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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

NEWARK EDUCATION WORKERS)
CAUCUS and NATURAL RESOURCES)
DEFENSE COUNCIL, INC.,)

Plaintiffs,)

v.)

CITY OF NEWARK, RAS BARAKA, in)
his official capacity as Mayor of the City of)
Newark, NEWARK DEPARTMENT OF)
WATER AND SEWER UTILITIES,)
ANDREA HALL ADEBOWALE, in her)
official capacity as Director of the Newark)
Department of Water and Sewer Utilities,)
and CATHERINE R. McCABE, in her)
official capacity as Commissioner of the)
New Jersey Department of Environmental)
Protection,)

Defendants.)
_____)

Case No. 2:18-cv-11025

Judge Katharine S. Hayden

Magistrate Judge Cathy L. Waldor

Motion date: September 17, 2018

Oral Argument Requested

**PLAINTIFFS' MEMORANDUM
IN SUPPORT OF MOTION FOR
A PRELIMINARY
INJUNCTION**

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INTRODUCTION

Every day, Newark residents are exposed to dangerous levels of lead in their tap water because City Defendants¹ are violating the federal Safe Drinking Water Act, a law designed to ensure the public has access to safe drinking water. City Defendants deny the problem and have repeatedly urged those who live and work in Newark to drink the lead-laden water the City delivers to their faucets. As a result, many people may not know that they are drinking water contaminated with lead, a toxic metal whose devastating effects, particularly to children, are well documented. Others are aware of the problem, but lack the resources to secure an alternative, safe water supply. Still others have requested help from the City to test their water, to no avail.

There is no safe level of lead exposure.² Since at least January 2017, lead in Newark's drinking water has repeatedly exceeded the 15 parts per billion

¹ The term "City Defendants" is used to refer collectively to the City of Newark, the Newark Department of Water and Sewer Utilities, the Mayor of the City of Newark, Ras Baraka, and the Director of the Newark Department of Water and Sewer Utilities, Andrea Hall Adebowale. This motion does not address Plaintiffs' claims against the Defendant Catherine R. McCabe, Commissioner New Jersey Department of Environmental Protection.

² See *infra* Part II.A.1 (describing the scientific consensus). The Environmental Protection Agency has set a Maximum Contaminant Level Goal of zero for lead. Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for Lead and Copper, 56 Fed. Reg. 26,460, 26,467 (June 7, 1991). The Maximum Contaminant Level Goal is the

(ppb) lead action level set by the U.S. Environmental Protection Agency (EPA).³ In the last eight weeks alone, 57% of Newark homes sampled by the City exceeded 15 ppb, 28% exceeded 30 ppb, and 13% exceeded 50 ppb. A sample from one Newark home showed a lead concentration of 250 ppb, more than sixteen times the action level. In children, even low levels of lead exposure can interfere with growth, behavior, and ability to learn. In adults, lead exposure is associated with heart disease, high blood pressure, low kidney function, and challenges with both pregnancy and fertility, among other conditions. Plaintiffs' members, as well as others who live and work in Newark, face a public health crisis that urgently requires preliminary relief.

The cause of this crisis? City Defendants' continuing violations of the Safe Drinking Water Act and one of the Act's implementing regulations, the Lead and Copper Rule. For years, City Defendants have failed to implement and maintain adequate water treatment to prevent the corrosion of lead pipes into Newark's drinking water. To make matters worse, City Defendants are

level of a contaminant in drinking water below which there is no known or expected risk to health. *Id.*

³ The lead action level is not a health-based standard. Instead, it is the concentration of lead which, if exceeded, triggers treatment or other requirements that a water system must follow (despite the scientific consensus that there is no safe level of lead exposure). A water system exceeds the lead action level if more than 10% of samples collected during a monitoring period have lead concentrations above 15 ppb. 40 C.F.R. § 141.80(c)(1).

violating federal requirements for drinking water sampling, masking the full extent of lead in the City's water. They are also failing to conduct required public education, among other violations.⁴ This blatant disregard for the laws that protect drinking water threatens the health and livelihood of Plaintiffs' members, as well as thousands of others who live and work in Newark.

Absent preliminary relief, Plaintiffs' members will continue to be irreparably harmed by ongoing exposure to lead. Under City Defendants' current plan, Newark residents will be left without safe water until late 2020, at the earliest. Even if Plaintiffs prevail before that late date, it will take time to correct the causes of the problems, and dangerous lead exposures will continue. To help ease the most immediate injuries now, Plaintiffs request limited preliminary relief from City Defendants: (1) provide safe and accessible drinking water for those Newark residents who are most at risk from lead exposure and associated health impacts, (2) provide free and timely drinking water testing for all Newark residents, (3) engage in a public awareness campaign, including the establishment of drinking water resource centers, and

⁴ The initial complaint includes five claims against City Defendants. ECF No. 1, ¶¶ 131-140. Plaintiffs recently identified at least four additional violations of the Safe Drinking Water Act. On August 23, 2018, Plaintiffs sent City Defendants a supplemental notice of intent to sue. PA 89-96. If City Defendants do not cure their violations within sixty days, Plaintiffs intend to seek to amend the complaint.

(4) correct misleading statements about the scope of the City's drinking water emergency. Without this relief, Newark residents will continue to suffer from the devastating, often invisible, effects of lead each time they turn on the tap.

This is a paradigmatic case for preliminary relief. Because of City Defendants' violations, Plaintiffs' members and other Newark residents face a situation that should be unthinkable in a major U.S. city: they do not have access to safe drinking water. To help stem further injury, Plaintiffs ask this Court to require the City Defendants to take steps necessary to protect public health while this case is being litigated.⁵

BACKGROUND

The levels of lead in the City of Newark's (the City or Newark) drinking water are among the highest recorded by a large water system in the United States in recent years. PA 2.⁶ The City's water crisis dates back to the 1990s,

⁵ While Plaintiffs have included the next available motion date in the caption of this motion, Plaintiffs ask this Court to consider this motion on an expedited basis, and to issue an order to show cause, pursuant to Local Rule 65.1. Accelerated consideration is necessary because of the ongoing and irreparable harm Plaintiffs' members, and others who depend on Newark's drinking water, are suffering from because of City Defendants' violations. *See infra* Part II. These injuries are detailed in this memorandum and in the supporting declarations. A proposed order to show cause is attached.

⁶ Plaintiffs' Appendix (PA) is a compilation of the exhibits attached to the Declaration of Sara Imperiale. PA has been paginated as a single document for the Court's convenience. All declarations hereafter will be referred to using the convention "[Last Name] Decl."

when the City failed to take initial steps to control the corrosion of lead pipes and plumbing, as required by the Lead and Copper Rule. 40 C.F.R.

