

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)

**DECLARATION OF STEPHEN G. SCHWARZ IN SUPPORT OF  
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND FOR LEAVE TO FILE  
SECOND AMENDED COMPLAINT**

I, Stephen G. Schwarz, Esq., declare and state as follows:

1. I am an attorney duly licensed to practice in New York State, and I am a partner in the law firm of Faraci Lange, LLP. I am fully familiar with the facts and circumstances surrounding this action. I submit this declaration in support of Plaintiffs' Motion for Class Certification.

**EXHIBITS IN SUPPORT OF MOTION FOR CLASS CERTIFICATION**

2. Annexed hereto as Exhibits S1 through S133, are true and correct copies of documents produced or served in this litigation, documents otherwise publically available and deposition testimony. Those are:

<b>Exhibit No.</b>	<b>Deposition Exhibit No. and/or Bates No.</b>	<b>Description</b>
S1	SGNY260004390	1/28/2016 Letter from Sen.Schumer to Kinisky of SGPP
S2	Baker_Michael-00003051	7/20/16 Letter McDonald to Cuomo
S3	N/A	Dec. 17, 2015 EPA Notice
S4	N/A	Second Circuit Denial of 23f Appeal in <i>Sullivan</i>
S5	N/A	Sullivan Decision and Order Denying Daubert Motions
S6	N/A	<i>Burdick</i> Frye Decisions and Orders on <i>Frye</i> Motions
S7	3M_NDNY00016156	9/27/07 3M TSCA 8(e) letter to EPA
S8	Ex. 411	DuPont Information Bulletin No X50f
S9	N/A	Selected Pages of Hassel Deposition Testimony, 1, 20, 27-29, 42-43, 45, 47, 58-62, 84-85
S10		DuPont Answers to Plaintiffs' First Interrogatories
S11	DUP-BAKER-0092460	Zipfel email Biofate Study
S12	N/A	Selected pages of Karrh Deposition Testimony, Apr. 14, 2004, 1, 218, 234-235;
S13	3M_NDNY00000468	Chronology Flurochemicals in Blood
S14	EID080271	Status Review Fluorochemicals in Blood 5/22/79
S15	3M_NDNY00119564	3M Meeting Minutes with Hodge 8/23/78
S16	3M_NDNY00067236	Broad Aspects - Metabolic Studies in Perspective
S17	3M_NDNY00119574	3M Meeting Minutes with Hodge 4/26/79

S18	3M_NDNY00062373	Ninety Day Subacute Rhesus Monkey Toxicity Study
S19	3M_NDNY00000019	Gilliland Thesis 10/1992
S20	PTX2722	3M Minutes of Meeting with Mitchell 4/26/79
S21	3M_NDNY00067233	3M Memo Recommendations of Hidge and Mitchell, 4/30/79
S22	EID080267	DuPont Meeting Mintues fluorochemicals in Blood
S23	EID107196	DuPont Memo to File by Berman on Fluorine Blood Levels, 7/30/79
S24	PTX2723	Phone Conversation report Prokop about call with DuPont's Berman, 7/26/79
S25	EID080255	Memo Shepherd to Doughty Organic Fluorides in Blood Analysis, 10/1/79
S26	EID079399	C-8 Communications Meeting 7/31/80
S27	PTX1247, PTX1249, PTX1251	[Combine into One PDF] Three 3M Teratology Studies
S28	3M_NDNY00067384	Recommendation Regarding Fluorochemical Exposure to Females of Childbearing Potential
S29	EID079428	DuPont Employee Communication
S30	EDI090083	DuPont 5/14/81 C-8 Blood Sampling Results Memo
S31	3M_NDNY00061557	3M letter to Office of Toxic Substances, 11/19/80
S32	DUP-BAKER-0090405	C-8 (FC-143) Chronology
S33	PTX1275	Roach memo to Riehle 1981 Chemolite Health Evaluations
S34	3M_NDNY00052975	The Toxicology of Perfluorooctanoate, Kennedy, et al.,
S35	3M_NDNY00017988	Roach memo to Riehle Organic Fluorine Levels, 8/31/84
S36	EID951165	DuPont Presentation on C-8 in Off-Plant Water Systems, 6/84
S37	EID79096	DuPont Schmid to Doughty Memo Summary of Water Sampling 8/29/84
S38	DUP-BAKER-0059783	C-8 Reduction and Control Status, Zipfel, 6/11/87

