IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CONCERNED PASTORS FOR SOCIAL ACTION, et al.,

Plaintiffs,

v.

NICK A. KHOURI, et al.,

Defendants.
_____/

Case No. 16-10277

Hon. David M. Lawson

Mag. J. Stephanie Dawkins Davis

PLAINTIFFS' EMERGENCY MOTION TO ENFORCE PRELIMINARY INJUNCTION

ACTION REQUESTED BY DECEMBER 23, 2016

Plaintiffs Concerned Pastors for Social Action, Melissa Mays, American Civil Liberties Union of Michigan, and Natural Resources Defense Council respectfully move the Court to order relief necessary to ensure Defendants' immediate compliance with the Court's preliminary injunction, ECF No. 96.

Counsel for Plaintiffs communicated in writing with opposing counsel in accordance with Local Rule 7.1(a) explaining the nature of the relief sought in this motion and seeking concurrence in the relief. Defendants oppose the motion.

Defendants' refusal to comply with the Court's preliminary injunction threatens public health and necessitates immediate relief. Plaintiffs request that the Court rule on this motion by **December 23, 2016**.

Dated: December 20, 2016

Respectfully submitted,

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PLAINTIFFS' BRIEF IN SUPPORT OF EMERGENCY MOTION TO ENFORCE PRELIMINARY INJUNCTION

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CONCISE STATEMENT OF THE ISSUE PRESENTED

The Court entered a preliminary injunction on November 10, 2016, requiring Defendants to ensure all Flint residents have properly installed filters or have bottled water delivered to their homes on a weekly basis. ECF No. 96. On December 16, Defendants filed status reports with the Court showing they have not complied with the preliminary injunction and have no intention to do so. ECF Nos. 114, 115. Should the Court enforce the injunction by ordering Defendants to take additional, specific actions to come into compliance?

CONTROLLING AUTHORITY

Gall v. Scroggy, 603 F.3d 346 (6th Cir. 2010)

Elec. Workers Pension Tr. Fund of Local Union 58 v. Gary's Elec. Serv. Co., 340 F.3d 373 (6th Cir. 2003)

INTRODUCTION

Nearly six weeks have passed since this Court ordered Defendants to "immediately" ensure that every Flint resident either has a properly installed and maintained filter or receives bottled water delivery. Yet Defendants' status reports show they have not complied with the Court's order, have made little attempt to comply, and appear to have no intention of complying moving forward. Defendants have not verified filter installation in most homes, and have not demonstrated verification for any homes. They have not expanded the limited "access and functional needs" water delivery program. And, as of their status reports, they had not even mailed the notices required under the order.

No doubt Defendants are unhappy with this Court's preliminary injunction. They wish "further discussion" of its terms, even after losing stay motions before this Court and the Sixth Circuit. *See* State Defs.' Status Rpt. 5, ECF No. 114. But Defendants' dislike for a federal court order does not give them license to ignore it. With the onset of winter, the daily chore of tracking down bottled water is even harder now than it was before. Defendants' continued refusal to take meaningful action to implement the preliminary injunction necessitates further judicial action. Plaintiffs therefore ask that the Court require Defendants to take additional, targeted, immediate steps to comply with their obligations under the injunction.

STATEMENT OF FACTS

On November 10, 2016, this Court issued a preliminary injunction requiring Defendants "to provide a rough substitute for the essential service that municipal water systems must furnish: delivery of safe drinking water at the point of use." Op. & Order Granting Pls.' Mot. for Prelim. Inj. 34 ("PI Order"), ECF No. 96. The Court made its injunction "effective immediately." *Id.* at 37.

The injunction is clear: Defendants must ensure that every household in Flint has a properly installed and maintained filter or provide weekly bottled water delivery to those households that do not have a filter so verified. *Id.* at 35-36. While water delivery may be the backstop, "[t]he main thrust of the ordered relief is the proper installation and maintenance of tap water filters." Op. & Order Den. Mot. to Stay Prelim. Inj. 6 ("Order Den. Stay"), ECF No. 108. "[B]ottled water delivery is not necessary and was not ordered" for households that Defendants verify have a properly installed and maintained filter, or for households that will not allow Defendants to install and maintain a filter at Defendants' expense. *Id.*; *see* PI Order 35.

