

EXHIBIT A

COVENANT NOT TO EXECUTE, AND ASSIGNMENT OF RIGHTS AND CLAIMS AGREEMENT

The undersigned Parties hereby stipulate and agree, subject to the approval of the Court, that these Actions, as defined herein below, shall be settled pursuant to the terms and conditions set forth in this Covenant Not To Execute, and Assignment of Rights and Claims Agreement (“Agreement”).

ARTICLE I - RECITALS

1. WHEREAS, the City of Benton Harbor, Mayor Marcus Muhammad, Michael O’Malley, Darwin Watson, and Ellis Mitchell (together, “Defendants”) are or were named as Defendants in the Actions;

2. WHEREAS, named plaintiffs in *Braziel et al., v. City of Benton Harbor, et al.*, No. 1:21-cv-00960 (HYJ-PJG) (the “Braziel Action”), pending in the U.S. District Court for the Western District of Michigan, are Daretha Braziel, individually and as next friend for minor D.R.; Ro’Nesha Braziel; Deanna Braziel; Keesha Jones, individually and as next friend for minors K.B., D.J., T.C., T.M.C; Kendasha Bates; Stacey Branscumb; and Emma Kinnard (“Class Plaintiffs” or “Class Representatives”);

3. WHEREAS, plaintiffs in *A.M. et al., v. City of Benton Harbor, et al.*, No. 1:22-cv-00475 (HYJ-PJG), also pending in the U.S. District Court for the Western District of Michigan (the “Mitchell Action”) are approximately four

hundred and fifty individuals who are represented by Levy Konigsberg, LLP (“Individual Mitchell Plaintiffs”);

4. WHEREAS, Class Plaintiffs and the Individual Mitchell Plaintiffs are separate parties with separate interests, who brought similar claims (collectively “All Plaintiffs”);

5. WHEREAS, All Plaintiffs allege that in the City of Benton Harbor, Michigan, where they currently reside or resided for at least two weeks between 2018 and through 2021, municipal drinking water exceeded federal and state-mandated lead levels from approximately 2018 through 2021, that certain City actors named as Defendants in these Actions acted or failed to act in certain ways from approximately 2018 through 2022, which violated their right to bodily integrity and caused them damage;

6. WHEREAS, All Plaintiffs seek to recover damages and injunctive relief on behalf of themselves and Class Plaintiffs also seek damages on behalf of a class of similarly-situated persons defined below as the Class;

7. WHEREAS, Class Plaintiffs on behalf of the Class, and the Individual Mitchell Plaintiffs, have alleged damages well in excess of twenty-five million dollars (\$25,000,000.00), including as described by Class Plaintiffs’ damages expert, who has submitted a report estimating that Class Plaintiffs’ medical

monitoring damages alone are valued in excess of thirty-six million dollars (\$36,000,000.00);

8. WHEREAS, All Plaintiffs allege that the City of Benton Harbor is independently and also vicariously liable for the acts of its agents, and each Defendant is jointly and severally liable with other Defendants for the entire amount of damages alleged.

9. WHEREAS, Defendants agree to the Consent Judgment, attached hereto as Exhibit A, based on their potential exposure and risk of an adverse judgment;

10. WHEREAS, based upon extensive analysis of the facts and the law applicable to Class Members' claims, and taking into account the burdens and expenses of litigation, including the risks and uncertainties associated with a potentially protracted trial and appeal, and the fair, cost-effective, and assured method of resolving by agreement the claims of the Class, Class Plaintiffs and Class Counsel (as defined below) have concluded that this Agreement provides substantial benefits to the Class and is fair, reasonable, adequate and in the best interests of the Class as a whole;

11. WHEREAS, based upon extensive analysis of the facts and the law applicable to the Individual Mitchell Plaintiffs' claims, and taking into account the burdens and expenses of litigation, including the risks and uncertainties associated

with a potentially protracted trial and appeal, and the fair, cost-effective, and assured method of resolving by agreement the claims of the Individual Mitchell Plaintiffs, Individual Mitchell Plaintiffs' Counsel (as defined below) have concluded that this Agreement provides substantial benefits to the Individual Mitchell Plaintiffs and is in the best interests of the Individual Mitchell Plaintiffs;

12. WHEREAS, Defendants have similarly concluded that this Agreement is desirable in order to avoid the time and risks of protracted litigation;

13. WHEREAS, the City represents that it properly tendered All Plaintiffs' demands regarding these Actions to the insurers under the City's Insurance (as defined herein and below) for each insurance policy listed herein, which constitute all insurance policies for the City for the time period set forth, but the insurers listed under the City's Insurance, individually and collectively, denied a duty to defend and/or indemnify Defendants;

14. WHEREAS, Defendants represent that they are not financially capable of satisfying any judgment for the damages alleged by All Plaintiffs in this litigation, and that the only way in which Defendants could potentially raise the funds necessary to pay for any such judgment in the future would be by way of assigning its rights to certain policies of insurance as provided for herein, or to significantly raise the rates of municipal water or taxes, a cost that would ultimately be borne by the Class and Individual Mitchell Plaintiffs who reside in Benton Harbor;

15. WHEREAS, the Parties engaged in extensive, arms'-length settlement negotiations over many months, including two in-person mediation sessions with mediator Lee Silver, most recently on August 15, 2025;

16. WHEREAS, Defendants agree to a Consent Judgment, as defined herein below, for All Plaintiffs in the Actions in the amount of twenty-five million dollars (\$25,000,000.00), plus applicable interest as provided by law, and the Assignment of rights to claims the Defendants may have under or against the City's Insurance;

17. NOW, THEREFORE, in consideration of the entry of the Consent Judgment in the amount of twenty-five million dollars (\$25,000,000.00), and the assignment of rights and all causes of actions thereto, the Parties agree as follows, subject to the approval of the Court and the entry of the Consent Judgment:

ARTICLE II - DEFINITIONS

As used in this Agreement and its exhibits, the terms set forth below shall have the following meanings. The singular includes the plural and vice versa:

18. The "Actions" refer collectively to the Mitchell Action and the Braziel Action as defined above.

19. "Assigned Claims" or "Assignment" means all rights to claims the Defendants may have under or against the City's Insurance, as described herein.

