



**IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA**

**RALPH TOLBERT,**

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**Plaintiff,**

\*

**vs.**

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**CIVIL ACTION NO. \_\_\_\_\_**

**MOBILE AREA WATER & SEWER  
SYSTEM,**

\*

**PLAINTIFF DEMANDS TRIAL BY JURY**

**Defendant.**

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**CLASS ACTION COMPLAINT**

**I. INTRODUCTION**

1. Plaintiff Ralph Tolbert (hereinafter sometimes referred to as “Plaintiff”), individually and as representative of the class defined herein (the “Class”), brings this action against Defendant Mobile Area Water & Sewer System (“MAWSS”), and avers as follows:

2. This is a class action, brought pursuant to Rule 23 of the Alabama Rules of Civil Procedure, to obtain equitable relief and damages suffered by Plaintiff and Class Members as a result of the contamination of the water sold by MAWSS, and the subsequent transmission of unsafe and/or tainted water to MAWSS’ customers.

3. The above-referenced water contamination and MAWSS’ failure to plan for, contain, remediate, and/or warn Plaintiff about the same, have caused significant injuries and/or damages to Plaintiff and Class Members, and will continue to cause significant injuries and/or damages to Plaintiff and Class Members in the future.

**II. PARTIES**

4. Plaintiff Ralph Tolbert is an individual over the age of nineteen (19) years and is a resident of Mobile County, Alabama.

5. As a result of the events described herein, Plaintiff Ralph Tolbert has been exposed to contaminated water and has suffered personal injuries, including but not limited to mental anguish and/or emotional distress and other out of pocket damages.

6. MAWSS is a public corporation with its principal place of business in Mobile County, Alabama.

7. MAWSS sold water to citizens of Mobile County, Alabama, at all times material to this Complaint.

**III. FACTUAL ASSERTIONS**

8. Polyfluoroalkyl substances (“PFAS”) are a group of man-made chemicals that include perfluorooctanesulfonic acid (“PFOS”) and perfluorooctanoic acid (“PFOA”).

9. PFAS are toxic and persistent in the environment, do not biodegrade, move readily through soil and water, and pose a significant risk to human health and safety and the environment. Because they do not break down easily, each exposure to the chemicals adds to the harm as the substances accumulate in the body and increase the risk of serious disease over time.

10. PFOA is a toxic, persistent, man-made chemical within a class known as perfluoroalkyl acid (“PFAA”). PFAAs are part of the larger chemical family known as PFAS. PFAA is composed of a chain of carbon atoms in which all but one of the carbon atoms are bonded to fluorine atoms, and the last carbon atom is attached to a functional group. The carbon-fluorine bond is one of the strongest chemical bonds that occur in nature, which is the reason why these

molecules are so persistent. PFOA contains eight carbon-fluorine bonds, which is why it is sometimes referred to as “C8.”

11. PFAS are sometimes described as long-chain and short-chain, depending on the number of carbon atoms contained in the carbon chain. PFOA is considered long-chain PFAS because it contains eight carbon atoms in their chains; short-chain PFAAs have six or less carbon atoms in their chains.

12. PFAS are highly water soluble, which increases the rate at which they spread throughout the environment, contaminating soil, groundwater, and surface water. Their mobility is made more dangerous by their persistence in the environment and resistance to biologic, environmental, or photochemical degradation.<sup>1</sup>

13. PFAS are readily absorbed in animal and human tissues after oral exposure and accumulate in the serum, kidney, and liver.

14. PFAS are persistent in the human body. A short-term exposure can result in a body burden that persists for years and can increase with additional exposures.<sup>2</sup>

15. Since they were first produced, information has emerged showing negative health effects caused by exposure to PFAS.

16. According to the United States Environmental Protection Agency (“EPA”), “. . . studies indicate that exposure to PFAS over certain levels may result in . . . developmental effects

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<sup>1</sup> EPA, Drinking Water Health Advisory for Perfluorooctanoic Acid (PFOA), EPA Doc. Number: 822-R-16-005 (May 2016) at 16, available at <https://www.epa.gov/ground-water-and-drinking-water/supporting-documents-drinking-water-health-advisories-pfoa-and-pfos>.

