity and within the scope of their authority.

26. This Complaint is filed within six months of the accrual of Plaintiffs' claim and satisfies all timeliness requirements of MCL §§ 600.6431 and 600.6452, to the extent that they may apply to Plaintiffs' claims, and Plaintiffs' claims arose in the City of Benton Harbor.

STATEMENT OF FACTS

Background Regarding Benton Harbor

27. The City of Benton Harbor has a population of approximately 10,000 residents, and approximately 85% of Benton Harbor residents are African American and 5% are Hispanic.

28. Booming manufacturing throughout the 20th Century caused Benton Harbor's population to swell to more than 20,000 before consistently dropping over the past 50 years in the wake of Michigan cities' all-too-familiar post-industrial pattern: loss of manufacturing jobs, depopulation, racial segregation, public and private disinvestment, increasing poverty, and declining tax revenues.

29. The Benton Harbor community has significant barriers to quality health care and are exposed to other threats associated with poverty that can exacerbate the impacts associated with lead exposure.

30. Similar to the previous lead crisis in Flint, the State of Michigan declared a financial emergency in Benton Harbor in 2010 and appointed an Emergency Manager to govern the Benton Harbor budget. Under unilateral State governance, the Benton Harbor Emergency Managers gutted staffing at the Benton Harbor Water Department. During emergency management, the city staff was cut roughly in half—severely impacting Benton Harbor's ability to deliver adequate and safe water services to its residents.²

Overview of the Benton Harbor Water System

31. The Benton Harbor Water Plant is located at 601 Ridgeway, St. Joseph, Michigan, in the southwest corner of Jean Klock Park near the Lake Michigan Shoreline.

² https://www.mlive.com/lansing-news/2014/03/benton_harbor_run_by_emergency.html (last visited November 17, 2021).

32. The Benton Harbor water system includes 347,645 feet (65.8 miles) of service pipes through 2-inch to 20-inch water mains.

33. The current process of the water plant starts with raw Lake Michigan water conveyed via one or more of five low lift pumps from an intake structure located 5,000 feet from the plant in Lake Michigan through a 30-inch diameter pipe to a raw water lift station and wet well.

34. The Benton Harbor Water Plant can process and treat up to 16 million gallons of water per day.

35. The system was designed to distribute water to a much larger area than it currently supplies. Benton Township and St. Joseph Charter Township branched away from the Benton Harbor water system, in 2011 and 2013 respectively. The departure of these two townships from the Benton Harbor municipal water system eliminated over 9,000 of the approximately 20,000 customers serviced by the Benton Harbor municipal water system. Benton Charter Township now receives water from the Benton Charter Township Water Plant. St. Joseph Township now receives water from the St. Joseph Water Plant.

36. The City of Benton Harbor distribution system still consists of the large mains that were necessary to distribute water to these further areas but now only distributes water within the Benton Harbor city limits.

Lead and Copper Rules under the Safe Water Drinking Act

37. The Michigan Safe Drinking Water Act (“SDWA”), Act 399 of 1976, was enacted to “protect the public health; to provide for *supervision and control over public water supplies*,” and “to prescribe the powers and duties of [EGLE,]” among other things.³

³ MCL § 325.1001, *et seq.* (emphasis added).

38. In 2018, the Michigan Safe Drinking Water Act (“SDWA”) was “expanded in order to better protect and prioritize the public health of Michiganders.” Following passage of the amended Michigan SWDA, the State boasted that “[w]ith the changes added to the Michigan Safe Drinking Water Act in 2018, our state now has the strongest protections in the United States against lead in drinking water.”⁴

39. The changes to the Michigan SDWA included requiring that both the first and fifth liters to come out of the tap during an in-home water sample be measured for lead content. Previously, only the first liter was sampled. According to the State:

“When there are high levels of lead at the first liter, the source is likely inside the home, such as lead faucets, pipes or lead solder on pipes. The new rules also test the fifth liter, which is water that has been sitting in the pipe that is the service line from the water main in the street to the meter in your home. When there is a high result at the fifth liter, it may mean additional corrosion control or removal of your line is necessary.”⁵

40. The revisions to the SDWA also assign responsibility for replacing lead service lines to the water supplier, requiring that on average 5 percent of the system’s lead service lines are replaced every year for the next 20 years and that “[t]he water supplier must use revenue it collects from customers to pay for lead line removal.”⁶

41. Corrosion control is vitally important to protect municipal water users because the toxic content of lead pipes can leach into drinking water sources from corrosion of older lead service lines and enter into private properties and the human body, causing a wide range of health and property injuries, many of which are irreversible. “Lead can enter drinking water when

⁴https://www.michigan.gov/mileadsafe/0,9490,7-392-92852_93738---.00.html#:~:text=With%20the%20changes%20added%20to,eliminate%20lead%20drinking%20water%20pipes. (last visited November 14, 2021).

⁵ *Id.*

⁶ *Id.*

plumbing materials that contain lead corrode, especially where the water has high acidity or low mineral content that corrodes pipes and fixtures.”⁷

42. It is well known to State Defendants that the overwhelming majority of Benton Harbor’s service lines either contain lead or are connected to service lines that contain lead, as only 133 (2%) of the 5,877 service lines in Benton Harbor have been confirmed as containing no lead or not being connected to lead service lines.⁸

43. State Defendants also knew that the water source utilized in Benton Harbor’s water system, which derives from Lake Michigan, was corrosive towards lead, creating a serious risk that lead would leach from the pipes into drinking water if appropriate corrosion control measures were not in place.

44. It is also well known and widely understood in the public health community, and by State Defendants, that “[t]here is no known safe blood lead concentration[.]”⁹ According to the World Health Organization (WHO), “even blood lead concentrations as low as 5 µg/dL may be associated with decreased intelligence in children, behavioral difficulties and learning problems. As lead exposure increases, the range and severity of symptoms and effects also increase.”¹⁰

45. Adverse effects from lead exposure include damage to the brain and nervous system, slowed growth and development, learning and behavioral problems, and hearing and

⁷ <https://www.epa.gov/ground-water-and-drinking-water/basic-information-about-lead-drinking-water> (last visited November 16, 2021).

⁸ Michigan Department of Environment, Great Lakes, and Energy, Michigan Service Line Materials Estimates Preliminary Distribution System Materials Inventories, last updated Dec. 2020, (attached as Exhibit 1), available at: https://www.michigan.gov/documents/egle/egle-dwehd-PDSMISummaryData_682673_7.pdf (last visited November 16, 2021).

⁹ <https://www.who.int/news-room/fact-sheets/detail/lead-poisoning-and-health> (last visited November 16, 2021).

¹⁰ *Id.*

speech problems. Lead exposure has also been linked to lower IQ, decreased ability to pay attention, underperformance in school, and criminality. A study published by Yale School of Public Health this year found that children born to mothers who were exposed to lead contaminated water in Flint had a significantly lower birth weight compared with those in other cities, and African American babies were disproportionately impacted by the lead exposure.

