

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MICHELE BAKER; CHARLES CARR; ANGELA CORBETT; PAMELA FORREST; MICHAEL HICKEY, individually and as parent and natural guardian of O.H., infant; KATHLEEN MAIN-LINGENER; KRISTIN MILLER, as parent and natural guardian of K.M., infant; JENNIFER PLOUFFE; SILVIA POTTER, individually and as parent and natural guardian of C.P., infant; and DANIEL SCHUTTIG, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

SAINT-GOBAIN PERFORMANCE PLASTICS CORP., HONEYWELL INTERNATIONAL INC. f/k/a ALLIED-SIGNAL INC. and/or ALLIEDSIGNAL LAMINATE SYSTEMS, INC., E.I. DUPONT DE NEMOURS AND COMPANY and 3M CO.,

Defendants.

Civ. No. 1:16-CV-917 (LEK/DJS)

**NOTICE OF MOTION FOR CLASS
CERTIFICATION**

PLEASE TAKE NOTICE, that upon the annexed Declaration of James J. Bilborrow, dated April. 6, 2020, and Stephen G. Schwarz, dated April 6, 2020, together with exhibits S1 through S133 annexed thereto, the Declarations of Plaintiffs Michele Baker, Charles Carr, Angela Corbett, Pamela Forrest, Michael Hickey, Kathleen Main-Lingener, Kristin Miller, Jennifer Plouffe, Silvia Potter, and Daniel Schuttig in support of Plaintiffs' Motion for Class Certification, the Declaration of Nicholas P. Cheremisinoff, Ph.D., dated April 6, 2020, together with exhibit A annexed thereto, the Declaration of Alan Ducatman, M.D., dated March 27, 2020, together with exhibit A annexed thereto, the Declaration of Edgar C. Gentile, III, dated March 30, 2020, together with exhibit A annexed thereto, the Declaration of Mark D. Huncik, dated April 6, 2020, together with exhibit A annexed thereto, the Declaration of David A. Savitz, Ph.D., dated March 14, 2020,

together with exhibit A annexed thereto, the Declaration of Hyeong-Moo Shin, Ph.D., dated March 13, 2020, together with exhibit A annexed thereto, the Declaration of Donald I. Siegel, Ph.D., dated March 30, 2020, together with exhibit A annexed thereto, the Declaration of Jeffrey E. Zabel, Ph.D., dated March 25, 2020, together with exhibit A annexed thereto, and the accompanying Memorandum of Law in support of Plaintiffs Motion for Class Certification, and upon all of the pleadings and proceedings herein, Plaintiffs, by their undersigned attorneys, move this Court for an Order,¹ to be entered for the relief as described more fully below:

1. Plaintiffs move this Court for an Order certifying the following four classes pursuant to Federal Rule of Civil Procedure 23(b)(3):

- (i) **Municipal Water Property Damage Class**
All individuals who are or were owners of real property that was supplied with drinking water from the Village of Hoosick Falls municipal water supply, and who purchased that property on or before December 16, 2015.
- (ii) **Private Well Water Property Damage Class**
All individuals who are or were owners of real property located in the Contamination Zone that was supplied with drinking water from a private well contaminated with PFOA and who owned that property at the time the contamination of the property's private well was discovered through a water test on or after December 16, 2015.
- (iii) **Nuisance Damage Class**
All individuals who are or were owners or lessors of real property located in the Contamination Zone that was supplied with drinking water from a privately owned well contaminated with PFOA, had a point-of-entry treatment (POET) system installed to filter water from that well, and who occupied that property at the time the contamination of the property's private well was discovered through a water test on or after December 16, 2015.

¹ Pursuant to the Second Amended Global Pretrial Case Management and Scheduling Order, any hearing on Plaintiffs' Motion for Class Certification shall occur in November 2020, or at the Court's convenience. (*See* Dkt. 138 at 6.) Accordingly, Plaintiffs have not selected a return date as required by Local Rule 7.1.

(iv) **PFOA Invasion Injury Class**

All individuals who, for a period of at least six months between 1996 and 2016, have (a) ingested PFOA-contaminated water at their residence, which was supplied with drinking water from the Village of Hoosick Falls municipal water supply or from a PFOA-contaminated private well in the Contamination Zone and (b) suffered invasion and accumulation of PFOA in their bodies as demonstrated by blood serum tests disclosing a PFOA level in their blood above the average background level of 1.86 ug/L; or any natural child born to a female who meets and/or met this criteria at the time of the child's birth and whose blood serum was tested after birth disclosing a PFOA level above the average background level of 1.86 ug/L.

