

**IN THE CIRCUIT COURT OF PLATTE COUNTY, MISSOURI**

JASON STROHM, on behalf of himself      )  
and all others similarly situated,      )  
    )  
Plaintiff,      )  
    )  
v.    )      Cause No.  
    )  
MISSOURI-AMERICAN WATER      )      Division No.  
COMPANY,      )  
    )  
Serve at:      )      **CLASS ACTION PETITION**  
CT Corporation System      )  
120 South Central Avenue      )      **JURY TRIAL DEMANDED**  
St. Louis, Missouri 63105      )  
    )  
Defendant.      )

**CLASS ACTION PETITION**

This case arises from Defendant Missouri-American Water Company's failure to ensure that the metered water it provides to its customers in Platte County is suitable for ordinary use, resulting in substantial injury to Plaintiff, similarly situated consumers, and their property. Defendant's failure to remedy its defective water, despite repeated complaints and publicly admitting knowledge of the problems, has increased the harm to its customers and exacerbated Defendant's breaches of duty, underscoring the propriety of granting relief to Plaintiff and Defendant's other Platte County customers.

**PARTIES**

1. Plaintiff Jason Strohm has been a resident and a homeowner in Parkville, Platte County, Missouri, since 2010. Plaintiff has purchased metered water for residential use from Missouri-American Water Company throughout this time.
2. Missouri-American Water Company ("MAWC") is a Missouri corporation with its principal office and place of business at 727 Craig Road, St. Louis, Missouri 63141. MAWC

currently sells metered water to the public in several Platte County municipalities including Parkville, Riverside, and Platte Woods.

3. MAWC is a “water corporation” and a “public utility” as those terms are defined in Mo. Rev. Stat. § 386.020.

4. MAWC may be served via its registered agent: CT Corporation System; 120 South Central Avenue; St. Louis, Missouri 63105.

#### **JURISDICTION AND VENUE**

5. This Court has general jurisdiction under Mo. CONST. Art. V, § 14, and Mo. Rev. Stat. § 478.220.

6. Venue is proper in this Court pursuant to Mo. Rev. Stat. § 508.010 because Platte County, Missouri, is the county where the plaintiff was first injured by the defendant’s tortious conduct.

#### **FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

7. Plaintiff is a purchaser of Defendant’s water at his home in Parkville, Platte County, Missouri. Plaintiff moved into his home in summer 2010, at which time his major appliances including his refrigerator, water heater, washing machine, and dishwasher were fewer than 5 years old.

8. Defendant is the only water provider available to Plaintiff at his home.

9. Since May 2011, Plaintiff has observed high levels of sediment buildup in the water sold to him by Defendant. Plaintiff has observed this sediment both as the water flows directly from taps in his home and as such sediment collects in the filters and aerators on faucets, water lines, and appliances in his home. Plaintiff regularly reported these issues to Defendant. As outlined below, this sediment caused substantial damage to Plaintiff’s property.

### *Initial Appliance Failures*

10. In approximately January 2011, Plaintiff's dishwasher quit working. Plaintiff contacted a repair technician. The technician removed some sediment from the dishwasher's aerator and the dishwasher worked again.

11. On May 23, 2011, the dishwasher again quit working. The technician returned and once again cleaned out the dishwasher's aerator. Again the dishwasher began working properly. The technician then examined the aerator at the kitchen sink where he found the same sediment. Next, he turned to the back of the refrigerator and cleaned the same sediment out of the filter at the incoming refrigerator water line. In addition, Plaintiff and the technician together cleaned out sediment buildup in Plaintiff's water heater. At this time, the technician identified the problem was likely the sediment.

12. Shortly thereafter the ice maker and water dispenser of Plaintiff's refrigerator completely stopped working. Because the machine was still under warranty, a manufacturer's representative came to Plaintiff's house to investigate and fix the problem. The representative found the same sediment that had built up in the dishwasher, water heater, and kitchen sink in the water line to Plaintiff's refrigerator. The representative removed the sediment but also instructed Plaintiff to purchase a new water line filter in case the sediment had already clogged the filter, which could cause further problems. Plaintiff did so.

13. Around this time, Plaintiff also began systematically cleaning out the aerators, filters, screens, and water lines for appliances and faucets in his house to remove the ubiquitous sediment. For example, each week Plaintiff detached the water lines from his washing machine, flushed them out into a bucket, cleaned the screens, and reattached them to the machine. Each week, Plaintiff found these water lines were completely clogged with the same sediment.

