

No. 16-1092

IN THE
Supreme Court of the United States

LOCKWOOD, ANDREWS & NEWNAM, P.C., *et al.*,

Petitioners,

v.

JENNIFER MASON, *et al.*,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit**

PETITIONERS' REPLY BRIEF

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PETITIONERS' REPLY BRIEF

Respondents concede, as they must, that the decision below creates a circuit split concerning CAFA's local controversy exception. Respondents claim that the split on the first question presented is narrow, but their view is contradicted by both the panel majority and the dissent—and by every other court to address the question. Faced with a universally acknowledged circuit split, Respondents conjure up a vehicle problem that is not only novel but nonexistent.

To avoid review of the second question presented, Respondents resort to mischaracterization. They claim that local defendant LAN P.C. was correctly held to be “significant” based on allegations that it “was responsible ‘to perform quality control.’” But Respondents’ complaint alleges only that “LAN”—an acronym that lumps together *both* local and diverse defendants—failed to provide quality control. The case therefore squarely presents the very issue meriting this Court’s review: whether such undifferentiated allegations suffice. Respondents do not deny that they would in some circuits but not in others.

At bottom, even if this class action is local “[i]n [some] colloquial sense * * * , it is not local in the way Congress contemplated in CAFA.” *Davenport v. Lockwood, Andrews & Newnam, Inc.*, No. 17-1200, 2017 WL 1457945, at *4 (6th Cir. Apr. 25, 2017). Like other “class actions filed surrounding the Flint water crisis[,]” this one “will have long-lasting implications for interstate commerce.” *Ibid.* The Sixth Circuit nonetheless sent this case back to state court. In doing so, it created national disunity on

two threshold legal questions—recognized by the Sixth Circuit itself as being both “important” and “recurr[ing]” (Pet App. 39a)—concerning the proper administration of CAFA and whether federal courts can hear such consequential cases. This Court should grant certiorari and reverse.

I. The First Question Presents A Circuit Split Warranting This Court’s Review

A. The Split Is Stark And Wide

1. Since the petition was filed, the circuit split it identifies has only become more entrenched. In *Hargett v. RevClaims, LLC*, the Eighth Circuit expressly rejected the majority opinion below in holding that a class action on behalf of forum residents should not be remanded absent “sound evidence” of their citizenship. Nos. 17-1339, 17-1340, 2017 WL 1405034, at *3 (8th Cir. Apr. 14, 2017); see *id.* at *3 n.2 (“We do not agree * * * that presumptions alone may transform a challenged allegation of residency into the establishment of citizenship.”).

Constrained to “acknowledge” (at 22) this split, Respondents argue that it extends no further. That would come as news to the Eighth Circuit, which expressly drew upon the Seventh, Ninth and Tenth Circuits’ opinions (and Judge Kethledge’s dissent) for support. *Hargett*, 2017 WL 1405034, at *3 & *3 n.2. It would also surprise Judge Kethledge, who identified five circuits (not counting the Eighth) that, unlike the majority below, require evidence of citizenship to permit a local controversy remand. Pet. App. 31a. Indeed, even the majority below recognized that other “circuits * * * have rejected the

rebuttable presumption” that it adopted. Pet. App. 19a (citing opinions of three circuits). And other courts have also recognized the circuit conflict. See, e.g., *Ellis v. Montgomery Cty.*, No. CV 16-2143, 2017 WL 440737, at *5-*6 (E.D. Pa. Jan. 27, 2017) (acknowledging that the decision below, which it followed, “br[eaks] with its sister circuits” in not “requir[ing] some proof of citizenship beyond residency”). In fact, *no one* has ever before suggested that the split is as narrow as Respondents now contend. And for good reason: It is not.

Respondents next suggest (at 24-27) that the Fifth and Ninth Circuits occupy some middle ground between the Eighth and Sixth.¹ Even if true, the existence of a three-way (rather than just a two-way) circuit split would hardly undermine the need for this Court’s intervention.

Besides, Respondents are not correct: the Fifth and Ninth Circuits may permit a residence-domicile presumption where its use is justified in light of “the entire record.” *Mondragon v. Capital One Auto Fin.*, 736 F.3d 880, 886 (9th Cir. 2013) (discussing *Preston v. Tenet Healthsystem Mem’l Med. Ctr., Inc.*, 485 F.3d 793, 800 (5th Cir. 2007)). But both of those circuits require there to be *evidence* in the record

¹ The Seventh and Tenth Circuits should be grouped with the Eighth. Respondents’ attempt (at 20-21) to exclude the Seventh Circuit because its opinion made an observation about people who commute into Kansas makes no sense. See also *Ellis*, 2017 WL 440737, at *5 n.4 (grouping Seventh Circuit with the Eighth). Equally meritless is Respondents’ effort (at 23-24) to dismiss the split with the Tenth Circuit based on *Siloam Springs Hotel, LLC v. Century Surety Co.*, 781 F.3d 1233 (10th Cir. 2015), a case that did not even involve CAFA.

before any such presumption is applied or remand granted. See *Mondragon*, 736 F.3d at 884 (remand inappropriate where there is “[a] complete lack of evidence”); *Preston*, 485 F.3d at 800 (distinguishing cases applying residence-domicile presumption because, in them, an “extensive record adduced over the course of the proceedings” also supported citizenship finding). And *that*—*i.e.*, whether plaintiffs must introduce evidence of citizenship—is the question that requires this Court’s review.

2. Respondents also attempt to narrow the split (at 13-15) by claiming that the decision below turns on “judicial notice” and “case-specific factual inferences—not simply legal presumptions.” This distinction—if it is one—was lost on all the courts that have recognized the circuit split here. That is not surprising, as the words “judicial notice” appear nowhere in any of the opinions below. The majority (at Pet. App. 24a-25a) did comfort itself with some observations that it thought “further undermine[d] the notion that the traditional residency-domicile inference is not appropriate in this particular case.” But that discussion does not add evidence to a record otherwise devoid of it. And it follows many pages (at Pet. App. 12a-24a) discussing why the residence-domicile presumption permits a remand in the absence of evidence of citizenship—the centerpiece of the opinion below and of the circuit split.

Finally, even if the paragraph discussing what Respondents (at 15) call “generally known facts”² and

² Petitioners would have contested several of these “facts” in the district court, had they been given any notice of them before remand—which they were not. For example, the district court’s

“factual inferences” were central to the opinion below, there would still be a circuit split. That is because other circuits hold that even “[s]ensible inferences” based on non-record evidence are just “guesswork” that cannot carry a plaintiff’s burden to obtain remand. *Reece v. AES Corp.*, 638 F. App’x 755, 770 (10th Cir. 2016) (internal quotation marks omitted); *Hargett*, 2017 WL 1405034, at *3; *Mondragon*, 736 F.3d at 882; *In re Sprint Nextel Corp.*, 593 F.3d 669, 674 (7th Cir. 2010) (“There are any number of ways in which [judicial] assumptions * * * might differ from reality.”).

B. There Is No Vehicle Problem

Faced with a clear and acknowledged split among the circuits, Respondents next contend that the first question presented is “not actually posed,” both because they amended their complaint after it was (wrongfully) remanded and because, even if this Court reverses, the amended complaint “likely” will be remanded again anyway. Opp. 7; see also Opp. 8-13, 15-16. This argument is flawed at every turn.

1. The Court need not consider this argument. Respondents did not brief this argument below—even though the second amended complaint was filed before the parties’ appellate briefs. See *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 273 (2009).

assertion that Flint lacks “a large number of college students” (Pet App. 46a) cannot be squared with Flint’s numerous colleges and universities, whose students together comprise a substantial portion of the city’s roughly 100,000 residents. See <http://bit.ly/2qvr8LR>; <http://bit.ly/2ruVEmA>; <http://bit.ly/2pXm4x5>.

2. Respondents' post-remand amendment is legally irrelevant. This Court long ago made clear that, once federal jurisdiction is properly obtained by removal—as it was here—it is not ousted by subsequent events, such as the filing of an amended complaint. *E.g.*, *Pullman Co. v. Jenkins*, 305 U.S. 534, 537 (1939). Applying this rule to CAFA, “the circuits have unanimously and repeatedly held that whether remand is proper must be ascertained on the basis of the pleadings at the time of removal.” *Broadway Grill, Inc. v. Visa Inc.*, No. 17-5499, 2017 WL 2174549, at *2 (9th Cir. May 18, 2017).

Practice confirms what the law says. In *Hertz Corp. v. Friend*, 559 U.S. 77 (2010), as here, plaintiffs amended their complaint post-remand. Joint Case Management Report at 2, *Friend v. Hertz Corp.*, No. C-07-5222 (N.D. Cal. May 28, 2010). There was no suggestion by anyone—including this Court, which expressly considered its jurisdiction (559 U.S. at 83-84)—that the state-court amendment affected this Court's grant of certiorari. And when the case returned to the district court after this Court reversed the remand order, that court did not even consider the state-court amendment. Rather, it ordered the plaintiffs to file a new amended complaint in federal court. Order, *Hertz* (N.D. Cal. June 4, 2010). The same would occur here.

Nor does it matter that Petitioners did not remove (again) after the second amended complaint was filed. See Opp. 9. Removal of that complaint during the pendency of this appeal was unnecessary, see *Nat'l S. S. Co. v. Tugman*, 106 U.S. 118, 123 (1882), and it would have been pointless under the law of the case. In *Hertz*, the defendant did not

remove the post-remand amended complaint, either. And, as in *Hertz*, if the district court's remand order is vacated, this case will return to that court, which can consider the legal significance (if any) of the new complaint.³

3. In any event, for multiple reasons, Respondents are mistaken in asserting that, because their new complaint “expressly limits the class to Michigan citizens” (Opp. 7), it is “likely” (Opp. 15) that this case will be remanded again anyway—and that, therefore, the first question presented is “hypothetical” (Opp. 8).

First, Respondents' belief that they would “likely” win under the correct legal standard is no obstacle to this Court's ability to determine what the correct standard is and then remand for it to be applied.

