

contaminated the drinking water in Washington D.C. The contaminated water caused a dramatic spike in lead poisoning (as evidenced by the incidence of high blood levels of lead) in young children throughout the District of Columbia.

3. Lead poisoning is toxic to almost every organ system, significantly to the central nervous system, kidneys, and blood. Infants and young children are particularly susceptible to the adverse effects of lead poisoning. The effects of lead poisoning on children includes: irreversible loss of IQ; developmental delays; learning disabilities, attention and focus issues; speech, language, and behavior problems; poor muscle coordination; decreased muscle and bone growth; and hearing damage. These health problems continue into adulthood, including an increased risk of death from heart disease and stroke.

4. In June 2001, WASA discovered that dangerous levels of lead were leaching into the District's drinking water. Not only did WASA fail to take any measures to eliminate this danger, but it actually took affirmative steps to hide it from citizens and authorities. In so doing, WASA, which holds itself out as a "provid[er of] world-class water and wastewater services as a leading environmental steward," negligently and recklessly exposed the most vulnerable of DC's populations to devastating and irreversible health problems.

5. Rather than protecting the public, WASA undertook Herculean efforts to shield itself from liability and to otherwise deny responsibility for *seven and a half years*. At the same time, WASA encouraged the public to consume its dangerous product. As a result, thousands of children and pregnant mothers faced elevated risks for years longer than necessary.

6. Along with actually hiding the elevated lead levels in 2001, WASA also omitted language from mandated public education campaigns that would have alerted the public to the seriousness of the problem and plotted ways to subvert or otherwise alter the outcomes of lead testing. At the same time, WASA actively encouraged DC residents to consume the water it knew was unsafe.

7. Indeed, much to the Environmental Protection Agency's ("EPA") "outrage," WASA's efforts at this cover-up *violated federal law* as established by EPA regulations and as concluded in an EPA order.

8. Through these and other tactics, WASA downplayed the seriousness of the lead contamination of its water.

9. WASA's obfuscation created massive confusion on the part of D.C. residents, who were slow to take remedial action as a result. The public simply did not understand that the problem existed or the risks it posed. As one WASA customer and D.C. resident explained, when she had received a letter informing her that the lead in her water tested as "higher than the federal action level," she was not sure if that was a good or bad result.

10. By engaging in these egregious acts and omissions, WASA endangered thousands of children who drank the District's water from 2001 through 2004, and who now suffer from such defects as brain damage, decreased growth, speech and balance problems, below-average learning skills, reduced I.Q. levels, the inability to focus, and hyperactivity.

11. To date, WASA has consistently denied responsibility for its acts and omissions. When, in 2004, the media revealed that D.C.'s water supply was

contaminated with startlingly high lead levels, WASA made every attempt to downplay the harms associated with this poisonous water, advising the public that drinking the water was safe and denying that the water was to blame for elevated lead levels in children.

12. But the data demonstrates that WASA's public statements regarding the safety of the water were simply false.

13. A study published in 2009 by Dr. Dana Best, of Children's National Medical Center and Marc Edwards, Ph.D. and Professor of Civil and Environmental Learning at Virginia Polytechnic Institute and State University ("Virginia Tech"), finds that the elevated blood levels discovered in the children are "directly correlated" to the amount of D.C. drinking water to which the children were exposed. In fact, during the exact time that the levels of lead in D.C.'s water spiked, there was a *ten-fold increase* in elevated blood lead levels in these children.

14. Yet WASA negligently and willfully failed to address the problem and failed to warn the public, leaving thousands of D.C.'s most vulnerable populations – unborn children, infants, and small children – exposed and at risk.

15. Minors J.D.P. and J.T.P ("Class Representatives), through Parent and Next Friend Parkhurst, bring this lawsuit on behalf of themselves and other similarly-situated minors for WASA's failure to timely and adequately notify Class Representatives and the Class about the presence and prevalence of lead in the City's drinking water; failing to alert Class Representatives and the Class of the dangers associated with consuming the City's water; for failing to take appropriate measures to ameliorate the dangers inherent

in consuming the City's water; and for continuing to cover up its wrongdoing from 2001 to the present.

16. Among the injunctive relief sought by Class Representatives and the Class are: (1) the establishment of a system of ongoing medical monitoring and care for those children lead-poisoned by the contaminated water, and (2) the establishment of a system of targeted educational intervention and services for those children lead-poisoned by the contaminated water.

II. JURISDICTION AND VENUE

17. Class Representative and the Class they seek to represent bring this action under the District of Columbia Consumer Protection Procedures Act, D.C. Code. § 28-3901, *et seq.* and the common law of the District, to obtain equitable relief and to recover damages and costs of suit for injuries sustained as a result of WASA's violations of District law.

18. WASA is domiciled in and transacts business in the District, and derives substantial revenues from the sale of drinking water in the District.

