

**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

Marble, et al.,

No. 5:17-cv-12942-JEL-MKM

Plaintiffs

v.

Snyder, et al.,

Defendants

**PLAINTIFFS' AMENDED SHORT FORM
COMPLAINT AND JURY DEMAND**

Plaintiff(s) incorporate by reference Amended Master Complaint (ECF No. 185-2). The following Short Form Complaint, when read in conjunction with its **Exhibit A** (attached hereto), which is incorporated herein, encompasses Plaintiff(s)' claims.

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]:

- ☒ McLaren Hospital
- ☒ Governor Richard D. Snyder
- ☒ The City of Flint, a municipal corporation
- ☐ Receivership Transition Advisory Board
- ☒ Darnell Earley
- ☒ Howard Croft
- ☒ Michael Glasgow
- ☒ Gerald Ambrose
- ☒ Jeff Wright
- ☒ Edward Kurtz
- ☒ Dayne Walling
- ☒ Daugherty Johnson
- ☒ Liane Shekter-Smith
- ☒ Daniel Wyant

- ☒ Stephen Busch
- ☒ Patrick Cook
- ☒ Michael Prysby
- ☒ Bradley Wurfel
- ☒ Eden Wells
- ☒ Nick Lyon
- ☐ Nancy Peeler
- ☐ Robert Scott
- ☐ Adam Rosenthal
- ☒ Andy Dillon
- ☒ Lockwood Andrews & Newnam, P.C.
- ☒ Lockwood Andrews & Newnam, 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 their individual and official capacities, partially outlined in the Master Complaint. They are named jointly and severally.

II. PLAINTIFFS

3. Plaintiff(s): LaShema Marble, as personal representative for the Estates of Bertie Marble and Roy Marble Jr., Roy Marble Sr., Jeron Marble, and Theresa Marble.

4. If brought on behalf of Plaintiff by another person, capacity (*i.e.*, administrator, executor, guardian, conservator, etc.): See #3 above

5. Plaintiffs' State of Residence: Michigan

III. **FLINT WATER EXPOSURE**

6. In this action the principal person injury claim is based on the Legionella exposure of Bertie Marble at McLaren Hospital in March, 2015. Thus *residency* in Flint is irrelevant to this particular Complaint.

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)

The individually named Plaintiffs all sustained the following elements of pain and suffering and emotional injury:

- a. The loss of the love society, services, and companionship of their wife and mother Bertie Marble;
- b. As well, they were all the victims of intentional infliction of emotional damage, in that the true cause (*legionella*) of the death of their loved-one (Bertie Marble) was intentionally and/or recklessly concealed from them, thereby preventing them from accurately knowing and understanding why their mother and wife suffered and died;
- c. The Estate of Bertie Marble sustained Bertie Marble's conscious pain and suffering that resulted from her *legionella* based disease and the emotional anguish that she suffered prior to and leading up to her death – not to mention the emotional pain inflicted by the Defendants' intentional concealment of the *legionella*;
- d. At the time that Bertie Marble contracted the *legionella* at McLaren Hospital, her son Roy Marble Jr. was in the final stages of cancer. The loss of his mother and the uncertainty of the cause of her death made the final months and days of his life all that more agonizing and painful;
- e. Injuries related to the violations of Bertie Marble's constitutional rights to bodily integrity, property and liberty interests, and deprivation of due process;
- f. Injuries related to the violations of Bertie Marble's fundamental rights pursuant to the Michigan Elliott Larsen Civil Rights Act.

- ☐ 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 Discrimination
- ☒ Count IV: 42 U.S.C. §1983 – 5th and 14th Amendments, Equal Protection of the Law – Wealth Based Discrimination
- ☒ 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: Breach of Contract
- ☐ Count VIII: Breach of Implied Warranty
- ☐ Count IX: Nuisance
- ☐ Count X: Trespass
- ☐ Count XI: Unjust Enrichment
- ☒ Count XII: Gross Negligence
- ☒ Count XIII: Intentional Infliction of Emotional Distress

- ☐ Count XIV: Negligent Infliction of Emotional Distress
- ☒ Count XV: Punitive Damages
- ☒ Count XVI: Professional Negligence (LAN PC, LAN Inc. and LAD)
- ☐ Count XVII: Professional Negligence (Rowe)
- ☒ Count XVIII: Professional Negligence (Veolia LLC, Veolia Inc., Veolia Water and Veolia S.A.)
- ☐ Count XIX: 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 XX: Violation of Safe Water Drinking Act – Notification Requirements (City of Flint and Richard D. Snyder)

- ☐ (Required if alleging Violations of Safe Water Drinking Act)
Notice of Claim filed on: _____
(mm/dd/yyyy).
- ☐ Count XXI: Violation of Safe Water Drinking Act – Requirement to Operate Optimal Corrosion Control (City of Flint and Richard D. Snyder)
 - ☐ (Required if alleging Violations of Safe Water Drinking Act)
Notice of Claim filed on: _____
(mm/dd/yyyy).
- ☐ Count XXII: Violation of the Comprehensive Environmental, Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601
- ☐ Count XXIII: Others [Specify Below]

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.

a. Since the “Master Long Form Complaint” fails to reference Defendant *McLaren Regional Medical Center*, these Plaintiffs rely on the allegations contained in **EXHIBIT A**, attached hereto.

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 Plaintiffs' response to #11, herein above and **EXHIBIT A**, attached hereto..