Second, this argument rests on a false premise. Respondents misreport what their new complaint says. The only change is that the *named* plaintiffs are now alleged to be Michigan citizens. Supp. App., *infra*, 114a-117a. The complaint does not “limit[]” the proposed class “to Michigan citizens,” Opp. 8, but instead contains the same hazy class definition as their prior complaint did. See Pet. 7.

Third, on remand, Respondents would *not* get a do-over of the citizenship inquiry based on the second amended complaint. That is because the “circuits are in complete agreement” that citizenship for CAFA purposes “*must be determined as of the*

³ State-court proceedings following a remand order that is later reversed are likely void. See *Bryan v. BellSouth Commc'ns, Inc.*, 492 F.3d 231, 240-41 & n.5 (4th Cir. 2007).

operative complaint at the date of removal.” Broadway Grill, 2017 WL 2174549, at *2, *4 (emphasis added) (collecting cases); accord *Hargett*, 2017 WL 1405034, at *3 (same); S. Rep. No. 109-14, at 44, reprinted in 2005 U.S.C.C.A.N. 3, 42 (same). Subsequent amendments do not matter because CAFA provides, in 28 U.S.C. § 1332(d)(7), that:

Citizenship of the members of the proposed plaintiff classes shall be determined for purposes of [the local controversy exception] as of the date of filing of the complaint or amended complaint * * * *indicating the existence of Federal jurisdiction.*

(Emphasis added.) Thus, as the lower courts have explained, whatever class allegations may be in Respondents’ second amended complaint are irrelevant. The citizenship inquiry turns on the complaint addressed by the opinion below—and it is “the only one which should be[] considered.” *Broadway Grill*, 2017 WL 2174549, at *4. That makes the consequence of review by this Court anything but “hypothetical.”⁴

This Court, of course, need not resolve any of this, much less speculate about evidence or legal theories never hitherto presented. Opp. 16. Should this Court vacate the district court’s remand order, that

⁴ In *Broadway Grill*, the Ninth Circuit expressly held that *Benko v. Quality Loan Service Corp.*, 789 F.3d 1111 (9th Cir. 2015), is not to the contrary because that case concerns only whether a plaintiff may amend its allegations about the significance of a local defendant’s conduct—an element of the local controversy exception not implicated by subsection 1332(d)(7).

court can consider the relevance, if any, of Respondents' supposedly amended class definition. That such questions may or may not confront the district court is no impediment to review here, just as it was not in *Hertz*.

II. The Second Question Presents A Circuit Split Warranting This Court's Review

Respondents say little about the second question presented—and nothing that undermines its significance or the need for this Court's review.

1. Respondents' main argument is that a half-dozen words in their complaint justify the Sixth Circuit's conclusion that the conduct of local defendant LAN P.C. was "significant." They point first to their allegation that diverse defendant LAN Inc. conducted its services "through" LAN P.C. Opp. 24-25. But, in relying on this single word, Respondents *still* do not respond to Judge Kethledge's charge (at Pet. App. 35a, 36a) that the word says nothing about what LAN P.C. actually did. It is "an enigma" at best, and "an exercise in studied ambiguity" at worst.

Respondents also (at 6, 24) return to—and mischaracterize—their allegation that "LAN, P.C. was responsible 'to perform quality control.'" As Judge Kethledge correctly observed (at Pet. App. 35a-36a), this particular allegation, see Pet. App. 81a, as with *every other* substantive allegation in the complaint, refers only to "LAN"—the defined term that lumps LAN Inc. and LAN P.C. *together*. By grounding their defense of the opinion below on this collective allegation, Respondents concede the

importance of the very question presented: whether such undifferentiated allegations suffice.⁵

2. Respondents hardly dispute Judge Kethledge’s conclusion that their undifferentiated allegations, accepted below, would not have sufficed in the Fifth Circuit. Instead, they observe that that circuit has held that “significance” cannot be determined “where ‘nothing in the complaint distinguish[es] the conduct of the local defendant from the conduct of the other defendants.’” Opp. 26 (quoting *Opelousas Gen. Hosp. Auth. v. FairPay Sols., Inc.*, 655 F.3d 358, 362 (5th Cir. 2011)). Precisely so. The Sixth Circuit held the reverse, which is why this Court’s review is needed.

Respondents also acknowledge that the Tenth Circuit refused to remand because of the plaintiffs’ “sparse” allegations about the conduct of the local defendant. Opp. 27 (discussing *Woods v. Standard Ins. Co.*, 771 F.3d 1257 (10th Cir. 2014)). Yet they don’t explain how that court’s rejection of a conclusory “knew or should have known” allegation, *Woods*, 771 F.3d at 1268, is consistent with the Sixth Circuit’s crediting of an equally unelaborated (and more mysterious) allegation of acting “through.”⁶ It is not.

⁵ Respondents also mischaracterize the district court as having made a “finding” (at 6) that LAN P.C.’s conduct formed a significant basis of the alleged claims. As discussed in the petition (at 9), the district court made no such finding, because it did not address the “significant basis” requirement at all.

⁶ As Respondents note (at 24, 27), the Sixth Circuit excluded (diverse) Leo A. Daly Company from the “significant basis” analysis because the complaint did not allege that it engaged in any conduct. Pet. App. 26a. But that is irrelevant to whether

As for the Eleventh Circuit’s decision in *Evans*, Respondents attempt to harmonize the opinion below by focusing on *Evans*’s holding that joint-and-several liability is insufficient to render a local defendant’s conduct significant. *Evans* did indeed so hold. *Evans v. Walter Indus., Inc.*, 449 F.3d 1159, 1167 n.7 (11th Cir. 2006). But it is its *other* holding (not relegated to a footnote) that is the basis for the split: namely, that a complaint must provide “insight into whether [the local defendant] played a significant role in the alleged [underlying conduct], as opposed to a lesser role, or even a minimal role” to satisfy the local controversy exception. *Id.* at 1167. The complaint considered below provides no such insight, yet it was held to satisfy the local controversy exception.

3. Finally, Respondents (at 25) attempt to convert a stray remark in *Coleman v. Estes Express Lines, Inc.*, 631 F.3d 1010 (9th Cir. 2011), into the crux of that opinion. Respondents’ goal, apparently, is to show that the Ninth Circuit disagrees with the Sixth. Yet their reading of *Coleman* is implausible. In *Coleman*, as here, the complaint “referred to actions taken by ‘Defendants,’” without distinguishing between them. *Id.* at 1013. Indeed, following *Coleman*, the Ninth Circuit later rejected the argument that plaintiffs seeking remand must “distinguish[] [a local defendant’s] acts from [a diverse defendant’s] acts.” *Allen v. Boeing Co.*, 821 F.3d 1111, 1121 (9th Cir. 2016). And a district court, following *Coleman*, has remanded a case *because*, in

the Sixth Circuit applied the right standard to analyze the allegations about the *local* defendant’s conduct.

“the operative complaint, there is no distinction drawn between the conduct of [a local defendant] and the conduct of [the diverse one].” *Aburto v. Chartwell Staffing Servs., Inc.*, No. 5:16-cv-00749, 2016 WL 3536169, at *5 (C.D. Cal. June 27, 2016). That is, of course, the opposite of the standard used in the Fifth, Tenth, and Eleventh Circuits.

The Sixth and Ninth Circuits’ rule invites abuse and cannot be right. “[W]ell-pleaded, nonconclusory factual allegation[s]” are necessary to survive a motion to dismiss, *Ashcroft v. Iqbal*, 556 U.S. 662, 680 (2009), so they should be necessary to win a motion to remand. “[A] district court must retain the power to insist upon some specificity in pleading before” being required to remand major interstate class actions to state court. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007) (internal quotation marks omitted). This split too warrants this Court’s review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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APPENDIX H

STATE OF MICHIGAN

**IN THE CIRCUIT COURT FOR THE COUNTY
OF GENESEE**

JENNIFER MASON, CARL
ROGERS II, TERESA
SPRINGER, JEFFREY
DUSHANE, DEBORAH
CULVER, DR. TRISTIN

HASSELL, ADAM DILL, and
DAVID YEOMAN on behalf
of themselves and a class of
all others similarly situated,

Plaintiffs,

Hon. Richard B.
Yuille

Case No. 16-106150-
NM

v.

LOCKWOOD, ANDREWS &
NEWNAM, P.C., a Michigan
corporation, LOCKWOOD,
ANDREWS & NEWNAM,
INC., a Texas Corporation,
LEO A. DALY COMPANY, a
Nebraska corporation,
ROWE PROFESSIONAL
SERVICES COMPANY f/k/a
ROWE ENGINEERING,
INC., a Michigan corporation,
VEOLIA NORTH AMERICA,

SECOND
AMENDED
CLASS ACTION
COMPLAINT

LLC, a Delaware limited liability company, VEOLIA NORTH AMERICA, INC., a Delaware corporation, VEOLIA WATER NORTH AMERICA OPERATING SERVICES, LLC, a Delaware limited liability company, and VEOLIA ENVIRONMENT S.A., a transnational corporation

Defendants.

Mark L. McAlpine (P35583)	Wayne B. Mason (SBOT 13158950)
John T. Peters (P40220)	Travis S. Gamble (SBOT 00798195)
Jayson E. Blake (P56128)	S. Vance Wittie (SBOT 21832980)
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SECOND AMENDED CLASS ACTION
COMPLAINT

Plaintiffs Jennifer Mason, Carl Rogers II, Teresa Springer, Jeffrey DuShane, Deborah Culver, Dr. Tristin Hassell, Adam Dill, and David Yeoman (collectively, “Plaintiffs” or “Plaintiff Class Representatives”), on behalf of themselves and all others similarly-situated (the “Class” or “Class Members” as defined below), upon personal knowledge as to the facts pertaining to themselves, upon information and belief as to all other matters, and based upon the investigation of counsel, bring this Second Amended Complaint for damages against Defendants Lockwood, Andrews & Newnam,

P.C., Lockwood, Andrews & Newnam, Inc., Leo A. Daly Company, Rowe Professional Services Company f/k/a Rowe Engineering, Inc., Veolia Water North America Operating Services, LLC, Veolia North America, LLC, Veolia North America, Inc., and Veolia Environmental S.A., based on the following allegations.

