UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JAMES D. SULLIVAN and LESLIE ADDISON, WILLIAM S. SUMNER, JR., RONALD S. HAUSTHOR, GORDON GARRISON, TED and LINDA CRAWFORD, and BILLY J. KNIGHT, Individually and on behalf of Class of persons similarly situated, Plaintiffs, v. SAINT-GOBAIN PERFORMANCE PLASTICS CORPORATION, Saint-Gobain.	Civil Action Docket No. 5:16-cv-00125-gwc

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

This is an environmental contamination case arising from the Perfluorooctanoic Acid ("PFOA") contamination in and around Bennington, Vermont. Plaintiffs James D. Sullivan, Leslie Addison, Ronald S. Hausthor, Gordon Garrison, Ted Crawford, Linda Crawford, and Billy J. Knight, on behalf of themselves and others similarly situated, brought this action against Defendant Saint-Gobain Performance Plastics Corporation alleging that Saint-Gobain is liable for the PFOA contamination of their properties under various tort and statutory causes of action. Plaintiffs consist of two certified classes: (1) a Property Class, an issues class for the purpose of determining liability under Fed. R. Civ. P. 23(c)(4), consisting of owners of residential real property in the Zone of Concern seeking compensation for property damages caused by the PFOA contamination; and (2) an Exposure Class, an injunctive relief class certified under Fed. R. Civ. P. 23(b)(2), consisting of residents of the Zone of Concern who drank PFOA-contaminated water and have elevated PFOA levels in their blood and who are seeking medical monitoring.

Plaintiffs have reached a Class Settlement Agreement with Defendant Saint-Gobain that is fair, adequate and reasonable, and this Court has preliminarily approved the Settlement under Federal Rule of Civil Procedure 23(e). The Settlement Agreement requires Saint-Gobain to fund a 15-year Court-supervised Medical Monitoring Program for the Exposure Class members to provide diagnostic monitoring for early detection of certain diseases. The Settlement Agreement also requires Saint-Gobain to pay $26,200,000 into a Qualified Settlement Fund to be allocated among Property Class Members. The Settlement Agreement also contains agreements on upper limits for attorney fees and litigation expense reimbursement for Class Counsel, subject to Court approval.

Having provided notice to Class Members, as more fully set forth in Section II, *infra,* Plaintiffs now move for final approval of the Settlement in advance of the April 18, 2022, Final Approval Hearing. As set forth herein, the Settlement meets all standards of Rule 23(e) of the Federal Rules of Civil Procedure and other applicable case law. Therefore, Plaintiffs respectfully request that the Court issue an Order Granting Final Approval of the Settlement. A proposed Final Approval Order is attached hereto as Exhibit 7.

BACKGROUND

Plaintiffs filed this lawsuit against Saint-Gobain in 2016 alleging that, for over 20 years, PFOA was released from two facilities operated by Saint-Gobain and/or its predecessor in the Town of Bennington and the Village of North Bennington, Vermont, contaminating Plaintiffs' properties and blood. Plaintiffs allege that Saint-Gobain is liable for the PFOA contamination of their properties and blood under various tort and statutory causes of action, including negligence, nuisance, and trespass. Plaintiffs seek to obtain monetary compensation for their property damages, including diminution in value and loss of use and enjoyment of their properties,

annoyance, upset and inconvenience, and out-of-pocket expenses. Plaintiffs also seek damages and equitable relief for the unreasonable harm to groundwater caused by Saint-Gobain in violation of the Vermont Groundwater Protection Act, 10 V.S.A. § 1410. Plaintiffs further seek injunctive relief, including a medical monitoring program to monitor their health and diagnose at an early stage any ailments associated with PFOA exposure.