20. “Benton Harbor Water Exceedances” means the action lead level exceedances and alleged additional exceedances in the City of Benton Harbor Water from approximately 2018 through 2021.

21. “Business Day” means any day except a Saturday, Sunday, or other day on which commercial banks in Michigan are authorized by law to close.

22. “CAFA Notice” means the notice intended to comply with the requirements imposed by the Class Action Fairness Act, 28 U.S.C. § 1715, as described in Article V.C.

23. “City” means the City of Benton Harbor.

24. “City’s Insurance” means all insurance policies obtained by the City from July 2017 through July 2025 issued by the Travelers Indemnity Company of Connecticut, the Travelers Indemnity Company, and/or Travelers Property Casualty of America (collectively “Travelers”):

Policy Year	Insurer	Policy	Policy Number
07.01.17-07.01.18	Travelers Indemnity Company of Connecticut	Commercial General Liability Policy ("CGL")	ZLP-91M82256-17-PB
07.01.17-07.01.18	The Travelers Indemnity Co. of Connecticut	Public Entity Management Liability Policy ("PEML")	ZLP-91M82256-17-PB
07.01.17-07.01.18	The Travelers Indemnity Company	Excess Policy	ZUP-41M79632-17-PB

Policy Year	Insurer	Policy	Policy Number
07.01.18-07.01.19	Travelers Indemnity Company of CT	CGL Policy	ZLP-71N00009-18-PB
07.01.18-07.01.19	The Travelers Indemnity Company of Connecticut	PEML Policy	ZLP-71N00009-18-PB
07.01.18-07.01.19	The Travelers Indemnity Company	Excess Policy	ZUP-71N00010-18-PB
 			
07.01.19-07.01.20	Travelers Indemnity Company of CT	CGL Policy	ZLP-71N00009-19-PB
07.01.19-07.01.20	The Travelers Indemnity Company of Connecticut	PEML Policy	ZLP-71N00009-19-PB
07.01.19-07.01.20	Travelers Property Casualty Company of America	Excess Policy	ZUP-71N00010-19-PB
 			
07.01.20-07.01.21	Travelers Indemnity Company of CT	CGL Policy	ZLP-71N00009-20-PB
07.01.20-07.01.21	The Travelers Indemnity Company of Connecticut	PEML Policy	ZLP-71N00009-20-PB
07.01.20-07.01.21	Travelers Property Casualty Company of America	Excess Policy	ZUP-71N00010-20-PB
 			
07.01.21-07.01.22	Travelers Indemnity Company of CT	CGL Policy	ZLP-71N00009-21-PB
07.01.21-07.01.22	The Travelers Indemnity	PEML Policy	ZLP-71N00009-21-PB

Policy Year	Insurer	Policy	Policy Number
	Company of Connecticut		
07.01.21-07.01.22	Travelers Property Casualty Company of America	Excess Policy	ZUP-71N00010-21-PB
07.01.22-07.01.23	Travelers Indemnity Company of CT	CGL Policy	ZLP-71N00009-22-PB
07.01.22-07.01.23	The Travelers Indemnity Company of Connecticut	PEML Policy	ZLP-71N00009-22-PB
07.01.22-07.01.23	Travelers Property Casualty Company of America	Excess Policy	ZUP-71N00010-22-PB
07.01.23-07.01.24	Travelers Indemnity Company of CT	CGL Policy	ZLP-71N00009-23-PB
07.01.23-07.01.24	The Travelers Indemnity Company of Connecticut	PEML Policy	ZLP-71N00009-23-PB
07.01.23-07.01.24	Travelers Property Casualty Company of America	Excess Policy	ZUP-71N00010-23-PB
07.01.24-07.01.25	Travelers Indemnity Company of CT	CGL Policy	ZLP-71N00009-24-PB
07.01.24-07.01.25	The Travelers Indemnity Company of Connecticut	PEML Policy	ZLP-71N00009-24-PB
07.01.24-07.01.25	Travelers Property Casualty Company of America	Excess Policy	ZUP-71N00010-24-PB

25. “Class Counsel” means the law firms of Lieff Cabraser Heimann & Bernstein, LLP, Edwards & Jennings, P.C., and Kershaw Talley & Barlow P.C.

26. “Class Members” means all of the individuals belonging to the Class.

27. “Class Notice” means the Court-approved notice referred to in Article V.B of this Agreement.

28. “Class Representatives” means Daretha Braziel, individually and as next friend for minor D.R.; Ro’Nesha Braziel; Deana Braziel; Keesha Jones, individually and as next friend for minors D.J., T.C., T.M.C, and K.B.; Kendasha Bates; Stacey Branscumb; and Emma Kinnard.¹

29. “Consent Judgment” means the judgment in the form set forth in Exhibit A.

30. “Court” means the United States District Court for the Western District of Michigan.

31. “Effective Date” means the date on which the Court’s Final Approval Order is Final.

32. “Final” means that the Final Approval Order has been entered for All Plaintiffs, and (a) the time to appeal from such order has expired and no appeal has been timely filed; or, (b) if such an appeal has been filed, it has been resolved finally

¹ Plaintiffs Kendasha Bates, Deana Braziel, and Ro’Nesha Braziel were minors at the time of filing of the *Braziel* Action but have since reached the age of majority.

and has resulted in an affirmance of the Final Approval Order; or (c) the Court, following the resolution of the appeal, enters a further order or orders approving the Agreement on the terms set forth herein, and either the time to appeal from such further order or orders has expired and no further appeal has been taken from such order(s) or any such appeal results in affirmation of such order(s).