19. WASA, through authorized agents within the scope of its authority, has caused damage by acts or omissions within the District

III. PARTIES

20. Class Representative J.D.P. ("Representative J.D.P.") is an eight year-old boy and a resident of the District of Columbia. J.D.P. was born on November 5, 2000. Between 2001 and 2003, when J.D.P. was between eight months and three years of age, he resided at 633 7th Street, N.E., Washington, D.C., 20002. On information and belief, WASA provided Class Representative J.D.P.'s residence with drinking water that was

contaminated with dangerous levels of lead throughout that time period. Representative J.D.P. appears by a parent and next friend, John Parkhurst (“Parent and Next Friend Parkhurst”), who is sufficiently familiar with the facts of J.D.P.’s situation to fairly and adequately represent his interests in this litigation.

21. Class Representative J.T.P. (“Representative J.T.P.”) is an eight year-old boy and a resident of the District of Columbia. J.T.P. was born on November 5, 2000. Between 2001 and 2003, when J.T.P. was between eight months and three years of age, he resided at 633 7th Street, N.E., Washington, D.C., 20002. On information and belief, WASA provided Class Representative J.T.P.’s residence with drinking water that was contaminated with dangerous levels of lead throughout that time period. Representative J.T.P. appears by a Parent and Next Friend Parkhurst, who is sufficiently familiar with the facts of J.T.P.’s situation to fairly and adequately represent his interests in this litigation.

22. WASA is a “semiautonomous” water and sewer authority with its principal place of business at 5000 Overlook Avenue, S.W., Washington, D.C., 20032 whose general purpose is to “plan, design, construct, operate, maintain, regulate, finance, repair, modernize, and improve water distribution and sewage collection, treatment, and disposal systems and services, and to encourage conservation.” D.C. Code § 34-2202.02 (2001). At the times relevant herein, WASA provided drinking water and wastewater collection and treatment to more than 500,000 residential, commercial and governmental customers in the District.

IV. FACTS

A. THE DISTRICT'S WATER DISTRIBUTION SYSTEM

23. WASA describes itself as “a multi-jurisdictional regional utility that provides drinking water and wastewater treatment to more than 500,000 residential, commercial and governmental customers in the District of Columbia” as well as a waste treatment facility. WASA has an exclusive franchise for delivering potable water throughout the District.

24. To distribute water and support the distribution system, WASA operates and maintains approximately 1,300 miles of water pipes, five pumping stations, five reservoirs, four elevated water storage tanks, 36,000 valves, and 8,700 hydrants. Many of these pipes are made of lead or copper and are joined by lead solder. WASA’s service area covers approximately 725 miles.

25. The water provided to Class Representatives at their residence during the relevant time period on 7th Street, N.E. is typical of that provided in the District. Their home was connected, during the relevant time period, to the city-wide potable water distribution system by means of a service pipe (the “Service Line”). The Service Line typically, although not necessarily in every instance, runs from the outside wall of the serviced residence, through the front yard of the residence it serves, and connects with the water main or trunk line located beneath the sidewalk or street in front of the residence.

26. By law, WASA is responsible for the repair and maintenance of the pipes and conveyances, including the Service Line, by which such drinking water is delivered to residences in the District.

27. WASA is responsible for the delivery of safe and drinkable water all the way to the consumers' taps.

B. THE EPA LEAD AND COPPER RULE

28. In 1991, the EPA issued regulations that require municipal water systems to test drinking water for lead. These regulations, known as the "Lead and Copper Rule" ("the Rule"), require public water systems to conduct sampling of drinking water and report the levels of lead (and copper) found in these samples.

29. While the EPA has not set a maximum contaminant level for lead in public drinking water, it has adopted a "Lead Action Level" ("LAL") of 15 parts per billion (ppb). The EPA set this level based on data showing that prolonged exposure to lead in drinking water at this level correlates to elevated blood lead levels in infants, small children and adults that can pose a significant risk of adverse health affects.

30. If 10% of the water samples tested exceed the EPA Lead Action Level of 15 ppb, the Rule requires the water utility to undertake comprehensive remedial action, including beginning corrosion control treatment, monitoring the water, and educating the public about the presence of lead, the adverse health effects posed by lead, the measures being taken to ameliorate the problem, and what consumers can do to minimize their exposure to the lead.

31. Specifically, within 60 days of exceeding the lead action level, the water utility must:

- (a) Insert notices in each customer's bill;
- (b) Deliver pamphlets and/or brochures that contain the public education materials to facilities and organizations that provide services to pregnant women and children;

- (c) Submit information to the editorial departments of the major daily and weekly newspapers circulated throughout the community; and
- (d) Deliver public service announcements (“PSAs”) to radio and television stations.

C. 2000: WASA SWITCHES TO CHLORAMINE TO DISINFECT THE CITY’S DRINKING WATER

32. In November of 2000, WASA began using a new chemical as a part of its process to purify the District’s drinking water. Specifically, WASA switched from using chlorine to chloramines (a combination of chlorine and ammonia), rejecting the use of arguably safer options that were more costly.

33. Notably, before WASA decided to use chloramines as a part of the disinfection treatment, the American Water Works Association Research Foundation (AWWARF) – the scientific division of the public drinking water trade group widely known to publish expert and scholarly articles in this field – published notice in 1999 that chloramines appear to increase corrosion.

