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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.,	)	Case No. 2:18-cv-11025-ES-CLW
	)	
Plaintiffs,	)	<b>Judge Esther Salas</b>
v.	)	<b>Magistrate Judge Cathy L. Waldor</b>
	)	
CITY OF NEWARK, RAS BARAKA, in	)	
his official capacity as Mayor of the City of	)	
Newark, NEWARK DEPARTMENT OF	)	
WATER AND SEWER UTILITIES,	)	<b>PLAINTIFFS' MEMORANDUM</b>
KAREEM ADEEM, in his official capacity	)	<b>IN SUPPORT OF EMERGENCY</b>
as Acting Director of the Newark	)	<b>MOTION TO REQUIRE CITY</b>
Department of Water and Sewer Utilities,	)	<b>DEFENDANTS TO EXPAND</b>
and CATHERINE R. McCABE, in her	)	<b>EXISTING FILTER PROGRAM</b>
official capacity as Commissioner of the	)	
New Jersey Department of Environmental	)	
Protection,	)	
	)	
Defendants.	)	

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## INTRODUCTION

City Defendants have known for over nine months—since at least February 2018—that legally required corrosion treatment to limit the release of lead into the City’s drinking water has never been effective at the Pequannock plant, one of its two water treatment plants. And, back in 2016, City Defendants learned that the valves that separate Pequannock water from water delivered from its other treatment plant—the Wanaque plant—were open, causing water from the troubled Pequannock plant to blend with the water received by residents in the Wanaque service area. As a result, residents in the Wanaque service area, which covers the entire East Ward and parts of the North, Central, and South Wards, are receiving inadequately treated water from the Pequannock plant.

Defendants represented to Plaintiffs, and to this Court, that Newark residents meeting the City’s criteria would be eligible to receive filters, regardless of their geographic location. Despite those initial assurances, City Defendants have excluded residents who live in the Wanaque service area, even though they too receive inadequately treated water from the Pequannock plant. Meanwhile, City officials continue to promise residents in the Wanaque service area that their water is safe and unaffected, signaling that they do not need to take critical steps to protect themselves and their families. City

Defendants' implementation of their water filter program, lack of testing, and misleading public statements leave residents across the eastern part of Newark vulnerable to the devastating and potentially life-long health effects of lead.

As an emergency measure, Plaintiffs file this targeted motion to require City Defendants to expand their filter program to include residents in the Wanaque service area, including the East Ward—relief Defendants initially promised Plaintiffs and this Court that the City would provide. While the parties disagree about the adequacy of that program, *see, e.g.*, ECF No. 61, the relief requested will provide some measure of protection to exposed residents for the months pending resolution of Plaintiffs' motion for preliminary relief.

## **BACKGROUND**

Since at least January 2017, levels of lead in Newark's drinking water have repeatedly exceeded the 15 parts per billion (ppb) lead action level set by the U.S. Environmental Protection Agency. *See* Ex. A, N.J. Dep't Env'tl. Prot., Drinking Water Watch, Lead/Copper Summaries. In the current six-month monitoring period, the City's 90th percentile lead level is 51 ppb,<sup>1</sup> more than

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<sup>1</sup> Each time a water system completes a six-month monitoring period, it must calculate whether more than 10 percent of the samples collected have a lead concentration greater than 15 ppb. *See* 40 C.F.R. § 141.80(c)(1). A 90th percentile level of 51 ppb means that 10 percent of samples had a lead concentration of 51 ppb or greater.

three times the federal action level. *See id.* During the same period, over 48 percent of samples reported have tested above the action level so far. *See* Ex. B, N.J. Dep't Env'tl. Prot., Drinking Water Watch, Lead/Copper Results. In contrast, a two-month 2015 study of elevated lead levels in drinking water in Flint, Michigan, showed 16.7 percent of samples above 15 ppb and a 90th percentile level of 25.2 ppb.<sup>2</sup> Ex. C, Flint Water Study at 5. Newark's climbing sampling results through this fall and early winter are alarming, particularly given that lead levels generally test lower in colder winter months. *See* Ex. D, S. Masters et al., Seasonal Variations in Lead Release to Potable Water, 50 *Env'tl. Sci. & Tech.* 10, 5269, 5269-75 (2016).

