

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

DOUGLAS LONG, RENEE
HODGES, and NAOMI ANTHONY,
individually, and on behalf of all
other similarly situated
Genesee County Jail Detainees,

Plaintiffs,

vs.

Case No. 2016-cv-10842-AC-SDD
Judge Aver Cohn.
MJ Stephanie Dawkins Davis

ROBERT J. PICKELL, Sheriff,
Genesee County Jail; JASON
GOULD, Captain, in charge of
the internal working of the Genesee
County Jail, sued in their official
capacities,

Defendants

_____ /

**COMPLAINT FOR CLASS CERTIFICATION AND
FOR DECLARATORY AND INJUNCTIVE RELIEF**

Parties

1. Plaintiff DOUGLAS LONG (hereafter Long) at all times relevant is/was a prisoner with the Genesee County Jail (hereafter Jail) who has been and is currently being subjected to the toxic water in violation of the the Fourteenth and Eighth Amendments.

2. Plaintiff RENEE HODGES (hereafter Hodges) is/was at all times relevant a person confined at the Jail who has been and is currently being subjected to toxic water the Flint City in violation of the Fourteenth and Eighth Amendments. Hodges is currently 15 weeks pregnant.

3. Plaintiff NAOMI ANTHONY (hereafter Anthony) is/was at all times relevant a person confined at the Jail who has been and is currently being subjected to toxic water of the City of Flint in violation of the Fourteenth and Eighth Amendments. Anthony was also confined in the Jail during the months of February 2015 through July 2015. When Anthony entered the Jail in February 2015, she was one-and-a-half months pregnant. By the time Anthony left the Jail in July 2015, she was seven months pregnant. During this five-month span, Anthony's only water source at the Jail was the toxic tap water from the City of Flint. Following her release, Anthony gave birth to a daughter who was three weeks early and underweight for reasons which her doctor was not able to identify.

4. Defendant ROBERT J. PICKELL, Sheriff (hereafter Pickell) is/was at all times relevant was the Sheriff of the Genesee County Jail. He is being sued in his official capacity and was at all times acting under color of state law. He is responsible for the overall operation of the Jail, which includes providing of clean

and safe water for consumption, bathing and food preparation for those confined at the Jail.

5. Defendant JASON GOULD (hereafter Gould) was/is the Captain in charge of the internal running of the Jail. At all times he was acting under color of state law and is sued in his official capacity. He is responsible for supervising and ensuring that all Jail detainees consume, bathe, and have food prepared in clean and safe water

Jurisdiction

6. This Court has jurisdiction over this case pursuant to 42 U.S.C. Sec. 1331 and 1343; 28 U.S.C. Sec. 2201; and Federal Rules of Civil Procedure 57 and 65. This action is brought pursuant to 42 U.S.C. Sec. 1983.

Class Allegations

7. The named Plaintiffs intend to proceed, pursuant to Fed. R. Civ. P. 23, on behalf of all other persons similarly situated in obtaining declaratory relief and an injunction against these Defendants as to the present policies and/or practices of denying and delaying the provision of clean and safe water for personal consumption by the detainees, for use in showering by the detainees, and for use in cooking and baking of food for consumption by the detainees.

8. The named Plaintiffs and the proposed classes are claiming that the Defendants have created systemic deficiencies in the providing of safe and clean water to the detainees. The present and future detainees subjected to this unsafe water that will impact negatively health impacts as a result of Defendants' deficiencies in violation of the Fourteenth and Eighth Amendments.

9. Faced with overwhelming evidence that the water was unsafe to drink and was a source of lead poisoning for children of Flint and other vulnerable persons, Genesee County Health Officials, on October 1, 2015, issued a public health emergency on October 1, 2015 and advised Flint residents not to drink the tap water.

10. In spite of this declared public health emergency, Defendants provided Plaintiffs and the proposed class members 9 days worth of bottled water throughout the months of October, November and December of 2015. After Defendants discontinued providing bottled water, detainees within the Jail were required to drink, shower, and consume food prepared with the toxic tap water.

11. Because Defendants' policy choice to discontinue providing bottled water, the named Plaintiffs and the proposed class members have been and will likely be subjected to toxic water provided to the City of Flint including the toxic substance contained in that water.

12. The Defendants are directly responsible for the care of the named Plaintiffs, and the proposed class members, and these individuals will or have suffered as a result of the Defendants' failures to provide safe water enumerated in this complaint.

13. Because Plaintiffs and the proposed class members have no choice but to consume and bathe in toxic water provided to the City of Flint, these conditions violate the Eighth and Fourteenth Amendments. The Defendants are directly responsible for subjecting the named Plaintiffs and the proposed class member to the unconstitutional conditions of being forced to consume and use toxic water provided by the City of Flint.

14. The Defendants are directly responsible for designating what water is provided to prisoners confined at the Jail, and are directly responsible for the care of the named Plaintiffs and the proposed class members, who have all suffered, and will suffer, as a result of the failures enumerated in this complaint.

15. These Defendants have known from at least April of 2014 that the water being provided to those confined at the Genesee County Jail contained toxic substances that were likely to adversely affect the health of those confined at the Jail.

16. These Defendants refused to replace this toxic water being provided to the Jail with safe water for drinking, hygiene purposes and cooking food to be provided to those confined solely for fiscal reasons.

17. The proposed class is composed of all past, present and future detainees who have or will consume, bathe in, and eat food prepared at the jail using the toxic water from the City of Flint, in violation of the Fourteenth and Eighth Amendments.