46. Children are more likely than adults to absorb lead and are at the highest risk of lead poisoning. Exposure to even low levels of lead can cause irreversible damage to brain development.

47. Under the federal Safe Drinking Water Act, the EPA's maximum contaminant level goal (MCLG) "for lead is zero. EPA has set this level based on the best available science which shows there is no safe level of exposure to lead. The fact that there is no safe level of exposure underscores the fact that any action to reduce exposures can have impacts on lives and livelihoods."¹¹ The inverse of the EPA's statement is equally true: any action to create, increase, or prolong lead exposures can have serious, often irreversible, impacts on lives and livelihoods.

48. Accordingly, both the federal and State of Michigan lead and copper rule establish detailed, mandatory actions with specified deadlines that both the water supplier and EGLE must undertake to actively reduce, prevent, or limit lead contamination after an Action Level Exceedance of lead in municipal drinking water is identified.

49. Under the SDWA, the State is required to order local water suppliers to implement or modify corrosion control treatment, which is a practice of treating water to prevent lead from leaching into it from pipes, when there are known Action Level Exceedances of lead.

¹¹ <https://www.epa.gov/ground-water-and-drinking-water/basic-information-about-lead-drinking-water> (last visited November 16, 2021).

50. An Action Level Exceedance (“ALE”) for lead under the Michigan SDWA occurs when a supplier of water’s 90th percentile number of lead content, based on all the lead sample results taken within the water system during a particular monitoring period, is over 15 parts per billion (ppb).¹² As stated in federal regulations, “[t]he lead action level is exceeded if the concentration of lead in more than 10 percent of tap water samples collected during any monitoring period conducted in accordance with § 141.86 is greater than 0.015 mg/L (i.e., if the ‘90th percentile’ lead level is greater than 0.015 mg/L).” 40 CFR Part 141, Subpart I(c)(1).

The Lead Crisis in Benton Harbor

51. In 2018, Benton Harbor’s testing revealed an Action Level Exceedance (ALE) of lead in the water that well surpassed the established lead action levels under state and federal law and regulation.

52. In tap samples collected between June 1, 2018 and September 30, 2018, the 90th percentile was 22 ppb, well in excess of the action level of 15 ppb.

53. This ALE for the sampling period ending on September 30, 2018 triggered numerous affirmative requirements under state and federal law. Among these requirements were to issue a public advisory, deliver consumer notice of lead and copper results, distribute public education materials, and “correct the problem” by proposing an optimal corrosion control treatment or propose to perform a corrosion control study *by six months after* the end of the monitoring period that revealed an ALE.

54. Mich. Admin. Code R. 325.10604f(2)(e)(i) states that “[t]he supply that exceeds the lead or copper action level shall recommend optimal corrosion control treatment within 6

¹² https://www.michigan.gov/mileadsafe/0,9490,7-392-104591_92796-500553--,00.html (last visited November 16, 2021).

months after the end of the monitoring period during which it exceeds 1 of the action levels.” (emphasis added).

55. Mich. Admin. Code R. 325.10604f(2)(e)(ii) further requires that “[w]ithin 12 months after the end of the monitoring period during which a supply exceeds the lead or copper action level, [EGLE] may require the supply to perform corrosion control studies under subdivision (3)(b) of this rule. If [EGLE] does not require the supply to perform the studies, ***[EGLE] shall specify optimal corrosion control treatment under subdivision (3)(d) of this rule ... within 12 months*** after the end of the monitoring period during which the supply exceeds the lead and copper action level.” *Id.* (emphasis added).

56. In other words, there are two affirmative courses of action that must be conducted when an ALE of lead is indicated.

57. The first option is provided through Subdivision 3(b), which states that “[w]hen required by [EGLE], a small or medium size water supply that exceeds the lead or copper action level shall perform corrosion control studies under subdivision (c) of this subrule to identify optimal corrosion control treatment for the supply.” Mich. Admin. Code R. 325.10604f(3)(b).

58. If the first option is not performed, the second option provides that EGLE ***must*** “specify ***optimal corrosion control treatment under subdivision (3)(d) of this rule ... within 12 months*** after the end of the monitoring period during which the supply exceeds the lead and copper action level.” Mich. Admin. Code R. 325.10604f(2)(e)(ii).

59. Under the second option, EGLE must designate “optimal control treatment” under subsection 3(d), which “shall be [determined] as follows:

- (i) Based on consideration of available information, including, where applicable, studies performed under subdivision (c) of this subrule and a supply’s recommended treatment alternative, the department will either approve the corrosion control treatment option recommended by the supply

or will designate alternative corrosion control treatment *from the treatment specified in subdivision (c)(i) of this subrule*. When designating optimal treatment, *the department shall consider* the effects that additional corrosion control treatment will have on water quality parameters and on other water quality treatment processes.

Mich. Admin. Code R. 325.10604f(3)(d) (emphasis added).

60. Subdivision (c)(i) requires performance of a corrosion control study as follows:

(i) A water supply that performs corrosion control studies *shall evaluate the effectiveness of each of the following treatments* and, if appropriate, combinations of the following treatments to identify the optimal corrosion control treatment for that supply:

(A) Alkalinity and pH adjustment.

(B) Calcium hardness adjustment.

(C) The addition of a phosphate or silicate based corrosion inhibitor at a concentration sufficient to maintain an effective residual concentration in all test tap samples.

Mich. Admin. Code R. 325.10604f(3)(c)(i) (emphasis added).

61. At the time of the initial ALE of lead in 2018, Benton Harbor was not implementing any corrosion control treatment pursuant to the federal or Michigan lead and copper rule.¹³

62. Purportedly to comply with these critical legal requirements, EGLE entered into an Administrative Consent Order (ACO) with Benton Harbor on March 8, 2019. Under the AOC, EGLE ordered Benton Harbor to “[s]ubmit a proposal for optimal corrosion control treatment or a corrosion control study to [EGLE’s Drinking Water and Municipal Assistance Division] DWMAD *no later than April 31, 2019.*”¹⁴ (emphasis added).

¹³ 40 C.F.R. § 141.81(c) (2020) (stating that the “requirement for any small- or medium-size system to implement corrosion control treatment steps in accordance with paragraph (e) of this section (including systems deemed to have optimized corrosion control under paragraph (b)(1) of this section) is triggered whenever any small- or medium-size system exceeds the lead or copper action level.”); Mich. Admin. Code R. 325.10604f(2)(c) (same).

¹⁴ There are only 30 days in April.

63. EGLE also unilaterally directed Benton Harbor to install a commercial polyphosphate corrosion control blend recommended by Elhorn Engineering Company, called Carus 8600. Carus 8600 consisted of 70% orthophosphate and 30% polyphosphate with a target dose of 1.5 milligrams per liter (mg/L). This polyphosphate corrosion control scheme was designed and selected by EGLE.