§ 141.81(d). Over the years, lead in Newark's water have drawn attention from Newark residents, government officials, and media outlets. However, it was not until March 2016, when nearly half of Newark's public schools tested above the 15 ppb action level, that the public began to learn the full extent of lead contamination in the City's drinking water.⁷ PA 12.

The news of elevated lead levels in Newark's schools prompted many schools to disconnect from the City water supply, shut off water fountains, and post "do not drink" notices. PA 12-19, 22-23. However, affected schools eventually reconnected to City water after committing to replace equipment and install filters. PA 26-44. Despite these promises, public reporting shows lead concentrations are still elevated at accessible, non-decommissioned water fountains in certain school buildings. PA 46. Moreover, sampling results from allegedly filtered or decommissioned water fountains in many cases remain

⁷ The Lead and Copper Rule does not require schools to conduct independent testing for lead in drinking water. Instead, Newark's schools rely on the City's compliance with the Lead and Copper Rule, along with state-mandated testing. *See* N.J.A.C. § 6A:26-12.4. However, because Newark's schools receive water from the same water system as Newark's homes and businesses, the high lead levels in schools' drinking water support Plaintiffs' claims that City Defendants have violated the Lead and Copper Rule, including by failing to install and maintain corrosion control treatment.

astronomically high, reaching 820 ppb at one Newark elementary school. PA 48. And at least one fountain at a Newark school is currently functioning with an expired filter or a filter that has not been properly maintained. Gianni Decl. ¶ 15; PA 184-185; Jordan Decl. ¶ 18.

In the months that followed the March 2016 discovery of lead in the drinking water at Newark's schools, Defendant Baraka assured residents that the lead problem was limited to schools, and that the City's water was "still safe" and "drinkable." PA 51. Defendant Baraka made these statements, even though Newark's homes and businesses receive water from the same system that provides drinking water to Newark's schools. ECF No. 14 ¶¶ 62, 64.

By summer 2016, the New Jersey Department of Environmental Protection (NJDEP) began "re-evaluating the steps that have been taken to ensure" compliance with the Lead and Copper Rule in Newark. PA 53-54. As part of NJDEP's reevaluation, the City was required to take more drinking water samples, more often. *Id.* Immediately after the new sampling regime took effect, Newark began to report a dramatic spike in concentrations of lead in the City's drinking water. PA 56.

During the first six-month monitoring period of 2017—from January to June—over 22% of drinking water samples across the City exceeded 15 ppb. PA 56, 58. In that same period, the City's drinking water reached 27 ppb of

lead at the 90th percentile of samples collected.⁸ PA 56. In other words, 10% of samples collected exceeded 27 ppb of lead, almost double the federal action level. During that period, six homes tested above 50 ppb and one address tested at 137 ppb. PA 58. On July 11, 2017, NJDEP notified the City that it had exceeded the lead action level under the Lead and Copper Rule. PA 60-64.

The City's elevated lead levels persisted during the second six-month monitoring period of 2017, reaching 26.7 ppb at the 90th percentile.⁹ PA 56. Many samples exceeded that level, with 13 addresses testing above 30 ppb and four addresses testing above 50 ppb. PA 66-68. As a result, the City triggered a second action level exceedance at the close of December 2017, and NJDEP issued a second notice of non-compliance to the City. PA 70-74.

This pattern has continued into 2018. Between January and June 2018, numerous homes tested above 30 ppb, with one home testing as high as 182 ppb, more than 12 times the federal action level. PA 76-77. The City triggered

⁸ Each time a water system completes a six-month monitoring period, it must calculate whether more than 10% of the samples collected have a lead concentration greater than 15 ppb. *See* 40 C.F.R. § 141.80(c)(1). A 90th percentile of 27 means that 10% of samples had a concentration of 27 ppb for lead or greater.

⁹ Throughout this motion, Plaintiffs refer to 90th percentile calculations as reported by the City on the New Jersey Drinking Water Watch Website. PA 56. However, Plaintiffs cannot confirm whether the City is complying with the Lead and Copper Rule's methodology for calculating the 90th percentile under 40 CFR § 141.80(c)(3).

a third-consecutive action level exceedance, and NJDEP issued another notice of non-compliance to the City. PA 79.

Plaintiffs have attempted to discuss the serious nature of the lead contamination with the City Defendants on numerous occasions, beginning in September 2017 when Plaintiff Natural Resources Defense Council (NRDC) and a coalition of New Jersey and Newark organizations sent a letter demanding that the City take specific steps to address the crisis. PA 18. Plaintiffs' counsel then met with City representatives on October 27, 2017, to discuss the letter, the high lead concentrations, and the City Defendants' violations. *See* ECF No. 12 at 4. However, between November 2017 and April 2018, City Defendants refused to meaningfully discuss Plaintiffs' requests for information about the causes of the exceedances and the City Defendants' violations. *Id.* As a result, Plaintiffs submitted a 60-day notice of intent to sue on April 24, 2018. ECF No. 1-1. During the notice period, counsel for Plaintiffs attempted to contact counsel for City Defendants on several occasions to discuss Plaintiffs' claims. *See* ECF No. 12 at 5. City Defendants either did not respond or declined Plaintiffs' requests for a meeting. *Id.* Plaintiffs determined that this Court's intervention was required and filed their complaint on June 26, 2018. ECF No. 1.

On July 20, 2018, the City and NJDEP entered into a Compliance Agreement and Order, which authorizes extensions to regulatory deadlines, allows for incomplete submission of mandatory documentation, excuses the City from paying for required infrastructure improvements, and sets a protracted schedule for the abatement of lead contamination in the City's drinking water. ECF No. 15-6.

The City's lead levels show no sign of decline and, in fact, appear to have substantially worsened. In the eight weeks since the second monitoring period of 2018 began, more than half of the reported drinking water samples have tested above the 15 ppb action level. PA 56, 87. While the current monitoring period is still underway, at least 10% of the City's samples thus far have exceeded 53.1 ppb, with eight homes above 40 ppb, including the home of one of Plaintiffs' members. Jordan Decl. ¶ 9; PA 56. Although nearly two-and-a-half years have passed since high lead levels were reported in Newark's schools, the City recently reported a home with 250 ppb in its drinking water, the highest residential sampling result since the City increased sampling volume and frequency in early 2017. PA 87.

The concentrations of lead in Newark's drinking water are especially concerning because they compound long-standing community concerns about Newark children's exposure to toxic levels of lead. Exposure to lead from

multiple sources presents a cumulative toxicological threat to children and adults. Landrigan Decl. ¶ 34. For example, older cities, like Newark, have a high proportion of housing built before 1978, when the federal government prohibited consumer uses of lead-containing paint. *Id.* ¶ 33. Thus, many Newark residents may be exposed to lead through multiple sources, including through their drinking water and lead paint in their homes. *Id.* A 2016 study showed that elevated blood lead levels affect Newark children at a rate three times greater than children in the State of New Jersey overall. *Id.* ¶ 32.

