

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:

ALL CASES

**OPINION AND ORDER GRANTING FINAL APPROVAL OF A
PARTIAL SETTLEMENT, GRANTING CERTIFICATION OF A
SETTLEMENT CLASS, GRANTING APPOINTMENT OF
SETTLEMENT CLASS COUNSEL [1794], DENYING
OBJECTIONS, AND ADOPTING THE REPORT AND
RECOMMENDATION [2006]**

Before the Court is a motion for final approval of a partial settlement that provides compensation to tens of thousands of people who were impacted by exposure to lead, *legionella*, and other contaminants from the City of Flint's municipal water supply system during the events now known as the Flint Water Crisis. The settlement resolves thousands of claims pending in this Court, the Genesee County Circuit Court, and the State of Michigan Court of Claims. The settlement involves both class action and non-class action lawsuits. The portion of the \$626.25 million

settlement to be paid by the State of Michigan is one of the largest settlements in the State's history.¹

The settlement reached here is a remarkable achievement for many reasons, not the least of which is that it sets forth a comprehensive compensation program and timeline that is consistent for *every* qualifying participant, regardless of whether they are members of a class or are non-class individuals represented by their own counsel. For the reasons set forth below, the objections to the settlement are denied, and final approval of the settlement is granted. Plaintiffs' motion for attorney fees will be addressed in a separate opinion and order.

¹ See, e.g., Michigan S. Fiscal Agency, *FY 2018-19 Status of Lawsuits Involving the State of Michigan*, 4 (July 2020), https://www.senate.michigan.gov/sfa/publications/lawsuit/lawsuit_mostrecent.pdf [<https://perma.cc/W3ZQ-X7RK>] (showing, at Table 3, that the maximum settlement amount for all combined lawsuits against the State over a ten-year period did not exceed \$76,308,820).

Table of Contents

I.	BACKGROUND.....	6
A.	The Negotiation Process	10
B.	The Amended Settlement Agreement (“ASA”).....	16
C.	Registration Forms and Objections Received by the March 29, 2021 Deadline	27
D.	Fairness Hearing	32
E.	Other Matters Post-Fairness Hearing	36
II.	LEGAL STANDARD.....	37
III.	DISCUSSION	44
A.	Non-Class Portion of the Settlement	44
B.	Class Plaintiffs’ Portion of the Settlement.....	59
1.	Likelihood of Success on the Merits.....	60
2.	Class Representatives and Class Counsel Representation	64
3.	Arm’s Length Negotiations and No Evidence of Collusion or Fraud.....	65
4.	Adequate Relief	66
5.	Whether Class Members Are Treated Equitably Relative to Each Other	70
6.	The Amount of Discovery Conducted.....	72
7.	Opinions of Class Counsel and Class Representatives and Reaction of Absent Class Members	73
8.	Public Interest	76
9.	Incentive Awards.....	76
C.	Notice to the Class and Due Process.....	78
D.	Certification of the Settlement Class	81
E.	Appointment of Co-Lead Class Counsel and the Executive Committee as Class Counsel for Settlement Purposes	95

F. Report and Recommendation on Late Registrants.....	96
IV. OBJECTIONS.....	96
A. Objections Based On Compensation Grid.....	98
1. Objections Related to Bone Lead Level Testing	98
a. Objections to the Use of the Thermo Fisher Manufactured Hand-Held XRF Device on Humans	101
b. Objections Regarding The Napoli Program's Regulatory Compliance and Legality	119
c. Objections to XRF Bone Lead Level Testing Because It Has No Medical Purpose.....	124
d. Objections Arguing that the Napoli Program Constitutes an Undisclosed Research Project.....	127
e. Objections Claiming that Bone Lead Level Testing is the "Main Method" of Recovery Under the ASA	130
f. Objections Asserting That Bone Lead Level Testing At Mt. Sinai and Purdue University Were Unavailable to Objectors...	133
g. Objections Related to the Unavailability for Non-Client Bone Lead Level Test Appointments with the Napoli Program.....	138
h. Objections Related to the Napoli Program's Requirement that Participants Sign a Liability Release.....	143
i. Objections Related to the \$500 Cost of a Bone Lead Level Test with the Napoli Program	145
j. Arguments Related to Bone Lead Level Testing Submitted After the March 29, 2021 Deadline for Filing Objections.....	146
2. Objection Related to Blood Lead Level Test Results.....	148
3. Objections to Cognitive Deficit Testing Settlement Category Requirements.....	149
4. Objection Related to the Miscarriages and Fetal Blood Lead Level Test Results Settlement Category.....	154
5. Objections to the Compensation Grid's Requirements of Proof of Galvanized Steel Service Lines	155

6. Objections Related to the Compensation Grid's Failure to Include Additional or Different Categories.....	158
7. Objections Related to the Overall Allocation of Funds for Minors Versus Adults	160
8. Objections Related to the \$1,000 "Cap" in the Compensation Grid for Property Owners and Renters	162
9. Objections Arguing that the Overall Settlement is Unfair, Unreasonable, and Inadequate to Homeowners	163
B. Objections Related to the ASA's Requirements for Registration and Objections	165
1. Arguments that Registration Deadline Was Too Short	165
2. Objection to Providing the Claims Administrator With PII for Registration Purposes.....	166
3. Objection Arguing that, at the Time of Registration, Participants Did Not Know the Final Amount of their Monetary Award	167
4. Objections that Individual and Class Counsel Who Are Listed in Exhibit 17 of the ASA Did Not Represent Individual Objectors At the Fairness Hearing.....	169
5. Objections related to Using Zoom to Communicate With their Attorneys.....	171
C. Objections Related to COVID-19.....	172
D. Objections to the Notice's Content	173
E. Objections to Class Representative Payment	174
V. CONCLUSION	175

Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.