64. However, EGLE never followed the requirements of Mich. Admin. Code R. 325.10604f(3)(d) or (c)(i) in ordering this treatment.

65. Instead, internal EGLE emails suggest that Elhorn Engineering directly solicited EGLE to choose the Carus 8600 product, and it appears that Elhorn was selected without any public bidding process, as no RFP was issued seeking alternative vendors or corrosion control products. There is no evidence in the public record to support that EGLE considered any options outside of the Carus 8600 product that Elhorn Engineering solicited the State to provide.

66. Internal emails further suggest that EGLE was paying Elhorn Engineering directly for the product and services it delivered to Benton Harbor.

67. The City of Benton Harbor was relying entirely upon EGLE to set up an adequate corrosion control scheme for the city's drinking water system, and EGLE affirmatively took on the task of choosing and ordering this corrosion control treatment. As of the time of the March 8, 2019 ACO, EGLE had taken control over the corrosion control scheme utilized by the Benton Harbor water system.

68. The new corrosion control scheme selected by EGLE was implemented, in coordination with Elhorn Engineering, on or about March 25-26, 2019. Troublingly, the use of Carus 8600 as a corrosion control treatment was criticized by EGLE's own staff because it would not effectively reduce lead contamination in the Benton Harbor public water system. In an email

dated February 21, 2019, Brian Thurston, EGLE's Community Water Supply Section Manager stated that the "attached permit does not show how the consultant is planning to reach [optimal corrosion control treatment] OCCT" and that in his opinion "a higher initial dose of orthophosphate is needed to quickly establish a protective film in the pb service lines." Mr. Thurston expressed that he did not support the permit application for these important reasons. Accordingly, EGLE knew prior to the introduction of any corrosion control into the Benton Harbor system that no optimal corrosion control study had been conducted, and no testing of CARUS 8600 (70-30% blend) was conducted to determine its efficacy prior to its introduction into the Benton Harbor water system.

69. In April 2019, Benton Harbor, through Elhorn Engineering, provided EGLE with a preliminary corrosion control treatment plan and study proposal. It proposed that Elhorn would conduct water quality parameter monitoring and install a minimum of two coupon racks containing mild steel, copper, and lead to test the effectiveness of the Carus 8600 inhibitor. Similar to the study required as a condition of the March 2019 permit, this corrosion control study proposed by Elhorn Engineering did not meet the requirements of the federal or State of Michigan lead and copper rules, in that it only proposed to analyze a single corrosion control treatment—the Carus 8600 blend—at a single dose and did not evaluate the efficacy of other treatments, as required by law.

70. Despite its obvious deficiencies, EGLE authorized the corrosion control study plan without considering other available options or evaluating their efficacy. In fact, internal emails from April 2019 state that the Elhorn Engineering plan was merely a "generic version" used by the company and had no relationship whatsoever to any study or analysis relating to its efficacy or appropriateness in the Benton Harbor system.

71. No optimized corrosion control study has yet been ordered by EGLE that complies with Michigan's lead and copper rule, and EGLE failed to timely designate the Carus 8600 blend, or any other for that matter, as an optimal corrosion control treatment designed for the Benton Harbor system.

72. Despite clear knowledge of actionable and dangerous lead levels in the Benton Harbor municipal water system, and with clear knowledge of the dire human and property consequences that would befall the residents of Benton Harbor (particularly in light of the recent Flint water crisis), EGLE failed to undertake or require these actions and egregiously failed to do so in a timely manner, as required by state and federal law.

73. In fact, the lead levels in the Benton Harbor system only got worse after introduction of EGLE's unilaterally selected and "generic" Carus 8600 corrosion control treatment.

74. Nonetheless, EGLE granted Benton Harbor numerous extensions to the April 31, 2019 deadline to submit a proposal for optimal corrosion control treatment or an optimal corrosion control study, and EGLE repeatedly extended the deadlines for compliance thereafter, without appropriate penalty, enforcement, or urgency.

75. While EGLE delayed and violated its legal duties under the lead and copper rule, the people of Benton Harbor were exposed to dangerous and actionable lead levels that went unremedied.

76. In the January to June 2019 sampling period, Benton Harbor's 90th percentile lead levels increased to 27 parts per billion with a range of results from 0 to 59 parts per billion.

77. As of one year after the first ALE for lead, August 12, 2019, EGLE had not set any acceptable ranges of phosphate or designated an optimal corrosion control treatment.

78. In November of 2019, a concerned organization, the Great Lakes Environmental Law Center (GLELC), sent a letter to EGLE expressing concerns over EGLE's corrosion control plan and notifying EGLE that the law had not been followed in ordering the Carus 8600 corrosion control plan. As stated by the GLELC:

“Elhorn did not take into account EPA guidance or the unique characteristics of Benton Harbor's water supply in providing its optimal corrosion control treatment recommendation. Instead, it provided a ‘generic plan’ to introduce a blended phosphate to the Benton Harbor water system. Despite the EPA cautioning against the use of this corrosion control treatment without careful examination, it was introduced into Benton Harbor's water supply without examining whether alternative corrosion control treatment would be more effective. Similarly, the Study Proposal did not provide for the analysis of the range of corrosion control treatments as required by both the Michigan and federal lead and copper rule. Instead, the Study Proposal appears to have been written to justify the use of the Carus 8600 corrosion inhibitor recommended by Elhorn.”

79. The letter went on to state that:

GLELC “recommends that EGLE immediately stop the ongoing Benton Harbor corrosion control study and ensure that Benton Harbor provides a study plan that is consistent with the federal lead and copper rule, and EPA guidance. Continuing to implement the current study plan continues to divert spending that could be used for an effective corrosion control study. ***Delay of an adequate corrosion control study continues to expose drinking water customers in Benton Harbor to elevated levels of lead and copper that could be mitigated by distribution of filters, bottled water, and/or improved water treatment. These actions should be taken immediately to protect the residents of Benton Harbor.***” (emphasis added).

80. In response, EGLE dismissed the GLELC's clarion call for action and (incorrectly and without evidence) claimed that the Carus 8600 corrosion control treatment was “effectively reducing corrosion rates.”

81. In reality, lead levels in Benton Harbor's drinking water ***increased*** following implementation of the Carus 8600 blend into the system. For the July to December 2019 sampling period, Benton Harbor's lead levels ***again increased*** from 27 to 32 parts per billion with a range of results also increasing from 0 to 59 ppb to 0 to 72 ppb since the preceding sampling period.

82. More than one year after the initial 2018 ALE, EGLE's interventions were followed by significant increases in the lead levels experienced by Benton Harbor water users.

83. Through a February 13, 2020 letter to Benton Harbor, EGLE acknowledged, in a notably understated analysis of the facts, that the Carus 8600 blend "is not achieving desired results quickly enough." EGLE then stated that **"the City is hereby directed to change its current blended phosphate chemical from the 70%/30% ortho/poly-phosphate to a product with a minimum of 90% orthophosphate.** The chemical selected must be ANSI/NSF 60 certified for use in drinking water systems. **The City is also hereby directed to adopt a new treatment rate, such that a minimum of 3.0 mg/L orthophosphate (as phosphate) residual is maintained throughout the distribution system."** (emphasis in original). EGLE ordered Benton Harbor to comply with this directive "not later than February 28, 2020."