Following a combined hearing on *Daubert* and class certification, this Court certified two Classes in 2019. [Doc. 303 (8/23/19)]. The Exposure Class was certified under Rule 23(b)(2) consisting of all persons who, as of August 23, 2019: (1) have resided within the Zone of Concern;[1] (2) ingested water with PFOA within the Zone of Concern; (3) and experienced an accumulation of PFOA in their bodies as demonstrated by blood serum tests disclosing a PFOA blood level above 2.1 parts per billion ("ppb"). [Doc. 445 at 6 (May 10, 2021 Class Notice)]. The Property Class was certified for purposes of liability only under Rule 23(c)(4) and consists of natural persons who owned residential real property in the Zone of Concern on March 14, 2016, as well as natural persons who purchased residential real property after March 14, 2016 that was subsequently added to the Zone of Concern. *Id.*

On December 17, 2021, the Court granted preliminary approval of the proposed Settlement under Rule 23(e) of the Federal Rules of Civil Procedure. [Doc. 470 ("Preliminary Approval Order)"]. In the Preliminary Approval Order, the Court also, *inter alia*: approved the Notice Plan and Notice; appointed Mr. John Schraven as Special Master to review the fairness of the allocation of compensation to the Property Class; appointed KCC Class Action Services, LLC ("KCC") as the Property Settlement Administrator; and appointed Mr. Edward Gentle as Administrator of the Court-Supervised Medical Monitoring Program. *Id.* In accordance with the Preliminary Approval

[1] The Zone of Concern is defined in the attached Settlement Agreement, ¶ II.12, and is shown on the map previously filed in this matter in support of preliminary approval of the proposed Settlement. [Doc. 461-3].

Order, Class Counsel has, with the assistance of KCC, completed the provision of notice of the Settlement to Class Members in the form approved by the Court, and KCC has begun accepting claim forms submitted by Class Members.

SUMMARY OF THE SETTLEMENT AGREEMENT

The Settlement Agreement, attached as Exhibit 1, establishes a Medical Monitoring Program for the Exposure Class and provides monetary compensation to the Property Class. The Settlement Agreement and the exhibits thereto provide all of the details of the Settlement terms, while the following provides a brief summary.

A. Exposure Class Settlement

The Exposure Class Settlement establishes a 15-year Court-Supervised Medical Monitoring Program, which Saint-Gobain agrees to fund up to six million dollars ($6,000,000) based on an Evergreen funding model with a right of reversion of any unexpended payments after 15 years. [Ex. 1, Section III]. The Program will be conducted by physicians and staff at the Occupational Health Clinic of the Southwestern Vermont Medical Center ("SVMC") located in Bennington, Vermont. The Program is designed to provide participating Exposure Class Members with targeted diagnostic monitoring that does not duplicate their current primary care for early detection of certain diseases that Plaintiffs allege Exposure Class Members are at a higher risk of developing due to their PFOA exposure. The Program shall provide incentive payments of one hundred dollars ($100) to participating Exposure Class members, to be paid by Class Counsel and not from any Medical Monitoring Program Payment by Saint-Gobain.

The Program will be subject to the Court's continuing jurisdiction and will be administered by a Court-appointed Administrator. The Court-appointed Administrator will be responsible for establishing procedures for eligible Exposure Class Members to register for the Program and for

the program budgeting, accounting, and reporting.

The level of funding for the Medical Monitoring Program was negotiated by the Parties prior to any discussion of attorney fees [Declaration of Class Counsel, Ex. 2 at ¶ 16]. Saint-Gobain agrees not to oppose an application by Class Counsel for an award of attorneys' fees and costs up to one million, nine hundred and fifty thousand dollars ($1,950,000) with respect to the Exposure Class Settlement, in addition to the Medical Monitoring Program Payments. The costs expended by Class Counsel for experts and other medical monitoring related expenses were approximately $450,000, so if the Court ultimately approves this award of fees and costs, the fees would be approximately 19% of the gross Medical Monitoring settlement.

B. Property Class Settlement

Saint-Gobain will pay a total of twenty-six million, two hundred thousand dollars ($26,200,000) to a Qualified Settlement Fund to resolve all claims of the Property Class. [Ex. 1, Section IV]. A Court-appointed Administrator will administer the claims process and the allocation of the Settlement Payment to Property Class Members. As discussed in more detail herein, Class Counsel has proposed a method for allocation of the share of the Total Property Settlement Payment to Property Class Members, after deduction of Court-approved attorney fees, litigation expense reimbursements and incentive awards for Class Representatives. The proposed allocation method is based upon the value of each property before March 14, 2016, and utilizes different percentages of that value for compensation depending upon the category of the property with regard to its water supply and the level of PFOA contamination of groundwater on the property. John Schraven, the Court-appointed Special Master, has reviewed the allocation of the Settlement Payment to the Property Class Members and found that the proposal treats class members equitably relative to each other. [Declaration of John A. Schraven, Ex. 3 at ¶¶ 16-17]. Although Saint-Gobain recognizes the

need to consider individual circumstances in determining an allocation, it takes no position on the allocation method proposed by Class Counsel or its method of application to Property Class Members. In addition, KCC, as Court-appointed Administrator, will administer the claims process.