Recognizing the immediate threat of harm to Newark residents, Plaintiffs moved for a preliminary injunction and order to show cause, asking this Court, inter alia, to order the City to provide an alternative, safe drinking water supply to residents. *See* ECF Nos. 19-1, 55. Nearly two months after Plaintiffs asked this Court for preliminary relief, City Defendants announced

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<sup>2</sup> Plaintiffs acknowledge that it is difficult to draw comparisons between drinking water sampling results in two different cities, particularly where different methodologies may have been used. Samples taken by researchers during the Flint Water Study were not limited to "Tier 1" homes that, under the Lead and Copper Rule, are most likely to show lead. At the same time, many of the sampling results reported by City Defendants are customer requests, which similarly may not be taken from "Tier 1" homes.

plans to provide free water filters to certain residents. Under the original plan reported to Plaintiffs and this Court, “Newark . . . will provide NSF-certified water filters . . . to anyone who (a) has or may have lead service lines or (b) whose testing results exceed 15 ppb for lead, regardless of whether the household is located in the Pequannock or Wanaque service area.” ECF No. 53 at 4; *see also* ECF No. 54 at 1, 3; ECF No. 54-1 ¶ 2; ECF No. 76-1 at 5.

But City Defendants changed their tune, claiming that the promise to provide filters to residents in the Wanaque service area was a “miscommunication.” *See* Ex. E, Stewart Dep. Tr. 102:4-103:1. Today, residents in the eastern part of the City are not eligible to receive water filters unless they can convince the City to test their water, a task that has proven most difficult. *See id.* at 97:24-98:10; *see also infra* pp. 11-13. And while Defendant Baraka has promised residents “we are definitely going to allow people in the East Ward at some point to be able to get a filter,” Second Decl. of Daniel Carpenter-Gold (Carpenter-Gold Decl.) ¶ 9, City Defendants have since testified that there are no plans to provide filters to East Ward residents now or in the future. *See* Ex. E, Stewart Dep. Tr. 100:17-101:9; Ex. F, City Defs.’ Resps. to Pls.’ Pre-Inj. Interrogs. 8. Even residents living in homes in the Wanaque service area that have exceeded the action level, including one home that tested at 182 ppb this summer, have not received filters. *See infra* p. 15.

City Defendants initially claimed that their decision to provide filters to certain residents was spurred by their consultant's October 2018 report, which found that the current corrosion control treatment is not effective in reducing the risk of lead exposure. *See* ECF No. 53 at 3-4; ECF No. 54 at 2; ECF No. 67-1. However, documents obtained through state-court litigation under the New Jersey Open Public Records Act<sup>3</sup> establish that Newark has known since at least February 2018 that corrosion control treatment "has not been effective for [the] Pequannock" service area since 1992. Ex. I, Feb. 22, 2018, Email from S. Kutzing to K. Adeem; *see* Ex. J, CDM Smith, The City of Newark Lead Compliance Sampling Data: Frequency Distribution Analysis 3 (data suggest that from 1992 to 2017, corrosion control treatment "was relatively ineffective in reducing action level exceedance"). Over the course of 2018,

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<sup>3</sup> Putting aside their refusal to timely produce documents in response to Plaintiffs' discovery requests, Defendant City of Newark has twice defied orders from the Superior Court of New Jersey compelling the production of records under public access laws. *See, e.g.*, Ex. G, Order Granting Pl. Sec. Mot. to Enforce, *Nat. Res. Def. Council v. City of Newark*, No. ESX-L-002906-18 (N.J. Super. Ct. filed Apr. 24, 2018); Ex. H, October 12, 2018, Letter from C. Woods to E. Klein (describing OPRA violations). After more than a year of follow-up communications, and seven months of litigation, Newark finally complied in November 2018, producing records showing that City Defendants knew that treatment at the Pequannock plant had long been failing. Newark has not responded to two of Plaintiff NRDC's outstanding records requests.

Newark continued to assure its residents that the City's water was safe to drink, despite evidence to the contrary. *See infra* pp. 13-16.

### LEGAL STANDARD

Plaintiffs must show only “that irreparable injury is *likely* in the absence of an injunction” under a preponderance of the evidence standard. *See Winter v. NRDC*, 555 U.S. 7, 22 (2008).<sup>4</sup> In their briefing in support of their motion for a preliminary injunction, ECF Nos. 19-1, 55, and here, Plaintiffs have offered evidence that goes well beyond the required showing.

### ARGUMENT

In refusing to provide filters to most residents in the Wanaque service area and by repeatedly assuring East Ward residents that their water is safe, Newark has left many vulnerable to the harmful effects of lead. Residents in the Wanaque service area, who receive water that is blended with inadequately treated Pequannock water, are likely to suffer irreparable harm as a result of City Defendants' violations of the Safe Drinking Water Act. City Defendants' filter program leaves this harm completely unaddressed.

