UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re Flint Water Cases.

Judith E. Levy
United States District Judge

_____/

This Order Relates To:

ALL CASES

_____/

FIFTH AMENDED CASE MANAGEMENT ORDER

This Case Management Order (CMO) shall not apply to those defendants who have not filed an answer, except as otherwise provided by Court order. Any defendant to which this order does not apply shall be treated as a non-party for the purposes of discovery, subject to the defendant's properly raised objection. Non-parties who have been previously identified as defendants shall be entitled to participate in discovery initiated by other parties. If and when any such defendants file an answer, such defendants shall be entitled to initiate discovery, the timing and manner of which shall then be established by this Court.

Contents

I. Discovery Coordination Protocol

A. Scope

(1) The purpose of this Order is to effectuate efficiency and limit duplication in the discovery processes associated with litigation arising out of claims made regarding the use of the Flint River as a water source. Section I (Discovery Coordination Protocol) was adapted from the

Amended Discovery Coordination Protocol Order (ECF No. 675) and now supersedes that order.

(2) This Order is not intended to serve as an instrument to circumvent each Judge's authority over his or her own docket, but rather as an instrument that allows for notice, attendance, and participation, if appropriate, in the discovery processes in the various venues wherein litigation involving the same or similar parties are pending in actions arising out of the same or similar events.

(3) This Order shall apply to all cases, currently or in the future, consolidated or coordinated into the Flint Water Cases before the Honorable Judith E. Levy. In that regard, it applies to all discovery permitted under the Federal Rules of Civil Procedure, including, without limitation: (i) depositions noticed under Rule 30; (ii) document requests and requests to inspect and/or permit entry onto property issued under Rule 34; (iii) subpoenas *duces tecum* issued under Rule 45 (iv) interrogatories under Rule 33; (v) motions for physical and mental examination under Rule 35; and (vi) requests for admission under Rule 36.

(4) The Court recognizes that effective coordination will require the

approval and cooperation of the judges in the various state and federal cases that are not consolidated in the current case (5:16-cv-10444), including the entry of a complementary order(s) sufficient to accomplish that coordination in those other cases.[1]

B. Definitions

(1) "Federal Flint Water Cases" means all cases that are, currently or in the future, consolidated or coordinated into the above captioned case; and, subject to the entry of necessary complementary order(s): (i) *In re FTCA Flint Water Cases*, Case No. 17-11218, currently pending before the Hon. Linda V. Parker[2] and (ii) any other federal court cases for which the Court determines that discovery coordination would be in the interest of justice.

(2) "State Flint Water Cases" means, subject to the entry of any necessary complementary order(s), all cases that are, currently or in the

[1] McLaren Regional Medical Center ("MRMC") reserves the right to object to the entry of a complementary order in any state court case against MRMC in which it is alleged that individuals contracted Legionnaires' Disease at McLaren Flint Hospital after April 2014. All parties to cases in other venues, including state courts, the Michigan Court of Claims, and *In re FTCA Flint Water Cases*, Case No. 17-11218 shall have the right to object to the entry of a complementary order in those cases.

[2] The Hon. Linda V. Parker entered a complementary Discovery Coordination Protocol Order on March 3, 2020. (17-11218, ECF 112.)

future, consolidated or coordinated into: (i) the *In re Flint Water Litigation*, Case No. 17-108646-NO, in the Circuit Court of Genesee County, Michigan, (ii) the several *legionella* related cases before the Hon. Joseph J. Farah in Genesee County; (iii) *Tamara Nappier et al. v. Snyder et. al.*, Case No. 16-71 in the Michigan Court of Claims; and (iv) any other state court cases for which the Court determines that discovery coordination would be in the interest of justice.[3]

(3) "Flint Water Cases" means the Federal Flint Water Cases and the State Flint Water Cases, collectively. "CACC" means the Consolidated Amended Class Action Complaint pending in *Carthan v. Snyder*, 16-cv-10444.

(4) "Putative Class Action Plaintiffs" means: (i) the named plaintiffs identified in the pending CACC and any subsequent Federal Flint Water case brought as a putative class action; and (ii) the named plaintiffs identified in any currently pending class actions or later filed class actions in the State Flint Water Cases brought as a putative class action.

(5) "Individual Plaintiffs" means each plaintiff who: (i) has filed or

[3] The Hon. Richard B. Yuille entered a complementary discovery coordination order on October 1, 2018, in *In re Flint Water Litigation*, Case No. 17-108646-NO. This case was recently transferred to the Hon. Joseph J. Farah.

in the future files a "Short-Form Complaint" adopting the Master Long Form Complaint in either the Federal or State Court Flint Water Cases; or (ii) otherwise files a non-class complaint in either the Federal or State Court Flint Water Cases.

C. Depositions

(1) Subject to Section I(C)(2) below, a witness may be deposed only once in the Flint Water Cases after the date of this order, except by order of the Court based on a showing of good cause or by agreement of all interested parties. For purposes of this order, good cause includes, without limitation, a party's not having had a meaningful opportunity to depose a witness because that witness's deposition was taken before resolution of that party's dispositive motion(s) in a Flint Water Case, or any other circumstance in which a party has not had a meaningful opportunity to depose a witness. Notwithstanding the foregoing, a party may depose as a fact witness under Rule 30(b)(1) or Rule 45, or the comparable state court procedural rule if the deposition is noticed in a state court proceeding, an individual who has been previously deposed or will be deposed solely as an entity's designee under Rule 30(b)(6) or the comparable state court procedural rule; but in such case the

individual may be deposed only once in his or her capacity as a designee and only once in his or her individual capacity. Nothing in this order shall be to the prejudice of any party's or witness's right to seek the protection of any court of competent jurisdiction from a deposition which the party or witness considers to be objectionable under the applicable law.

(2) Depositions that are noticed in the Federal Flint Water Cases shall be noticed pursuant to the Federal Rules of Civil Procedure for a proposed date, time, and location, subject to the provisions of this Order. *See also* Section V(D) (Deposition Protocol). Depositions that are noticed in the State Flint Water Cases shall be noticed pursuant to the Michigan Court Rules for a proposed date, time, and location, subject to the provisions of this Order.

(3) Prior Depositions.

(a) To the extent counsel for parties to Flint Water Cases have participated before the date of this order in depositions taken in any case included within the definition of Federal Flint Water Cases, *see* Section I(B)(1), or in any case included within the definition of State Flint Water Cases, *see* Section I(B)(2), or in any other case arising out of

contamination of the City of Flint municipal water supply, such counsel shall, within 14 days after the date of this order, file with this Court a list that sets forth: (i) the full caption of each case in which he or she has participated in such depositions, (ii) the name of each person or entity deposed in each such action, (iii) the name of the party and attorney who noticed each such deposition, (iv) the date(s) on which the deposition was taken, (v) all means by which the deposition was recorded, whether stenographically, audiovisually, or otherwise, and (vi) whether any testimony taken or exhibits marked at the deposition are subject to the terms of any confidentiality or other protective order entered in the case in which the deposition was taken.

(b) To the extent counsel for parties to Flint Water Cases have participated before the date of this order in depositions taken in any case included within the definition of Federal Flint Water Cases, *see* Section I(B)(1), or in any case included within the definition of State Flint Water Cases, *see* Section I(B)(2), or in any other case arising out of contamination of the City of Flint municipal water supply, such counsel shall supply complete and accurate copies of the transcripts, videotapes, and other recordings of, and the exhibits to, all such depositions to all counsel of

record in Flint Water Cases to the extent such counsel of record request the transcripts, videotapes, other recordings, and exhibits in writing and agree to reimburse counsel providing them for the reasonable actual cost of providing the copies. Such transcripts, videotapes, other recordings, and exhibits shall be delivered to the attorney requesting them within 7 calendar days after the request for them and agreement to reimburse is made. Provided, however, that this subsection shall not require delivery of transcripts, videotapes, or exhibits to the extent delivery in accordance with this subsection would contravene a confidentiality order or other protective order entered by the court with jurisdiction over the case in which the deposition was taken.

(c) To the extent counsel for parties to Flint Water Cases have noticed, or have received notice of, depositions to be taken but not yet taken in any case included within the definition of Federal Flint Water Cases, *see* Section I(B)(1), or in any case included within the definition of State Flint Water Cases, *see* Section I(B)(2), or in any other case arising out of contamination of the City of Flint municipal water supply, such counsel shall forthwith file with this Court a list that sets forth: (i) the full caption of each case in which such deposition has been noticed, (ii) the

name of each deponent named in each such notice, (iii) the name, telephone number, and e-mail address of the attorneys who have noticed each such deposition, (iv) and the date(s) for which the deposition has been noticed or will be taken.

D. Other Coordination Obligations

(1) All parties to the Federal Flint Water Cases shall endeavor to avoid service of discovery in any Flint Water Case that is duplicative of discovery already served after the date of this order in another Flint Water Case.

(2) Each party to the Federal Flint Water Cases shall use best efforts to be familiar with the documents and tangible things that have been produced and the written responses that have been made in response to earlier discovery requests in the Flint Water Cases so as to avoid unnecessary service of requests for documents and things that have already been produced in response to discovery requests in a Flint Water Case or to propound interrogatories to which complete and responsive answers have already been served in a Flint Water Case. Provided, however, that nothing in this Order impairs the right of any party to a Flint Water Case to serve requests for supplementation of prior discovery

responses if the procedural rules of the court in which the requests for supplementation are served provide for such requests.

(3) Registration of Counsel. All counsel in the Flint Water Cases who have not already filed an appearance in E.D. Mich. Case No. 16-10444 are required to file an appearance as an interested party in that case. Any obligation for service and/or notice for matters covered by this Order shall be satisfied if filed in and served on all counsel listed in 16-10444. See ECF No. 312, PageID.11658–11659 for instructions on how to file an appearance as an interested party.

(4) Service by Email. All parties shall be deemed to consent to service of any discovery document by email.

(5) Prior Interrogatories and Document Requests

(a) To the extent counsel for parties to Flint Water Cases have issued, before the date of this Order, interrogatories or document discovery (whether of parties or non-parties) (hereinafter "written discovery") in any case included within the definition of Federal Flint Water Cases, *see* Section I(B)(1), or in any case included within the definition of State Flint Water Cases, *see* Section I(B)(2), or in any other case arising out of contamination of the City of Flint municipal water

supply, such counsel shall, within 14 days after the date of this order, file with this Court a list that sets forth: (a) the full caption of each case in which the written discovery was issued, (b) the person or party to whom the written discovery was issued; (c) the title(s) and date of the written discovery; (c) whether responses to the written discovery were produced or served; (d) the responses are subject to the terms of any confidentiality or other protective order.

(b) With reference to the written discovery disclosed, counsel for the issuing party shall supply complete and accurate copies of the written discovery responses, including any documents, to the extent that counsel for any other party request them in writing and agree to reimburse counsel providing them for the reasonable actual cost of providing the copies. Such written discovery responses shall be delivered to the attorney requesting them within 7 calendar days after the request for them and agreement to reimburse is made. Provided, however, that this subsection shall not require delivery of written discovery responses to the extent delivery in accordance with this subsection would contravene a confidentiality order or other protective order entered by the court with jurisdiction over the case in which the written discovery was issued.

II. Preliminary Discovery

A. Documents-Only Subpoenas to Non-Parties

(1) This CMO applies to subpoenas issued in the Flint Water Cases to non-parties who are commanded by the subpoena to produce documents, electronically stored information, and tangible things but who are not commanded by the subpoena to provide testimony. This CMO supplements, but does not replace, the provisions addressing the same subject matter set forth in the Court's Order Regarding Matters Discussed at the April 16, 2018 Status Conference. (ECF No. 452.) This order shall remain effective except as modified by further Court order or by stipulations entered on the docket in Case No. 16-cv-10444.

(2) Interim Lead Counsel for the Putative Class, Co-Liaison Counsel, and/or any defendant may cause a subpoena to be properly served on a non-party in accordance with Federal Rule of Civil Procedure 45 or with the non-party's agreement to accept service by other means. Once an attorney drafts a non-party documents-only subpoena, he or she shall share the draft with counsel for the parties to the litigation as defined by the Case Management Order, or its then current iteration, who shall then have five business days to provide constructive comments, as well as to propose additional categories of documents, which proposals

shall be shared with all counsel upon whom the draft was served. With regard to subpoenas proposed and not served prior to entry of this order, the foregoing five business day period shall commence upon issuance of this order. The subpoena's originator may incorporate the proposed changes to the draft subpoena. After five business days have passed, the subpoena's originator may serve the subpoena in accordance with the Federal Rules of Civil Procedure or pursuant to an agreement with the non-party to accept service (the "Initial Subpoena"), and shall deliver a copy of such issued subpoena to all parties of record. Within 5 business days of the service of the Initial Subpoena, counsel for the remaining parties to the litigation may serve a supplemental subpoena on the same non-party requesting additional categories of documents not included in the original subpoena ("Supplemental Subpoena") and shall deliver a copy of such issued subpoena to all parties of record. The lawyer serving the Initial Subpoena shall at the time of such service advise the non-party that Supplemental Subpoenas may be served by the other parties to the litigation within 5 business days and that the non-party should produce the documents requested by all subpoenas in a contemporaneous production, provided that the production required by the Initial

Subpoena and each Supplemental Subpoena shall be made upon counsel for each such requesting party, or that counsel's document or copy service provider.

(3) Prior to service of the Initial Subpoena, any party to the litigation may choose to be a co-signatory of the Initial Subpoena by advising the originator of that intent, and once so advised, the originator shall include any such party as a co-signatory of the Initial Subpoena. After service of the Initial Subpoena, and after service of each Supplemental Subpoena, each party to the litigation shall advise the originator(s) if that party would like to receive copies of the documents produced by the non-party. Counsel that has proposed changes to an Initial or Supplemental Subpoena is not deemed to be a signatory, or to have requested copies, regardless of whether the proposed changes were adopted by the originator.

(4) Fifty percent of the costs associated with third-party discovery shall be borne by plaintiffs and fifty percent of the costs associated with third-party discovery shall be borne by defendants. As to how the defendants' costs shall be allocated, the following provisions shall apply to the costs associated with the initial and any supplemental subpoena:

(a) All defendants seeking discovery from a non-party shall contribute in equal shares to the costs associated with that discovery.

(b) If a defendant that did not initially request or seek the discovery later wants access to the information, that party shall then become responsible for an equal share of the cost. The party or parties that initially requested the discovery shall maintain records of the costs incurred and the initial division of costs among defendants. If an additional defendant joins in the request or seeks access to the discovery after the costs have been allocated among the initial defendants, the initial defendants shall reallocate the costs by including the new defendant and the new defendant shall reimburse the initial defendants. For example, if four defendants initially requested the discovery, each defendant shall pay 25% of the costs. If a fifth defendant later joins in the request, each defendant shall pay 20% of the costs and the new defendant shall reimburse each of the initial four defendants 5% of the costs. For the purposes of this process, a defendant shall mean an individual named person or entity.

(c) The initial parties shall not provide access to the discovery materials to a new party unless and until the new party pays the required

amount. This allocation formula shall apply retroactively and prospectively to all such discovery costs incurred in the Flint Water Cases. Accordingly, parties that now seek to utilize discovery materials previously obtained by and at the expense of other parties must reimburse the "paying parties" in accordance with the formula above.

(d) Any disputes about these provisions may be brought to the Special Master or to the Court for resolution.

(5) The signatories may, but need not, agree (unanimously) to identify in the subpoena itself one or more of themselves as persons who the non-party recipient should contact with questions about the subpoena. Agreements to modify the non-party documents-only subpoena, including without limitation to enlarge the time for responding to it, to change the specified place or manner of production of materials requested by it, or to modify the scope or description of the requested materials, must be unanimous by the signatories of the subpoena. If unanimity cannot be achieved with reasonable promptness, any signatory may contact the Special Master to schedule a telephone hearing to resolve the dispute.

(6) If a non-party serves objections to a non-party documents-only subpoena or moves for a protective order with respect to the subpoena or to quash it, Interim Co-Lead Class Counsel may bring a motion on behalf of the plaintiffs named in the Consolidated Amended Class Action Complaint to compel compliance with all or part of the subpoena or may oppose in whole or in part the motion for a protective order or to quash; plaintiffs' Co-Liaison Counsel may do likewise on behalf of the plaintiffs for whom they are counsel of record or at the request of any other individual plaintiff's counsel of record; and counsel of record for any answering parties may do likewise on their clients' behalf. If and only if plaintiffs' Co-Liaison Counsel refuse to bring a motion to compel compliance at the request of an individual plaintiff's counsel of record, or to oppose at the request of such other counsel of record a non-party's motion for a protective order or to quash, may such other individual plaintiff's counsel of record bring such a motion or file such opposition.

(7) The attorney who receives a non-party's production in response to a documents-only subpoena shall without delay notify in writing interim Co-Lead Class Counsel, plaintiffs' Co-Liaison Counsel, and the lawyers representing the parties of his or her receipt of the production

and shall thereafter provide copies of all or any parts of the production to the attorneys for parties to the Flint Water Cases who make written request and pay for them. Production to such other attorneys shall be in the same form and order as the materials were produced by the non-party unless otherwise agreed in writing and shall occur as soon as is reasonably feasible in light of the form and volume of the production. Transmission of the produced materials should be by the most economical means that is reasonably feasible, such as, for example, e-mail, FTP, or other electronic means. In addition to payment to the non-party for the cost of responding to the subpoena, each party that receives a copy of the production must promptly reimburse the attorney who provided it for the reasonable actual copying and transmission cost incurred by that attorney in supplying the copy of the production.

(8) Consistent with this Court's Order Preserving Certain Immunities and Defenses for Purposes of Limited Pre-Answer Discovery (ECF No. 467), joinder in or assent to the motion for entry of this order, and participation in the activities described in this order, does not constitute a waiver of any Fifth Amendment privilege or immunity,

Eleventh Amendment privilege or immunity, qualified immunity, or other governmental immunity defenses.

B. Exchange of Freedom of Information Act Materials

(1) Within seven (7) days from entry of the original CMO (May 7, 2019), Co-Lead Class Counsel and Co-Liaison Counsel will give written notice to counsel for defendants of documents and other information that they have obtained by means of Freedom of Information Act (FOIA) requests submitted pursuant to 5 U.S.C. § 552, Mich. Comp. Laws §§ 15.231–246, or any statute or regulation of similar purpose in any other state. This paragraph applies only to information obtained relating to the alleged contamination of the City of Flint water supply on or after April 25, 2014.

(2) The notice described above shall concisely identify the public person, agency, or entity that provided the FOIA response, approximately when the response was provided, the form in which it was provided, approximately how large the response was, and the general types of materials included in the response. Counsel who wish to obtain copies of the materials identified in the notice may do so from the counsel who provided the notice, but must reimburse for the reasonable actual

expense of providing them. Copies should be produced in the same form in which they were produced in response to the FOIA request unless they are no longer available in that form. Counsel have an obligation to ascertain the FOIA materials over which they have control.

(3) Within seven (7) days from entry of the original CMO (May 7, 2019), counsel for defendants will give written notice to Co-Lead Class Counsel and Co-Liaison Counsel of documents and other information that they have obtained by means of Freedom of Information Act (FOIA) requests submitted pursuant to 5 U.S.C. § 552, Mich. Comp. Laws §§ 15.231–246, or any statute or regulation of similar purpose in any other state. This paragraph applies only to information obtained relating to the alleged contamination of the City of Flint water supply on or after April 25, 2014. The same procedures and requirements described in paragraph I.B(2) shall regulate the production of documents in this paragraph.

(4) All requests for FOIA information authorized under this Section shall be made no later than thirty-seven (37) days from entry of this CMO (June 6, 2019). Production of documents shall be made within fourteen (14) days after a requesting party delivers its written request.

III. Written Discovery

A. Privilege Logs

(1) Each party must maintain a log of potentially Privileged Communications.

(2) No party must include in its privilege log Privileged Communications between the party or the party's employees and the attorneys who represent the party in the Flint Water Cases or related litigation. With defendants, this paragraph only applies to Privileged Communications created or occurring on or after the date that a complaint was filed naming the defendant as a party to the Flint Water Cases or a related matter in this Court or any other. With plaintiffs, this paragraph only applies to Privileged Communications that were had on or after the date that the plaintiff filed a complaint in the Flint Water Cases or a related matter in this Court or any other. This exception shall not apply to communications shared with someone other than the party, or the party's employees, attorneys, experts, or insurer.

(3) The parties are not required to log Privileged Communications that are shared among parties who share a Joint Defense Agreement or Common Interest Agreement.

(4) No plaintiff must include in its privilege log confidential communications between the plaintiff's attorneys and Co-Lead Class Counsel or Co-Liaison Counsel, if the communications relate to matters within the scope of their duties. Similarly, no defendant in any Flint Water Case must include in its privilege log confidential communications between that defendant's attorneys and members of the Defense Executive Committee, if the communications relate to matters within the scope of their duties.

(5) No plaintiff who is also a plaintiff in a Genesee County case included within that court's Flint Water Litigation must include in its privilege log confidential communications between the plaintiff's attorneys and Lead Co-Liaison Counsel and Lead Class Action Counsel as appointed by the Genesee County Circuit Court, if the communications relate to matters within the scope of their duties. Similarly, no defendant who is also a defendant in a Genesee County action included within that court's Flint Water Litigation must include in its privilege log confidential communications between the defendant's attorneys and the lead defense counsel and defendants' lead class action counsel as

appointed by the Genesee County Circuit Court, if the communications relate to matters within the scope of their duties.

(6) The failure to include in a privilege log any Privileged Communication exempted by this section shall not constitute a waiver of the privilege.

(7) As used in this Section, references to an attorney includes other attorneys and employees in an attorney's firm, outside counsel, contract attorneys, and legal services vendors hired by an attorney's firm. With respect to parties that are not natural persons, it also includes in-house attorneys and other employees on the party's legal staff and legal services vendors hired by the party.