34. Furthermore, on information and belief, WASA did not follow the EPA’s written guidelines and requirements, which warn that because a significant change in disinfection treatment could increase lead corrosion, utility companies must alter their existing corrosion-control program in order to safely accommodate the use of chloramines. WASA also ignored EPA written guidance that instructs utilities to carefully monitor the possible effects of chloramines, especially when used in older public water systems (which typically contain larger numbers of lead pipes susceptible to corrosion).

35. On information and belief, despite (1) the EPA's and AWWARF's explicit warnings and (2) the fact that WASA was particularly susceptible to harmful corrosion due to the advanced age of DC's water system, WASA did not conduct any further studies on the effect of chloramines on lead corrosion.

36. Just as the EPA and AWWARF warned, the chloramines interacted with the DC water system dangerously, causing lead to leach into the water from the lead pipes, brass pipes and lead solder used to connect pipes in the system.

D. BEGINNING IN 2001, WASA DISCOVERS AND COVERS UP DANGEROUSLY ELEVATED LEAD LEVELS IN THE CITY'S WATER

37. By the close of June 2001, WASA conducted its EPA-mandated 2000-2001 lead and copper monitoring of the water in Washington D.C. Out of the 55 samples recorded, WASA collected nine samples with lead levels above 15 ppb. This constituted an approximate 16% rate of elevated lead levels in the District's water supply, well above the EPA set 10% Lead Action Level.

38. In violation of EPA regulations, WASA "invalidated" some of the samples which showed elevated levels without securing authorization to do so. WASA then falsely reported that its testing had revealed elevated lead levels in fewer than 10% of the samples, thereby avoiding EPA-mandated public education and remediation efforts.

39. WASA did not embark on any public-education campaign regarding elevated lead levels in the water after its collection of the June 2001 samples.

40. WASA did not report to the EPA or the public that, although testing prior to the use of chloramines had shown only a 5% contamination rate (with 2 out of 40 samples showing elevated lead levels), testing done subsequent to the use of chloramines

yielded seven out of fifteen samples with elevated lead levels – a 46.6% contamination rate.

41. Furthermore, in WASA’s “Year 2001 Water Quality Report,” there is no public education regarding elevated lead levels, nor any notice that elevated lead levels spiked above allowed levels.

42. Based on WASA’s misrepresentation to the EPA regarding the lead levels in DC’s water supply, WASA conducted its 2001 to 2002 lead and copper monitoring under the EPA’s reduced monitoring requirements, which dictate that only fifty samples need be collected over the course of the year.

43. WASA took more than half of the 2002 reported samples in July and August of 2001. Of these samples, **55% exceeded the Lead Action Level**. Several of the samples had lead levels of more than 40 ppb -- **nearly triple the limit set by the EPA**. Three showed lead levels of more than 100 ppb, or **more than six times the limit set by the EPA**.

44. Taken in conjunction with the other samples WASA had drawn in June of 2001 (subsequent to the use of chloramines), 53% of the District’s water supply tested in 2001 exceeded the LAL – an alarming increase over the 5% contamination rate shown prior to the use of chloramines.

45. No later than October of 2001, WASA had notice (1) of the dramatic spike in lead levels, (2) that chloramines are regarded as being particularly corrosive by the EPA and the scientific community, and (3) that the District’s water supply would drastically exceed the EPA established LAL for 2002, requiring significant remediation and education efforts.

46. WASA did not make any public statements to notify or warn the public of these above, nor did it begin preparations for the required public education campaign it would be required to institute once those results were turned over to the EPA. Upon information and belief, WASA did not take any steps to identify what had caused the spike in lead levels, nor did it revisit its decision to begin using chloramines as a component of its water purification process.

E. WASA'S CONTINUED REFUSAL TO ADDRESS THE LEAD PROBLEM IN 2002 AND ITS ONGOING EFFORTS TO COVER IT UP

47. At the close of the 2001-2002 monitoring period in June 2002, WASA reported its collection of 53 samples, 26 of which exceeded the EPA's Lead Action Level – again yielding a nearly *50% contamination rate*.

48. On information and belief, up until June 2002, WASA had not taken any steps to identify what had caused the spike in lead levels, nor had it revisited its decision to include chloramines as a component of the disinfection treatment. On information and belief, WASA failed to take these steps despite being advised by its water quality manager in the summer of 2002 that it should change to a less corrosive disinfection treatment to address the lead contamination. On information and belief, WASA further ignored advice that it should meet with a phosphate company in October 2002 to address this potential corrective action.

49. When, as expected, the EPA officially deemed in October of 2002 that WASA lead levels exceeded the LAL and that immediate remediation efforts were required, WASA had only begun to prepare public education materials, despite having known of the gross magnitude of the problem for approximately twelve months.

50. Pursuant to the Lead and Copper Rule, WASA was required to send out material educating the public regarding dangerously elevated levels of lead in the water within 60 days. As confirmed by an independent EPA investigation, WASA did not send out notices that were compliant with established requirements – yet another clear violation of EPA regulations.