S39	N/A	Paustenbach Article on Washington Works Fate and Transport (2007)
S40	3M_NDNY01623347	3M FC-129 Biodegradability Memo Chasma to Killian, 12/30/98
S41	3M_NDNY00061643	Zobel memo re Organic Fluoride Meeting Notes 12/4/89
S42	EID924242	C-8 Review Meeting Agenda 4/26/90
S43	PTX1387	Abstract, Gilliland, Mortality among employees of PFOA production plant
S44	EID073255	DuPont Memo regarding C-8 Potential Carcinogen, Ducatman, Walrath
S45	DUP-BAKER-0050656	Minutes of APME Tox Working Group 12/7/94
S46	3M_NDNY00061745	Notes from APME Meeting, Perkins to Buttenhoff and Zobel, 10/12/95
S47	3M_NDNY01623386	Email from Lieder to Buttenhoff re: Sharing APFO-primate Information, 5/4/99
S48	DUP-BAKER-0076309	C-8 Project Phase I Review, 1/27/97
S49	DUP-BAKER-0092523	DuPont internal email on Monkey Study, 09/09/98
S50	Baker v. Miller	Decision in Baker v. Miller
S51	DUP-BAKER-0085295	C-8 Pace Team Minutes 9/30/98
S52	DUP-BAKER-0085308	C-8 Project Phase IIc Review, 7/30/1998
S53	DUP-BAKER-0056086	C-8 Pace Team Minutes 8/31/98
S54	DUP-BAKER-0085244	Customer Presentation - Surfactant Changes
S55	N/A	EPA Map with Well Results 8.16
S56	DUP-BAKER-0055980	C-8 Pace Team Meeting Notes and Charts, 10/98
S57	DUP-BAKER-0104336	DuPont McCord to Cavanaugh email chain 10/25/99
S58	DUP-BAKER-0105229	DuPont Cavanaugh to McCord email 1/21/2000
S59	DUP-BAKER-0105664	C8 Strategy Review Power Point, 3/3/2000
S60	SGNY21002128	Email Canning to Crowe Re Update on PFOA/APFO Situation, 7/31/06
S61	DUP-BAKER-0076422	Materials in Lieu of 5/7/98 PAC Meeting

S62	PTX1523	Occurrence of PFOS in Wildlife, Purdy, 10/16/1998
S63	3M_NDNY01623370	Buttenhoff confidential toxicology memo on PFOS
S64	PTX1533	Purdy Email to Adams re Risk to Environment of PFOS 12/3/1998
S65	PTX1002	Purdy Resignation Email and Letter 3/28/99
S66	Exhibit 301	Meeting Notes Canning SGPP and Millet 3M, 4/25/2006
S67	N/A	3M Answer to Plaintiffs' First Interrogatories
S68	DUP-BAKER-0064525	Koenings to Zipfel 9/14/99 email re C-8 Human Risk Assessment
S69	N/A	Purposely Left Blank
S70	N/A	Purposely Left Blank
S71	DUP-BAKER-0056175	Levy email to Shomper and others 4/5/2001
S72	Ex. 346	Hoeck and Jamke PowerPoint R&D Review 4/29/2003
S73	N/A	Selected Pages from Richard Hoeck Deposition 1, 73-74
S74	DUP-Baker-0050943	DuPont Press Release refuting health claims about PFOA
S75	EID102805	June 23, 2000 letter from DuPont's Kennedy to EPA
S76	Ex. 34	Barr Processors Mass Balance Report
S77	DUP-BAKER-0056172	Pinchot to McCord about Chemfab Confidentiality agreement 8/30/2000
S78	DUP-BAKER-0056966	Booth to McCord email 7/27/2001
S79	PTX2096	3M-EPA Consent Decree
S80	N/A	Selected pages of Kristen Miller Deposition
S81	HONDON-0019666	Agreement and Plan of Reorganization Oak Electro and Dodge Industries 6/23/67
S82	HONDON-0002541	Bargain and Sale Deed Allied to Furon 2/2/96
S83	HONDON-0018250	Acquisition Agreement, Allied Signal, Inc., and Oak Industries, 2/14/1986