33. “Final Approval Hearing” means the hearing scheduled to take place after the entry of the Preliminary Approval Order for the Class Plaintiffs at which time the Court shall, *inter alia*: (a) determine whether to grant final approval to this Agreement as to the Class Plaintiffs; (b) consider any timely objections to this Agreement and the Class Plaintiffs’ responses to such objections; (c) certify the Class; and (d) appoint Class Counsel to effectuate the Agreement on behalf of the Class.

34. “Final Approval Order” means the order in which the Court, *inter alia*, grants final approval of this Agreement.

35. “Class Notice” means Mail Notice, Publication Notice, and CAFA Notice, substantially in the form approved by the Court in its Preliminary Approval Order.

36. “Parties” means Class Representatives, on behalf of themselves and all members of the Class; the Individual Mitchell Plaintiffs; and Defendants.

37. “Preliminary Approval Order” means the Court’s preliminary approval of this Agreement in the Braziel Action, appointment of Class Counsel, appointment of the Class Notice Administrator, and approval of the Class Notice.

38. “Judgment Amount” means the \$25,000,000 in the Consent Judgment.

39. “Claim” means any claim that Class Members or the Individual Mitchell Plaintiffs had, have or may have against the Defendants, which is based upon, relates to, or arises out of the allegations in the Complaints in these Actions, whether known or unknown, asserted or unasserted.

40. “Class” means all individuals who have resided in Benton Harbor for a period of two weeks or more from August 1, 2018 through November 30, 2021, excluding the Individual Mitchell Plaintiffs.

41. “Travelers Coverage Litigation” means the pending lawsuit entitled *The City of Benton Harbor v. The Travelers Indemnity Company of Connecticut*, (Berrien County Circuit Court case no. 25-0168-CZ; U.S. District Court, Western District of Michigan, case no. 1:25-cv-00861), as well as any other litigation arising from the City’s Insurance.

42. “Individual Counsel” or “Counsel for the Individual Mitchell Plaintiffs” means the law firm of Levy Konigsberg, LLP, representing the Individual Mitchell Plaintiffs in the Mitchell Action.

ARTICLE III - RELIEF

Subject to the Court's approval, the Parties agree to the following relief:

A. Consent Judgment & Assignment

43. In consideration of the entry of the Consent Judgment, and subject to all of the conditions of this Agreement and the below Assignment of rights and cause of actions thereto, Class Members and the Individual Mitchell Plaintiffs agree and covenant not to sue, nor execute on the Consent Judgment, against Defendants, or their past or current employees, commissioners, trustees, officers, administrators, directors, agents, representatives, predecessors, successors, heirs and assigns. Class Members and the Individual Mitchell Plaintiffs further agree and covenant not to exercise their right to sue Defendants, or their past, current, or future employees, commissioners, trustees, officers, administrators, directors, agents, representatives, predecessors, successors, heirs and assigns, for any cause of action, claims, demands, damages, costs, expenses, and compensation, present and future, known or unknown, and any other claims or demands in law or equity, arising from or in any way related to the Claims, regardless of and separate from whether the Consent Judgment has or has not been satisfied so long as all of the conditions of this Agreement and the below Assignment are satisfied. This Agreement constitutes a covenant not to sue or execute; it is not and should not be construed as a release that extinguishes the claims in the Actions.

44. Nothing contained in this Agreement shall be construed to release or otherwise discharge any insurance company for any coverage afforded directly or indirectly to Defendants under any policy of insurance, nor any insurance agent, broker, or agents for duties and obligations to Defendants relative to the Claims or any insurance coverage applicable or which should have been applicable thereto. For the avoidance of doubt, the insurers listed under the City's Insurance do not constitute "past or current employees, commissioners, trustees, officers, administrators, directors, agents, representatives, predecessors, successors, heirs and assigns," as those words are used in this section.

45. Defendants hereby agree to assign to Class Members and the Individual Mitchell Plaintiffs any and all of Defendants' rights, titles, interests, claims, causes of action, of any kind for insurance coverage including but not limited to insurance coverage that includes obligations for the insurer to defend or indemnify Defendants, breach of contract, and/or bad faith, arising out of the Actions and/or the insurers listed in the City's Insurance's declination to defend and indemnify Defendants for the Actions. For the avoidance of doubt, this includes assignment of all rights and claims asserted in the Traveler's Coverage Litigation, as well as all claims which have not been asserted but may or could have been asserted in the Traveler's Coverage Litigation.

46. The Parties agree that neither this Agreement, the assignment of rights and claims, the Consent Judgment, nor the covenant not to execute under Paragraph 43 shall be used for any purpose other than is necessary in connection with any proceedings against the City's Insurance or in the Traveler's Coverage Action. To the extent that certain of the Defendants' claims are not currently assignable, Defendants hereby assign those claims to Class Members and the Individual Mitchell Plaintiffs to pursue if and when they become assignable.

47. Class Members and the Individual Mitchell Plaintiffs shall have the exclusive right to jointly pursue all Assigned Claims.

48. This Agreement is binding on Class Plaintiffs, Class Members, the Individual Mitchell Plaintiffs, and Defendants, regardless of whether there are any recoveries made under any insurance policies, including those listed under the City's Insurance in Paragraph 24, such risk being fully assumed by Plaintiffs.

49. Nothing herein or relating to this Agreement shall be construed as affecting or limiting in any respect any other rights or claims of Defendants under the City's Insurance for claims unrelated to the Actions, the Consent Judgment, or this Agreement.