PARTIES, JURISDICTION AND VENUE

1. This lawsuit is brought as a proposed class action against Defendants for professional negligence in connection with their participation in the plan to use water drawn from the Flint River via the Flint Water Treatment Plant (“FWTP”) as the primary source of drinking water for the City of Flint, Michigan (“Flint”). As a direct and proximate result of Defendants’ breaches, the residents of Flint, from April 25, 2014 to the present, have experienced and will continue to experience serious personal injury and property damage.

2. Plaintiff Jennifer Mason is married and the mother of two children. At all relevant times, Ms. Mason was a resident and citizen of the State of Michigan, a resident and citizen of the City of Flint, and resided in a single family home located on Maxine Street in Flint, Michigan. Ms. Mason has suffered damages as a direct and proximate result of Defendants’ conduct described herein.

3. Plaintiff Carl Rogers II is single. At all relevant times, Mr. Rogers was a resident and citizen of the State of Michigan, a resident and citizen of the City of Flint, and resided in a single family home on Indiana Avenue in Flint, Michigan. Mr. Rogers also

owned other real properties located in Flint, Michigan. Mr. Rogers has suffered damages as a direct and proximate result of Defendants' conduct described herein.

4. Plaintiff Teresa Springer is the mother of three children. At all relevant times, Ms. Springer was a resident and citizen of the State of Michigan, a resident and citizen of the City of Flint, and resided in a single family home on Winthrop Boulevard in Flint, Michigan. Ms. Springer has suffered damages as a direct and proximate result of Defendants' conduct described herein.

5. Plaintiff Jeffrey DuShane is married. At all relevant times, Mr. DuShane was a resident and citizen of the State of Michigan, a resident and citizen of the City of Flint, and resided in a single family home on Burroughs Avenue in Flint, Michigan. Mr. DuShane has suffered damages as a direct and proximate result of Defendants' conduct described herein.

6. Plaintiff Deborah Culver is a widow, mother, and grandmother. At all relevant times, Ms. Culver was a resident and citizen of the State of Michigan, a resident and citizen of the City of Flint, and resided in a single family home on Maxine Street in Flint, Michigan. Ms. Culver has suffered damages as a direct and proximate result of Defendants' conduct described herein.

7. Plaintiff Dr. Tristin Hassell is married and the father of one child. At all relevant times, Dr. Hassell was a resident and citizen of the State of Michigan, a resident and citizen of the City of Flint, and resided in a single family home on Kensington Avenue in Flint, Michigan. Dr. Hassell has suffered damages as a direct and proximate result of Defendants' conduct described herein.

8. Plaintiff Adam Dill is single. At all relevant times, Mr. Dill was a resident and citizen of the State of Michigan, resident and citizen of the City of Flint, and resided in a single family home on Blanchard Avenue in Flint, Michigan. Mr. Dill has suffered damages as a direct and proximate result of Defendants' conduct described herein.

9. Plaintiff David Yeoman is married and the father of two children. At all relevant times, Mr. Yeoman was a resident and citizen of the State of Michigan, resident and citizen of the City of Flint, and resided with his family in a single family home on Oklahoma Avenue in Flint, Michigan. Mr. Yeoman also owned other real properties located in Flint, Michigan. Mr. Yeoman has suffered damages as a direct and proximate result of Defendants' conduct described herein.

10. Plaintiffs' representatives, at all relevant times, were residents and citizens of the State of Michigan and residents and citizens of Flint who, as individuals, parents of minors and as property owners, have been and continue to be exposed to highly dangerous conditions created and caused by Defendants' negligent administration of a plan to

place the Flint Water Treatment Plant (“FWTP”) into full-time operation for drawing water from the Flint River.

11. Lockwood, Andrews & Newnam, P.C. (“LAN PC”) is a Michigan professional corporation with its principal place of business located at 1311 S. Linden Road, Suite B, Flint, Michigan 48532. At that location, LAN PC held itself out to the world as a Leo A. Daly Company. Upon information and belief, LAN PC was incorporated in 2008 by LAN Inc. after it was retained to conduct studies and reports of a new water supply that was being developed for Flint, Genesee County, Lapeer County and Sanilac County. Upon further information and belief, the vast majority of the services provided by LAN PC, at all relevant times, were conducted at LAN Inc.’s Chicago, Illinois location.

12. Lockwood, Andrews & Newnam, Inc. (“LAN Inc.”) is a Texas corporation with its principal place of business in Houston, Texas. At all relevant times, LAN Inc. conducted business in Genesee County, Michigan through LAN PC. Pursuant to its website, LAN Inc.’s Michigan office is located at 1311 S. Linden Road, Suite B, Flint, Michigan 48532. LAN Inc. is a full-service consulting firm offering planning, engineering and program management services, including civil infrastructure engineering and municipal water treatment and design.

13. Leo A. Daly Company (“LAD”) is a Nebraska corporation with its principal place of business in Omaha, Nebraska. Per its website, LAD’s “services are extended through [LAN Inc.]”

LAD is an international architecture/engineering firm, with nearly 800 professionals in 31 offices worldwide and projects in more than 87 countries and all 50 U.S. states. Upon information and belief, LAD is the parent company to LAN Inc. and LAN P.C.

14. LAN P.C., LAN Inc., and LAD are referred to collectively herein as “LAN.”

15. LAN performed professional engineering services and/or engaged in other conduct in Flint from 2011 through 2016. LAN holds itself out as “a full-service consulting firm offering planning, engineering and program management services” with “firsthand knowledge of the Flint Water Treatment Plant” and its operations.

16. LAN maintains an office in Flint, Michigan, regularly conducts business in Michigan, and has committed torts in Michigan.

17. Rowe Professional Services Company f/k/a Rowe Engineering, Inc. (“Rowe”) is a Michigan corporation with its principal place of business in Flint Michigan. Per its website, Rowe “has grown to be a leading professional consulting firm, driving infrastructure and development projects for our public, private, governmental, tribal, and not-for-profit client.” Its services include civil engineering, surveying, aerial photography and mapping, landscape architecture, planning, and land development.

18. Veolia North America, LLC (“Veolia LLC”) is a Delaware limited liability company with its

principal place of business in Chicago, Illinois. Veolia LLC designs and provides water, waste and energy management solutions to communities and industries across the country.

19. Veolia North America, Inc. (“Veolia Inc.”) is a Delaware corporation with its principal place of business in Indiana. Per its website, Veolia Inc. “blend[s] skills in operations, engineering and technology with innovative business models, offering a complete range of environmental solutions to meet the challenges of cities, governments, campuses, businesses, and industries.”

20. Veolia Water North America Operating Services, LLC (“Veolia Water”) is a Delaware limited liability company with its principal place of business in Westland, Michigan. Per its website, Veolia Water provides turn-key industrial cleaning and maintenance services.

21. Veolia Environmental S.A. (“Veolia S.A.”) is a French transnational corporation with its principal place of business in Paris, France. Veolia S.A. is a leading global provider of environmental management services, which include the supply of water, the treatment and recover of municipal or industrial effluent, waste collection, processing and recycling, the supply of heating and cooling services and the optimization of industrial processes. Upon information and belief, Veolia S.A. is the parent corporation of Veolia N.A.

22. Veolia LLC, Veolia Inc., Veolia Water and Veolia S.A. are referred to collectively herein as “Veolia.”

23. Veolia performed professional engineering services and/or engaged in other conduct in Flint in 2015. Veolia holds itself out as a “leading water services provider in [the] North American market, with more projects, operations, resources, expertise and demonstrated success than any other services provider.”

24. Veolia maintains multiple offices in Michigan, regularly conducts business in Michigan, and the acts alleged herein were committed in Michigan.

25. The amount in dispute is in excess of \$25,000.00, exclusive of costs and attorney fees, and all of the parties have, upon information and belief, either resided or transacted business in Genesee County, Michigan, at all times relevant herein such that jurisdiction and venue are properly with this Court.

CLASS ALLEGATIONS

26. This action is brought by the named Plaintiffs on behalf of the Class who have been and continue to be exposed to highly dangerous conditions created and caused by Defendants’ negligent and/or reckless administration of a plan to place the FWTP into full-time operation using the Flint River as the primary water source, and reckless disregard of the safety and health of the citizens of Flint as well as its own professional duties and obligations.

27. The number of injured individuals who have been exposed to and injured by the highly dangerous

conditions (described more thoroughly throughout this pleading) is in the tens of thousands. The number of Class Members is sufficiently numerous to make class action the most practical method for Plaintiffs to secure redress for injuries sustained by the Class Members.

28. There are questions of law and fact raised by the claims set forth herein that are common to, and typical of, those raised by the Class Members that Plaintiffs seek to represent.

29. The violations of law and resulting harms alleged by the named Plaintiffs are typical of the legal violations and harms suffered by all Class Members.

30. Plaintiff Class Representatives will fairly and adequately protect the interests of the Plaintiff Class Members. Plaintiffs' counsel are unaware of any conflicts of interest between the Plaintiff Class Representatives and absent Class Members with respect to the matters at issue in this litigation; the Plaintiff Class Representatives will vigorously prosecute the suit on behalf of the entire Class; and the Plaintiffs are represented by experienced counsel.

31. Plaintiffs are represented by attorneys with substantial experience and expertise in class action and complex litigation involving engineering firms and the duty of care.

32. Plaintiffs' attorneys have identified and thoroughly investigated all claims in this action, and

have committed sufficient resources to represent the Class.

33. The maintenance of the action as a class action will be superior to other available methods of adjudication and will promote the convenient administration of justice. Moreover, the prosecution of separate actions by individual members of the Class could result in inconsistent or varying adjudications with respect to individual members of the Class.