The Court also ordered Defendants to provide residents with clear information "about the current state of the water distributed through the system, proper use and maintenance of filters, and points of distribution of bottled water." PI Order 35; *see also id.* at 36-37. These notices were to be "delivered promptly."

Id. at 37.

Defendants understood that the injunction did not tolerate delay. State Defendants filed an emergency motion with this Court for a stay pending appeal, State Defs.' Emergency Mot. for Stay Pending Appeal 1 ("Dist. Ct. Stay Mot."), ECF No. 97 (Nov. 17, 2016), and, two business days later, filed a similar motion in the Sixth Circuit, State Defs.' Emergency Mot. for Stay Pending Appeal ("App. Ct. Stay Mot."), *Concerned Pastors for Social Action v. Khouri*, Dkt. No. 3-1, No. 16-2628 (6th Cir. Nov. 21, 2016). They argued that an emergency stay was required because the injunction took effect "immediately" and provided a "compressed timeframe" for "full compliance by December 16, 2016." *Id.* at 1, 22; *see also* Dist. Ct. Stay Mot. 1 (referencing the "time constraints" for compliance). City Defendants ultimately joined both stay motions. City Defs.' Am. Resp. to State Defs.' Mot. for Stay 2, ECF No. 107 (Nov. 29, 2016); City Defs.' Am. Resp. to State Defs.' Emergency Mot. for Stay 3, *Concerned Pastors for Social Action v. Khouri*, Dkt. No. 19, No. 16-2628 (6th Cir. Nov. 29, 2016).

This Court denied a stay on December 2, finding that Defendants were unlikely to succeed on appeal and that "staying the injunction designed to ensure that each water user has an operational tap water filter, or that there is a suitable alternative for the delivery of safe drinking water at the point of use" would not serve the public interest. Order Den. Stay 7, 12. The Sixth Circuit denied a stay as

well. Order 4 ("App. Ct. Order Den. Stay"), ECF No. 112 (Dec. 16, 2016).

Defendants then filed status reports, ostensibly to document their compliance with the preliminary injunction. *See* State Defs.' Status Rpt., ECF No. 114; City Defs.' Status Rpt., ECF No. 115. The status reports confirm that, in the almost six weeks since the injunction issued, Defendants have made little progress or effort toward compliance. State Defendants' CORE program has made contact with fewer than 5000 Flint households, and has entered only an unspecified "small percentage" of those households to provide filter-related services. State Defs.' Status Rpt. 4. Defendants are not providing bottled water delivery to all remaining households in Flint, and have not even materially expanded their pre-existing water delivery program. *Id.* at 5. And as of the date of the status reports, Defendants had not even sent the required notice to Flint residents. *Id.* at 4.

STANDARD OF REVIEW

Federal courts have the "inherent power to enforce compliance with their lawful orders." *Shillitani v. United States*, 384 U.S. 364, 370 (1966). And, "because a federal court always retains jurisdiction to enforce its lawful judgments," it has "authority to see that its judgment is fully effectuated." *Gall v. Scroggy*, 603 F.3d 346, 352 (6th Cir. 2010); *see also Augustus v. Sch. Bd. of Escambia Cty.*, 507 F.2d 152, 156 (5th Cir. 1975) ("A court has inherent power to enter such ancillary orders as are necessary to carry out the purpose of its lawful

authority.").

Although Plaintiffs do not ask the Court to find Defendants in contempt or impose sanctions at this time, the civil contempt standard provides a useful framework through which to determine the propriety of an order enforcing the preliminary injunction. *Cf. Elec. Workers Pension Tr. Fund of Local Union 58 v. Gary's Elec. Serv. Co.*, 340 F.3d 373, 378 (6th Cir. 2003) ("Contempt proceedings enforce the message that court orders and judgments are to be complied with in a prompt manner."). Put differently, if the civil contempt standard is met—and it is here—an enforcement order is surely justified.