B. Requests for Documents and Tangible Things

(1) Beginning seven (7) days from entry of the original CMO (May 7, 2019), Co-Lead Class Counsel and Co-Liaison Counsel may serve requests for production of documents and tangible things on defendants. These counsel will coordinate so that defendants shall not need to respond to the same request twice. Beginning seven (7) days from entry of the original CMO (May 7, 2019), counsel for defendants may also serve requests for production of documents and tangible things on the named

plaintiffs in the consolidated putative class action *Carthan v. Snyder*, No. 16-cv-10444. However, no defendant may serve such requests on any named plaintiff whose claims against that defendant have been dismissed in their entirety.

(2) Beginning seven (7) days from entry of the original CMO (May 7, 2019), each defendant may serve requests for production of documents and tangible things on other defendants. However, no defendant may serve such requests on any defendant which is not a current codefendant with it in at least one of the Flint Water Cases.

(3) Parties shall follow Federal Rule of Civil Procedure 34(b)(2)(A) in responding to requests for production of documents and tangible things. Within ninety-seven (97) days from entry of the original CMO (August 5, 2019), parties shall substantially complete requests for production of documents and tangible things ("Substantial Completion"), with the exception that this deadline only applies to requests made within fourteen (14) days from entry of the original CMO (May 14, 2019).

(4) Counsel for defendants shall serve requests for production of documents and tangible things on plaintiffs in the individual cases

pursuant to Section X (Bellwether Trial Proceedings in the Individual Cases).

C. Interrogatories

(1) Beginning seven (7) days from entry of the original CMO (May 7, 2019), Co-Lead Class Counsel and Co-Liaison Counsel may serve interrogatories on defendants. These counsel will coordinate so that defendants shall not need to respond to the same interrogatory request twice. Beginning seven (7) days from entry of the original CMO (May 7, 2019), counsel for defendants may also serve interrogatories on the named plaintiffs in *Carthan*. However, no defendant may serve such interrogatories on any named plaintiff whose claims against that defendant have been dismissed in their entirety.

(2) Co-Lead Class Counsel and Co-Liaison Counsel may serve no more than thirty (30) interrogatories on each defendant (or, in the case of the VNA Defendants and the LAN Defendants, on each group of defendants). These interrogatories may be served divided up into sets of interrogatories, but no more than a total of thirty (30) may be served on any defendant unless otherwise agreed by all interested parties or with leave of court.

(3) Defendants may collectively serve twenty-five (25) interrogatories on each named plaintiff in *Carthan*. Additionally, each defendant may individually serve five (5) interrogatories on each named plaintiff in *Carthan*.[4] These interrogatories may be divided up into sets of interrogatories, but no more than the limits described in this paragraph may be served on any named plaintiff in *Carthan* unless otherwise agreed by all interested parties or with leave of court.

(4) Beginning seven (7) days from entry of the original CMO (May 7, 2019), defendants (or, in the case of the VNA Defendants and the LAN Defendants, each group of defendants) may serve twenty-five (25) interrogatories on each other defendant (or, in the case of the VNA Defendants and the LAN Defendants, on each group of defendants). These interrogatories may be divided up into sets of interrogatories, but no more than twenty-five (25) may be served on any defendant by any other defendant unless otherwise agreed by all interested parties or with leave of court.

[4] Defendants who file an answer after April 30, 2019, may individually serve ten (10) interrogatories on each named plaintiff.

(5) No defendant may serve any interrogatories on any defendant which is not a current codefendant with it in at least one of the Flint Water Cases.

(6) Counsel for defendants shall serve interrogatories on plaintiffs in the Individual Cases pursuant to Section X (Bellwether Trial Proceedings in the Individual Cases).

D. Requests for Admission

(1) Beginning seven (7) days from entry of the original CMO (May 7, 2019), Co-Lead Class Counsel and Co-Liaison Counsel may serve requests for admission on defendants. These counsel will coordinate so that defendants shall not need to respond to the same request twice. Beginning seven (7) days from entry of the original CMO (May 7, 2019), defendants may also serve requests for admission on the named plaintiffs in *Carthan*. No defendant may serve a request on any plaintiff whose claims against that defendant have been dismissed in their entirety.

(2) Beginning seven (7) days from entry of the original CMO (May 7, 2019), defendants (or, in the case of the VNA Defendants and the LAN Defendants, each group of defendants) may serve on each other defendant (or, in the case of the VNA Defendants and the LAN

Defendants, on each group of defendants) no more than twenty-five (25) requests for admission. These requests may be divided up into sets of requests, but no more than twenty-five (25) may be served on any defendant by any other defendant unless otherwise agreed by all interested parties or with leave of court.

(3) No defendant may serve any requests for admission on any defendant which is not a current codefendant with it in at least one of the Flint Water Cases.

(4) Counsel for defendants shall serve requests for admission on plaintiffs in the Individual Cases pursuant to Section X (Bellwether Trial Proceedings in the Individual Cases).

E. Pending Criminal Charges

Defendants who are subject to pending criminal charges may petition the Court for relief from written discovery until after the final resolution of those criminal charges.

IV. Requests for Entry on, Inspection, Sampling, and Testing of Land

(1) Beginning thirty-seven (37) days from entry of the original CMO (June 6, 2019), Co-Lead Class Counsel and Co-Liaison Counsel may serve requests for entry on, inspection, sampling, and testing of land on

defendants. Plaintiffs shall have the collective right to enter on, inspect, sample, and test each piece of land owned or otherwise controlled by each defendant only once, unless otherwise agreed by all interested parties or with leave of court. Each entry shall not last more than seven (7) hours, unless otherwise agreed by all interested parties or with leave of court.

(2) Beginning thirty-seven (37) days from entry of the original CMO (June 6, 2019), defendants may serve requests for entry on, inspection, sampling, and testing of land on the named plaintiffs in *Carthan*. Defendants shall have the collective right to enter on, inspect, sample, and test each piece of land owned or otherwise controlled by each named plaintiff only once, unless otherwise agreed by all interested parties or with leave of court. Each entry shall not last more than seven (7) hours, unless otherwise agreed by all interested parties or with leave of court.

(3) Beginning thirty-seven (37) days from entry of the original CMO (June 6, 2019), defendants (or, in the case of the VNA Defendants and the LAN Defendants, each group of defendants) may serve requests for entry on, inspection, sampling, and testing of land on each other defendant (or, in the case of the VNA Defendants and the LAN Defendants, on each group of defendants). No defendant may serve any

requests for entry on, inspection, sampling, and testing of land on any defendant which is not a current codefendant with it in at least one of the Flint Water Cases.

(4) Counsel for defendants shall serve requests for entry on, inspection, sampling, and testing of land on plaintiffs in the Individual Cases pursuant to Section X (Bellwether Trial Proceedings in the Individual Cases).

V. Fact Witness Depositions

A. Testimonial Depositions

(1) Beginning thirty (30) days from substantial completion of document production (September 4, 2019), parties may begin serving parties and non-parties with notices of testimonial deposition. However, this is with the exception of the plaintiffs in the individual cases who shall be served in accordance with Section X (Bellwether Trial Proceedings in the Individual Cases).

(2) No deposition notice shall specify a deposition date that is less than thirty (30) days from the date the notice is served, unless otherwise agreed by all interested parties or with leave of court.

(3) There shall not be any numerical limit on the number of testimonial depositions any party may take as a matter of right—the

provisions of Federal Rule of Civil Procedure 30(a)(2)(i) shall not apply—but any party or non-party may move for a protective order with respect to any deposition for any of the reasons recognized in the Federal Rules of Civil Procedure.

B. Depositions of Health Care Providers, and Education and Plumbing Professionals

(1) Because of the very large number of plaintiffs and, potentially, of absent class members, there are some types of witnesses whose testimony cannot practically be taken only once. This may include health care providers, education professionals, and plumbers. Witnesses of these types are excluded from the one-deposition-only rule.

(2) Parties shall seek to minimize the unavoidable burden that will be imposed on witnesses of these types in all ways reasonably possible. Measures to be considered with respect to each witness shall include, among others: stipulating in advance to the authenticity and other foundational facts bearing on the admissibility of records related to the plaintiff in whose case the deposition is taken; designating a single defense attorney and a single plaintiffs' attorney to conduct the deposition on behalf of all defendants and plaintiffs; stipulating to the admissibility of testimony by the witness concerning their background,

training, experience, and other matters that are of common relevance to more than the specific case in which the deposition is taken; and conducting depositions of the witness in two or more plaintiffs' cases on a single day if convenient to the witness.

C. Pending Criminal Charges

Defendants who are subject to pending criminal charges may petition the Court for relief from testimonial depositions until after the final resolution of those criminal charges.

D. Deposition Protocol Order

The Parties will cooperate in the notice and taking of depositions as follows:

(1) Governing Provisions and Law

This CMO controls depositions of all non-expert witnesses, including Non-Parties. It does not apply to depositions taken pursuant to Fed. R. Civ. P. 30(b)(6) or expert depositions taken pursuant to Section VII (Expert Witnesses). Discovery shall be governed by the applicable provisions of the Federal Rules of Civil Procedure and the Local Rules, except as otherwise provided herein. Unless specifically modified, nothing in this Order shall be construed to abrogate, modify, or enlarge

the Federal Rules of Civil Procedure or the Local Rules of the presiding court.

(2) Notices of Deposition

(a) Cooperation. Counsel are expected to cooperate and coordinate the scheduling of depositions and shall consider the scheduling needs or requests of all parties. However, subject to the provisions of this CMO, the deposition date need only be agreed to by the Noticing Party and the Deponent to proceed to scheduling with the Court Reporter.

(b) Contents and Service of Notice. Notices of Deposition will be served by email on the Deponent, the Court Reporter, and on all parties to the Flint Litigation in accordance with this CMO. Consistent with this Court's Order Preserving Certain Immunities and Defenses for Purposes of Limited Pre-Answer Discovery (ECF No. 467), joinder in or assent to the motion for entry of this order, and participation in the activities described in this order, does not constitute a waiver of any Fifth Amendment privilege or immunity, Eleventh Amendment privilege or immunity, qualified immunity, or other governmental immunity defenses. The Notice shall state the name of the deponent, contact information for the Noticing Party, and designate the proposed date and

location in accordance with Section V(A)(2) (requiring 30 days' notice unless otherwise agreed to by all interested parties or by leave of court) and Section V(D)(4) below (defining locations). The notice shall also include a statement that all depositions will be video recorded and include a reference to this CMO. If the Deponent is a non-party, the Notice shall include a subpoena as appropriate. The notice shall also include substantially the following statement: "If the date and location is not convenient to the Deponent, the Deponent (or his or her counsel) shall contact the Noticing Party's counsel within five (5) business days to arrange an alternate date and/or location."

(c) Who Must Agree to Deposition Date. Within five (5) business days of the issuance of the Notice, the Noticing Party and the Deponent, through his or her counsel if known, shall meet and confer to negotiate the deposition date. Any disputes between the Noticing Party and the Deponent regarding the date of a deposition may be raised to the Court following the meet and confer process. After expiration of the five (5) business days, the Noticing Party shall promptly inform all parties to the Flint Litigation and the Court Reporter by email either confirming the original deposition date and location, notifying all parties of the new date

or location, or updating the parties as to the status of any dispute with respect to the deposition notice. When sending an email confirming a deposition, the Noticing Party shall circulate a confirming or amending deposition notice with any accompanying subpoena to the Court Reporter with the email title "Flint: CONFIRMED Deposition of [Enter Deponent Name] [ENTER DATES]" and clearly stating in the body of the email that the deposition has been confirmed with the deponent and is proceeding to scheduling. The final notice shall otherwise conform with the provisions of Section V(D)(2) and shall include any other deposition requirements. Any subpoenas for deposition testimony shall be served as required by governing law, but copies shall be served via email on all parties to the Flint Water Cases.

(d) Objections to Deposition Notices. Any party wishing to raise an objection or a scheduling conflict with the Noticing Party shall do so within three (3) business days after the deposition is confirmed by the Noticing Party. The Noticing Party will attempt to resolve the objection. If the objecting party and the Noticing Party cannot agree, they may contact the Court wherein the deposition is noticed for resolution. Parties in all other Flint Water Cases shall have the opportunity to attend and

participate in any depositions, except those of individual plaintiffs, where attendance is permitted but not participation.[5] Any subsequent changes to the date of a deposition shall by communicated to all parties to the Flint Litigation by the Noticing Party using the email title "Flint: REVISED CONFIRMED Deposition of [Enter Party/Witness Name] [ENTER NEW DATES]" and explaining the change in date or location in the body of the email.

(e) Master Schedule and Equipment. The Court Reporter will make arrangements for the services required in the confirmed final Notice of Deposition (including court reporter, videographer, conference room reservations and if indicated, interpreter). The Court Reporter will communicate confirmation that deposition arrangements have been made by uploading an updated Master Deposition Calendar. The parties will be responsible for any additional costs incurred by the Court Reporter for additional services required for any deposition (such as translator, videographer, etc.). The Court Reporter shall maintain a

[5] The Court ruled on July 2, 2018, over the objections of Interim Co-Lead Class Counsel, that counsel for the putative class shall not be permitted to examine witnesses or otherwise participate in the depositions of individual plaintiffs.

Master Deposition Calendar that will be posted with regular updates to the date, time, and location of any scheduled depositions.

(3) Depositions

(a) Number of Depositions. More than one deposition may take place in the Flint Water Cases at the same time, except that no more than three (3) depositions may be scheduled on the same day absent agreement by the parties or court order.

(b) Deposition Days. Absent agreement of the parties, all depositions will be scheduled for two (2) days, including the business day on which the deposition is noticed as well as the next business day. The Master Schedule shall so reflect the two-day scheduling for all depositions. A Deposition Day shall typically commence at 9:00a.m. Minimally, there shall be one fifteen (15) minute morning break and two fifteen (15) minute afternoon breaks, with one (1) hour for lunch. Variations in this schedule may be made by agreement of counsel who noticed the deposition and counsel for the deponent.

(c) Holidays. No depositions may be scheduled on the day of an in-person Court hearing in any of the Flint Water Cases or any national or religious holiday. For purposes of this deposition protocol, such holidays

are: New Year's Eve, New Year's Day, Martin Luther King, Jr.'s Birthday, Presidents' Day, Passover (2 days), Good Friday, Easter Monday, Memorial Day, Independence Day, Labor Day, Rosh Hashanah (2 days), Yom Kippur, Columbus Day, Veterans' Day, Thanksgiving (Wednesday, Thursday, and Friday), Christmas Eve, and Christmas Day.

(4) Deposition Appearance and Location

(a) Location. Unless otherwise agreed by the parties, or by court order, depositions will take place in Michigan in Genesee County, Wayne County, Washtenaw County, or Oakland County at a location arranged by the Court Reporter. The Court Reporter will provide a list of approved deposition locations to be selected by the Noticing Party in issuing any deposition notice.

(b) Remote Depositions. As of April 2020, in light of the emergence of the COVID19 pandemic, all depositions shall be conducted remotely until further order of the Court or by agreement of counsel. All of the rules associated with the Federal Rules of Civil Procedure and the Local Rules of United States District Court for the Eastern District of Michigan shall apply.

All deponents shall utilize either a computer with a built-in video camera, a phone with a video camera, or a stand-alone video device so that the examiners can see the witness. Witnesses shall be sworn in by the court reporter remotely. All deponents, as part of their oath, shall certify that they will not communicate with anyone but the examining attorney and the Court Reporter during the deposition while on the record. Any deponent's attorney shall utilize either a computer with a built-in video camera, a phone with a video camera, or a stand-alone video device.

All counsel shall make all exhibits utilized during a particular deposition available to all counsel/participants during or prior to a deposition before their introduction. Attorneys utilizing exhibits shall be responsible for presenting said exhibits electronically, utilizing a shared screen via the Zoom Application. If a designating party is contacted by another party regarding its lack of access to certain designated deposition exhibits, the designating party will provide copies of those identified exhibits to the requesting party prior to examining the witness on the exhibit.

Given time constraints, objection for one is objection for all. Counsel shall not communicate with the witness during questioning by electronic means while the witness is on the record except as permitted under the Federal Rules of Evidence and other applicable law. All participants not questioning the witness should be on mute except to make an objection. To the extent practical, and as a supplement to the existing deposition protocol, counsel may provide a .pdf of each document counsel intends to use, one week in advance of the scheduled deposition. No person attending remotely shall record the deposition either by video or audio.

The parties have agreed that they will use best efforts to prioritize the depositions so that certain witnesses will be deposed first, when remote depositions will be necessary, and they will depose other witnesses later, when in-person depositions may become possible.

If, due to technical difficulties, any attorney attending a remote deposition drops off the deposition, that attorney shall immediately notify the other participating attorneys. Best efforts shall be made to pause the deposition to provide an opportunity for said counsel to promptly rejoin the deposition. If that attorney is unable to rejoin the deposition, either by agreement of counsel or by order of the Court,

counsel may be permitted to make objections related to the deposition, which counsel would have made had the technical issues not occurred.

(c) Arrangement for Deposition Space. The Court Reporter will be responsible for reserving the necessary conference room and providing the necessary technical equipment for each deposition.

(d) Notice of Intent to Appear. At least fifteen (15) days before a deposition, any counsel that intends to attend shall notify the Court Reporter. The Court Reporter will maintain a list of all parties who have given notice of their intent to appear and shall make the list available to all parties on the Master Calendar

(5) Attendance and Confidentiality

(a) Protective Order. If good cause exists for limiting access to depositions, the party seeking to exclude individuals from the deposition must move for a protective order "designating the persons who may be present while the discovery is conducted." Fed. R. Civ. P. 26(c)(1)(E). To meet this burden, the moving party must show "good cause" that an order is necessary "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Fed. R. Civ. P. 26(c)(1).

(b) Appearance by Telephone or Other Remote Means. Any party may alternatively appear and participate by telephone or other audiovisual means available and shall give notice of their intent to do so in at least fifteen (15) days before the deposition in accordance with Section V(D)(4)(c) (Notice of Intent to Appear). The Party shall not re-record the deposition by video or audio means. Parties participating remotely must identify all persons attending at the deposition with them. If counsel participating remotely believes that an objection not already made must be made on the record, such counsel shall identify themselves and state the objection. Counsel participating in depositions by remote access shall have the same opportunity to examine the witnesses as counsel attending in person.

(c) Confidentiality Order Provisions Regarding Deposition Materials and Testimony

(i) Counsel for a producing party may designate testimony as "Confidential" or "Highly Confidential – Attorneys' Eyes Only" by identifying it as such on the record at or about the time the testimony is given. With respect to deposition exhibits, counsel for a producing party may designate such exhibits, or portions of them, as "Confidential" or

"Highly Confidential – Attorneys Eyes' Only" by identifying them as such on the record at or before the conclusion of the deposition, provided, however, that no such designation need be made with respect to exhibits that have previously been marked in a manner to make them Protected Material.

(ii) A non-party witness who is not an employee of a party, or the witness's attorney, may designate testimony or exhibits as "Confidential" or "Highly Confidential – Attorneys' Eyes Only" in the same manner described in subparagraph (c)(i). But in all cases where such designation is made by a non-party witness or the witness's attorney, both the witness and his or her attorney shall be deemed to have accepted, by making the designation, all obligations created by the Confidentiality Order.

(iii) If no testimony is designated "Confidential" or "Highly Confidential – Attorneys' Eyes Only" at a deposition, the deposition testimony and the entire transcript shall be accorded the highest level of protection for a period of fifteen (15) calendar days after the final transcript (that is to say, not a draft transcript) is received by or becomes available to a producing party's attorney of record for a party or party's

attorney to identify the testimony or transcript as "Confidential or "Highly Confidential." If, before expiration of such 15-day period, any party or attorney makes or joins in a designation of testimony as "Confidential or "Highly Confidential" that party or attorney must notify counsel of record for all other parties to the actions in which the deposition was taken of the pages and lines of deposition testimony that are "Confidential" or "Highly Confidential – Attorneys' Eyes Only," then those pages and lines, but no other pages and lines, shall remain subject to the protection of this Order after the 15-day period has ended.

(iv) All transcripts of depositions at which testimony has been designated in accordance with subparagraph (c)(i) or (c)(ii) as "Confidential" or "Highly Confidential – Attorneys' Eyes Only" shall be marked by the Court Reporter on the cover page with one or both of those designations and each page on which testimony appears that was identified as protectable at the deposition shall likewise be marked with one or both of those designations; but in making use of the deposition testimony and transcript the persons bound by the Confidentiality Order shall be limited in their use only of the testimony and portions of the transcript that was identified as protectable at the deposition.

(v) All transcripts of depositions at which the statement described in subparagraph (c)(iii) was made shall be marked by the Court Reporter on the cover page with one or both of those designations. In the event no written designation of specific protectable testimony is provided in accordance with subparagraph (c)(iii), persons bound by this Order may obliterate the designations placed on the cover page. In the event a written designation of specific protectable testimony is provided in accordance with subparagraph (c)(iii), all persons bound by this Order shall treat those pages and lines as required by this Order for Protected Material.

(vi) Deposition exhibits designated "Confidential" or "Highly Confidential – Attorneys' Eyes Only" shall be marked as provided in ¶ 8(a) of the Confidentiality Order.

(vii) If testimony taken at an audiovisually-recorded deposition is designated "Confidential" or "Highly Confidential – Attorneys' Eyes Only," the videocassette, other videotape container, or disk on which the deposition was recorded shall be marked by affixing a label to it with the appropriate designation.