14. Despite these efforts, in approximately December 2011, Plaintiff's washing machine quit working. Due to the effect of Defendant's sediment-heavy water, the machine's flow valves became dysfunctional and had to be replaced, at Plaintiff's expense and with a delay of several days.

***Defendant's Initial Acknowledgement and Attempted Solutions***

15. In connection with its sale of metered water, Defendant makes the following statement on its website:<sup>1</sup>

**Your Right to High-Quality Drinking Water**

You have the right to expect high quality drinking water every time you turn on your faucet. Our employees conduct an extensive treatment and monitoring program to ensure your water meets all state and federal drinking water regulations. Our Consumer Confidence Reports will help you learn more about water quality in your community.

16. In approximately February 2012, Defendant sent a representative to Plaintiff's house who observed the sediment deposits and suggested that Plaintiff "blow out the system" by letting water run from taps, heads, and spigots inside and outside his house for ten minutes. Plaintiff did so; the result was that the external spigot connected to his sprinkler head stopped running due to sediment buildup in the sprinkler head screen.

17. Subsequently, Defendant attempted to "blow out" sediment from the water main servicing Plaintiff and his neighbors by letting the hydrants run for ten minutes. This attempt was unsuccessful in that it did not remedy or halt the damage caused to Plaintiff's property by Defendant's defective water.

18. On February 7, 2012, Plaintiff emailed Defendant, detailing his experiences and injuries to date, and including reports of low water pressure, appliance failures, and even flooding

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<sup>1</sup> <http://www.amwater.com/moaw/customer-service/your-rights-and-responsibilities.html>. (last accessed April 25, 2016).

due to ruptured water lines among his neighbors. Plaintiff requested that Defendant take action to resolve the problems.

19. In response, Defendant's Customer Service department sent the following email on February 8, 2012:

"Dear Jason Strohm,

Thank you for your contact. Your email has been forwarded to our Water Quality department for follow up.

Should you have any other questions or concerns, please reply with history to this email or you may contact us by phone at 1-800-256-6426.

Sincerely,

American Water  
Customer Service

20. On March 13, 2012, a meeting of Platte County purchasers of Defendant's water was held at the Homeowner's Association Clubhouse of Plaintiff's residential subdivision, Thousand Oaks. During this meeting, it came to light that consumers of Defendant's water residing in Platte County subdivisions (including Thousand Oaks, Riss Lake, and the National) were experiencing water quality problems with Defendant's water. Plaintiff and representatives of Defendant were present for this meeting, including Mike McMillian, Jody Johnston, representative from St. Joseph, Missouri and a representative from the chemical company supplying goods to Missouri American Water.

21. On April 19, 2012, Plaintiff again notified Defendant that he was experiencing poor water quality including poor water flow and sedimentary build up leading to a leaking hot water heater. Defendant sent a technician to Plaintiff's home, who observed and acknowledged the sedimentary buildup and clogging in Plaintiff's washing machine water lines. The technician also observed and acknowledged sand and water dripping from Plaintiff's water heater onto the floor.

The technician stated that a representative of Defendant would contact Plaintiff and arrange for a plumber to address the problem.

22. By April 27, 2012, the pressure relief valve of Plaintiff's water heater was so heavily coated with calcium and sediment that it was no longer functional. On that day Plaintiff, a plumber and Defendant's representative (McMillian) worked together to remove sediment from Plaintiff's water heater. Approximately three one-gallon bags of contaminant were removed, including large chunks of sediment. The plumber stated that there was "at least 20 years of build up on a 5 year old water heater." The plumber further stated, in the hearing of Defendant's representative, that he had once before removed an equal amount of sediment from the same water heater.

23. After cleaning out the water heater, while Defendant's representative was still present, Plaintiff removed the aerator from a nearby faucet, which was clogged with sediment. The screen was cleaned and returned, but water pressure did not return. Further attempts to return pressure by flushing out water lines were unsuccessful. Still in the presence of Defendant's representative, the plumber stated his belief that the faucet's check valve had been irreparably clogged by sediment in the water. The faucet, which had installed only four months previously in January 2012 had to be replaced at Plaintiff's expense.