84. As of February 11, 2020, an EGLE internal draft of a letter to the City of Benton Harbor from EGLE's Lead & Copper Unit Supervisor Brandon Onan stated that "[t]he above phosphate treatment strategy is intended to provide immediate improvement of corrosion protection in the distribution system, *but without further study it is not certain to be the optimum treatment strategy.*" (emphasis added). Accordingly, EGLE knew that it had thus far failed, and was continuing to fail, to satisfy its obligation under the lead and copper rule to designate an optimal corrosion control.

85. Prior to distribution of the February 13, 2020 letter, EGLE's Surface Water Treatment Specialist Bob London had warned that "we should not bias the direction of the study in the letter." Mr. London noted that Mich. Admin. Code R. 325.10604f "states that several treatment options (pH/alkalinity adjustment, calcium hardness adjustment, and the use of corrosion inhibitors) must be evaluated. The system must also evaluate constraints that might make a

particular treatment option unfeasible. Basically, the sub-rule places the burden of eliminating possible treatment options on the water system.”

86. On February 24, 2020, Benton Harbor’s Water Operator wrote to EGLE to express numerous concerns, including that EGLE’s unilaterally ordered corrosion control scheme, which was not working, “may be venturing into this world of treatment blind to its potential or detriment; **and should not be** just yet.” (emphasis in original). Mr. O’Malley criticized EGLE’s approach, stating that “your order left us quite anxious about what was required and it felt like you wanted us to begin running scared. To us seems not to be good science.”

87. Following his protestations, the State revoked Mr. O’Malley’s certification to operate the city water plant in November 2020. He was later suspended and fired.

88. Benton Harbor’s Mayor made public statements complaining that the State, under emergency management, laid off half of the Benton Harbor Water Department’s staff, then later told the City that more staff was needed. Mayor Muhammad stated: “I was cross-eyed because on the one hand you had a state official deplete the water labor and then another official coming back saying you need to increase it[.]”¹⁵

89. However, despite knowledge of its legal duties, EGLE flaunted legal requirements and instead required a particular type of phosphate-based corrosion inhibitor be implemented, by a single company, with a single specified product, in a specific quantity, even though EGLE had never sent out a formal Request for Proposal (RFP) for an optimal corrosion control study, never obtained an optimal corrosion control study from Benton Harbor, or properly designated an optimal corrosion control for use in the Benton Harbor system, as required by law.

¹⁵ <https://www.freep.com/story/news/local/michigan/2021/11/08/emails-benton-harbor-lead-crisis/6347539001/> (last visited November 19, 2021).

90. Meanwhile, Benton Harbor's system again exceeded the lead action level in the next round of sampling. The January to June 2020 sampling revealed 90th percentile sampling of 23 ppb and an expanding range of results from 0 to 440 ppb of lead in the water.

91. On May 19, 2020, Benton Harbor provided EGLE with a corrosion control study *proposal*, which proposed to offer Elhorn Engineering as the firm to conduct the study with another delayed start date of September 30, 2020. EGLE responded with a June 17, 2020 letter expressing concerns with the proposed corrosion control study and requested a more comprehensive proposal, further delaying the process.

92. In response, on July 28, 2020, Benton Harbor submitted an updated optimal corrosion control study *proposal* to be performed by Elhorn Engineering, which proposed to run for a minimum of 12 months.

93. At EGLE's direction, on August 7, 2020, Benton Harbor and EGLE agreed to an amended Administrative Consent Order (ACO) to the prior March 8, 2019 ACO. This time, the amended ACO ordered Benton Harbor to have a qualified third-party consultant submit a corrosion control optimization study scope and completion schedule *by September 30, 2020*. The prior deadline from the March 2019 ACO required a proposal for optimal corrosion control to be submitted *by April 31, 2019*. EGLE inexplicably extended Benton Harbor's prior deadlines for submitting an optimal corrosion control study on numerous occasions, causing unacceptable delays and prolonging the known Action Level Exceedances of lead in the Benton Harbor system.

94. Meanwhile, the sampling period of July to December 2020 reported 90th percentile lead levels of 24 ppb with a reported range of 0 to 240 ppb of lead—again revealing dangerous lead levels.

95. At some point, it was determined that Elhorn Engineering could not act as the third-party contractor to conduct the optimal corrosion control study, purportedly because they provided the corrosion control products utilized in the Benton Harbor system, and it was apparently believed that this presented a potential conflict of interest.

96. As of March-April 2020, EGLE was still merely soliciting proposals for an optimal corrosion control study, which would take 18 additional months to complete.

97. Despite the ongoing crisis, and instead of requiring a compliant optimal corrosion control study by the September 30, 2020 deadline, which had been previously moved back from April 2019, EGLE entirely shifted course and ordered Benton Harbor to issue a Request for Proposal (RFP) from third party engineering firms (other than Elhorn Engineering) to conduct the long overdue optimal corrosion control study.

98. The RFP was issued on April 19, 2021, and proposals were due by May 13, 2021. Under the RFP, “[t]his study is expected to be substantially completed *within 18 months* upon City award.” (emphasis added).

99. EGLE set and controlled the egregiously delayed optimal corrosion control study timeline.

100. Under the Michigan Lead and Copper Rule, the optimal corrosion control study was required to be completed within 12 months from the end of the monitoring periods that resulted in the first 2018 ALE for lead content. Yet, EGLE’s actions and orders caused this study to be delayed by nearly three years prior to even issuing a formal RFP for a study that would not be completed for 18 months. Based on EGLE’s orders, the vital optimal corrosion control study would not be due until late 2022 at the earliest.

101. These impermissible delays directly contravene EGLE's affirmative legal duties under the Michigan and federal lead and copper rules. Because of EGLE's actions, and assuming there are no additional delays, the RFP process and implementation of an optimal corrosion control treatment plan are unlikely to be completed until 2024.

102. Predictably, the January to June 2021 sampling period reported 90th percentile lead levels of 24 ppb with another increased range of results from 0 to 889 ppg. This was *the sixth consecutive lead action level exceedance*, and, because of EGLE's actions, the process for studying an optimal corrosion control treatment was back at square one.

103. All the while, EGLE knew since at least January 2019 that "callers to the City are being told that the City is delivering 'clean water right to the tap and you should have no trouble drinking it (after flushing)'"'. EGLE's own internal communications further reported that it knew that "communication by the City to its public may not be consistent with the health risks associated with lead exposure."

104. As recently as this year, local residents had been advised to run their water and use cold water for preparing baby formula as measures to mitigate lead poisoning. This horrific messaging was contained in written materials that EGLE received and retained copies.