S84	Ex. 7	Honeywell Overview Statement 9/12/2016
S85	N/A	Selected Pages of Morris Deposition, 1, 28-29, 70-71, 75, 128-129, 142-143, 169-170, 192, 260
S86	Ex. 9	AlliedSignal Laminate Systems, Inc. Certificate of Incorporation
S87	Ex. 11	Asset Purchase Agreement, Furon from AlliedSignal Laminate
S88	Ex 198	SGPP Corporate Structure Document for 30(b)(6) Deposition
S89	Ex. 121	Allied Signal DuPont Purchase Memo
S90	Ex. 123	Consignment Sales Agreement Allied Signal and DuPont
S91	Ex. 127	Guy to Stevens Email on Dispersion Usage
S92	N/A	Selected Pages of Guy Deposition, 1, 40-42, 345
S93	N/A	Selected Pages of Noonon Deposition, 1, 92-93, 106-107
S94	SGNY270001860	Spreadsheet of AFD purchases 1997-2003
S95	N/A	Purposely Left Blank
S96	3M_NDNY00001516	Invoice for sale of surfactants to Fluoroglass Dec. 1989
S97	3M_NDNY00027694	Spreadsheet of FC-143 and Dyneon AFD sales to Hoosick Falls
S98	Ex. 147	Guy to Canning email on FP Purchases 12/1/2015
S99	Ex. 416	IR Fabric Coating Oven Diagram - Hassel
S100	Ex. 99	Fluorglas FC-143 Mixing Procedure 2/5/88
S101	Ex. 289	El Eris email to Canning on use of FC-143
S102	N/A	Selected Pages of Beuamont Deposition, 1, 33-37, 65-67, 75-78, 94-96, 107-111, 114
S103	Ex. 95	Allied Signal Permit Application to NYSDEC
S104	Ex. 269	Opacity Omissions Study Report
S105	N/A	Selected Pages of Canning Deposition, 1, 74-76, 225-226, 274-280

S106	Ex. 171	Adirondack 1997 Stack Testing
S107	Ex. 170	Canning letter to NHDES
S108	Ex. 265	NYS DEC Consent Order with Furon
S109	Ex. 228	Furon Emission Controls Study Plan
S110	Ex. 275	Canning Letter to NYSDEC 10/18/2002
S111	N/A	Sewer camera inspection 10/14/2015
S112	Ex. 229	Parsons Report Phase I
S113	Ex. 230	Parsons Report Phase II
S114	Ex. 83	Keese Memo to Brownell on Rhodes Review, 11/22/1988
S115	3M_NDNY00000488	MSDS FC-143
S116	3M_NDNY00000510	MSDS FC-143 1991
S117	SGNY040010635	DuPont Material Safety Data Sheet
S118	Ex. 279	Hoeck Memo re meeting with Cavanaugh of DuPont, 3/17/95
S119	Ex. 97	Memo on meeting with ICI 7/20/999
S120	Ex. 284	Risk Assessment in the Workplace Hoosick Falls, McCaffrey Street 2001
S121	Ex. 350	Email Mirley to Jamke 7/2/2003 re Tymor
S122	Ex. 384	Canning email attaching Tymor Mission Statement 3/10/2006
S123	SGNY080001268	Email Lindsey to Canning 7/1/2003
S124	Ex. 381	Jamke to Lindsey emails on PFOA risk messaging 2/22/2006
S125	Ex. 290	Barr Engineering report to SGPP on Merrimack Testing 2003
S126	Ex. 361	PowerPoint presentation to R. Caliari, 9/22/2004
S127	SGNY210060949	Kilrush Air Dispersion Modeling Report
S128	Ex. 362	Canning email to Foster re NHDES meeting to discuss APFO 10/14/2004

S129	Ex. 138	Koziel to Crowe and many others re Fluoropolymer related issues 9/9/2004
S130	Ex. 310	SGPP Statement on PFOA found in Hoosick Falls, 12/17/2014
S131	N/A	Selected Pages of Michael Hickey Deposition, 1, 51-53
S132	EPA Statement Hoosick Falls	EPA Statement on Hoosick Falls
S133	Second Amended Master Complaint	Plaintiffs' Second Amended Master Complaint

### **APPOINTMENT AS LEAD COUNSEL**

3. By Decision and Order dated July 27, 2016 (Dkt. # 20), Weitz & Luxenberg, P.C. and Faraci Lange, LLP were appointed interim co-lead class counsel in this matter. Since appointment as interim co-lead class counsel almost four years ago, Plaintiffs' Interim Lead Counsel have been effectively, efficiently and vigorously litigating this matter on behalf of the putative classes. Plaintiffs' Lead Counsel have done so in accordance with and pursuant to the Order the above referenced Order setting forth the responsibilities of Plaintiffs' Interim Lead Counsel as well as this Court's Order and governing guidelines regarding billing practices and related issues. (Dkt. # 21.)

