

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 7TH JUDICIAL CIRCUIT
GENESEE COUNTY

IN RE: FLINT WATER LITIGATION

No. 17-108646-NO

HON. JOSEPH J. FARAH

**PLAINTIFFS' MOTION FOR AN ORDER APPOINTING NEXT FRIENDS ON
BEHALF OF EACH MINOR AND LEGALLY INCAPACITATED OR
INCOMPETENT INDIVIDUAL FOR PURPOSES OF PARTICIPATING IN
THE FLINT WATER SETTLEMENT**

Plaintiffs move this Court for an order appointing Next Friends on behalf of each Minor and Legally Incapacitated or Incompetent Individual (LII) for purposes of participating in the Flint water settlement.¹ In support, Plaintiffs state as follows:

1. Plaintiffs and the Settling Defendants have entered into a settlement of the Flint water cases. That settlement is the subject of a separate motion seeking court approval of the terms of the parties' Amended Settlement Agreement. That motion was filed in the U.S. District Court for the Eastern District of Michigan, Case No. 16-10444 at ECF. No. 1318. A majority of the settlement funds under the Amended Settlement Agreement are allocated for Minors. Other LIIs will also be able to seek recovery of settlement funds. The Amended Settlement Agreement provides for a registration, claims, and recovery process, during which many thousands of claimants, including Minors and

¹ Capitalized terms in this motion and accompanying proposed order have the same definitions as in the Amended Settlement Agreement.

other LIIs, will need Next Friends appointed to pursue their interests through the registration, claims, and Monetary Award recovery process.

2. Michigan Court Rule 2.201(E) requires that this Court appoint a Next Friend to represent each Minor and each LII who does not have a conservator.
3. MCR 2.201(E)(2)(b) authorizes this Court to refuse to appoint a representative it deems unsuitable.
4. Plaintiffs request that this Court order that any one of the following can be appointed as Next Friend for any related Minor or LII, for the sole purposes of registering and pursuing a claim and recovery under the Amended Settlement Agreement: parent (natural or adoptive), grandparent, legal guardian, existing court-appointed representative, adult sibling (full, half, or step), or adult aunt or uncle.
5. Any individual applying to represent the interest of a Minor or LII as Next Friend, must provide written notice to all other individuals who fall into the Next Friend categories listed in paragraph 4.
6. Plaintiffs also ask that the Court order that only one Next Friend can act for any one Minor or LII. For example, one parent can be appointed as Next Friend for a minor child or children, but both parents cannot be appointed as Next Friend for the same child or children. In this manner, the Court and Claims Administrator need only look to one person as Next Friend for any particular Minor or LII.

7. Plaintiffs ask that the order recognize that there is no conflict if the Next Friend is also a Claimant in the Amended Settlement Agreement because separate Qualified Settlement Fund allocations exist for the Minors and Adults. In addition, this Court's and the Federal Court's oversight and approval of the entire Amended Settlement Agreement, including the methods of Monetary Awards to Minors and LIIs, provide added protection against conflicts.
8. In order to act as a Next Friend, an individual must identify themselves on the Registration Form as a Next Friend for a Minor or LII and provide proofs with the Claim Form to the Claims Administrator that they are a: parent (natural or adoptive), grandparent, legal guardian, existing court-appointed representative, adult sibling (full, half, or step), or adult aunt or uncle, of the Minor or LII. Within forty-five (45) days of receipt of a Claim Form identifying a Next Friend for a Minor or LII, the Claims Administrator will send an Adverse Notice to any Next Friend that has failed to submit proofs necessary to demonstrate that they meet the requirements to act as a Next Friend for a Minor or LII. The Claims Administrator shall consult with the Special Master before issuing any such Adverse Notice.
9. Plaintiffs ask that an individual who has satisfied the aforementioned requirements and submitted the appropriate proofs be deemed appointed as a Next Friend.

10. Plaintiffs request that once a Next Friend has been appointed, they be authorized to execute, on behalf of a Minor or LII, trust agreements, structured settlement agreements, and any other agreements or documents necessary to accomplish full and final resolution of the matter on behalf of the Claimant, as well as how the Monetary Awards should be received and managed on their behalf through providers who have been approved as part of the Settlement Program.
11. Plaintiffs ask that the Court order that, as Next Friend, an individual can register and pursue claims and a recovery for a Minor or LII under the Amended Settlement Agreement.
12. A Next Friend may seek reconsideration or an appeal of any Adverse Notice issued by the Claims Administrator pursuant to a process to be set forth in the Amended Settlement Agreement.
13. In the event of a dispute between two or more individuals seeking to act as Next Friend, the Master GAL may take action to secure consensual resolution among the potential Next Friends. If consensual resolution is not obtained, the Master GAL shall refer the matter to the Special Master along with a report of his or her findings and recommendation, who will take action as authorized by the Court. The Special Master's determination shall be final, binding, and non-appealable by any means.

CONCLUSION AND RELIEF REQUESTED

For the reasons stated above, Plaintiffs request that this Honorable Court enter the accompanying order.

