

**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:

*Carthan, et al. v. Snyder et al.*  
Case No. 16-10444

\_\_\_\_\_ /

**ORDER GRANTING IN PART CLASS PLAINTIFFS' RENEWED  
MOTION FOR APPROVAL OF THE FORM AND MANNER OF  
CLASS NOTICE [2138]**

Before the Court is Class Plaintiffs' Renewed Motion for Approval of the Form and Manner of Class Notice. (ECF No. 2138.) Defendants LAN and VNA responded to the motion. (ECF Nos. 2151, 2138.) Plaintiffs replied. (ECF No. 2155.) The Court held a conference with counsel for the parties to discuss the content of the class notice on May 19, 2022. (*See* ECF No. 2165.)

Class Plaintiffs' motion is granted in part. The Court attaches the approved form and content of the Class Notice to this Order, which may not be sent out prior to July 1, 2022.

**IT IS SO ORDERED.**

Dated: June 14, 2022  
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 June 14, 2022.

s/William Barkholz  
WILLIAM BARKHOLZ  
Case Manager

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN  
**NOTICE OF PENDENCY OF CLASS ACTION**

**This Notice explains the pendency of a class action in the Flint Water Cases. This Notice relates solely to claims against two engineering firms that Plaintiffs allege are liable for harm suffered as a result of the Flint Water Crisis. As described below, the Court certified two issues classes to address specific parts of Plaintiffs' claims. There is no settlement or claims process at this time related to the claims that are the subject of this Notice.**

This Notice applies to you if you are at least 18 years old now, and, for any period of time between April 25, 2014 and October 16, 2015, you:

- (1) were exposed to or purchased drinking water supplied by the City of Flint;
- (2) owned real property in the City of Flint; or
- (3) owned or operated a business in the City of Flint.

*This Notice is being provided by Order of a U.S. District Court.  
It is not a solicitation from a lawyer. You are not being sued.*

- A lawsuit is pending in the United States District Court for the Eastern District of Michigan (the "Court") against Veolia North America, LLC; Veolia North America, Inc.; and Veolia Water North America Operating Services, LLC (collectively "VNA") and Lockwood, Andrews & Newnam, P.C.; Lockwood, Andrews & Newnam, Inc.; and the Leo A. Daly Company (collectively "LAN").
- Class Plaintiffs in this lawsuit claim that VNA and LAN each committed professional negligence relating to the City of Flint's ("City's") water, which injured Class members. VNA and LAN each deny that they committed professional negligence, and that any negligence caused any Class member's injury.
- On August 31, 2021, the Court determined that nine questions that are necessary to resolve Class Plaintiffs' claims of professional negligence against LAN and VNA could proceed as a class action. These questions, referred to here as "Certified Issues," are listed under Question 11, below. If Class Plaintiffs succeed on questions 1-6 and 8-9, individual members of the class will then have the option to bring their own lawsuits to prove that they were injured and that LAN and/or VNA caused their injuries, as well as the nature and amount of their damages. If Plaintiffs do not succeed on all eight of those questions, the claims of individual members of the class will be conclusively resolved against them.
- The Court has not decided whether VNA or LAN committed professional negligence. There is no money available now, and no guarantee that there will be. However, your legal rights are affected, and **you have a choice to make now.**

**CERTIFIED ISSUES CLASSES**

The issues classes certified by the Court (the "Issues Classes" or "Class") include the following persons and entities:

**Multi-Defendant Issues Class (Rule 23(c)(4)):** All persons and entities who, for any period of time between February 10, 2015, and October 16, 2015, were exposed to or purchased drinking water supplied by the City of Flint, owned real property in the City of Flint, or owned or operated a business in the City of Flint.

**LAN Issues Class (Rule 23(c)(4)):** All persons and entities who, for any period of time between April 25, 2014, and October 16, 2015, were exposed to or purchased drinking water supplied by the City of Flint, owned real property in the City of Flint, or owned or operated a business in the City of Flint.