105. Residents of Benton Harbor literally received state-sanctioned propaganda telling them how to feed lead-contaminated water to their babies.

106. In a grant application to the U.S. E.P.A, Benton Harbor admitted that, "[w]hile the city is required to conduct public advisory and public education each time an ALE occurs, these are not necessarily tailored to residents and may not reach most people."

107. However, despite knowing that Benton Harbor residents have been repeatedly misinformed about the severity of the crisis and justifiably continued to drink the lead-

contaminated water, EGLE refused to issue public statements correcting this known misinformation or issue a statement clarifying that the water in Benton Harbor is unsafe to drink. It also failed to perform the necessary oversight of Benton Harbor's communications to ensure the dissemination of accurate or at the very least unharmful information.

108. On March 26, 2021, EGLE issued a press statement announcing a "Benton Harbor Water Outreach Task Force." However, the press release deceptively omitted the most critical information: that the water in Benton Harbor is not, and has not been, safe to drink and use for numerous household purposes. Instead, the press statement misleadingly touted the corrosion control measures and monitoring activities that were undertaken, which EGLE itself has admitted internally were not working to reduce the amount of lead in the water.

109. In September 2021, a group of 20 Michigan and national organizations filed an emergency petition with the EPA to secure a free source of safe drinking water for Benton Harbor's nearly 10,000 residents, among other requests including full removal of the nearly 6,000 lead service lines delivering water to homes. The petition was filed on behalf of Benton Harbor Community Water Council, Great Lakes Environmental Law Center, NRDC, Flint Rising, People's Water Board Coalition, Michigan Welfare Rights Coalition, Water You Fighting For, Safe Water Engineering, LLC, Highland Park Human Rights Coalition, Michigan Environmental Justice Coalition, Sierra Club Michigan Chapter, Dr. Mona Hanna-Attisha, Clean Water Action, Ecology Center, Freshwater Future, East Michigan Environmental Action Council, Detroit People's Platform, Campaign for Lead Free Water, For Love of Water, and Environmental Transformation Movement of Flint.

110. In October 2021—more than three years after actionable lead levels were identified and well-known internally—the State of Michigan finally issued an advisory warning Benton

Harbor residents to use bottled water for cooking, drinking, brushing teeth, rinsing foods and mixing powdered infant formula. Eight days later, Governor Whitmer signed an executive directive employing what her office called an “all-hands-on-deck” approach to the situation.

111. On October 21, 2021, under questioning by the state House Oversight Committee, EGLE Director Liesl Clark finally relented and admitted that the water in Benton Harbor was not safe to drink, meaning it had not been safe to drink for years.

112. Director Clark was asked: “let’s just talk like normal people, here. It’s a normal question. Is the water in Benton Harbor safe to drink or not?” She responded “no, it’s not...People should be drinking bottled water.”

113. Throughout the Benton Harbor lead crisis, Defendant-Director Oswald was informed of the ALE’s of lead in the water and the underlying communications relating to the lead contamination crisis, and he maintained consistent oversight and direction of EGLE’s policies relating to corrosion control treatments and enforcement relating to the ongoing lead crisis. Each of EGLE’s actions alleged herein were under Mr. Oswald’s direction and control and within his personal knowledge, and he was included in hundreds of internal communications that culminated in his Division’s official acts.

114. On November 2, 2021, the U.S. EPA issued a Unilateral Administrative Order under the federal Safe Drinking Water Act to the City of Benton Harbor based on violations and deficiencies found during a joint federal-state inspection of the water system, setting out steps necessary for Benton Harbor to bring its water system into compliance to assure proper operations and protect residents from exposure to lead. But all of this came far too late and well after the State’s actions made the lead-in-water problem worse and prolonged the unacceptable exposure

that Benton Harbor residents had to devastating quantities of lead. And, still, no sampling period has yet to reveal led levels below actionable level.

115. Benton Harbor water users are now entering their fourth year of documented actionable lead levels, and there is no end in sight.

116. Now, in addition to being exposed to and consuming lead poisoned water at actionable levels for years, Benton Harbor water users are unable to use their properties for the most ordinary of purposes. Plaintiffs and the putative class cannot use the water out of their taps to drink, bathe, cook, clean food, or prepare baby formula, among other necessary activities. Further, Benton Harbor residents are required to spend countless hours waiting in line and collecting cases of bottled water for the most basic human necessities, like drinking, cooking, preparing baby formula, cleaning, brushing their teeth, and even bathing.

117. The water crisis in Benton Harbor is an unspeakable and unacceptable tragedy, particularly in the most water-rich state in the United States.

118. EGLE's affirmative, intentional actions and violations of their mandatory legal duties to protect Benton Harbor residents have caused Plaintiffs' properties to be taken without just compensation and their constitutional rights to be repeatedly invaded by toxic water that has caused severe and irreversible harm.

119. Incredibly, Plaintiffs and the putative class have continued to be charged significant, and reportedly increasing, expenses for water that was poisoning them, and for which they are now unable to use.

**STATEMENT OF FACTS REGARDING NAMED PLAINTIFFS AND PROPOSED
CLASS REPRESENTATIVES**

Plaintiff Angel Guyton

120. Plaintiff Angel Guyton is a resident of Benton Harbor. She rents her home and is a paying customer of Benton Harbor's municipal water system.

121. Ms. Guyton is mother and next of friend to three minor children who live with her, G.S., G.A., and G.D, ages 14, 12, and 6, respectively.

122. Ms. Guyton and her children have consumed lead contaminated water from the Benton Harbor water system through a variety of ordinary uses including, but not limited to, drinking, washing, bathing, personal care and hygiene, cooking, food preparation and cleanup.

123. Ms. Guyton and her children did not know they were consuming lead contaminated water and did not consent to having their home or bodies invaded by lead contaminated water.

124. As a proximate result of Defendants' actions as set forth herein, Ms. Guyton and/or her children have suffered serious physical and emotional injuries including, but not limited to, skin rashes and blemishes, severe emotional and psychological distress, and other injuries to be proven at trial.

Plaintiff Katie Lynn Reykjalín

125. Plaintiff Katie Lynn Reykjalín is a resident of Benton Harbor. She owns her home and is a paying customer of Benton Harbor's municipal water system.

126. Ms. Reykjalín is the mother and next of friend to one minor child who lives with her, U.N.P., age 1.

127. Ms. Reykjalín and her child have consumed lead contaminated water from the Benton Harbor water system through a variety of ordinary uses including, but not limited to, drinking, washing, bathing, personal care and hygiene, cooking, food preparation and cleanup.

128. Ms. Reykjalin and her child did not know they were consuming lead contaminated water and did not consent to having their home or bodies invaded by lead contaminated water.

129. As a proximate result of Defendants' actions as set forth herein, Ms. Reykjalin and/or her child have suffered serious physical and emotional injuries including, but not limited to, severe emotional and psychological distress and other injuries to be proven at trial.