4. With my partner, Hadley Matarazzo and I as well as Robin Greenwald and James Bilsborrow of Weitz & Luxenberg, have been responsible for managing and coordinating all work of Plaintiffs' Lead Counsel. During this litigation, we have asked other lawyers in our firms and other law firms to assist with litigation-specific work, including but not limited to the review of the extensive documents produced by Defendants during discovery, defense of class representative plaintiffs' depositions, and conducting more than a dozen depositions of representatives of Defendants and multiple other non-party witnesses. We have also coordinated the defense of



Defendants' Motions to Dismiss and the appeal of this Court's Decision and Order denying those motions to the Second Circuit Court of Appeals

5. To ensure efficiency, we have managed and directed the work being performed by all counsel in this matter. Further, Weitz & Luxenberg has on a monthly basis collected contemporaneous time and expense reports from every law firm that has billed time or incurred an expense in the prosecution of this putative class action.

6. Plaintiffs respectfully request this Court appoint Stephen G. Schwarz and Hadley L. Matarazzo of Faraci Lange, LLP and Robin Greenwald and James J. Bilsborrow of Weitz & Luxenberg, PLLC, () as co-lead class counsel, and John K. Powers of Powers & Santola, LLP as Plaintiffs' liaison counsel.

7. Together, Attorneys Matarazzo, Greenwald, Bilsborrow, Powers and I have the experience to adequately represent the classes of plaintiffs sought to be certified. The work we have done in this matter satisfies the applicable criterion under Rule 23(g) to serve as class counsel.

8. My firm, Faraci Lange LLP, has been engaged in the practice of law for over 50 years and is devoted to representing the interests of injured plaintiffs and consumers. The firm has offices in Rochester and Buffalo, and currently employs 14 attorneys, as well three nurse consultants, and a staff of paralegals and legal assistants. The firm has a stellar reputation in both the legal and broader community, and its attorneys pride themselves on providing individualized service and top-notch representation to every client no matter how big or small the case. Faraci Lange attorneys are experienced trial attorneys who have been called on to litigate and try all types of cases, including complex medical malpractice cases, environmental toxic tort cases, mass tort product liability cases, consumer and employment class actions, and contract cases.

9. I am a Fellow in the American College of Trial Lawyers and an invited member of the American Board of Trial Advocates. Faraci Lange has 10 attorneys listed in the prestigious Best Lawyers in America directory under personal injury law and in the Upstate New York Super Lawyers directory, including lawyer of the year in various aspects of personal injury practice. Five of the firm's attorneys have been elected to the American Board of Trial Advocates and two are Fellows of the American College of Trial Lawyers. Faraci Lange is also an AV rated law firm listed on Martindale Hubbell's list of America's Preeminent Law Firms.

10. I am an experienced class action litigator familiar with the legal and factual issues in this case, and I am qualified to serve as class counsel. I am my firm's managing partner, and have been engaged in trial work since 1984. I have tried over 50 complex cases in my career, including environmental toxic tort, medical malpractice, product liability and patent cases. Specifically, Ms. Matarazzo and I also successfully represented plaintiffs in large environmental contamination cases in New York State courts that have established important precedents in this area of the law, including *Allen v. General Elec. Co.*, 32 A.D.3d 1163 (4th Dept. 2006); *Baity v. General Elec. Co.*, 86 A.D.3d 948 (4th Dept. 2011); and *Ivory v. International Business Machines Corp.*, 116 A.D.3d 121 (3d Dept. 2014). More recently, our firm was also appointed co-lead class counsel in *Burdick, et al. v. Tonoga, Inc.*, Rensselaer County Index No. 00253835, a certified class action related to PFOA contamination in Petersburg, New York.

11. I am prosecuting two consumer class actions pending in the Western District of New York involving overcharges to patients for copies of their own medical records. Faraci Lange was appointed co-lead class counsel in *McCracken et al, v. Verisma Systems, Inc.*, Civ. No. 6:14-CV-0648 by the Hon. Michael A. Telesca, U.S.D.J., and is acting as co-lead counsel in a similar action, *Carter et al, v. CIOX Health, LLC, et al.* Case No. 14-CV-6275.