STANDARD OF REVIEW

In the Third Circuit, courts consider two primary factors when considering whether to grant a preliminary injunction: “(1) a reasonable probability of eventual success in the litigation, and (2) that [movant] will be irreparably injured . . . if relief is not granted.” *Reilly v. City of Harrisburg*, 858 F.3d 173, 176 (3d Cir. 2017) (quoting *Del. River Port Auth. v. Transam. Trailer Transp., Inc.*, 501 F.2d 917, 919-20 (3d Cir. 1974)). If those “gateway” factors are met, the court must also consider: “(3) the possibility of harm to other interested persons from the grant or denial of the injunction, and (4) the public interest.” *Id.* Courts “balance those four factors so long as the party seeking the injunction meets the threshold on the first two.” *Id.* at 176, 179. The Third Circuit employs a sliding scale approach, such that “the more net harm an

injunction can prevent, the weaker the plaintiff's claim on the merits can be while still supporting some preliminary relief." *Id.* (citing *Hoosier Energy Rural Elec. Co-op., Inc. v. John Hancock Life Ins. Co.*, 582 F.3d 721, 725 (7th Cir. 2009)).

ARGUMENT

I. Plaintiffs are likely to succeed on the merits of their Safe Drinking Water Act claims

The party seeking a preliminary injunction must show "a likelihood of success on the merits." *Reilly*, 858 F.3d at 179. "A 'likelihood' does not mean more likely than not." *Id.* Instead, the movant must show its chances of winning on the merits are "significantly better than negligible." *Id.*

A. Plaintiffs have standing to bring their claims

Plaintiffs Newark Education Workers Caucus (NEW Caucus) and NRDC have associational standing to bring this case on behalf of their members. Plaintiffs' members are concerned about the effect lead-contaminated water has already had and will continue to have on their health and the health of their families, students, and community. They are burdened physically, emotionally, and financially by their exposure to lead and their struggle to secure safe water for themselves and their families.¹⁰ Additionally,

¹⁰ Alston Singleton Decl. ¶¶ 4, 6-13; Mitchelson-Parker Decl. ¶¶ 4, 6-10; Moussab Decl. ¶¶ 5-14; Jordan Decl. ¶¶ 5, 9-11, 15, 16-17, 21; Gianni Decl. ¶¶ 6, 14, 16; Canik Decl. ¶ 11; Vicino Decl. ¶¶ 4, 6, 8, 11; Fenniman Decl. ¶ 4-9; Haggag Decl. ¶¶ 3-6.

Plaintiff NEW Caucus’s members are forced to carry extreme stress and anxiety, teaching students who may be limited in their ability to learn because of the devastating effects of lead.¹¹ Plaintiffs’ members’ exposure to lead-contaminated water, the related uncertainty and burdens associated with finding alternative sources of safe water and, in many cases, the worry they endure as teachers of affected students, are concrete injuries, traceable to City Defendants’ Safe Drinking Water Act violations, and redressable by the relief Plaintiffs seek.¹²

B. City Defendants are liable for violations of the Safe Drinking Act as owners and operators of the Water System

The “owners and operators” of a public water system are responsible for ensuring that the system complies with the Safe Drinking Water Act. *See United States v. Ritz*, 772 F. Supp. 2d 1017, 1021 (S.D. Ind. 2011); *United States v. Alisal Water Corp.*, 114 F. Supp. 2d 927, 937-38 (N.D. Cal. 2000). The City of Newark, through its Department of Water and Sewer Utilities, owns and

¹¹ Gianni Decl. ¶¶ 3-13; Moussab Decl. ¶ 15; Rippey Decl. ¶ 6; Jordan Decl. ¶¶ 6, 18-21; Canik Decl. ¶¶ 5-10.

¹² Plaintiffs satisfy the remaining requirements for associational standing. Ensuring access to safe drinking water for Newark residents is germane to the interests of the Plaintiffs, *see* Trujillo Decl. ¶¶ 5-10; Moussab Decl. ¶¶ 16, 17, and the declaratory and injunctive relief requested does not require participation of their members. *See Hunt v. Wash. State Apple Advert Comm’n*, 432 U.S. 333, 343 (1977).

operates a public community water system. *See* N.J.A.C. § 7:10-1.3 (defining public community water system); Newark Mun. Code 2:17-1; ECF No. 15-6. The Mayor and Director of the Water Department are also operators because they are actively involved in managing the Water System. *See United States v. Bestfoods*, 524 U.S. 51, 66-67 (1998).¹³

C. City Defendants have violated, and continue to violate the Safe Drinking Water Act

Congress passed the Safe Drinking Water Act, 42 U.S.C. §§ 300f–300j-27, in 1974 to protect the public from harmful contaminants in their drinking water. In 1991, EPA promulgated the Lead and Copper Rule, pursuant to the Act, to establish requirements for monitoring and controlling lead in drinking water. *See* 56 Fed. Reg. 26,460, 26,462 (June 7, 1991); 40 C.F.R. §§ 141.80–141.91. Plaintiffs are likely to succeed on the merits of the Safe Drinking Water Act claims described below.

¹³ While *Bestfoods* was decided under another environmental statute, courts apply the same ordinary meaning of “operator” in the Safe Drinking Water Act context. *See, e.g., United States v. County of Westchester*, No. 13-CV-5475 NSR, 2014 WL 1759798, at *6 (S.D.N.Y. Apr. 28, 2014); *Ritz*, 772 F. Supp. 2d at 1022; *Alisal Water Corp.*, 114 F. Supp. 2d at 937-38.

1. City Defendants are violating the Safe Drinking Water Act's requirement to implement and maintain optimal corrosion control

The cause of the City's drinking water crisis is the City's failure to adequately treat its water to control and minimize corrosion from lead pipes into the drinking water that flows through those pipes. Giammar Decl. ¶¶ 16, 22, 30-32. Absent adequate treatment, the water corrodes leaded materials in the City's water distribution infrastructure, including the lead service lines that carry water to homes and businesses and lead plumbing within residents' homes. *Id.* ¶¶ 12, 15. As a result of this corrosion, lead particles flake into the water that flows through the pipes. *Id.* ¶¶ 15, 16. That lead is delivered into the water that flows from residents' taps. *Id.* ¶ 10, 16.

To prevent exactly this situation, the Lead and Copper Rule requires water systems to implement and maintain treatment measures to minimize corrosion. 40 C.F.R. § 141.80(d). All large water systems (systems, like Newark's, that service more than 50,000 people) must implement optimal corrosion control treatment. *Id.* § 141.81(d)(4). This treatment minimizes lead concentrations in consumers' tap water, often by introducing chemical additives to reduce corrosion of lead pipes and solder. *See id.* § 141.2. The Lead and Copper Rule sets forth specific steps and deadlines that must be followed to achieve optimal corrosion control treatment. *Id.* § 141.81(d). The Rule

required optimal corrosion control treatment to have been designated and installed by the 1990s. Thereafter, a system must “continue to operate and maintain optimal corrosion control treatment.” *Id.* § 141.82(g).