24. On April 30, 2012, Plaintiff again emailed Defendant, detailing his experiences and injuries to date, and requesting a resolution to the problems. Shortly thereafter, Defendant purchased Plaintiff, at minimum, six inline water filters for Plaintiff's refrigerator. Plaintiff was replacing water filters and experiencing water filter cracks and breakages resulting in water leakage in, under, and around the refrigerator.

25. In response, Defendant's Customer Service department sent the following email on May 3, 2012:

Dear Jason Strohm,

Thank you for your contact. Your below e mail has been forwarded to the appropriate department.

Should you have any other questions or concerns, please reply with history to this email or you may contact us by phone at 1-800-256-6426.

Sincerely,  
American Water Customer Service

***Defendant's Actions Showing Knowledge of Fault***

26. In approximately June 2012, Plaintiff filed a claim against Defendant's insurance policy with Traveler's Insurance for the property damage caused by Defendant's defective water. In response, Defendant instructed the Traveler's Claim agent, Daniel Wemhoff, to review certain additional materials which it provided to him, but not to Plaintiff. Traveler's denied the claim, stating that the damage was caused by an "internal" issue, despite complaints of water quality from multiple other consumers in Platte County and Defendant's attempts to address the problem by "blowing out" water mains in Plaintiff's area.

27. After his claim was denied, Plaintiff again contacted Defendant to ascertain what materials had been submitted by Defendant and reviewed by Traveler's before the claim was denied. In response, Defendant provided Item 6, Rule H which states, in part:

Repairs or maintenance necessary on the Customer Water Service Line or on any pipe or fixture in or upon the Customer's premise including the connections to the Company's metering installation, but excluding the Company-owned meter, shall be the responsibility of the Customer. Such pipe and fixtures shall be kept and

maintained in good condition, protected from freezing and free from all leaks. Customer's failure to do so may result in discontinuance of service.

28. On or about June 12, 2012, Defendant contacted Plaintiff informing him that Defendant would install an "in line filter" on Plaintiff's service line where it entered his home. Defendant explained that this should "eliminate any internal issues with your appliances" but that Defendant was "continuing to work on this issue."

29. In exchange for installing the filter, Defendant required Plaintiff to sign a "non-disclosure agreement" stating that he would not discuss his water quality problems or the alleged fix that Defendant provided for him. This agreement was limited to one year.

30. Also at this time, Defendant took some of Plaintiff's filters for "testing."

31. Despite the filter, Plaintiff has continued to observe high levels of sediment in water discharging from his taps, and has been forced to continually clean and replace aerators, filters, screens, and water lines throughout his home. The filters installed by Defendant are warranted for three to six months. However, filters at Plaintiff's residence typically last no longer than one month.

***Defendant's Acknowledgement That Problem is Widespread***

32. Other Platte County consumers of Defendant's water have experienced similar problems, including low water pressure, dysfunctional sprinkler systems, appliance failures, and flooding due to ruptured lines.

33. In response to complaints from multiple consumers, Defendant has attempted to clear out sediment from the water main servicing Plaintiff and his neighbors. These attempts have

been unsuccessful in that they did not remedy or halt the damage caused to Plaintiff's and other Platte County consumers' property by Defendant's defective water.

34. Defendant has publicly acknowledged the problems with its water quality for consumers in Platte County. In a news story dated March 1, 2016, Defendant's spokesperson Christie Barnhart indicated that the company was aware of the problem, that it did not know the root cause, but that it intended to "rectify the problem" by adding carbon dioxide to its water.<sup>2</sup>

35. Defendant admitted that numerous customers experience similar water quality problems to those described in that article – "gunk" clogging pipes and causing property damage, including destroyed appliances, ruptured water lines and flooding.<sup>3</sup>

36. Defendant again admitted the widespread problems in an April 27, 2016 news story. In that story, multiple other residents again confirmed experiencing the same problems as Plaintiff – clogged pipes and property damage, including destroyed appliances.

37. No effective solution, including the addition of carbon dioxide, has been implemented by Defendant to resolve its Platte County water quality problems, nor has any remedy or compensation been provided to Plaintiff or those similarly situated for their damages to date.

### **CLASS ACTION ALLEGATIONS**

38. Plaintiff incorporates by reference and re-alleges all paragraphs previously alleged herein.

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<sup>2</sup> See Eckert and Ricono, "Parkville residents concerned over water," KCTV5 March 1, 2016, available at <http://www.kctv5.com/story/31358383/parkville-residents-concerned-over-water> (updated March 31, 2016).