(6) Apportionment of Time and Sequence of Examination

(a) Length of Depositions. The apportionment of time shall be made as follows:

- Plaintiffs. Any plaintiff may be deposed for 13 hours by the defendants
- Defendants. Any defendant may be deposed for 16 hours – 7 hours are allocated amongst the defendants by agreement, 9 hours are allocated amongst the plaintiffs
- Non-Parties. Any non-party may be deposed for 14 hours – 7 hours for the plaintiffs, 7 hours for the defendants

(b) Sequence of Examination. Questioning at the depositions taken by plaintiffs' counsel will be conducted in the following sequence:

(i) the primary examiner selected by plaintiffs' counsel;

(ii) other plaintiffs' attorneys on non-redundant matters;

(iii) examination by the defendants;

(iv) individual counsel for the deponent, if any; and

(v) any re-cross or re-direct by those mentioned above.

Questioning at the depositions taken by defense counsel shall be conducted in the following sequence:

(i) the primary defense counsel examiner or noticing party;

(ii) other defendants on non-redundant matters;

(iii) examination by the plaintiffs;

(iv) individual counsel for the deponent, if any; and

(v) any re-cross or re-direct by those mentioned above.

(c) Allocation of Time Among Plaintiffs. Absent agreement or further order of the court, the time allocated shall be coordinated amongst plaintiffs' counsel.

(d) Allocation of Time Among Defendants. Absent agreement or further order of the court, the time allocated to the defendants shall be as follows:

- State Defendants – 15.4%
- City Defendants – 15.4%
- Rowe – 15.4%
- LAN Defendants – 15.4%
- VNA Defendants – 15.4%
- Hospital Defendants – 15.4%
- United States of America – 15.4%

The exception to the time allocated above is as follows:

(i) When the State of Michigan is acting as plaintiff in the state court case, *People v. Veolia North America, et al.*, then their allotted time for depositions will increase. The State of Michigan will receive up to 1.36 hours when either VNA or LAN are being deposed—the time in excess to the above 15.4% already allocated is to be drawn equally from plaintiffs and defendants.

(ii) When MDEQ Defendants wish to depose certain parties, up to 45 minutes will be added to the overall deposition time.

(iii) When the United States of America wishes to depose witnesses, their 15.4% time allocation is to be drawn equally from plaintiffs and defendants. For defendant and non-party depositions, each of the defendants listed in Section (V)(D)(6)(d) will have 64.68 minutes total to question witnesses, and the plaintiffs' total time is reduced by 32.34 minutes.

(e) Deposition Timing and Order

(i) The Court Reporter shall be responsible for recording and tracking of time of questioning for each Party during the deposition. For purposes of tracking and apportionment of time, only time on the record shall be computed against the total time allocated to each party.

(ii) Prior to the deposition, the parties will circulate a written order of questioning to include:

- the identity of the attorney who will question the witness,
- the order in which each party will be asking questions, and
- the time allocation each party is entitled to under the Case Management Order (or by agreement to cede times with other parties made in advance of the deposition).

For the purpose of this rule, plaintiffs collectively should identify the examining attorneys, the order in which they will examine the witness, and the total time allocated to plaintiffs, but they need not designate a particular allocation of time among attorneys representing plaintiffs. Counsel for plaintiffs should continue to coordinate questioning and time allocations as they have done to date. Counsel noticing the deposition shall be responsible for compiling the written order of questioning and bringing it to the deposition.

(iv) Golkow will be responsible for keeping the time allocated to each party during the deposition and shall notify the attorney questioner when their time limit has been reached.

(v) If, at a deposition, a party wishes to reserve time at the conclusion of their questioning, they must explicitly state their intent to do so on the record. The Golkow representative responsible for maintaining the time shall state on the record the total amount of time remaining for that party. Any party that reserves time with a witness will get that time with the witness.

(vi) If a party no longer wishes to use their reserved time, any reserved time shall be divided amongst those present (in person or via teleconference) wishing to further question the witness. Following all examinations from the written order of questioning, any unused time shall be reallocated among parties wishing to further examine the witness. Fifty percent of unused time shall be divided among plaintiffs who wish to further examine the witness. Fifty percent of unused time shall be divided equally among defendants who wish to further examine the witness. In the event that either all plaintiffs or all defendants no longer wish to examine the witness, unused time shall be divided equally among all parties who wish to examine the witness. This allocation of remaining time shall be so stated on the record.

(7) Video Recorded Depositions. Audio-Video Recording of All Depositions. All depositions shall be audiovisual depositions recorded pursuant to Fed. R. Civ. P. 30(b)(3) and subject to the following rules:

(a) Real-time feed. All video depositions will be stenographically recorded by a Court Reporter with "real-time feed" capabilities. Nothing herein precludes any party from ordering "real-time feed" of any non-video deposition.

(b) Video Operator. The operator(s) of the video recording equipment shall be subject to the provisions of Fed. R. Civ. P. 28(C). At the commencement of the deposition, the operator(s) shall swear or affirm to record the proceedings fair and accurately.

(c) Filing. The Operator shall preserve custody of the original video medium in its original condition until further order of the Court.

(d) Interruptions. The video camera operation will be suspended during the deposition only upon stipulation by counsel and "off the record" discussions.

(e) Filming. The videographer shall film the witness only while the witness is seated in the witness chair and shall not film the witness at any other time, including when entering or leaving the deposition room.

The videographer shall not film any other persons in the room, except for the witness.

(8) Objections and Disputes

(a) Stipulations and Disputes. The Parties may agree to certain deposition stipulations, however in all other circumstances the Federal and local rules control. The Parties shall use best efforts to avoid deposition disruptions or adjournments due to discovery disputes. In the event a dispute arises, the parties may contact the Court in an attempt to resolve such dispute informally. If the Court is unavailable, the deposition will continue as to matters not in dispute and the party seeking relief may present the issue to the Court for expedited consideration pursuant to the Court's discovery dispute protocol.

(b) Objections. During a deposition, any objection by counsel for any plaintiff shall be deemed an objection on behalf of all plaintiffs. It shall not be necessary for counsel for each plaintiff to separately object on the record to preserve the objection. Similarly, any objection by counsel for any defendant shall be deemed an objection on behalf of all defendants. It will not be necessary for counsel for each defendant to separately object on the record to preserve the objection. But no party is bound by another

party's objection, and nothing in this paragraph shall preclude any party from stating its own objection on the record if that objection has not been made. Counsel shall comply with Fed. R. Civ. P. 30(c)(2) concerning objections at depositions. Speaking objections or those calculated to coach the deponent are prohibited. Counsel shall refrain from engaging in colloquy during depositions.

(9) Transcript Repository, Read and Sign, and Errata Sheets

(a) Read and Sign. Witnesses shall read and sign their deposition transcripts. The Federal Rules of Civil Procedure shall govern the time each witness has to read and sign unless otherwise agreed by all interested parties or by leave of court. Counsel for the witness shall submit any errata pages and signatures to the Court Reporter via email. The Court Reporter shall coordinate, track, and maintain a record as to the status and signature by witnesses of deposition transcripts. The Deponent's counsel will be provided with an e-transcript, an errata page and a witness signature page for review, signature and return to the Court Reporter.

(b) Transcript Repository. The Court Reporter will provide a searchable electronic copy of all deposition transcripts to the parties via

the Court Reporter Repository, except that deposition testimony and exhibits designated as "Confidential" or "Highly Confidential" shall only be made available to the appropriate parties under the Confidentiality Order.

(10) Exhibits

(a) The Court Reporter shall maintain a Master Exhibit List and an online Deposition Exhibit Repository which will contain a single copy of all deposition exhibits used in the case, and will make the Exhibit Repository available at all depositions taken in the Flint Litigation. The Court Reporter will maintain an original (hard copy) deposition transcript for all depositions in their office.

(b) At least seven (7) days before a deposition, counsel for each party that intends to examine a deponent ("Examining Counsel") shall serve via electronic mail to counsel for any plaintiff group or defendant group who have indicated that they will attend, a non-binding list of documents (by Bates number) that they anticipate using or referring to during the deposition.

(c) Examining Counsel shall bring paper copies of any documents used at a deposition (whether or not they are pre-designated). Examining

Counsel shall not bring copies of pre-designated documents for any other counsel present at the deposition. However, Examining Counsel shall provide paper copies of any non-designated documents to counsel for any plaintiff group or defendant group who have indicated that they will attend.

(d) Deposition exhibits shall be marked sequentially beginning with the first witness, and steps will be taken to ensure that no two exhibits used in a deposition contain the same Exhibit Number. In the event of double or triple tracking depositions, Exhibit Numbers will be blocked in advance to avoid duplication of Exhibit Numbers. Counsel shall not re-mark documents that have previously been marked as exhibits, and shall use the previously marked exhibit number in subsequent depositions. The index of exhibits annexed to each deposition transcript shall contain the Bates number (if any), the exhibit number and a brief description of the exhibit.

(e) The Court Reporter will make available electronically at every deposition all documents maintained in the Deposition Exhibit Repository for use as exhibits.

(11) Costs. The Parties have selected Golkow as the Court Reporting Company on the Flint Water Cases. Costs will be allocated according to each party ordering transcripts, with the exception of remote access and participation which will be charged on a per party basis for those wishing to appear remotely, and videographer costs, which would be allocated amongst parties ordering the video.

VI. Plaintiff Examinations

The schedule for examinations of the plaintiffs in the individual cases will be pursuant to Section X (Bellwether Trial Proceedings in the Individual Cases).

VII. Expert Witnesses

(1) Parties may serve notice of a deposition on expert witnesses who have been retained or employed by any other party and who have completed an expert report or disclosure pursuant to Federal Rule of Civil 26(a)(2)(B) or (C) in relation to the alleged contamination of the City of Flint's water supply on or after April 25, 2014. These expert witnesses shall be produced for deposition without need for service of a subpoena.

(2) Expert witnesses shall deliver to the attorney who noticed the deposition an advance production of their complete file no later than seven (7) days before the date set for a deposition. The file shall include

all materials compiled up to that time, except that the expert may exclude any portions protected by Federal Rule of Civil Procedure 26(b)(4). The attorney who noticed the deposition shall provide copies of the advance production to counsel for all other parties who have notified them of their intent to participate in the deposition.

(3) The party who notices the deposition shall reimburse the expert for the time reasonably and actually devoted by the expert or their employees to making the advance production; the time reasonably and actually devoted by the expert in traveling to and from the site of the deposition; the time spent by the expert at the deposition; the expense reasonably and actually incurred by the expert in producing other documents in response to any other request for production of documents; and the reasonable travel expenses (transportation, meals, lodging, miscellaneous) actually incurred by the expert in traveling to and from the site of the deposition and during their attendance at the deposition.

(4) Unless an expert agrees otherwise, their deposition shall be taken in the locality where they work or reside.

VIII. Class Certification in *Carthan*

(1) By June 30, 2020, a motion for class certification and supporting Federal Rule of Civil Procedure 26(a)(2) expert reports and disclosures shall be filed. Any opposition and supporting Rule 26(a)(2) expert reports and disclosures shall be filed by September 30, 2020, and any reply in support of class certification shall be filed by November 30, 2020.

(2) A hearing on the motion for class certification shall be set following the filing of the reply. Within two (2) weeks from the filing of the reply, defendants shall notify the Court if an evidentiary hearing is requested.

IX. Notices of Non-Parties at Fault in the Individual Actions

Any party filing a Notice of Non-Parties at Fault in each of the individual Flint Water Cases pursuant to MCR 2.112(K) shall file a short form Notice of Non-Parties at Fault, incorporating by reference their Master Notice of Non-Parties at Fault filed in *Walters v. Flint*, Case No. 5:17-cv-10164. *See* Exhibit B. The short form notice shall include and incorporate any supplements filed to the Master Notice, which shall be deemed applicable to the short form Notice filed in each of the individual cases. A party shall not be required to file a full notice of Non-Parties at Fault in each of the individual actions in order to comply with the

requirements set forth in MCR 2.112(K) as the Master Notice of Non-Parties at Fault and any supplements thereto shall be incorporated in full by reference as if it were set forth at length in each individual action.

X. Bellwether Trial Proceedings in the Individual Cases

The initial bellwether trial will begin on June 1, 2021. The Court will set a date for the second bellwether group trial at a later date.

A. First Bellwether Group

1. First Bellwether Pool Selection

(1) Within seven (7) days from entry of the original CMO (May 7, 2019), Co-Liaison Counsel and counsel for defendants shall submit to the Court an agreed-upon form of plaintiff fact sheet. If agreement upon fact sheets cannot be reached, the Court will place this issue on the May 15, 2019, status conference agenda.

(2) Within fourteen (14) days from entry of the original CMO (May 14, 2019), the Special Master shall, based on census data that she has collected, identify the names of all individual plaintiffs whose dates of birth are between April 25, 2008, and April 25, 2014, and who only claim lead-induced injuries. The Special Master shall identify the numbers of the cases in which these individuals are plaintiffs.

(3) Within twenty-one (21) days from entry of the original CMO (May 21, 2019), Co-Liaison Counsel and counsel for defendants shall select 150 plaintiffs ("Pool One Claimants") from those identified by the Special Master, using a selection process to which they agree and which will result in the selection of a random sample.

(4) Within fifty (50) days from the selection of the Pool One Claimants, each of the 150 plaintiffs shall provide to counsel for defendants completed plaintiff fact sheets, together with authorizations for release of records specified in the fact sheets and any documents specified in the fact sheets which are within their possession, custody, or control (as those words are used in Federal Rule of Civil Procedure 34(b)).

(5) To the extent a plaintiff's fact sheet is less than substantially completed, Co-Liaison Counsel shall be notified within seven (7) days by counsel for defendants, and the deficiency shall be cured to the extent possible within seven (7) days after receiving notification.

2. Second Bellwether Pool Selection and Written Discovery

(1) On day seventy (70) following the selection of the Pool One Claimants, Co-Liaison Counsel and counsel for defendants shall simultaneously identify to each other a total of 100 claimants from among

the Pool One Claimants with respect to whom written discovery will be conducted ("Pool Two Claimants"). Half of the Pool Two Claimants will be selected by Co-Liaison Counsel and half will be selected by counsel for defendants. If there is overlap between the Pool Two Claimants identified by the two sides, selection of additional claimants shall continue until a total of 100 claimants have been selected.

(2) Beginning seventy-one (71) days from the selection of the Pool One Claimants, defendants may serve on each of the 100 Pool Two Claimants requests for production of documents and tangible things, interrogatories, and requests for admission.

(3) Each defendant (or, in the case of the VNA Defendants and the LAN Defendants, each group of defendants) may serve on each Pool Two Claimant who has sued that defendant requests for production of documents and tangible things that comprise no more than thirty (30) separately numbered paragraphs describing with reasonable particularity specific documents and things or categories of documents and things to be produced. The thirty (30) separately numbered paragraphs may be divided among as many separate sets of requests as the defendant serving them chooses, but the total number of paragraphs

shall not exceed thirty (30) unless otherwise agreed by all interested parties or by leave of court.

(4) Each defendant (or, in the case of the VNA Defendants and the LAN Defendants, each group of defendants) may serve on each Pool Two Claimant who has sued that defendant up to twenty-five (25) interrogatories. The twenty-five (25) interrogatories may be divided among as many separate sets of interrogatories as the defendant serving them chooses, but the total number of interrogatories shall not exceed twenty-five (25) unless otherwise agreed by all interested parties or by leave of court.

(5) Each defendant (or, in the case of the VNA Defendants or the LAN Defendants, each group of defendants) may serve on each Pool Two Claimant who has sued that defendant up to twenty-five (25) requests for admission. The twenty-five (25) requests for admission may be divided among as many separate sets of requests as the defendant serving them chooses, but the total number of requests shall not exceed twenty-five (25) unless otherwise agreed by all interested parties or by leave of court.

3. Third Bellwether Pool Selection and Further Discovery

(1) On day ninety (90) following the selection of the Pool Two Claimants, Co-Liaison Counsel and counsel for defendants shall each identify thirty (30) claimants from among the Pool Two Claimants who will be engaged in further discovery ("Pool Three Claimants").[6] If there is overlap between the Pool Three Claimants initially identified by the two sides, selection of additional Pool Three Claimants shall proceed in the manner described in this paragraph until a total of sixty (60) have been selected.

(2) Beginning seven (7) days from selection of the Pool Three Claimants, defendants may begin noticing testimonial depositions of the Pool Three Claimants in accordance with this CMO. Defendants may also notice testimonial depositions of other persons with knowledge of facts particular to claims by the Pool Three Claimants in accordance with this CMO. There shall be no specific numerical limit on the number of

[6] On March 23, 2020, the Court ordered that this first bellwether group be reduced to the fourteen plaintiffs who had already been deposed. (ECF No. 1089.) This reduction was due to the circumstances caused by COVID-19. As set forth further below, on August 26, 2020, The Court ordered that the first bellwether trial focus on four of the fourteen plaintiffs. (ECF No. 1247, PageID.39135.)

testimonial depositions that may be taken, but no party or non-party witness is precluded from bringing a motion for a protective order if there is good cause for doing so.

(3) Nothing in this Section is intended to prevent any party from deposing any other party or non-party before the date specified in this Section if the witness is reasonably likely to have discoverable information relevant to the issues in *Carthan* or if relevant to issues in any Genesee County case included in *In re Flint Water Litigation*.

(4) Beginning seven (7) days from the selection of the Pool Three Claimants, defendants may begin noticing and conducting entries upon land in the possession or control of the Pool Three Claimants for purposes of inspection, photographing, sampling, and testing. Defendants shall coordinate among themselves so that representatives of all defendants which have been sued by any Pool Three Claimant will complete their entries on the same date or dates, unless otherwise agreed by all interested parties or by leave of court.

Under Federal Rule of Civil Procedure 34, entry on land for inspections of the premises currently occupied by the bellwether plaintiffs within the reduced bellwether pool of 14 who still live in the

same premises now as they did during 2014 and 2015 (6 total) may take place on dates convenient for the plaintiffs, their counsel, the defendants' counsel, and defendants' consultants and technicians pursuant to the agreed upon House Inspection Protocol. *See* Exhibit E.

Defendants seeking entry on land for inspections of premises formerly occupied by bellwether plaintiffs within the reduced bellwether pool of 14 which are currently owned by others (8 total) shall serve notices pursuant to Federal Rule of Civil Procedure 45 identifying the address of the premises, the current owner and the bellwether plaintiff(s) who formerly resided in the premises. Objections by any party to any requested inspection shall be served within 10 days, concisely stating the basis for the objection. No premises as to which an objection has been served shall be inspected until agreement of the parties has been reached or by order of the Court. Defendants seeking to inspect the premises as to which no objection has been served may contact the premises owner and attempt to arrange for the inspection on a date convenient to the plaintiff's counsel, the defendants' counsel, defendants' consultants and technicians, and the owner of the premises. Alternatively, the defendants may cause subpoenas under Federal Rule of Civil Procedure 45 to be

issued, served on counsel, and served on the owners of the premises seeking permission to inspect the premises. Objections to any subpoenas asserted by owners of the premises will be addressed and resolved by the Court before the inspections take place. At no time, however, may any direct contact by defendants be made or any subpoena served on a plaintiff represented by counsel in this litigation.

4. Expert Depositions

(1) On September 9, 2020, Co-Liaison Counsel shall provide full and complete Federal Rule of Civil Procedure 26(a)(2) expert reports and disclosures from all experts who have produced such reports and disclosures with respect to the Pool Three Claimants. The experts shall also provide three dates on which they are available for deposition between September 10, 2020 and November 2, 2020. Defendants may begin noticing the depositions of the plaintiffs' experts to take place on one of the three dates provided.

(2) Beginning on , September 15, 2020, Pool Three Claimants shall begin appearing for Federal Rule of Civil Procedure 35 examinations, on dates reasonably identified by defendants which that claimant has sued. These examinations shall be conducted by suitably licensed or certified

examiners identified by defendants. Examiners shall examine the claimant on the same day if the examiners are specialists in the same field unless the nature of the examinations make simultaneous examinations impractical. Examiners who are specialists in different fields may examine the claimant on different days. However, all examinations shall be completed by October 30, 2020 unless otherwise agreed by all interested parties or by leave of court.

(3) On November 12, 2020, defendants shall provide full and complete Rule 26(a)(2) expert reports and disclosures to Co-Liaison Counsel. The experts shall also provide three dates on which they are available for deposition between November 30, 2020 and February 1, 2021. Plaintiffs may begin noticing the depositions of the defendants' experts to take place on one of the three dates provided.

5. Pretrial Motions

The following deadlines been agreed upon by the parties for the first bellwether trial group:

February 1, 2021: deadline for deposing defendants' disclosed experts;

February 8, 2021: deadline for filing motions for summary judgment and Daubert motions;

March 17, 2021: deadline for filing motions in limine and designating deposition testimony to be played or read to the jury;

March 22, 2021: response to motions for summary judgment and response to Daubert motions are due;

April 7, 2021: deadline for oppositions to motions in limine; counter designations and objections to the designated testimony;

April 12, 2021: deadline for replies in support of motions for summary judgment and Daubert motions;

April 16, 2021: objections to counter-designated deposition testimony due;

May 3, 2021: deadline for witness lists, exhibit lists, trial briefs, jury instructions, and other pretrial filings as required by the Court;

May 14, 2020: objections and responses to May 3, 2021 filings due;

June 1, 2021: trial.

Any other hearings the Court may set for motions for summary judgment or other motions shall be ordered at a later date.

The Court informed the parties on August 26, 2020 that there will be four bellwether plaintiffs' cases tried starting on Tuesday June 1, 2021. The selection process for bellwether plaintiffs' cases for trial shall be completed by September 14, 2020. Selection of trial plaintiffs shall proceed in the following order: one plaintiffs' selection, one defendants' selection, one plaintiffs' selection and one defendants' selection.

B. Second Bellwether Group

The second bellwether group shall consist of adult plaintiffs alleging both personal injury (excluding alleged exposure to *legionella*) and property damage.