The Parties negotiated the Property Class compensation prior to negotiating the attorney fee. [Ex. 2 at ¶ 16]. Saint-Gobain agrees not to oppose an application by Class Counsel for an award of attorneys' fees up to five million, one hundred thousand dollars ($5,100,000), to be paid from the Total Property Settlement Payment. If the Court approves this fee, it would be 19.4 percent of the Total Property Settlement Payment. In addition, Saint-Gobain agrees not to oppose an application for reimbursement of Class Counsel's costs up to five hundred ninety thousand dollars ($590,000), to be paid from the Total Property Settlement Payment for the Property Class.

In exchange for the benefits provided under the Settlement Agreement, Plaintiffs agree to release Saint-Gobain from any and all past, present or future claims and causes of action, including without limitation causes of action and/or relief created or enacted in the future that were or could have been asserted in this action, arising out of or related to the subject matter of this case. [Ex. 1, ¶ V.8.b]. The release does not, however, include any future personal injury claims for any class member or any other person arising out of alleged exposure to chemicals from Saint-Gobain's Facilities that are the subject of this action. Nor does the release include any of Saint-Gobain's duties and obligations contained in the Consent Order and Final Judgment Order of May 23, 2019, entered in the case of *State of Vermont, Agency of Natural Resources v. Saint-Gobain Performance Plastics Corporation*, Vermont Superior Court, Bennington Unit, No. 9Z-419, pursuant to which Saint-Gobain has agreed to provide funding for extension of municipal waterlines to properties within the Zone of Concern and has agreed to provide other properties with water filters or new wells.

ARGUMENT

Rule 23(e) establishes the standards for the Court's approval of a class action settlement. Fed. R. Civ. P. 23(e). Pursuant to Rule 23(e)(2), as amended in 2018, a court may grant final approval of a proposed class action settlement "only after a hearing and only on finding that it is fair, reasonable, and adequate" after considering whether:

> (A) the class representatives and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the class is adequate, taking into account:
> (i) the costs, risks, and delay of trial and appeal;
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> (iv) any agreement required to be identified under Rule 23(e)(3); and
> (D) the proposal treats class members equitably relative to each other.

Rosenfeld v. Lenich, No. 18CV6720NGGPK, 2021 WL 508339, at *3 (E.D.N.Y. Feb. 11, 2021); *see also* Fed. R. Civ. P. 23(e)(2).

Courts in the Second Circuit also consider the factors set forth in *City of Detroit v. Grinnell Corp*., 495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000). *See* 2018 Advisory Notes to Fed. R. Civ. P. 23, Subdiv. (e)(2) ("2018 Advisory Note") (stating that the four new Rule 23 factors were intended to supplement rather than displace the *Grinnell* factors). Under *Grinnell*, courts examine: (1) the expense, complexity, and likely duration of the litigation; (2) the class's reaction to the settlement; (3) the stage of the proceedings and amount of discovery completed; (4) the risks of establishing damages; (5) the risks of establishing liability; (6) the risks of maintaining the class throughout the litigation; (7) the defendant's ability to withstand greater judgment; and (8) the range of reasonableness of the settlement amount. *Grinnell,* 495 F.2d at 463; *D'Amato v. Deutsche Bank*, 236 F.3d 78, 86 (2d Cir. 2001). Courts should also be mindful of the "strong judicial policy in

favor of settlements particularly in the class action context." *McReynolds v. Richards-Cantave*, 588 F.3d 790, 804 (2d Cir. 2009).

I. THE COURT SHOULD APPROVE THE SETTLEMENT AS FAIR, REASONABLE AND ADEQUATE UNDER RULE 23(E)(2).

A. Class Counsel and the Class Representatives have adequately represented the Classes.

Rule 23(e)(2)(A) requires the Court to find that "the class representatives and class counsel have adequately represented the class" before approving a settlement. For class representatives to be adequate, they must have "an interest in vigorously pursuing the claims of the class" and must have "no interests antagonistic to the interests of other class members." *Rosenfeld*, 2021 WL 508339, at *4 (*quoting Denney v. Deutsche Bank AG*, 443 F.3d 253, 268 (2d Cir. 2006)).