51. For example, the brochure WASA sent did not track the language required by the EPA. WASA was required to state:

“SOME HOMES IN THIS COMMUNITY HAVE ELEVATED LEAD LEVELS IN THEIR DRINKING WATER. LEAD CAN POSE A SIGNIFICANT RISK TO YOUR HEALTH.”

Instead, WASA issued notices that *intentionally omitted the key required phrases* that indicated the elevated lead levels were found “in their drinking water” and that that these elevated levels posed “significant” health risks. WASA distributed a notice which, in effect, read:

“SOME HOMES IN THIS COMMUNITY HAVE ELEVATED LEAD LEVELS IN THEIR DRINKING WATER. LEAD CAN POSE A SIGNIFICANT RISK TO YOUR HEALTH.”

52. Furthermore, the WASA brochure did not contain the requisite alert. It did not indicate that the brochure was being sent in response to the alarming spike in lead levels, nor did it convey that tests showed a nearly 50% contamination rate in the District’s water supply.

53. At the same time, WASA modified the EPA-mandated language for public service announcements in order to downplay the threat to public health posed by the elevated lead levels. WASA omitted language urging consumers to have their water

tested and omitted pricing information for water testing. WASA made these modifications without EPA consent.

54. The impact of even these mild cautions was completely diluted by offsetting efforts made by WASA. WASA took precise steps as a part of its regular public information campaign to build public confidence in the water supply, rather than focusing on educating and protecting the consumer.

55. Rather than warning customers of the elevated lead levels and the attendant serious health complications, WASA actually *encouraged the consumption of the dangerous water*. Beginning in the winter of 2002, WASA included in its “On Tap” newsletter (mailed to each customer) recipes featuring unfiltered WASA tap water. Notably, in the Winter 2002 issue, an issue which appeared *after WASA had ample notice* of the widespread lead contamination in the city’s drinking water, WASA included *a recipe for cranberry tea which called for the use of unfiltered water*.

F. WASA’S ONGOING EFFORTS TO COVER UP THE LEAD PROBLEM IN 2003

56. When distributing its “Year 2002 Water Quality Report” (issued sometime in early 2003), WASA printed as the front cover a letter informing consumers, “We are once again proud to report that Washington, DC’s drinking water met or surpassed all requirements of the federal Safe Drinking Water Act (SDWA) every single day in 2002.” By beginning the report in such a manner, WASA suggested to customers that there was nothing of concern in the report.

57. WASA further buried its discussion regarding the dangerous levels of lead contamination in the District’s water, limiting such disclosure to a few lines of text on the third page of the seven page report. WASA did not disclose the scope of the lead

problem nor did it indicate that customers must take steps to protect themselves from this risk. Rather, WASA merely recommended consumption of drinking water be from the cold water tap, instead of the hot water tap, and that the customer “run the cold water for a few minutes before drinking it.”

58. At the close of the January through June of 2003 monitoring period, WASA reported its collection of 104 samples, 27 of which showed lead levels over 15 ppb, yielding an overall contamination of rate of nearly 26%. These results exceeded the EPA LAL by nearly three times, despite the fact that publicly-released documents show WASA specifically designed its 2003 sampling plan in order to minimize the likelihood of finding samples that exceeded permissible lead levels.

59. At the close of the July through December of 2003 monitoring period, WASA reported its collection of 106 samples, 35 of which showed lead levels over the allotted limit, again yielding a nearly 33% contamination rate. Again, these results exceeded the EPA LAL by nearly three times, despite the fact that publicly-released documents show WASA specifically designed its 2003 sampling plan in order to minimize the likelihood of finding samples that exceeded permissible lead levels.

60. Despite the clear and ongoing health risks associated with the city’s drinking water, WASA continued to mislead the public regarding the seriousness of the contamination and the attendant health risks. For example, WASA alleged in a notice mailed in 2003 that “most homes have very low levels of lead in the drinking water.” In the “Lead-Free Drinking Water Act of 2007,” Oversight and Government Reform Committee Chairman Henry A. Waxman and Congresswoman Eleanor Holmes Norton

generally characterized WASA as “delaying or burying their warnings” by “using generic language deep in a brochure or water bill.”

60. Likewise, WASA similarly downplayed the urgency of the situation in public meetings. In December 2003, WASA held a public meeting, but its advertisements for the meeting failed to disclose that the meeting was about the lead problem. Instead, advertisements for the meeting simply noted that purpose of the meeting was to discuss “WASA’s Safe Drinking Water Act projects.”

G. WASA CONTINUES TO DENY RESPONSIBILITY WHEN EXPOSED IN 2004

61. WASA made little attempt to publicize the discovery of lead in the drinking water system until forced to do so as a result of press coverage of the issue in early 2004.

62. On January 31, 2004, the Washington Post published an article exposing the elevated lead levels and that WASA had known of the elevated levels as early as 2001.

63. Subsequent to the publication of this report, WASA publicly claimed that the elevated lead levels did not pose a health risk and that it was not responsible for the elevated lead levels being found in the District’s children. WASA made similar representations to its customers.