<sup>3</sup> *Id.* See also Verkamp, "Residents fighting water rates, other issues," Platte County Landmark February 3, 2016, available at <http://www.plattecountylandmark.com/Article12065.htm>. (reporting homeowner's statement that some 30 residents of the Montebello subdivision in Riverside had identified water quality problems).

39. Plaintiff brings this case on behalf of himself, and as a representative of the following class: All of Defendant's customers<sup>4</sup> in Platte County, Missouri to whom Defendant provides water ("the Class").

40. Plaintiff also brings Counts IV-V, *infra*, on behalf of himself, and as a representative of the following subclass: All of Defendant's customers in Platte County, Missouri to whom Defendant provides water who have suffered property damage ("the Property Damage Subclass").

41. Plaintiff further brings Count VI, *infra*, on behalf of himself, and as a representative of the following subclass: All of Defendant's residential customers in Platte County, Missouri to whom Defendant provides water who have suffered property damage ("the Residential Subclass").

42. This action has been brought and may be maintained as a class action under Supreme Court Rule 52.08.

43. **Numerosity – Rule 52.08(a)(1).** Class members are so numerous that their individual joinder is impracticable. Upon information and belief, the Class numbers in the thousands. The precise number of Class members and their addresses can be obtained from information and records in Defendant's possession and control. The precise number of Property Damage Subclass and Residential Subclass members and their addresses can be ascertained upon the execution of the relief prayed for in Counts I and II. Class members may be notified of the pendency of this action by mail or other appropriate methods.

44. **Existence and Predominance of Common Questions of Law and Fact – Rule 52.08(a)(2); 52.08(b)(3).** Common questions of law and fact exist as to all members of the Classes

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<sup>4</sup> The term "customer" in this Petition refers to individuals, businesses, and other entities who are citizens of Missouri.

and predominate over questions affecting only individual Class members. These common legal and factual questions, each of which may also be certified in the alternative under Rule 52.08(c)(4), include the following:

- a. Whether Defendant had a duty to provide water free from significant levels of sediment and other contaminants to its Platte County customers.
- b. Whether Defendant breached this duty by failing to ensure that the water it provided to its Platte County customers was free from sediment and other contaminants.
- c. Whether Defendant's breach of this duty posed an unreasonable risk to the property of its Platte County customers.
- d. What is the cause(s) of the defective water.
- e. Whether there exists a common remedy for the defective water.
- f. Whether customers who suffered property damage as a result of this breach may recover for that damage.
- g. Whether Defendant acted negligently by providing defective water to its Platte County customers.
- h. Whether Defendant committed nuisance by providing defective water to its Platte County customers.
- i. Whether Defendant violated the UCC's implied warranty of merchantability by supplying defective water to its Platte County customers.
- j. Whether Defendant violated the Missouri Merchandizing Practices Act.
- k. Whether this case may be maintained as a class action under Supreme Court Rule 52.08, including whether the Class and Subclasses may be certified under Rule 52.08.

1. Whether and to what extent Class members are entitled to equitable relief, including declaratory relief, restitution, rescission, a preliminary and/or a permanent injunction.
- m. Whether and to what extent Class and Subclass members are entitled to damages and other monetary relief.

45. **Typicality – Rule 52.08(a)(3).** Plaintiff's claims are typical of the Class because Defendant failed to ensure that the water it provided to Plaintiff and the Class was free from sediment and other contaminants. Moreover, Plaintiff's claims are typical of the Property Damage Subclass because Defendant provided Plaintiff and the Property Damage Subclass with water, and Plaintiff and the Property Damage Subclass suffered property damage. Finally, Plaintiff's claims are typical of the Residential Subclass because Plaintiff is a residential customer of Defendant's metered water, uses that water primarily for personal, family or household purposes, and suffered property damage.

46. **Adequacy of Representation – Rule 52.08(a)(4).** Plaintiff will fairly and adequately protect the interests of Class and Subclass members. Plaintiff has retained counsel competent and experienced in complex class action litigation, and Plaintiff will prosecute this action vigorously. Plaintiff has no interests adverse or antagonistic to those of the Class or Subclasses.