Any person or entity included in either or both of the Issues Classes is referred to here as a Class member. Some individuals or entities that meet this definition may be excluded for other reasons, *see* Question 9 for more information.

<b>YOUR LEGAL RIGHTS AND OPTIONS</b>	
<b>DO NOTHING</b>	<p><b>Stay in this lawsuit. Await the outcome. Give up certain rights.</b> This option means that you remain part of the Class and you keep the possibility of getting money or benefits that may come from a trial or a settlement. If you choose this option, you will be represented by the lawyers who filed the class-action lawsuit and were designated by the Court as class counsel. You will be bound by the outcome on each of the Certified Issues, whether for or against VNA and/or LAN. If the outcome on any Certified Issue other than Issue 7 is in favor of VNA and/or LAN, your claim against that Defendant will be extinguished. If the outcome on all of Issues 1-6 and 8-9 is against VNA and/or LAN, will need to take further steps, which may include filing a separate lawsuit, if you wish to prove the rest of your claim. By remaining in the Class, you also will give up any right to personally challenge a final determination, whether by the Court or a jury, of any of the Certified Issues that is unfavorable to Class Plaintiffs. The right to do that will be controlled solely by the lawyers who represent the Classes.</p>
<b>EXCLUDE YOURSELF FROM THE CLASS</b>	<p><b>Get out of the lawsuit. Get no benefits from it. Keep rights.</b> This option allows you to exclude yourself from the Class lawsuit and retain the right to choose your own lawyer and file a lawsuit against VNA and/or LAN asserting the claims relating to the allegations in this case. If you exclude yourself, you will not be bound by any favorable or unfavorable resolution of the Certified Issues. If you choose to bring your own individual lawsuit, you will need to do so within the applicable statute of limitations period and the statute of limitations will begin to run immediately upon when you opt out of the class.</p>

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**BASIC INFORMATION ABOUT THE LAWSUIT**

**1. What is the lawsuit about?**

Class Plaintiffs in this lawsuit claim that while advising the City of Flint at different points in time regarding water treatment related to using the Flint River as a drinking water source, VNA and LAN each breached the standard of care for a professional engineering firm, resulting in injuries to Class members. VNA and LAN each deny that they breached the standard of care and that any breach of the standard of care caused Class members’ injuries. At this point, no court has found that either VNA or LAN breached the standard of care.

There is also a settlement pending with the State of Michigan, City of Flint, and other Government Defendants. This Notice does not relate to or affect that settlement.

**2. Why did I get this Notice?**

The City of Flint’s records show that you received water from the Flint Water Treatment Plant between April 25, 2014 and October 16, 2015.

**3. What is a class action and who is involved?**

In a class action lawsuit, one or more people called “class representatives” sue on behalf of other people who have similar claims. The people together are a “class” or “class members.” The class representatives who sued—and all the class members like them—are called the plaintiffs. The plaintiffs are represented by lawyers who filed the class action suit and then were designated ‘class counsel’ by the court. Class counsel have the sole right to represent the class’s interests in the case and decide whether to appeal any decisions that are made. The companies and people the plaintiffs sued (in this case, LAN and VNA) are called the defendants. One proceeding resolves the certified issues for everyone in the class—except for those people who choose to exclude themselves from the class.

**4. What is an “issues” class?**

An issues class is a type of class action lawsuit in which only parts of the class claims will be resolved through the class action lawsuit instead of the entire claim. If the issues class receives a favorable verdict on the certified issues, additional proceedings are required to determine whether any particular class member is entitled to recover damages and, if so, the amount of damages.

**5. Why is this lawsuit a class action?**

The Court decided that certain issues in this lawsuit can move toward a trial as a class action because they meet the requirements of the relevant Federal Rules of Civil Procedure, which govern class actions in United States courts.