64. Contrary to fact, WASA further claimed that it had made all necessary and appropriate disclosures to the public at all times.

65. Only after the press began reporting on the elevated lead levels found in WASA’s water did WASA begin to conduct a test to determine whether the use of chloramines were the cause of the elevated lead levels.

66. In June of 2004, the EPA issued an administrative order finding that WASA had violated federal law by withholding key test results and failing to properly notify the public of unsafe levels of lead in its drinking water. Specifically, the EPA found that WASA knew that over 10% of its water samples reflected unacceptably high levels of lead in early 2001, however it failed to report this to the EPA for an entire year.

67. EPA's Regional Office Chief characterized WASA's failure to abide by EPA regulations as a "serious breach of the protection under the Lead and Copper Rule." He further indicated that the EPA was "outraged that the data was not reported."

68. WASA further paid for a report in 2007 that again stated WASA's contaminated water was not the cause of the lead poisoning suffered by the District's children. However, the report's author did not disclose that he was a paid consultant for WASA. Moreover, in violation of scientific standards, the author ignored direction from his peer reviewers to remove the "scientifically dubious" conclusion that there was no health impact attributable to the elevated levels of lead in WASA's water.

69. Of further note, WASA has had to pay fines to the EPA in both 2006 and 2007 for failure to abide by the requirements set by the EPA as a part of its lead remediation efforts.

H. JANUARY 2009: NEW STUDY CONFIRMS THAT LEAD POISONING OF DC CHILDREN STEMMED FROM WASA WATER

70. On January 27, 2009, researchers at Virginia Tech and Children's National Medical Center published a study entitled, "*Elevated Blood Lead in Young Children Due to Lead-Contaminated Drinking Water: Washington, DC, 2001-2004*" ("Edwards Study" hereinafter).

71. *The findings from this study directly contradict the public statements made by WASA to date regarding the safety of D.C.'s drinking water from 2001 through 2004.*

72. Contrary to the public statements made by WASA regarding the safety of its drinking water, the Edwards Study reveals that “the number of toddlers and infants with blood-level concentrations that can cause irreversible loss and developmental delays more than doubled after harmful levels of lead began leaching into the city’s drinking water in 2001.”

73. Professor Edwards found that “the incidence of elevated blood lead (“EBL”) for children aged less than or equal to 1.3 years continued its decades long decline from 1999 through the first half of 2001. But in the second half of 2001 the incidence of EBL abruptly increased 9.6 times versus the first half of 2001.” This sudden jump in the incidence of EBL among children under 2 years of age correlates with the switch made by WASA from chlorine to chloramines -- the factor that all researchers have acknowledged as the cause of the increased levels of lead in tap water.

74. Professor Edwards’ study also shows that, throughout 2002 and 2003, the incidence of EBL among children under 2 years of age was more than 4 times higher than in 2000. Moreover, a neighborhood by neighborhood breakdown shows a strong correlation between incidence of EBL and high water lead levels during the period from 2001-2004.

75. Professor Edwards concludes that the high water lead levels from 2001-2004 were directly responsible for the increase in the incidence of EBL among young children during that period. His findings suggest that 42,000 unborn children and

76. The publication of Professor Edwards' findings have shown that thousands of young and unborn children faced harm as a result of the high lead levels that WASA failed to publicize or aggressively address for over 2 years. The study has also raised new questions about whether WASA misled the public in repeatedly claiming that DC tap water was safe to drink and that the high levels of lead in the water did not pose a direct danger to public health.

I. HARM TO CLASS REPRESENTATIVES

77. Parent and Next Friend Parkhurst moved his two healthy infant boys, J.D.P. and J.T.P., to his residence at 7th St. N.E., Washington, D.C. in July of 2001. On information and belief, this home has a lead water service line that connects from the main water supply pipe, passes under city-owned property, and into his home.

78. At the time of the move, both of the Class Representatives, aged eight months at the time, were given formula and food prepared exclusively with tap water.

79. Both of the Class Representatives continued to drink formula and consume food prepared with tap water until at least the end of 2002, when they were approximately two years of age.

80. In November of 2002, when Class Representatives were two years old, they had their yearly physical examinations.

81. Both of the Class Representatives showed evidence of lead poisoning.

82. Because Parent and Next Friend Parkhurst had not received any notice from WASA about lead in the water, Class Representatives continued to use WASA-supplied water.

83. Beginning in February or March of 2006, Parent and Next Friend Parkhurst grew increasingly concerned about behavioral and learning difficulties both of his boys were having. By March 2007, Parent and Next Friend Parkhurst was so concerned that he brought Class Representatives to a doctor for a neuropsychological evaluation. The testing identified significant problems in attention, learning, and executive function with both J.D.P and J.T.P.

84. Throughout the 2006-2007 school year, one of the Class Representatives' kindergarten teachers expressed to Parent and Next Friend Parkhurst that she continued to observe attention, learning, and behavioral difficulties in Representative J.D.P.