47. **Propriety of Injunctive Relief – Rule 52.08(b)(2).** Defendant has acted and refused to act on grounds generally applicable to the Class by failing to ensure that the water it provides to Platte County residents is free from sediment and suitable for ordinary use, and refusing to provide a generally applicable solution to the problem despite direct knowledge that the problem exists on a classwide basis and causes property damage to members of the Subclasses. Therefore,

the classwide injunctive and declaratory relief herein requested – that Defendant test all Class member's water, ascertain all members to whom it is providing defective water, and remediate the defective water – is appropriate.

48. Additionally, the Class and Subclasses may be certified under Rule 52.08(b)(1) and/or (b)(3) because:

a. **Risk of Inconsistency – Rule 52.08(b)(1).** The prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications with respect to individual Class members that would establish incompatible standards of conduct for Defendant; and

The prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them which would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and/or

b. **Superiority – Rule 52.08(b)(3).** A class action is superior to all other available means for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual Class members are small compared with the burden and expense that would be entailed by individual litigation of their claims against Defendant. Thus, it would be virtually impossible for the Class members, on an individual basis, to obtain effective redress for the wrongs done them.

Furthermore, even if Class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts.

Individualized litigation also would increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no unusual management difficulties under the circumstances here.

49. Finally, in the alternative, this action may be brought or maintained as a class action with respect to particular issues under Rule 52.08(c)(4), including but not limited to the common questions of law and fact identified above.

**COUNT I**  
**DECLARATORY JUDGMENT**  
**(Brought by the Class Against Defendant)**

50. Plaintiff incorporates by reference and re-alleges all paragraphs previously alleged herein. Plaintiff asserts this cause of action on behalf of himself and the Class against Defendant.

51. As stated herein, Defendant has failed and is failing to ensure that the water it provides to its Platte County customers is free from sediment and fit for ordinary purposes, including use for washing, watering lawns, and in household appliances.

52. In doing so, Defendant has violated and is violating its duties to act reasonably and to ensure that the water it sells the Class is clean and merchantable.

53. In addition to the other relief sought herein, Plaintiff, on behalf of himself and the Class, seeks a declaration that Defendant has breached and is breaching its duties to Plaintiff and the Class by failing to ensure that the water it sells the Class is free from significant sediment and merchantable.

**COUNT II**  
**INJUNCTIVE RELIEF**  
**(Brought by the Class Against Defendant)**

54. Plaintiff incorporates by reference and re-alleges all paragraphs previously alleged herein. Plaintiff asserts this cause of action on behalf of himself and the Class against Defendant.

55. As stated herein, Defendant has failed and is failing to ensure that the water it provides to its Platte County customers is free from sediment and fit for ordinary purposes, including use for washing, watering lawns, and in household appliances.

56. In doing so, Defendant has violated and is violating its duties to act reasonably and to ensure that the water it sells the Class is clean and merchantable.

57. In addition to the other relief sought herein, Plaintiff, on behalf of himself and the Class, requests an injunction directing Defendant to test all Class member's water, ascertain all members to whom it is providing defective water, and remediate the defective water. Plaintiff additionally requests this Court to authorize Plaintiff to provide notice of this action to all members of the Class.

**COUNT III**  
**NUISANCE**  
**(Brought by the Class Against Defendant)**

58. Plaintiff incorporates by reference and re-alleges all paragraphs previously alleged herein. Plaintiff asserts this cause of action on behalf of himself and the Class against Defendant.

59. Under Missouri law, an unreasonable use of property that substantially impairs the right of another to peacefully enjoy his or her property is a nuisance. *Frank v. Envtl. Sanitation Mgmt., Inc.*, 687 S.W.2d 876, 880 (Mo. banc 1985). The focus is defendant's unreasonable interference with the use and enjoyment of plaintiff's land. *Id.*

60. Nuisance is a condition and does not depend on the degree of care used; it depends on the degree of danger existing with the best of care. *Id.*

61. Missouri courts have consistently recognized that the unreasonable use of a utility's property resulting in injury to a plaintiff's property may constitute a nuisance. *See, e.g., Byrom v. Little Blue Valley Sewer Dist.*, 16 S.W.3d 573, 576 (Mo. banc 2000); *Basham v. City of Cuba*, 257 S.W.3d 650, 653 (Mo. Ct. App. 2008) ("[w]hen it becomes evident after sewers and drains are constructed that they are inadequate to perform the functions contemplated, and when, after due notice of those shortcomings, a [defendant] fails to remedy the condition and continues to operate the system in the same manner as before so that it constitutes a nuisance, the [defendant] will be held liable.")

