

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

*In re* Flint Water Cases.

Judith E. Levy  
United States District Judge

\_\_\_\_\_ /

**AGENDA FOR JANUARY 11, 2018 STATUS CONFERENCE**

The Court will hold a status conference in these cases on January 11, 2018 at 11:00 A.M. in Ann Arbor, Michigan. The agenda will be as follows, although the Court may adjust the agenda prior to the conference, if necessary:

**A. Administrative Issues**

***Master and Short-Form Individual Complaints***

On November 15, 2017, the Court granted the motion to file a master amended complaint and corresponding short-form complaint for all currently pending and future-filed individual litigation. (Case No. 16-cv-10444, Dkt. 260.) The master amended complaint is an administrative tool, and the short-form complaints will become the operative complaint when filed in each case. If a case has multiple plaintiffs, those plaintiffs

will file a single short-form complaint, with additional pages appended noting which claims are being asserted by which plaintiff.

The master amended complaint was filed on December 15, 2017. (Case No. 17-cv-10164, Dkt. 115.) The proposed master short-form complaint was filed on December 22, 2017. (Case No. 17-cv-10164, Dkt. 116.) Individual liaison counsel and counsel for all defendants should be prepared to discuss the following issues:

- 1) The timing for amendment of all currently pending non-class action Flint Water cases.
- 2) The timing for responsive pleadings, including dispositive motions, in all currently pending non-class action Flint Water cases.
- 3) Whether to identify certain cases as bellwether cases for adjudication.
- 4) The manner in which the Court should handle newly filed or removed non-class action Flint Water cases, including the form of an order to be entered and procedure to be followed.

***Consolidation of Mays v. Snyder, Case No. 15-cv-14002, and Boler v. Earley, Case No. 16-cv-10323, With the Consolidated Class Action***

Both *Mays* and *Boler* are putative class actions that have been remanded from the United States Court of Appeals for the Sixth Circuit and reassigned to the Court. Interim co-lead class counsel, counsel in *Mays* and *Boler*, and all counsel for defendants should be prepared to discuss whether these two cases should be consolidated, and what effect the Sixth Circuit's ruling would have on the master class action complaint.

### ***Removal Based on Federal-Officer Jurisdiction***

In *Mays v. City of Flint, Mich.*, 871 F.3d 437 (6th Cir. 2017), the Sixth Circuit determined that federal-officer jurisdiction does not exist over the MDEQ defendants based on their contention that they were “acting under” the Environmental Protection Agency. *Id.* at 444-49. The MDEQ defendants are ordered to identify all cases currently pending before the Court that were removed based on federal-officer jurisdiction under 28 U.S.C. § 1442, regardless of whether federal-officer jurisdiction was the sole basis of removal. The MDEQ defendants are to submit this list of cases via e-mail to the Court on or before **January 8, 2018**.

The Court will also hold oral argument on the motion to remand in *Waid v. City of Flint*, Case No. 16-cv-13519.

### ***Insurance Disclosures***

Interim co-lead class counsel and individual liaison counsel have notified the Court that they believe certain insurance disclosures from the MDEQ defendants are insufficient. (Case No. 17-cv-10164, Dkt. 117 at 3.) This issue will be addressed at the status conference.

### ***Failure to Serve in Case Nos. 17-cv-11392 and 17-cv-11481***

At the November 15, 2017 status conference, the Court granted plaintiffs in these cases leave to obtain new summonses and serve the unserved defendants. Plaintiffs in these cases have not done so, and should come prepared to discuss why the unserved defendants have not yet been served.

### **B. Mediation**

Prior to the status conference, the Court intends to issue a notice regarding the selection of facilitators in these cases. The notice will include a process for parties to respond.

### **C. Substantive Issues**

### ***Motions to Stay Discovery Based on Fifth Amendment and Sovereign Immunity Concerns***

The Court will hold argument on the motions to stay discovery in the consolidated class action based on Fifth Amendment and sovereign immunity concerns.

***Motion to Strike Allegations in the Consolidated Class Action Complaint***

On November 11, 2017, defendants Liane Shekter-Smith and Stephen Busch filed a motion to strike certain allegations from the consolidated class action complaint. (Case No. 16-cv-10444, Dkt. 253.) The Court will address the motion at the status conference. The Court may require class plaintiffs to amend the complaint to better reflect the status of the relevant criminal charges vis-à-vis Shekter-Smith and Busch.

***Motion to Strike the Proposed Classes from the Consolidated Class Action Complaint***

The Veolia defendants have moved to strike plaintiffs' proposed classes from the consolidated class action complaint. (Case No. 16-cv-10444, Dkt. 275.) The MDEQ defendants have concurred in that motion. (Case No. 16-cv-10444, Dkt. 296.) The MDEQ defendants have requested that the Court address the pending motions to dismiss prior to addressing the Veolia defendants' motion to strike.

The Court will determine whether it will address the motion to strike at the same time as the motions to dismiss once the motions are fully briefed and the Court can determine the most efficient manner of proceeding with the motions.

**D. Discovery Issues**

***Consolidated Class Action Evidence Preservation Notice***

The Court will address the proposed evidence preservation order to parties submitted on December 7, 2017. (Case No. 16-cv-10444, Dkt. 291-3.)

***Consolidated Class Action Outstanding Issues Regarding Discovery***

Counsel in the consolidated class actions should be prepared to discuss any other outstanding issues regarding discovery the parties were not able to solve since the prior status conference, including issues related to the approved Fact Sheet.

Dated: December 27, 2017  
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 December 27, 2017.

s/Shawna Burns  
SHAWNA BURNS  
Case Manager