85. In the summer of 2007, Parent and Next Friend Parkhurst sought a psychiatric evaluation for J.D.P., with a view towards treatment and medication; in the fall of 2007, Parent and Next Friend Parkhurst sought psychiatric evaluation for Representative J.T.P., with a view towards treatment and medication.

86. The psychiatric evaluations of Class Representatives J.DP and J.T.P. identified unusual patterns in attention, learning, and executive function similar to those seen in the earlier neuropsychological evaluations. These unusual patterns suggest long term difficulties in learning and behavior, and are also identified with a higher likelihood of substance abuse later in life.

87. The psychiatrist eventually prescribed Concerta, an ADHD medication also designed to address the proclivity towards substance abuse, for both Class Representatives.

88. As of January 2009, Representative J.T.P. began psychiatric therapy to address ongoing issues with anxiety.

89. The total cost for Representative J.DP and J.T.P.'s medication and therapy approximates \$30,000 to \$40,000 per year.

J. HARM TO THE CLASS

90. As Drs. Edwards and Best asserted in their recent report, “the assertion that no one was harmed [by lead in DC’s drinking water] contradicts decades of scientific research on lead in drinking water.”

91. Numerous studies indicate that the presence of increased lead in drinking water can lead to physical injuries and intellectual impairment. The Class is at substantially high risk of developmental disabilities, psychological disorders and brain damage.

92. Specialists say damage from lead is often permanent. Children can exhibit signs of aggressiveness and difficulty focusing in school. Numerous studies show lead-poisoned children can on average lose 3 to 7 IQ points.

93. There is, as the Edwards study now confirms, “no doubt that many children in this city were profoundly impacted by the years of completely unnecessary exposure to high lead in the District's water.”

V. CLASS ALLEGATIONS

A. Class Definition

94. Class Representatives J.D.P. and J.T.P. seek to maintain claims, through Parent and Next Friend Parkhurst, (1) on behalf of themselves and (2) pursuant to D.C. SCR-Civ. R. 23(b)(1)(A), and 23(b)(2) and/or 23(b)(3) on behalf of a Class, consisting of all minor children who, at any time between while six years or younger in age drank unfiltered water from a residential tap located within the District of Columbia containing lead in concentrations in excess of the EPA Lead Action Level (15 ppb) from 2000 through 2004, including all minor children who ingested lead prenatally as a result of their birth-mother drinking such water.

B. Efficiency of Class Prosecution of Common Claim

95. Certification of a class of minors similarly-situated to Class Representatives J.D.P. and J.T.P. is the most efficient and economical means of resolving the questions of law and fact which are common to Class Representatives' claims. Class Representatives' claims require resolution of numerous common questions of both fact and law.

96. Class action treatment of this case is the superior, if not the only, method for the fair and efficient adjudication of this controversy because, among other reasons, such treatment will permit a large number of similarly situated persons and entities to prosecute their claims without the unnecessary and inefficient duplication of effort, evidence, and expense that numerous individual cases would engender. The class method is the only practicable method for many class members to achieve judicial resolution of their claims, due to the relatively small number of individual claims.

97. Moreover, the piecemeal litigation of these cases by individual members of the Class would create a substantial risk of inconsistent or varying adjudications that might establish incompatible standards of conduct governing WASA.

98. Class Representatives have standing to seek such relief because of the adverse effect that WASA's acts have had them and on the Class generally. Without class certification, the same evidence and issues would be subject to re-litigation in a multitude of individual lawsuits with an attendant risk of inconsistent adjudications and conflicting obligations. Certification of the proposed Class, which has been affected by these common questions of law and fact is the most efficient and judicious means of presenting the evidence and arguments necessary to resolve such questions for the Class Representatives, the Class and WASA.

C. Numerosity and Impracticability of Joinder

99. The class which Class Representatives seek to represent is too numerous to make joinder practicable. Although the exact size of the Class is currently unknown to Class Representatives, the total number of class members approximates the thousands. As such, the Class is sufficiently numerous such that joinder of all class members would be impracticable.

D. Common Questions of Law and Fact

100. The prosecution of Class Representatives' claims will require the adjudication of numerous questions of law and fact common to both his individual claims and those of the proposed class he seeks to represent. There exist numerous questions of law and fact common to the Class, including:

- (a) Whether WASA breached its duty of care to the Class Representatives and to the Class by knowingly delivering unsafe drinking water; failing to provide

timely and accurate information regarding the dangers of the drinking water; failing to timely take comprehensive remedial action; and/or failing to educate the public about the unsafe drinking water and mitigating steps to avoid lead exposure.

(b) Whether WASA falsely represented that the drinking water it supplied was safe for drinking, and whether this was a material misrepresentation of fact;

(c) Whether WASA made these representations with the intent to deceive;

(d) Whether WASA marketed and promoted drinking water accompanied by express and/or implied warranties and representations to its customers that the water was safe for young children or children in utero if used for its intended purpose;

(e) Whether WASA's marketing and promotions of the defective and unsafe drinking water unreasonably exposed the Class Representatives and the Class to unsafe drinking water, causing them to suffer injuries, losses, and damages.

