

HEALTH EQUITY NEWSLETTER

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Welcome to Health Equity, a monthly newsletter advocating for racial health equity and environmental justice in the United States, brought to you by Equal Justice Society and Lief Cabraser Heimann & Bernstein LLP

ADVOCATING FOR ACCESS TO CLEAN, SAFE WATER AS A RACIAL JUSTICE IMPERATIVE

This month is the tenth anniversary of the Flint, Michigan water crisis where residents uncovered that they were being exposed to lead, a highly toxic metal that is especially dangerous to children, through their public water supply. Ten years later, our clients in [Jackson, Mississippi](#) and [Benton Harbor, Michigan](#) are still fighting for access



to clean, safe water that is sadly still not guaranteed, especially to Black residents.

Lief Cabraser attorney [Wesley Dozier](#) recently spent time in Benton Harbor with residents and below discusses the

long fight for justice waged by our client Emma Kinnard (a named plaintiff in the proposed water contamination class action) to protect her community.

Lief Cabraser attorney [Annie Wanless](#) represents service members and their families exposed to contaminated water at Camp Lejeune between August 1953 and December 1987. She discusses the segregation and racism perpetrated on Black marines and local staff personnel at Camp Lejeune and the upcoming deadline to submit a claim for those exposed to contaminated water.

Benton Harbor, Michigan: Residents create change and demand accountability



By Wesley Dozier,
Lief Cabraser,
Attorney

On October 14, 2021, Michigan Governor Gretchen Whitmer declared a State of Emergency in the City of Benton Harbor, Michigan in response to the elevated lead levels in the public drinking water. Governor Whitmer's announcement was the first time any Michigan state or local official provided public notice that the water in Benton Harbor was contaminated by lead at levels that exceeded state and federal regulatory standards. The heightened presence of lead in the Benton Harbor water system was discovered three years prior, in 2018, but various government officials failed to sound the alarm

despite the residents raising concerns about the water safety. Further, these officials implemented, recommended, and promoted ineffective remedies to the water crisis. The impact of this mismanagement fell on the mostly Black and mostly low income residents of Benton Harbor.

Unfortunately, the Benton Harbor water story is not unique. Historically, communities of color in the U.S. have long suffered from poor infrastructure, inadequate safety monitoring, and gross indifference of too many private actors and state and local officials to the concerns of individuals and communities lacking in money and/or power. As a result, Black Americans and other persons of color, especially children, have endured the harsh consequences of lead poisoning caused by their own drinking water. However, the residents of Benton Harbor have demonstrated tremendous resilience and strength in the face of these challenges. In particular, Benton Harbor

resident Emma Kinnard has used this moment to be a catalyst for change. For decades Ms. Kinnard has been a staple in the Benton Harbor community. She worked in the Benton Harbor Area Schools for 26 years before retiring. She has served as the founding director of Fresh Start Children's Garden, a nonprofit organization dedicated to urban gardening, education, and nutrition. And she became so concerned about the lack of safe water in her community that she decided to step forward and bring a class action lawsuit against the City of Benton Harbor and the State of Michigan for their mismanagement of the Benton Harbor Water Crisis. Through her leadership in the lawsuit, Ms. Kinnard is ensuring that the City and State are held to account for the harms their actions and inactions caused Benton Harbor residents.

Yet, Ms. Kinnard's change-making ethic did not stop at her involvement in the lawsuit. In 2023, Ms. Kinnard ran

for commissioner-at-large in the City of Benton Harbor. With the support of her community, Ms. Kinnard won the election and was sworn in on December 18, 2023. Now, Ms. Kinnard has the ability in her official capacity to help Benton Harbor's residents

hold governments to account when its representatives ignore issues that are most important to Benton Harbor residents. Thus, Ms. Kinnard has modeled how to push for critical change even when faced with severe obstacles. While her election does not itself

remedy the harms caused to Benton Harbor residents by lead-contaminated water, it signals a future in which such harms will not be perpetrated against this community again.

Camp Lejeune: Fighting for Health Equity for Veterans of Color



**By Annie Wanless,
Lieff Cabraser,
Attorney**

In 1942, the first Black recruits in the Marine

Corps reported to Montford Point in North Carolina, which is now part of Marine Corps Base Camp Lejeune. President Roosevelt had just signed Executive Order 8802, which banned racial discrimination in the military. From 1942-1949, over 20,000 African-Americans would train at Montford Point. They became known as the **Montford Point Marines**, and would go on to serve their country around the world. These brave men and women served their country even as they faced

racism and segregation at home—in fact, the Montford Point Marines were not allowed to enter neighboring Camp Lejeune unless accompanied by a White Marine. That changed in 1948, when President Truman signed Executive Order 9981, prohibiting racial segregation in the military. The decision to desegregate the Armed Forces was in large part due to the contributions of men and women like the Montford Point Marines.