A party moving for civil contempt has the burden to "produce clear and convincing evidence that shows that '[the contemnor] violated a definite and specific order of the court.'" *Id.* at 379 (quoting *NLRB v. Cincinnati Bronze, Inc.*, 829 F.2d 585, 591 (6th Cir. 1987)). "[T]he intent of a party to disobey a court order is 'irrelevant to the validity of [a] contempt finding,'" because "[w]illfulness is not an element of civil contempt." *Rolex Watch U.S.A., Inc. v. Crowley*, 74 F.3d 716, 720 (6th Cir. 1996) (quoting *In re Jaques*, 761 F.2d 302, 306 (6th Cir. 1985)).

Once the movant establishes its *prima facie* case, the burden shifts to the contemnor "to prove an inability to comply." *Glover v. Johnson* (*Glover II*), 138 F.3d 229, 244 (6th Cir. 1998). To satisfy this burden, the contemnor "must show categorically and in detail why he or she is unable to comply with the court's

order." *Rolex Watch*, 74 F.3d at 720 (internal quotation marks omitted). "[T]he test is not whether defendants made a good faith effort at compliance but whether 'the defendants took all reasonable steps within their power to comply with the court's order.'" *Glover II*, 138 F.3d at 244 (quoting *Glover v. Johnson* (*Glover I*), 934 F.2d 703, 708 (6th Cir. 1991)).

A district court retains its broad authority to compel future compliance with its orders even when the order is pending on appeal. *Cincinnati Bronze*, 829 F.2d at 588. A court may issue relief to ensure "compliance with [its] order," *Elec. Workers Pension*, 340 F.3d at 379 (quoting *United States v. United Mine Workers of Am.*, 330 U.S. 258, 303 (1947)), including by ordering "additional affirmative conduct" that is "not required by the underlying injunction," *Roman v. Korson*, 307 F. Supp. 2d 908, 919 (W.D. Mich. 2004).

ARGUMENT

I. Defendants are in violation of the preliminary injunction

This Court's preliminary injunction required Defendants to ensure that every household in Flint either has a properly installed and maintained filter or is receives sufficient bottled water delivery each week. PI Order 35-36; Order Den. Stay 6. A home may opt out of this program, and bottled water need not be delivered to a home that refuses to allow a filter to be installed and maintained at Defendants' expense. PI Order 35-36. Defendants are in violation of this

injunction.

Defendants have not ensured that all, most, or even many Flint households have properly installed and working filters. According to State Defendants, CORE teams have "ma[de] contact" with only around fifteen percent of households in Flint. *Compare* State Defs.' Status Rpt. 4 (stating CORE teams contacted 4910 households between November 1 and December 13), *with* Krisztian Decl. ¶ 5, ECF No. 97-4 (noting 33,562 households are served by the Flint water system). Defendants do not report the number of homes they have entered to provide filter services, but apparently it is only a "small percentage" of those with which they made "contact." State Defs.' Status Rpt. 4. On this record, there may still be many Flint residents who either lack a filter or—worse—are relying on a filter that has been improperly installed or maintained. *See* PI Order 29; Order Den. Stay 6, 8.

Defendants also have not ensured bottled water delivery to all households without a verified, working filter. And they appear to have no present intention to provide such delivery. Instead, State Defendants merely "continue[]" delivery of unknown amounts of bottled water to households on the Access and Functional Needs list and to residents who call 211. State Defs.' Status Rpt. 5. Despite the Court's conclusion that these exact delivery systems were inadequate, PI Order 25-28, State Defendants have not significantly expanded them. *Compare* State Defs.' Status Rpt. 5 (around 1500 homes per week), *with* PI Order 25 (noting testimony

of Captain Kelenske that 1250 residents were on the Access and Functional Needs list as of September 14, 2016). All told, State Defendants are delivering bottled water to less than five percent of Flint homes each week. *Compare* State Defs.' Status Rpt. 5, *with* Krisztian Decl. ¶ 5 (noting 33,562 households are served by the Flint water system).