Here, there is no suggestion that the Class Representatives' interests are antagonistic to the interests of the Class Members. As this Court previously found [Doc. 303 at 16]:

> "All property owners have the same interest in establishing liability for potential property losses whether they purse these claims or not," and "[a]ll persons demonstrating exposure to PFOA have the same interest in obtaining access to medical testing, whether they choose to make use of it or not. These are common interests which are free of potential conflict."

Nor is there any indication that a potential conflict has arisen since class certification. Indeed, as this Court recognized, "[a]s the case to be tried becomes more narrow and focused, the prospect of a conflict within the class diminishes." *Id.* This continues to be true.

To determine the adequacy of Class Counsel's representation, courts look to whether the attorneys are qualified, experienced and able to conduct the litigation." *Id.* (*quoting Cordes & Co. Fin. Servs. v. AG. Edwards & Sons, Inc.*, 502 F.3d 91, 99 (2d Cir. 2007)). This Court has previously found that Class Counsel, who consist of "a highly experienced consortium of national environmental lawyers, Vermont-based environmental lawyers, and a local law firm from Bennington . . . have performed at a very high level before this court in this case." [Doc. 303 at

18]. The adequacy and quality of Class Counsel's representation is further reflected in the results they have obtained so far—obtaining class certification and prevailing on dispositive motions, marshalling expert evidence, readying this case for trial, and ultimately obtaining a multi-million dollar settlement following protracted settlement negotiations, which further evinces Class Counsel's vigorous representation of Plaintiffs.

B. The Settlement was negotiated at arm's length.

Rule 23(e)(2) requires procedural fairness and consideration whether the settlement "was negotiated at arm's length." Fed. R. Civ. P. 23(e)(B). If a class "[s]ettlement is the product of arm's length negotiations conducted by experienced counsel knowledgeable in complex class litigation, the Settlement will enjoy a presumption of fairness." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005); *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 173-74 (S.D.N.Y. 2000), *aff'd sub nom., D'Amato*, 236 F.3d at 78. Moreover, "a mediator's involvement in settlement negations can help demonstrate their fairness." *In re GSE Bonds Antitrust Litig.*, No. 19-CV-1704 (JSR), 2019 WL 6842332, at *2 (S.D.N.Y. Dec. 16, 2019) (citing *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.,* 330 F.R.D. 11, 35 (E.D. N.Y. 2019).

Here, the parties have engaged in protracted settlement negotiations over the course of one and one-half years, which was facilitated by an experienced mediator, Mr. John Schraven, who has confirmed that the Settlement Agreement was a product of extensive and informed negotiations conducted at arm's length by sophisticated and capable counsel. [Ex. 3, ¶¶ 1-5]; [Ex. 2, ¶¶ 1-17]. Furthermore, for each part of the Settlement, the Parties negotiated the amount of the Settlement prior to and separate from the "Clear Sailing" agreement, wherein Defendant has agreed not to oppose an amount to be requested for attorney fees and costs. [Ex. 2, ¶ 16]. *See, e.g., Pearlman v.*

Cablevision Sys. Corp., No. CV104992JSAKT, 2019 WL 3974358, at *5 (E.D.N.Y. Aug. 20, 2019). The Settlement Agreement is therefore entitled to a presumption of fairness under Rule 23(e)(2)(B).

C. The Settlement provides not only adequate, but significant relief to the Classes.

Rule 23(e)(2)(C) also requires substantive fairness and an examination whether "the relief provided for the class is adequate, taking into account:

> (i) the costs, risks, and delay of trial and appeal;
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims, if required;
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> (iv) any agreement required to be identified under Rule 23(e)(3)."

i. The costs, risks, and delay of trial and appeal

This factor "subsumes several *Grinnell* factors, including the complexity, expense and likely duration of litigation, the risks of establishing liability, the risks of establishing damages, and the risks of maintaining the class through trial." *Rosenfeld*, 2021 WL 508339, at *5 (*quoting In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. at 36).