People of color continued to serve and work in staff roles at Camp Lejeune between August 1953 and December 1987. Unfortunately, during that time, people at the base were exposed to **contaminated water** that has since been linked to many cancers and other illnesses. Lieff Cabraser is assisting hundreds of clients with these issues.

It is important to note that there are deadlines coming up to participate

in this lawsuit. Anyone who thinks exposure at Camp Lejeune might have caused an illness—to themselves or to a deceased loved one—can file an administrative claim with the Navy **by August 10 of this year**. Filing a claim will not jeopardize VA benefits. If the Navy does not respond for six months, claimants can file a claim in court, where they are now progressing in North Carolina. One of Lieff Cabraser's founding partners, Elizabeth Cabraser serves as one of the court-appointed Co-Lead Counsel for all Plaintiffs.

If you think you were injured by Camp Lejeune water, we recommend speaking with an attorney before taking any action, as the information provided to the Navy is critical to assessing damages and errors in submission could limit damages to which a claimant may legitimately be entitled.

More information can be found [here](#).

California's Intersectionality Senate Bill 1137 to Recognize Amplified Harm in Discrimination Cases



**By Amalee Beattie,
Equal Justice
Society, Berkeley
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Under the laws of the federal and most state governments, discrimination on the basis of a protected characteristic – such as race, sexuality, gender, age, disability, etc., – is prohibited. However, protections under this framework have historically been interpreted in a very limited way, that is, there can be bias against one of these traits but generally not bias claims based on the combination of multiple traits. This tradition ignores the reality of individuals who hold multiple protected characteristics, such as Black women

or Latinas. Racism and sexism may hit women of color, and Black women in particular, more profoundly due to the combination of hostility to women, hostility to Black people, and hostility in particular to Black women. Thus, the law of bias has left Black women and others with inadequate legal claims and remedies to address their specific experiences of discrimination.

On February 14, California State Senator Lola Smallwood-Cuevas introduced SB 1137, a bill that



would clarify California’s anti-discrimination laws to explicitly prohibit discrimination based on the intersection or combination of two or more protected traits. The bill would significantly strengthen the ability of Black women, and other people who experience multiple forms of discrimination, to bring discrimination claims based on treatment they experience due to a combination of two or more characteristics (for example, racism and sexism, racism and transphobia). This new law would seek to prevent perversions of justice that have happened in prior cases.

For example, in *Lam v. University of Hawaii* (9th Cir. 1994), a hiring discrimination case brought by an Asian woman, the lower court allowed the employers to defend itself by arguing that it did not discriminate against the Asian woman because it had hired an Asian man and White

women. This argument entirely misses the unique experience in trying to get hired that an Asian woman may have as compared to an Asian man or White woman. (Fortunately, the appellate court later reversed the *Lam* court’s ruling.) It is crucial to recognize that allowing only for neatly separable claims of race discrimination or gender discrimination ignores reality.

This phenomena is what law professor Kimberlé Crenshaw sought to explain when she coined the term “intersectionality” in 1991: “**Intersectionality is a lens through which you can see where power comes and collides, where it interlocks and intersects.**”ⁱ Crenshaw’s work refers specifically to how U.S. civil rights law has ignored the unique experiences of discrimination faced by Black women.

Crenshaw describes how, in both social and legal settings, the experience of Black heterosexual cisgender men is often upheld as the “typical” Black racial experience, while the experience of White heterosexual cisgender women is upheld as the “typical” women’s gendered experience. But while a Black woman might experience discrimination when seeking healthcare

based on gender or race, she might also experience discrimination based on both gender *and* race; she is exposed to a set of stereotypes and assumptions that neither Black men nor White women experience.

SB 1137 would explicitly prohibit this kind of intersectional discrimination, and direct courts to treat intersectional claims consistently.

The bill has the potential to substantially impact the ability of people facing intersectional forms of discrimination to seek justice. Black women with the capacity for pregnancy have a maternal mortality rate 2.9 times higher than similar White women.

ⁱⁱ American Indian, Black, and Latinx transgender patients report higher rates of medical harassment than White transgender patients.ⁱⁱⁱ Black women are incarcerated at twice the rate of White women, which can lead to health complications brought on by poor prison conditions.^{iv} And the US prison and the foster care systems work together to disparately harm Black mothers, necessitating, as argued by Dorothy Roberts, Professor of Law & Sociology at the University of Pennsylvania, “cross-movement strategies that can address multiple forms of systemic injustice.”^v Yet, because existing law does not formally recognize these realities, plaintiffs seeking redress for intersectional discrimination and harm cannot achieve justice under the laws. SB 1137 would formally recognize the way discrimination actually operates for those of us with more than one

ⁱ Kimberlé Crenshaw on Intersectionality, More than Two Decades Later, June 08, 2017, <https://www.law.columbia.edu/news/archive/kimberle-crenshaw-intersectionality-more-two-decades-later>.

