

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

AARON KNOTT, et al

CIVIL ACTION NO.: 6:23-cv-00401

VERSUS

JUDGE: DAVID C. JOSEPH

UNITED WATER SYSTEM, INC.,
et al

MAG. JUDGE: DAVID J. AYO

**SECOND SUPPLEMENTAL, AMENDING, AND RESTATED CLASS
ACTION PETITION FOR DAMAGES**

NOW INTO COURT, through undersigned counsel, come Plaintiffs, MICHAEL CARRUTH, KAREN CARRUTH, CHRISTINA SONNIER, AARON KNOTT, and CHRISTINE OLIVIER (referred to hereinafter as “Plaintiffs” or “Petitioners”) who submit this *Second Supplemental, Amending, and Restated* Petition, individually and on behalf of all others similarly situated, pursuant to FRCP 23 and La. C.C.P. art. 591, et seq., and respectfully represent:

Parties

1.

Made Defendants herein are the following persons and/or entities who are justly and truly indebted unto your Petitioners and the class of persons described herein, jointly and *in solido*, for their damages and losses as set forth herein, and these claimants are entitled to judgment in their favor and against the defendants, for a sum which will reasonably compensate each for their respective damages and losses, and all costs and expenses of these proceedings, together with legal interest thereon from date of judicial demand until paid, and for all other just and equitable relief to which these claimants may be entitled:

- (a) UNITED WATER SYSTEM, INC., hereinafter “UWS,” a Louisiana non-profit corporation, domiciled in St. Martin Parish, La, authorized to do and doing business

in the State of Louisiana, and who may be served through its designated agent for service of process, Barbara Hebert, 1064 Lynn Hardy Rd. Arnaudville, LA 70512;

- (b) AMERICAN ALTERNATIVE INSURANCE CORPORATION, hereinafter “AAIC,” a foreign insurer domiciled in Delaware, authorized to do and doing business in and a licensed insurer in the State of Louisiana who may be served through its agent for service of process, Louisiana Secretary of State, at 8585 Archives Ave., Baton Rouge, LA 70809; *and*
- (c) NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, hereinafter “NUFIC,” a foreign insurer domiciled in Dauphin County, PA, authorized to do and doing business in and a licensed insurer in the State of Louisiana who may be served through its agent for service of process, Louisiana Secretary of State, at 8585 Archives Ave., Baton Rouge, LA 70809.

2.

UWS is a supplier of drinking water for certain areas in and around the town of Arnaudville, La. The plaintiffs and the putative class members herein are all *residential* water customers/consumers of the defendant UWS, and they purchase their purportedly potable water from UWS.¹ UWS has been the sole source of drinking water for these residents for a number of years. UWS as the owner and operator of the water supply system complained of herein was insured under a series of insurance policies issued to it by both AMERICAN ALTERNATIVE INSURANCE CORPORATION and NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA which were in full force and effect, respectively, at all times pertinent providing liability coverage for all claims asserted by Plaintiffs. Plaintiffs bring their claims against AMERICAN ALTERNATIVE INSURANCE CORPORATION and NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA under the Louisiana Direct Action Statutes.

¹ The putative class proposed herein does not include any commercial account holders of United Water System, Inc. and/or juridical persons who may be account holders of United Water System, Inc.

Factual Allegations

3.

Pursuant to the laws of the State of Louisiana and federal drinking water regulations, the defendants herein are obligated to provide safe and clean drinking water in adequate quantities to the customers of UWS for their residential usage, including but not limited to such uses as drinking, cooking, washing, bathing, sewerage, gardening, sanitation, pets, livestock, etc.

4.

Plaintiffs would show that for many years, the drinking water that they and the class members have received in their homes has been periodically brown, yellow, and discolored, and often has suspended particulate matter of unknown origin in the water; and has regularly had unpleasant and objectionable odors. Plaintiffs and other putative class members regularly receive written, published, and other notices of drinking water standards violations from UWS warning of health risks associated with the water, and on several occasions in recent times been placed on boil advisories. Plaintiffs and putative class members have also regularly suffered with drops in and fluctuating water pressures as well as total loss of water pressure/supply, sometimes for days at a time, causing massive inconvenience. These problems continue through the present and constitute a continuing tort.

5.