1. First Bellwether Pool Selection

Within fourteen (14) days from entry of the Third Amended CMO, the Special Master shall provide a list of all such plaintiffs. Within twenty-one (21) days of the Third Amended CMO entry the parties shall utilize a random selection process to select 100 plaintiffs (Pool One). By August 13, 2020, each of the 100 plaintiffs shall provide to counsel completed plaintiff fact sheets together with authorizations for release of records and documents.

Deficiencies in fact sheets shall be stated within twenty (20) days by defendants and the deficiency shall be cured within thirty (30) days

after notice. Substantial completion of the fact sheets including the required authorizations is essential for the parties, particularly the defendants, to select the bellwether candidates for additional discovery and potential inclusion in the bellwether trial process. Substantial completion of the fact sheets along with the fully executed authorizations for all 100 bellwether candidates is necessary to move to the next step in the process.

2. Second Bellwether Pool Selection and Written Discovery

Within ten (10) days of the substantial completion of the fact sheets (and authorizations), Co-Liaison Counsel and defendants' counsel shall simultaneously identify thirty (30) plaintiffs each for a total of sixty (60) plaintiffs comprising Pool Two. Defendants may serve written discovery on the Pool Two plaintiffs immediately upon the selection of the sixty (60) Pool Two group of bellwether plaintiffs.

3. Third Bellwether Pool Selection and Further Discovery

On day ninety (90) following selection of the Pool Two plaintiffs, Co-Liaison counsel and defendants shall each identify fifteen (15) plaintiffs for a total of thirty (30) plaintiffs who will engage in further discovery

(Pool Three). Beginning seven (7) days from selection of Pool Three, defendants may begin noticing depositions, entries upon land for purposes of inspection, sampling and testing and other discovery directed to the 30 Pool Three bellwether plaintiffs.

Six (6) months from selection of Pool Three, plaintiffs shall provide expert disclosures and reports. Defendants may begin noticing depositions of plaintiffs' experts immediately upon the disclosure of the plaintiffs' experts. The plaintiffs shall include in the disclosure three dates on which each expert is available for deposition within sixty (60) days of the disclosure.

All plaintiffs alleging personal injuries must be available for Rule 35 examinations starting ten (10) days after plaintiffs' expert disclosures and reports are served. Defendants will provide expert disclosures and reports seventy-five (75) days after service of plaintiffs' expert disclosures and reports. Co-Liaison Counsel may begin noticing of defendants' experts. The defendants will include in the disclosure three dates on which each expert is available for deposition within sixty (60) days of the disclosure.

4. Fourth Bellwether Selection Pool

Seventy-five (75) days after defendants' expert disclosures the parties will each identify eight (8) plaintiffs, for a total of sixteen (16), to continue to Pool Four. The Court will, on a date to be determined, advise the parties of the number of Pool Four plaintiffs who will proceed to the initial adult bellwether trials.

Selection of trial plaintiffs shall proceed in the following order: two defense sections, two plaintiff selections, two defense selections, and continuing in that alternating pattern of two selections by each side until the determined number of cases for trial are selected.

5. Pretrial Motions

The schedule for summary judgment, motions in limine, and other pretrial filings are set forth above.

XI. Initial Discovery in *Legionella* Cases

The purpose of this section is to effectuate efficiency and limit duplication in the discovery processes associated with those cases that are consolidated into or coordinated with the Flint Water Cases before the Honorable Judith E. Levy in which the plaintiffs seek recovery for a *legionella*-related injury. Any party pursuing discovery under this section shall be obligated to be aware of discovery that has already been

conducted in the Flint Water Cases and to use good faith efforts to avoid duplication.

All discovery in the Federal Flint *Legionella* Cases, as defined below, shall be subject to this Case Management Order.

A. Definitions

Unless otherwise specified below, the definitions set forth in Section I (Discovery Coordination Protocol) and Section XIV (Definitions) shall apply to this section.

(1) "FOIA Materials" means any documents or other information obtained by a party to a Flint Water Case pursuant to a Freedom of Information Act request or comparable state statute.

(2) "Hospital Defendant" means McLaren Regional Medical Center ("McLaren") and City of Flint Board of Hospital Managers d/b/a Hurley Hospital, Norb Birchmeier, and Ann Newell (collectively, "Hurley Defendants").

(3) "Federal Flint *Legionella* Case" means any Federal Flint Water Case as defined in Section I (Discovery Coordination Protocol) seeking recovery for a *legionella*-related injury, except for *In re FTCA Flint Water*

Cases, Case No. 17-11218, currently pending currently pending before the Hon. Linda V. Parker.

(4) "State Flint *Legionella* Case" means any State Flint Water Case as defined in Section I (Discovery Coordination Protocol) seeking recovery for a *legionella*-related injury.

(5) "Flint *Legionella* Cases" means the Federal Flint *Legionella* Cases and State Flint *Legionella* Cases, collectively.

(6) "*Legionella* Discovery" means all party and non-party discovery conducted pursuant to the applicable rules of procedure in a Flint *Legionella* Case.

(7) "Rule 'XX' Discovery" shall mean discovery undertaken under the corresponding Federal Rule of Civil Procedure or its state court analog. For example, "Rule 33 Discovery" shall refer to Interrogatories.

(8) "Prior," when used in connection with one of the other defined terms, means prior to the date of entry of this Fourth Amended CMO.

B. Disclosure of Prior Discovery

(1) Prior Depositions and Written Party Discovery

(a) Within twenty-one (21) days following the entry of this Fourth Amended CMO, counsel for Hospital Defendants in a Federal Flint

Legionella Case shall file with the Court a disclosure of Prior Rule 30 Discovery, Prior Rule 33 Discovery, and Prior Rule 36 Discovery conducted in any State Flint *Legionella* Case in accordance with Section 1(C)(3) (prior depositions) and Section 1(D)(5)(b) (written discovery).

(b) Counsel for parties in a Federal Flint *Legionella* Case may request copies of Prior *Legionella* Discovery in accordance with Section 1(C)(3)(a) (prior depositions) and Section 1(D)(5)(b) (written discovery). The recipient of the request shall provide copies of the requested materials to requesting counsel within twenty-one (21) days of the request.

(c) Prior *Legionella* Discovery disclosed pursuant to the Fourth Amended CMO is subject to the Confidentiality Order (Exhibit C).

(2) FOIA Materials and Prior Third-Party Discovery

(a) Within twenty-one (21) days following the entry of the Fourth Amended CMO, counsel for Class Plaintiffs will provide to other counsel in the Federal Flint *Legionella* Cases an inventory of FOIA Materials obtained by counsel in any Flint Water Case prior to the entry of the Fourth Amended CMO. To facilitate the disclosure of FOIA Materials, within seven (7) days following the entry of the Fourth Amended CMO,

counsel for parties in a Federal Flint *Legionella* Case shall give written notice to counsel for Class Plaintiffs of any FOIA Materials obtained in connection with a Flint Water Case following the prior FOIA disclosures.

(b) Counsel for a party in a Federal Flint *Legionella* Case may request copies of such FOIA Materials in accordance with Section II(B)(2). The recipient of the request shall provide copies of the requested materials to requesting counsel within twenty-one (21) days of the request.

(c) Within twenty-one (21) days following the entry of the Fourth Amended CMO, counsel for Class Plaintiffs will distribute to counsel for the parties in the Federal Flint *Legionella* Cases an updated inventory of documents obtained by way of documents-only subpoenas to non-parties obtained by counsel in any Flint Water Case served in accordance with Section II(A) (Documents-Only Subpoenas to Non-Parties) before the entry of the Fourth Amended CMO. To facilitate the updated inventory, counsel for parties in a Federal Flint *Legionella* Case will give written notice to counsel for Class Plaintiffs of documents obtained in response to prior documents-only subpoenas to non-parties.

(d) Counsel for a party in a Federal Flint *Legionella* Case may request copies of documents obtained by other parties way of documents-only subpoenas to non-parties in accordance with Section II(A)(4) and any subsequent orders pertaining to the allocation of costs for non-party document subpoenas. The recipient of the request shall provide copies of the requested materials to requesting counsel within twenty-one (21) days of the request.

(3) Confidentiality

If any Prior *Legionella* Discovery is subject to the terms of any confidentiality or other protective order or is otherwise designated as confidential by the original producing party, disclosure to other counsel is not required unless the requesting counsel has agreed in writing to be bound by the Confidentiality Order attached as Appendix C.

C. Discovery in Federal Flint *Legionella* Cases

(1) Discovery

(a) Rule 45 Discovery: Beginning twenty-one (21) days following the entry of the Fourth Amended CMO, and only when specifically authorized by the Court, counsel for parties in a Federal Flint *Legionella* Case may proceed with the issuance of documents-only subpoenas to non-

parties in accordance with Section II (Preliminary Discovery), the Order Permitting Service of Non-Party Document Subpoenas (ECF No. 502), and the Further Order Regarding Non-Party Document Subpoenas (ECF No. 501). Counsel shall endeavor to avoid service of documents-only subpoenas to non-parties that are duplicative of the subpoenas already served in any Flint Water Case.

(b) Fact Sheets: Within seven (7) days from entry of the Fourth Amended CMO, Co-Liaison Counsel and counsel for defendants in the Federal Flint *Legionella* Cases shall submit to the Court an agreed-upon form of a plaintiff fact sheet. If agreement upon fact sheets cannot be reached, the parties will notify the Court, and the issue will be resolved during the next discovery dispute or status conference agenda.

(2) Written Discovery

(a) Rule 33, Rule 34 and Rule 36 Discovery from Plaintiffs: Beginning twenty-one (21) days following the entry of the Fourth Amended CMO, counsel for the defendants in the Federal Flint *Legionella* Cases may serve each plaintiff in a Federal Flint *Legionella* Case a single joint set of 30 Interrogatories, 30 Requests for Production of Documents, and 30 Requests for Admission. Before service of any Rule

33, Rule 34, or Rule 36 Discovery, counsel for defendants will coordinate to develop the joint set of discovery requests, to ensure that the requests are not duplicative of Prior Discovery and that plaintiffs shall not need to respond to the same request twice.

(b) Rule 33, Rule 34 and Rule 36 Discovery from Defendants: Beginning twenty-one (21) days following the entry of the Fourth Amended CMO, Co-Liaison Counsel in the Federal Flint *Legionella* Cases may serve a single joint set of 30 Interrogatories, 30 Requests for Production of Documents, and 30 Requests for Admission on each defendant (or, in the case of the VNA Defendants, the LAN Defendants, and the Hurley Defendants, on each group of defendants) in a Federal Flint *Legionella* Case that are not duplicative of Rule 33, Rule 34 and Rule 36 Discovery exchanged in other Flint Water Cases. These discovery requests may be served divided up into sets, but no more than a total of thirty (30) may be served on any defendant or group of defendants unless otherwise agreed by all interested parties or with leave of Court.

Before service of any Rule 33, Rule 34, or Rule 36 Discovery, Co-Liaison Counsel will coordinate with counsel for individual plaintiffs to develop the joint set of discovery requests, to ensure that the requests are

not duplicative of Prior Discovery, and that defendants shall not need to respond to the same request twice.

(c) Rule 33, Rule 34 and Rule 36 Co-Defendant Discovery From Hospital Defendants: Beginning twenty-one (21) days following entry of the Fourth Amended CMO, counsel for the defendants in a Federal Flint *Legionella* Case (or, in the case of the VNA Defendants and LAN Defendants, each group of defendants) may serve a single joint set of up to 30 Interrogatories, 30 Requests for Production of Documents, and 30 Requests for Admission on any Hospital Defendant (or, in the case of the Hurley Defendants, on each group of co-defendants) in a Federal Flint *Legionella* Case that are not duplicative of Rule 33, Rule 34 and Rule 36 Discovery previously exchanged in other Flint Water Cases. These discovery requests may be served divided up into sets, but no more than a total of thirty (30) Interrogatories, Requests for Production of Documents, and Requests for Admission may be served on any Hospital Defendant unless otherwise agreed by all interested parties or with leave of Court.

(d) Rule 33, Rule 34 and Rule 36 Hospital Defendant Discovery From Co-Defendants: Beginning twenty-one (21) days following entry of

the Fourth Amended CMO, counsel for the Hospital Defendants in a Federal Flint *Legionella* Case (or, in the case of the Hurley Defendants, each group of defendants) may serve a single joint set of up to 30 Interrogatories, 30 Requests for Production of Documents, and 30 Requests for Admission on any co-defendant in a Federal Flint *Legionella* Case that are not duplicative of Rule 33, Rule 34 and Rule 36 Discovery previously exchanged in other Flint Water Cases. These discovery requests may be served divided up into sets, but no more than a total of thirty (30) Interrogatories, Requests for Production of Documents, and Requests for Admission may be served by the Hospital Defendants on any co-defendant unless otherwise agreed by all interested parties or with leave of Court.

No defendant may serve such requests on any Hospital Defendant which is not a current co-defendant with it in at least one of the Federal Flint *Legionella* Cases.

(e) All other aspects of written discovery in the Federal Flint *Legionella* Cases shall be conducted in accordance with the provisions of the CMO, including but not limited to Section I (Discovery Coordination Protocol) and Section III (Written Discovery).

(3) Depositions

(a) Fact Witness Depositions

(i) Beginning twenty-one (21) following the entry of the Fourth Amended CMO, counsel for parties in a Federal Flint *Legionella* Case may notice depositions of fact witnesses who have not previously been deposed in a Flint Water Case, in accordance with the provisions of CMO, including but not limited to Section I (Discovery Coordination Protocol) and Section V (Fact Witness Depositions).

(ii) Fact witness depositions shall be conducted in accordance with the provisions of Section V (Fact Witness Depositions).

(iii) Nothing in this section shall limit the ability of counsel for the parties in the consolidated putative class action *Waid v. Snyder*, No. 16-cv-10444 to notice fact witness depositions; however, with respect to fact witnesses with knowledge of matters that are of common relevance to *Waid* and the individual Federal Flint *Legionella* Cases, counsel for the parties shall coordinate on the timing and sequence of such depositions, so as to avoid the need for such witnesses to be deposed more than once.

(b) Depositions of Health Care Providers

(i) Because of the large number of plaintiffs and, potentially there are some types of witnesses whose testimony cannot practically be taken only once, including but not limited to health care providers and others. Witnesses of these types are excluded from the one-deposition-only rule.

(ii) Counsel for parties to the Federal Flint *Legionella* Cases shall abide by the provisions of Section V(B)(1) in order to seek to minimize the unavoidable burden that will be imposed on witnesses of these types.

(4) Plaintiff Examinations

As set forth in Section VI (Plaintiff Examinations), the schedule for examinations of the plaintiffs in the individual cases will be pursuant to Section X (Bellwether Trial Proceedings in the Individual Cases).

(5) Expert Witnesses

Expert witness discovery in the individual Federal Flint *Legionella* Cases shall be governed by the Federal Rules of Civil Procedure and Section VII (Expert Witnesses).

XII. Notice of Death Procedure

Substitution of Plaintiffs. In the event that a plaintiff dies, the following procedures shall govern the substitution of an individual as plaintiff in place of the deceased plaintiff:

(1) Suggestion of Death

Within thirty (30) days of entry of the Fifth Amended CMO or the death of a plaintiff, whichever is later, plaintiff's counsel shall file a "Suggestion of Death" that identifies the plaintiff and describes the time, date, and circumstances of the plaintiff's death.

(2) Timing of Motion for Substitution.

The ninety (90) day time period for filing a motion for substitution, as required by Fed. R. Civ. P. 25(a), will commence upon the filing of a suggestion of death.

(3) Contents of Motion for Substitution.

(a) The motion for substitution shall identify the proposed substitute plaintiff by name and shall describe why the proposed substitute plaintiff is a proper party and why the claim has not been extinguished under the applicable state survivorship statute or applicable state common law.

(b) In the event that applicable state law requires the opening of an estate and the appointment of a personal representative to pursue the claims of a deceased plaintiff, plaintiff's counsel shall initiate or cause to be initiated proceedings to open an estate and/or obtain the appointment

of a personal representative for plaintiff within thirty (30) days of the plaintiff's death or thirty (30) days from entry of the Fifth Amended CMO, whichever is later.

(i) If available at the time of filing, plaintiff's counsel shall attach as an exhibit to the motion to substitute a copy of any order appointing the person sought to be substituted as the personal representative of the deceased plaintiff.

(ii) In the event that no personal representative has been appointed by the deadline for filing a motion for substitution, plaintiff's counsel shall describe in the motion to substitute the steps taken to obtain the appointment of a personal representative and state whether there are any competing applications. If the Court determines that the person sought to be substituted would be a proper party if appointed a personal representative of the deceased plaintiff and that the provisions of this section of the order and Fed. R. Civ. P. 25(a) have otherwise been complied with, the Court will provisionally grant the motion for substitution on the condition that the substituted plaintiff submit to the Court prior to remand of the

plaintiff's claims a copy of the order appointing him or her as the deceased plaintiff's personal representative.

(c) Plaintiff's failure to comply with the provisions of this section, including the requirement that an order appointing the substitute plaintiff as the decedent's personal representative be filed prior to remand where the Court grants a provisional substitution, will entitle defendant to request a dismissal of plaintiff's action with prejudice in accord with Fed. R. Civ. P. 25(a).

(4) Opposition to Substitution

Nothing in this section shall preclude defendant from challenging the authority or capacity of the proposed substitute plaintiff.

XIII. Discovery Dispute Protocol

(1) Conduct a meet and confer on the issue.

(2) If the parties reach an impasse, email Leslie Calhoun (Leslie_Calhoun@mied.uscourts.gov) with two or three sentences indicating the nature of the dispute, copied to the executive committee

for defendants,[7] co-lead interim class counsel, and co-liaison counsel. This email must indicate that there has been a meet and confer on the issue and that there is an impasse. All relevant parties to the dispute must be copied on this email. The dispute must be submitted by the previous Thursday at 2:00pm in order to be considered for resolution the following Wednesday. The Court will set forth its availability for these conferences in the order that follows each monthly status conference.

(3) The Court will then accept the topic for a biweekly conference call, authorize briefing on the topic, or place the issue on the agenda for the next status conference. The parties will learn of the Court's decision after the agenda for the next call is set and docketed.

(4) If the topic is accepted for the biweekly conference call, then pursuant to the timeline specified in the agenda, parties to the dispute must submit a one-page, single-spaced summary of the issue via email to the Court's assigned law clerk. Do not file these on the docket. The disputed request may be attached to the one-page summary of the issue.

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[7] The executive committee for defendants is (1) Philip Erickson for LAN Defendants, (2) Alaina Devine for VNA Defendants, (3) Charles Barbieri for MDEQ Defendants, (4) William Young Kim for City Defendants, (5) Craig Thompson for Rowe Defendants, (6) Susan Smith for McLaren Defendants, (7) Richard Kuhl for State Defendants, and (8) Michael Williams for the United States Defendant.

(5) The Court will generally convene a one-hour conference call as needed every two weeks on Wednesday afternoons, usually at 2:00 pm. These calls will not normally be on the record. If a party seeks to have the dispute on the record, then this must be requested in advance of the call by email.

XIV. Pretrial Motions and Completion Date for Discovery

Unless otherwise mentioned above, the date by which all pretrial motions shall be filed and the completion date for discovery will be established by the Court at a later date.

XV. Definitions

(1) "Privileged Communications" mean attorney/client privileged communications, communications that constitute protected work product, and communications with experts that are protected from disclosure by Federal Rule of Civil Procedure 26(b)(4).

(2) "Co-Lead Class Counsel" means the attorneys appointed from time to time by the Court to serve in that capacity as well as persons authorized by those persons to act in their stead. (ECF No. 696.)

(3) "Co-Liaison Counsel " means the attorneys appointed from time to time by the Court to serve in that capacity as well as persons authorized by those persons to act in their stead. (*Id.*)

(4) "Defense Executive Committee" means the attorneys appointed from time to time by the Court to serve in that capacity as well as persons authorized by those persons to act in their stead. (ECF No. 260 adopting ECF No. 241.)

(5) "*Carthan*" means the consolidated putative class action case *Carthan v. Snyder*, No. 16-cv-10444.

(6) "Individual Cases" means cases filed by persons that are set forth in Short Form Complaints and the Master Complaint, in accordance with the order dated November 17, 2017. (ECF No. 260.)

(7) "Plaintiffs" means the putative class representatives in Carthan and the plaintiffs in the Individual Cases, collectively.

(8) "VNA Defendants" means Veolia North America, LLC, Veolia North America, Inc., Veolia Water North America Operating Services, LLC, insofar as each of the above individuals and entities remain as a party.

(9) "LAN Defendants" means Lockwood, Andrews, & Newnam, P.C., Lockwood, Andrews, & Newnam, Inc., Leo A. Daly Company, insofar as each of the above individuals and entities remain as a party.

XVI. Appendices

A. Exhibit A – Document Production Protocol [ECF No. 371-1]
B. Exhibit B – Sample Short Form Non-Party at Fault Filing for Individual Actions
C. Exhibit C – Confidentiality Order [ECF No. 299]
D. Exhibit D – Addendum to the Confidentiality Order [ECF No. 790]
E. Exhibit E – Home Inspection Protocol

Dated: September 8, 2020
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on September 8, 2020.

s/William Barkholz
WILLIAM BARKHOLZ
Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re Flint Water Cases

No. 5:16-cv-10444

HON. JUDITH E. LEVY

MAG. MONA K. MAJZOUB

DOCUMENT PRODUCTION PROTOCOL

I. SCOPE

A. General

The procedures set forth in this Document Production Protocol (the "Order") shall govern the production of Documents in this above-captioned matter (the "Litigation"), unless otherwise agreed to in writing by the Parties or as ordered of the Court. To the extent that non-parties produce Documents in this case, the Parties agree to request that such non-parties adopt this Order.