50. The intent of this assignment of rights and claims referenced herein is to resolve all Claims and to assign Class Members and the Individual Mitchell Plaintiffs the maximum amount possible under the law, all claims and or causes of

action, if any, that are or could be asserted against the insurance companies listed in the City's Insurance in Paragraph 24, that arise from or relate in any way to the Actions, the Consent Judgment, or the Travelers Insurance Action, including but not limited to the failure to provide insurance coverage, indemnification, and or defense, or any other duties owed to Defendants for claims made by Plaintiffs. Should a challenge be raised, or should any court find, that this Agreement has not sufficiently identified or assigned all rights, claims, title, causes of action, etc., necessary for Plaintiffs to bring any claim that Defendants could have brought under the City's Insurance as a result of these Actions, the Consent Judgment, and/or any claim which Defendants have brought or could have brought in the Traveler's Insurance Action, the City must promptly execute all additional documentation clarifying that those additional rights have been assigned, and/or otherwise assign those rights, claims, titles, causes of action, etc., to Plaintiffs. This Agreement was negotiated and made prior to the Consent Judgment being entered by the Court.

51. The City shall agree to entry of a Consent Judgment in the amount of Twenty-Five Million Dollars (\$25,000,000.00) ("Judgment Amount"), in accordance with the terms of the Consent Judgment. This amount is to compensate All Plaintiffs solely for damages arising from the Class and Individual Mitchell Plaintiffs' Claims against the Defendants or their past or current employees, commissioners, trustees, officers, administrators, directors, agents, representatives,

predecessors, successors, heirs and assigns, and in no way includes any damages arising from the claims the Class members or the Individual Mitchell Plaintiffs have asserted against other defendants in other actions related to the Benton Harbor Water Exceedances, including, but not limited to, claims asserted against Elhorn Engineering Company, F&V Operations and Resource Management, Inc. (“F&V”), the State of Michigan’s Department of Environment, Great Lakes, and Energy (“EGLE”), or any other Michigan State entities.

52. Any sums collected from the City’s Insurance in satisfaction of the Consent Judgment or as a result of the Assigned Claims in this Agreement shall be distributed to Class Members and the Individual Mitchell Plaintiffs in the manner set forth in Paragraph 85.

B. Injunctive Relief

53. For five years after the Effective Date, the City agrees to do the following:

- a. Water Testing for Lead, E Coli, and Other Exceedances
 - i. Testing of water overseen by independent person with knowledge agreed to by the Parties (“Independent Monitor”), who will be appointed from existing City consultants or contracted firms.
 - ii. Testing of water system no less frequent than every six months, with the testing plan developed by Independent Monitor.
 - iii. Reporting made public every six months; reporting overseen by Independent Monitor.
 - iv. The City agrees to abide by the Environmental Protection Agency (“EPA”) regulatory requirements under the Lead

- and Copper Rule Improvements (“LCRI”) that 10 parts per billion (“ppb”) of lead at 90th percentile triggers enforcement under the SDWA, even if federal regulations change to become less strict. Should a result of over 10 ppb occur, the Independent Monitor shall oversee enforcement of the next steps under now-current SDWA.
- v. Independent Monitor tasked with specific implementation of above-described plan, and to be added, to the extent practical, to an existing scope of work for the selected existing City consultant.
- b. **Lead Testing of Residents**
 - i. The City agrees to facilitate and cooperate with other qualified and agreed-upon entities who may provide lead testing of residents, such as posting sign up forms or informational flyers in City Hall or on City’s website, or in other manners reasonably feasible and within the scope of the City’s statutory authority.
 - ii. If there is a positive test of a City resident’s blood lead levels, defined as any amount over the CDC’s then-current recommended action level, City shall provide testing of the specific home’s water, by sampling and testing the first and fifth liter drawn. Results should be provided to the resident.
 - iii. For children who test positive, City can facilitate a Health Department referral resource, if available, to residents, both by posting and upon request.
 - iv. For adults who test positive, the City can make that referral resource available to residents, both by posting and upon request.
 - c. **Enhanced Community Services for Children Impacted by Lead Exposure**
 - i. The City agrees to facilitate and cooperate with other qualified and agreed-upon entities who provide enhanced community services, such as posting sign up forms or informational flyers in City Hall or on City’s website, or in other manners reasonably feasible and within the scope of the City’s statutory authority.
 - d. **Water Rates**
 - i. The City water rates are set at the cost of service; the City cannot guarantee that rates will not increase if costs

increase. However, the City:

- (1) Agrees to pursue all available grants to fund the water system/reduce costs of service;
- (2) Will publicize and provide assistance to residents to apply to Michigan's low-cost water program;
- (3) Will continue to offer payment plans to residents upon request before resorting to water service shut offs, and agree that such shut offs will not occur if the agreed-upon payment plan is maintained.

e. Cooperation in Other Related Litigation

i. Defendants agree to fully cooperate with the Class Members and the Individual Mitchell Plaintiffs in all reasonable acts in litigation to collect on the Consent Judgment, in the Travelers Coverage Litigation, and any other litigation in the pursuit of the Assigned Claims against the City's Insurance. In particular, the City will provide the following documents, which may be used for any appropriate purpose by the Individual Mitchell Plaintiffs and the Class Plaintiffs:

- (1) all correspondence with Michigan State entities (including EGLE), the United States Environmental Protection Agency, F&V, Elhorn Engineering, and any other consultants and/ or engineering companies from the beginning of their involvement with the City's water system, at the latest 2012, to present, with reasonably limited custodial parameters agreed-to by the parties;
- (2) Without regard to any privilege that may apply, all documents, correspondence, and records of correspondence with and between the insurance companies listed under City's Insurance regarding these Actions;
- (3) all invoices, proofs of payment, statements of account, and any other documents reasonably necessary to prove the recoverable defense fees and costs relating to the defense of the Defendants in these Actions;
- (4) Without regard to any privilege that may apply, all correspondence with the insurers listed under the City's Insurance beginning in 2010 to present

related to filed or contemplated litigations pertaining to lead level exceedances in water, with reasonably limited custodial parameters agreed-to by the parties.