Respectfully submitted,

/s/ Corey M. Stern
Corey M. Stern
LEVY KONIGSBERG, LLP
800 Third Avenue, 11th Floor
New York, NY 10022
(212) 605-6298 Telephone
cstern@levylaw.com
*Lead Counsel in State Court
and Co-Liaison Counsel for
Individual Plaintiffs in Federal Court*

/s/ Theodore J. Leopold
Theodore J. Leopold
COHEN MILSTEIN SELLERS &
TOLL PLLC
11780 U.S. Highway One Suite N500
Palm Beach Gardens, FL 33408
(561) 515-1400 Telephone
tleopold@cohenmilstein.com
*Co-Interim Lead Counsel for the
Putative Class in Federal Court*

/s/ Hunter Shkolnik
Hunter J. Shkolnik
NAPOLI SHKOLNIK PLLC
270 Munoz Rivera Avenue, Suite 201
Hato Rey, Puerto Rico 00918
(787) 493-5088 Telephone
hunter@napolilaw.com
*Co-Liaison Counsel for Individual
Plaintiffs in Federal Court*

/s/ Michael L. Pitt
Michael L. Pitt
PITT MCGEHEE PALMER
BONANNI & RIVERS, P.C.
117 West 4th Street Suite 200
Royal Oak, MI 48067
(248) 398-9800 Telephone
mpitt@pittlawpc.com
*Co-Interim Lead Counsel for the
Putative Class in Federal Court*

CERTIFICATE OF SERVICE

The undersigned certifies that on January 7, 2021, the foregoing motion was filed with the Clerk of Court and that all parties of record received a copy by email.

Dated: January 7, 2020

Respectfully submitted,

/s/ Renner K. Walker

Renner K. Walker
LEVY KONIGSBERG LLP
800 Third Ave., 11th Fl.
New York, New York 10022
(212) 605-6288 Telephone
rwalker@levylaw.com

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 7TH JUDICIAL CIRCUIT
GENESEE COUNTY

IN RE: FLINT WATER LITIGATION

No. 17-108646-NO

HON. JOSEPH J. FARAH

**ORDER GRANTING PLAINTIFFS' MOTION FOR THE APPOINTMENT OF
NEXT FRIENDS ON BEHALF OF EACH MINOR AND LEGALLY
INCOMPETENT INDIVIDUAL FOR PURPOSES OF PARTICIPATING IN
THE FLINT WATER SETTLEMENT**

The Court has considered Plaintiffs' motion to appoint Next Friends on behalf of each Minor or Legally Incompetent Individual ("LII") for purposes of participating in the Flint water settlement. Subject to the U.S. District Court for the Eastern District of Michigan granting the Plaintiffs' Motion to Establish Settlement Claims Procedures and Allocation and for Approval of Class Settlement Components in Case No. 16-10444 at ECF. No. 1318, the Court **GRANTS** that motion and orders as follows:

- A. The following individuals are appointed as Next Friend for the sole purposes of registering and pursuing a claim and recovery under the Flint water Amended Settlement Agreement for any related Minor or LII: parent (natural or adoptive), grandparent, legal guardian, existing court-appointed representative, adult sibling (full, half, or step), or adult aunt or uncle.
- B. Any individual applying to represent the interest of a Minor or LII as Next Friend, must provide written notice to all other individuals who fall into the

Next Friend categories listed in paragraph A. Failure to do so may, at the Court's discretion, result in nullifying an individual's Next-Friend status.

- C. Only one Next Friend may act for any particular Minor or LII. For example, one parent can be appointed as Next Friend for a minor child or children, but both parents cannot be appointed as Next Friend for the same child or children. In this manner, the Court and Claims Administrator need only look to one person as Next Friend for any particular Minor or LII.
- D. The Next Friend may be a Claimant in the settlement under the Amended Settlement Agreement. Because separate Qualified Settlement Fund allocations exist for the Minors and Adults under the Amended Settlement Agreement, there is no conflict if the Next Friend is also a Claimant. This Court's and the Federal court's oversight and approval of the entire Amended Settlement Agreement, including the methods of Monetary Awards to Minors and LIIs, provide added protection against conflicts.
- E. To act as a Next Friend, an individual must identify themselves on the Registration Form as a Next Friend for a Minor or LII and provide proofs with the Claim Form to the Claims Administrator that they are a: parent (natural or adoptive), grandparent, legal guardian, existing court-appointed representative, adult sibling (full, half, or step), or adult aunt or uncle, of the Minor or LII before processing their claim. If the Claims Administrator cannot do so, then additional steps must be taken by the Next Friend to confirm the Next Friend's relationship status to the Minor or LII. Within forty-five (45)

days of receipt of a Claim Form identifying a Next Friend for a Minor or LII, the Claims Administrator will send an Adverse Notice to any Next Friend that has failed to submit proofs necessary to demonstrate that they meet the requirements to act as a Next Friend for a Minor or LII. The Claims Administrator shall consult with the Special Master before issuing any such Adverse Notice.

- F. An individual who meets the aforementioned requirements and has submitted the appropriate proofs is deemed appointed as a Next Friend.
- G. Once appointed, a Next Friend, on behalf of a Minor or LII, is authorized to execute trust agreements, structured settlement agreements, and any other agreements or documents that are necessary to receive a Monetary Award, including documents necessary to direct how money will be received and managed on their behalf through providers who have been approved as part of the Amended Settlement Program.
- H. A Next Friend can register and pursue claims and a recovery for a Minor or LII under the Amended Settlement Agreement.
- I. A Next Friend may seek reconsideration or an appeal of any Adverse Notice issued by the Claims Administrator pursuant to a process to be set forth in the Amended Settlement Agreement.
- J. In the event of a dispute between two or more individuals seeking to act as Next Friend, the Master GAL may take action to secure consensual resolution among the potential Next Friends. If consensual resolution is not obtained,

the Master GAL shall refer the matter to the Special Master, along with a report of his or her findings and recommendation. The Special Master will take action as authorized by the Court, and the Special Master's determination shall be final, binding, and non-appealable by any means.

IT IS SO ORDERED.

JOSEPH J. FARAH, Circuit Judge

Dated: _____