The complexity of this environmental contamination class action is beyond dispute. [Ex. 2, ¶¶ 1-11]. This case involves two different classes totaling over 8,000 Class members and 2200 properties, and, as is typical of environmental contamination cases, has presented numerous complex factual and legal questions requiring highly specialized, technical expertise such as, for example, proof of liability, causation, and damages for groundwater pollution. Likewise, the medical monitoring claim presents complex issues of toxicology, epidemiology, and clinical medicine, also requiring expert evidence. Plaintiffs and Defendant have retained numerous experts, from hydrogeologists and air modeling experts to real estate appraisers and have commissioned several voluminous expert reports.

Although discovery is largely complete, continuing to litigate this case through trial and possibly appeal will entail significant costs. Plaintiff's real estate appraisal expert, Michael Bailey, still needs to be deposed. The trial, itself, would be lengthy, estimated by the Parties at 4-6 weeks, with expensive expert witness travel, preparation, and trial testimony, in addition to attorney time and law firm staff time. Plaintiffs will therefore incur considerable costs if they were to continue litigating this case through trial, which will not occur until the beginning of 2022, at the earliest.

In addition to costs, litigation also carries significant risk. [Ex. 2, ¶¶ 10-11]. This case has already been pending for over five years. Saint-Gobain has not conceded liability, presenting a real risk of appeal in the event of a jury verdict in Plaintiffs' favor, which would further delay the resolution of this case. Second, Defendant is likely to appeal decisions by the Court, such as class certification, and the decision finding medical monitoring as injunctive relief for toxic chemical exposure under Vermont law. Moreover, assuming a jury verdict finding liability and damages for the Class Representatives, proof of damages for additional Property Class members could require individual trials, which would involve even greater time, cost and risk as compared to the overall Class Settlement. There is also a risk that Plaintiffs would be unable to maintain the Property Class should the Court allow Saint-Gobain to extend individual, unnegotiated settlement offers to Property Class Members, as this could have the effect of reducing the size of the Property Class to such an extent that it could no longer satisfy the numerosity requirement for a class action.

Accordingly, consideration of the costs, risks and delay of trial and appeal supports a finding that the proposed settlement is adequate. *See, e.g., Rosenfeld,* 2021 WL 508339, at *5 ("Courts favor settlement when it 'results in substantial and tangible present recovery, without the attendant risk and delay of trial'.") (*quoting In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. at 36).

ii. The effectiveness of the proposed method of distributing relief

Rule 23(e)(2) requires courts to examine "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims." Fed. R. Civ. P. 23(e)(2)(C)(ii). "A claims processing method should deter or defeat unjustified claims, but the court should be alert to whether the claims process is unduly demanding." Fed. R. Civ. P. 23 Advisory Committee's Note to 2018 amendment.

Plaintiffs propose that both the Medical Monitoring Program and the Property Class Settlement Fund be administered by Court-appointed Administrators to ensure that the eligible Class Members obtain effective relief. The Medical Monitoring Program will be conducted at the Occupational Health Clinic at SVMC and will be funded for the entirety of the program's 15-year duration under an Evergreen Funding Model, as described in the Settlement Agreement. [*See also* Ex. 2, ¶¶ 23-27]. In addition to budgeting, reporting and accounting, the Program Administrator will establish procedures for eligible Exposure Class Members to demonstrate their eligibility through blood test results and proof of residency and drinking water consumption in the Zone of Concern.

With respect to the Property Class Settlement, a Claim Form has been provided (and will continue to be made available) to Class Members, which contains instructions on how to verify eligibility and claim compensation based on their ownership of residential property in the Zone of Concern. Payments will be allocated among Property Class Members based on the value of each property before March 14, 2016, and will utilize different percentages of that value for compensation depending upon the category of the property with regard to its water supply and the level of PFOA contamination of groundwater on the property, as discussed in more detail in Section I.D, *infra*, and the Settlement Agreement. [Ex. 1, ¶ IV.7; *see also* Ex. 2, ¶¶ 18-22]. *In re*

Payment Card Interchange Fee & Merch. Disc. Antitrust Litig., 330 F.R.D. at 40 ("An allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel.") (quotation omitted); *In re EVCI Career Colleges Holding Corp. Sec. Litig.*, No. 05-CV-10240, 2007 WL 2230177, at *11 (S.D.N.Y. July 27, 2007) ("a plan of allocation need not be perfect") (collecting cases). Any allocated Property Class funds not claimed by Property Class Members within the Claim Period shall be allocated to previously approved claimants on a *pro rata* basis.