62. Defendant MAWC's unreasonable use of its property causes water laden with sediment to enter upon Plaintiff and the Class's premises, creating an unreasonable interference with Plaintiff and the Class's use and enjoyment of their properties.

63. Defendant's unreasonable interference has resulted in substantial injury to Plaintiff and the Class's property including direct damage and diminution in value.

64. Plaintiff and the Class seek actual damages in an amount to be determined at trial; a declaration that Defendant has created a nuisance; an injunction requiring Defendant to effectively prevent sediment in the metered water sold to Plaintiff and the Class from further entering upon their property; pre- and post-judgment interest; and attorneys' fees and costs.

**COUNT IV**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
**(Brought by the Property Damage Subclass Against Defendant)**

65. Plaintiff incorporates by reference and re-alleges all paragraphs previously alleged herein. Plaintiff asserts this cause of action on behalf of himself and the Property Damage Subclass against Defendant.

66. Mo. Rev. Stat. § 400.2-314, which codifies section 2-314 of the Uniform Commercial Code (“UCC”), imposes an implied warranty of merchantability on the sale of goods by a merchant.

67. Under Missouri law, a plaintiff may recover under the provisions of section 400.2-314 by proving:

- a. that a merchant sold goods,
- b. which were not “merchantable” at the time of sale, and
- c. injury and damages to the plaintiff or his property
- d. caused proximately and in fact by the defective nature of the goods, and
- e. notice to the seller of the injury.

*Metty v. Shurfine Cent. Corp.*, 736 S.W.2d 527, 530 (Mo. Ct. App. 1987).

68. Under Mo. Rev. Stat. § 400.2-104, Defendant Missouri-American Water Company is a merchant because it is “a person who deals in goods of the kind,” i.e., water.

69. Under Mo. Rev. Stat. § 400.2-105, which codifies UCC section 2-105, water is a good because it is a “thing[...] which [is] movable at the time of identification to the contract for sale.” *See also Gall by Gall v. Allegheny Cty. Health Dep’t*, 555 A.2d 786, 789 (Pa. 1989) (approving suit for breach of implied warranty of merchantability against water provider because the UCC definition of “goods” includes metered water provided by a utility).

70. Therefore, Defendant’s sale of metered water to Plaintiff and the Property Damage Subclass was the sale of goods by a merchant.

71. Under Mo. Rev. Stat. § 400.2-314, to be “merchantable” goods must be “fit for the ordinary purposes for which such goods are used.”

72. Because the water that Defendant sold to Plaintiff and the Property Damage Subclass contained large quantities of sediment and contaminants, it was unfit for its ordinary purposes.

73. As a factual and proximate result of the defective nature of Defendant's water, Plaintiff and Property Damage Subclass members suffered injury and damages, including but not limited to the damage and destruction of household appliances, inability to use sprinklers and external spigots, ruptured water lines, and flooding.

74. Defendant, as seller, was repeatedly notified of such defects and resulting injuries by Plaintiff and others.

75. Accordingly, Plaintiff is entitled to recover for Defendant's violation of Mo. Rev. Stat. § 400.2-314.

76. Plaintiff and the Property Damage Subclass seek actual and consequential damages, including for the amount of the diminishment in value of their damaged and destroyed property and expenses incurred as a result of the property damage, including repairs and replacements; a declaration that Defendant's sale of unmerchantable metered water violates Mo. Rev. Stat. § 400.2-314; an injunction requiring Defendant to effectively prevent sediment in the metered water sold to Plaintiff and the Property Damage Subclass from further damaging their property; pre- and post-judgment interest; and attorneys' fees and costs.

**COUNT V**  
**NEGLIGENCE**  
**(Brought by the Property Damage Subclass Against Defendant)**

77. Plaintiff incorporates by reference and re-alleges all paragraphs previously alleged herein. Plaintiff asserts this cause of action on behalf of himself and the Property Damage Subclass against Defendant.

78. Under Missouri law, a defendant is liable for negligence where:

- a. the defendant had a duty to protect the plaintiff from injury,
- b. the defendant failed to perform that duty, and
- c. the defendant's failure proximately caused injury to the plaintiff.

*Lopez v. Three Rivers Elec. Co-op., Inc.*, 26 S.W.3d 151, 155 (Mo. banc 2000).