B. Scope of Production

This Order does not address the scope of the Parties' productions.

C. Subsequent Orders and Modification

This Order shall not preclude subsequent agreements between the Parties relating to Documents, nor shall it preclude any Party from seeking an amendment or modification of this Order from the Court.

This Order may not be modified or amended except in writing signed by all Parties. Court approval is not required to modify

or amend this Order, provided that such modification or amendment is in writing signed by all Parties.

D. Previously Produced Documents

The Parties agree that Documents that have previously been produced in the Litigation, or in other related litigation, need not be re-produced to be consistent with this Order so long as the earlier productions are consistent with the attached ESI protocol(s). This provision only applies to productions made prior to the entry of this Order.

E. Confidentiality of Produced ESI

Nothing in this Order is intended to be inconsistent with the Stipulated Confidentiality Order that the Court has entered in this Litigation (Dkt. 299), and where anything in this Order is inconsistent with the terms of the Confidentiality Order, the terms of the Confidentiality Order shall prevail. If a document is produced subject to a claim that it is protected from disclosure under the Confidentiality Order, the word "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" shall be burned electronically on each page of such document or otherwise identified as such consistent with this Order and any other orders entered by this Court.

II. DEFINITIONS

A. "**Documents**" means "Documents" as defined in Federal Rule of Civil Procedure 34(a)(1)(A), and Electronically Stored Information, as defined below, and shall be interpreted in the broadest sense possible.

B. **"Electronically stored information"** or **"ESI,"** as used herein, means and refers to computer-generated information or data, stored in or on any storage media located on computers, file servers, disks, tape, USB flash ("thumb") drives or other real or virtualized devices or media, as such

information is defined in Federal Rule of Civil Procedure 34(a)(1)(A).

C. **"Native Format"** means and refers to the format of ESI in which it was generated or as it is used by the Producing Party in the usual course of its business and in its regularly conducted activities.

D. **"Media"** means an object or device, including but not limited to a disc, tape, computer, drive, or other device, whether or not in the Producing Party's physical possession, on which data is or was stored.

E. **"Metadata"** means and refers to: (i) information embedded in a native file that is not ordinarily viewable or printable from the application that generated, edited, or modified such native file; and (ii) information generated automatically by the operation of a computer or other information technology system when a native file is created, modified, transmitted, deleted, or otherwise manipulated by a user of such system.

F. **"OCR"** means and refers to an optical character recognition file which is created by software used in conjunction with a scanner that is capable of reading text-based Documents and making such Documents searchable using appropriate software.

G. **"Party"** or **"Parties"** means and refers to the named Plaintiffs and/or Defendants in the above-captioned matter. "Producing Party" refers to a Party (or non-party that avails itself of this Order) that produces Documents in this Litigation.

H. "**Redacted Document**" means any Document that contains a text box redaction over any portion of the Document, or contains other means to intentionally obscure any portion of the Document.

I. "**Withheld document"** means any Document that is omitted from production due to privilege or non-responsiveness.

III. MISCELLANEOUS

A. English Language

To the extent any data exists in more than one language, the data shall be produced in English, if available. If no English version of a document is available, the Producing Party does not have an obligation to produce an English translation of a document.

B. Cooperation

The Parties shall, as necessary, meet and confer to exchange information regarding issues associated with any production of Documents.

C. Reservation of Rights

Nothing contained herein is intended to create a precedent for, or to constitute a waiver or relinquishment of, any Party's objections or arguments pertaining to any potential future productions of Documents.

D. Relief from this Order

Any Party may request that the Court modify or amend the terms of this Order by the filing of an appropriate motion. Prior to filing such a motion, the Party seeking such modification or amendment must first meet and confer with the relevant Parties.

E. Production Costs

This Order does not address the costs of Document production and the Parties reserve their rights with respect to the allocation of those costs.

IV. TECHNICAL SPECIFICATIONS

A. Image Files

All Documents are to be produced as black and white images, unless otherwise addressed herein.

Black and white images are to be produced as Group IV, black and white single page TIFF images with the file extension, .TIFF.

To the extent a Party requests that any ESI be produced in color, as opposed to black and white, the Parties shall meet and confer as to whether reproduction in color is necessary and appropriate.

Each image file is to be named with its corresponding production bates number.

B. Image File Formats

Microsoft Word documents will be imaged showing track changes and comments.

Microsoft PowerPoint files will be imaged showing notes in Notes Pages.

C. Native Files

When producing Documents in Native Format, the files are to be named with the bates number assigned to the Document and the confidentiality legend, if applicable. For Example: Bates123456 – Confidential.XLSX

For each Native Format file produced, a TIFF image placeholder should be included. The placeholder is to state, "This document has been produced in native format" and it should be endorsed with the confidentiality legend, if applicable, and bates number.

A text file must be provided for each native file. If extracted text is not available, the text file should include a machine generated OCR.

Both the image and text file must be named with the bates number.

Documents that cannot be accurately TIFF-imaged must be produced in their Native Formats, unless otherwise agreed to between the Parties, or as required by this Order. Such files include video and audio recording and database files.

All spreadsheets should be produced in their Native Format, except those that require redaction (the requirements of which are detailed below).

The Parties agree to work out a future protocol governing the use and format of Documents produced pursuant to this paragraph at trial, depositions, and hearings.

D. Hard Copy Paper Documents

Hard copy paper documents shall be produced as images files, and, to the extent reasonably practicable, produced in the manner in which those documents were kept in the ordinary course of business. Where hard copy paper documents have "post-it notes," tabs, or other labels, such information shall be produced to the extent reasonably practicable. The Producing Party will utilize reasonable best efforts to ensure that hard copy paper documents are produced in a manner that maintains the physical unitization of documents.

E. Proprietary Files

To the extent that Documents produced cannot be rendered or viewed without the use of proprietary third-party software, the Parties shall meet and confer to minimize any expense or burden associated with the production of such Documents in a reasonably usable format, including issues as may arise

with respect to obtaining access to any such software and operating manuals which are the property of a third-party.

F. Extracted Text/OCR

Each produced Document will have a single text file, named for the production bates number. The text files will delivered as multi-page ASCII. The location of the text file for a document will be captured in the TextFileLink field.

For native files, extracted text is to be produced.

For any redacted Documents, a machine generated OCR text file from the redacted image is it to be provided, except that information which is redacted.

For any hard copy paper documents, a machine generated OCR text file is it to be provided.

G. Metadata

Metadata fields associated with all Documents will be produced, as set forth below, except for Documents that do not include metadata, or the metadata is not machine extractable. For Redacted Documents, metadata fields must be produced, except those that disclose redacted information

Metadata should be provided in a .DAT file. The first line of the load file must include the field names. Each subsequent line will contain the fielded information for the Document. All .DAT files produced in this Litigation should contain the same fields in a consistent order.

This Order shall not be construed to affect whether information contained in the metadata produced shall be admissible evidence about the corresponding Document; rather, the Parties' positions with regard to admissibility shall be preserved.

H. Load File Specifications – Delimiters

The .DAT file will use the following delimiters for all Documents produced:

Delimiter	Character	Function	ASCII Code
þ	Default	The field delimiter separates the load file columns	254
"|"	Pipe	The text qualifier. Marks the beginning and end of each load file field.	124
®	Newline	The delimiter that marks the end of a line of extracted or long text. Concordance replaces all carriage returns or carriage return linefeed combinations with the newline code.	174

Sample Concordance (.DAT) load file:
þProdBegBatesþþProdEndBatesþþProdBegAttachþþProdEndAttachþ
þGP0000001þþGP0000002þþþþ
þGP0000003þþGP0000057þþþþ

I. Load File Specifications – Production Fields

The following fields will be provided for all Documents produced.

Field Name	Description	Applies To
ProdBegBates	Beginning bates number of all produced document	All Documents
ProdEndBates	Ending bates number of all produced documents	All Documents
ProdBegAttach	Beginning attachment number	All Documents
ProdEndAttach	Ending attachment number	All Documents
Confidential	Confidentiality designation	All Documents
NativeFileLink	Production path to native file	All Documents
TextFileLink	Production path to extracted text or OCR file	All Documents

J. Load File Specifications – Metadata Fields

A Producing Party shall produce the following metadata fields for Documents, all Microsoft Word documents ("EDOC") and/or all email ("Email"), to the extent the information is available, as specified below:

Field Name	Description	Applies To
Author	Native file author	EDOC
File Name	Name of the application file	EDOC
DateCreated	Date file was created	EDOC
TimeCreated	Time file was created	EDOC
DateMod	Date file was last modified	EDOC

Field Name	Description	Applies To
TimeLastMod	Time file was modified	EDOC
To	Recipient(s)	Email
From	Sender	Email
CC	Carbon copy recipient(s)	Email
BCC	Blind carbon copy recipient(s)	Email
Subject	Subject line of the email	Email
Date Sent	Email sent date	Email
TimeSent	Email sent time	Email
Date Rec	Email received date	Email
TimeRcvd	Email received time	Email
Custodian	Individual in possession of the document or Mailbox.	All Documents
Other Custodian or dup custodian	***In the event cross custodian de-duplication is employed	All Documents
Source	Physical location, computer or server from which the data was collected	All Documents
DocType	Type of file (Word, Excel, email, etc)	All Documents
DocExt	File extension of document	All Documents
Native File Size	Size of file in bytes	All Documents
Hash Value	MD5 Hash Value	All Documents
Confidentiality Designation		All Documents

Field Name	Description	Applies To
Redacted		All Documents
Withheld	Identifies any Family Member of a Document that is omitted from production	All Documents
Email Folder Path		All Documents
Page Count		All Documents
Conversation Index		All Documents

K. Deduplication

ESI will be deduplicated globally following industry-standard global deduplication algorithms. An acceptable method, such as the MD5 hash format, shall be used for any deduplication. Additional custodians who had a copy prior to deduplication, such as email recipients, copyees, or blind copyees, will be populated in the "DupCustodia" or "Other Custodian" metadata fields.

L. Document Families

Whenever a Document is produced, the entire corresponding family of Documents (i.e. parent and all children, the "Document Family," and individually a "Family Member") will be also produced. If a Family Member is withheld for any reason, then that Document should be replaced by a placeholder identifying that it has been withheld. Document Families will be produced with a continuous bates range. The Parties agree to meet and confer regarding any challenges to documents that are withheld from a document family as non-responsive.

Withholding non-responsive attachments cannot be used as a basis to challenge the completeness of a document for evidentiary purposes under FRE 106.

M. Email Threading

For emails, in addition to de-duplication, email threading may be utilized. Threading allows emails that are wholly contained in a later, surviving email, with all of the recipients and attachments contained, to be identified and suppressed from production. An email is only suppressed from production if 100% of the message body is contained, all addresses are included, and all attachments are included in a later email that is produced.

N. Voicemails, Text Messages and Smart Phone ESI

For production of these forms of ESI, the Parties shall meet and confer regarding the scope of said production and the applicable custodians for whom an obligation to search and produce exists. Production requests for these forms of ESI shall identify the custodian, search terms, and timeframe. Indiscriminate terms, such as the Party's name, are inappropriate unless combined with narrowing search criteria that sufficiently reduce the risk of overproduction. The Parties shall cooperate to identify the proper custodians, proper search terms and proper timeframe.

O. Redactions and Logs

A Producing Party shall disclose and describe the basis for every redaction in a Redacted Document.

The basis for all redactions shall be specified in the appropriate metadata field that corresponds to the Redacted Document.

In addition, for each redaction, a Producing Party must also: (a) include a text box describing the basis for the redaction

("Text Box Redactions") on the Redacted Document; or (b) produce a corresponding log that identifies and describes the basis for the redaction.

If a Party opts to utilize Text Box Redactions, the redactions on images shall be made with white boxes with black borders, and shall contain black text that describes the basis for the redaction, for example, "Attorney-Client Privilege," "Work Product Privilege," "PPI" (Protected Personal Information), "PHI" (Protected Health Information, or "NRI" (Non-Responsive Information). If a Party has more than one basis for a redaction, then the Text Box Redaction need only identify one basis, but all basis must be identified in the metadata.

Where some or all of the e-mail string is privileged, the Parties need only include one entry on the privilege log for the entire e-mail string and need not log each e-mail contained in the chain separately.

Documents that are to be produced in Native Format, but that require redactions, may be produced as TIFF images (as to spreadsheets, imaged unhiding hidden cells, rows, columns, or sheets), with extracted text, with the relevant portions redacted, or in Native Format using a commercially available "native redaction" tool, or by producing a copy of the Native Format file with the relevant portions replaced with the mark "[REDACTED"]or a similar mark. If modification of a Native Format file is required for redaction purposes, metadata information associated with that file should remain unchanged unless it also requires redaction.

P. De-Nisting of ESI

The Parties may remove operating system files and program files with the assistance of their respective information technology vendors or agents prior to conducting searches of data in accordance with the National Software Reference Library De-Nisting Process.

Q. Replacement Images

In the event that an already produced Document or set of Documents has to be re-produced or a new load file or "overlay" is produced for any production, the new production shall always maintain the same bates number for any re-produced Documents, with the addition of the suffix "-R" at the end of the bates number.

R. Production of Databases and Other Structured Data

Generally, databases should be produced in a mutually agreeable data exchange format, which may include production of reports generated from database rather than producing the entire database. To determine the data that is relevant to the document requests, a list of databases and systems used to manage relevant data should be provided with the following information:

i. Database Name
ii. Type of Database
iii. Software Platform
iv. Software Version
v. Business Purpose
vi. Users
vii. Size in Records
viii. Size in Gigabytes
ix. A List of Standard Reports
x. Database Owner or Administrator's Name

Upon review of the list, the Parties agree to meet and confer regarding the data to be produced from each source, if any, and the form(s) of the production thereof.

V. PRODUCTION SPECIFICATIONS

A. All Deliveries

Productions may be delivered either via encrypted physical media or via secure electronic download, or as otherwise agreed by the Parties.

All file paths should be relative.

Data to be encrypted and the decryption key should be provided prior to the delivery of the physical media.

An electronic version of the cover letter should be included. The decryption key should not be contained in the cover letter accompanying the physical media.

B. Physical Delivery

Productions that are delivered via physical media should be self-contained and not require that multiple discs or drives be combined after delivery.

The disc or drive should be clearly labeled with the following information:

- Date of the production
- Producing Party
- Production Regarding
- Production Volume
- Bates Range
- Number of Records

C. Electronic Delivery

The production should be announced via e-mail and made available for immediate download upon receipt of the e-mail.

Delivery should be via a secure file transfer (SFT) system, or a password protected link. Productions made via insecure file transfer sites or sent via email may be rejected.

Electronic deliveries must remain downloadable for seven days after the production date or until the production has been downloaded and confirmed to be complete.

APPENDIX A(1)

Appendix A(1) – ESI Protocol

1. **Scope.** The Parties agree that each producing Party is best situated to evaluate the procedures, methodologies, and technologies appropriate for preservation, collection, and review of their own paper documents and electronically stored information (together with paper documents, "**ESI**"). Accordingly, this Protocol shall govern only the actual production of paper documents and ESI and shall in no way affect the Parties' respective rights and obligations concerning the preservation, collection, and review of ESI. All Parties preserve their attorney-client privileges and other privileges, and there is no intent by this Protocol, or the production of documents pursuant to this Protocol, to in any way waive or weaken these privileges. Nothing in this Protocol shall limit the Parties' respective rights and obligations concerning confidential, proprietary or private information, with respect to which they may make such agreements or stipulations as they see fit, subject to applicable law. All documents produced pursuant to this Protocol are fully protected and covered by the Parties' confidentiality agreements, and orders of the Court, as well as any clawback agreements, and protective order(s) of the Court effectuating the same.

2. **Hard Copy Paper Documents.** Hard copy paper documents shall be scanned and, to the extent reasonably practicable, produced in the manner in which those documents were kept in the ordinary course of business. Where hard copy paper documents have "post-it notes," tabs, or other labels, the information on the label shall be scanned and produced to the extent reasonably practicable. The Parties will utilize reasonable best efforts to ensure that hard copy scanned paper documents are produced in a manner that maintains the physical unitization of documents.

3. **Images.** Except as otherwise provided in paragraph 4, below, all documents that are produced will be produced as images. Images will be produced as Single Page Group IV, 300 DPI, black and white TIFF images named as the beginning Bates number. To the extent that a party believes that any ESI should be produced in color, as opposed to black and white, the parties shall meet and confer as to whether reproduction in color is necessary and appropriate. Page level Bates numbers will be branded in the lower right of the image and additional confidentiality legends applied to the lower left (if applicable). The following formatting will be applied to Microsoft Word, Excel, and PowerPoint documents:

a. Word documents will be imaged showing track changes and comments;

b. Excel files with redactions will be imaged un-hiding any hidden cells, rows, columns, or sheets; and

c. PowerPoint files will be imaged showing notes in Notes Pages.

If a Party determines in good faith that it needs a document, which has been produced as an image, to be produced in its native file format, the Party will submit a request for such native file to the producing Party, in writing, and the Parties will meet and confer in good faith to discuss the request. Such request to the producing Party shall include the Bates number of each imaged document that is requested in native file format.

4. **Native Files**. When available, native files will be produced for Excel documents that do not contain any redacted information. Native files will be produced for email messages (MSG format) unless: (1) the email message contains a redaction; (2) any attachment to the email message contains a redaction; or (3) the email contains a non-responsive attachment. Native files will be produced for all files that cannot be imaged (e.g. audio and video files). With the exception of email, when a native file is produced, the producing party will produce a placeholder (a single-page TIFF slip-sheet indicating that the native file was produced) along with the file itself in native format; and the name of the native file will be the Bates number of the corresponding slip-sheet. Email that is produced in native format will also include a TIFF image of the email as described in paragraph 3. The metadata load file that is included with a production shall include available native file link information for each native file that is produced.

5. **Metadata**. A standard Concordance delimited load file (.DAT), with field header information added as the first line of the file, will be provided with each production. The Parties are not required to produce metadata from any electronic document if metadata does not exist in the document or the metadata is not machine-extractable. Documents will be produced with related metadata (to the extent it exists) as described in Appendix B. DAT file delimiters:

a. Column delimiter: Default is ¶ (ANSI 182)

b. Quote: Default is þ (ANSI 254)

c. Record delimiter: Default is ® (ANSI 174)

d. Multi-value delimiter: Default is ; (ANSI 059)

For redacted documents, metadata fields must be produced only to the extent such fields will not disclose redacted information.

6. **Image Cross Reference**. A standard Opticon (.OPT) file will be provided with each production that contains imaged documents.

7. **Text**. Document level text files (.TXT) will be provided for each document produced. Text files will be named the first Bates number of the respective document. Extracted text will be provided when it exists for non-redacted documents. When extracted text is provided for an email, the email header

information must appear in the extracted text. OCR text will be provided for documents when no extracted text exists, when the document is redacted, and for all PDF documents. A text load file (.LST) will be provided to load the text from the .TXT files into a review platform.

8. **Encoding Format.** TXT, DAT, OPT, and LST files will be provided in ANSI encoding.

9. **Deduplication.** ESI will be deduplicated across custodians (i.e. global deduplication) following industry-standard deduplication algorithms. An acceptable method, such as the MD5 hash format, shall be used for any deduplication. Additional custodians who had a copy prior to deduplication, such as email recipients, copyees, or blind copyees, will be populated in the "DupCustodian_w_Orig" metadata field referenced in Appendix B.

10. **Document Families.** Whenever a document is produced, the entire corresponding family of documents (i.e. parent and all children) will be produced, except to the extent any member of the family is withheld because of privilege or confidentiality. Notwithstanding the foregoing, if an email message is produced in response to a discovery request or a subpoena, then non-responsive attachments to the email are not required to be produced. If a family member is withheld for any reason then that document should be replaced by a placeholder identifying that it has been withheld. Families of documents will be produced with a continuous Bates range. Child documents will refer to their corresponding parent document via the "Production Bates – Attach Begin" metadata field referenced in Appendix B.

11. **Email Threading.** For emails, in addition to de-duplication across custodians, thread de-duplication may be applied prior to production. Thread de-duplication allows emails that are wholly contained in a later, surviving email, with all of the recipients and attachments contained, to be identified and suppressed from production. An email is only removed from production if 100% of the message body is contained, all addresses are included, and all attachments are included in a later email that is produced. To facilitate a receiving Party's use of email threading:

a. When extracted text is provided for an email, the email header information must appear in the extracted text; and

b. The Conversation Topic Index and Parent ID metadata fields referenced in Appendix B must be provided for all emails produced as images.

12. **Voicemails, Text Messages, and Smartphone ESI.** Production requests for these forms of ESI shall only be propounded for specific issues, rather than general discovery. In addition, discovery of this information shall be phased and initially limited to three (3) custodians. Production requests for these forms of ESI

shall identify the custodian, search terms, and timeframe. Indiscriminate terms, such as the Party's name, are inappropriate unless combined with narrowing search criteria that sufficiently reduce the risk of overproduction. The Parties shall cooperate to identify the proper custodians, proper search terms and proper timeframe. Requests for additional custodians, search terms and timeframes shall only be discussed by the Parties after the initial phased production and only upon showing a distinct need.

13. Redactions. Redactions on images shall be made with white boxes and contain black text that reasonably describes the nature of the asserted privilege or confidential information such as, for example, "Attorney-Client Privilege," "Work Product Privilege," "PPI" (Protected Personal Information), "PHI" (Protected Health Information, or "NRI" (Non-Responsive Information). If a Party redacts a document based on more than one claim of privilege or confidentiality, then the text that appears on the redaction need only describe the nature of one of the claims of privilege or confidentiality, but the corresponding entry in a privilege log must state all claims of privilege and confidentiality. For example, and without limiting the foregoing, if a Party claims that redacted text is protected by both the attorney-client privilege and the work product privilege, then the text that appears on the redaction on the face of the document may state only "Attorney-Client Privilege," but the corresponding entry in a privilege log must state both "Attorney-Client Privilege" and "Work Product Privilege." In addition to redactions based on claims of privilege and confidentiality, the Parties may redact all non-responsive information.