- (5) Corresponding privilege logs describing the documents withheld and the basis for withholding such documents.
- ii. The City will make current City officials and employees available for informal interviews and/or for deposition, provided that their counsel may be present. The City will also agree to cooperate to provide former City officials and employees for informational interviews and/ or for deposition.
- iii. Should any additional need for documents arise as a result of the Traveler's Coverage Litigation, the Individual Mitchell Plaintiffs and/or the Class Plaintiffs may request such documents from the City, and the City shall provide such documents, subject to reasonably limited custodial and time parameters, within thirty (30) days of Plaintiffs' request, but, should the volume of documents requested be significant, the Parties agree to negotiate an amended production timeline in good faith sufficient to meet the needs to the Traveler's Coverage Litigation.
- iv. In addition to the above process, All Plaintiffs reserve the right to request additional documents through a subpoena or any other applicable discovery vehicle available under federal and/or state law and/or rules of civil procedure.
- f. The Defendants agree to continue to diligently pursue the Travelers Coverage Litigation in good faith during the approval process up and until the Assignment is effectuated.
- g. The Parties agree to engage in good faith efforts to effectuate the Agreement and its terms, and may rely on the recourse set forth in Paragraph 91 where necessary to achieve mutually agreeable outcomes.
- h. Administrative costs of class approval and notice are to be borne by Class Representatives but with substantial assistance of the City of Benton Harbor with respect to outreach, addresses, publication notice (website, City Hall), and direct notice (e.g., class notice included in City's water bills).

ARTICLE IV - REQUIRED PRELIMINARY EVENTS AND COOPERATION

A. City Actions

54. After the Court enters the Preliminary Approval Order, the Defendant shall begin collecting for transmission the documents outlined in Paragraph 53(e)(i). Within seven (7) days of the entry of the Final Approval Order and assignment of claims, the City shall provide to Class Counsel and Individual Counsel the documents set forth above in Paragraph 53(e)(i). Consent for additional time to satisfy this requirement shall not be unreasonably withheld.

55. Between the execution of this Agreement and the entry of the final order approval of the Agreement, the City shall continue to exercise due diligence and good faith in taking any required actions in the Insurance Actions. After the Assignment is effectuated, the City will continue to cooperate in reasonable acts as set forth in Paragraph 53(e).

B. Class Plaintiffs' Preliminary Approval Process

56. Promptly after execution of this Agreement, Class Plaintiffs shall submit this Agreement to the Court for Preliminary Approval, moving the Court for one or more orders which by their terms shall:

- a. Consolidate the *Braziel* and *Mitchell* Actions for the purposes of Agreement approval only;
- b. Schedule the Final Approval Hearing to: review any Class

Member objections regarding this Agreement; consider its fairness, reasonableness and adequacy; determine whether to enter a Final Approval Order and Consent Judgment pursuant to Federal Rule of Civil Procedure 23(e); and

- c. Enjoin Class Members from proceeding against the Defendants with respect to the Claims, including taking any action further to pursue related class actions or individual actions arising from the Claims or allegations in the Complaint against the Defendants or past, present, and future City employees, officers, commissioners, trustees, or directors other than as allowed or directed by the Court in these Actions, pending the Court's entry of the Final Order and Consent Judgment.

57. The Parties and their respective Counsel shall cooperate, assist, and undertake all reasonable actions in order to accomplish these required events on the schedule set by the Court.

58. Notwithstanding this or any other provision of this Agreement, however, if the Agreement is terminated for any reason, the Parties hereby stipulate and agree that such Consent Judgment shall be null and void, and the claims against the Defendants may be reinstated *status quo ante* to the date of the execution of this Agreement, with the Parties thereto and all absent class members reinstated to their

respective positions *status quo ante* to the date of the execution of this Agreement. Further, all statutes of limitation and repose for all claims in these Actions shall be deemed to have been tolled from the date of the execution of this Agreement until the date of reinstatement and reactivation or for such longer period as the law(s) may provide.

C. Individual Mitchell Plaintiffs' Approval Process

59. Within five (5) days of the execution of this Agreement, Individual Mitchell Plaintiffs' Counsel will submit a notice or stipulated motion joining in the Class Plaintiffs' request to consolidate the Mitchell and Braziel dockets for purposes of Agreement approval only. Individual Mitchell Plaintiffs' Counsel will also file with the Court under seal (and provide to all Parties in unredacted copy) a list of the Individual Mitchell Plaintiffs. This shall be completed prior to the filing of the Class Plaintiffs' Preliminary Approval Motion.

60. Within seven (7) days of the execution of this Agreement, Individual Mitchell Plaintiffs' Counsel will send a Notice to all Individual Mitchell Plaintiffs (via Electronic Mail and Short Message Service) that informs Individual Mitchell Plaintiffs (the "Individual Settlement Notice") of the Agreement. An individual that seeks to be excluded from the Agreement may do so only by sending a notice ("Rejection Notice") personally signed by the person, Next Friend, personal representative, or entity (as opposed to counsel), to Individual Mitchell Plaintiffs'

counsel that is received on or before thirty (30) days of the Settlement Notice (the “Participation Deadline”). If an Individual Mitchell Plaintiff does not send such Rejection Notice by the Participation Deadline, they will be deemed to be participating.