79. “Whether a defendant’s conduct created a duty to a plaintiff depends on whether the defendant should have foreseen a risk in a given set of circumstances.” *Id.*

80. Under the circumstances described above, including Plaintiff’s and other Class members’ repeated notice to Defendant regarding the sediment and property damage, Defendant MAWC should have foreseen that its provision of defective water would create a risk of injury to Plaintiff and the Property Damage Subclass. Therefore, MAWC had a duty to Plaintiff and the Property Damage Subclass.

81. Nevertheless, MAWC breached its duty to Plaintiff and the Property Damage Subclass by continuing to provide them with defective water.

82. Defendant’s provision of defective water proximately injured Plaintiff and the Property Damage Subclass by, *inter alia*, damaging their property.

83. Accordingly, Defendant is liable for negligence.

84. Plaintiff and the Property Damage Subclass seek actual and consequential damages, including for the amount of the diminishment in value of their damaged and destroyed property and expenses incurred as a result of the property damage, including repairs and replacements; a declaration that Defendant has acted negligently; an injunction requiring Defendant to effectively prevent sediment in the metered water sold to Plaintiff and the Property Damage Subclass from further damaging their property; pre- and post-judgment interest; and attorneys’ fees and costs.

**COUNT VI**  
**VIOLATION OF THE MISSOURI MERCHANDISING PRACTICES ACT**  
**(Brought by the Residential Subclass Against Defendant)**

85. Plaintiff incorporates by reference and re-alleges all paragraphs previously alleged herein. Plaintiff asserts this cause of action on behalf of himself and the Residential Subclass against Defendant.

86. Section 407.020.1 (The “Missouri Merchandising Practices Act” or “MMPA”) provides that “[t]he act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce [...] is declared to be an unlawful practice.”

87. Plaintiff, members of the Residential Subclass, and MAWC are “persons” within the meaning of section 407.010(5).

88. MAWC’s sale of metered water constituted the sale of “merchandise” within the meaning of section 407.010(4).

89. Plaintiff and members of the Residential Subclass purchased metered water from Defendant “primarily for personal, family or household purposes” within the meaning of section 407.025.

90. As set forth herein, Defendant’s acts, practices and conduct violate section 407.020(1) in that, among other things, Defendant has used and/or continues to use unfair practices and concealment, suppression and/or omission of material facts in connection with its sale of metered water to Plaintiff and members of the Residential Subclass.

91. Defendant’s unfair, unlawful and deceptive acts, practices, and conduct include, but are not limited to, (1) omitting the material fact that the metered water sold by Defendant includes excessive and damaging levels of sediment; (2) attempting to suppress disclosure of that material

fact by requiring Plaintiff to sign a non-disclosure agreement regarding Defendant's defective water; and (3) representing to customers that they have a "right to expect high quality drinking water every time [they] turn on [their] faucet[s]," while not ensuring that the water provided to Plaintiff and the Residential Subclass is of high quality.

92. In addition to the statutory language of the MMPA, MAWC's conduct also violates the enabling regulations for the MMPA because it causes substantial injury to consumers' property. See Mo. Code Regs. Ann. tit. 15, § 60-8.

93. As a result of MAWC's unfair and deceptive acts, Plaintiff and the Residential Subclass have suffered substantial injury to their property, including direct damage and diminution in value.

94. In accordance with section 407.025(7), Plaintiff will inform the attorney general of the commencement of this action by letter dated April 28, 2016, and included therewith a copy of this Petition.

95. Plaintiff and the Residential Subclass seek actual and consequential damages, including for the amount of the diminishment in value of their damaged and destroyed property, expenses incurred as a result of the property damage, including repairs and replacements; declaration that Defendant has violated the Missouri Merchandising Practices Act, Mo. Rev. Stat. §§ 407.010 et seq.; an injunction requiring Defendant to effectively prevent sediment in the metered water sold to Plaintiff and the Residential Subclass from further damaging their property; pre and post-judgment interest; punitive damages; and attorneys' fees and costs.

#### **JURY DEMAND**

Plaintiff, on behalf of himself and the proposed Classes, hereby demands a jury trial on all issues triable to a jury.

DATED: April 28, 2016

Respectfully submitted,

**WILLIAMS DIRKS DAMERON LLC**

/s/ Eric L.Dirks

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