This violation of the Court's preliminary injunction is no accident. Following the Sixth Circuit's denial of the stay motion, a spokeswoman for Governor Snyder confirmed that the State would continue only to deliver bottled water when requested by residents. Chaudhary Decl. Ex. 1; *see also id.* Ex. 2 (asserting that the State would continue delivering water "just as we have been"). The proposed notice to residents attached to Defendants' status report similarly indicates only that "[i]ndividuals unable to visit a water distribution site due to age or health issues" may obtain water delivery by calling 211. *See* State Defs.' Status Rpt., Page ID 6624. Defendants continue to disregard their "obligation to furnish safe drinking water to Flint residents—an obligation which has eluded them" for years. *See* Order Den. Stay 7.

Indeed, Defendants failed to timely comply even with the simplest of the injunction's requirements: to "promptly" deliver to Flint residents clear information about lead contamination in their drinking water. PI Order 37. Over five weeks after the injunction issued, Defendants had apparently not yet sent these

notices. State Defs.' Status Rpt. 4. Instead, State Defendants stated that notices "are all expected to be mailed by early [this] week." *Id.*

The notices Defendants propose to send, moreover, are misleading, rather than clear. Among other concerns, those notices mistakenly equate the federal lead action level with a "federal standard[] for safe drinking water." *Id.*, Page ID 6621.[1] That is not correct. As State Defendants' witness conceded at the preliminary injunction hearing, no amount of lead in water is safe, and a finding that 90 percent of tap water samples are below the 15 ppb lead action level does not demonstrate compliance with the Lead and Copper Rule. Tr. 231:19-25, 250:19-21 (Feighner). Instead, the Rule requires Flint's water system to maintain treatment that "minimizes" lead concentrations at residents' taps. 40 C.F.R. §§ 141.2, .82(g); *see also* 56 Fed. Reg. 26,460, 26,491 (June 7, 1991). "To 'minimize' something is, to quote the Oxford English Dictionary, to 'reduce [it] to the smallest possible amount, extent, or degree.'" *Hazardous Waste Treatment Council v. U.S. EPA*, 886 F.2d 355, 361 (D.C. Cir. 1989). Minimization is not measured by whether the water system's 90th percentile lead levels are below the action level of 15 ppb. *See* 56 Fed. Reg. at 26,488. Defendants' inaccurate spin on the recent testing results in their planned notice misleads, rather than informs, Flint residents.

[1] The "lead action level" is not a maximum contaminant level for safe drinking water, *see* Order Den. Stay 5, but merely a threshold that, if exceeded as measured at the 90th percentile, triggers *additional* requirements under the Lead and Copper Rule. *See* 40 C.F.R. §§ 141.84, .85.

Nearly six weeks after the Court entered preliminary relief to ensure every household in Flint had "safe drinking water at the point of use," PI Order 34, little has changed on the ground for the vast majority of Flint residents. Filters have not been verified in most homes. Water is not being delivered to most homes that lack a verified filter. Residents continue to struggle to get water. In short, Defendants are violating the preliminary injunction.

II. Defendants have no excuse for their failure to comply with the preliminary injunction

Not only have Defendants failed to comply with the preliminary injunction, they also have failed to show "categorically and in detail" why compliance with the injunction is impossible. *Glover II*, 138 F.3d at 244 (internal quotation marks omitted). Compliance is not impossible. Far from it, Defendants' own representations demonstrate that they have failed to take "all reasonable steps"—or even some obvious steps—to comply. *Id.* (internal quotation marks omitted).

A. Compliance with the preliminary injunction is possible

State Defendants' assertion that bottled water delivery to non-exempt homes would "involve[] significant logistical difficulties," State Defs.' Status Rpt. 5, does not show that compliance is impossible. Defendants have confronted worse logistical difficulties before, and overcome them. Indeed, last January, the state began door-to-door water and filter deliveries throughout Flint just one week after the Governor declared an emergency. *See* Kelenske Aff. ¶¶ 10, 15, ECF No. 40-2.