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<sup>4</sup> Plaintiffs must also show that their chances of success are “significantly better than negligible.” *Reilly v. City of Harrisburg*, 858 F.3d 173, 179 (3d Cir. 2017). In the interest of brevity, Plaintiffs do not discuss their chances of success here, instead incorporating their briefing in support of their motion for a preliminary injunction, ECF No. 19-1 at 11-21, ECF No. 55 at 14-16.

**I. Water delivered to many residents in the Wanaque service area is not safe to drink**

City Defendants claim the public health risks are limited to the Pequannock service area, but the data show otherwise. In 2014, the City reported lead levels of 19.3 ppb at the 90th percentile in the Wanaque service area, alone. Ex. K, 2014 Annual Water Quality Report. Two years later, in 2016, lead levels above the federal limit were found in the drinking water of nearly half of Newark's public schools, including at least three schools—Wilson Avenue School, South Street School, and East Side High School—located in the East Ward.<sup>5</sup> See Ex. L, Elevated Lead Levels Found in Newark Schools' Drinking Water, *NY Times* (Mar. 9, 2016); Ex. M, Jessica Mazzola, Which Newark Schools Have Elevated Lead Levels, *NJ.com* (Mar. 10, 2016). Lead in drinking water at Wilson Avenue School, an elementary and middle school, reached 193 ppb.<sup>6</sup> See Ex. M. The American Academy of Pediatrics

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<sup>5</sup> City Defendants claim that the elevated lead levels in the City's schools are unrelated to the elevated levels in residents' homes. But schools receive the same water as residences, businesses, and other townships receiving or purchasing water from Newark. Elevated lead levels in all of these sources are caused by the City's failure to treat its water to prevent corrosion of lead pipes and plumbing throughout the system.

<sup>6</sup> Data from 2017 showing elevated lead levels in Newark's schools have been removed from their original location on the Newark Public Schools district website. Plaintiff NRDC has requested 2017 and 2018 data through public access laws, but the New Jersey Department of Environmental Protection has not yet responded.

recommends that lead not exceed 1 ppb in school water fountains. *See* Ex. N, Am. Acad. of Pediatrics, Prevention of Childhood Lead Toxicity 11.

The City has found elevated lead levels in residents' homes in the Wanaque service area, as well. Since the New Jersey Department of Environmental Protection (NJDEP) required Newark to increase its monitoring frequency in January 2017, at least six results above the lead action level have been reported in homes in the Wanaque Service area: 182 ppb, 84 ppb, 70.6 ppb, 46.1 ppb, 25.9 ppb, and 15.7 ppb. Ex. O, Sampling Results above 15 ppb in Wanaque. And, during the same period, City Defendants reported at least nine results above 10 ppb in the East Ward, the level the World Health Organization has deemed unsafe in drinking water, and twenty-four results above 5 ppb, the level at which some states recommend remedial action.<sup>7</sup> *See* Ex. P, Results Above 5 ppb in East Ward; Ex. Q, World Health Org., Guidelines for Drinking-water Quality 383 (2017); Ex. R, Lead Poisoning, N.H. Dept. of Env'tl. Servs. 2; Ex. Z, Ex. Z, Liz Leyden, In Echo of Flint, Mich., Water Crisis Now Hits Newark, *NY Times* (Oct. 30, 2018)

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<sup>7</sup> The nine results above 10 ppb and 24 results above 5 ppb were taken from the East Ward, and do not include results from the remainder of the Wanaque service area. Because City Defendants have not yet produced requested mapping files, Plaintiffs have been unable to confirm the number of additional results above 5 ppb in the Wanaque service area, but not in the East Ward.

(quoting Dr. Jennifer Lowry stating that “a health-based standard” for lead in drinking water would “certainly be below five” ppb). The sampling data show a risk that requires immediate protective action.<sup>8</sup>

Despite the data, City Defendants continue to insist that residents in the Wanaque service area are not affected. However, the City recently reported to NJDEP that inadequately treated water from the Pequannock service area—where the City admits that corrosion control treatment is not working and tap flushing is not protective—is “blending” into the areas that receive water from the Wanaque plant, including the East Ward. *See* ECF No. 94-1 at 2-3, 8. As shown on the City’s maps, the “potential” and “likely” blending areas cover almost all of the East Ward, as well as portions of the North, Central, and South Wards. *Id.* at 12. And while this alarming information is new to the public, it has been known by the City for years. As far back as 2016, City Defendants knew “many section gates are either in an open or partially open position, transferring Pequannock supply to the Wanaque Zone.” Ex. S, Excerpt from Tech., Managerial and Fin. Capacity Eval., May 2016, at 81.