**6. What is the current status of the lawsuit?**

The lawsuit is currently pending in the United States District Court for the Eastern District of Michigan before United States District Judge Judith E. Levy. The Class Action is part of the cases referred to as *In re Flint Water Cases*, under case number 5:16-cv-10444-JEL-EAS. The Court has not yet determined whether a trial is required in this case. If there is a trial, Class Plaintiffs will put on evidence at trial regarding the Certified Issues.

Even if Class Plaintiffs win on the Certified Issues, no money damages will be awarded at the end of the trial. Money damages could be awarded in a subsequent proceeding, which individual Class members would have the option to bring if they prevail. There is no guarantee that Class Plaintiffs will win.

In the event that Class Plaintiffs prevail, an additional Notice will be sent with more information on the next steps that individual Class members may take, if they choose, such as bringing their own lawsuit to prove that VNA and/or LAN caused their injuries as well as the nature and amount of their damages. There is also a settlement pending with the State of Michigan, City of Flint, and other Government Defendants. This Notice does not relate to or affect that settlement.

**7. Is there any money available now?**

No money or benefits are available now. If Class Plaintiffs succeed on Certified Issues 1-6 and 8-9, then Class members will have the option to file individual lawsuits in which they will have to prove that VNA and/or LAN caused their injuries and they also must prove the nature and amount of their damages. If they are successful in their individual lawsuits, Class members may then receive an award of damages.

**DETERMINING IF YOU ARE A MEMBER OF THE ISSUES CLASS(ES)**

**8. I live in the City of Flint and/or I own property or a business in the City of Flint. How do I know if I am a member of the Issues Class(es)?**

You are a member of the Multi-Defendant Issues Class if, for any period of time between February 10, 2015, and October 16, 2015, you were exposed to or purchased drinking water supplied by the City of Flint, owned real property in the City of Flint, or owned or operated a business in the City of Flint, and are at least the age of majority (18) as of the date of this notice.

You are a member of the LAN Issues Class if, for any period of time between April 25, 2014, and October 16, 2015, you were exposed to or purchased drinking water supplied by the City of Flint, owned real property in the City of Flint, or owned or operated a business in the City of Flint.

“Exposure” is defined to include ingestion (either through drinking or consuming foods prepared with the drinking water), bodily contact with the water (such as by way of bathing), and property contact with the water (through residential plumbing or other appliances).

**9. Are there people or entities that meet the definition above but are excluded from the Issues Class(es)?**

Yes. Certain individuals and entities are excluded from the Issues Class(es). These include:

- Defendants.
- The judicial officers to whom this case is assigned in federal court, Genesee County Circuit Court, and the Michigan Court of Claims, as well as these officers' staff and immediate family members.
- All persons and entities who timely and validly elect to opt out of the Issues Class(es) (see Question 14 below for more information on how to do this).
- All persons and entities that have retained a lawyer who is not acting as Class counsel designated by the Court. If you retained a lawyer and are not certain whether your lawyer is Class counsel, then you should contact them and ask whether they are Class counsel designated by the Court. If you have retained your own lawyer and have questions about whether you are included in the Issues Class, you should contact your lawyer directly.

All other questions can be directed to the Notice Administrator (contact information provided in Question 20).

**10. What if I am excluded from the Issues Class because I am represented by Reporting Counsel but wish to participate in the certified Issues Class?**

If any individual or entity wishing to participate in the Issues Class qualifies for membership in the Issues Class but is excluded because they are represented by Reporting Counsel, they may petition the Court through their lawyer and ask to be included.

Reporting Counsel include: (a) all counsel who are listed as counsel of record for any plaintiff in any case in *In re Flint Water Cases* — including any counsel who become counsel of record after the date of this Order; (b) any counsel who has entered an appearance for any plaintiff in any legal action related to the Flint water contamination in the Eastern District of Michigan; (c) any counsel who has a fee interest with respect to plaintiffs in any case in *In re Flint Water Cases*; and (d) any counsel who is a Participating Counsel as defined in the Case Management Order Regarding Time and Expenses. In other words, if you are represented by a lawyer who is not one of the Class Counsel, then you are excluded from the Class but may petition the court to join the class.