Even if it were true that no single "private entity" has "a sufficient number of employees and vehicles to immediately implement the delivery," State Defs.' Status Rpt. 5, that would merely beg the question whether some or all of the vendors the State has contacted could *collectively* provide the deliveries required under the injunction. The State's door-to-door canvassing efforts last winter confirm that such relief is possible: the response teams deployed in January 2016 routinely visited between 5000 and 7500 homes each day, with total visits one day exceeding 14,000 homes. *See* Kelenske Aff. ¶¶ 23, 25, 27-29. Even assuming that the injunction required weekly water delivery to every household in Flint, this pace of household visits would be sufficient to meet that requirement. *See* Tr. 325:17-20 (Kelenske) (stating teams would need to visit around 5000 homes per day to deliver to every home).

Nor does the expense of bottled water delivery render it impossible. Both this Court and the Sixth Circuit have rejected Defendants' arguments that bottled water delivery is too costly. *See* PI Order 30-33; Order Den. Stay 8-9; App. Ct. Order Den. Stay 2-3. State Defendants have funds available to comply, PI Order 31; App. Ct. Order Den. Stay 3, and can substantially "mitigate[]" the costs, PI Order 32; *see also* App. Ct. Order Den. Stay 3. Indeed, State Defendants' status report reflects a cost of delivery to *all* households of $7.1 million per month,[2] State

[2] This total is calculated from the quoted cost of $1,642,752.14 per week, State

Defs.' Status Rpt. 6, which is $4 million less than the total monthly cost State Defendants represented to the Sixth Circuit, *see* App. Ct. Stay Mot. 2.

Moreover, as this Court has instructed, bottled water delivery is only a backstop to the primary means of compliance: verification that Flint households have properly installed and working filters. *See* PI Order 34-35; Order Den. Stay 1, 6. In support of State Defendants' stay motion, the State's Flint Action Plan Coordinator, George Krisztian, explained how the nascent CORE program could be expanded "to comply with the order" by last Friday, December 16. Krisztian Decl. ¶ 5(b)-(f). Mr. Krisztian stated that CORE would need to hire 134 additional people—bringing its employee count up to 160—and also hire at least 16 State employees to serve as coordinators. *See id.* ¶ 5(b), (d). The total cost of such a program, according to Krisztian, would be around $955,000 per month, *id.* ¶ 5(f), or less than $10 per month per Flint resident.[3]

Defendants' status reports do not call into question the path to compliance Mr. Krisztian set forth in his declaration. They do, however, call into question Defendants' commitment to following that path. The status reports indicate that the

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Defs.' Status Rpt. 6, multiplied by 52 weeks in a year, divided by 12 months in a year, which equals $7,118,592.61 per average month.

[3] Mr. Krisztian's cost estimate of $955,971 per month, *see* Krisztian Decl. ¶ 5(f), divided by Captain Kelenske's estimate that 98,635 residents are served by Flint's water system, Kelenske Decl. ¶ 7(a), ECF No. 97-3, equals $9.69 per resident per month.

CORE program has *fewer* employees now than it apparently had when State Defendants moved for a stay pending appeal more than a month ago. *Compare* Krisztian Decl. ¶ 5(b) (stating, on November 16, that the CORE program needed to hire "at least 134 additional people" to meet its 160-person goal), *with* City Defs.' Status Rpt. 1-2 (stating, on December 16, that the CORE program was hiring "approximately 138 additional Flint residents (for a total of 160)"). Yet, notwithstanding scores of CORE program vacancies, Defendants waited until just before their status reports were due to hold a job fair. City Defs.' Status Rpt. 2.

Nor have Defendants tried to explain their nearly six-week delay in sending out the notices that this Court required be provided to all Flint residents. *See* State Defs.' Status Rpt. 4. The notices—which should contain critical information regarding residents' health and access to safe drinking water—could have been prepared and sent out in a matter of days. Defendants' delay in sending these notices suggests indifference, at best, to this Court's order.