12. My partner, Hadley Matarazzo, has acted as interim lead counsel in two data breach class actions, *Fero et al. v. Excellus, et al.*, Case No. 6:15-CV-06569 (WDNY) and *Denier v. Taconic Biosciences, Inc.*, Index No 00255851, pending in Rensselaer County, New York. She has been appointed by court throughout the country to the Plaintiffs' Steering Committee in consolidated products liability litigations, including: *In re Bard IVC Filter Products Liability Litigation* (MDL 2641) pending in the District of Arizona, and was on the trial team for the first bellwether trial that resulted in a \$3.6 million dollar in favor of plaintiff in March 2018; *In re Biomet M2A Magnum Hip Implant Products Liability Litigation* (MDL 2391) pending in the Northern District of Indiana; and the Science Committee in *Stryker Rejuvenate/ABG II Multi County Litigation* (MCL 296), pending in Bergen County, New Jersey. Our client's case was one of two bellwether cases in the *In re DePuy Orthopaedics, Inc., ASR Hip Implant Products Liability Litigation* (MDL 2197) in Toledo, Ohio. Ms. Matarazzo and I were part of the four member trial team and responsible for specific causation, which included the areas of the orthopedic pathology and immunology. Ms. Matarazzo has tried a number of complex cases in her career.

13. Plaintiffs' Lead Counsel have performed significant work litigating this case on behalf of the putative classes. To date, this has included the following legal work performed or managed by Plaintiffs' Lead Counsel:

- Drafting responses to motions to dismiss filed by Defendants;
- Drafting an opposition brief and arguing the appeal by Defendants' of this Court's Decision and Order denying Defendants' Motion to Dismiss;
- Drafting and propounding hundreds of specific Requests for Production of Documents to Defendants, and thereafter engaging in several dozen lengthy, substantive meet and confers in person and by telephone with defense counsel, including, inter alia,

- negotiating search terms to be used in ESI discovery and prioritization of document production;
- Drafting and propounding Interrogatories to Defendants;
  - Analyzing numerous categorical and document-by-document privilege logs containing thousands of logged documents or categories of documents;
  - Receiving and overseeing the efficient, targeted review of numerous productions of responsive ESI and documents from Defendants between 2016 and the present, totaling over 100,000 separate documents/records encompassing more than 1,000,000 Bates pages;
  - Serving discovery requests via subpoena to and receiving responses from third-parties, including the New York State Department of Health and New York State Department of Environmental Conservation.;
  - Responding to multiple requests for production and interrogatories from Defendants for all class representative plaintiffs;
  - Preparing class representative plaintiffs for their depositions and Defending them;
  - Taking more than a dozen depositions of representatives of Defendants lasting multiple days each as well as non-party witness depositions;
  - Preparing and serving eight expert witness reports;
  - Regularly engaging in dozens of meet and confers with defense counsel on numerous, significant discovery disputes, and resolving many of the same short of motion practice;
  - Filing, and arguing, a discovery motions before the Hon. Daniel J Stewart;
  - Attending numerous in-person and telephone conferences with Magistrate Judge Stewart regarding litigation management and discovery disputes; and

- Drafting this class certification motion.

14. In addition, interim co-lead counsel have negotiated with defense counsel and argued before the Court regarding the content of several Case Management Orders that have set schedules and procedures for this case as well as the numerous individual actions filed before this Court involving the same or closely related subject matter.

15. During the course of this litigation, interim co-lead counsel have assumed overall responsibility for developing, implementing and driving litigation strategy and workflow for the last four years. We have scheduled and held countless hours of telephone and in-person strategy conferences with each other and other plaintiffs' attorneys involved in this litigation to seek input and provide information to all interested attorneys. We have also served deposition notices on all other counsel covered by the Case Management Order and negotiated agreements on division of time to question noticed witnesses.

16. The putative classes will benefit from the continuity of representation by our appointment as co-lead class counsel. We are committed to continuing representation and leading this case on behalf of the putative classes sought to be certified in the instant motion for class certification.

#### **STIPULATION TO AMEND COMPLAINT**

17. Due to information learned through discovery and from expert evaluation of the evidence, Plaintiffs requested that Defendants' consent to the filing of a Second Amended Master Consolidated Complaint. Defendants have agreed not to object to the filing of such an amended complaint and a stipulation is currently being drafted and will be filed for the Court to "So Order" in the near future. A copy of the Proposed Second Amended Master Consolidated Complaint is being filed as Ex. S133 herewith. The principal changes made through this proposed amendment

are a refinement of the class definitions and specifically narrowing the scope of the geographic area referred to as the “Contamination Zone”. This change affects the far eastern portion of the Town of Hoosick because of discovered overlap between contamination caused by emissions from the Hoosick Falls facilities, and specifically the McCaffrey Street fabric coating facility, and emissions from the former Chemfab fabric coating facility in North Bennington Vermont. Because properties in this region were contaminated by both facilities, residents living in this region had to be exempted from these classes to preserve commonality and typicality.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATED: April 6, 2020  
Rochester, New York

s/Stephen G. Schwarz  
Stephen G. Schwarz