34. Defendants has acted or failed to act on grounds generally applicable to all Plaintiffs, necessitating legal relief for the Class, including but not limited to an award of damages to fully compensate the Class for all of the damages it has sustained past, present and future.

GENERAL ALLEGATIONS

35. Flint, Michigan is located along the Flint River, approximately 60 miles northwest of Detroit. Flint sits in Genesee County and is the largest city in that county. According to the 2010 census, Flint is home to 102,434 residents, 27.3% (approximately 28,000) of whom are under 18 years of age, and 8% (approximately 8,000) of whom are under 5 years of age. More than half of Flint's residents are African American. There are more than 50,000 housing units in Flint, Michigan, and approximately 55% of those units are owner-occupied. According to the most recent census, 41.6% of Flint's citizens live at or below the poverty level. The median household income in Flint is just \$24,679.

36. Like the residents of any American city, residents of Flint rely on a steady supply of safe and clean water to go about their daily lives. Flint also has commercial and other nonresidential properties whose owners rely upon clean and safe water.

37. The FWTP was constructed in 1917 to draw water from the Flint River as the source of Flint's drinking water for approximately 50 years until 1964.

38. As early as 1964, the US Geological Survey noted high levels of chloride in the Flint River. Due to the concerns regarding the adequacy of the Flint River to provide safe drinking water, Flint evaluated alternatives for a new water supply. From 1964 to 2014, Flint water users received their water from Lake Huron via the Detroit Water and Sewerage Department ("DWSD"). During this 50-year span, the Flint water users enjoyed safe, clean, fresh water in their homes, businesses, hospitals and other places of public services. However, since approximately the 1990s, Flint and other local governmental entities had growing concerns over the cost of the DWSD water supply.

39. Amidst these growing concerns, Flint and the other local governmental entities, which included Genesee County, Lapeer County and Sanilac County, commissioned studies for alternative water supplies. These studies were completed in 1992.

40. A 2001 report by the Department of Natural Resources noted that certain businesses along the Flint River had permits to discharge runoff

from industrial and mining activities as well as petroleum and gasoline cleanups.

41. In 2004, a technical assessment of the Flint River raised concerns about using the river as a source of drinking water. One of the key points from the technical assessment, entitled "*Source Water Assessment Report for the City of Flint Water Supply - Flint River Emergency Intake*," prepared by the U.S. Geological Survey, the Michigan Department of Environmental Quality ("MDEQ") and the Flint Water Utilities Department, was that the Flint River was a highly sensitive drinking water source that was susceptible to contamination.

42. The Flint City Charter requires that Flint have somebody serving in the capacity of City Engineer. In order to receive State and Federal funding for projects, it is mandatory for Flint to have a City Engineer to certify and submit required documentation.

43. Flint issued a notice of Solicitation of Qualifications to secure a professional engineering firm to provide services as Flint's contracted City Engineer, bid proposal number 326. Rowe submitted a bid to provide said services.

44. In 2007, Rowe was awarded the bid to provide professional engineering services as City Engineer for a five year period. Rowe provided those services to Flint under City Contract 07-103 under the broad categories of engineering, surveying, and project management / administration (both design and construction) and technical assistance.

45. Flint and the local governmental entities again commissioned studies for alternative water supplies that were completed in 2006 and 2009.

46. The 2009 study, prepared by Rowe, LAN and others, evaluated two alternatives for water supply - continue to purchase from DWSD or construct a new pipeline (later known as the Karegnondi Water Authority pipeline) from Lake Huron.

47. In 2011, Flint's finances reached a critical place: an audit estimated a \$25 million deficit overall and Flint's water supply fund showed a \$9 million deficit.

48. In 2011, Governor Snyder declared Flint to be in a financial emergency, and Flint entered receivership, with responsibility for governance of Flint and operation of its utilities and other services, including its water supply, under the direction of Emergency City Managers who were appointed by the Governor and employed by the State of Michigan.

49. Also in 2011, Flint government officials commissioned a study (or studies) by LAN and Rowe to determine if the Flint River could be safely used by the city as the primary source of drinking water. One of those studies, entitled "*Analysis of the Flint River as a Permanent Water Supply for the City of Flint*" (the "2011 Report"), which bore LAN's and Rowe's respective logos, was published in July of 2011.

50. The 2011 Report stated that chemically treating Flint River water on a continuous basis

would be a challenge and more expensive than chemically treating lake water. It concluded that “water from the river can be treated to meet current regulations; however, additional treatment will be required than for Lake Huron Water Although water from the river can be treated to meet regulatory requirements, aesthetics of the finished water will be different than that from Lake Huron.” The study further concluded that such treatments to Flint River water could be done if improvements were made to the FWTP. However, if used as a water supply, the study noted that “a source water protection management plan should be developed to ... identify potential sources of contamination”

51. LAN also prepared an additional analysis, attached to the 2011 Report as an appendix, which detailed over \$69 million in improvements that would have to be made to bring the FWTP up to current standards. This additional analysis specifically projected costs for corrosion control chemicals that would be required to ensure the safety of water to be drawn from the Flint River.

52. In December of 2012, during a meeting with the State of Michigan Treasury, Flint rejected the Flint River as a source because of the comparatively high costs of preparing the FWTP to treat water drawn from the Flint River to applicable standards.

53. In January of 2012, Flint Emergency Manager Jerry Ambrose executed a resolution authorizing Flint to enter into Change Order No. 9,

which would extend Rowe's contract as City Engineer from January 1, 2012 to June 30, 2013.

54. In early 2013, Flint Emergency Manager Ed Kurtz (who was appointed to that position in or around August of 2012) signed an agreement to switch Flint's primary drinking water source from the DWSD to the newly formed Karegnondi Water Authority ("KWA"), which was scheduled to become operational sometime in 2016. Upon information and belief, Flint assumed it would continue to purchase its water from DWSD until the KWA pipeline became operational in 2016.

55. DWSD protested Flint joining the KWA, and attempted to convince Flint to reconsider switching over to the KWA and continue purchasing its water from the DWSD. Flint declined. In April of 2013, DWSD gave Flint notice that their long-standing water agreement would terminate in April of 2014.

56. On June 10, 2013, LAN submitted a proposal to Flint for upgrading the FWTP entitled "*Flint Water Treatment Plant Rehabilitation - Phase II.*" The proposal was to make "improvements ... intended to help the City operate[] the plant on a full time basis using the Flint River." The proposal was signed by J. Warren Green, Professional Engineer (Project Director) and Samir F. Matta, Professional Engineer (Senior Project Manager).

57. LAN claimed in its proposal that its "staff has the knowledge, expertise and the technical professionals to handle all aspects of the projects. Our staff has firsthand knowledge of the [FWTP]"

58. The proposal included the following relevant sections:

- a. A “Scope of Services” section that stated the “project involves the evaluation and upgrade of the Flint Water Plant to provide continuous water supply service to the City of Flint (Flint) and its customers.” The upgrades and improvements would allow the use of the Flint River as a water supply.
- b. A “Standards of Performance” section where LAN “agree[d] to exercise independent judgment and to perform its duties under this contract in accordance with sound professional practices.” As part of the proposal, it was understood that Flint was relying upon the professional reputation, experience, certification, and ability of LAN.

59. On or about June 26, 2013, Mr. Kurtz signed a resolution authorizing Flint to enter into a professional services contract with LAN for the administration of placing the FWTP into full-time operational use, which would draw water from the Flint River as its primary source of water until the completion of the KWA.

60. Flint formally retained LAN as the design engineer for improvements and upgrades to the FWTP, which would ultimately enable the FWTP to operate full-time and provide proper treatment to the water drawn from the Flint River. Stated differently, LAN was hired to prepare the FWTP for the treatment of new water sources, including both the Flint River and the KWA pipeline.

61. From July of 2013 through April of 2014, LAN provided its professional services, but failed to meet its duty of care and competence. LAN was responsible for providing engineering services to make Flint's inactive water treatment plant sufficient to treat water from each of its new sources. Its actions facilitated the transfer of Flint's water source to river water without proper corrosion control treatment, which was necessary to protect against the poisoning of thousands of Flint residents and damaging thousands of Flint homes, including those owned by Plaintiffs.

62. According to the Environmental Protection Agency ("EPA"), "it is critical that public water systems, in conjunction with their primary agencies and, if necessary, outside technical consultants, evaluate and address potential impacts resulting from treatment and/or source water changes." Various factors specific to individual water sources necessitate different treatments, including but not limited to the use of chemical additives. But LAN did not require water quality standards to be set for the Flint River water that would be delivered to Flint's residents and property. Further, LAN did not require corrosion control to ensure that corrosive water was not delivered throughout Flint's aging water system.

63. LAN, as Flint's independent and regulatory Michigan Licensed Professional Engineer, and Rowe, as City Engineer, had a duty to recognize the need for corrosion control and to ensure that it be implemented, even if that treatment exceeded regulatory minimums.

64. Rowe had a duty to ensure that the standards it and LAN articulated in the 2011 Report and other requirements of the applicable standards of care were being adhered to by LAN and, later, Veolia.

65. Upon information and belief, there were no bids submitted by LAN or any other firm for this work, nor were any other firms considered for this work. The contract was awarded without competitive bidding.

66. On June 29, 2013, LAN met with representatives of Flint, representatives of the Genesee County Drain Commissioners Office and the MDEQ to discuss:

- a. Using the Flint River as a water source;
- b. The ability to perform the necessary upgrades to the FWTP;
- c. The ability to perform quality control;
- d. The ability for Flint to provide water to Genesee County;
- e. The ability to meet an April or May 2014 timeline; and
- f. Developing a cost analysis.