Plaintiffs would show that for many years, the drinking water that they and the class members receive in their homes has continually violated state and federal drinking water quality standards. Among many particular violations are the following, non-exclusive instances:

- a. Exceeding maximum contamination level for arsenic, in both source and treated water;

- b. Exceeding maximum residual disinfectant levels for chlorine and/or chloramine;
- c. Violation of minimal residual level for Total Chlorine;
- d. Failure to meet minimum monitoring requirements for residual disinfectant levels for chlorine and/or chloramine;
- e. Exceeding action levels for lead and copper in violation of the Lead and Copper Rules;
- f. Violation of Consumer Confidence Rule- CCR Report;
- g. Violations of the Lead & Copper Rule- Lead Consumer Notice;
- h. Violation of Consumer Confidence Rule- CCR Adequacy/ Availability/ Content;
- i. Failure to routinely inspect and maintain Finished Water Ground Storage Tank after previous site visit by La. Dept. of Health;
- j. Failure to routinely inspect a second Finished Water Ground Storage Tank after previous site visit by La. Dept. of Health;
- k. Failure to have proper screen on overflow pipe of Finished Water Ground Storage Tank;
- l. Damaged fencing around well site;
- m. Leaking service pump with heavy rust;
- n. Failure to prepare and maintain all appropriate records of customer listing, residential and commercial customer compliance, appropriate notice to all customers, and protection against contamination through properly administered Cross Connection Control Program;
- o. Failure to maintain and correct known problems with well discharge piping that showed rust, corrosion, and flaking paint on both wells for the system;
- p. Failure to properly label chemical feed tank for caustic soda;
- q. Splash plate for #2 ground storage tank's overflow not effective and does not allow for appropriate discharge of the tower's overflow with proper drainage away from the tower's foundation;

- r. Violation of record keeping responsibilities in failing to keep complaints documented;
- s. Violation of Ground Water Rule;
- t. Operators of the UWS system were not properly certified in Class 2 Water Production, Treatment, and Distribution;
- u. Exceeding secondary maximum contaminant levels for various contaminants, including iron, manganese, and aluminum.

Many of these violations continue through the present. Further, the foregoing is not an all-inclusive list- there are other violations and acts of negligence and professional negligence which have caused the damages complained of herein.

6.

Plaintiffs have been regularly advised in writing through the many notices of drinking water violations issued to them by UWS that exposure to arsenic, copper, lead, and inadequate/excessive disinfectant levels (resulting in threat of organic contaminants and disease) in amounts that exceed or fall below the statutory requirements and standards pose serious health risks. Due to these known and reported risks, Plaintiffs and others similarly situated cannot, do not, and have not consumed the water.

7.

Plaintiffs and others, have consistently, over time, complained to the defendant UWS about the quality, odor, and appearance of the water, staining caused by same, and the regular receipt of notices of drinking water violations to no avail.

8.

In December of 2018, UWS was placed under administrative order by the Louisiana Department of Health for then ongoing violations of drinking water regulations and standards; said administrative order is attached hereto by reference and made a part hereof, as though reproduced

here in extenso. The order included mandates for UWS to comply with aimed at addressing multiple identified deficiencies in the system's infrastructure, treatment process, distribution system, and operation thereof. UWS remains under this administrative order today, over five years later, with several deficiencies remaining unaddressed. On or about February 16, 2022, the Louisiana Department of Health (LDH) issued a notice of multiple violations to defendant UWS chronicling immediate and ongoing problems with the quality of the water that UWS has been providing to its customers, and ordering that certain corrective measures be undertaken immediately; said notice is attached hereto by reference and made a part hereof, as though reproduced here *in extenso*.

9.

The UWS water has stained and damaged plaintiffs' clothes and linens, either damaging or totally destroying same, resulting in the need for replacement or repair.

10.

The UWS water cannot safely be consumed or used to cook, and customers have had to continually purchase bottled water and ice for consumption and cooking, on top of the water bill that they pay to UWS each month for purportedly potable water to be used by the plaintiffs and the members of their households. Further, Plaintiffs have had to utilize the water supplied by UWS for bathing/showering on a regular basis, further exposing themselves through dermal contact and uptake. The use of the water for bathing/showering is an exposure to the water that plaintiffs cannot avoid and has contributed to plaintiffs' fear of bodily injury and fear of contracting disease as a result. Plaintiffs are not, however, claiming any bodily injuries, illness or disease caused by consuming, ingesting and/or absorbing the water supplied by United Water System, nor are plaintiffs claiming to have suffered any bodily injuries, illness or disease resulting from the direct

toxicological effects of the water supplied by United Water System, Inc. or any contaminants contained in the drinking water.