Newark’s sustained action level exceedances evidence its failure to install and maintain optimal corrosion control treatment.¹⁴ Giammar Decl. ¶ 22. To adequately install and maintain optimal corrosion control treatment, a system must minimize lead concentrations to the maximum extent feasible. *See* 40 C.F.R. § 141.2; 56 Fed. Reg. at 26,477, 26,491. A system experiencing lead levels that are as high as City Defendants’ levels is not maintaining optimal corrosion control treatment.¹⁵ Giammar Decl. ¶¶ 30, 32.

NJDEP agrees that Newark is not maintaining optimal corrosion control treatment. NJDEP has issued at least three notices of non-compliance to Newark over the last year, at least one of which stated that “the Newark Water Department is deemed to no longer have optimized corrosion control

¹⁴ For brevity, Plaintiffs have addressed two separate claims—City Defendants’ failure to *install* optimal corrosion control treatment, ECF No 1, at ¶¶ 135-136, and City Defendants’ failure to *operate and maintain* optimal corrosion control treatment, ECF No. 1, at ¶¶ 137-138—in a single section.

¹⁵ A lead action level exceedance is indicative of a failure to control corrosion. Giammar Decl. ¶¶ 22, 30, 32. However, a system that tests below the 15 ppb action level, but that does not have low, stable lead levels, has still failed to optimize corrosion control treatment.

treatment.”¹⁶ PA 62, ¶ 5. And the Compliance Agreement and Order, entered into by City Defendants and NJDEP last month, requires the City to install corrosion control treatment. ECF No. 15-6 at 7,9. Such an obligation would not be necessary if City Defendants were already minimizing lead in drinking water to the maximum extent feasible, as required. *See* 40 C.F.R. § 141.2; 56 Fed. Reg. at 26,477, 26,491.

Plaintiffs have attempted to confirm the City’s failure to install and maintain optimal corrosion control by requesting records from City Defendants and NJDEP through the New Jersey Open Public Records Act. To date, despite several months of litigation in New Jersey Superior Court, and two orders from that court requiring City Defendants to produce records regarding corrosion control treatment, no such records have been produced. PA 101, 105. The City Defendants now claim the records do not exist. PA 107.

2. City Defendants are violating the Safe Drinking Water Act’s sampling requirements

Under the Lead and Copper Rule, water systems are required to identify a pool of sampling sites prior to commencing sampling. 40 C.F.R. § 141.86(a).

¹⁶ In July 2018, Plaintiffs requested the June 27, 2018 notice of non-compliance from City Defendants and NJDEP through the New Jersey Open Public Records Act. While it has not been produced within the required deadline, Plaintiffs records indicate that a third notice of non-compliance was issued on June 27, 2018. *See, e.g.*, PA 79.

Water systems that serve more than 100,000 people must collect and test at least 100 tap water samples from their sampling pool during each six-month monitoring period. *Id.* § 141.86(c)-(d). Water systems must prioritize testing of sites that are most at risk for elevated lead levels, called Tier 1 sites. *See id.* § 141.86(a)(3). These are sites with lead service lines, lead pipes, or copper pipes with lead solder. *Id.* In meeting the 100-sample requirement, water systems must first sample available Tier 1 sites. *Id.* § 141.86(a)(3)-(5). Systems may use lower-priority Tier 2 or Tier 3 sites to meet the 100-sample quota only if they do not have sufficient Tier 1 sites. *Id.*

City Defendants are violating the Lead and Copper Rule's sampling requirements. The City has impermissibly sampled lower-priority sites that are less likely to have high lead concentrations. During the first six-month monitoring period of 2017, Newark's water system listed approximately 131 Tier 1 sites in its sampling pool. However, sampling site certification forms show that it sampled only 40 Tier 1 sites, even though it was required to sample at least 100 Tier 1 sites. PA 110-119; PA 58; 40 C.F.R. § 141.86(a)(3)-(5). Newark's insufficient sampling of high-risk sites continued in the second monitoring period of 2017. Between July and December 2017, Newark sampled only 88 Tier 1 sites, despite having more than 100 available Tier 1 sites. PA 66-68. In diluting its sampling pool with lower-tier sites that are less

likely to have lead contamination, the City Defendants may be systematically under-reporting the true extent of lead in the City's drinking water.¹⁷

Newark's ongoing violations of the Lead and Copper Rule's sampling requirements are also supported by the startling discrepancy between the already high lead levels associated with samples taken from the City's sampling pool and the even higher levels in samples requested by Newark residents whose homes are not in the sampling pool. PA 127 (compare sample point ID "DS," which are customer requests, to "PBCU"). Since January 2017, samples taken in response to customer requests are, on average, nearly three times higher than samples taken from the Newark's sampling pool. Carpenter-Gold Decl. ¶¶ 2-7. Since July 1, 2018, 24 of the 38 reported samples have been requested by customers. PA 127. These customer-requested samples show lead concentrations of 61.6 ppb at the 90th percentile, more than twice the 90th percentile levels Newark reported from its sampling pool in two of the last three monitoring periods, and three times the 90th percentile level in the most recent monitoring period. PA 129. This discrepancy supports Newark's failure to sample from sufficient high-priority, Tier 1 homes: if Newark were

¹⁷ Exchanges between the City and NJDEP reveal that Newark has repeatedly failed to submit lead sampling plans and certifications forms in compliance with the Lead and Copper Rule. PA 121-125.

sampling the homes most likely to have high lead concentrations as part of their sampling plan, the samples taken outside of their sampling plan—as customer requests—should show the same or lower, not significantly higher, concentrations of lead.¹⁸

3. City Defendants are violating the Safe Drinking Water Act’s requirement to conduct public education

When more than 10% of the water samples collected during a monitoring period exceed the federal action level, the Lead and Copper Rule requires the water system to deliver public education materials about lead levels and exposure to each customer. 40 C.F.R. §§ 141.80(c)(1), 141.85(a), (b). The required public education materials must include a warning that lead exposure can cause serious health effects, including “damage to the brain and kidneys” and “lowered IQ in children.” *Id.* § 141.85(a)(1)(ii). The materials must also describe precautions residents should take, how residents can have their water tested for lead, and the steps being taken to address the problem, among other information. *Id.* § 141.85(a)(1)(iv), (v). The materials must be

¹⁸ The discrepancy could also indicate that the City may not be complying with the Lead and Copper Rule’s requirements for sampling when drawing samples from their sampling pool. For example, flushing water from the tap before taking first draw drinking water samples may minimize the lead concentration in the sample. *See* 40 C.F.R. § 141.2 (defining “first draw sample” to mean a sample “that has been standing in plumbing pipes at least 6 hours and is collected without flushing the tap.”)

delivered to every bill-paying customer within sixty days of the close of the monitoring period in which the exceedance occurred. *Id.* § 141.85(b)(2).

