

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CONCERNED PASTORS FOR SOCIAL
ACTION, MELISSA MAYS, AMERICAN
CIVIL LIBERTIES UNION OF MICHIGAN,
and NATURAL RESOURCES DEFENSE
COUNCIL, INC.,

Plaintiffs,

v.

Case Number 16-10277
Honorable David M. Lawson

NICK A. KHOURI, FREDERICK HEADEN,
MICHAEL A. TOWNSEND, JOEL
FERGUSON, MICHAEL A. FINNEY,
SYLVESTER JONES, and CITY OF FLINT,

Defendants.

**ORDER GRANTING IN PART PLAINTIFFS' THIRD MOTION TO ENFORCE
SETTLEMENT AGREEMENT**

On July 13, 2018, the plaintiffs filed their third motion (ECF No. 173) to enforce the Settlement Agreement (ECF No. 147-1), which the Court approved on March 28, 2017 (ECF No. 152). The main concern expressed by the plaintiffs in this motion was the City of Flint's compliance with its obligations under the Agreement to ensure that residents had properly-installed faucet filters immediately after service lines were replaced and to provide filter verification information for all homes where replacement had occurred. The plaintiffs also were troubled by the apparent inaccuracies found in certain reports on that activity that the City had furnished, as the Agreement required.

The Court held an evidentiary hearing on this and two other enforcement motions on August 21, 2018 and ordered supplemental briefing. On September 6, 2018, the parties filed a stipulation that addressed all of the plaintiffs' concerns outlined in the third enforcement motion

save one: that the City be required to verify under oath the reports it is required to submit under the Agreement. *See* ECF No. 191, PageID.9832. That is the only issue remaining on all the enforcement motions. For the reasons explained below, the Court believes that the request is justified and will grant it in part.

The plaintiffs outlined in their motion several instances where the City's periodic reports on service line replacement and resident contacts regarding faucet filter installation and verification were late, inaccurate, or wrong. After uncovering additional reporting discrepancies, the plaintiffs sought to modify an initial request regarding reporting. The plaintiffs asked the Court to order the City to produce (i) a declaration signed under penalty of perjury to be filed with the Court explaining the causes of the discrepancies in the data that is the subject of this motion and the City's plan to ensure it does not happen again; (ii) weekly filter verification reports that use a consistent format (in Excel), documenting the date and time of each attempt and a narrative description of what occurred; and (iii) a signed declaration under penalty of perjury from a City employee or contractor with personal knowledge averring that a reasonable review of the data was performed in preparing the weekly report and explaining any discrepancies with earlier reports.

The City objects to furnishing a declaration under oath, contending that such a demand is categorically impossible because the City's quality assurance process reviews invoices on a bi-weekly basis. The City argues that a declaration under penalty of perjury is unwarranted as there is no nefarious intent here and impractical because the declarant would have to be personally familiar with all previous data productions.

As the Sixth Circuit has explained, a district court possesses broad, inherent authority and equitable power to enforce the terms of a settlement agreement entered into by the parties to litigation. *Brock v. Scheuner Corp.*, 841 F.2d 151, 154 (6th Cir. 1988). However, "[t]he court

must enforce the settlement as agreed to by the parties and is not permitted to alter the terms of the agreement.” *Ibid.*

It appears that the plaintiffs’ main concern at the time they filed their third enforcement motion was that residents were not notified promptly after service line replacement so that they would be informed about the dangers of using unfiltered water from the faucet, even though the lead service line was replaced. Apparently recognizing the importance of conveying that information to residents, the City and the plaintiffs stipulated that the City would complete the filter installation and verification process outlined in Paragraph 38 of the Agreement within three business days of service line replacement and furnish weekly verification reports. *See* ECF No. 191 ¶¶ 2, 3, PageID.9831.

The Settlement Agreement is silent as to the form of verification of the periodic reports. Certainly, there is no express requirement that verification be subject to the penalty of perjury. And the Court at this point sees no justification for writing that requirement into the Agreement. However, it is fair to conclude that the obligation to furnish reports under the Agreement includes the requirement that the reports be accurate. To infer a contrary intent would be indulging in nonsense. And when enforcing a settlement agreement, as with a contract, the first objective is to “honor the intent of the parties.” *Rasheed v. Chrysler Corp.*, 445 Mich. 109, 127 n.28, 517 N.W.2d 19, 29 n.28 (1994).

To ensure accuracy, it follows that the information in the reports be furnished by persons with direct knowledge. Mistakes might be made, but the reporting party must be accountable for bad information, even in the absence of nefarious intent. Moreover, the additional requirement of certifying that reported data are accurate and that reasonable diligence was

undertaken in gathering the information is neither unduly burdensome nor contrary to the parties' Agreement.

Accordingly, it is **ORDERED** that the plaintiffs' third motion to enforce the Settlement Agreement (ECF No. 173) is **GRANTED IN PART**.

It is further **ORDERED** that the reports that the City must submit to the plaintiffs under the Settlement Agreement, as modified, must include a certification that the information is accurate, based on personal knowledge of the reporter, or if information is furnished by others, that those named individuals furnished information on personal knowledge, and that reasonable diligence was undertaken in gathering the information.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Date: March 27, 2019

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first-class U.S. mail on March 27, 2019.

s/Susan K. Pinkowski
SUSAN K. PINKOWSKI