There is no guarantee that the Court will grant your request. The Court has stated that it will consider any such petitions if and when they are filed.

If this applies to you, you should contact your individually retained lawyer for more information regarding next steps.

**11. What are the specific issues that the Court certified for treatment as a class action?**

The Court certified nine questions for resolution on a common basis. Class Plaintiffs must prevail on all but one of those questions—Issue 7—for the Class members' claims to survive. If Class Plaintiffs prevail on each of Issues 1-6 and 8-9, then Class members will have the option to file individual lawsuits in which they will have to prove that VNA and/or LAN caused their injuries and they also must prove the nature and amount of their damages. In particular, Class members will need to prove both that they suffered an injury and that the injury was caused by exposure to Flint water. With respect to VNA, individual Class

members also will have to prove that their injury was suffered or was aggravated after the earliest date on which the levels of contaminants in their water would have gone down had VNA not committed the acts or omissions that the class alleges breached the standard of care. The nine questions are as follows:

**Issue 1:** Did Defendants' contracts with the City create a duty of care to third parties, and if so, what was the scope of that duty?

**Issue 2:** What is the applicable standard of care in a professional engineering case?

**Issue 3:** If Defendants' contracts created a duty of care to third parties, did Defendants breach that duty by failing to provide appropriate advice to the City of Flint regarding treating the water?

**Issue 4:** Did Defendants' conduct cause corrosive water conditions in the Flint water distribution system?

**Issue 5:** What is Defendants' role in creating, exacerbating, and/or prolonging the contamination of the City's water supply, including their involvement in the decisions to switch to the Flint River as a water source, refrain from using corrosion control at the Flint Water Treatment Plant, and conceal information related to the safety of the City's water supply?

**Issue 6:** Were the corrosive water conditions allegedly caused by Defendants capable of causing harm to Flint residents, property, and businesses?

**Issue 7:** To what extent were other actors at fault for causing corrosive water conditions in the City water distribution system, and how should fault be allocated among all those responsible?

**Issue 8:** Was it foreseeable to Defendants that their conduct would cause corrosive water conditions in the City water system?

**Issue 9:** What, if any, precautions should Defendants have taken to prevent the resulting harm to human health and property?

#### IF YOU DO NOTHING

#### 12. What happens if I do nothing at all?

If you do nothing, you will be bound by the outcome of the case as to the Certified Issues listed in Question 11, whether a judgment is rendered for or against Class Plaintiffs. You will be able to use any findings on the Certified Issues in a future proceeding to determine whether you are entitled to compensation-but only if Class Plaintiffs succeed on each of Certified Issues 1-6 and 8-9. By remaining in the class, you also will give up any right to personally challenge any final determination, by a court or jury, of the Certified Issues that is unfavorable to Class Plaintiffs. The right to do that will be controlled solely by the lawyers who represent the Classes.

#### EXCLUDING YOURSELF FROM THE ISSUES CLASS(ES)

#### 13. What does it mean to request to be excluded from the Issues Class(es)?

If you do not want to be part of the Issues Class(es) and want to keep your right to sue VNA and/or LAN separately relating to the Certified Issues described in this Notice, then you must take steps to remove yourself from the Issues Class(es). This is called excluding yourself or opting out of the Class. If you exclude yourself, you will not be bound by any judgment for or against VNA and/or LAN. You will have



to bring your own lawsuit within the required timeframe and prove your entire case, including with respect to the Certified Issues.