67. According to incomplete meeting minutes, “the conversation was guided with focus on engineering, regulatory, and quality aspects ...” of the items previously referenced, and the following determinations were made:

- a. The Flint River would be more difficult to treat, but was viable as a source;
- b. It was possible to engineer and construct the upgrades needed for the treatment process;
- c. It was possible to perform quality control “with support from LAN engineering which works with several water systems around the state, quality control could be addressed[;]”
- d. FWTP did not have the capacity to treat and distribute sufficient water to meet the needs of Flint and Genesee County;
- e. There were many obstacles to overcome, but completion by the April or May 2014 timeline was reachable; and
- f. The next steps were for LAN to present Flint with a proposal that would include engineering, procurement, and construction needs for the project along with cost estimates.

68. Upgrading the FWTP would have its challenges. Since 1965, the FWTP served as a secondary and backup water supply system to the DWSD. Typically, a secondary supply for a public water system is expected to be needed only during emergency situations, and is normally designed for short term operation such as providing the average daily demand for only a few days.

69. Upon information and belief, the FWTP was previously upgraded in or around 2004 in order to allow it to operate for an extended short-term period (i.e., approximately 6 weeks) because of a

perceived high risk that the DWSD supply would fail and remain out of service for an extended duration.

70. Due to the aforementioned 2013 agreement, the FWTP needed to be upgraded again to operate on a full-time basis, otherwise it would be unable to provide the citizens of Flint with sufficient quantities of water.

71. In September of 2013, Rowe was re-hired by Flint for professional services for the 2014 fiscal year, wherein Rowe would continue to serve as City Engineer.

72. In April of 2014, LAN, Flint and DEQ officials addressed and discussed optimization for lead, and they decided that having more data was advisable before implementing an optimization method.

73. LAN knew, if not recommended, that the FWTP would begin drawing water from the Flint River later that month that would not be treated with anti-corrosive measures.

74. The improvement and upgrade plans to the FWTP were approved by MDEQ in April of 2014 pursuant to plans and specifications signed and sealed by LAN.

75. On March 7, 2014, DWSD was told: “[t]he Flint Water Treatment Plant will be fully operational and capable of treating Flint River water prior to the date of termination ... there will be no need to ... purchas[e] water to serve [Flint] after April 17, 2014.”

76. Between April 16, 2014 and April 25, 2014, numerous state and city employees expressed discomfort with the switch. One wrote that he was “expecting changes to our Water Quality Monitoring parameters, and ... our lead & copper monitoring plan Any information would be appreciated, because it looks as if we will be starting the plant up tomorrow and we are being pushed to start distributing water as soon as possible.” Another employee stated that he would “need time to adequately train ... staff ... update our monitoring plans before [the transition].” Despite these concerns, the plans proceeded forward.

77. On or about April 25, 2014, Flint formally ceased obtaining water from the DWSD and began drawing water from the Flint River through the FWTP.

78. Since LAN was involved in determining whether the Flint River could be safely used as a water source, it knew or should have known that, without proper anti-corrosive treatment, drawing water from the Flint River and using it as the primary source of drinking water would create a condition dangerous to the health and welfare of the community.

79. Pursuant to the Federal Safe Drinking Water Lead and Copper Rule (the “LCR”), all large public water systems, including Flint, are required to install and maintain corrosion control treatment for lead and copper water service systems. In the absence of such corrosion control treatment, lead levels in water traveling through a lead and copper-

based water system will be present at unacceptable and even dangerous levels.

80. LAN failed to ensure that the upgraded FWTP would treat the water drawn from the Flint River with the proper anti-corrosive chemicals before it was released for consumption and use into the community, which is contrary to water quality standards, the standard of care of similarly-situated and experienced engineers, and common sense.

81. At all relevant times, LAN knew or should have known that, as a consequence of any failure to operate the FWTP by using the required and necessary anti-corrosive agents in the water drawn from the Flint River, or failure to report the non-use of these agents to the proper authorities, the Plaintiffs and the entire Class would be exposed to toxic levels of lead and other dangerous and unsafe metals and chemicals.

82. Despite these requirements, corrosion control chemicals were not used when the FWTP began operation and drawing water from the Flint River.

83. LAN either failed to recommend and/or design for the use of corrosion control treatment chemicals during the full-time operation of the FWTP when it drew water from the Flint River, or it failed to demand or ensure the use of corrosion control treatment chemicals once the upgraded FWTP was placed into full-time operation.

84. The danger to the public in not using anti-corrosive treatments when using water from the

Flint River as the primary source was or should have been well-known to LAN, as such dangers are well-known within the water treatment community.

85. Moreover, the potential consequences in endangering the public health as a result of not using anti-corrosive treatments when using water from the Flint River as the primary source were or should have been well-known and foreseeable to LAN, an engineering firm that, according to its website, is a “national leader in the heavy civil infrastructure engineering industry,” “one of the most respected engineering firms in the United States today,” and “a recognized leader in the industry with a rich history of serving a diverse group of heavy civil infrastructure clients across the country.”

86. The potential consequences were seemingly, if not recklessly, ignored or not raised with the appropriate officials by LAN.

87. It came (or should have come) as no surprise to a highly reputable civil engineering firm that, within days of the switch, Flint officials began receiving complaints from water users that the water was cloudy and discolored in appearance and foul in taste and odor.

88. Within weeks following the April 25, 2014 switch, water users were reporting to Flint authorities that they were experiencing hair loss, rashes, vomiting and other physical maladies.

89. Flint water users, having enjoyed decades of safe, clean and fresh water via the DWSD, knew

almost immediately after the switch to Flint River water that something was not right about this new water supply.

90. During the next eight months, Flint water users expressed their concerns about water quality in multiple ways, including letters, e-mails and telephone calls to Flint and MDEQ officials, the media and through well-publicized demonstrations on the streets of Flint.

91. The residents of Flint - unlike LAN - were unaware of the specific dangers lurking in the water that was being used and distributed by the FWTP.

92. For example, by August of 2014, Flint water tested positive for E.coli., and several “boil water” advisories were issued by Flint through September of 2014. As a result, Flint was deemed to have violated the National Primary Drinking Water Regulations Maximum Contaminant Level (“MCL”) for E. coli bacteria on at least two separate occasions.

93. Additionally, unsafe levels of Trihalomethane (“TTHM”) were present in the water. Beginning almost immediately after the Flint River became the primary source of water for Flint residents, the MDEQ and Flint officials were aware or should have been aware of elevated and unlawful levels of TTHM.

94. By virtue of its involvement with the FWTP and its continuous work for Flint, LAN likewise knew or should have known of the elevated and unlawful levels of TTHM.

95. In October of 2014, it was publicly reported that General Motors had refused to continue using water from the Flint River in its manufacturing facilities due to the highly corrosive nature of the water that, in turn, was ruining its parts and production machinery. General Motors believed that the corrosive nature of the water was due to high chloride levels when their spokesman, Tom Wickham, said “you don’t want the higher chloride water (to result in) corrosion.”

96. In November of 2014, LAN was on actual notice of the need to assess the factors contributing to high TTHM levels following the water source change because LAN was engaged to evaluate this issue by Flint and provide a report of its findings, which it did in August of 2015.

97. LAN issued a 20-page Operational Evaluation Report on November 26, 2014, intended to address compliance with EPA and MDEQ operations and regulations. LAN entirely failed to address the hazard of lead associated with the corrosive water flowing through the pipes, at least half of which were made of lead.

98. After about 7 months of elevated TTHM levels, Flint water users belatedly received a notice in January of 2015 stating that their water was not in compliance with the Federal Safe Drinking Water Act because of unlawful levels of TTHM.

99. The biggest danger was the high level of lead in the water. The residents of Flint, including Plaintiffs and the Class Members, initially had no knowledge that the water contained dangerous levels

of lead, even though LAN knew or should have known by virtue of its history and involvement with the FWTP, as well as its vast experience with civil engineering relating to water systems.

100. In late 2014 or early 2015, a study by the Michigan Department of Health and Human Services (“MDHHS”) was published that showed a dramatic spike in elevated blood lead levels in Flint’s youngest children. The testing occurred in the Third Quarter of 2014.

101. This aforementioned spike meant that, by the Third Quarter of 2014, the percent of Flint children with known elevated blood lead level tests rose from 2.5% to about 7%.

102. This upward spike coincided precisely with the exposure of Flint’s children to the toxic water of the untreated Flint River, in their homes, schools and other public locations.

103. That the aforementioned spike occurred at the time of the exposure to the Flint River water constituted clear and certain notice that a major health emergency confronted the children of Flint.

104. Furthermore, a dramatic spike in Legionnaires’ disease occurred in Flint that, upon information and belief, resulted in 10 deaths in 18 months. This spike in Legionnaires’ disease, upon information and belief, is attributable, in whole or in part, to the presence of harmful chemicals and substances in the drinking water.

105. LAN and Rowe knew that no optimized corrosion control had been implemented, because

none of them required it, and they did not set water quality parameters for the Flint River Water source.

106. Neither LAN nor Rowe did anything to address what they knew or should have known was a catastrophic public health crisis.

107. On January 29, 2015, Veolia submitted to Flint its “*Response to Invitation to Bid for Water Quality Consultant*”, Proposal No. 15-573. Veolia proposed “to address the immediate reliability and operational needs” of Flint’s water system.

108. Flint had requested engineering services:

- a. To review and evaluate “the City’s water treatment process ... and procedures to maintain and improve water quality”;
- b. To develop and report with recommendations “to maintain compliance with both State of Michigan and federal agencies”; and
- c. To assist the City in implementing the recommendations.

109. Veolia, however, responded that “addressing the fundamental issues concerning water quality compliance and operational reliability is much more complex than the recommendations study and advisory services outlined [in City of Flint’s request].” Veolia proposed to respond to Flint’s requested scope of work by:

- a. Calibrating “daily water quality samples with the City’s hydraulic model”;
- b. Refining “the operational strategies for the plant and distribution system”;

- c. Coordinating “daily efforts across plant, operations and maintenance staff”; and
- d. Alleviating “continued concerns from the public communications process”.

110. In February of 2015, Veolia was hired through a resolution that incorporated a standard of performance clause, which stated that “the City is relying upon the professional reputation, experience, certification, and ability of [Veolia].”