14. De-Nisting of ESI. The Parties may remove operating system files and program files with the assistance of their respective information technology vendors or agents prior to conducting searches of data in accordance with the National Software Reference Library De-Nisting Process.

15. Third-Party Software. To the extent that documents produced cannot be rendered or viewed without the use of proprietary third-party software, the Parties shall meet and confer to minimize any expense or burden associated with the production of such documents in an acceptable format, including issues as may arise with respect to obtaining access to any such software and operating manuals which are the property of a third party.

16. No Waiver by Disclosure.

a. If a producing Party discloses information that the Party thereafter claims to be privileged or confidential ("**Disclosed Protected Information**"), the disclosure of the Disclosed Protected Information shall not constitute or be deemed a waiver or forfeiture of any claim of privilege or confidentiality that the Party would otherwise be entitled to assert with respect to the Disclosed Protected Information and its

subject matter in this litigation, any investigation, or any other federal, state, or administrative proceeding.

b. The producing Party may assert in writing any privilege or claim of confidentiality with respect to the Disclosed Protected Information. The receiving Parties must—unless they contest the claim of privilege or confidentiality for each document in the Disclosed Protected Information—within five (5) business days of receipt of that writing, (i) return or destroy all copies of the Disclosed Protected Information, and (ii) sequester the Disclosed Protected Information and (iii) provide a written notification to the producing Party that all of the Disclosed Protected Information has been sequestered, returned or destroyed. Within five (5) business days of receipt of the notification that the Disclosed Protected Information has been sequestered, returned or destroyed, the producing Party must provide a privilege log with respect to the Disclosed Protected Information to the receiving Parties. The Parties may stipulate in writing to extend the time periods set forth in this sub-paragraph.

c. If a receiving Party contests the claim of privilege or confidentiality for Disclosed Protected Information, the receiving Party may not disclose any of the Disclosed Protected Information, except under seal to a court of law, until the resolution of the objection. Pending such resolution, the receiving Party must sequester the Disclosed Protected Information and not use the Disclosed Protected Information or disclose it to any person other than as required by law.

d. Disclosed Protected Information that is sought to be reclaimed by a producing Party shall not be used as grounds by any other Party or third party to argue that any waiver of privilege or protection has occurred by virtue of its production.

e. The producing Party retains the burden of establishing the privileged or protected nature of the Disclosed Protected Information.

17. Reservation of Rights. Nothing contained herein is intended to create a precedent for, or to constitute a waiver or relinquishment of, any Party's objections or arguments pertaining to any potential future productions of ESI. Nothing contained herein constitutes a waiver of any Party's rights or obligations under any law, including but not limited to laws regarding any matter or information that is or may be claimed to be privileged, confidential, proprietary, or otherwise personal or private.

18. Entire Agreement/Modification. This Protocol contains the entire agreement of the Parties with respect to the production of ESI, and any statement, promise, or inducement made by either Party not set forth herein shall be of no effect, nor shall it be used in construing the terms of this Protocol. This Protocol

may not be modified or amended except in writing signed by all Parties. Court approval is not required to modify or amend this Protocol, provided that such modification or amendment is in writing signed by all Parties.

19. **Relief from this Protocol.** Any Party may request relief from any obligation set forth in this Protocol. All such requests shall be in writing and submitted to the Court for consideration, with a copy of the request served to all Parties via email and U.S. mail. Any Party may oppose any request for relief by submitting a written opposition to the Court, with a copy of the opposition served to all Parties via email and U.S. mail within five (5) days of service of the request for relief.

20. **Cost Shifting.** Each Party expressly reserves the right to petition the Court to shift the cost of the production of ESI to the requesting Party.

###

APPENDIX A(2)

Appendix A(2) – Metadata Fields

Field	Description
Production Volume	Production volume name.
Production – Begbates	Beginning bates number of document.
Production – Endbates	Ending bates number of document.
Production Bates – Attach Begin	Beginning bates number of attached documents.
Production Bates – Attach End	Ending bates number of attached documents.
MD5 Hash	MD5 hash value of native file.
Application	Program commonly used to access the record.
Extension	File extension.
File Name	File name without the file path.
Time Zone Field	Time zone at which record was collected.
File Size (bytes)	Size of file in kilobytes.
Relativity Image Count	Number of pages imaged.
Custodian	Person, device, or organization in possession of the record at the time of collection.
DupCustodian_w_Orig	Name(s) of custodian(s) with exact copy of file before deduplication.
Created Date	Date an edoc (loose file) was created.
Created Time	Time edoc (loose file) was created.
Last Modified Date	Date edoc (loose file) was last modified.
Last Modified Time	Time edoc (loose file) was last modified.
App Created Date	Date email attachment was created.
App Created Time	Time email attachment was created.
App Last Modified Date	Date email attachment was last modified.
App Last Modified Time	Time email attachment was last modified.
Subject	Subject field of email.
From (Name)	Sender of email.
Sent To	The “to” addressee(s) of email.

Field	Description
CC	The carbon copy addressee(s) of email.
BCC	The blind carbon copy addressee(s) of email.
Sent Date	Date email was sent.
Sent Time	Time email was sent.
Received Date	Date email was received.
Received Time	Time email was received.
Conversation Topic Index (CTOPICINDEX)	Unique identifier assigned to email chain by Microsoft Outlook.
Parent ID	Unique identifier assigned to a child attachment's parent email.
Author	Last editor of edoc (attachments / loose files) either inputted manually by author or through a preference setting in file properties.
Title	Title of edoc (attachments / loose files) either inputted manually by last editor or through a preference setting in file properties.
Native File Link	This field will contain the full path on the production media to any native files being produced.
Internet Header	Section of the email message populated with source and destination information. It sometimes includes Sender IP Address, and Transit server information. Often includes Sender / Recipient, subject, date-stamps, message ID and more based on the originating Mail User Agent.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re FLINT WATER CASES	)	Case No. 5:17-cv-10444-JEL-MKM
Marlana Sirls et al. Plaintiffs vs. Governor Richard Snyder et al., Defendants	)	Case No. 5:17-cv-10342-JEL-EAS

NOTICE OF NON-PARTIES AT FAULT

NOW COME the Defendants, [Name of Party], and hereby file their ***Notice of Non-Parties at Fault*** in this matter pursuant to MCR 2.112(K) and the Second Amended Case Management Order in the *In Re* Flint Water Cases, Case No. 5:17-cv-10444. It is appropriate to file a notice of nonparties at fault in this Court where Plaintiffs have pled a variety of state law tort claims.

In accordance with the Court's Second Amended Case Management Order, [Name of Party] incorporates and adopts in full its Notice of Non-Parties at Fault and all supplements to that notice filed in *Walters v. Flint,* Case No. 5:17-cv-10164 [ECF __] as if it were set forth at length herein.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re FLINT WATER CASES

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

Hon. Judith E. Levy
Mag. Mona K. Majzoub

CONFIDENTIALITY ORDER

WHEREAS parties to one or more of these federal Flint Water Cases may seek discovery or disclosure of documents, information, or other materials that contain non-public, confidential, competitively sensitive, or proprietary information (hereinafter called "Confidential Material") of other parties or of non-parties;

WHEREAS a confidentiality order should be entered at this time to limit appropriately the use and disclosure that may be made of such Confidential Material;

WHEREAS the following provisions will appropriately balance the need for protection of Confidential Material with the public interest in access to information relevant to litigation arising out of alleged contamination of the City of Flint municipal water supply that began in 2014; and

WHEREAS the Court has found based on the parties' submissions and its own experience to date with the federal Flint Water cases, in accordance with Fed. R. Civ. P. 26(c) and E.D. Mich. L.R. 26.4, that there is good cause for entry of a confidentiality order in the form proposed to protect the parties' legitimate privacy and confidentiality interests as well as, potentially, those of non-parties, and also to simplify and expedite proceedings in this complex litigation, it is hereby ORDERED as follows:

1. Limitation on Use of Protected Material.

All documents, other materials, and information that are produced in response to discovery requests served in any of the federal Flint Water Cases, or in response to court orders entered in any of the federal Flint Water Cases, or in any of the federal Flint Water Cases pursuant to any disclosure provision in the Federal Rules of Civil Procedure or the Local Rules of this Court, or by stipulation in any of the federal Flint Water Cases, and which is designated in accordance with this Order as "Confidential" or "Highly Confidential – Attorneys' Eyes Only" (hereinafter called "Protected Material") shall be used solely for the prosecution or defense of the federal Flint Water Cases, or for the prosecution or defense of Flint Water Cases pending in the Genesee County Circuit Court and consolidated for pretrial handling under that court's Docket No. 17-1086646-NO or in the Michigan Court of Claims (hereinafter called the "State Flint Water Cases"), except to the

extent the document, other material, or information already is or later becomes publicly available without any intentional or unintentional violation of this Order having contributed to its public availability. No party or non-party bound by this Order may designate documents, other materials, and information as "Confidential" or "Highly Confidential – Attorneys' Eyes Only" unless the party or non-party in good faith believes the document, other material, or information satisfies the requirements for those designations that are described in ¶¶ 5, 6, or 7 of this Order.

2. Purpose of the Order.

To preserve the legitimate privacy and confidentiality interests of parties and non-parties who produce Protected Material, this Order establishes procedures for disclosing Protected Material to parties in federal Flint Water Cases and to certain other persons to whom disclosure may be necessary for proper and efficient prosecution or defense of federal Flint Water Cases; imposes obligations on such persons as are appropriate to protect the Protected Material from use or disclosure for purposes other than prosecution or defense of these federal Flint Water Cases or of State Flint Water Cases; and prescribes a procedure by which persons who in good faith believe specific Protected Materials do not deserve the protection or level of protection they are designated to receive may challenge such designations.

3. Materials Covered.

This Order applies to all Confidential Material that is produced in response to discovery requests served in any of the federal Flint Water Cases, or in response to court orders entered in any of the federal Flint Water Cases, or in any of the federal Flint Water Cases pursuant to any disclosure provision in the Federal Rules of Civil Procedure or the Local Rules of this Court, or by stipulation in any of the federal Flint Water Cases. It applies to such Confidential Material whether the Confidential Material is a document, a deposition or other out-of-court testimony, a multimedia audio/visual file such as a voice or video recording, a discovery response, or electronically stored information (hereinafter called "ESI"); and it shall apply not only to the document, transcript, multimedia audio/visual file, discovery response, or ESI that is actually produced, but also to the information in it.

4. Persons Bound.

This Order is binding on all parties to federal Flint Water Cases as well as their respective attorneys, agents, representatives, officers, and employees and others identified elsewhere in this Order. It is also binding on non-parties to the action to the extent such non-parties are made subject to the Order by ¶¶ 8(c)(ii) or 23 or have executed a written agreement to be bound substantially in the form attached to this Order as Exhibit A or Exhibit B. Nothing in this Order shall limit

the use or disclosure of Protected Material by the party or other person who produces it, but disclosure by that party or other person of Protected Material in a way that causes it to become public will cause it to lose its protection under this Order. "Person," as used in this Order, means not only natural persons but also all business entities, government entities, and institutions and associations of all kinds. As used in this Order, "producing party" means any party or other person that designates Protected Material pursuant to this Order.

5. Requirements for Designation as "Confidential."

The designation "Confidential" shall be used only with respect to Confidential Material that the producing party believes, in good faith: (a) contains private, non-public, confidential, competitively-sensitive, or proprietary information that is not readily ascertainable through lawful means by the public, (b) that if disclosed publicly would likely cause oppression, competitive disadvantage, infringement of privacy rights established by statute or regulation, or infringement of confidentiality requirements established by statute or regulation with respect to government purchasing or other operations, or (c) that if used for purposes other than those authorized by this Order could cause oppression or competitive disadvantage.

6. Requirements for Designation as "Highly Confidential – Attorneys' Eyes Only."

The designation "Highly Confidential – Attorneys' Eyes Only" shall be used only with respect to Confidential Material that meets the requirements of ¶ 5 of this Order and, in addition, is highly sensitive proprietary information for which, in practical terms, there is substantial reason to believe the protections prescribed by this Order for Protected Material designated only "Confidential" will be inadequate to prevent use of the Protected Material for commercial purposes not permitted by this Order. For illustrative purposes only, and without intending or attempting to be comprehensive, such material might include current financial or business planning information; recent, current, and projected future financial performance data; recent and current customer lists; recent, current, and future marketing plans; planning information for future products and services; and projected future business development plans and strategies.

7. Parties' Designation of Protected Material Produced by Others.

Any party may designate "Confidential" or "Highly Confidential – Attorneys' Eyes Only" Confidential Material produced by another party or by a non-party if the Confidential Material (a) originated from the designating party or was generated on behalf of the designating party, or (b) contains Confidential Material of the designating party, and (c) meets the requirements of ¶¶ 5 or 6. In the event a party makes such a designation, the designating party shall be deemed

the producing party for purposes of this Order. Failure to designate Confidential Material produced by another party or a non-party pursuant to this paragraph at or before the time such Confidential Material is produced shall not constitute a waiver of the designating party's right to make such a designation at a later time, so long as the designation is made at the earliest practical time.

8. Manner of Designating Protected Material.

Confidential Material may be designated "Confidential" or "Highly Confidential – Attorneys' Eyes Only" in the following ways:

(a) A producing party may designate documents that are produced in hard copy or in electronic copies by marking the first page and each subsequent page that contains Confidential Material with, as appropriate, the legend "Confidential" or "Highly Confidential – Attorneys' Eyes Only." The appropriate designation shall, to the extent practical, be placed on the document so as not to obscure any information contained in the document and close to any Bates number assigned to the document by the producing party. Pages of a document that do not meet the standards of ¶¶ 5 or 6 of this Order, except for the first page of the document, shall not be marked as described in this paragraph.

(b) A producing party may designate written discovery responses or written disclosures that are made pursuant to court order or provisions of the Federal Rules of Civil Procedure or this Court's local rules by marking the first

page and each subsequent page that contains Confidential Material with, as appropriate, the legend "Confidential" or "Highly Confidential – Attorneys' Eyes Only." Unless it is impractical to do so, specific responses or disclosures containing Confidential Material shall be separated from responses that contain only non-confidential material and shall be collected in a separate addendum to the set of responses or disclosure, so that to the extent possible responses or disclosures that do not deserve the protection of this Order may be freely and easily used and disclosed. When a single page marked "Confidential" or "Highly Confidential – Attorneys' Eyes Only" contains responses that satisfy the requirements for one of those designations but also responses that do not satisfy those requirements, the non-confidential responses shall be conspicuously identified as non-confidential.

(c) (i) In the case of depositions, counsel for a producing party may designate testimony as "Confidential" or "Highly Confidential – Attorneys' Eyes Only" by identifying it as such on the record at or about the time the testimony is given. With respect to deposition exhibits, counsel for a producing party may designate such exhibits, or portions of them, as "Confidential" or "Highly Confidential – Attorneys Eyes' Only" by identifying them as such on the record at or before the conclusion of the deposition, *provided, however*, that no such

designation need be made with respect to exhibits that have previously been marked in a manner to make them Protected Material.

(ii) In the case of depositions, a non-party witness who is not an employee of a party, or the witness's attorney, may designate testimony or exhibits as "Confidential" or "Highly Confidential – Attorneys' Eyes Only" in the same manner described in subparagraph (c)(i). But in all cases where such designation is made by a non-party witness or the witness's attorney, both the witness and his or her attorney shall be deemed to have accepted, by making the designation, all obligations created by this Order.

(iii) If no testimony is designated "Confidential" or "Highly Confidential – Attorneys' Eyes Only" at a deposition, the deposition testimony and the transcript of it shall be presumed not to be Protected Material unless, at or before the close of the day's testimony, a producing party's attorney of record states on the record, consistent with Fed. R. Civ. P. 11, the party's or the attorney's good faith belief that testimony given at the deposition is likely to be protectable as "Confidential" matter, "Highly Confidential – Attorneys' Eyes Only" matter, or both in accordance with the standards of ¶¶ 5 and 6 of this Order. If such an on-the-record-statement is made, all of the deposition testimony and the entire transcript shall be accorded the highest level of protection identified by such attorney for a period of fifteen (15) calendar days after the final transcript (that is

to say, not a draft transcript) is received by or becomes available to attorneys who made or joined in the statement. If, before expiration of such 15-day period, any attorneys who made or joined in the statement notify counsel of record for all other parties to the actions in which the deposition was taken of the pages and lines of deposition testimony that are "Confidential" or "Highly Confidential – Attorneys' Eyes Only," then those pages and lines, but no other pages and lines, shall remain subject to the protection of this Order after the 15-day period has ended.

(iv) All transcripts of depositions at which testimony has been designated in accordance with subparagraph (c)(i) or (c)(ii) as "Confidential" or "Highly Confidential – Attorneys' Eyes Only" shall be marked by the court reporter on the cover page with one or both of those designations and each page on which testimony appears that was identified as protectable at the deposition shall likewise be marked with one or both of those designations; but in making use of the deposition testimony and transcript the persons bound by this Order shall be limited in their use only of the testimony and portions of the transcript that was identified as protectable at the deposition.

(v) All transcripts of depositions at which the statement described in subparagraph (c)(iii) was made shall be marked by the court reporter on the cover page with one or both of those designations. In the event no written designation of specific protectable testimony is provided in accordance with

subparagraph (c)(iii), persons bound by this Order may obliterate the designations placed on the cover page. In the event a written designation of specific protectable testimony is provided in accordance with subparagraph (c)(iii), all persons bound by this Order shall treat those pages and lines as required by this Order for Protected Material.

(vi) Deposition exhibits designated "Confidential" or "Highly Confidential – Attorneys' Eyes Only" shall be marked as provided in ¶ 8(a).

(vii) If testimony taken at an audiovisually-recorded deposition is designated "Confidential" or "Highly Confidential – Attorneys' Eyes Only," the videocassette, other videotape container, or disk on which the deposition was recorded shall be marked by affixing a label to it with the appropriate designation.

(d) To the extent protectable information is produced in a form rendering it impractical to label (including electronically stored information produced on electronic, magnetic, or other computer-readable media), the producing party may designate such information "Confidential" or "Highly Confidential – Attorneys' Eyes Only" by cover letter or by affixing to the media containing the protectable information a label containing the appropriate legend. If a person bound by this Order reduces computerized information that has been so designated to hard-copy form, that person shall mark the hard-copy form in the manner described in ¶ 8(a). Whenever any "Confidential" or "Highly Confidential – Attorneys' Eyes Only"

computerized material is copied into another form, the person copying the material shall also mark those forms in the manner described in this ¶ 8.

(e) To the extent any person bound by this Order other than the producing party creates, develops, or otherwise establishes on any digital or analog machine-readable device, recording media, computers, discs, networks or tapes, or maintains for review on any electronic system material that contains information designated "Confidential" or "Highly Confidential – Attorneys' Eyes Only" that person or its counsel shall take all necessary measures to assure that access to the electronic system and media containing such information is restricted to those persons who, by the terms of this Order, are permitted to have access to it.

(f) Documents, materials, and other information that are made available for inspection only shall be treated as "Highly Confidential – Attorneys' Eyes Only" during the inspection. To the extent copies of any such materials are later provided to parties or to non-parties bound by this Order, however, the copies provided shall be marked in accordance with ¶¶ 8(a)-(d) of this Order and shall thereafter be accorded only such protection as provided by this Order for Protected Materials so marked.

9. Filing Protected Material.

(a) In connection with any court filing in which a party intends to reveal or submit Protected Material, the filing party shall initially file a redacted version

omitting the Protected Material, and shall serve both the redacted and an unredacted copy of the filing (hereinafter called "unredacted filing") on counsel of record for all parties and the Court. If the court filing includes Protected Material designated by a non-party pursuant to this Order, the filing party will also serve on that non-party a copy of the filing with that non-party's Protected Material unredacted. Notwithstanding the above, if the producing party is also the filing party, it may elect to not file the designated material redacted or under seal.

(b) Upon service of such unredacted filing, the producing party shall have fourteen (14) days to file a further motion to seal the Protected Material contained in the unredacted filing, identifying (in a manner that does not disclose the substance of the Protected Material) the specific pages, lines, words, and content of such filing that such party contends meet the standard for sealing from public view under applicable law. The motion shall be submitted to the Court via email or hard copy and served on counsel of record for all parties. The parties will have seven (7) days from the date the sealing motion is served to file a response. The response shall be submitted to the Court via email or hard copy and served on counsel of record for all parties. In the event no such motion to seal is filed, the original filing party shall re-file the complete, unredacted motion in the public record.

(c) If a producing party does file a motion to seal all of the Protected Material in the unredacted filing, then no public filing of the Protected Material will be made unless ordered by the Court.

(d) If the producing party files a motion seeking to seal some, but not all, of the Protected Material in the unredacted filing, then the producing party shall be responsible for promptly providing the filing party with a version of the original filing in PDF format redacted so as to omit only the Protected Material that is the subject of its motion to seal, and the original filing party will file a "Modified Redacted Version" of the original redacted filing.

(e) If the Court grants some, but not all, of the relief requested by producing party in its motion to seal, then the producing party shall be responsible for promptly providing an "Amended Redacted Version" of the redacted filing or the Modified Redacted Version in Adobe PDF format reflecting the Court's ruling, for filing by the original filing party.