61. Within two (2) days of the Participation Deadline, Counsel for the Individual Mitchell Plaintiffs shall provide to the Defendants and Class Plaintiffs, through their counsel, a list of all Individual Mitchell Plaintiffs who sent a Rejection Notice on or before the Participation Deadline.

62. Within seven (7) days of the Participation Deadline, Individual Mitchell Plaintiffs shall file a motion (the “Individual Mitchell Plaintiffs’ Settlement Approval Motion”) seeking the Court’s entry of an order that approves this Agreement for the Individual Mitchell Plaintiffs. This Motion shall seek an Order that the Agreement is fair, reasonable and serves the best interests of the Individual Mitchell Plaintiffs who are either Minors and/or Legally Incapacitated Individuals.

63. Individual Mitchell Plaintiffs agree that they will not proceed against Defendants with respect to the Claims, pending the Court’s entry of the Final Order and Consent Judgment.

64. The City, in its sole discretion, shall have the option to rescind the Agreement in its entirety should more than ten percent (10%) of all Individual Mitchell Plaintiffs who are sent Individual Settlement Notice send a valid Rejection

Notice by the Participation Deadline. If the City wishes to rescind pursuant to this provision, it must notify Individual Counsel and Class Counsel in writing of its election within fourteen (14) days of receipt of the list of all Individual Mitchell Plaintiffs who sent a valid Rejection Notice.

**ARTICLE V - NOTICE TO THE CLASS
AND CLASS NOTICE SETTLEMENT ADMINISTRATION**

A. Class Notice Administrator

65. As part of the Preliminary Approval Order, Class Counsel shall seek appointment of a Class Notice Administrator. The Class Notice Administrator shall administer the settlement notice according to the terms of this Agreement and orders of the Court.

66. The Class Notice Administrator shall only serve the purposes set forth in Paragraph 68 of this Agreement. When the Consent Judgment monies are made collectable, the Individual Mitchell Plaintiffs and Class Plaintiffs shall jointly agree on a Settlement Administrator who will be appointed to facilitate the claim and payment processing.

67. Defendants shall not have any responsibility, authority, or liability whatsoever for the selection of the Class Notice Administrator, the administration of the Settlement, receiving and responding to any inquiries from Class Members, or the disbursement of the Settlement Judgment amount. Defendants shall have no liability whatsoever to any person or entity, including, but not limited to, Class

Representatives, any other Class Members, or Class Counsel in connection with the Settlement Administration.

B. Notice to Class Members

68. In accordance with the terms of the Preliminary Approval Order to be entered by the Court, Class Counsel shall cause the Class Notice Administrator to issue notice to potential Class Members by Mail Notice and Publication Notice. The costs of Notice, including Mail Notice, Publication Notice, and CAFA Notice, including costs to enable the Class Notice Administrator to begin its work, shall be paid by the Class, but Defendants agree to assist the Class Notice Administrator and Class Counsel in providing names and addresses of Class Members and to the extent feasible, including the Notice in water bill correspondence distributed to Class Members.

69. The Parties agree, and the Preliminary Approval Order shall state, that compliance with the procedures described in this Article shall constitute appropriate notice to the Class of the terms of the Agreement and the Final Approval Hearing, and shall satisfy the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law.

C. CAFA Notice

70. Within 10 days of the filing of this Agreement and the motion for preliminary approval of the Agreement, the Class Representatives shall provide

CAFA Notice as required under 28 U.S.C. § 1715. CAFA Notice shall be provided to the Attorney General of the United States and the Attorney General of Michigan. CAFA Notice shall be mailed, can be in an electronic or disc format, and shall include to the extent then available and feasible: (1) the complaint, and all amended complaints, in the Action; (2) the motion for preliminary approval of the Settlement, which shall include the proposed Final Approval Hearing date and shall confirm that there are no additional agreements among the Parties not reflected in the Settlement; (3) the proposed Mail Notice and Publication Notice; (4) this Agreement; and (5) a reasonable estimate of the total number of Class Members and the number of Class Members residing in each State. Upon completion of CAFA notice, Class Counsel shall file a declaration with the Court so certifying.

71. The Parties agree that this CAFA Notice shall be sufficient to satisfy the terms of 28 U.S.C. § 1715.

ARTICLE VI - SETTLEMENT FINAL APPROVAL ORDER & TRANSFER OF ASSIGNMENT

72. This Agreement is subject to and conditioned upon the issuance by the Court, following the Final Approval Hearing, of a Final Order and Consent Judgment granting final approval of the Agreement and providing the below-specified relief, which relief shall be subject to the terms and conditions of this Agreement and the Parties' performance of their continuing rights and obligations hereunder.

73. After all of the preliminary approval steps are complete, including that the Court grants Class Plaintiffs' Motion for Preliminary Approval and grants Individual Mitchell Plaintiffs' Motion for Approval, the Plaintiffs shall promptly and jointly file a motion for Final Approval of the Settlement. Such motion shall seek an Order from the Court, which:

- a. Determines that this Agreement is fair, reasonable, adequate and in the best interests of the Class and Individual Mitchell Plaintiffs;
- b. Certifies a Class for purposes of resolution only and appoints Class Counsel;
- c. Directs the Defendants to take and cooperate in any and all remaining actions necessary and appropriate to effectuate the Agreement and Consent Judgment of this Agreement (Exhibit A) and to commence immediately the agreed-upon injunctive relief (*see supra* ¶ 53);
- d. Reserves the Court's continuing exclusive jurisdiction over the Parties to this Agreement, including the Defendants and Individual Mitchell Plaintiffs and Class Members, to administer, supervise, construe and enforce this Agreement in accordance with its terms for the mutual benefit of the Parties and the Class;

and

e. Enters the Consent Judgment, attached hereto as Exhibit A.