Newark's water system failed to notify as many as 20,000 service account holders about its June 30, 2017, action level exceedance within the sixty days, in violation of the Lead and Copper Rule. PA 131, 133. Email correspondence between NJDEP and the City shows that only 36,800 public education notices were mailed after the June 2017 action level exceedance, compared to the 57,615 service connections in the City of Newark. *Id.*; PA 135. These failures are ongoing. In the July 20, 2018 Compliance Agreement and Order, City Defendants admit that they "failed to comply with the billing notice public education requirements in the last quarter of the [sic] 2017 and the first quarter of 2018." ECF No. 15-6, n.1; *see also* PA 79. Thus, for at least the last three consecutive monitoring periods, City Defendants have violated the Lead and Copper Rule's public education requirements.

These ongoing violations have deprived Plaintiffs' members and Newark residents of notice of the City's high lead levels, the effects lead can have on their health, and the steps they can take to protect themselves and their families. Alston-Singleton Decl. ¶¶ 6,7; Jordan Decl. ¶ 12. To make matters worse, during the same period, City Defendants repeatedly encouraged Newark residents to drink the lead-contaminated water. *See infra* Part II.B.1.

As a result, many people who work and live in Newark are uncertain about something the public education requirement intended to make clear: whether they may be risking their health when drinking a glass of water. Alston-Singleton Decl. ¶¶ 7,12; Mitchelson-Parker Decl. ¶ 7. City Defendants' egregious misleading statements, and blatant disregard for the need to educate at-risk residents, undermine the effectiveness of any public education materials that City Defendants did timely mail.

II. Plaintiffs are suffering irreparable harm and will continue to suffer irreparable harm if preliminary relief is not granted

Plaintiffs' members and others who live and work in Newark will "be irreparably injured [] if relief is not granted." *Reilly*, 858 F.3d at 176 (citations omitted). Having safe water to drink is one of the "fundamental elements of life." H.R. Rep. No. 93-1185 (1974), *reprinted in* 1974 U.S.C.C.A.N. 6454, 6457. The lack of access to safe drinking water constitutes irreparable harm. *See Concerned Pastors for Soc. Action v. Khouri*, 217 F. Supp. 3d 960, 970 (E.D. Mich. 2016) (all people "need daily access to a source of safe drinking water"); *see also United States v. Tzavah Urban Renewal Corp.*, 696 F. Supp. 1013, 1022 (D.N.J. 1988) (emission of asbestos dust constituted irreparable harm).

Injuries to the environment, like the public health injuries at issue here, are "especially difficult to remedy and [are] usually irreparable." *S. Camden*

Citizens in Action v. N.J. Dep't of Env'tl. Prot., 145 F. Supp. 2d 446, 499 (D.N.J. 2001) (subsequent history omitted); *see also Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987). Irreparable harm is based on not only the potential exposure to unsafe water, but also the uncertainty, anxiety, stress, and financial hardship of repeatedly seeking out alternative safe drinking water sources. *See, e.g., Verville v. Int'l Ass'n of Machinists & Aerospace Workers*, 520 F.2d 615, 620 (6th Cir. 1975); *see also Johnson v. Wetzel*, 209 F. Supp. 3d 766, 781 (M.D. Pa. 2016) (“anxiety” and “stress” are irreparable injuries). Injunctive relief is necessary to prevent these ongoing harms.

A. Newark’s tap water is not safe to drink and will not be safe to drink for the immediate future

1. Newark’s tap water is not safe to drink

Newark’s water has dangerously high concentrations of lead, even when measured by City Defendants’ flawed sampling of lower-priority sites that are less likely to show lead contamination. *See supra* pp. 16-19. There is no safe level of lead in drinking water. Landrigan Decl. ¶ 16. Lead has toxic effects on multiple organ systems at even relatively low levels of exposure. *Id.* Exposure to lead causes diminution in brain function and reduction in achievement that

can last throughout life. *Id.* ¶¶ 17, 19, 21-23. The effects of lead exposure are often untreatable and irreversible. *Id.* ¶ 29.

Developing fetuses, infants, and young children are especially vulnerable to lead exposure. *Id.* ¶ 17. Lead can pass from mothers to developing fetuses. *Id.* ¶ 18. It can also pass from nursing mothers to their babies through breastmilk. *Id.* ¶ 20. Infants absorb lead at higher rates than adults, particularly lead from drinking water. *Id.* ¶ 17. Young children also have a greater risk of exposure from lead-contaminated water because, pound for pound, they drink more water than older children and adults. *Id.*

In children, even low levels of lead exposure can cause a wide array of problems, including reduced IQ scores, poorer academic performance, developmental delays, Attention Deficit and Hyperactivity Disorder (known as ADHD), and other behavioral and learning problems. *Id.* ¶¶ 21-23. Children with elevated blood lead levels may never reach the same peak cognitive ability as children who have less lead exposure. *Id.* ¶ 29.

Exposure to lead also harms adults, including by harming the nervous, cardiovascular, and circulatory systems, causing decreased kidney function, and gastrointestinal damage. *Id.* ¶ 25. Adults exposed to lead may also suffer from muscle and joint pain, memory and concentration problems, and high blood pressure or hypertension. *Id.* Women who have been exposed to lead are

more likely to experience premature birth, miscarriage, and delays in time to achieve pregnancy. *Id.* ¶ 26. Studies have shown a link between low-level exposure to lead and increased risk of premature death. *Id.* ¶ 28.

Even slightly elevated blood lead levels are linked to increased antisocial, disruptive, and violent behaviors, and to increased risk of criminal arrests. *Id.* ¶ 30. Prenatal and postnatal blood lead concentrations are associated with higher rates of total arrests and/or arrests for offenses involving violence. *Id.* Exposure to lead in early life can be a powerful determinant of behavior decades later in adult life. *Id.*

Most of the lead that is absorbed by the body is stored in a person's bones, where it can remain for years. *Id.* ¶ 14. Lead in bones can be re-released into the blood stream during times of physiological change, including pregnancy, lactation, fractures, menopause, and other times of stress. *Id.* For example, the concentration of lead in a woman's blood increases by about 30% after menopause. *Id.* For this reason, measuring lead in blood likely will not fully capture a person's lifetime exposures and risks. *Id.* ¶ 15.