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<sup>8</sup> As discussed in Plaintiffs’ briefing in support of their motion for a preliminary injunction, which Plaintiffs incorporate here, Newark’s drinking water lead levels are causing serious and irreversible harm to residents’ health. *See* ECF No. 55 at 12-14 (describing the correlation between lead in drinking water, elevated blood lead levels); *see also* ECF Nos. 55-3, 55-5.

City Defendants claim the addition of orthophosphate at the Wanaque plant has been effective in controlling corrosion in the Wanaque service area, but the levels of orthophosphate in the Wanaque service area are far too low to be effective. Every sample in the “likely blending” area and all but one in the “potential blending” area show average orthophosphate levels below 0.5 parts per million (ppm). *See* ECF No. 94-1 at 10. City Defendants have acknowledged, in 2015 and again in 2016, that orthophosphate levels must exceed a minimum of 0.5 ppm to adequately control corrosion. Ex. T, 2015 Optimal WQP Rec. 2; Ex. U, 2016 Optimal WQP Rec. 1. Moreover, the U.S. Environmental Protection Agency recommends that orthophosphate levels must exceed 1 ppm to achieve effective corrosion control treatment. Ex. V, U.S. Env'tl. Prot. Agency, Optimal CCT Eval. Tech. Recs. 46. And samples from the parts of the Wanaque service area that the City claims are not affected by blending show two of three orthophosphate results above 1.4 ppm, *see* ECF No. 94-1 at 10. Thus, even if orthophosphate is being added to the Wanaque system under the precise conditions required to avoid corrosion—which is doubtful, given the City’s failure to sufficiently study the effects of orthophosphate on the Wanaque service area for decades—the addition of inadequately treated water from the Pequannock service area dilutes the orthophosphate in the water that is delivered to residents in the Wanaque

service area. The orthophosphate levels in the Wanaque service area are far too low to effectively control corrosion and prevent residents' exposure to lead.

**II. City Defendants have refused to study and sample the Wanaque service area in any meaningful way**

Facing their own incontrovertible data, City Defendants pivot, claiming that that they are not providing filters to residents in the Wanaque service area because there have not been studies of that area confirming that its corrosion control treatment is ineffective. But, if City Defendants were in compliance with NJDEP's direction, they would have already completed a study of the entire system, including the Wanaque. In a July 2017 Notice of Noncompliance with the Lead and Copper Rule, NJDEP required City Defendants to complete that study by December 31, 2017, *see* Ex. W, July 11, 2017, Notice of Noncompliance ¶ 5, a deadline which was effectively extended by Defendants to October 15, 2018. *See* ECF No. 15-6 ¶¶ 12, 28-29. But when the study was made public in mid-October 2018, it included an analysis of only the Pequannock. Ex. X, October 26, 2018, Letter from J. Mattle to A. Adebowale ¶ 1 (citing City Defendants for failure to study the entire system).

Further exacerbating their failure to study the Wanaque service area, City Defendants have not taken sufficient samples from homes in the Wanaque service area. Over the course of the last five months—a period during which lead levels skyrocketed from 18 ppb to 51 ppb at the 90th

percentile—City Defendants tested only twenty-four homes in the East Ward. Declaration of Dr. Yukyan Lam ¶ 3. And since City Defendants acknowledged that their corrosion treatment is ineffective, they have tested only three homes in the East Ward in October, and three homes in the East Ward in November. *Id.* Compared to the 154 samples taken in total this monitoring period, *see* Ex. A, the East Ward has been undertested relative to other parts of the City, despite having a comparable population size to Newark’s other four wards.

The lack of testing is, perhaps, not surprising, since the City’s actions have suppressed customer-requested sampling in the Wanaque service area. First, the steady drumbeat of declarations from City Defendants that the water in the eastern portion of Newark is unaffected by the lead crisis discourages residents from requesting lead sampling. *See infra* pp. 13-16. Second, Plaintiffs have received reports from residents in the Wanaque service area who attempted to request water tests for their home, but were turned away or indefinitely delayed. *See* ECF No. 19-18 ¶ 13; Carpenter-Gold Decl. ¶¶ 4-6. In recent months, City Defendants have failed to test lead levels in the Wanaque service area in any meaningful way, while at the same time requiring a City-administered result above 15 ppb to qualify for a filter. *See* ECF No. 76-3 at 10.