**14. How do I exclude myself from the Issues Class?**

To exclude yourself from the Issues Class, you must send a letter by mail stating that you wish to be excluded from the Issues Class in *In re Flint Water Cases*, 5:16-cv-10444-JEL-EAS. Be sure to include your name, address, telephone number, and signature. You cannot exclude yourself over the telephone. You must mail your Request for Exclusion, postmarked no later than \_\_\_\_\_, 202\_, to:

Flint Water Crisis Issues Classes Action  
 Attn: Exclusions  
 c/o A.B. Data, Ltd.  
 P.O. Box 173001  
 Milwaukee, WI 53217

**15. If I don't exclude myself, can I sue later?**

Unless you exclude yourself, you give up the right to sue VNA and LAN separately with respect to the Certified Issues in this case. You must exclude yourself from the Class to be able to bring your own, separate lawsuit(s) against VNA and/or LAN. Remember, the exclusion deadline is \_\_\_\_\_, 202\_.

**THE LAWYERS REPRESENTING YOU**

**16. As a member of the Class, do I have a lawyer representing my interests in this class action?**

Yes. The Court has appointed lawyers to represent the members of the Class. These lawyers are called Class Counsel. The following lawyers are lead counsel in representing the Issues Classes:

CO- LEAD CLASS COUNSEL	
<p style="text-align: center;">Theodore J. Leopold                      Cohen Milstein Sellers &amp; Toll PLLC                      11780 U.S. Highway One, Suite N500                      Palm Beach Gardens, FL 33408                      (561) 515-1400                      tleopold@cohenmilstein.com</p>	<p style="text-align: center;">Michael L. Pitt                      Pitt McGehee Palmer Bonanni &amp; Rivers P.C.                      117 W. Fourth Street, Suite 200                      Royal Oak, MI 48067                      (248) 398-980                      mpitt@pittlawpc.com</p>

**17. How will the lawyers be compensated? Will the Class Representatives receive a service award?**

If Class Plaintiffs are successful regarding Certified Issues 1-6 and 8-9, Class members would have the option to bring individual lawsuits to prove that VNA and/or LAN caused their injuries, as well as the nature and amount of their damages. If Class members are successful in their individual lawsuits, Class counsel will ask the Court to approve and award attorneys' fees and expenses that will be deducted from any awards obtained by Class members in their individual lawsuits. The payment to Class counsel will be in addition to any fees and expenses that individual Class members must pay to the lawyers they hire to bring their individual lawsuits. Class counsel also may ask for service awards for the Class Representatives that would not be paid at the end of the issues Class trial, but instead would be taken from any damages the Class members receive after litigating their individual claims. The amount of these fees, costs, and awards, if any, will ultimately be determined by the Court.

**18. Should I get my own lawyer?**

You have the right to hire your own lawyer, but you do not need to do so. Class counsel are working on behalf of the Issues Classes as a whole. If you decide to hire your own lawyer, they must file a Notice of Appearance. If you hire your own lawyer, you will need to discuss attorney fees and costs with that lawyer.

**19. What if I already have my own lawyer?**

If you have already hired your own lawyer, you should contact your lawyer directly with any questions as to whether this Notice applies to you and how to proceed.

**GETTING MORE INFORMATION**

**20. Where do I get more information?**

You can view a copy of relevant pleadings and court orders and read a list of Frequently Asked Questions and Answers at [www.xxxxxxxxxx.com](http://www.xxxxxxxxxx.com). You may also write with questions to the Notice Administrator, c/o A.B. Data, Ltd., P.O. Box XXXXXXX, Milwaukee, WI 53217 or send an email to [info@xxxxxxxxxxxx.com](mailto:info@xxxxxxxxxxxx.com). If you wish to communicate with Co-Lead Class Counsel, you may contact them directly (see contact information listed in Question 16). You may also seek advice and guidance from your own private lawyer at your own expense.

PLEASE DO NOT CONTACT THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS CASE.

DATED: \_\_\_\_\_

BY ORDER OF THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN, JUDITH E. LEVY

## NOTICE OF PENDENCY OF CLASS ACTION

This Notice explains the pendency of a class action in the Flint Water Cases. This Notice relates solely to claims against two engineering firms, VNA and LAN, that Plaintiffs allege are liable for injuries suffered as a result of the Flint Water Crisis. The Court certified two issues classes to address nine questions— called Certified Issues— that are necessary for resolution of Plaintiffs’ claims. There is no settlement or claims process at this time related to the claims that are the subject of this Notice.