130. Ms. Reykjalin has further experienced property damage in the form of irreparably damaged pipes and plumbing caused by the contaminated water and/or additives, which has resulted in a substantial loss in the value of her property.

Plaintiff Jennifer Janssen-Rogers

131. Plaintiff Jennifer Janssen-Rogers is a resident of Benton Harbor. She owns her home and is a paying customer of Benton Harbor's municipal water system.

132. Ms. Janssen-Rogers has consumed lead contaminated water from the Benton Harbor water system through a variety of ordinary uses including, but not limited to, drinking, washing, bathing, personal care and hygiene, cooking, food preparation and cleanup.

133. In fall 2018, the water in Ms. Janssen-Rogers' home was tested, which revealed lead at a level exceeding regulatory thresholds.

134. Ms. Janssen-Rogers did not know that she was consuming lead contaminated water and she did not consent to having her home or body invaded by lead contaminated water.

135. As a proximate result of Defendants' actions as set forth herein, Ms. Janssen-Rogers has suffered serious physical and emotional injuries including, but not limited to, severe emotional and psychological distress and other injuries to be proven at trial.

136. Ms. Janssen-Rogers has further experienced property damage in the form of substantial loss in the value of her property.

Plaintiff Brooke Rosenbaum

137. Plaintiff Brooke Rosenbaum owns and operates a business in Benton Harbor. She owns the building in which her business is located and she is a paying customer of Benton Harbor's municipal water system.

138. Ms. Rosenbaum has consumed lead contaminated water from the Benton Harbor water system through a variety of ordinary uses including, but not limited to, drinking, washing, personal sanitation and hygiene, cooking, food preparation and cleanup.

139. Ms. Rosenbaum did not know she was consuming lead contaminated water and did not consent to having her property or body invaded by lead contaminated water.

140. As a proximate result of Defendants' actions as set forth herein, Ms. Rosenbaum has suffered serious physical and emotional injuries including, but not limited to, severe emotional and psychological distress and other injuries to be proven at trial.

141. Ms. Rosenbaum has further experienced property damage in the form of irreparably damaged pipes and plumbing caused by the contaminated water and/or additives, which has resulted in a substantial loss in the value of her property.

STATEMENT OF FACTS REGARDING PLAINTIFFS' INJURY AND DAMAGES

142. Since becoming aware of the contamination, Plaintiffs' use of their properties has been significantly limited and/or precluded. Affected practices include, but are not limited to, the following:

- a. Drinking or otherwise consuming water from their faucets;
- b. Washing, preparing food, cooking, and cleaning;
- c. Showering, bathing, teeth brushing, and other personal care and hygiene; and
- d. Utilizing various appliances such as washing machines, dish-washers, and water/ice dispensers.

143. Plaintiffs and the putative class have had their property taken from them without just compensation and had their constitutional right to bodily integrity repeatedly invaded because of Defendants' intentional, deliberately indifferent, and conscience-shocking actions. Plaintiffs hereby seek all damages available under law for the injuries alleged herein, including but not limited to:

- a. High levels of lead in their bloodstream, brains, bones, and other organs;
- b. Skin lesions and hair loss;
- c. Neurological symptoms and disorders;
- d. Chronic and acute abdominal and stomach discomfort;
- e. Other significant medical injuries;
- f. Medical monitoring;
- g. Severe emotional and psychological distress;
- h. Diminution of property values;
- i. Physical property damage and/or destruction;
- j. Loss of use and enjoyment of property;
- k. Loss of exclusive possession of property;
- l. Economic losses resulting from damages to real and personal property;
- m. Consequential damages;
- n. Injunctive relief;
- o. Punitive damages; and
- p. Other damages that may be available under law and/or determined through discovery.

CLASS ALLEGATIONS

144. Plaintiffs bring this action on behalf of all others similarly situated pursuant to Mich. Ct. R. 3.501.

145. Plaintiffs seek to represent a class preliminarily defined as “all owner-occupants and renters of residential or commercial properties serviced by Benton Harbor’s municipal water system.”

Expressly excluded from this class are:

- a. All persons or entities who have individually been named as plaintiffs in any other litigation against the State of Michigan or any of its departments arising out of the acts alleged herein;
- b. All persons who are employees, directors, officers, or agents of Defendants and were involved in the actions alleged herein;
- c. Governmental entities; and
- d. The Court, the Court’s immediate family, and the Court staff.

146. Upon information and belief, there are many thousands of Benton Harbor water users, and the class is sufficiently numerous that joinder of all members would be impracticable. EGLE’s own internal records indicate that the Benton Harbor system services 2,963 residential accounts with an average household size of 2.77 persons per household, and services 8,208 residents in total. Accordingly, the number of class members is sufficiently numerous to make class action status the most practical method for Plaintiffs to secure redress for the injuries sustained and class-wide equitable relief.

147. There are numerous questions of law and fact raised by the named Plaintiffs that are common to all members of the putative class. Such questions include, by way of illustration and without limitation:

- a. The extent to which Benton Harbor’s water supply was contaminated with lead;

- b. The acts of Defendants that caused Plaintiffs and the putative class to be exposed to lead-contaminated drinking water;
- c. The fate and transport of lead migration into the homes of Plaintiffs and the putative class;
- d. The harms and impacts imposed upon Plaintiffs and the class by their exposure to lead-contaminated water;
- e. Whether Defendants' acts were intentional and/or made with deliberate indifference;
- f. Whether Defendants' acts were an abuse of legitimate governmental authority;
- g. Whether Defendants' acts were unlawful and/or unconstitutional;
- h. Whether Defendants' acts were directed at the properties of Plaintiffs and the putative class;
- i. Whether Defendants' affirmative acts caused Plaintiffs and the putative class to be exposed to lead-contaminated drinking water;
- j. Whether Defendant acted with objective and/or subjective knowledge of the harm that was likely to result from those acts;
- k. Whether the harms allegedly suffered by Plaintiffs and the putative class were foreseeable; and
- l. The proper measure of damages experienced by Plaintiffs and the putative class.

148. The claims of the named Plaintiffs are typical of the claims of the absent class members. The harms suffered by the named Plaintiffs are the same as those of the Class and they are pursued under the same legal theories as are applicable to the Class.

149. Plaintiffs will fairly and adequately protect the interests of the absent class members and have no conflicts with the Class with respect to the allegations in this complaint.

150. Plaintiffs have retained counsel with substantial experience related to the claims in this lawsuit. Plaintiffs' Counsel has represented certified classes in numerous cases involving

environmental contamination, including class action water contamination cases, and claims involving complex hydrological issues and problems with municipal infrastructure.

151. Plaintiffs' counsel has investigated the allegations in the complaint and will commit the appropriate resources to representing Plaintiffs and the Class.

152. The common questions of law and fact predominate over questions affecting only individual members.

153. The maintenance of a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice, while protecting the rights of the putative class.