10. Filing of Protected Material Under Seal.

(a) This Order does not itself authorize the filing of any documents under seal. Documents may be sealed only if authorized by a separate order of the Court. A party seeking to file under seal any paper or other matter must file and serve a motion that sets forth: (i) the authority for sealing; (ii) an identification and description of each item proposed for sealing; (iii) the reason that sealing each item

is necessary; (iv) the reason that a means other than sealing is not available or unsatisfactory to preserve the interest advanced by the movant in support of the seal; and (v) a memorandum of legal authority supporting the seal. *See* E.D. Mich. L.R. 5.3. The movant shall not file or otherwise tender to the Clerk any item proposed for sealing unless the Court has granted the motion. If a motion to seal is granted, the documents to be filed under seal shall, if possible, be filed electronically by the movant.

11. Use of Protected Material.

(a) Protected Material may only be used for the purpose of prosecuting or defending the federal Flint Water Cases and the State Flint Water Cases. It may not be used for any business, competitive, personal, private, or political purpose. Protected Material may not be sold or offered for sale. Protected Material may not be used for marketing, promotional, or advertising purposes.

(b) Notwithstanding the foregoing, nothing in this Order limits the use a producing party may make of its own Confidential Material. A producing party's use of its Confidential Material in a way that causes it to become public, however, shall constitute a waiver of any earlier designation that party made of the Confidential Material as "Confidential" or "Highly Confidential – Attorneys' Eyes Only."

(c) Subject to the provisions of ¶ 11(d) of this Order, nothing in this Order limits the use any party may make of Protected Material at trial or at any evidentiary hearing in a federal Flint Water Case or in a State Flint Water Case. The protection, if any, to be accorded to evidence offered at trial or at an evidentiary hearing and to counsels' and witnesses' references to such evidence at trials and evidentiary hearings shall be determined by the judicial officer presiding over the trial or evidentiary hearing.

(d) Any party who intends to disclose Protected Material at a public court proceeding shall make its best efforts to inform the Court and the producing party at least five (5) business days in advance of the anticipated disclosure date of the intended disclosure, but in any event shall provide sufficient advance notice to the Court and to the producing party to permit the Court to decide, before any disclosure has been made, what, if any, orders it should enter to protect the Protected Material from inappropriate use or disclosure.

(e) A producing party may designate portions of transcripts of trials and evidentiary hearings as "Confidential" or "Highly Confidential – Attorneys' Eyes Only" by providing written notice to counsel of record for all parties of the designation and of the pages and lines subject to the designation. Such written notice must be provided no later than fifteen (15) calendar days after the final

transcript (that is to say, not a draft transcript) has been completed by the court reporter or other transcriptionist.

(f) Nothing in this Order is intended to prevent counsel for any party from rendering advice to his or her client with respect to the federal Flint Water Cases or the State Flint Water Cases or, in rendering such advice, from relying upon his or her examination and understanding of Protected Material; but in rendering such advice, counsel shall not disclose Protected Material to any person to whom disclosure is not permitted by this Order.

12. Disclosure of Confidential Information.

(a) Counsel of record for all parties and for non-parties bound by this Order are responsible for taking reasonable measures consistent with this Order to control access to and distribution of Protected Material designated "Confidential" that they receive.

(b) Access to Protected Material designated "Confidential" shall be limited to:

(i) This Court, the Genesee County Circuit Court, and the Michigan Court of Claims, clerks and other personnel of this Court, the Genesee County Circuit Court, and the Michigan Court of Claims, jurors, alternate jurors, and persons engaged in recording, taking, or transcribing proceedings at

depositions, trials, and hearings in a federal Flint Water Case or a State Flint Water Case.

(ii) Appellate courts handling appeals from orders or judgments entered in federal Flint Water Case or State Flint Water cases, clerks and other personnel of such appellate courts, and persons engaged in recording, taking, or transcribing proceedings in such appeals.

(iii) Mediators and settlement masters appointed by the Court or retained by parties to federal Flint Water Cases or State Flint Water Cases, except that if a party is not participating in the mediation or other settlement proceedings being conducted by the mediator or other settlement master, Protected Material designated by that party may not be disclosed to the mediator or other settlement master unless and until the mediator or other settlement master has executed a written agreement in the form attached to this Order as Exhibit A.

(iv) Subject to ¶ 12(c), counsel of record for parties in the federal Flint Water Cases and State Flint Water Cases, as well as members of such counsel-of-record's firms, associates at such firms, and paralegals, investigative employees, technical employees, and secretarial and clerical employees of those firms who are assisting counsel of record with a federal Flint Water Case or State Flint Water Case and who have a need for access to Protected Materials to provide such assistance adequately.

(v) Subject to ¶ 12(c), attorneys employed in parties' in-house legal departments, as well as paralegals, investigative employees, technical employees, and secretarial and clerical employees of those parties who are assisting in-house counsel with a federal Flint Water Case or State Flint Water Case and who have a need for access to Protected Materials to provide such assistance adequately.

(vi) Subject to ¶ 12(c), insurers who may be liable to satisfy all or part of a possible judgment against a defendant in a federal Flint Water Case or a State Flint Water Case or to indemnify or reimburse for payments made to satisfy such a judgment, as well as counsel for any such defendant and any such insurer as may be actually engaged in addressing coverage issues related to Flint Water Cases and who have a need for access to Protected Materials to provide their professional services adequately.

(vii) Subject to ¶ 12(c), photocopying, document storage, data processing, document review, graphic production, jury research or trial management firms retained by parties or their counsel of record to assist them with federal Flint Water Cases or State Flint Water Cases and who have a need for access to Protected Materials to provide such assistance adequately.

(viii) Subject to ¶ 12(c), contract attorneys and paralegals retained by parties' counsel of record to assist them with federal Flint Water Cases or State

Flint Water Cases and who have a need for access to Protected Materials to provide such assistance adequately.

(ix) Subject to ¶ 12(c), experts, consultants, and expert consulting firms retained by counsel of record in connection with a federal Flint Water Case or State Flint Water Case to the extent reasonably necessary to enable the expert, consultant, or expert consulting firm to advise counsel of record with respect to federal Flint Water Cases or State Flint Water Cases, to prepare one or more written reports as required by Fed. R. Civ. P. 26(a), or to testify orally or in writing in a federal Flint Water Case or State Flint Water Case. Disclosures authorized under this subparagraph, however, shall be made only to the individual expert or consultant retained by the party or to such members, partners, independent contractors, other support personnel, or employees of the individual expert's or consultant's consulting firm who have a need for access to Protected Materials to perform the engagement adequately (hereinafter called "Expert Personnel"). The individual expert or consultant retained by the party or Expert Personnel may use Protected Material solely in connection with their work on federal Flint Water Cases or State Flint Water Cases. The individual expert or consultant and all Expert Personnel must, before receiving Protected Material, execute a Written Assurance in the form attached to this Order as Exhibit A. Expert Personnel may not include any person who, since January 1, 2017, has been an officer, director, or

employee of any party in a federal Flint Water Case or in a State Flint Water Case other than of the party who retains the expert, consultant, or consulting firm.

(x) In addition to employees in a party's in-house legal department, current employees of the party who have personal knowledge with respect to the information contained in the Protected Material and: (i) with respect to the Veolia, LAN, and Rowe Parties and Plaintiffs, no more than three officers, directors, or employees who are charged with responsibility for making decisions dealing directly with the party's prosecution, defense, or resolution of federal Flint Water Cases or State Flint Water Cases; and (ii) with respect to the Government Parties, officers, elected officials, or employees who are charged with responsibility for making decisions dealing directly with the party's prosecution, defense, or resolution of federal Flint Water Cases or State Flint Water Cases; provided that the requirements of ¶ 14(a) of this Order are satisfied.

(xi) Parties who are natural persons, provided that the requirements of ¶ 14(a) of this Order are satisfied.

(xii) Any person who authored or is identified as a former recipient of the particular Protected Material; or is or formerly was a custodian of the particular Protected Material; or is a current employee of the party or non-party who designated the particular Protected Material for protection; or is a witness testifying at a deposition, or at trial, or at an evidentiary hearing to whom

disclosure is reasonably necessary for proper prosecution or defense of a federal Flint Water Case or of a State Flint Water Case and whom counsel who makes the disclosure has a reasonable and good faith belief already is aware of the specific information contained in the Protected Material.

(xiii) Any other person to whom the producing party agrees in writing or on the record in advance of the disclosure, or whom the Court explicitly directs, may have access to the Protected Material.

(c) Some parties to State Flint Water Cases may be bound by this Order if they are also parties to one or more federal Flint Water Cases. To the extent parties to State Flint Water Cases are not bound by this Order, they may have access to Protected Material only after executing the written agreement attached hereto as Exhibit A. Persons described in ¶ 12(b)(iv), (v), (vi), (vii), (viii), or (ix) may have access to Protected Material only by executing the written agreement attached hereto as Exhibit A, unless they are already bound by this Order by virtue of being employed by, retained by, or an insurer for a party to at least one federal Flint Water Case.

13. Disclosure of Highly Confidential – Attorneys' Eyes Only Material.

(a) Counsel of record for all parties and for non-parties bound by this Order are responsible for taking reasonable measures consistent with this Order to

control access to and distribution of Protected Material designated "Highly Confidential – Attorneys' Eyes Only" that they receive.

(b) Access to Protected Material designated "Highly Confidential – Attorneys' Eyes Only" shall be limited to:

(i) The persons identified in ¶ 12(b)(i)-(iv) and (vi)-(x), subject to ¶ 12(c).

(ii) In-house attorneys employed in the legal departments of parties, but only to the extent such in-house attorneys have a need to know the "Highly Confidential – Attorneys' Eyes Only" material.

(iii) Any person who authored or is identified as a former recipient of the particular Protected Material; or is or formerly was a custodian of the particular Protected Material; or is a current employee of the party or non-party who designated the particular Protected Material for protection; or is a witness testifying at deposition, or at trial, or at an evidentiary hearing to whom disclosure is reasonably necessary for proper prosecution or defense of a federal Flint Water Case or of a State Flint Water Case and whom counsel who makes the disclosure has a reasonable and good faith belief already is aware of the specific information contained in the Protected Material.

(iv) Any other person to whom the producing party agrees in writing or on the record in advance of the disclosure, or whom the Court explicitly directs, may have access to the Protected Material.

14. Notification of Confidentiality Order.

(a) Subject to the exceptions in ¶ 14(b), counsel of record for the parties shall be responsible for obtaining, before disclosing Protected Material, the written agreement to be bound by this Order of the person to whom the disclosure is to be made. The written agreement shall be in the form annexed hereto as Exhibit A. The originals of all written agreements obtained by counsel of record for a party shall be kept by that attorney until final resolution of the federal Flint Water Cases and the State Flint Water Cases, whereupon copies shall be provided to counsel of record who request them; but the Court may order earlier disclosure of one or more such written agreements upon motion of any party supported by a showing of good cause for the earlier disclosure.

(b) The provisions of ¶ 14(a) do not apply to disclosures made to this Court, the Genesee County Circuit Court, the Michigan Court of Claims, clerks and other personnel of this Court, the Genesee County Circuit Court, or the Michigan Court of Claims, jurors, alternate jurors, persons engaged in recording, taking, or transcribing proceedings at depositions, trials, and hearings in a federal Flint Water Case or a State Flint Water Case, appellate courts handling appeals

from orders or judgments entered in federal Flint Water Cases or State Flint Water Cases, clerks and other personnel of such appellate courts, or persons engaged in recording, taking, or transcribing proceedings in such appeals. The provisions of ¶ 14(a) do not apply to disclosures to testifying non-party witnesses who are not retained experts or consultants except to the extent provided in ¶ 14(c).

(c) Before Protected Material is disclosed to a non-party witness (who is not a retained expert or consultant) at a deposition, trial, or evidentiary hearing, the witness shall be shown a copy of this Order and asked to sign the written agreement of which a copy is annexed hereto as Exhibit A. If the witness signs the agreement, the original signed agreement shall be marked as an exhibit to his or her testimony, a copy of the signed agreement shall be provided to the witness at or before the end of the testimony, and the witness shall be bound by this Order. If the witness refuses to sign the agreement, his or her testimony shall proceed unless the Court orders upon motion of any interested party that it not be taken or that it be taken only with respect to matter that is not Protected Material. In the event the testimony of a witness who refuses to sign the agreement of which a copy is annexed hereto as Exhibit A, no copies of Protected Material that are marked as exhibits to the testimony or shown to the witness in connection with his or her testimony shall be provided to or shown to the witness outside the courtroom or deposition room.

15. Challenges to Designations of Protected Material.

(a) A party need not challenge the appropriateness of a "Confidential" or "Highly Confidential – Attorneys' Eyes Only" designation at the time the designation is made, and failure to do so does not prevent a later challenge to the appropriateness of the designation. Any challenge must be made, however, no later than the deadline for completion of fact discovery in the action in which the designation was made or sixty (60) days after the designation was made, whichever is later.

(b) A party who objects to a designation of Protected Material made pursuant to this Order shall give written notice of its objections via e-mail to counsel of record for all parties and to any non-party who made such designation. The notice shall identify the challenged Protected Material by Bates number on an item-by-item basis unless the Protected Material cannot reasonably be identified in that fashion, except that if a party challenges a mass designation or extensive designations of substantially identical types of Protected Material the notice may describe with reasonable specificity the items being challenged and identify their Bates numbers by range. The notice shall include in concise but meaningful language the factual basis on which the challenge to each item is based. The interested parties and non-parties bound by this Order thereafter shall confer in a good faith attempt to resolve the objections by agreement to the extent they are

able to do so. If the objection is not completely resolved within fourteen (14) days of transmission of the notice, the party challenging the designation may file with the Court, using the "Notice-Other" designation in ECF, a "Notice of Objection to Designation of Protected Material" which shall identify all Protected Materials that remain in dispute in the same manner as they were identified in the original notice and which shall indicate the degree of protection, if any, that each item should continue to receive; the designating party or non-party bound by this Order may within twelve (12) days thereafter file a memorandum in support of the designation it contends is appropriate; and the party challenging the designation may file a response within seven (7) days thereafter. Once a Notice of Objection to Designation of Protected Material has been filed, the party or non-party that made the designation shall bear the burden of showing good cause for the designation it advocates. If no memorandum is filed by the designating party or non-party supporting its designation, the Protected Material will be redesignated in the manner suggested in the Notice of Objection to Designation of Protected Material. If the designating party or non-party agrees to change the designation of any challenged Protected Material, that party or non-party shall send written notice of the change to counsel of record for all other parties.

(c) All Protected Materials shall continue to be treated according to their designation unless and until the Court orders otherwise or the designating party or non-party notifies all other parties that it has agreed to change the designation.

16. No Waiver of Objections.

Nothing in this order shall affect the right, if any, of a party or non-party to assert any objection to any discovery request or to any questions or proceedings at a deposition, trial, or evidentiary hearing; but no party or non-party shall be deemed to have waived an objection based on confidentiality to any discovery request or deposition question or proceeding if, in that person's judgment, the protection afforded by this Order adequately addresses the person's confidentiality concern. Nothing in this Order shall diminish the right of any party or non-party to withhold Protected Material on the basis of any legally cognizable privilege, or Fed. R. Div. P. 26(b)(3) or 26(b)(4), or the work product immunity.

17. Disposition of Protected Material.

(a) Subject to the provisions of ¶ 17(b) and (c), within sixty (60) days after final disposition of the last remaining federal Flint Water Case and the last remaining State Flint Water Case, including disposition of any appeal and subsequent remand, all parties and non-parties bound by this Order shall return to counsel of record for the respective producing parties or non-parties all Protected

Material and all copies of such Protected Material, including among others all copies that were provided to experts and consultants for the returning party.

(b) In lieu of returning Protected Material and copies thereof in accordance with ¶ 17(a), any party or non-party bound by this Order may destroy and certify in writing that it has destroyed such materials.

(c) Notwithstanding the provisions of ¶ 17(a), parties to the federal Flint Water Cases and the State Flint Water Cases, as well as their counsel of record and their insurers, may retain copies of filings that were made in federal Flint Water Cases and State Flint Water Cases as well as correspondence and memoranda among themselves related to those cases; but any Protected Material contained in such documents must continue to be treated in accordance with this Order so long as it is neither returned nor destroyed.

18. Correction of Designations and Clawback of Protected Material.

(a) A party who fails to designate Confidential Material as "Confidential" or "Highly Confidential – Attorneys' Eyes Only" at the time it produces it may correct its designation at a later time consistent with this paragraph, except that no such correction may be made with respect to items that have already been filed, or included in filings, in the public docket in any federal Flint Water Case or State Flint Water Case.

(b) Any correction shall be made by means of a written notice of the correction or, if made orally, shall be confirmed in writing within three (3) days thereafter. The notice of correction shall be sent to counsel of record for all parties and shall be accompanied by substitute copies of each item, marked in accordance with ¶ 8 of this Order, as to which a new designation of "Confidential" or "Highly Confidential – Attorneys' Eyes Only" is being made. Any party receiving such a notice may, within fifteen (15) days after having received the notice, object to the late designation by sending written notice of its objection via e-mail to counsel of record for all other parties, stating in concise but meaningful fashion the basis for the objection.

(c) If no timely objection is interposed, all parties shall destroy or return to counsel of record for the producing party all previously received copies of the newly designated Protected Material, including copies that were supplied to experts and consultants retained by that party; except that no party is required to destroy or return transcripts or audiovisual recordings of depositions or other testimony.

(d) If an objection has been interposed in accordance with ¶ 18(b), the interested parties thereafter shall confer in a good faith attempt to resolve the objections by agreement to the extent they are able to do so. If the objection is not completely resolved, the producing party may file within fourteen (14) days of

transmission of the written notice of objection a motion seeking to designate the items in accordance with its written notice of correction and parties opposing the late designation may file memoranda in opposition to the motion within twelve (12) days after it is filed. The party proposing the late designation shall bear the burden of establishing good cause for its allowance. Once a motion has been filed in accordance with this ¶ 18(d), items subject to the motion shall be treated as if they were Protected Material bearing the proposed designation until such time as the Court has ruled otherwise.

(e) The obligation to treat late-designated Protected Material in accordance with this Order is prospective only. Persons who reviewed late-designated Protected Material before the late designation became effective in accordance with this ¶ 18 shall, after receiving notice of the late designation, abide by the provisions of this Order in all future use and disclosures of the Protected Material.

19. Responsibilities with Respect to Improperly Disclosed Protected Material.

If a party, a party's counsel of record, or any other person bound by this Order discovers that he or she, or someone for whose conduct he or she is responsible, has disclosed Protected Material to a person who is not authorized under this Order to receive it, the party, counsel, or other person bound by this Order shall promptly notify counsel of record for the producing party of the

unauthorized disclosure and shall promptly take all reasonable steps to retrieve the improperly disclosed Protected Material and to restore to it the protection contemplated by this Order. Nothing in this Order is intended to limit the right of any party or person to seek additional relief, if appropriate, against persons responsible for any improper disclosure.

20. Non-Application to Information from Other Sources.

(a) Nothing in this Order limits use or disclosure of documents, material, or information that are publicly available, except that if Protected Material becomes publicly available because of a violation of this Order the party or other person bound this Order who is responsible for the violation shall be subject to such sanctions for the violation as all interested parties may agree or the Court may determine are appropriate in the circumstances.

(b) Nothing in this Order limits use or disclosure of Confidential Material that a party or other person obtained from a person who is not bound by this Order and whom the party or other person obtaining it reasonably believed at the time was lawfully in possession of it.

21. Compliance Not an Admission.

Compliance with this Order is not an admission by any party or non-party that any particular document, other material, or information is or is not confidential, except that a party or non-party who designates a document, other

material or information "Confidential" or "Highly Confidential – Attorneys' Eyes Only" by such designation admits it meets the standards for such designation described in this Order. Compliance with this Order is not an admission by any party or non-party that any particular, document, other material, or information is or is not privileged, except that a party or non-party who asserts any privilege with respect to a document, other material, or information by such assertion admits that it is privileged. Compliance with this Order is not an admission by any party or non-party that any particular document, other material, or information is or is not discoverable or that any particular document, other material, or information is or is not admissible in evidence.

22. Non-Parties' Discovery Requests for Protected Material.

If any party receives a subpoena, other formal discovery request, or investigative demand, except for one issued in a federal Flint Water Case or State Flint Water Case, that seeks Protected Material designated as such by someone else, the party must promptly inform the issuer of the subpoena, other discovery request, or investigative demand about this Order, provide the issuer with a copy of this Order, and notify counsel of record for all parties to the federal Flint Water Cases of the subpoena, other discovery request, or investigative demand. The notice to counsel of record for all parties shall be provided as soon as reasonably possible and, in any event, far enough in advance of the date specified in the

subpoena, other discovery request, or investigative demand for disclosure of the Protected Material to permit other interested parties a reasonable opportunity to file such motions and take such other steps as they may deem appropriate to prevent or limit disclosure of the Protected Material before the disclosure occurs; and the party who received the subpoena, other discovery request, or investigative demand shall provide reasonable cooperation to the other interested parties in their efforts to prevent or limit such disclosure. *Provided, however,* that nothing in this Order requires any party or other person to violate any legal obligations created by any subpoena, other discovery request, or investigative demand.

23. Protection of Non-Parties.

Persons who are not party to any federal Flint Water Case or State Flint Water Case may obtain the protection of this Order for Confidential Material they provide in response to discovery proceedings in any such Flint Water Case. Such persons may obtain the protection of this Order by executing a written agreement in the form attached to this Order as Exhibit B and by complying with the requirements of this Order for the designation, use, and disclosure of Protected Material.

24. Persons Bound and Continued Effectiveness.

This Order binds all parties to federal Flint Water Cases, their counsel of record, and other persons to the extent described in the order. It shall remain in

effect until modified or terminated by further Court order. Nothing in this Order is to the prejudice of the right of any party or other person to move this Court for relief from any of its provisions, or to modify it (including *without limitation* to modify it to provide greater, lesser, or different protection for particular Confidential Material or to prevent disclosures to particular people), and nothing is to the prejudice of the right of any party or other person to move for additional protective orders. The provisions of this Order remain effective after final disposition of the federal Flint Water Cases and the State Flint Water Cases. This Court retains jurisdiction after final disposition of the federal Flint Water Cases for the purpose of enforcing this Order.