<sup>2</sup> EPA Doc. Number: 822-R-16-005 (May 2016) at 55; and EPA Doc. Number: 822-R-16-004 (May 2016) at 55.

to fetuses during pregnancy or to breastfed infants (e.g., low birth weight, accelerated puberty, skeletal variations), cancer (e.g., testicular, kidney), liver effects (e.g., tissue damage), immune effects (e.g., decreased antibody production and immunity), thyroid effects and other effects (e.g., cholesterol changes).”<sup>3</sup>

17. On June 15, 2022, the EPA issued an updated health advisory which essentially states there is no safe exposure level to PFOA and PFOS, and advising lifetime exposure levels of .0004 ppt for PFOA and .02 ppt for PFOS. EPA notes that it is basing the updated PFOA and PFOS health advisories on suppression of vaccine response (decreased serum antibody concentrations) in children and that cancer analyses are ongoing for both PFOA and PFOS.

18. PFOA and PFOS have been detected in varying amounts at least between January and June 2022, if not earlier, in water sold by MAWSS. MAWSS reported levels of PFOS at 1-1.6 ppt and 1.8-2.2 for PFOA for the 2022 period. Any detectible level of PFOA and PFOS in MAWSS’ water makes said water unmerchantable and requires investigation, treatment, remediation, and monitoring.

19. The detection and/or presence of PFOA and PFOS, and the threat of further detection and/or presence of PFOA and PFOS in MAWSS’ water in varying amounts and at varying times has resulted, and will continue to result, in significant injuries and damage to Plaintiff and Class Members.

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<sup>3</sup> “Fact Sheet PFOA & PFOS Drinking Water Health Advisories,” EPA Doc. Number: 800-F-16-003, available at <https://www.epa.gov/ground-water-and-drinking-water/supporting-documents-drinking-water-health-advisories-pfoa-and-pfos>.

**IV. CLASS ACTION ALLEGATIONS**

20. Plaintiff brings this action and each of the claims therein, on his own behalf and on behalf of all others similarly situated pursuant to Ala. R. Civ. P. 23(b)(1), (b)(2), and (b)(3). Plaintiff is duly representative and typical of the proposed members of the hereinafter described class and/or subclasses.

21. Plaintiff seeks the certification of classes or subclasses of people impacted by the subject contaminated water as follows:

All customers of MAWSS, and each member of said customer's household who use and/or consume water sold by MAWSS for the 6 years preceding the filing of this complaint.

22. Excluded from the Class are: (a) the officers and directors of MAWSS; (b) any entity or division in which MAWSS has a controlling interest; (c) any judge or judicial officer assigned to this matter and his or her immediate family; and (d) any legal representative of MAWSS, successor, or assign or any excluded persons or entities.

23. This action is maintainable under Rule 23(b)(2) of the Alabama Rules of Civil Procedure as the Defendant, through its actions as alleged herein, has acted or refused to act on grounds generally applicable to the Class, making injunctive relief appropriate to the Class as a whole.

24. The requirements of Rule 23(b)(3) are met in that there are common questions of law and fact involved with this action that affects the rights of each member of the Class, and the relief sought is common to the Class. The common questions of law and fact that exist in and among the Class, such as the presence of the contamination itself; MAWSS' herein described conduct which caused, brought about, allowed, contributed to, and/or significantly increased the risk of the

contamination itself or damages resulting therefrom; and MAWSS' liability to Plaintiff under the legal theories set forth herein, predominate over any questions solely affecting individual members of the aforesaid Class.

25. The Class is so numerous that joinder of all members is impractical. The number of class members exceeds 10,000.

26. The duty, breach of duty, violation of laws/regulations, claims, causation and/or damages asserted by the named Plaintiff, who will be the representative party, are typical of the proposed Class, and Plaintiff will thoroughly and adequately represent the interests of the Class.

27. Plaintiff has adequate financial resources to prosecute this litigation and has retained the undersigned class counsel, as set forth below, who are experienced in prosecuting class actions, mass tort actions, environmental claims, and complex civil matters.

28. Further, Plaintiff's counsel has and will advance all reasonable costs necessary to protect the Class, including with regard to hiring necessary experts, conducting discovery, the presentation of class certification motion papers, trying the case, and otherwise vigorously prosecuting the claims set forth herein.

29. A class action mechanism is superior to all other available methods for the fair and efficient adjudication of this matter. The expenses and burden of individual litigation would preclude many members, if not all, of the aforesaid class(es) from seeking redress for the harms and wrongs complained of herein, from obtaining justice and access to the courts, and from obtaining the aforesaid necessary injunctive relief.