(f) Whether Class Representatives and the Class they seek to represent are entitled to damages; and

(g) Whether Class Representatives and the Class they seek to represent are entitled to injunctive relief.

E. Typicality

101. The claims of Class Representatives J.D.P. and J.T.P. are typical of the claims of the Class. The relief sought by Class Representatives herein is also typical of the relief which is sought on behalf of the Class.

102. Class Representatives are, like members of the Class, minor children who, while six years or younger in age, drank unfiltered water from a residential tap located within the District of Columbia containing lead in concentrations in excess of the EPA Lead Action Level (15 ppb) from 2000 through 2004.

103. Class Representatives have no conflicts of interest with any other member of the proposed Class and will fairly and adequately protect the interests of the other class members, including absent class members.

F. Adequacy of Representation

104. The Class Representatives' interests are co-extensive with those of the members of the proposed class they seek to represent in this case. Class Representatives seek both monetary damages and injunctive relief. The injunctive relief they seek would include: (1) establishment of a system of ongoing medical monitoring and care for those children lead-poisoned by the contaminated water; (2) establishment of a fund from which class members may draw to pay for ongoing medical and educational services necessitated to offset the effects of the lead-poisoning; and (3) establishment of a system of targeted educational intervention and services for those children lead-poisoned by the contaminated water. The Class Representatives are willing and able to represent the proposed class fairly and vigorously as they pursue their similar individual claims in this action.

105. The Class Representatives have, through Parent and Next Friend Parkhurst, retained counsel who are qualified, experienced and able to conduct this litigation and to meet the temporal and fiscal demands required to litigate this case. The combined interests, experience and resources of the Class Representatives and their counsel to litigate competently the individual and class claims at issue in this case clearly satisfy the adequacy of representation requirement of Sup. Ct. R. Civ. P. 23(a)(4).

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION NEGLIGENCE

106. Class Representatives reallege all of the above allegations as if fully set forth herein.

107. At all times relevant herein, WASA owes a duty of care to Class Representatives and to the Class. Specifically, WASA owed a duty to:

- a. deliver drinking water that was not dangerous;
- b. provide timely and accurate information to Class Representative and the Class concerning the known or potential dangers of its drinking water;
- c. undertake comprehensive remedial action where 10% or more of the water samples showed evidence of dangerously high lead levels; and
- d. educate the public about the presence of lead, the adverse health effects posed by lead, the measures being taken to ameliorate the problem, and what consumers could do to minimize exposure to the lead

108. WASA breached its duty of care to Class Representatives and the Class by, *inter alia*:

- a. knowingly delivering drinking water that contained dangerous levels of lead;
 - b. failing to provide timely and accurate information to Class Representatives and the Class concerning the dangerous levels of lead in of its drinking water;
 - c. failing to accurately report the lead levels found in its water to the EPA;
 - d. failing to timely undertake appropriate remedial action;
- and

e. failing to timely and adequately educate the public about the presence of lead in the water, the adverse health effects posed by lead, the measures being taken to ameliorate the problem, and what consumers could do to minimize their exposure to the lead.

109. WASA's breach of its duty of care is the proximate and legal cause of Class Representatives' and the Class's injuries, which include but are not limited to: irreversible loss of IQ; developmental delays; learning disabilities, attention and focus issues; speech, language, and behavior problems; poor muscle coordination; decreased muscle and bone growth and hearing damage.

110. The Class Representatives may also rely on the doctrine of *res ipsa loquitor*.

111. As a result of the foregoing, WASA is liable for damages suffered by Class Representatives and the Class in an amount to be proven at trial.

SECOND CAUSE OF ACTION
FRAUDULENT MISREPRESENTATION

112. Class Representatives reallege all of the above the allegations as if fully set forth herein.

113. Through the course of conduct described herein, WASA made false representations that induced Class Representatives and the Class to consume water they believed was fit for human consumption but that was, in fact, toxic and contaminated with lead.

114. WASA's false representation that the water was free of toxic lead levels and fit for consumption was a material misrepresentation of a fact that a reasonable person would consider important to know in deciding whether to continue to drink the water.

115. WASA knew that these representations were false.

116. WASA made these representations and concealed facts from Class Representatives and the Class with the intent to deceive, and did in fact deceive and induce Class Representatives and the Class to consume toxic water contaminated with lead.

117. Class Representatives and the Class reasonably relied on these representations and omissions to their detriment.

118. As a result of WASA's fraudulent conduct, Class Representatives and the Class suffered damages.

119. WASA is liable for damages suffered by Class Representatives and the Class in an amount to be proven at trial.

THIRD CAUSE OF ACTION

**VIOLATION OF THE D.C. CONSUMER PROTECTION PROCEDURES ACT
(D.C. Code §§ 28-3901, *et seq.*) – UNFAIR OR DECEPTIVE TRADE PRACTICES**

121. Class Representatives repeat and reallege all of the above allegations as if fully set forth herein.

122. The water supplied by WASA and intended to be consumed as drinking water constitutes "goods and services" under the Act.