B. Defendants have not taken all reasonable steps within their power to comply with the preliminary injunction

Defendants' status reports also reflect their failure to take "all reasonable steps within their power" to comply. *See Glover II*, 138 F.3d at 244. Compliance with the injunction is not binary: partial compliance with the filter installation and maintenance and bottled water delivery provisions is not only possible but preferable to the status quo. Even if Defendants could prove that full compliance

with these provisions was impossible—and they have offered no such proof—they have shown no effort to comply as fully as circumstances permitted.

The day after this Court issued its preliminary injunction, Plaintiffs offered to confer with State Defendants regarding an "appropriate schedule" for compliance. Chaudhary Decl. Ex. 3. State Defendants never responded to that offer. Chauhdary Decl. ¶ 5. Defendants instead moved for stays, and then treated their motions as if they were self-executing stay orders. No defendant has that prerogative. *See United Mine Workers*, 330 U.S. at 293 (holding that a federal court's order remains in effect and "must be obeyed" unless stayed or reversed).

Defendants' vague excuses for their failure to comply do not add up. State Defendants' assertion that the CORE program employees have entered only a "small percentage" of Flint homes to check filters is more confession than excuse. State Defs.' Status Rpt. 4. Only last month, Mr. Krisztian testified that compliance would require the CORE program to be staffed with 160 employees. Krisztian Decl. ¶ 5(b). Yet as of last week, the program employed only 22, *see* City Defs.' Status Rpt. 1-2, four fewer than a month ago, *supra* p. 13. Defendants have not explained their delay in holding a job fair to hire additional employees for the CORE program. Nor have they explained why they did not repurpose City or State employees, or hire temporary contract employees (including volunteer workers in Flint), to carry out filter installation and maintenance until qualified Flint residents

could be hired.

Relatedly, State Defendants have not offered a satisfactory explanation—aside from the obvious observation that the CORE program remains understaffed—for their failure to make contact with the vast majority of Flint households in the past six weeks. *See* State Defs.' Status Rpt. 4; Feighner Decl. ¶ 13, ECF No. 110-1. Indeed, that the CORE program has made contact with only around one quarter of the 18,000 homes its teams have visited since November 1, *see* State Defs.' Status Rpt. 4, raises more questions than it answers: What times and days of the week are CORE teams visiting homes?[4] Are teams providing advance notice to homes they intend to visit? Do teams leave a card or flyer if no one is available? Do teams otherwise follow up with homes where they have not made contact? Do personnel have appropriate identification? For what percentage of homes were residents not home, as opposed to unwilling to talk to CORE personnel? Are the teams documenting when residents refuse them entry to their homes? How are they documenting this information?

Perhaps most importantly, Defendants provide no indication they have told Flint residents that the CORE program is a legitimate program intended to assist

[4] To the extent CORE teams canvass primarily during work hours on weekdays, the CORE program suffers from the same problem as the distribution sites: many residents are simply not home or available during those times. *See* Pls.' Post-Hr'g Br. in Supp. Mot. for Prelim. Inj. 5, ECF No. 89.

with filter installation and maintenance, and that each resident should expect a CORE team to visit their home.[5] If Flint residents are not aware of and expecting visits from the CORE program, it is no surprise they often turn away CORE teams that show up unannounced seeking entry to their homes. Defendants also have not reported whether CORE personnel are explaining that refusing entry effectively opts the household out of the bottled water delivery backstop under the preliminary injunction. Defendants have taken hardly any, let alone all, reasonable steps available to them to ensure all homes have properly installed and maintained filters.

Defendants' failure to implement a water delivery program for non-exempt households is even more mystifying. Although State Defendants claim that they have "diligently pursued water delivery options," *see* State Defs.' Status Rpt. 5, they appear to have done nothing to actually expand delivery. *Supra* pp. 7-8. Even assuming that City-wide delivery of four cases of water per resident per week could only be "implemented gradually over several months," State Defs.' Status Rpt. 6, Defendants should have already begun implementation. They could have started with a program that delivered four cases of water per resident to each non-

[5] While the materials State Defendants allege were mailed to Flint residents early this week describe the CORE program, State Defs.' Status Rpt., Page IDs 6621-6623, Plaintiffs are unaware of any previous attempts by Defendants to inform Flint residents about the CORE program and how it can help with filter installation and maintenance.

exempt home every other or even every third week. Or one that made weekly deliveries to each non-exempt home, but initially provided only one case of water per resident. Instead, after six weeks, they have not made any progress on water delivery, and appear not even to have seriously tried.