2. People who live and work in Newark will not have access to safe water for the immediate future

City Defendants have no immediate plans to provide safe water to those that live and work in Newark. *See generally* ECF No. 15-6. In fact, City Defendants and NJDEP have agreed that Newark need not do so until late

2020, at the earliest. *See id.* ¶¶ 28.B, 31.B; *see also* ECF No. 15-1, 24 (describing six-month timeframe for designation of treatment). Thus, under the current plan, City Defendants are not required to implement optimal corrosion control treatment until over three years from the date of the City’s first lead action level exceedance, and nearly five years from the date lead was found in drinking water at nearly half of Newark’s schools. In the interim, those served by Newark’s water system must not be left to drink toxic water.

B. Many Newark residents do not know whether their water contains lead and, therefore, do not know whether they need to take precautions

Health experts recommend precautions families can take to protect themselves from lead exposure. These steps include letting the tap run before drinking, installing filters that are certified to remove lead, and regularly cleaning faucet aerators, among other steps. PA 142. However, Newark residents will take these and other steps only if they know they are at risk.

Many Newark residents lack this knowledge because Newark has failed to comply with the Safe Drinking Water Act’s public education requirements. And despite their promises, PA 147, 150, 155, City Defendants have failed to provide drinking water testing and lead service line inspections to the City’s residents. To make matters worse, City Defendants have repeatedly assured residents that the City’s water is “safe to drink” and “pure,” effectively

encouraging residents to drink the lead-contaminated water. Understandably, residents are uncertain and confused and, as a result, many are not taking the steps health experts unanimously recommend. This uncertainty—brought on by City Defendants’ conduct—will irreparably harm Plaintiffs’ members as well as others that depend on Newark’s water.

1. City Defendants’ statements encouraging Newark residents to drink the water

For more than two years, City Defendants, including both Defendant Baraka and Defendant Adebowale, have issued statements assuring Newark residents that their water is safe. First, in March 2016, after lead was found in Newark’s schools, Defendant Baraka stated that “the water system in Newark is still safe, it’s still drinkable.” PA 51. Later that month, Defendant Baraka told residents “[t]here is nothing wrong with Newark’s water.” PA 159.

More than a year later, in September 2017, after City-wide results consistently showed lead levels above the federal action level, a coalition of Newark and New Jersey community groups sent City Defendants a public letter, urging them to take specific action. PA 18. Around the same time, Defendant Baraka publicly committed to “act swiftly, competently, and professionally to eliminate this menace.” PA 167. He has not kept those promises.

On April 27, 2018, City Defendants issued a press release encouraging Newark residents to drink the water. Newark officials stated, “[t]he truth is that the water supplied by the City is safe to drink . . . the City’s water is not contaminated with lead . . . our water is safe.” PA 146-147. The City followed up that press release with an automated robocall to Newark residents again assuring residents that the City’s water is safe to drink and is some of the best water in New Jersey. Moussab Decl. ¶ 12; Jordan Decl. ¶ 14. Two months later, the City again made similar statements, including that “the water supplied by the city is pure, safe and fully complies with federal and state regulations The City’s water is not contaminated with lead . . . this issue is confined to a limited number of homes with lead service lines.” PA 170-172. The City made these statements knowing there are between 18,465 and 23,584 lead service lines in the City. *Id.*; *see also* Compliance Agreement and Order, ECF No. 15-6, ¶¶ 14, 34.

2. City Defendants’ failure to respond to Newark residents’ requests for testing and inspections

The City claims to offer free drinking water testing and lead service line inspections for any resident who requests such services. PA 147, 150, 155.

However, many residents' requests for these basic services have gone unanswered.

Yvette Jordan, a Newark resident and member of Plaintiff NEW Caucus, repeatedly asked the City to test her home's water, without success. Jordan Decl. ¶ 7. She initially requested testing by telephone but did not receive a return call. *Id.* Mrs. Jordan then followed up with a second request by email. *Id.* In response, she received a text message stating "I hope you know it's not free" and demanding \$300.¹⁹ *Id.*; PA 174. Mrs. Jordan was then told that her water could not be tested for weeks. Jordan Decl. ¶ 8. After the City finally completed the requested testing and provided the results—months after her original request—Mrs. Jordan learned that the drinking water in her home has a lead level of 42.2 ppb, nearly three times the federal action level. *Id.* ¶ 9.

Mrs. Jordan's experience is not unique. Earlier this year, Felicia Alston-Singleton, a Newark resident and NRDC member, became concerned because her water was discolored. Alston-Singleton Decl. ¶ 8. She asked her landlord, the Newark Housing Authority, for information on whether her drinking water may have lead. *Id.* ¶ 6. In response, she was told to contact the City to request

¹⁹ The rate for drinking water testing for lead, including testing equipment and lab analysis, is approximately \$65. PA 176-177. At least one non-profit testing service offers pay-what-you-can testing starting at \$12. *Id.*

drinking water testing, which she did by telephone in March 2018. *Id.* The City agreed to test Ms. Alston-Singleton's water, but never scheduled a test date, and never provided Ms. Alston-Singleton with any results. *Id.* ¶¶ 6,7. To date, Ms. Alston-Singleton has not received any information or other educational materials from the City or the Housing Authority about lead contamination in her drinking water. *Id.*; *see also* Moussab Decl. ¶ 13.

City Defendants have also failed to fulfill their commitments to inspect Newark residents' homes for lead service lines. Moussab Decl. ¶ 13. On at least three occasions over the last three months Albert Moussab, Chair of Plaintiff NEW Caucus and father of two young children, contacted the City, both by email and phone, to request that the City test his home's water. *Id.* After months, the City finally returned his call, but deferred Mr. Moussab's request for testing. Instead, they would start by inspecting his home for a lead service line. *Id.* To date, the City still has not told Mr. Moussab whether the promised inspection has taken place. *Id.* And Mr. Moussab still does not know whether his home is served by a lead service line or whether there are elevated lead levels in his home's drinking water. *Id.*

Many people have lost trust in the City because of its repeated failures to provide essential services. Mitchelson-Parker Decl. ¶¶ 9,10; Haggag Decl. ¶ 4. Some of residents have not requested water testing and lead service line

inspections because they are concerned that their requests will go unanswered or the results will be unreliable. Mitchelson-Parker Decl. ¶¶ 9,10. These residents are forced to shoulder the substantial financial burden of purchasing bottled water for their families to use for drinking and cooking. *Id.* ¶ 4; Alston-Singleton Decl. ¶ 10. Still other families whose water has not been tested, or who have made unsuccessful requests for testing, may be drinking water that is contaminated with high levels of lead. Moussab Decl. ¶¶ 8-9.

City Defendants' haphazard approach to providing necessary services, including drinking water testing and lead service line inspections, has left Plaintiffs' members, and others who live and work in Newark, without the resources necessary to know whether their families are affected by the City's lead problem. Without such knowledge, many families do not know what precautions they must take to protect themselves.

C. Non-profit and volunteer relief efforts are inadequate to fill the gaps in the government's response

Many Newark and New Jersey-based community organizations have joined forces to address this crisis. For example, just this week, Plaintiffs announced plans to distribute 1,435 water filters and water filter replacement cartridges to the most vulnerable Newark residents, free of charge. PA 179-182. Local community organizations have volunteered their time and resources to distribute these much-needed filters to at-risk Newark residents.