18. Plaintiffs seek certification of one class consisting of all persons confined presently and in the future at the Genesee County Jail.

19. The maintenance of the instant action as a class action will be superior to individual litigation by promoting convenient and efficient administration of justice.

20. By requiring the named Plaintiffs and the proposed class members to bathe in and consume the toxic water, Defendants have subjected the named Plaintiffs and the proposed class members to deliberate indifference.

21. The proposed class of prisoners similarly situated to the named Plaintiffs is so numerous, it is impractical to list or bring all members before the court. On information and belief, there are approximately 500 individuals confined at the Jail at any one time, if not more, who are class members similarly situated to

the named Plaintiffs, in that, they have been required to consume water provided through the water pipes of the City of Flint. This water contains toxic substances that can adversely effect those consuming such water.

22. The named Plaintiffs and their counsel will fully and adequately represent the interests of all the members of the proposed class. Counsel Manville specializes in the area of prisoners' rights and has litigated other class action lawsuits.

23. The nature of the right sought to be enforced by the named Plaintiffs is typical of all of the members of the proposed class because there are common questions of law and fact that predominate over questions affecting only members and common relief is sought.

Factual Allegations

24. Starting in 2013, and no later than, 2014, the Defendants were aware of the toxic conditions of the water being provided to those confined at the Jail.

25. Even with the knowledge that consumption of this water by the detainees could adversely affect their medical conditions, Defendants took no steps to provide clean and safe water to those presently confined or to those confined in the future.

26. Even with the knowledge that use of the water from the City of Flint for hygiene purposes by the detainees could adversely affect their preexisting medical conditions, Defendants took no steps to provide clean and safe water to those presently confined or to those confined in the future.

27. Even with the knowledge that use of the water from the City of Flint for purposes of food preparation and consumption by the detainees could adversely affect their medical conditions, Defendants took no steps to provide clean and safe water for such food preparation, which food was then provided to those presently confined or to those confined in the future.

28. Faced with overwhelming evidence that the water was unsafe to drink and a source of lead poisoning for children of Flint and other vulnerable persons, Genesee County Health Officials, on October 1, 2015, issued a public health emergency advising Flint residents not to drink the tap water.

29. In October of 2015, Defendant Pickell purchased approximately \$5000 of bottled water and approximately \$5000 of dry food that was then provided to those confined at the Jail.

30. However, those purchases by the Defendant Pickell lasted approximately 9 days and Long and proposed class members were required to return to consumption of tap water provided by the City of Flint.

31. Until the beginning of January of 2016, all three named Plaintiffs and the proposed class members were required to drink, to bathe in, and consume food prepared with the tap water from the City of Flint.

32. Starting in January of 2016, Defendants have been providing named Plaintiffs and the proposed class members with up to 4 bottles of water per day.

33. Defendant Pickell claims that the tap water was turned off at the Jail in January of 2016, however, this is likely not accurate. The tap water continued to be used for showers and in sinks within the Jail in January of 2016. It is unclear whether the tap water was still being used for preparation of food in January of 2016 but food was being prepared at the Jail.

34. The bottled water being provided by these Defendants is water that has been donated to the Jail.

35. There is no guarantee how long the donated water will continue to be provided to the Jail.

36. There has been no budget increase or other money allotted to these Defendants to ensure that such bottled water will continue to be provided to those confined at the Jail in the future.

37. Starting in January of 2016, the named Plaintiffs and proposed class members were required to use tap water from the City of Flint. This practice continues as this lawsuit is filed.

38. Even though the Defendants have taken minor steps to improve the water conditions at the Jail, the named Plaintiffs and proposed class members continue to be subjected to unconstitutional conditions. There is no assurance that once the donation of bottled water decreases or ceases that those confined at the Jail will not be required to return to consuming and using toxic tap water.

39. As a proximate result of Defendants' actions or non-actions, as set forth *supra*, the named Plaintiffs and proposed class members may experience serious physical injuries due to their exposures to the toxic water, including but not limited to:

- a. High levels of lead and copper in their bloodstreams, brains, bones and other organs;
- b. Chemical induced hypertension;
- c. Autoimmune disorder;
- d. Neurological disorder, such as the "brain fog", seizure like convulsions, vision loss, memory loss;

- e. Psychological disorders such as depression, chronic anxiety, post-traumatic stress disorder and an inability to cope with normal stress.

40. The named Plaintiffs and the proposed class members have been subjected to unconstitutional conditions in violation of the Fourteenth and Eighth Amendments.

Relief

WHEREFORE, for the reasons stated above, this Court should:

- A. Accept jurisdiction of this matter;
- B. Certify this matter as a class action;
- C. Declare that the rights of Plaintiffs and class members were violated by the actions or non-actions of the Defendants;
- D. Find that the policy of the Jail in providing of water from the Flint water system is unconstitutional because Plaintiffs and the proposed class members are subjected to water that can or will negatively affect their health.
- E. Issue an injunction requiring the Defendants to provide safe and clean water to all those confined presently and in the future at the Jail; to provide safe and clean water to maintain daily hygiene; and to prepare all food in water that is safe and clean.
- F. To award attorneys' fees and costs;

G. To grant any other relief that is just and equitable.

Respectfully submitted:

Counsel for Plaintiffs

/s/ Daniel E. Manville
Daniel Manville (P39731)
Director, Civil Rights Clinic

Lauren Dyer
Dominique Augustus
Ryan Fowler
Clinical Law Students

Michigan State University College of Law
610 Abbott Road
East Lansing, Michigan 48823
(517) 336-8088, Ext. 1137
daniel.manville@law.msu.edu