### Who is Included?

The issues classes certified by the Court (the “Issues Classes” or “Class”) include the following persons and entities:

**Multi-Defendant Issues Class (Rule 23(c)(4)):** All persons and entities who, for any period of time between February 10, 2015, and October 16, 2015, were exposed to or purchased drinking water supplied by the City of Flint, owned real property in the City of Flint, or owned or operated a business in the City of Flint.

**LAN Issues Class (Rule 23(c)(4)):** All persons and entities who, for any period of time between April 25, 2014, and October 16, 2015, were exposed to or purchased drinking water supplied by the City of Flint, owned real property in the City of Flint, or owned or operated a business in the City of Flint.

Any person or entity included in either or both of the Issues Classes is referred to here as a “Class member.” Some persons or entities may meet this definition but be excluded for other reasons — please read the Long-Form Notice, available to download at [www.xxxxxxx.com](http://www.xxxxxxx.com) or contact your lawyer if you have one to determine if you qualify.

This is only a summary. The Court has not decided whether either VNA or LAN breached the standard of care for water engineering companies. The Court will address nine Certified Issues as part of the class action. If Plaintiffs succeed on Certified Issues 1-6 and 8-9, then Class members will have the option to file individual lawsuits in which they will have to prove that VNA and/or LAN caused their injuries and they also must prove the nature and amount of their damages before they can receive any award of damages. However, your legal rights are affected, and you have a choice to make now. For additional details, please read the Long-Form Notice available to download at [www.xxxxxxxxxxxxx.com](http://www.xxxxxxxxxxxxx.com).

### Your Rights and Options

**DO NOTHING:** Stay in this lawsuit. Await the outcome. Give up certain rights. This option means that you remain part of the Class. You will be bound by the resolution of the nine Certified Issues.

**EXCLUDE YOURSELF FROM THE CLASS:** Get out of the lawsuit. Get no benefits from it. Keep rights. This option allows you to exclude yourself from the Class lawsuit and retain the right to file a separate lawsuit against VNA and/or LAN asserting the claims relating to the allegations in this case within a specified time period. The deadline to

exclude yourself from the Class is \_\_\_\_\_, 202\_. Specific instructions on how to request exclusion are included in the Long-Form Notice available to download at [www.xxxxxxxxxx.com](http://www.xxxxxxxxxx.com).

### **Current Status of the Lawsuit**

The lawsuit is currently pending in the United States District Court for the Eastern District of Michigan before United States District Judge Judith E. Levy. The Class Action is part of the cases referred to as *In re Flint Water Cases*, under the civil action number 5:16-cv-10444-JEL-EAS. The Court has not yet determined whether a trial is required in this case. Class Plaintiffs will have to put on evidence at trial regarding the nine Certified Issues. With the exception of Issue 7, Class Plaintiffs need to prevail on every Certified Issue in order for you to have a chance to collect damages. If Class Plaintiffs obtain a favorable verdict on all eight of those Certified Issues, then individual Class members will be entitled to use the jury's verdict to pursue their individual claims in subsequent lawsuits, if they so choose. These subsequent lawsuits would be brought by the individual Class members, and in those lawsuits the individual Class members must prove the remaining elements of their claims against VNA and LAN and also must prove the nature and amount of their damages.

There is also a settlement pending involving the State of Michigan, City of Flint, and other Government Defendants. This Notice does not relate to or affect that settlement.

### **Want More Information?**

You can view a copy of relevant pleadings and Court orders and read a list of Frequently Asked Questions and Answers at [www.xxxxxxxxxx.com](http://www.xxxxxxxxxx.com). You may also write with questions to the Notice Administrator, c/o A.B. Data, Ltd., P.O. Box XXXXXX, Milwaukee, WI 53217 or send an email to [info@xxxxxxxxxxx.com](mailto:info@xxxxxxxxxxx.com).