Count I
Michigan Constitution, Article 1 § 17
Substantive Due Process – Bodily Integrity
All Plaintiffs against all Defendants

154. The due process clause of Article 1, § 17 of the Michigan Constitution provides that the State may not deprive a person of life, liberty or property without due process of law. The due process clause of Article 1, § 17 of the Michigan Constitution includes an implied right to bodily integrity.

155. The Michigan Constitution is a limitation on the plenary power of government, and its provisions are paramount.

156. Defendants, acting through the Michigan Department of Environment, Great Lakes, and Energy (EGLE) and EGLE's Drinking Water and Environmental Health Division (DWEHD) and its official policymakers, all acting in their official capacities and pursuant to established customs, policies, and/or practices, violated Plaintiffs' and the putative class' right to bodily integrity, in that:

- a. Defendants had a duty to protect Plaintiffs and the putative class members from a foreseeable risk of harm from lead-contaminated water;
- b. Defendants knew, and should have known, of the serious medical risks associated with exposure to lead-contaminated water;
- c. Defendants knew, and should have known, of the serious risks of property damages, including diminution of property values and loss of ordinary use and enjoyment of private property, associated with lead-contaminated water physically invading private property through municipal and private service lines;
- d. Through affirmative actions, and with deliberate indifference to the known consequences of such actions, Defendants failed to protect Plaintiffs and the putative class from known risks associated with exposure to lead-contaminated water; and
- e. Plaintiffs and the putative class suffered bodily harm and property injuries as a result of their exposure to lead-contaminated water.

157. Plaintiffs and the putative class, as Benton Harbor municipal water users, were foreseeable victims of the decisions to repeatedly order ineffective corrosion control treatments that Defendants knew were ineffective and unlikely to be effective to mitigate the actionable lead content flowing through the municipal water system and directly into their homes and bodies.

158. Defendants, acting through the Michigan Department of Environment, Great Lakes, and Energy (EGLE) and its official policymakers, all acting in their official capacities and pursuant to customs, policies, and/or practices, deliberately exposed Plaintiffs and the putative class to dangerous, unsafe, and/or inadequately treated municipal water that was contaminated with lead, despite subjective and objective knowledge that such exposure would result in widespread and permanent damage to person and property, including through irreversible lead poisoning of children and other vulnerable persons.

159. Defendants intentionally and unilaterally ordered knowingly inadequate corrosion control treatments to implemented and continued, with full knowledge (and multiple warnings) that such treatments were not working, would continue to be ineffective to mitigate the known

risk, and that Benton Harbor water users would continue to be exposed to actionable levels of lead in water that were certain to result in substantial harm to person and property.

160. At the same time, Defendants knew that the public was being materially misled regarding the risks of consuming Benton Harbor’s lead-contaminated water but continued to order that the contaminated water be inadequately treated and transported into the homes and properties of Plaintiffs and the putative class. Defendants further failed to correct the misinformation by refusing to inform the public about the dangers of drinking and using water from Benton Harbor’s municipal system and by affirmatively making, and refusing to correct, materially misleading statements and omissions that caused Plaintiffs and the putative class to continue using the water for ordinary household purposes, despite knowing that the water was not safe for such purposes. In fact, it was not until the fall of 2021 that Defendants finally admitted that the water was not safe to drink or use for many ordinary household purposes.

161. Defendants’ affirmative actions and decisions, which violated both the Michigan and federal lead and copper rules, were an arbitrary and abusive use of otherwise legitimate governmental authority and deprived Plaintiffs and the putative class of clean and safe water, pursuant to policies, practices, and/or customs of the State of Michigan that caused, increased, and/or prolonged the risk of harm to Plaintiffs and the putative class.

162. Defendant’s conduct was culpable and egregious in the extreme and shocks the conscience. Defendants had time—indeed years—for deliberation in their decisions to expose, and continue to expose, Benton Harbor water users to toxic water, and their decisions to do so were made with deliberate indifference to the known serious medical and property-related risks that the knowingly contaminated water posed to Plaintiffs and the putative class. “When such extended opportunities to do better are teamed with protracted failure to even care, indifference is truly

shocking.” *Mays v. Governor of Mich.*, 506 Mich 157, 194 (Mich 2020) (quoting *Sacramento Co v Lewis*, 523 U.S. 833, 853; 118 S. Ct. 1708; 140 L. Ed. 2d 1043 (1998)).

163. Plaintiffs did not consent to the invasion of lead-contaminated water into their bodies or properties.

164. Defendants knew, and were warned on numerous occasions, that the unilateral corrosion control methods that it ordered were inadequate, ineffective, and likely increasing the risk of toxic water entering into Plaintiffs’ bodies and property.

165. Defendants further knew of, and made, numerous materially false and misleading statements regarding the safety of the water being provided through the Benton Harbor municipal water system, yet concealed and/or failed to correct this knowingly false information by informing Plaintiffs and the putative class that the Benton Harbor water was contaminated with lead and was unsafe to drink and use for numerous ordinary purposes.

166. It is well-established that “there is no obviously legitimate governmental objective in poisoning citizens with lead-contaminated water.” *Mays v. Governor of Mich.*, 506 Mich 157, 193 (Mich 2020).

167. At all times, Defendants acted under color of law, in their official capacities and pursuant to the customs, policies, and/or practices of the State of Michigan.

168. Governmental immunity does not bar Plaintiffs’ claims, which arise from Defendants’ policies, practices, and customs that violated a well-established right conferred by the Michigan Constitution.

169. As a direct and proximate result of the unconstitutional acts of Defendants, as alleged in the Complaint, Plaintiffs and the putative class have experienced, and will continue to experience into the future, serious bodily injuries from ingesting lead-contaminated water and

substantial economic losses, including but not limited to medical expenses, educational expenses, and lost wages.

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

171. Plaintiffs and the putative class have further experienced property damage to their homes in the nature of lost property values, interference with the reasonable use and enjoyment of property, deprivation of exclusive possession of private property, and economic damages to remediate permanent damage caused by the use of corrosive, lead contaminated water without property anti-corrosive treatment.

Count II
Michigan Constitution, Article 10 § 2
Unconstitutional Taking of Property
All Plaintiffs against all Defendants

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

173. This claim is brought by Plaintiff property owner-occupants and renters who had water service lines susceptible to damage caused by the physical invasion of corrosive, lead-contaminated water into their properties, which were rendered unsafe and unfit for ordinary use, even after Benton Harbor residents were advised to stop drinking the lead-contaminated water for ordinary purposes. The physical invasion of lead-contaminated water into Plaintiffs’ property has yet to cease and is likely to continue, even if the water eventually becomes free of lead contamination because of the repeated leaching of lead from the municipal service lines into the private service lines and appurtenances attached to Plaintiffs’ properties, causing physical damage

thereto and the need for physical improvements to Plaintiffs' properties to mitigate the risk moving forward.