111. Veolia’s task was to review Flint’s public water system, including treatment processes, maintenance procedures, and actions taken. As water treatment professionals, Veolia had an opportunity to catch what LAN and Rowe had missed or refused to warn about – corrosive water was being pumped through lead pipes into the homes of Flint residents without corrosion control.

112. On February 12, 2015, Rob Nicholas, Veolia’s Vice President stated: “We’re going to look at the numbers, we’re going to look at the plant, we’re going to decide how the equipment’s functioning, look at the raw water, look at the finished water, decide how it’s getting through the pipe to the house, and from that, decide how to fix each of those problems as we go forward.”

113. Despite its representations that it would conduct a thorough, all-encompassing review of the Flint Water system, it took Veolia only 6 days to issue an interim report on its findings, which it presented to a committee of Flint’s City Council on February 18, 2015. Per the interim report, the only

issue not in Veolia's scope of study was "why the change from [Lake Huron water via the Detroit system pipeline] or the history of the utility."

114. In the interim report, Veolia indicated that Flint's water was "in compliance with drinking water standards." It also noted that "[s]afe [equals] compliance with state and federal standards and required testing." Veolia effectively declared publically that Flint's poisonous water was safe.

115. Veolia's interim report also noted that the discoloration in Flint's water "raises questions," but "[d]oesn't mean the water is unsafe." It noted that among Veolia's "next steps" were to "carry out more detailed study of initial findings" and "[m]ake recommendations for improving water quality."

116. In response to potential questions about "[m]edical problems," Veolia's interim report dismissively claimed that "[s]ome people may be sensitive to any water."

117. On February 27, 2015, LAN prepared a Final Operational Evaluation Report titled "*Trihalomethane Formation Concern.*" Trihalomethane levels continued to violate the Safe Drinking Water Act. LAN recommended additional ferric chloride to address the water quality problems, as adding ferric chloride could "easily be implemented without the need for additional equipment." However, as is widely known in the profession, ferric chloride is highly acidic and would increase the corrosiveness of Flint's water, worsening the corrosion of lead pipes, and the resulting leaching of lead into the water supply.

118. Veolia issued its final “*Water Quality Report*” on March 12, 2015.

119. In the final report, Veolia noted that it had conducted a “160-hour assessment of the water treatment plant, distribution system, customer services and communication programs, and capital plans and annual budget.” The final report claimed that “a review of water quality records for the time period under our study indicates compliance with State and Federal water quality regulations.”

120. The final report also states that “the public has ... expressed its frustration of discolored ... water. Those aesthetic issues have understandably increased the level of concern about safety of the water. The review of the water quality records during the time of Veolia’s study shows the water to be in compliance with State and Federal regulations, and based on those standards, the water is considered to meet drinking water requirements.”

121. Specifically addressing the lack of corrosion control, the final report notes that “[m]any people are frustrated and naturally concerned by the discoloration of the water with what primarily appears to be iron from the old unlined cast iron pipes. The water system could add a polyphosphate to the water as a way to minimize the amount of discolored water. Polyphosphate addition will not make discolored water issues go away. The system has been experiencing a tremendous number of water line breaks the last two winters. Just last week there were more than 14 in one day. Any break, work on broken valves or hydrant flushing

will change the flow of water and potentially cause temporary discoloration.”

122. Therefore, in addition to completely missing the connection between the lack of corrosion control and lead contamination, Veolia made a permissive “could” suggestion aimed only at reducing aesthetic deficiencies while suggesting that Flint’s drinking water met all applicable requirements and was safe to drink.

123. In fact, not only did the report fail to discuss lead corrosion, the use of polyphosphate, as suggested, only deals with iron corrosion and could worsen lead corrosion.

124. As a result of Veolia’s actions, Flint residents, including Plaintiffs and the Class Members, continued to be exposed to poisonous water beyond February and March of 2015.

125. As evidence of problems mounted, Rowe, LAN and Veolia denied the dangers facing residents, insisting the water was safe.

126. Supported by the stated denials from Rowe, LAN and Veolia, Jerry Ambrose, Flint’s Emergency Manager at that time, publicly declared that “Flint Water today is safe by all Environmental Protection Agency and Michigan Department of Environmental Quality standards, and the city is working daily to improve its quality ... water from Detroit is no safer than water from Flint.”

127. In April or May of 2015, EPA representative Miguel Del Toral stated that the sampling procedures skewed lead levels results and

did not properly account for the presence of lead service lines. Del Toral issued a memorandum, stating “I wanted to follow up on this because Flint has essentially not been using any corrosion control treatment since April 30, 2014, and they have [lead service lines]. Given the very high lead levels found at one home at the pre-flushing happening in Flint, I’m worried that the whole town may have much higher lead levels than the compliance results indicated, since they are using pre-flushing ahead of their compliance sampling.”

128. The EPA also found that lead levels from the Flint River were twice the limit that would classify Flint River water as hazardous waste.

129. Del Toral, a national expert in the field, identified the problem, the cause of that problem, and the specific reason it had been missed.

130. On April 24, 2015, the EPA was finally informed that Flint did not have optimized corrosion control in place, contradicting what had previously been stated.

131. On or about June 24, 2015, EPA representative Miguel Del Toral wrote a detailed memo entitled “*High Lead Levels in Flint, Michigan-Interim Report*,” outlining numerous dangers and hazards associated with the water being pumped from the Flint River, including unacceptable levels of lead. According to Mr. Del Toral’s memo, because there had been a failure to use the same chemical treatments for lead and copper after Flint made the switch in 2014, corroded plumbing was likely leaching lead (“In the absence of any corrosion

control treatment, lead levels in drinking water can be expected to increase”) and making its way to the water taps found in the homes of Flint’s residents, including the homes of the Plaintiffs and the Class Members.

132. During the spring and summer of 2015, Professor Marc Edwards (“Professor Edwards”) and other experts from Virginia Polytechnic Institute and State University (commonly known as “Virginia Tech”) tested 277 drinking water samples in Flint and found that 10% of the samples had lead levels of 25 parts per billion (ppb), substantially in excess of the federal action level of 15 ppb.

133. Professor Edwards was quoted as saying “I have never in my 25-year career seen such outrageously high levels going into another home in the United States.”

134. Professor Edwards also determined that water from the Flint River was 19 times more corrosive than the water pumped from Lake Huron by the DWSD, and that without corrosion control treatment, lead was leaching out from the lead-based service lines at alarming rates and finding its way to the homes of Flint’s residents, including but not limited to the homes of the Plaintiffs.

135. Professor Edwards has stated that the lead leaching into the water was predictable because of the chloride content in the water, but that he “didn’t see anything that proper treatment couldn’t render potable.”

136. On or about September 2, 2015, Professor Edwards published the results of his studies described above. This report noted starting findings. Amongst those findings:

- a. “FLINT HAS A VERY SERIOUS LEAD IN WATER PROBLEM”;
- b. “101 out of 252 water samples from Flint homes had first draw lead more than 5 ppb”;
- c. “Flint’s 90th percentile lead value is 25 parts per billion ... over the EPA allowed level of 15 ppb that is applied to high risk homes ... how is this possible that Flint ‘passed’ the official EPA Lead and Copper Rule sampling overseen by MDEQ?”; and
- d. “Several samples exceeded 100 ppb and one sample collected after 45 seconds of flushing exceeded 1000 ppb”.

137. Additional findings published by Professor Edwards on September 2, 2015 included that “[o]n average, Detroit water is 12 times (or 12X) less corrosive than the Flint River water currently in use;” and that “even with phosphate, Flint River water has 10 times more lead compared to the same conditions using Detroit water.” Available at <http://flintwaterstudy.org/2015/09/flint-rivers-water-is-very-corrosive-to-lead-and-causing-leadcontamination-in-homes/> (last visited July 1, 2016).

138. On September 11, 2015, Professor Edwards updated his September 2, 2015 findings by stating that “[o]n average, Detroit water is 19 times (or 19X)

less corrosive than the Flint River water currently in use[,]” and that “even with phosphate, Flint River water has 16 times more lead compared to the same condition using Detroit water.” Available at <http://flintwaterstudy.org/2015/09/test-update-flint-river-water-19x-more-corrosive-than-detroitwater-for-lead-solder-now-what/> (last visited July 1, 2016).

139. Therefore, the Flint River water was so corrosive that even the obvious, necessary measure of adding corrosion control may not have been enough to totally make it safe.

140. This would have been known if the water was treated or studied before the switch.

141. Professor Edwards predicted that “in the weeks and months ahead MDEQ and Flint will be forced to admit they failed to protect health as required under the Federal Lead and Copper Rule.” He was entirely correct.

142. At around the same time, Dr. Hanna-Attisha, a pediatrician at Hurley Hospital demonstrated and publicly disclosed a dramatic and dangerous spike in elevated blood lead levels in a large cohort of Flint children corresponding with the time of exposure to the highly corrosive Flint River water. She produced her study evidencing these elevated blood lead levels on or about August of 2015.

143. LAN issued its second Operational Evaluation Report, which was 40 pages, on August 27, 2015, intended to again address compliance with EPA and MDEQ operations and regulations. Once again, LAN neglected to address the hazards of lead

in the Flint Water which was poisoning residents of Flint and damaging their property, including Plaintiffs, Class Members and their respective properties.

144. On or about September 29, 2015, the Genesee County Health Department issued a “Public Health Advisory for People Using the Flint City Water Supply with the Flint River as the Source,” which stated in pertinent part: “recent data provided by Hurley Hospital Researchers has indicated that a significant increase in blood lead levels has occurred in children since the switch to Flint River water.”

145. On or about October 8, 2015, Flint’s Eisenhower and Freeman Elementary Schools, along with Brownell and Holmes STEM Academies, exceeded 15 ppb for lead - the safety standard set forth by the Federal Government. Students and staff were ordered to drink bottled water only.

146. On October 16, 2015, Flint reconnected to DWSD. However, the damage had been done and lead has continued to leach from pipes into the water.