123. At all times relevant hereto, WASA was engaged in a "trade practice" as defined by § 28-3901(a)(6)

124. WASA violated the District of Columbia Consumer Protection Procedures Act, D.C. Code §§ 28-3901, *et seq.* (the "CPPA"), enacted to assure that a just mechanism exists to remedy all improper trade practices, deter the continuing use of such practices and promote fair business practices throughout the community. D.C. Code §

28-2904.

125. At all times relevant hereto, Class Representatives and the Class were among the class of people the CPPA is designed to protect.

126. WASA willfully violated the CPPA by, *inter alia*, marketing its water, to District of Columbia consumers as being safe for human consumption, while knowing of the dangerous lead levels present in the water.

127. WASA, through public statements and assurances, promoted public trust in its product, with the goal of increasing the public's consumption of that product. Such statements and assurances had the tendency to, and did in fact, deceive Class Representatives and the Class.

128. Intending that Class Representatives and the Class rely on WASA's misrepresentations, WASA further willfully violated the CPPA by deception, fraud, false pretense, false promise, misrepresentation, concealment, suppression and/or omission of material facts related to the promotion and sale of water. WASA's conduct was so outrageous as to constitute ill will, bad motive and reckless indifference to the interests of the consumers and was specifically designed to induce Class Representatives and the Class to continue to utilize WASA's goods and services after it was known to be unsafe.

129. Class Representatives and the Class have suffered damages as a direct and proximate result of these acts and/or omissions by WASA in violation of the CPPA. The injuries suffered by Class Representatives and the Class as a result of WASA's conduct were substantial and not reasonably avoidable by consumers.

130. As a result of the foregoing, WASA is liable for damages suffered by Class Representatives and the Class in an amount to be proven at trial.

FOURTH CAUSE OF ACTION
BREACH OF EXPRESS AND/OR IMPLIED WARRANTY

130. Class Representatives reallege all of the above allegations as if fully set forth herein.

131. At all times relevant to this action, Defendant marketed and promoted drinking water accompanied by express and/or implied warranties and representations to its customers that the water was safe for unborn children and young children if used for its intended purpose.

132. Defendant knew, or should have known, that young children were relying on Defendant's skills and judgments and the implied and express warranties and representations.

133. At all times relevant to this action, these implied and express warranties and representations were false, misleading and unfounded. In fact, WASA's drinking water was not safe for young children or unborn children to consume.

134. As a direct result of the breach of warranties by the Defendant, Class Representatives and the Class have been injured.

FIFTH CAUSE OF ACTION
STRICT LIABILITY

135. Class Representatives reallege all of the above the allegations as if fully set forth herein.

136. The drinking water provided by WASA was, at all times relevant to this action, an unreasonably dangerous and defective product when used for its advertised and intended purpose.

137. Defendant knew, or should have known, that Class Representatives and the Class could not realize and could not detect the dangerous and harmful nature of WASA's drinking water.

138. WASA should have, but did not, provide clear warnings as to the dangers associated with its drinking water.

139. As a result of Defendant's marketing and promotion of said defective and unreasonably dangerous drinking water, Class Representatives and the Class were unreasonably exposed to toxic drinking water and have suffered injuries, losses and damages.

140. By reason of having marketed and promoted its drinking water in its defective and unreasonably dangerous condition, Defendant is strictly liable to Class Representatives and the Class.

141. Because of actions attributable to WASA, Class Representatives and the Class suffered and will continue to suffer physical and mental harm, as well as monetary losses, including, but not limited to, future medical expenses, lost wages, and impaired earning capacity.

VI. PRAYER FOR RELIEF

WHEREFORE, Class Representatives, on their own behalf and on behalf of the Class, pray that this Court:

- A. Certify the case as a class action maintainable under the D.C. Superior Court Rules of Civil Procedure Rule 23(a), (b)(2) and/or (b)(3), on behalf of the proposed Class, and designate J.D.P. and J.T.P. as the representatives of this Class and their counsel of record as class counsel;
- B. Order injunctive relief including but not limited to: (1) establishing a system of ongoing medical monitoring and care for those children lead-poisoned by the contaminated water and (2) establishing a system of targeted educational intervention and services for those children lead-poisoned by the contaminated water;
- C. Award Class Representatives and the Class compensatory damages against WASA for all damages sustained as a result of WASA's wrongdoing (including, *inter alia*, lost earnings, medical expenses and other past and future economic losses, physical pain, mental suffering, and other past and future non-economic losses, etc.), in the amount of \$200,000,000 (200 Million Dollars), or such larger amount to be proven at trial, including interest thereon;
- D. Award punitive damages in favor of Class Representative and the Class against WASA in an amount to be determined by the jury.
- E. Award Class Representatives reasonable costs and expenses incurred in this action, including counsel fees and expert fees;

- F. Award treble damages to the extent permitted under the CPPA;
- G. Enter such other and further relief as the Court may deem just and proper.

Dated: June 9, 2009

Respectfully submitted,

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[†] *Pro Hac Vice* admission pending.