174. The actions of the Defendants were a substantial cause of the decline of Plaintiffs' and the putative class members' property values and ordinary uses of their property, in that Defendants' actions substantially impaired the value, marketability, and ordinary use of Plaintiffs' properties. Since the public has become aware of the Benton Harbor water crisis, lenders have, and will increasingly be, hesitant to authorize loans for the purchase and/or improvement of realty within Benton Harbor, and property values have, and will continue to be, impaired as a result.

175. Defendants deliberately, unilaterally, and consciously ordered, and continued to order, knowingly ineffective and unsafe phosphate-based corrosion control treatments that knowingly caused lead-contaminated water to physically invade their properties and deteriorate, destroy, and/or render useless Plaintiffs' water service lines, thereby rendering them unsafe for present and future use for ordinary purposes and relatively diminished in value.

176. Defendants took affirmative actions directly aimed at the properties of Plaintiffs and the putative class through the water services lines to their properties, rendering those properties unsafe and unusable for ordinary purposes due to the repeated, and continuing, physical invasion of lead-contaminated water, which remains and will continue to remain, even if the invasion of lead-contaminated water eventually ceases.

177. Defendants abused their legitimate governmental authority by repeatedly violating and intentionally disregarding the Michigan and federal lead and copper rules and regulations, despite both objective and subjective knowledge that their intentional conduct was unlawful, dangerous, and likely to cause substantial damages to Plaintiffs' property.

178. As a result of Defendants' intentional and affirmative conduct, Plaintiffs and the putative class suffered special injuries that are different in kind, and not merely in degree, from the harm suffered by similarly situated municipal water users.

RELIEF REQUESTED

For the reasons stated above, Plaintiffs respectfully request the following relief:

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

Dated: December 29, 2021

Respectfully Submitted,

/s/ Nicholas A. Coulson
LIDDLE SHEETS COULSON P.C.
STEVEN D. LIDDLE (P45110)
NICHOLAS A. COULSON (P78001)
MATTHEW Z. ROBB (P81665)
Attorneys for Plaintiffs
975 E. Jefferson Ave.
Detroit, Michigan 48207
(313) 392-0015

DESIGNATION OF INSTITUTION OF THE STATE INVOLVED IN CLAIM

Pursuant to MCL § 600.6431(1), Plaintiffs designate the following institutions or agencies of the state “involved in connection” with this claim:

The Michigan Department of Environment, Great Lakes, and Energy (“EGLE”)

***Eric Oswald, in his official capacity as EGLE’s Director of Drinking Water and
Environmental Health Division (DWEHD)***

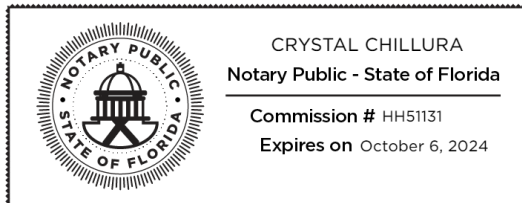
**SIGNATURE AND VERIFICATION OF COMPLAINT BY PLAINTIFF
ANGEL GUYTON**

Pursuant to MCL § 600.6431, Plaintiff Angel Guyton hereby signs and verifies this
Complaint before an office authorized to administer oaths:

Signed: Angel Lynette Guyton
Angel Guyton

CERTIFICATION OF ACKNOWLEDGEMENT BY NOTARY PUBLIC

STATE OF FLORIDA COUNTY OF PASCO
The foregoing was signed and verified before me this 23rd day of December, 2021,
CC acknowledged
by Angel Guyton. ID Provided Michigan ID Card



s/ Crystal Chillura
Name: Crystal Chillura
County, State: Pasco County, Florida
My Commission Expires: 10/06/2024
(Notarized using electronic/remote technology)

Notarized online using audio-video communication

12/23/2021

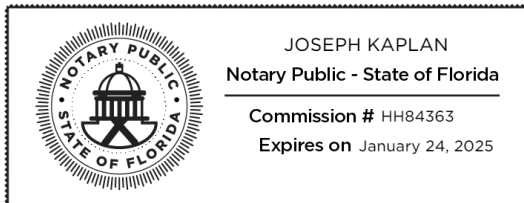
**SIGNATURE AND VERIFICATION OF COMPLAINT BY PLAINTIFF
KATIE LYNN REYKJALIN**

Pursuant to MCL § 600.6431, Plaintiff Katie Lynn Reykjalin hereby signs and verifies
this Complaint before an office authorized to administer oaths:

Signed: Katie Lynn Reykjalin
Katie Lynn Reykjalin

CERTIFICATION OF ACKNOWLEDGEMENT BY NOTARY PUBLIC

The foregoing was signed and verified before me this 21st day of December, 2021,
by Katie Lynn Reykjalin. produced for identification her ID DRIVER LICENSE



s/ Joseph Kaplan Online Notary
Name: Joseph Kaplan
County, State: Volusia Florida
My Commission Expires: 01/24/2025
(Notarized using electronic/remote technology)
Notarized online using audio-video communication

**SIGNATURE AND VERIFICATION OF COMPLAINT BY PLAINTIFF
JENNIFER JANSSEN-ROGERS**

Pursuant to MCL § 600.6431, Plaintiff Jennifer Janssen-Rogers hereby signs and verifies
this Complaint before an office authorized to administer oaths:

Signed: *Jennifer Janssen-Rogers*
Jennifer Janssen-Rogers

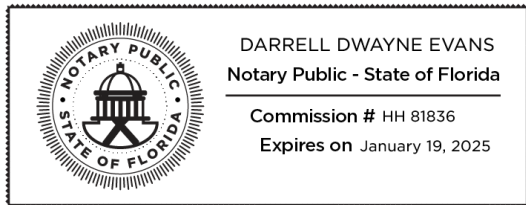
CERTIFICATION OF ACKNOWLEDGEMENT BY NOTARY PUBLIC

STATE OF FLORIDA COUNTY OF SAINT LUCIE

The foregoing was signed and verified before me this 21st day of December, 2021,

by Jennifer Janssen-Rogers.

Form of ID Produced: Driver's License



s/ *Darrell Dwayne Evans*

Name: Darrell Dwayne Evans

County, State: Saint Lucie Florida

My Commission Expires: 01/19/2025

(Notarized using electronic/remote technology)

Notarized online using audio-video communication


**SIGNATURE AND VERIFICATION OF COMPLAINT BY PLAINTIFF
BROOKE ROSENBAUM**

Pursuant to MCL § 600.6431, Plaintiff Brooke Rosenbaum hereby signs and verifies this
Complaint before an office authorized to administer oaths:

Signed: Brooke Marti-Warner Rosenbaum
Brooke Rosenbaum

CERTIFICATION OF ACKNOWLEDGEMENT BY NOTARY PUBLIC

The foregoing was signed and verified before me this 21st day of December, 2021,
by Brooke Rosenbaum.

s/  Notary Public, State of Texas
Name: Roosevelt Flahnma
County, State: Harris Texas
My Commission Expires: 10/12/2024
(Notarized using electronic/remote technology)

Notarized online using audio-video communication