147. In November of 2015, LAN’s contract with Flint was amended to retain LAN for the purpose of providing engineering services for drawing and servicing water from the KWA pipeline.

148. On December 5, 2015, Flint declared a state of emergency.

149. On December 23, 2015, the Michigan Auditor General provided an investigative report on the crisis, finding that corrosion control should have

been maintained from the beginning and that improper sample sites had been selected.

150. On December 29, 2015, a task force appointed by Governor Rick Snyder issued a letter detailing its findings, which states, in part: “The City of Flint’s water customers – fellow Michigan citizens - were needlessly and tragically exposed to toxic levels of lead through their drinking water supply.”

151. On January 4, 2016, Genesee County declared its own state of emergency.

152. On January 12, 2016, the Governor called the National Guard into Flint and requested assistance from FEMA.

153. On January 16, 2016, President Barack Obama declared a federal state of emergency in Flint.

154. On February 16, 2016, the State of Michigan hired Rowe, which had already failed miserably as Acting City Engineer to begin the process of locating, removing and eventually replacing lead pipes in the highest risk areas of Flint.

155. Properties were also heavily impacted. For example, the prolonged exposure of the highly corrosive water without adequate anti-corrosive agents may have irreparably damaged lead and copper plumbing throughout Flint, all of which must now be repaired or replaced.

156. In February of 2016, the Detroit Free Press reported on the sharp decline in property values as a result of the water crisis in Flint. According to the

article, certain individuals that specialize in property tax matters estimate that the property values in Flint, due to the water crisis, will drop as much as 25%. In at least one instance, property value(s) were found to be 75% less than pre-exposure levels.

157. According to this Detroit Free Press article, Eric Dean Morse, the president of Flint-based Allied Real Estate Appraisers, indicated that lenders are “already skittish about lending in Flint ...” and that “[e]ight months ago [it] was a completely different market than what’s going on now.”

158. In February of 2016, Charles “Charlie” LeDuff, an on-air journalist for Detroit Fox affiliate WJBK, published a TV spot relating to LAN’s role in the so-called Flint Water Crisis. According to the TV spot, when Mr. LeDuff went to LAN’s Flint, Michigan office, it was empty and looked abandoned, even though Flint recently retained LAN for connecting the FWTP to the KWA.

COUNT I
PROFESSIONAL NEGLIGENCE AGAINST LAN

159. Plaintiffs incorporate the preceding paragraphs as though fully stated herein.

160. LAN undertook, for consideration, to render services for Flint, which they did or should have recognized as necessary for the protection of Plaintiffs and Class Members.

161. LAN undertook to perform a duty owed to Plaintiffs and Class Members by LAN independent of Flint and/or the State of Michigan.

162. Based on its undertaking, LAN had a duty to Plaintiffs and Class Members to exercise reasonable care.

163. LAN owed a duty to Plaintiffs, as residents and property owners in the City of Flint, to exercise that degree of care consistent with the greater degree of knowledge and skill possessed by design professionals, as well as an ethical duty to report to public authorities the dangers posed to public health and property that would result from the failure to install and/or operate a proper anti-corrosive treatment when using the Flint River as a primary source of drinking.

164. LAN also owed a duty to Plaintiffs to notify the proper authorities of unethical or illegal practices of others whose actions or decisions posed threats to public health and property that would result from the failure to install and/or operate a proper anti-corrosive treatment when using the Flint River as a primary source of drinking.

165. LANs' duties to Plaintiffs included, but were not limited to, the duty to properly administer the placing the FWTP into operation using the Flint River as a primary source, to do so in such a manner that would not endanger the health and property of Plaintiffs and Class Members, take other actions consistent with the greater degree of knowledge and skill possessed by design professionals, and/or the duty to report to public authorities the dangers posed to public health and property that would result from the failure to install and/or provide proper anti-

corrosive treatment when using the Flint River as a primary source of drinking.

166. LAN failed to exercise reasonable care in preparing for and executing the transition from treated DWSD water to untreated Flint River water.

167. LAN failed to undertake reasonable care and conduct as a professional engineering firm.

168. LAN failed to exercise reasonable care when it did not ensure that corrosion control measures were implemented in a water supply system that drew water from a highly corrosive water source and that transmitted that water to Plaintiff and Class Members through lead pipes.

169. LAN failed to exercise reasonable care when it failed to recognize the need for corrosion control in a system containing lead pipes when LAN continued to undertake duties to provide professional engineering services in relation to the Flint Water System on an ongoing basis.

170. Plaintiffs and Class Members suffered harm resulting from LAN's failures to exercise reasonable care.

171. LAN's failure to exercise reasonable care caused Plaintiffs and Class Members injuries, which were entirely foreseeable.

172. LAN is liable to Plaintiffs and Class Members for all harms resulting from LAN's failures to exercise reasonable care.

173. LAN's liability includes, without limitation, lead poisoning, personal injuries, illnesses, property

damages, diminution in property values, and exposure to lead and other toxic substances suffered by Plaintiffs and the Class Members as a result of LAN's failures to exercise reasonable care.

174. There is also an inference that LAN breached its collective duties to Plaintiffs and the Class Members, since the spike in lead levels does not normally occur unless water is not properly treated, such as the non-use of anti-corrosion treatments in providing finished water drawn from a water source and transported through a pipe system known or should have been known to require the use of such anti-corrosion treatments.

175. LAN's conduct and/or failure(s) to act constitute gross negligence because it was so reckless that it demonstrated a substantial lack of concern for whether an injury would result.

176. As a direct result of LAN so negligently, carelessly and/or recklessly administering the placing of the FWTP into operation using the Flint River as a primary source and/or failing to report to public authorities the dangers posed to public health and property that would result from the failure to install and/or provide proper anti-corrosive treatment when using the Flint River as a primary source of drinking, Plaintiffs and Class Members have experienced serious and in some cases life-threatening and irreversible bodily injury.

177. Plaintiffs and Class Members have and will also incur substantial economic losses, including but not limited to medical expenses and lost wages.

178. Plaintiffs and Plaintiff Class Members have also been damaged in the nature of pain and suffering, embarrassment, outrage, mental anguish, fear, sense of insult, indignity, humiliation and mortification, and stress related physical symptoms such as sleeplessness, gastro-intestinal discomfort, neuropathy and similar symptoms.

179. Additionally, Plaintiffs and Class Members have experienced property damage to the homes and places of business in the nature of diminution of values (due to both the need to repair their property and the loss in market value of their property) and seek damages to remediate the permanent damage caused by the use of corrosive water without proper anti-corrosive treatment.

180. In addition to the damages alleged above, Plaintiffs and Class Members seek exemplary damages against LAN.

181. LAN's professional negligence was voluntary conduct that inspired humiliation, outrage and indignity by Plaintiffs and Class Members.

182. LAN's conduct was malicious, willful and wantonly as to disregard Plaintiffs' and Class Members' rights for the following reasons:

- a. LAN knew that Plaintiffs and Class Members were relying upon LAN to provide it with safe water;
- b. LAN knew that the failure to include corrosion control chemicals posed threats to public health and property that would result in

injury and damages to Plaintiffs and Class Members; and/or

- c. LAN knew that the failure to notify and/or report to the proper authorities of unethical or illegal practices of others whose actions or decisions posed threats to public health and property that would result in injury and damages to Plaintiffs and Class Members.

183. As a result of the foregoing, Plaintiffs and Class Members seek an award of exemplary damages from LAN so as to deter such morally reprehensible conduct by LAN and similarly situated corporations in the future.

184. There is an amalgamation of interests, activities and the roles of LAN and LAD that blur the legal distinction between the corporations that include, but are not limited to:

- a. LAD and LAN have interlocking officers and directors. For example, LAN and LAD share the same executive personnel - Chief Executive Officer Leo A. Daly III and President Dennis W. Petersen - who, upon information and belief, control and direct the companies as one.
- b. LAD and LAN share offices in Houston, Texas and other locations.
- c. LAN holds itself out to the world as a LAD company.
- d. LAD's website homepage contains the LAN logo and a link to the LAN website.

- e. LAN holds itself out to world as “A Leo A. Daly Company” on LAN’s website, reports, and even on the buildings where its offices are located (including its office in Flint).
- f. The Terms and Conditions of Use, Privacy Statement on the LAD website indicate that it and LAN are not separate and distinct entities by making joint assertions such as their intellectual property rights and warranty disclaimers, which explicitly declare that “LEO A DALY’, ‘Lockwood Andrews & Newnam’, and ‘LAN’ are trademarks of Leo A. Daly Company.”
- g. LAD’s “services are extended through Lockwood, Andrews & Newnam, Inc. (LAN), a Leo A. Daly Company.”

185. Upon information and belief, LAN is a subsidiary of LAD, which exerts a degree of control over LAD greater than what is normally associated with common ownership and directorship, such that LAN exists as a separate entity from LAD in name only. Upon further information and belief, LAN is totally reliant upon LAD for direction with regard to all critical aspects of the issues giving rise to this lawsuit.

186. Upon information and belief, because LAN does not manifest separate corporate interests from those of LAD and functions solely to achieve the corporate purposes of LAD, retention of their separate corporate personalities and identities would promote injustice in the context of this lawsuit.

187. Due to this amalgamation of interest, activities and roles, LAD should be held liable for any judgment entered in favor of Plaintiff and Class Members and against LAN.

COUNT II
PROFESSIONAL NEGLIGENCE AGAINST
ROWE

188. Plaintiffs incorporate the preceding paragraphs as though fully stated herein.

189. Rowe undertook, for consideration, to render services for Flint, which it should have recognized as necessary for the protection of Plaintiffs and Class Members.

190. Rowe undertook to perform a duty owed to Plaintiffs and Class Members by Flint and/or the State of Michigan.

191. Based on its undertaking, Rowe had a duty to Plaintiffs and Class Members to exercise reasonable care.

192. Rowe failed to exercise reasonable care in overseeing the preparation for and execution of the transition from treated DWSD water to untreated Flint River water.