Furthermore, the sampling that the City *has* performed—that which is mandated by the Lead and Copper Rule—has been seeded with sites less likely

to have high lead levels. As detailed in Plaintiffs' First Amended Complaint, City Defendants have consistently failed to sample sufficient "Tier 1" homes—homes that have lead service lines or lead plumbing. *See* ECF No. 89-2 ¶¶ 37, 182. This problem is especially pronounced in the Wanaque service area; for example, in the City's sampling pool, two of the three "Tier 3" homes, which have no lead elements in their plumbing and are therefore extremely unlikely to have lead exceedances, are located in the East Ward. Ex. Y, PbCu Sample Location Spreadsheet 4.

### **III. City Defendants' public statements prevent East Ward residents from taking steps to protect themselves and their families**

The blending of inadequately treated water into the Wanaque service area directly contradicts City officials' insistence to the Court, to Plaintiffs, and to Newark residents that areas served by the Wanaque plant, including the East Ward, are not affected. Between 2016—when news of lead in the City's schools broke—and 2018, City officials promised residents that water "in Newark is still safe, it's still drinkable," and that "[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." *See* ECF No. 19-1 at 26-27. These assurances continued—even as City Defendants announced that failed corrosion treatment necessitated the use of filters—with the claims this October that "Newark's water has always been the best and safest water in the state and

probably in the country for that matter,” Carpenter-Gold Decl. ¶ 7, and, in November, that “[t]here’s nothing wrong with Newark’s water,” *id.* ¶ 12.

Even after the City’s earlier assurances that the water was safe proved untrue for residents living in the Pequannock service area, City officials continue to boldly assure East Ward residents that their water is safe.

Defendant Baraka promised “[t]he East Ward has been unaffected,” *id.* ¶ 7, and committed that the “East Ward, parts of the North, parts of the South, and parts of the Central [are] not affected by this at all,” *id.* ¶ 12. Defendant Baraka has even gone so far as to incorrectly tell residents that the “East Ward does not show any elevated levels of lead in their water system,”<sup>9</sup> *id.* ¶ 9, while other officials have blamed elevated lead levels in the East Ward on a disgruntled former employee who “spiked the sample,”<sup>10</sup> *id.* ¶ 11.

The City’s website also contains false and misleading information that limits residents’ ability to arm themselves with information. For most of 2018, the website promised residents that “NEWARK’S WATER IS ABSOLUTELY SAFE TO DRINK.” Ex. Z; Ex. AA, Newark’s Water is

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<sup>9</sup> City Defendants have reported numerous instances of elevated lead levels—at least nine samples above 15 ppb, including two reaching nearly 200 ppb—at homes and schools in the Wanaque service area. *See supra* p. 7-11.

<sup>10</sup> If City Defendants actually believed an elevated sample was tainted, they could have requested to apply the invalidation procedures provided for under the Lead and Copper Rule. *See* 40 C.F.R. § 141.86(f).

Absolutely Safe to Drink (last saved Aug. 22, 2018). Likewise, the City's website recommended flushing as effective in limiting exposure well into November, even though the City had already concluded that lead levels were so high and sustained that flushing was not effective in limiting exposure.

Ex. E, Stewart Dep. Tr. 219:10-15-223:6; Ex. AB, Nov. 7, 2018, Email from C. Woods to E. Klein.

Perhaps most egregiously, the City's website continues to tell residents in the Wanaque service area who live in homes that have tested above 15 ppb that they do not qualify for a filter. The City's "check your address" function states "under the current distribution plan, you are not eligible for a filter . . ." for a home that tested with 182 ppb in May 2018.<sup>11</sup> Ex. AD, Check Your Address. In this litigation, City Defendants claim that a home testing above 15 ppb is eligible to receive a filter, but their website states otherwise.

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<sup>11</sup> Plaintiffs have asked Defendants to correct the website to alert residents living in homes that have testing above 15 ppb that they are eligible to receive a filter under the City's program, but Defendants have refused. First, on October 16, 2018, Plaintiffs wrote to Defendant Commissioner McCabe's counsel, asking that counsel to ensure the website would be immediately corrected. Ex. AC, October 16, 2018, Email from C. Woods to A. Reese. Again, during the November 7 Rule 30(b)(6) deposition, Plaintiffs' counsel alerted City Defendants to the problem. Ex. E, Stewart Dep. Tr. 92:14-22. One month later, the City's website remains unchanged.