Id. But the groups leading these efforts have limited resources and are unable to fill the gap in services that should be provided by the City. Nor should they have to, especially given that City Defendants are violating the law.

D. The lack of safe water is creating stress, fear, and financial hardship for Plaintiffs' members and others who rely on Newark's water

Plaintiffs' members experience daily stress because of the City's lead-contaminated drinking water. Mr. Moussab constantly worries because his daughter—age 5—frequently drank from the water fountains at Samuel Berliner School, one of the schools that reported elevated lead levels in 2016. Moussab Decl. ¶ 6. He worries “whether she could have been harmed by the water contamination” and whether she will be exposed to lead at her new school. *Id.* ¶¶ 6, 7. Mr. Moussab and his family are also Newark residents, and rely on tap water at home for drinking and cooking. *Id.* ¶¶ 8, 9. Mr. Moussab and his wife worry that their children could “develop serious developmental, intellectual, or behavioral conditions, just from the everyday act of drinking water.” *Id.* ¶ 7.

Ms. Alston-Singleton is also terrified about the high levels of lead in the City's drinking water. *Id.* ¶ 9. She worries that her young grandchildren are being exposed to lead in her home, especially because filters have not been an effective solution for her family. *Id.* ¶¶ 9, 11. Part of the reason she is so

frightened is because she “get[s] so little information about [her] home’s water” from the City or her landlord, the Newark Housing Authority. *Id.* ¶ 12. *See also* Mitchelson-Parker Decl. ¶ 6 (describing constant worry that grandchildren are endangered by Newark’s water).

Newark residents also worry about the cost of protecting themselves and their families from lead-contaminated drinking water. For many families, purchasing filters would be very expensive, as would buying bottled water for drinking and cooking. Lisa Mitchelson-Parker, a Newark resident and member of Plaintiff NRDC, has “tried hard to protect” herself and her family from lead exposure, “but it is expensive” and she feels “there’s only so much [she] can do.” *Id.* ¶ 4. Buying bottled water costs Ms. Mitchelson-Parker about \$40 a month. *Id.* Because she is “retired and live[s] on a fixed income, this expense is a real burden.” *Id.* Others who rely on Newark’s water also have difficulty paying for safe water for themselves and their families. Alston-Singleton Decl. ¶ 10; Jordan Decl. ¶¶ 11, 21; Gianni Decl. ¶ 14; Haggag Decl. ¶ 4; Moussab Decl. ¶ 10.

Newark residents are also concerned about whether they may be forced to shoulder the substantial cost of replacing the lead service lines underneath their homes. Jordan Decl. ¶ 16; Moussab Decl. ¶ 10. City Defendants have sent mailings to some Newark residents offering enrollment in a program to replace

lead service lines for what City Defendants have called a “nominal cost.” PA 171. However, the actual cost to residents is far from nominal: \$1,000 is a substantial payment that many Newark residents cannot bear. PA 152,171; Jordan Decl. ¶¶ 16, 21; Moussab Decl. ¶ 10; Mitchelson-Parker Decl. ¶ 8.

As educators, Plaintiff NEW Caucus’s members worry about the effect of lead exposure on their ability to teach their students. Moussab Decl. ¶ 14; Jordan Decl. ¶ 19; Rippey Decl. ¶¶ 6-7; Canik Decl. ¶¶ 5-7. As discussed above, even low levels of exposure to lead can cause diminished capacity for learning and behavioral problems, including ADHD. *See infra* Part II.A.1. For Nancy Gianni, a NEW Caucus member and first-grade teacher at South Street Elementary School, teaching kids that suffer from these conditions creates challenges in the classroom, and takes up an immense amount of attention and resources. Gianni Decl. ¶¶ 8-12. As a result, it has become harder for Mrs. Gianni to teach the way she needs to teach in order for her students to learn and be ready for the next grade level. *Id.* ¶ 12. The stress of teaching so many students that suffer from these challenges has even negatively impacted her own health and potential decisions about her retirement. *Id.* Other NEW Caucus members also worry that their effectiveness as teachers, and their students’ education and ability to learn, are being harmed by the ongoing lead contamination. Rippey Decl. ¶ 6; Jordan Decl. ¶¶ 19-21; Moussab Decl. ¶ 15;

Canik Decl. ¶¶ 9-10. Likewise, they are concerned that they are being exposed to lead while teaching in Newark’s public schools and working in Newark.

Gianni Decl. ¶¶ 14, 16; Jordan Decl. ¶ 17; Rippey Decl. ¶ 5.

III. Ensuring that Newark residents have access to safe drinking water serves the public interest

A. Access to safe water is in the public interest

Access to safe drinking water is a “fundamental” and “unusually compelling public interest.” *Alisal Water Corp.*, 431 F.3d at 656; *see also In re Methyl Tertiary Butyl Ether (MTBE) Prods. Liab. Litig.*, 725 F.3d 65, 112 (2d Cir. 2013). The protection of environmental and public health rights is in the public interest. *See Kos Pharm., Inc. v. Andrx Corp.*, 369 F.3d 700, 730-31 (3d Cir. 2004); *S. Camden Citizens in Action*, 145 F. Supp. 2d at 502. The Safe Drinking Water Act’s “minimum national standards for protection of public health,” H.R. Rep. No. 93-1185, 1974 U.S.C.C.A.N. at 6454, and the Lead and Copper Rule’s aim to “protect populations from exposure to lead . . . in drinking water,” 72 Fed. Reg. 57,782, 57,784 (Oct. 10, 2007), reflect this fundamental public interest in ensuring access to potable water supplies.

In promulgating the regulations under the Safe Drinking Water Act, EPA envisioned that water systems must provide to affected residents the very relief Plaintiffs now request. EPA regulations authorize states to compel water systems to provide an alternative water supply to residents if there is an

“unreasonable risk to health,” under certain circumstances. 42 U.S.C. § 300g-5; 40 C.F.R. §§ 142.57, 142.62(f)-(h). In such cases, the system is required to provide bottled water in “sufficient quantities” and “to every person supplied by the public water system,” and has the “responsibility” to “operate and maintain” filters. 40 C.F.R. § 142.62(g)-(h).

Exposure to lead, even at low levels for a short period, may change the course of a person’s life. Minimizing these effects serves the public interest because it will allow children in Newark to grow to their potential and adults to live without debilitating health burdens. Additionally, the relief requested will mitigate some of the fear and stress that Plaintiffs’ members and other Newark residents experience when worrying about the effects of lead from tap water on their own health and the health of their families. Plaintiffs’ requested relief, as described below, is narrowly tailored to achieve these goals until tap water in Newark is safe to drink.

