

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

CONCERNED PASTORS FOR SOCIAL
ACTION et al.,

Plaintiffs,

v.

Case No. 16-10277

Hon. David M. Lawson

NICK A. KHOURI et al.,

Defendants.

STIPULATION AND NOTICE

Plaintiffs and Defendants in the above-captioned matter, along with the other parties to the Settlement Agreement in the above-captioned matter (collectively, the “Settling Parties”), provide notice to the Court of the City of Flint’s (City’s) invocation of force majeure due to the coronavirus pandemic, and resulting delays in the City’s performance of required excavations and service line replacements and related public outreach efforts under the Settlement Agreement, ECF No. 147-1 (Agmt.), as amended by this Court.

On March 10, 2020, Governor Whitmer issued a Declaration of State of Emergency concerning the outbreak of the novel coronavirus, which causes a respiratory disease known as COVID-19 that can result in serious illness and death. On March 12, 2020, City of Flint Mayor Sheldon Neeley declared a local state of

emergency due to the COVID-19 pandemic. On March 13, 2020, President Trump declared a National Emergency concerning the COVID-19 outbreak.

Beginning on March 23, 2020, Governor Whitmer issued a series of Executive Orders directing Michigan residents to stay at home or in their place of residence to the maximum extent feasible. This stay-at-home directive currently remains in place.

On April 30, 2020, Governor Whitmer issued Executive Order No. 2020-68, declaring a State of Emergency and Disaster through May 28, 2020.

As a result of the COVID-19 pandemic, on April 2, 2020, the City notified Plaintiffs and the State of Michigan that the City was invoking Section XIV (Force Majeure) of the Settlement Agreement concerning its service line excavation and replacement obligations. The Force Majeure provisions of the Agreement provide that a “Party’s obligation to comply with one or more provisions of this Agreement will be deferred for the duration of a delay in compliance caused by force majeure or impossibility.” Agmt. ¶ 131, PageID.7424.

Plaintiffs and the State of Michigan agree that the City’s invocation of the Force Majeure provision of the Settlement Agreement is appropriate in light of the COVID-19 pandemic.

The Force Majeure provisions of the Settlement Agreement provide that, if all parties agree that a delay in performance of obligations under the Settlement has been or will be caused by force majeure, the parties “will agree in writing to a

reasonable modification of all requirements affected by the force majeure.” Agmt. ¶ 136, PageID.7426. There is currently significant uncertainty about when restrictions and public health guidelines concerning the COVID-19 pandemic will change.

There is a dispute among the parties concerning the duration of State Parties’ obligations under Paragraphs 39 and 59 of the Settlement Agreement to provide filter replacement cartridges and tap water test kits to the City. State Parties contend that their obligations under these paragraphs do not extend beyond December 31, 2020. Plaintiffs contend that State Parties’ obligations under these paragraphs continue until one year after the Completion of Service Line Replacement, as defined by the Settlement Agreement.

Based on the above facts and circumstances, the Settling Parties thus agree and stipulate to the following:

1. The City’s deadline for completing the required service line excavations and replacements and associated public outreach efforts pursuant to Paragraphs 8-20, 34-35, and 38 of the Settlement Agreement, as amended by the Court, and pursuant to the March 26, 2019 Stipulation (ECF No. 208), shall be stayed during the State of Emergency in Michigan.

2. No later than 10 days after the State of Emergency in Michigan has been lifted, the Settling Parties will meet and confer to discuss an appropriate

schedule for completion of the City's service line replacement obligations and related public outreach efforts.

3. No later than 30 days after the State of Emergency in Michigan has been lifted, and subject to any legally required approvals on the part of the City, the Settling Parties will file with the Court an agreed-upon modification to the Settlement Agreement, including new deadlines for completion of the City's service line excavation and replacement obligations and related public outreach efforts. The City will undertake all reasonable efforts to obtain any legally required approvals within this 30-day window.

4. The parties will confer and attempt to resolve their dispute concerning State Parties' obligations under Paragraphs 39 and 59 of the Settlement Agreement during this 30-day period.

Dated: May 18, 2020

Respectfully submitted,

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Counsel for the City of Flint

CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2020, I electronically filed the foregoing Stipulation and Notice with the Clerk of the Court using the ECF system.

Dated: May 18, 2020

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