Claims & Damages

11.

Plaintiffs bring this action on behalf of themselves and all putative class members pursuant to the provisions of Federal Rule of Civil Procedure 23, La. C.C.P. art. 591, et seq. and La. C. C. art. 2520 in that the water which is supplied to the plaintiffs and putative class members is so defective that plaintiffs and putative class members would not purchase this water from the defendants but for the fact that defendants have a monopoly over the sale of water in the customer's area of residence. Alternatively, if the water is not totally useless, the usefulness of the water is such that its value is greatly diminished.

12.

Plaintiffs allege that the water sold and delivered to the customers of UWS is not reasonably fit for its ordinary and/or intended use by the purchasers.

13.

Petitioners and the putative class members are entitled to all remedies allowed by law, including but not limited to a reduction in or return of purchase price, and reasonable attorney's fees.

14.

Defendant UWS has been negligent in the processing, filtering, treatment, storage, distribution, delivery, and sale of deleterious and contaminated water to Plaintiff customers herein, and in the maintenance, upkeep, and management of its water distribution system, which constitutes a breach of both their contractual and delictual obligations (La. C.C. art 2315) to the

Plaintiffs and the putative class members. The aforesaid breaches have caused the Plaintiffs and putative class members herein substantial damages, including but not limited to mental anguish, emotional distress, personal property damage, loss of use, inconvenience, nuisance, and trespass.

15.

In addition to redhibition and general tort/negligence, the acts and/or omissions of UWS, which have caused the damages sustained by the Plaintiffs and putative class members herein, give rise to claims for: (1) breach of contract, (2) negligence, and (3) detrimental reliance, amongst others, all as set forth more particularly below.

16.

UWS' primary duty is the treatment and distribution of potable water intended and provided for human consumption. All of the damages set forth herein, which have been sustained by Plaintiffs and putative class members, have been caused by acts, errors, or omissions in the water and/or wastewater professional activities of defendant UWS. All damages complained of herein continue through the present and into the unforeseeable future.

17.

All of the damages set forth herein, which have been sustained by Plaintiffs and putative class members, have arisen from defendant UWS's bad faith breach of contract with Plaintiffs and putative class members, and Plaintiffs are entitled to recover for all said damages, including but not limited to attorney's fees, expert witness fees, and costs.

18.

For all periods during which the Plaintiffs received defective, contaminated, and deleterious water, or otherwise compromised, unusable, or diminished-quality water from the defendant UWS; and for all periods wherein Plaintiffs' uninhibited use of water was adversely

affected or obstructed by boil order directives or other cautionary directives by UWS, or where service was interrupted due to UWS' negligence or acts, errors, and omissions arising from its professional water activities, Plaintiffs and putative class members are entitled to a reduction in the purchase price and/or return of the purchase price of the defective water, as well as incidental damages caused by the defective water, attorney's fees, expert witness fees, and costs, all in accordance with Louisiana's laws of redhibition.

19.

Plaintiffs and putative class members have sustained tortious damages, compensable under La. C.C. art. 2315, including but not limited to the following:

- (1) Mental anguish and emotional distress, fear of bodily injury, fear of contracting disease, fear of increased risk of contracting disease, nuisance, annoyance, discomfort, and inconvenience;
- (2) Personal property losses to clothes and linens including: damage and staining of clothes and linens; replacement costs of clothes and linens damaged/stained by deleterious water, all of which comprise diminishment/destruction of the Plaintiffs' and class members' personal property (Plaintiffs assert no claims for any of the damages itemized in this sub-paragraph in relation to any real property, real estate, fixtures, toilets, bathtubs, showers, sinks or appliances. As it relates to tangible items of personal property, plaintiffs' personal property damage claims are specific to clothes and linens only.);
- (3) Out of pocket expenses, including but not limited to expenses for purchasing bottled water/ice, purchase of water/ice dispensers, expenses of installing water filtration systems and related maintenance and filter replacement costs or necessitating the need for same in the future, all of which is a result of the fear that plaintiffs have of the water provided by United Water System, Inc. as complained of herein;
- (4) Loss of use and enjoyment of Plaintiffs' and putative class members' real property, homes, or leased property(ies).

20.

Plaintiffs have sustained civil trespass damages after having defective and contaminated water delivered and distributed to their homes and leased properties, all of which was caused

specifically by the actions or omissions of defendant UWS in its professional water treatment, production, distribution, and/or wastewater activities; Plaintiffs and putative class members are therefore entitled to recover for all damages associated with the consumption of such defective water, including but not limited to those damages complained of herein which inherently result from consumption of contaminated water, and all associated mental anguish and emotional distress.