80. The Parties agree that the date that the Court enters the Final Approval Order and Consent Judgment, shall constitute the date that the Assignment described herein becomes effective.

ARTICLE VII - JURISDICTION OF COURT

81. The Parties agree that the Court shall retain exclusive and continuing jurisdiction over the Action, Parties, Claims, Class Members, and the Claims Process.

ARTICLE VIII - MISCELLANEOUS PROVISIONS

A. Scope of Agreement

82. For avoidance of doubt, this Settlement applies only to the Claims. It in no way applies to any pending claims by these or other plaintiffs against any other individuals or entities involving the contamination of the water in Benton Harbor from 2018 to 2022 in any other court.

B. Cooperation

83. The Parties and their counsel agree to support approval of this Agreement by the Court and to take all reasonable and lawful actions necessary to obtain such approval. Defendants also agree that they will cooperate with, and take no action to obstruct, the Class's and the Individual Mitchell Plaintiffs' attempts to collect any applicable insurance proceeds, or any sums due from the City's Insurance

pursuant to the Assigned Claims, the Consent Judgment, or that otherwise might apply to the claims at issue in these Actions and that are resolved under this Agreement, including by providing the communications and invoices with the City Insurance described above. The Parties have entered into this Agreement voluntarily after time to consult with counsel.

C. Agreement Between Class Plaintiffs and Individual Mitchell Plaintiffs

84. The Assignment and Assigned Claims as set forth herein shall be assigned to the Class and the Individual Mitchell Plaintiffs equally. The equal assignment in no way implies that any *recovery* resulting from the assignment will be split equally, or any other way, between the Class, on the one hand, and the Individual Mitchell Plaintiffs, on the other. All decisions made and actions taken in pursuing those rights must be taken jointly. No action can be taken without express written assent by counsel for both Individual Mitchell Plaintiffs and Class Plaintiffs, and such express written assent shall not be unreasonably withheld.

85. Class Plaintiffs and the Individual Mitchell Plaintiffs agree that the \$25 million Consent Judgment will be allocated 85% to All Plaintiffs who were minors on or before November 30, 2021, and 15% to All Plaintiffs who were adults after November 30, 2021. Class Plaintiffs and the Individual Mitchell Plaintiffs further agree that if monies are made collectable, the Class through Class Counsel and the Individual Mitchell Plaintiffs through Counsel for the Individual Mitchell Plaintiffs

will jointly present to the Court for approval the necessary procedures for effectuating recovery of the monies set forth in the Consent Judgment, including but not limited to, a claims valuation and administration process, a qualified settlement fund, and a payment distribution plan to Class Members and the Individual Mitchell Plaintiffs, as well as motions for attorney's fees, costs, and Class Representative service awards, all of which are subject to Court approval.

86. The Individual Mitchell Plaintiffs reserve all rights afforded under the law to object to a class for damages that includes minors.

D. Binding on Assigns

87. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, successors, and assigns.

E. Captions

88. Titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof.

F. Construction

89. The Parties agree that the terms and conditions of this Agreement are the result of lengthy, intensive arms-length negotiations between the Parties' counsel and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party, or their counsel, participated in the drafting of this Agreement.

G. Counterparts

90. This Agreement and any amendments hereto may be executed in one or more counterparts, and either Party may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and each of which counterparts taken together shall constitute but one and the same instrument. A facsimile, verified electronic signature (such as DocuSign), or PDF signature shall be deemed an original for all purposes.

H. Disputes

91. Should a dispute arise regarding any Party's compliance with the terms of this Agreement (including those outlined in Article VIII.C), the dispute shall be presented to the Mediator for expeditious telephonic mediation, and if mediation is unsuccessful, for prompt final binding, non-appealable resolution in arbitration before said Mediator.

I. Governing Law

92. Construction and interpretation of this Agreement shall be determined in accordance with the laws of the State of Michigan, without regard to the choice-of-law principles thereof.

J. Integration Clause

93. This Agreement, including the Exhibits referred to herein, which form an integral part hereof, contains the entire understanding of the Parties with respect to the subject matter contained herein. There are no promises, representations,

warranties, covenants, or undertakings governing the subject matter of this Agreement other than those expressly set forth in this Agreement. This Agreement supersedes all prior agreements and understandings among the Parties with respect to the settlement of the Action. This Agreement may not be changed, altered or modified, except in a writing signed by the Parties; if any such change, alteration or modification of the Agreement is material, it must also be approved by the Court.

K. Jurisdiction

94. The Court shall retain jurisdiction, after entry of the Final Approval Order, with respect to enforcement of the terms of this Agreement, and all Parties and Class Members submit to the exclusive jurisdiction of the Court with respect to the enforcement of this Agreement and any dispute with respect thereto.

L. No Collateral Attack

95. This Agreement shall not be subject to collateral attack by any Class Member or Individual Mitchell Plaintiff at any time on or after the Effective Date.

M. Parties' Authority

96. The signatories hereto represent that they are fully authorized to enter into this Agreement and bind the Parties to the terms and conditions hereof.

N. Receipt of Advice of Counsel

97. The Parties acknowledge, agree, and specifically warrant to each other that they have read this Agreement, have received legal advice with respect to the advisability of entering into this Agreement, and fully understand its legal effect.

O. Waiver of Compliance

98. Any failure of any Party to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

IN WITNESS WHEREOF, the Parties have executed this Agreement
on the dates set forth below:

DATED: December 18, 2025



MARK P. CHALOS
Mark P. Chalos (Bar No. 19328)
LIEFF CABRASER
HEIMANN & BERNSTEIN, LLP
222 2nd Avenue South, Suite 1640
Nashville, TN
Telephone: (615) 313-9000
Facsimile: (615) 313 -9965

*On behalf of Braziel Plaintiffs and the
Class*

DATED: : 12/18/2025 _____

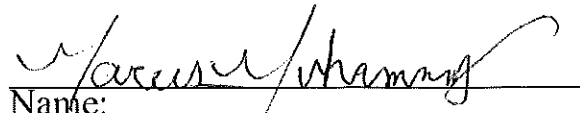
Signed by:

8D5138BFE8D7422...