IV. The requested relief will not harm City Defendants

“To determine whether granting preliminary injunctive relief would result in greater harm to the nonmovant, the court must examine the terms of the proposed injunction, consider the parties’ respective positions, and assess the ramifications of the requested relief.” *Johnson*, 209 F. Supp. 3d at 782.

Where, as here, defendants are governmental entities, “assessing the harm to

the opposing party and weighing the public interest . . . merge.” *Minard Run Oil Co. v. U.S. Forest Serv.*, 670 F.3d 236, 256 (3d Cir. 2011) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Thus, because the requested relief will serve the public interest, it will not cause substantial harm to City Defendants.

Even if City Defendants were to argue that the costs of the relief sought constitute harm, such costs are self-inflicted. Newark residents need the relief requested because of City Defendants’ disregard for their obligations under the Safe Drinking Water Act. Such “self-inflicted” harm “weighs in favor of granting preliminary injunctive relief.” *Pappan Enters. v. Hardee’s Food Sys., Inc.*, 143 F.3d 800, 806 (3d Cir. 1998). Indeed, the “injury a defendant might suffer if an injunction were imposed may be discounted by the fact that the defendant brought that injury upon itself.” *Novartis Consumer Health, Inc. v. Johnson & Johnson-Merck Consumer Pharm. Co.*, 290 F.3d 578, 596 (3d Cir. 2002). Even if this Court does consider the cost of implementing the relief to be a harm, such harm pales in comparison to the long-term health and behavioral effects that Plaintiffs’ members risk as a result of City Defendants’ violations. Any claimed monetary harm is therefore “substantially outweighed by the profound public interest at stake here.” *Alisal Water Corp.*, 431 F.3d at 656.

Additionally, the relief requested is narrowly tailored, minimizing the monetary burden City Defendants must bear. At this time, Plaintiffs have not

requested that this Court order an alternative water supply for every single resident. Plaintiffs recognize that providing such widespread preliminary relief could present challenges. Rather, as discussed below, Plaintiffs have limited the most expansive aspect of the requested relief—the provision of alternative water supply—to those most likely to be exposed to lead through their drinking water and harmed by that exposure. This restraint will significantly lessen the burden City Defendants face in providing temporary relief.

RELIEF REQUESTED

“District courts have the freedom to fashion preliminary equitable relief so long as they do so by exercising their sound discretion.” *Reilly*, 858 F.3d at 178-79 (internal quotations omitted). As explained more fully in the attached proposed order, Plaintiffs request that this Court require City Defendants to take the following steps necessary to help ensure that the most at-risk Newark residents have reliable access to safe drinking water.²⁰

²⁰ Plaintiffs respectfully request that this Court waive the bond requirement under Federal Rule of Civil Procedure 65(c) or, in the alternative, permit Plaintiffs to post a nominal bond. Plaintiffs qualify for waiver or a nominal bond because they are non-profit organizations that seek to “enforce an important federal right” arising out of a “comprehensive federal health and welfare statute[.]” *Temple Univ. v. White*, 941 F.2d 201, 220 (3d Cir. 1991); see also *S. Camden Citizens in Action*, 145 F. Supp. 2d at 504; *McCormack v. Clinton*, 872 F. Supp. 1320, 1328 (D.N.J. 1994); *Am. Freedom Def. Initiative v. Se. Penn. Tranp. Auth.*, 92 F. Supp. 3d 314, 331 (E.D. Pa. 2015); *Stilp v. Contino*, 629 F. Supp. 2d 449, 468 (M.D. Pa. 2009).

First, City Defendants must deliver an alternative water supply for those Newark residents who are most likely to suffer irreparable harm because of exposure to lead through drinking water.²¹ The City must deliver an alternative water supply in the form of bottled water to: (1) homes with pregnant or nursing women; (2) homes with children aged six or younger; (3) homes where water samples have tested above 10 ppb;²² and (4) homes that are served by a lead service line or have lead plumbing or copper plumbing with lead solder. Upon a household's request for a water filter in lieu of bottled water, City Defendants must install a drinking water filters, provide regular maintenance, and provide training. City Defendants must advertise the availability of the alternative water supply water, so that residents know that they have access to this resource, free of charge.

²¹ Some Newark residents may understandably believe that a single non-detect or low-lead test result may mean that their families are not exposed to lead in the drinking water. That is not the case. Giammar Decl. ¶ 23. Residents who have had their water tested, and have received a low or undetectable result, may be unknowingly drinking lead-contaminated water. *Id.* While a home's initial sampling results may not detect lead, a sample at the same faucet the very next week may show astronomical levels. *Id.* ¶¶ 24-25. Without an alternate water supply, even those residents who have had their water tested face risks of lead exposure.

²² Plaintiffs propose 10 ppb as a screening criterion, even though exposure to lead levels below 10 ppb are known to cause health effects. There is no safe level of lead exposure. However, Plaintiffs propose the 10 ppb threshold in an effort to facilitate narrow relief that is targeted to help those who are most at risk of exposure and the associated health effects.

Second, City Defendants must offer free drinking water testing to all Newark residents. City Defendants must respond to all requests for testing, and provide testing results, on an expedited and enforceable schedule. For those residents wishing to test their own water, City Defendants must provide training and self-test kits. For residents who prefer not to conduct the sampling on their own, City Defendants must conduct timely in-home testing. City Defendants must maintain a record of all homes it tests, including name, address, date of request, date of results provided, and concentration of lead in ppb. City Defendants must post online all sampling results, without identifying the name of the resident, within a week of receipt.

Third, City Defendants must engage in a public awareness campaign to ensure residents know about the alternative water supply and testing services. As part of that campaign, City Defendants must establish drinking water resource centers, where residents may pick up water bottles, filters, and drinking water testing kits, and may drop off completed testing kits for lab analysis. City Defendants must also provide educational materials, training, and other resources at the drinking water centers. City Defendants must advertise the water supply and testing programs in a major newspaper, on the City's website, and via flyer distribution (a) through schools to all homes with

school-aged children, and (b) at pre-natal care facilities, family planning clinics, and hospitals.

Finally, City Defendants must issue a press release to correct its past misstatements that Newark's water is safe to drink. City Defendants must refrain from making any similar statements that may discourage Newark residents from protecting themselves and their families, in the future.

As set forth in the attached proposed order, Plaintiffs ask this Court to order tailored relief focused on those residents who are most at risk of being exposed to and harmed by lead. Plaintiffs' requested relief is reasonable in view of the ongoing irreparable harm that City Defendants' violations of the Safe Drinking Water Act have caused—and will continue to cause—Plaintiffs' members and others who drink Newark's tap water.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court enter a preliminary injunction requiring City Defendants to provide relief for Newark residents who are currently exposed to lead through their drinking water.

Respectfully submitted,

Dated: August 24, 2018

/s/ Sara E. Imperiale

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