193. Rowe failed to undertake reasonable care and conduct as a professional engineering firm.

194. Rowe failed to exercise reasonable care when it failed to insist upon the implementation of corrosion control chemical in a system containing lead pipes that was transporting highly corrosive water from the Flint River to the FWTP to the

residents and citizens of Flint, including Plaintiffs and the Class Members.

195. Plaintiffs and Class Members suffered harm resulting from Rowe's failure to exercise reasonable care.

196. Rowe's failure to exercise reasonable care caused Plaintiffs and Class Members injuries, which were entirely foreseeable.

197. Rowe is liable to Plaintiffs and Class Members for all harms resulting from its failures to exercise reasonable care.

198. Rowe's liability includes, without limitation, lead poisoning, personal injuries, illnesses, property damages, diminution in property values, and exposure to lead and other toxic substances suffered by Plaintiffs and Class Members as a result of Rowe's failures to exercise reasonable care.

199. Rowe's conduct and/or failure(s) to act constitute gross negligence because it was so reckless that it demonstrated a substantial lack of concern for whether an injury would result.

200. As a direct result of Rowe so negligently, carelessly and/or recklessly administering the placing of the FWTP into operation using the Flint River as a primary source and/or failing to report to public authorities the dangers posed to public health and property that would result from the failure to install and/or provide proper anti-corrosive treatment when using the Flint River as a primary source of drinking, Plaintiffs and Class Members

have experienced serious and in some cases life-threatening and irreversible bodily injury.

201. Plaintiffs and Class Members have and will also incur substantial economic losses, including but not limited to medical expenses and lost wages.

202. Plaintiffs and Class Members also incurred damages in the nature of pain and suffering, embarrassment, outrage, mental anguish, fear, sense of insult, indignity, humiliation and mortification, and stress related physical symptoms such as sleeplessness, gastro-intestinal discomfort, neuropathy and similar symptoms.

203. Additionally, Plaintiffs and Class Members have experienced property damage to the homes and places of business in the nature of diminution of values (due to both the need to repair their property and the loss in market value of their property) and seek damages to remediate the permanent damage caused by the use of corrosive water without proper anti-corrosive treatment.

204. In addition to the damages alleged above, Plaintiffs and Class Members seek exemplary damages against Rowe.

205. Rowe's professional negligence was voluntary conduct that inspired humiliation, outrage and indignity by Plaintiffs and Class Members.

206. Rowe's conduct was malicious, willful and wantonly as to disregard Plaintiffs' and Class Members' rights for the following reasons:

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- a. Rowe knew that Plaintiffs and Class Members were relying upon Rowe to provide it with safe water;
- b. Rowe knew that the failure to include corrosion control chemicals posed threats to public health and property that would result in injury and damages to Plaintiffs and Class Members; and/or
- c. Rowe knew that the failure to notify and/or report to the proper authorities of unethical or illegal practices of others whose actions or decisions posed threats to public, health and property that would result in injury and damages to Plaintiffs and Class Members.

207. As a result of the foregoing, Plaintiffs and Class Members seek an award of exemplary damages from Rowe so as to deter such morally reprehensible conduct by Rowe and similarly situated corporations in the future.

COUNT III
PROFESSIONAL NEGLIGENCE AGAINST
VEOLIA

208. Plaintiffs incorporate the preceding paragraphs as though fully stated herein.

209. Veolia undertook, for consideration, to render services for Flint, which it should have recognized as necessary for the protection of Plaintiffs and Class Members.

210. Veolia undertook to perform a duty owed to Plaintiffs and Class Members to exercise reasonable care.

211. Plaintiffs and Class Members relied on Veolia to perform the duty to inspect Flint's water supply to make sure that it was safe.

212. Veolia failed to exercise reasonable care as a professional engineering firm.

213. Veolia failed to exercise reasonable care when it declared that Flint's drinking water met federal and/or state and/or all applicable requirements.

214. Veolia failed to exercise reasonable care when it declared that Flint's drinking water was safe.

215. Veolia failed to exercise reasonable care when it denied that problems unique to Flint's water supply were causing medical harms and property damage.

216. Veolia failed to exercise reasonable care when it failed to warn about the dangers of lead leaching into Flint's water system.

217. Veolia failed to exercise reasonable care when it did not ensure the immediate implementation of corrosion controls for purposes of preventing lead contamination of Flint's water supply.

218. Plaintiffs and Class Members suffered harm resulting from Veolia's failures to exercise reasonable care.

219. Veolia's failures to exercise reasonable care proximately caused the Plaintiffs and the Class Members' injuries, which were entirely foreseeable.

220. Veolia's liabilities include, without limitation, without limitation, lead poisoning, personal injuries, illnesses, property damages, diminution in property value, and exposure to lead and other toxic substances suffered by Plaintiffs and the Class Members as a result of Veolia's failures to exercise reasonable care.

221. Veolia's conduct and/or failure(s) to act constitute gross negligence because it was so reckless that it demonstrated a substantial lack of concern for whether an injury would result.

222. Plaintiffs and Class Members have and will also incur substantial economic losses, including but not limited to medical expenses and lost wages.

223. Plaintiffs and Class Members also incurred damages in the nature of pain and suffering, embarrassment, outrage, mental anguish, fear, sense of insult, indignity, humiliation and mortification, and stress related physical symptoms such as sleeplessness, gastro-intestinal discomfort, neuropathy and similar symptoms.

224. Additionally, Plaintiffs and Class Members have experienced property damage to the homes and places of business in the nature of diminution of values (due to both the need to repair their property and the loss in market value of their property) and seek damages to remediate the permanent damage caused by the use of corrosive water without proper anti-corrosive treatment.

225. In addition to the damages alleged above, Plaintiffs and Class Members seek exemplary damages against Veolia.

226. Veolia's professional negligence was voluntary conduct that inspired humiliation, outrage and indignity by Plaintiffs and Class Members.

227. Veolia's conduct was malicious, willful and wantonly as to disregard Plaintiffs' and Class Members' rights for the following reasons:

- a. Veolia knew that Plaintiffs and Class Members were relying upon Veolia to provide it with safe water;
- b. Veolia knew that the failure to include corrosion control chemicals posed threats to public health and property that would result in injury and damages to Plaintiffs and Class Members; and/or
- c. Veolia knew that the failure to notify and/or report to the proper authorities of unethical or illegal practices of others whose actions or decisions posed threats to public health and property that would result in injury and damages to Plaintiffs and Class Members.

228. As a result of the foregoing, Plaintiffs and Class Members seek an award of exemplary damages from Veolia so as to deter such morally reprehensible conduct by Veolia and similarly situated corporations in the future.

229. There is an amalgamation of interests, activities and the roles of Veolia LLC, Veolia, Inc., Veolia Water and Veolia S.A. that blur the legal

distinction between the entities that include, but are not limited to:

- a. Veolia S.A., a French company, reports income from business activities within the United States and having employees working within the United States, per its filings with the Securities and Exchange Commission;
- b. Veolia S.A. includes Veolia LLC, Veolia Inc. and its subsidiaries in its consolidated financial statements and reporting to the Securities and Exchange Commission;
- c. Veolia S.A. owns and controls 100% of Veolia LLC, Veolia Inc. and its subsidiaries;
- d. Veolia's ethics guide, filed with the Securities and Exchange Commission, holds the Veolia Group out to the public as an international group of related entities provided water services to customers throughout the world;
- e. Veolia website represents to the public that each of the Veolia entities are part of the same international Veolia Group that provides its services, including those relating to private and public water systems, to its customers around the world;
- f. Veolia website provides no distinction between any of the Veolia entities; and
- g. Veolia entities share offices around the world;

230. Due to this amalgamation of interest, activities and roles, Veolia S.A., Veolia LLC, Veolia Inc. and Veolia Water should be held liable for any

judgment entered in favor of Plaintiffs and Class Members and against any and all of the Veolia entities named herein.

COUNT IV
FRAUD AGAINST VEOLIA

231. Plaintiffs incorporate the preceding paragraphs as though fully stated herein.

232. According to the complaint filed by the State of Michigan in this Genesee County Circuit Court (Case No. 16-107175-NM) (“State Complaint”), Veolia made false and material representations regarding the safety of Flint’s water, the nature and cause of the water quality problems in Flint, and the risks to the public health.

233. Upon information and belief and in reliance on the allegations of the State Complaint, the false and material representations include, but are not limited to, statements in Veolia’s 2015 Interim Report that:

- a. Flint’s water was “safe” and “in compliance with drinking water standards,”
- b. The observed discoloration was merely aesthetic and not indicative of a water quality of health problems, and
- c. Medical problems are because “[s]ome people may be sensitive to any water.”

234. Upon information and belief and in reliance on the allegations of the State Complaint, these false and material representations were repeated in Veolia’s 2015 Report and other public statements.

235. Upon information and belief and in reliance on the allegations of the State Complaint, the material representations and other acts and omissions of Veolia constitute fraud.

236. Upon information and belief and in reliance on the allegations of the State Complaint, Veolia knew the representations were false, or Veolia's representations were made recklessly without any knowledge of the potential truth.

237. Upon information and belief and in reliance on the allegations of the State Complaint, Veolia made the representations with the intention that Plaintiffs and the Class Members would act and rely on them, which they did.

238. As a direct and proximate result, Plaintiffs and the Class Members suffered and continue to suffer injuries and damages.

RELIEF REQUESTED

Accordingly, Plaintiffs request the following relief from the court:

- a. An order certifying this case as a Class Action;
- b. An order for an award of full compensatory damages for those injuries and damages, including diminution of property values, sustained by Class Representatives and all Class Members;
- c. An order for an award of exemplary damages;
- d. An order for an award of actual reasonable attorneys' fees and litigation expenses;

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- e. An order for all such other relief the court deems reasonable, equitable and just under the circumstances.

JURY TRIAL

Plaintiffs demand a trial by jury of all claims so triable.

Respectfully submitted,

MCALPINE PC

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