COREY M. STERN
Corey M. Stern (Bar No. P80794)
LEVY KONIGSBERG, LLP
605 Third Ave, 33rd FL
New York, NY 10158
Telephone: (212) 605-6200

*On Behalf of the Individual Mitchell
Plaintiffs*

DATED: 12/18/2025


Name:
*On behalf of and with consent of the
Benton Harbor City Commission*

DATED: 12-18-25


MICHAEL O'MALLEY,
Former Water Department Director


as attorney in fact

DATED: 12/18/2025 _____

Signed by:
Ellis Mitchell
11A30F79114A49C...

ELLIS MITCHELL,
Former City Manager

DATED: 12/18/2025

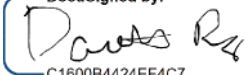

MAYOR MARCUS MUHAMMAD
Mayor of the City of Benton Harbor

DATED: 12/18/2025

Signed by:
Darwin Watson
C3FA96C34E85488...

DARWIN WATSON,
Former City Manager

DATED: 12/16/25 | 1:57 PM PST


DocuSigned by:

C1600B4424EF4C7...
DARCIA DIAZ
Class Plaintiff

DATED: 12-16-25



Keesha Jones
Class Plaintiff

DATED: 12/16/2025

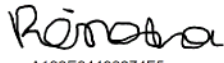


Stacey Branscum


DATED: 12/16/25


Emma Kinnard
Emma Kinnard


DATED: 12/16/25 | 1:31 PM PST

Signed by:

A193E04400874F5...
ROINÉSIA BRAZIEL

DATED: 12/16/25 | 1:44 PM PST

Signed by:

4FA1519DEEB04A3...
Deana BRAZICI

DATED: 12-16-2025

A handwritten signature in black ink, appearing to read "Kendasha Bates", written over a horizontal line.

Kendasha Bates

PLAINTIFFS

EXHIBIT A

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DARETHA BRAZIEL, <i>et al.</i> , Plaintiffs, v. CITY OF BENTON HARBOR, <i>et al.</i> , Defendants.	Case No. 1:21-cv-00960-HYJ-PJG Hon. Hala Y. Jarbou Hon. Philip J. Green
A.M., a minor, by and through Iesha Mitchell, Guardian and Next Friend, <i>et al.</i> , Plaintiffs, v. The City of Benton Harbor, <i>et al.</i> Defendants.	Case No. 1:22-cv-0475-HYJ-PJG Hon. Hala Y. Jarbou Hon. Philip J. Green

CONSENT ORDER AND JUDGMENT

WHEREAS Plaintiffs in the above-captioned actions¹ and Defendants² (collectively the “Parties”), entered into a Covenant Not To Execute, and Assignment of Rights and Claims

¹ Plaintiffs in *Braziel et al., v. City of Benton Harbor, et al.*, No. 1:21-cv-00960 (HYJ-PJG), pending in the U.S. District Court for the Western District of Michigan (the “Braziel Action”), are Daretha Braziel, individually and as next friend for minor D.R.; Ro’Nesha Braziel; Deanna Braziel; Keesha Jones, individually and as next friend for minors K.B., D.J., T.C., T.M.C; Kendasha Bates; Stacey Branscumb; and Emma Kinnard and represent the “Class” previously approved by this Court on [XXXXXXXXXX].

Plaintiffs in *A.M. et al., v. City of Benton Harbor, et al.*, No. 1:22-cv-00475 (HYJ-PJG), pending in the U.S. District Court for the Western District of Michigan (the “Mitchell Action”), are listed in Exhibit A (“Mitchell Plaintiffs” and, together with the Class, “All Plaintiffs”).

² “Defendants” refers to the City of Benton Harbor, Marcus Muhammad, Michael O’Malley, Darwin Watson, and Ellis Mitchell. Defendants Mitchell, Watson, and Muhammad were previously dismissed from the Braziel Action; Defendant Mitchell was not named in the *Mitchell* Action.

Agreement (“Agreement”)³ dated [XXXXXXXXXXXX], agreeing to resolve this matter in accordance with this Consent Order and Judgment (“Judgment”);

WHEREAS Defendants have consented to the entry of this Judgment, waiving any right to appeal and without trial or adjudication of any issue of fact or law;

WHEREAS Defendants acknowledge that this Court has subject matter jurisdiction and personal jurisdiction over Defendants, and that venue is proper in this Court as to the remaining claims in these Actions;

Now, it appearing to the satisfaction of the Court that the Agreement is fair and reasonable and freely entered by the Parties, and that entry of this Judgment resolves all matters in dispute between the Parties arising from the facts and circumstances alleged, up to the date of this Judgment, it is hereby ORDERED, ADJUDGED, AND DECREED that:

Pursuant and subject to the Agreement, judgment is entered in favor of All Plaintiffs in the amount of \$25,000,000, with interest at the rate provided by law from the date of this judgment; and

All rights to claims Defendants may have under and against the City’s insurance with respect to the claims in these actions are hereby assigned to All Plaintiffs in the manner set forth in the Agreement.

The Court retains jurisdiction of this matter for purposes of construction, modification and enforcement of the Agreement and this Consent Judgment.

IT IS SO ORDERED.

Dated:

Hon. Hala Y. Jarbou

³ The provisions of the Agreement, attached hereto as Attachment [], are incorporated by reference as if fully set forth herein. Capitalized terms in this Order have the same meaning as defined in the Agreement.