The following individuals and/or entities are excluded from these four classes: (i) Defendants, any entity or division in which Defendants have a controlling interest, and their legal representatives, officers, directors, assigns, and successors; (ii) the Judge to whom this case is assigned and the Judge's staff; (iii) any class counsel or their immediate family members; (iv) any State or any of its agencies; (v) the Village of Hoosick Falls and the Town of Hoosick; and (vi) any individual who would otherwise be included under one or more of the class definitions above but who has filed a lawsuit for personal injury alleging a PFOA-related illness caused by exposure to PFOA contained in the Village of Hoosick Falls municipal water supply or in a private well contaminated with PFOA. In addition, any property legally authorized for use in a commercial capacity shall be excluded from the Municipal Water Property Damage Class, the Private Well Water Property Damage Class, and the Nuisance Damage Class.

As referred to in the class definitions above, the "Contamination Zone" shall mean, "All properties located within the Town of Hoosick that have the zip codes 12028, 12057, 12090 and 12089 except the following properties: All addresses on White Creek Road, Gates Road, Telford Road, St. Croix Road, Cobble Hill Road, Battlefield Road, Cottrell Road, Stewart Road,

Beechwood Road, Burgess Road, Bayer Rd., Emmons Road, Orebed Road, Mapletown Road (excluding homes located on New York State Route 7 that also use that name), Farmers Inn Road, Breese Hollow Road, Sipperly Road and Cutoff Road; all addresses on New York State Route 67 east of Cobble Hill road; all addresses on New York State Route 7 east of the intersection with Route 279.”

2. Plaintiffs move this Court for an Order certifying the following class pursuant to Federal Rule of Civil Procedure 23(b)(2):

PFOA Invasion Injury Injunctive Relief Class

All individuals who, for a period of at least six months between 1996 and 2016, have (a) ingested PFOA-contaminated water at their residence, which was supplied with drinking water from the Village of Hoosick Falls municipal water supply or from a PFOA-contaminated private well in the Contamination Zone and (b) suffered invasion and accumulation of PFOA in their bodies as demonstrated by blood serum tests disclosing a PFOA level in their blood above the average background level of 1.86 ug/L; or any natural child born to a female who meets and/or met this criteria at the time of the child’s birth and whose blood serum was tested after birth disclosing a PFOA level above the average background level of 1.86 ug/L.

The exclusions set forth above apply equally to the PFOA Invasion Injury Injunctive Relief Class. In addition, the phrase “Contamination Zone” shall have the meaning set forth above.

3. Plaintiffs move this Court for an Order appointing the following Plaintiffs as representatives of the classes:

(i) Pamela Forrest, Kathleen Main-Lingener, Jennifer Plouffe, Silvia Potter, and Daniel Schuttig as the class representatives for the Municipal Water Property Damage Class;

(ii) Michele Baker, Charles Carr, and Angela Corbett as the class representatives for the Private Well Water Property Damage Class;

(iii) Michele Baker, Charles Carr, and Angela Corbett as the class representatives for the Nuisance Damage Class;

(iv) Charles Carr, Angela Corbett, Michael Hickey, individually and as parent and natural guardian of O.H., infant, Kathleen Main-Lingener, Kristin Miller, as parent and natural guardian of K.M., infant, and Silvia Potter, individually and as parent and natural guardian of C.P., infant, as the class representatives for the PFOA Invasion Injury Class; and

(v) Charles Carr, Angela Corbett, Michael Hickey, individually and as parent and natural guardian of O.H., infant, Kathleen Main-Lingener, Kristin Miller, as parent and natural guardian of K.M., infant, and Silvia Potter, individually and as parent and natural guardian of C.P., infant, as the class representative for the PFOA Invasion Injury Injunctive Relief Class.

4. Plaintiffs move for an Order appointing as co-lead class counsel Robin L. Greenwald and James J. Bilsborrow of Weitz & Luxenberg, P.C., and Stephen G. Schwarz and Hadley L. Matarazzo of Faraci Lange, LLP, and as Plaintiffs' liaison counsel John K. Powers of Powers & Santola, LLP.

5. Should the Court deny Plaintiffs' motion to certify any of the four classes proposed pursuant to Federal Rule of Civil Procedure 23(b)(3), Plaintiffs move the Court for an Order certifying an issue class for liability pursuant to Federal Rule of Civil Procedure 23(c)(4) against (i) Defendants Saint-Gobain Performance Plastics Corp. and Honeywell International Inc. for causing PFOA to contaminate class members' properties and bodies, and (ii) Defendants E.I. DuPont de Nemours and Company and 3M Co. for failing to warn users of PFOA-containing products of the environmental, health and safety risks posed by PFOA.

6. In addition to the above, Plaintiffs shall move this Court for an Order granting such other, further relief as this Court deems just and proper.

Dated: April 6, 2020
New York, New York

/s/ James J. Bilborrow
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Plaintiffs' Liaison Counsel

CERTIFICATE OF SERVICE

I certify that on April 6, 2020, I electronically filed the foregoing Notice of Motion for Class Certification with the Clerk of the Northern District of New York using the CM/ECF system, which sent notification of such filing to all counsel of record.

/s/ James J. Bilsborrow
James J. Bilsborrow