ⁱⁱ Njoku A, Evans M, Nimo-Sefah L, Bailey J., Listen to the Whispers before They Become Screams: Addressing Black Maternal Morbidity and Mortality in the United States. *Healthcare (Basel)*. 2023 Feb 3;11(3):438. doi: 10.3390/healthcare11030438.

ⁱⁱⁱ Jaime M. Grant, Lisa A. Mottet, Justin Tanis, Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, https://transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf

^{iv} The Sentencing Project, Incarcerated Women and Girls, <https://www.sentencingproject.org/fact-sheet/incarcerated-women-and-girls/>; See also ACLU, Racial Disparities in Jails and Prisons: Covid-19’s Impact on the Black Community, 12 June 2020, <https://www.aclu.org/en/news/racial-disparities-jails-and-prisons-covid-19s-impact-black-community>.

^v Roberts, Prison, Foster Care, and the Systemic Punishment of Black Mothers (2012) 59 *UCLA L. Rev.* 1474, 1491. <https://www.uclalawreview.org/pdf/59-6-2.pdf>.

protected characteristic that have historically suffered bias, and greatly clarify the path to achieving remedies for intersectional harms.

The original intent of California's

anti-discrimination laws and similar federal legislation was to end systemic discrimination impacting Black people as a group. Other historically marginalized communities have amplified and expanded these laws

in the fight against white supremacy and other forms of bias. SB 1137 arises from and reflects this history, and would advance the objectives of these protective laws.

CIVIL RIGHTS DOCKET UPDATE



Hair Relaxer Litigation

Plaintiffs across the country in the single federal court litigation (“multidistrict litigation” or “MDL”) continue to work to hold hair relaxer companies responsible for gynecologic cancers caused by their products. Over eight thousand women, represented by over 100 different law firms, have filed cases that are now pending before one federal judge, Hon. Mary Rowland in Chicago, Illinois.

The Court is actively managing the pre-trial investigation and evidence collection process (discovery), and holding the parties to strict deadlines. On April 9, the Court ruled on Plaintiffs’ motions to compel Defendants L’Oréal, Namaste, House of Cheatham LLC, Revlon and Avlon to produce documents responsive to specific requests and Defendants’ motion to compel Plaintiffs to respond to specific interrogatories (lists of written questions). The Court granted the motion to compel against L’Oréal, requiring L’Oréal to diligently search

for the documents pertaining to each of the brand names under which they made hair relaxer products available for sale or distribution. The Court also denied Defendants’ request to compel answers to interrogatories. The Court denied the remaining motions on the representations by Defendants that their productions were complete and/or would be supplemented.

As highlighted in our previous newsletter, the parties are awaiting the Court’s appointment of a “special master” to manage the collection of materials stored on computers (also called electronically stored information or ESI) amongst the parties. All Defendants sued in the litigation last year are now in the process of negotiating how to produce their ESI.

In addition, there are several Defendants that have been recently added to the lawsuit, including Advanced Beauty, RNA Corp., Wella, Murrays International, John Paul Mitchell, Walgreens, and Dudley Beauty. The Court ordered the process

and deadlines for Plaintiffs to file long-form complaints against these “second-wave” defendants and for the subsequent responsive pleadings (motions to dismiss or answers to the complaints).

On December 19, 2023, Judge Rowland issued Case Management Order No. 9, which governs the procedures necessary to complete Plaintiff Fact Sheets (“PFS”) and the signing of authorizations for the release of certain records. A PFS is a standardized questionnaire-styled form used to gain information about plaintiffs’ product usage and injuries. All information disclosed on a PFS or records produced under a signed authorization is treated as confidential. We recognize that completing the PFS can feel burdensome and be upsetting for some of our clients. However for most plaintiffs, this is likely the most time-consuming requirement that will need to be completed in this litigation. If you have any questions about the PFS process, please do not hesitate to reach out to a member of our legal team.

Please stay up to date by clicking [here](#).



action, as the information provided to the Navy informs the damages that may be available and errors can limit damages that are owed in a lawsuit. More information can be found [here](#).

to strengthen claims against the City of Jackson. The City of Jackson has once again moved to dismiss the amended complaint and the parties are awaiting the judge's order.

To learn more, please visit: [Benton Harbor](#) and [Jackson](#).