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

McLaren Regional Medical Center is sued for reasons set forth in #s 11 and 14 herein. The corporate identity of Defendant McLaren is Michigan based, Genesee County. See as well, **EXHIBIT A**, attached hereto. As well, Plaintiffs herein assert claims against Defendant McLaren as follows:

- a. Conspiracy with public officials to violate these Plaintiffs' constitutional rights to substantive due process (*bodily integrity* and *state created danger*), as secured by the 5th and 14th Amendments to the U.S. Constitution, in violation of 42 U.S.C. Sec. 1983;
- b. Conspiracy with public officials to violate these Plaintiffs' constitutional rights equal protection, as secured by the 14th Amendment to the U.S. Constitution, in violation of 42 U.S.C. Sec. 1983;
- c. Conspiracy with public officials, based on racial animus, to violate these Plaintiffs' constitutional rights to due process and equal protection, all in violation of 42 U.S.C. Sec. 1985;

- d. Intentional infliction of emotional distress and violation of the Michigan Elliott Larsen Civil rights act, wherein both claims are invoked pursuant to this Court's supplemental Jurisdiction.

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 response to Paragraph See above, and those facts set forth in paragraphs 2, 6-9 of their separate complaint,

See **EXHIBIT A**, attached hereto.

VI. AMENDMENTS

15. *Prior* to the discovery and recognition of the increased presence of *legionella* in the water delivered from the Flint River to residences, businesses, and institutions in the City of Flint, each of the public official Defendants had agreed that they would:

- a. City of Flint Defendants, Emergency Managers (including Defendant Shekter-Smith), Wright, Snyder and Dillon, and MDEQ Defendants – undertake to provide water to the City of Flint that they knew to be dangerous and poisoned;
- b. As to all public official Defendants – to conceal from the public and thereby endanger the public, and in particular the Plaintiffs herein, the threat and danger posed by the water, which had been made dangerous due to the actions of Defendants set forth above.

16. This conspiracy was effected, among other means, by:

- a. actions and statements, asserting the safety of the water that were known and never corrected by the other Defendants who were aware of these statements, but refused to correct and/or contradict them;
- b. explicit agreement to make such statements and not correct and/or contradict them.

17. As described above, this conspiracy was directed at violating the rights of the People of Flint and the users of its water, including decedent Bertie Marble, to bodily integrity, and thereby to due process of law, as secured by the Fifth and Fourteenth Amendments to the United States Constitution, and by The Michigan Constitution, Article I § 17.

18. Once these Defendants agreed to undertake these acts they assumed joint responsibility for the actions of each of them in furtherance of this conspiracy.

19. Once the increased presence of *Legionella* was discovered, shortly after the water source was changed from the DWSD to the Flint River, as a part of the conspiracy, it was evident that to allow this discovery to be known by the public would disclose the dangerous, indeed lethal, consequences of Defendants actions, as referenced in Paragraph 15 above.

20. The early manifestations and evidence of *legionella* became indisputable at McLaren Hospital, where an alarming number of patients were infected by it.

21. As a consequence, the public official Defendants, acting both individually and through the agency of the conspiracy, instructed, permitted, and agreed that Defendant McLaren would conceal the notable increase in cases of Legionnaires Disease, so as to hide the dangerous nature of the public water in Flint from the public and from the Plaintiffs herein.

22. Defendant McLaren agreed that it would conceal the outbreak of Legionnaires from the public and from its patients including Bertie Marble and her

family, although McLaren, acting through its agents and employees knew that Mrs, Marble had acquired a *legionella* infection while and patient at McLaren and had subsequently died of it while a patient there.

23. In furtherance of this agreement between the public official Defendants and Defendant McLaren, McLaren undertook and accomplished the following:

a. Participated in Bertie Marble to come into Flint for treatment at McLaren Hospital and acquiring a *legionella* infection that resulted in her death; and

b. In furtherance of the aforementioned conspiracy, although McLaren, acting through its agents and employees, believed that the cause of Bertie Marble's death was pneumonia due to a *legionella* infection, it concealed this from her husband and children, Plaintiffs herein and thereby caused them not to seek and autopsy which would have exposed the true cause of death. As a result, the Plaintiffs were forever prevented from knowing the true cause of the death of their beloved wife and mother and forced to live forever with uncertainty of those causes, reasons and circumstances. These actions by Defendants thus constituted an assault on the well-being, emotional and psychological, indeed, the very personhood of these Plaintiffs.

22. The purpose of this concealment was to protect these public official Defendants from public disclosure as persons who poisoned the people of Flint (and users of Flint water) and killed some of them, including Bertie Marble, Plaintiffs' decedent herein.

23. As participants in the aforementioned conspiracy, Defendant McLaren,

and its agents and employees, were private participants in a conspiracy with public officials and thereby acted under color of law to deprive these Plaintiffs of their rights secured by the Constitution of the United States and the Constitution of Michigan.

24. See also, **EXHIBIT A**, attached hereto.

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.

Goodman Hurwitz & James, P.C.

By: /s/ William H. Goodman (P14173)
Julie H. Hurwitz (P34720)
Attorneys for Plaintiffs
1394 E. Jefferson Ave
Detroit MI 48207
Tel: (313) 567-6170
bgoodman@goodmanhurwitz.com
jhurwitz@goodmanhurtwitz.com

Dated: September 9, 2019

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was filed with the U.S. District Court through the ECF filing system and that all parties to the above cause was served via the ECF filing system on September 9, 2019.

/s/ Laurel O. Seale