30. MAWSS' aforesaid misconduct, actions, and omissions make the requested injunctive relief and monetary relief appropriate and necessary to fully protect Plaintiff and all others similarly situated.

31. Any difficulties in management of this case as a class action are outweighed by the benefits of a class action with respect to efficiently and fairly disposing of common issues of law and act as to the large number of litigants.

### COUNT ONE

32. MAWSS is in the business of treating and selling water to its customers. The water sold by MAWSS is a "good" as defined by Ala. Code § 7-2-105.

33. MAWSS impliedly warranted to Plaintiff (and to members of Plaintiff's household) that its water was merchantable, was free from defects, and was fit for its ordinary purpose.

34. The water sold by MAWSS was unfit for its ordinary use and was not of merchantable quality, as warranted by MAWSS, because it was defective and contaminated with substances studies show causes serious health risks. Prior to purchase, Plaintiff could not have readily discovered that the product was not fit for its ordinary purpose and would potentially cause serious disease.

35. MAWSS did not sufficiently disclaim the implied warranty of merchantability.

36. MAWSS is in privity with Plaintiff by law and/or by fact.

37. MAWSS' conduct described in this Complaint constitutes a breach of implied warranties under Ala. Code §§ 7-2-314, 7-2-315 and 7-2-318, et seq.

38. Actual and/or constructive notice was duly given MAWSS of the breaches of these warranties that Defendant has failed to cure. In fact, Defendant notified Plaintiff of the breach. Further, Plaintiff has suffered personal injuries so that notice is excused.

39. As a direct and proximate result of the breaches of these warranties, Plaintiff has suffered damages, injury in fact, and/or ascertainable loss in an amount to be determined at trial.

40. Plaintiff demands judgment against MAWSS for compensatory damages, plus additional remedies as this Court deems fit.

### **COUNT TWO**

41. Defendant MAWSS owed a duty to Plaintiff and Class Members to exercise reasonable care in the treatment, containment, and/or safeguarding of water that was provided to the public.

42. Moreover, MAWSS owed a duty to Plaintiff and Class Members to exercise reasonable care in the warning of the general public about the contamination alleged herein.

43. MAWSS had a heightened duty of care to Plaintiff and Class Members because of the great danger and environmental, medical, and economic concerns associated with the subject contamination (and subsequent provision of such tainted water to the general public by MAWSS).

44. Plaintiff and Class Members had an absolute right to make informed and/or educated choices about their use, consumption, and/or exposure to such dangerous and contaminated water.

45. MAWSS breached its legal duties to Plaintiff and Class Members by failing to exercise reasonable care and in its failure to take adequate steps to contain, remediate, and/or safeguard the contaminated water.

46. Moreover, MAWSS breached its legal duties to Plaintiff and Class Members by failing to exercise reasonable in its failure to notify Plaintiff and Class Members of the serious situation regarding the contaminated water and the potential dangers, risks, and/or environmental, medical, and economic concerns associated with subject contamination (and subsequent provision of such tainted water to the general public by MAWSS).

47. MAWSS has an actual and publicly sanctioned monopoly over the delivery of water in its jurisdiction. As such, Plaintiff and the class lack any meaningful ability to protect themselves from the contamination as alleged herein. As such, Plaintiff and the class are entitled to injunctive relief requiring MAWSS to take all necessary steps to remediate the contamination and provide suitable and safe water to its customers, and to inform them of the dangers associated with the contaminated water.

#### **PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, Plaintiff and Class Members demand judgment against MAWSS as follows:

- a. An order certifying the Class and appointing Plaintiff as Class Representative; and appointing undersigned counsel as counsel for the Class;
- b. Economic and compensatory damages in amounts to be determined at trial;
- d. Pre- and post-judgment interest at the maximum rate allowable by law;
- e. Attorneys fees and costs of litigation;
- f. An order requiring disclosure of the health risks associated with the contaminated water;

- f. Such other and further relief available under all applicable state law and any relief the court deems just and appropriate; and

**PLAINTIFF DEMANDS A TRIAL BY JURY**

*/s/ Steven L. Nicholas*

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STEVEN L. NICHOLAS (NIC012)

*/s/ George S. Finkbohner, III*

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**PLEASE SERVE DEFENDANT AS FOLLOWS:**

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