Camp Lejeune

Many people of color spent time serving or working as staff at Marine Corps Base Camp Lejeune in North Carolina between August 1953 and December 1987. During that time, people at the base were exposed to contaminated water that has since been linked to many cancers and other illnesses. Claims based on these illnesses are progressing quickly in North Carolina federal court, with Elizabeth Cabraser of Lief Cabraser serving as one of the court-appointed Co-Lead Counsel for Plaintiffs. Trials for “Track 1” diseases—bladder cancer, kidney cancer, leukemia, Parkinson’s disease, and non-Hodgkin’s lymphoma—will begin by the end of this year. The court recently picked the “Track 2” diseases, which will head to trial next: prostate cancer, kidney disease, lung cancer, liver cancer, and breast cancer. Plaintiffs’ leadership posts all of the court’s most recent decisions at <https://camplejunecourtinfo.com/>.

Anyone who thinks exposure at Camp Lejeune might have caused an illness—to themselves or to a deceased loved one—can file an administrative claim with the Navy by **August 9, 2024**. If the Navy does not respond for six months, the claimant can file a claim in court using a simplified Short Form Complaint. We recommend speaking with an attorney before taking any

Jackson, Mississippi and Benton Harbor, Michigan Lead Water Crisis Cases

Lead is a toxic metal that causes severe health consequences, especially in children. There is [no safe level of exposure to lead](#).

Proposed class actions have been filed on behalf of residents of Jackson, Mississippi and Benton Harbor, Michigan alleging residents have consumed lead-contaminated water in their public water supply through the actions and failures of their elected officials and private companies.

In Benton Harbor, Michigan, plaintiffs successfully defeated the State of Michigan’s motion to dismiss the case in the Court of Claims. In federal court, the claims are moving forward against the City of Benton Harbor. The defendants have appealed both these orders in favor of plaintiffs. A third proposed class action has been filed in Michigan state court against the private engineering companies and City defendants. The City defendants have filed a motion arguing plaintiffs’ claims are untimely and plaintiffs opposed this motion.

In Jackson, on February 5, 2024, the federal court judge dismissed plaintiffs’ constitutional claims but allowed plaintiffs to file an amended complaint

Social Media Harms to Children and Teens

In 2023, both the Surgeon General and the American Psychological Association put out health advisories on the harmful impact social media use can have on our youth. These harms include anxiety and depression, eating disorders, self-harm, and suicidal behavior. Social media use, however, may differ by race, ethnicity, and gender. As recently reported by the [New York Times](#), a new study by Pew found “Black and Hispanic teenagers ages 13 to 17 spend far more time on most social media apps than their White peers. One-third of Hispanic teenagers, for example, say they are ‘almost constantly’ on TikTok, compared with one-fifth of Black teenagers and one-tenth of White teenagers. Higher percentages of Hispanic (27 percent) and Black teenagers (23 percent) are almost constantly on YouTube compared with White teenagers (9 percent); the same trend is true for Instagram.” Social media thus can disproportionality impact the mental well-being of Black and Hispanic teenagers. If you are



concerned about the impact of social media on your child's self-esteem and mental health, please consult the Surgeon General's advisory at <https://www.hhs.gov/sites/default/files/sg-youth-mental-health-social-media-advisory.pdf>. For more information about lawsuits against the social media companies for harms caused to youth, please click [here](#).

Necrotizing Enterocolitis (NEC) in Babies Fed Cow-Milk Infant Formula

NEC is the most common, serious gastrointestinal disease affecting newborn infants. Preterm and low birth weight babies have a higher risk of NEC. LCHB represents families whose children suffered by using this product.

The potentially lethal disease NEC in preterm and low-weight infants has been linked to the use of cow-milk based formula, including Similac and Enfamil. Despite the strong medical evidence establishing the extreme dangers that cow-based products pose

for premature infants, manufacturers have marketed and continue to market their cow-based products as an equally safe alternative to breast milk, and indeed have promoted their products as necessary for additional nutrition and growth. Formula companies have



historically targeted women of color and systemic and structural barriers, including racism, have resulted in Black and Hispanic families using formula (rather than breastfeeding) at higher rates than White families.

To learn more, please click [here](#).

Talcum Powder Litigation

Johnson & Johnson marketed talcum powder to women and girls, especially women and girls of color, for decades for personal hygiene use and as a method of absorbing moisture. Tens of thousands of lawsuits have been filed by women alleging Johnson & Johnson's baby powder and Shower to Shower products caused their epithelial ovarian cancer.

As alleged in the lawsuits, the ovarian cancer risks were concealed from consumers, a "failure to warn" that has led to injuries and deaths from talc exposure. LCHB represents women who suffered ovarian cancer after use of this product. For more information, please click [here](#).

MEET OUR LEGAL TEAM



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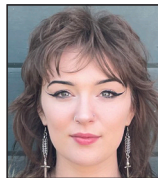
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