City Defendants' insistence that the water is safe—and that the East Ward is unaffected—is false and misleading. At best, Newark has not extensively studied the Wanaque service area, as it was required to do by NJDEP.<sup>12</sup> At worst, the evidence tells a clear story: the Wanaque service area had a 2014 action level exceedance; numerous elevated sampling results have been reported in homes and schools between 2016 and 2018; the City has admitted that inadequately treated Pequannock water is blending into the Wanaque service area; orthophosphate levels in the Wanaque service area are too low to be protective; and Newark has failed to complete recent and comprehensive testing in the Wanaque service area. Newark must stop misleading residents and take action—as it has failed to do for the last two years—to protect its vulnerable residents.

**IV. City Defendants have failed to dedicate sufficient resources to ensure all vulnerable residents—including those in the Wanaque service area—receive free water filters**

Newark claims that it should not be required to provide filters to residents in the Wanaque service area because residents in the Pequannock

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<sup>12</sup> Plaintiffs agree that a study of the Wanaque service area will undoubtedly be useful in identifying specific failures—as the October 2018 study confirmed failures at the Pequannock plant—but, given the clear evidence, City Defendants must not wait for the results of that study to act to protect residents from the often-permanent effects of lead.

service area face greater risks. That those served by the Pequannock plant require water filters does not lessen the harm that residents in the Wanaque service area are experiencing. Nor have City Defendants given any reason for leaving behind such a large number of Newark residents, other than having to admit the Wanaque service area is threatened by the crisis.

First, City Defendants have not explained what resource constraints they are operating under. In fact, they have said that they were able to procure enough filters to cover all parts of the City. *See* Carpenter-Gold Decl. ¶ 10 (“The City purchased filters, we had an additional 20,000 given to us from . . . Pur . . . . So we have enough to pass out.”); *see also* Ex. E, Stewart Dep. Tr. 112:16-24.

Even if City Defendants claim that lack of resources is, in fact, the reason filters cannot be distributed to the Wanaque service area, the evidence shows that City Defendants have, thus far, largely relied on donations, volunteer efforts, and redirecting existing staff and resources. Indeed, City Defendants have not “hire[d] anyone to help with capacity on the filter program.” Ex. E, Stewart Dep. Tr. 27:21-25; 28:3-6. Likewise, the recreation centers where filters are distributed are staffed by the City’s regular employees or volunteers. *Id.* at 132:17-133:7. And with regard to the testing and inspection facet of the program—which ostensibly already covers the Wanaque

system—only a few employees manage the influx of requests from customers, city-wide, *id.* at 172:15-173:4; 173:15-18; 174:12-175:3, and there is no one employee tasked with managing the City’s responses to residents, *id.* at 177:13-17; 182:5-183:1. Likewise, only one lab technician processes sampling results from across the City, using only one piece of equipment that can process only 40 samples per week. *Id.* at 195:15-17; 196:12-24. City Defendants have avoided the largest expenditures through a donation of 20,000 filters. *Id.* at 112:16-24. Clearly, Newark’s response to this crisis has been hampered—both across the City and in the Wanaque service area—by its failure to dedicate sufficient resources.

City Defendants’ expenditures on non-essential advertising related to the crisis cast further doubt on any claims that they should not be required to provide resources to residents in the Wanaque service area. Specifically, despite the clear parallels, *supra* p. 3, City Defendants are attempting to combat all comparisons to the drinking water crisis in Flint, Michigan, including by purchasing social media advertisements that promote the hashtag #NewarkisNotFlint. Ex. AE, Facebook Advertisements, November 2018.

City Defendants have all but acknowledged that the Pequannock service area is suffering from irreparable harm that requires the use of water filters. But, as discussed above, residents in Newark’s Wanaque service area face a

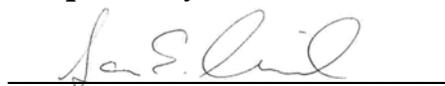
risk of harm, too. City Defendants' claim that they must prioritize residents in the Pequannock service area, at the expense of the rest of the City, must fail.

### CONCLUSION

For the reasons discussed above, Plaintiffs respectfully request that this Court require City Defendants to expand their existing filter program to include residents in the Wanaque service area, including the East Ward.

Dated: December 8, 2018

Respectfully submitted,



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