25. Application to New Plaintiffs and Defendants.

(a) When counsel of record for a plaintiff in an existing federal Flint Water Case commences suit on behalf of a new plaintiff in a federal Flint Water Case, the new plaintiff shall file at the same time as the complaint a notice either that the new plaintiff agrees to be bound by this Confidentiality Order (or by such amended Confidentiality Order as may be effective on the date the plaintiff's complaint is filed) or that the new plaintiff does not agree to be so bound. A copy of the notice shall be served along with the summons and complaint. Any plaintiff who files such a notice agreeing to be bound shall from that date forward be bound by and have the benefits of this Order.

(b) If a plaintiff who is not represented by counsel of record for an existing plaintiff in a federal Flint Water Case files an action in this Court arising out of alleged contamination of the City of Flint municipal water supply, that plaintiff and that plaintiff's counsel shall be bound by this Order unless, within fourteen (14) calendar days after filing the complaint or such longer time as the Court may allow, that plaintiff moves for relief from the order. Neither that plaintiff nor its counsel shall be entitled to receive any Protected Material until that plaintiff has either obtained relief from this Order by the Court or has filed its assent to be bound by this Order (or by such amended Confidentiality Order as may be effective on the date the plaintiff files its assent).

(c) Subject to ¶ 25(d), any person who is not already a party to a federal Flint Water Case but who in the future becomes a defendant may file at the time of its first appearance a notice either agreeing to be bound by this Order or not agreeing to be bound by it. Any defendant who files such a notice agreeing to be bound shall from that date forward be bound by and have the benefits of this Order. Any new defendant who does not agree to be bound by this Order, and that defendant's counsel, shall be bound by this Order unless, within fourteen (14) calendar days after first appearing or such longer time as the Court may allow, that defendant moves for relief from the order. Neither that defendant nor its counsel shall be entitled to receive any Protected Material until that defendant has either

obtained relief from this Order by the Court or has filed its assent to be bound by this Order (or by such amended Confidentiality Order as may be effective on the date the defendant files its assent).

(d) No filing required by ¶ 25(c) shall constitute a waiver of any defendant's defense based on lack of personal jurisdiction, lack of subject matter jurisdiction, or immunity.

26. Non-Waiver.

Nothing in this Order shall be construed as a determination by the Court, or as an admission by any party or non-party, that any parent or affiliate of a party is subject to personal jurisdiction in the Eastern District of Michigan or that it is subject to service of process or to discovery pursuant to the Federal Rules of Civil Procedure. Assent to or compliance with this Order does not constitute a waiver any defense, of any immunity, or of any claim.

IT IS SO ORDERED.

Dated: December 19, 2017
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

EXHIBIT A

On behalf of _____ [NAME OF ORGANIZATION], I, _____ [NAME OF INDIVIDUAL] certify (i) that I understand that documents, other materials, and information containing Confidential or Highly Confidential matter is being provided or otherwise disclosed to me pursuant to the terms and restrictions of the Confidentiality Order entered in *In re Flint Water Cases*, Civil Action No. 16-cv-10444-JEL-MKM, pending in the United States District Court for the Eastern District of Michigan; (ii) that I have received and reviewed a copy of that Confidentiality Order; (iii) that I agree to be bound by the restrictions in that Confidentiality Order on the use and disclosure that may be made of Protected Material to which the order applies and by the provisions in that order regarding the return of Protected Material to which the order applies; and (iv) that I agree to be subject to the jurisdiction of the United States District Court for the Eastern District of Michigan for the limited purpose of enforcing that Confidentiality Order and the agreements in this Exhibit A. I understand that a violation of the Confidentiality Order may be punishable as a contempt of court.

Dated: _____

Signature: _____

Printed Name: _____

Address: _____

_____

Telephone: _____

E-Mail: _____

EXHIBIT B

On behalf of _____ [NAME OF ORGANIZATION], I, _____ [NAME OF INDIVIDUAL] certify (i) that certain documents, other materials, and information containing Confidential or Highly Confidential matter is being provided or otherwise disclosed by me or by the organization I represent in response to a subpoena or other discovery requests by a party to *In re Flint Water Cases*, Civil Action No. 16-cv-10444-JEL-MKM, pending in the United States District Court for the Eastern District of Michigan; (ii) that I have received and reviewed a copy of the Confidentiality Order that has been entered in that litigation; (iii) that I wish to obtain the protection of that order for confidential material I or my organization are disclosing; (iv) that in return for obtaining such protection I agree on my own behalf and on behalf of the above-named organization to be bound by the provisions of that Confidentiality Order insofar as they apply to non-parties to the litigation; and (v) that I agree to be subject to the jurisdiction of the United States District Court for the Eastern District of Michigan for the limited purpose of enforcing that Confidentiality Order and the agreements in this Exhibit B. I understand that a violation of the Confidentiality Order may be punishable as a contempt of court.

Dated: _____

Signature: _____

Printed Name: _____

Address: _____

_____

Telephone: _____

E-Mail: _____

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re Flint Water Cases

Case No.: 5:16-cv-10444

HON. JUDITH E. LEVY

MAG. MONA K. MAJZOUB

ADDENDUM TO CONFIDENTIALITY ORDER RELATED TO PRODUCTION OF MEDICAL, EDUCATIONAL, INSURANCE, EMPLOYMENT AND GOVERNMENTAL RECORDS OF PLAINTIFFS

WHEREAS this Court entered a Confidentiality Order on December 19, 2017, Dkt. No. 299 ("Confidentiality Order"), which governs the permitted use and manner of dissemination of Confidential Material, as defined in that order;

WHEREAS the Confidentiality Order envisions the production of Confidential Material by parties and nonparties that may be designated as "Confidential" or "Highly Confidential – Attorneys' Eyes Only", with the restrictions of use as further delineated in the Confidentiality Order;

WHEREAS both the "Confidential" and "Highly Confidential – Attorneys Eyes Only" designations in the Confidentiality Order envision that Confidential Material designated under either such category shall be available to all parties (or their counsel) in any Federal Flint Water Case or State Flint Water Case;

WHEREAS it is appropriate to restrict the distribution of some highly personal Confidential Materials that are medical, educational, insurance,

employment or governmental records related to individual plaintiffs (hereinafter, "Plaintiffs' Records") more narrowly;

WHEREAS the parties further envision that a contractor will be retained by counsel for Defendants in various Federal and State Flint Water Cases to manage the gathering of Plaintiffs' Records in the discovery process and will assist in restricting distribution of Plaintiffs' Records (hereinafter "Defendants' Contractor for Plaintiffs' Records");

WHEREAS the Court has found based upon the submissions of the parties and its own experience, and in accordance with Fed. R. Civ. P. 26(c) and E.D. Mich. L.R. 26.4, that there is good cause for entry of this addendum to the Confidentiality Order, hereby ORDERS as follows:

1. Application to Plaintiffs' Records.

This Addendum shall apply to Plaintiffs' Records and allows a more narrow distribution of Plaintiffs' Records than the distribution of Confidential Materials that is permissible in the Confidentiality Order.

2. Restricted Distribution Designation.

Any Plaintiff may elect to opt for a more narrow distribution of their Plaintiffs' Records by applying, or requesting that the Defendants' Contractor for Plaintiffs' Records apply, a "Restricted Distribution" designation to such Plaintiffs' Records in advance of their distribution. The "Restricted Distribution" legend shall

be placed, to the extent practical, on each page of the document so as not to obscure any information contained in the document and close to any Bates number assigned to the document.

3. Dissemination of Restricted Distribution Materials.

If a "Restricted Distribution" designation has been applied to Plaintiffs' Records, the parties (or their counsel) eligible to receive the documents shall be as set forth in the Confidentiality Order, except that only those Defendants (or their counsel) who are named as Defendants in any state or federal action brought by the Plaintiff who has requested the Restricted Distribution shall be entitled to receive the Plaintiffs' Records. Distribution of Plaintiffs' Records to plaintiffs shall remain as set forth under the current Confidentiality Order.

4. Confidentiality Designation.

To the extent that a Defendant obtains Plaintiffs' Records from a third party in discovery pursuant to a records authorization executed by a plaintiff, then either the producing third party or the Defendants' Contractor for Plaintiffs' Records shall also designate the records as "Confidential" in the manner set forth in paragraph 8 of the Confidentiality Order, prior to dissemination of the Plaintiffs' Records.

5. Continued Application of the Confidentiality Order.

With the exception of the heightened restrictions set forth in this Addendum, the provisions of the Confidentiality Order shall continue to apply to Plaintiffs'

Records.

IT IS SO ORDERED.

Dated: March 18, 2019

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

Protocol for Lead Sampling and Assessment in Homes and Soils in Flint Michigan

This protocol specifically outlines a methodology for sampling interior/exterior paint and exterior soils at the selected homes.

The X-Ray Fluorescence (XRF) Sampling Method

The x-ray fluorescence (XRF) sampling/analytical method will be used to quantify lead levels in interior/ exterior painted surfaces and exterior soils. XRF sampling of water service lines and potable water fixtures may also be conducted, depending on accessibility. An individual XRF measurement is a scan that requires only a few seconds. Portable XRF instruments expose the media sample to x-rays or gamma radiation, which causes lead to emit x- rays with a characteristic frequency or energy. The intensity of this radiation, which is proportional to lead concentration in the substrate, is measured by the instrument. LBP concentrations are reported as both mg/cm^2 and ppm; soil concentrations are reported in ppm, and lead concentrations in piping are reported as %. Only XRF instruments that have a HUD/EPA-issued Performance Characteristic Sheet will be used in this survey. XRFs will be used in accordance with the manufacturer's instructions and the XRF Performance Characteristic Sheet.
The consultants and investigators will wear radiation dosimeters to measure their radiation exposure, although exposures are generally extremely low if the XRF instruments are used in accordance with the manufacturer's instructions. If feasible, persons should not be near the other side of a wall, floor, ceiling, or other surface being tested. The shutter of an XRF should never be pointed at anyone, even if the shutter is closed.

It is important to note that the XRF method is not routinely used to quantify lead in house dust samples (due to insufficient sample size). As described below, house dust samples will be collected and will be analyzed by a certified laboratory.

Sampling Consultants and Study Investigators

The study investigators will be selected by representatives of Veolia North America (VNA), in collaboration with the City of Flint. The study investigators will have prior experience with surveys of lead-containing media at residential locations. Lead-certified inspectors (outside the Flint city limits) that are certified for lead- XRF investigations of LBP, soils and indoor plumbing (the "sampling consultants") will be selected by VNA. The selected firm will also have experience collecting house dust and paint chip samples. The study investigators will review and approve the standard operating procedures (SOPs) and field survey forms used by the sampling consultants. SOPs will include XRF-instrument calibration, sampling technique, and results documentation (sample ID, time and location of sample collection, measured lead value, chain of

custody forms, etc.). Sampling consultants will also be responsible for all health and safety issues associated with LBP home investigations including the use of the XRF instrument.

Homes selected for sampling, sample locations at those homes, and number of samples collected per residence will be at the discretion of the study investigators.

General survey design

Several regulatory guidance documents (Michigan DHHS, HUD, EPA) prescribe procedures for conducting lead investigations of homes with LBP (the State of Michigan references the HUD Guidelines as one of their four accepted sampling methodologies (MDCH 2007). The methodology and approach described herein is generally consistent with the intent of these guidance documents but the proposed protocol does not strictly adhere to or attempt to fulfill the requirements of any of these regulatory programs. Because XRF provides real-time, in-field measurements, the survey approach is intended to be relatively "flexible", i.e., decisions in the field (based on visual assessment and preliminary XRF readings of painted surfaces and exterior soils) will largely guide the investigation.

Each of the selected residences will be evaluated, irrespective of the construction period of the individual residential unit. Generally, the proposed investigation will proceed as follows:

Photo Log

One or more photographs shall be taken with a GPS-enabled device or smartphone that show the house front door and (where possible) house or unit number. At least one photograph's metadata, or at least one photograph's filename will be recorded in an Excel spreadsheet, with columns that include the house or unit address.

Visual Assessment

A visual assessment will be conducted throughout each home to determine the size and instances of paint details such as (but not limited to): deteriorated paint, friction surfaces, chewed surfaces, deteriorated substrate conditions and bare soil on the exterior. The visual assessment will also include the location and accessibility of the water service line within the home as well as noting any potable water fixtures that appear to be brass-containing.

Interior paint

In each room, each wall and each painted surface will be initially scanned via XRF. Sample location will be at the direction of the investigator and pursuant to HUD guidelines 7-22 *"XRF testing is required for at least*

one location per testing combination, except for interior and exterior walls, where four readings should be taken, one on each wall." "Certain building components that are adjacent to each other and not likely to have different painting histories can be grouped together into a single testing combination, as follows: + Window casings, stops, jambs and aprons are typically a single testing combination + Interior window mullions and window sashes are a single testing combination - do not group interior mullions and sashes with exterior mullions and sashes + Exterior window mullions and window sashes are a single testing combination + Door jambs, stops, transoms, casings and other door frame parts are a single testing combination

+ Door stiles, rails, panels, mullions and other door parts are a single testing combination

+ Baseboards and associated trim (such as quarter-round or other caps) are a single testing combination (do not group chair rails, crown molding or walls with baseboards)

+ Painted electrical sockets, switches or plates can be grouped with walls

Each of these building parts should be tested separately if there is some specific reason to believe that they have a different painting history. In most cases, separate testing will not be necessary."

Per regulatory guidance documents, targeted wooden surfaces should include, but not be limited to:

- Window casings, stops, jambs and aprons
- Window mullions and window sashes
- Door jambs, stops, transoms, casings and other door frame parts
- Door stiles, rails, panels, and mullions
- Baseboards and associated trim (such as quarter-round or other caps)

An additional XRF reading (two total) will be taken of each surface in the room that is determined to have LBP. Per the EPA (EPA 2001), LBP will be defined as paint containing > 5,000 ppm lead (0.5%) or 1 mg/cm^2 in the XRF scan (SOM 2015) All surfaces determined to have LBP will be photographed. If a home is determined to have interior LBP, then attempts will be made to collect paint chip samples from different deteriorated LBP surfaces in the home if available and accessible. Paint chips will only be collected if the paint is already flaking or chipping. These samples will be stored and may be analyzed at a later date.

Exterior paint

One XRF scan of each exterior painted wall and exterior surface (e.g., door, porch railings and window frames) will be taken, depending on ease of accessibility. Accessibility is at the discretion of the investigator, i.e., if the unit is not on the ground floor and the windows cannot be opened from within,

then a particular surface may not be sampled. An additional XRF reading (two total) will be taken of each painted surface determined to contain LBP. Other painted structures (sheds, fences, etc.) may also be evaluated at the discretion of the study investigator.

Water service line

XRF scans of the water service line within the home will be taken, depending on ease of accessibility. Accessibility is at the discretion of the investigator. If there are multiple sections of the service line accessible, one XRF reading may be taken from each accessible section. The water service line location within the home will be photographed if accessible. Any reading over 0.25% for lead will be considered "lead- containing". According to the Reduction in Lead Water Act, the term 'lead free' means— "(A) not containing more than 0.2 percent lead when used with respect to solder and flux; and (B) not more than a weighted average of 0.25 percent lead when used with respect to the wetted surfaces of pipes, pipe fittings, plumbing fittings, and fixtures" (SWDA 2018).

Other fixtures

An attempt will be made to visually assess all plumbing fixtures within the home with emphasis on drinking water sources. At the discretion and professional judgment of the study investigator, any plumbing fixture may be scanned via XRF to determine lead content.

Residential soils

Outdoor soil samples will be collected and evaluated within the property boundaries in targeted areas of bare soil that will include 1) near the foundation of the home at the "drip line", 2) other areas where chipping or weathering of exterior paint might occur (near fences, sheds, etc.), and, bare soil greater than 9 sq. ft., and any identified play areas including sandboxes.

Pursuant to HUD guidelines 7-18: Exterior Painted Components That Should Be Tested Include but are not limited to:

- Air Conditioners Fascias Railing Caps
- Balustrades Floors Rake Boards
- Bulkheads Gutters and Downspouts Sashes
- Ceilings Joists Siding
- Chimneys Handrails Soffits
- Columns Lattice Work Stair Risers and Treads
- Corner boards Mailboxes Stair Stringers
- Doors and Trim Painted Roofing Window and Trim

- Other Exterior Painted Components Include:
- Fences Storage Sheds & Garages
- Laundry Line Posts Swing sets and Other Play Equipment.

"Each composite sample should consist of subsamples that are of approximately equal bulk and that are collected from 3-10 distinct locations. Subsamples should be collected at least 2-6 feet away from each other if possible (small play areas may not be large enough for this spacing). For non-play areas in both the dripline/foundation area and the rest of the yard, subsamples should be taken from bare soil locations and should be dispersed in a pattern roughly similar to the distribution of the surfaces of bare-soil area throughout the dripline/foundation area and the rest of the yard."

Soil screening may be conducted by XRF but samples will be collected and sent to a National Lead Laboratory Accreditation Program (NLLAP) - certified laboratory for analysis. At the direction of the study investigator, additional "non-targeted" soil locations will be evaluated (via XRF) to provide a representative overall estimate of lead levels in the exterior soils. No attempts will be made to penetrate through concrete or other permanent barriers that might prevent access to surface soil.

Soil samples may also be collected at targeted areas beyond the residential property boundary if 1) any resident of the home (particularly children) may have spent a significant amount of time at that location and the surface soils are accessible, and/or 2) it has been determined previously that a lead source may have existed at that location. Sampling of non-residential source locations may occur during a separate survey if needed (due to time constraints accessing the homes).

Soils may be wet or frozen during the survey. If soils are covered by snow at the time of the survey a follow up visit will be necessary when the snow cover is gone to continue the assessment and collect the appropriate soil samples.

Interior house dust

House dust will be collected at selected locations and will include visible dust in window wells, doormats, on upholstery, etc. House dust samples will be collected using 1) HUD and EPA-approved wipe sample techniques in residential dwellings; and 2) vacuum sample techniques (EPA, 2008) in locations at the discretion of the study investigator. Photos of both wipe and vacuum dust sample locations will be collected. House dust from floors and carpeted surfaces will be vacuumed using a procedure consistent with the guidelines of the USEPA , 2008 publication for use in the IEUBK Model. Sampling areas will be determined while at the residence.

Interior Walls will not require sampling using XRF or “wipe” sampling as the results of the sampling do not integrate into the IEUBK inputs. However. XRF samples could be sampled on walls which

demonstrate any chipping flaking or peeling paint. The flaking paint chips will provide an additional source of lead for children residing in the homes.

Porch dust

Porch dust samples will be collected on all porches serving the home. Porch dust samples will be collected using HUD and EPA-approved dust wipe sample collection techniques. Photos of dust wipe sample locations will be collected.

Schedule

It is anticipated that the home surveys can be completed in 6-7 weeks by the sampling/investigator team in the field. As noted above, surveys of potential source area soils (outside of residential property boundaries) could be performed in a separate investigation, depending on time constraints that apply to the surveys of the residential units.

References:

EPA, 1998. Short Sheet: IEUBK Model Mass Fraction of Soil in Indoor Dust (MSD) Variable https://www.epa.gov/superfund/lead-superfund-sites-guidance#indoordust

EPA 2001. 40 CFR Part 745 Lead; Identification of Dangerous Levels of Lead; Final Rule. Available on the internet https://www.govinfo.gov/content/pkg/FR-2001-01-05/pdf/01-84.pdf. Jan 2001

EPA, 2007. User's Guide for the Integrated Exposure Uptake Biokinetic Model for Lead in Children (IEUBK) https://nepis.epa.gov/Exe/tiff2png.cgi/P1002RKA.PNG?-r+75+-g+7+D%3A%5CZYFILES%5CINDEX%20DATA%5C06THRU10%5CTIFF%5C00000304%5CP1002RKA.TIF

EPA 2007M. METHOD 6200. FIELD PORTABLE X-RAY FLUORESCENCE SPECTROMETRY FOR THE DETERMINATION OF ELEMENTAL CONCENTRATIONS IN SOIL AND SEDIMENT. Available on the internet at https://www.epa.gov/sites/production/files/2015-12/documents/6200.pdf. Feb 2007.

EPA, 2008. OSWER Directive 9285.7-81 "Guidance for the Sampling and Analysis of Lead in Indoor Residential Dust for use in the Integrated Exposure Uptake Biokinetic (IEUBK) Model" (December 2008) https://www.epa.gov/superfund/lead-superfund-sites-guidance#ieubk

EPA 2018. Protecting Children from Lead Exposure. EPA PUBLICATION #171K18001 https://www.epa.gov/sites/production/files/2018-10/documents/leadpreventionbooklet2018-_v11web.pdf

HUD 2012. U.S. Department of Housing and Urban Development. Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing Office of Healthy Homes and Lead Hazard Control Second Edition. Available on the Internet at https://www.hud.gov/sites/documents/SECOND EDITION 2012.PDF. July 2012

MDCH 2007. Michigan Department of Community Health. LEAD HAZARD CONTROL. Available on the internet at https://www.michigan.gov/documents/lead/Lead Hazard Control Rules 625582 7.pdf. Sept 2007.

SOM 2015. State of Michigan. LEAD ABATEMENT ACT, Act 368 of 1978, Part 54A. Available on the internet at https://www.michigan.gov/documents/Act10_11140_7.pdf. Feb 2015.

SWDA 2018. SAFE DRINKING WATER ACT-(TITLE XIV OF PUBLIC HEALTH SERVICE ACT. Section 1417. Amended and Enacted Oct 2018.