III. Immediate relief is required to bring Defendants into compliance with the preliminary injunction

Although the Court has broad authority to compel compliance, at this time Plaintiffs seek only a targeted enforcement order to ensure that Defendants quickly address ongoing irreparable harms to Flint residents. Plaintiffs respectfully request that the Court:

1. Order Defendants to immediately begin deploying CORE teams on weekends and evenings, to the extent they are not already doing so;

2. Order Defendants to submit to the Court within two business days:
   a. the number of households Defendants have determined to be exempt from bottled water delivery under the preliminary injunction, including documentation of the basis for those exemptions;
   b. the list of bottled water delivery vendors they have contacted and the number of trucks and personnel each vendor can provide;

3. Order Defendants to, within three business days, hold a press conference, issue paid announcements in a local newspaper, and use other available communication channels to announce that CORE teams will be canvassing Flint neighborhoods to provide assistance with faucet filter installation and maintenance, including a description of how many people are in a team; what type of identification the teams will have; the times of day that teams will be canvassing; and whether residents will be asked to sign any documentation if they choose to opt out of the delivery program or refuse entry to their

homes for filter inspection;

4. Order Defendants to immediately begin delivering two cases of water per week to each non-exempt household served by the Flint water system. Each case must include at least the equivalent of twenty-four 0.5 liter bottles of water;

5. Order Defendants to mail to each Flint household within four business days, and to also include with the each water delivery under Paragraph 4, a flyer that provides the following information in English, Spanish, Chinese, Arabic, and Hmong:
   a. A description of the CORE program, including its purpose, who runs the program, and the times and days during which CORE teams are in the field;
   b. Contact information for households that have not been contacted by the CORE program, but would like assistance with installing or maintaining a faucet filter;

6. Order Defendants, by January 5, 2017, to provide the Court with a status report describing how they plan to come into full compliance with the preliminary injunction;

7. Order Defendants to make available for deposition, during the first ten business days of January, any persons responsible for compliance with the Court's order and on whose testimony Defendants may rely to demonstrate compliance;

8. Order Defendants, by January 12, 2017, to begin delivering four cases of water per week to each non-exempt household served by the Flint water system. Each case must include at least the equivalent of twenty-four 0.5 liter bottles of water. These deliveries shall continue until such time as Defendants can come into full compliance in accordance with the plans provided to the Court under Paragraph 6;

9. Enter such additional relief the Court deems necessary and appropriate to ensure Defendants comply with the preliminary injunction.

Immediate relief is necessary. It is encouraging that lead levels in Flint tap water may be improving. But even Defendants do not currently claim that unfiltered water is safe. Residents are still being advised to seek alternative drinking water sources. *See* State Defs.' Status Rpt., Page ID 6623. As the Sixth Circuit recognized, "[i]t is important to remember that there are still people in Flint that do not have access to safe drinking water." App. Ct. Order Den. Stay 3. And Defendants remain in violation of the Lead and Copper Rule. *See supra* p. 9.

Yet, as winter sets in and temperatures continue to drop, Defendants continue to refuse to comply with the preliminary injunction this Court issued to remedy those circumstances. Flint residents' "daily struggles" to track down bottled water are growing more difficult, not less so. *See* PI Order 30, 32. State-run water distribution sites have reduced their hours since the preliminary injunction hearing in September.[6] Relief is necessary now.

CONCLUSION

For the foregoing reasons, Plaintiffs request that the Court order the above-described relief to bring Defendants into compliance with the preliminary injunction.

[6] On October 24, 2016, the State reduced the hours of its distribution sites. Chaudhary Decl. Ex. 4. The sites are now open only between noon and 6 p.m., Monday through Saturday. *Id.*

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Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2016, I electronically filed Plaintiffs' Emergency Motion to Enforce Preliminary Injunction and accompanying Brief with the Clerk of the Court using the ECF system.

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