21.

In addition to all of the foregoing damages, Plaintiffs are entitled to compensation sufficient for each of them to be able to purchase and install their own filtering and/or treating systems in their own homes, to prevent or protect against future contamination of their drinking water in violation of state and federal drinking water standards and otherwise mitigate against future harm occasioned by the water; Defendant UWS has proven consistently unreliable and/or unwilling to comply with said standards, and in light of these repetitive breaches each of the Plaintiffs are entitled to said compensation as a remedy to the ongoing breaches by defendant UWS.

22.

Plaintiffs and putative class members are entitled to compensation from Defendant UWS for all of the damages set forth herein and above, special and/or general, as well as any and all other damages that they may otherwise be entitled to under law.

Class Allegations

23.

Plaintiffs bring this matter as a class action on behalf of themselves individually, and on behalf of all persons who utilize water provided by the defendant UWS for residential

purposes/needs, in and around Arnaudville, Louisiana, including but not limited to customers, spouses, children, and/or members of the household/ family/ occupants.

24.

Plaintiffs represent that their claims are typical of the claims of the putative class members and that they have no claims which are otherwise antagonistic to the claims of the putative class members. Concentrating this litigation in one forum will aid judicial economy and efficiency and promote parity among the claims of individual class members as well as judicial consistency.

25.

The number of individuals comprising the proposed class is so numerous as to make joinder of all of them impractical, in that there are, upon information and belief, approximately 1,520 customer connections to the UWS water system, as reported by UWS, with a derived population of approximately 4,560 people who rely on the UWS system as reported by UWS, as their sole water source.

26.

This matter presents common questions of law and fact arising out of the allegations represented herein by the plaintiffs on their behalf, individually, and on behalf of the putative class members.

27.

Plaintiffs show that a class action is a superior procedural vehicle with which to prosecute this matter so as to prevent the rendition of incompatible judgments and certification of this matter as a class action will promote judicial economy and efficiency in the adjudication of these claims.

28.

Plaintiffs will fairly and adequately represent and protect the interest of all members of the class sought to be represented herein. They understand their fiduciary duty to the absent class members. Additionally, plaintiffs show that most of the claims which are asserted herein are relatively small from a monetary standpoint in comparison to the cost of litigation, and that few, if any of the putative class members are able to afford the expense of prosecution of individual claims against the defendants.

29.

The class sought to be certified herein is defined as:

"All natural persons who are residential property owners (including members of their household) and lessees of residential property (including members of their household) who at any time between February 16, 2013 and the present received their water supply from United Water System, Inc. and, as a result of receiving water from United Water System, Inc. between February 16, 2013 and the present, have any of the following claims: mental and emotional distress; non-reimbursed personal expenses; nuisance, annoyance, discomfort, and inconvenience; civil trespass; fear of bodily injury, fear of contracting disease, fear of increased risk of contracting disease; personal property damage/loss as it relates to clothes and/or linens, diminution in value of clothes and/or linens, out of pocket expenses, including but not limited to expenses for purchasing bottled water/ice, purchase of water/ice dispensers, expenses of installing water filtration systems and related maintenance and filter replacement costs or need for same in the future; loss of use and enjoyment of real property, homes and leased property(ies)."

WHEREFORE, PETITIONERS, on behalf of themselves, individually, and all those similarly situated, pray that the defendants be cited to appear herein and answer this Petition, and that after due proceedings are had, there be judgment herein as follows:

- (1) Certifying this action for class action treatment; *and*

(2) Casting the defendants in judgment unto the plaintiffs and the putative class members for all of their damages, costs, expenses, legal interest from date of judicial demand and reasonable attorney fees.

WHEREFORE PETITIONERS PRAY FURTHER, that this matter be tried before a civil jury, and that Plaintiffs and all putative class members be awarded any other relief that the Court finds equitable and just under the circumstances.

Respectfully submitted:

/s/ Gordon Schoeffler

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CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2024, a copy of the foregoing pleading was forwarded to opposing counsel via the Court's ECF system. Notice of this filing will be sent to all counsel of record by operation of the court's electronic filing system. I also certify that I have mailed by United States Postal Service this filing to the following non-CM/ECF participants: None.

/s/ Gordon J. Schoeffler

Gordon Schoeffler #29412