Pursuant to the Preliminary Approval Order, [Doc. 470, ¶¶ 39-40], Saint-Gobain has made initial payments in the amount of $27,800,00 to the Court-approved Qualified Settlement Fund. [Declaration of Gio Santiago, Ex. 4 at ¶ 10]. Saint-Gobain has also provided financial assurances, in the form of a Litigation Settlement Bond, that funding will be available for the 15-year duration of the Medical Monitoring Program. *See* [Email from Michael Fazio to Jo LaMarche, dated 2/22/2022]. Subject to Court approval of this Bond, these steps will further ensure that all eligible Class Members receive effective relief.

iii. The terms of any proposed award of attorneys' fees

Rule 23(e)(2) requires the Court to examine "the terms of any proposed award of attorneys' fees, including timing of payment." Fed. R. Civ. P 23(e)(2)(C)(iii). Class Counsel seeks an award of attorneys' fees and costs up to $1,950,000[2] for the Exposure Class Settlement, the fee portion of which is 19% of the gross Exposure Class Settlement amount, which is not opposed by Saint-Gobain. That fee will be in addition to the Medical Monitoring Program Payments and will be paid

[2] As set out in Plaintiffs' Motion for an Award of Attorney's Fees and Expenses to Class Counsel [Doc. 474], Class Counsel seek a fee in the amount of $1,500,000 and reimbursement of expenses in the amount of $445,107.33 for the Exposure Class Settlement.

on or before the Effective Date, thirty-five (35) days after Final Approval of the Settlement, at which time the Court-Supervised Medical Monitoring Program will be established.

With respect to the Property Class Settlement, Class Counsel seeks an award of attorneys' fees of $5,100,000 to be paid from the Total Property Settlement Payment, which is 19.4% of the Total Property Settlement Payment of $26,200,000. Class Counsel also seeks reimbursement of $589,998.96 in costs to be paid from the Total Property Settlement Payment. Saint-Gobain does not oppose Class Counsel's application for an award of attorneys' fees and costs from the Property Class Settlement. If this Court approves these fees and costs, payment will be made to Class Counsel at the same time as the Property Settlement payment is made available for distribution to the Property Class (the Effective Date).

Courts in the Second Circuit routinely award fees "in the 20%-50% range in class actions," as Plaintiffs detailed in their Memorandum in response to this Court's request for briefing on the issue of attorneys' fees. [Doc. 406 at 16 (collecting cases)]. And this Court has already found that Class Counsel's efforts would warrant a higher fee percentage of one-third (1/3) of the total value of Saint-Gobain's proposed direct Property Class settlement offers, based on a review of the *Goldberger* reasonableness factors, including the time and labor expended by Class Counsel, the size and complexity of this case, the risks involved in the litigation, the high quality of the representation, public policy considerations, and the range of fee awards in other class actions within the Second Circuit. [Doc. 446 at 6-9]. Further, this Court found that "[t]he repayment of reasonable litigation costs to counsel is a conventional part of a fee award" and that "[a]ssessing an additional cost component against each settled claim is the only practical way to recover the litigation expenses." *Id*. at 9.

In accordance with the Court's Preliminary Approval Order [Doc. 470 at ¶ 37], Plaintiffs filed a Motion for an Award of Attorney's Fees and Expenses to Class Counsel, along with supporting declarations and documentation, on January 12, 2022. [Docs. 474 to 474-7]. Class Counsels' fee request represents approximately 19% of the total benefits recovered for the two Classes in the Settlement, well below the 25% benchmark applied by Courts in the Second Circuit, and further is amply supported by the *Goldberger* factors and the lodestar "cross check." Likewise, the expenses of litigation are reasonable given the complexity of this matter and the length and nature of discovery conducted. Finally, as discussed above, the amount of these awards of fees and expenses are within the maximum amount which Saint-Gobain has agreed to not oppose in the Settlement Agreement. [Ex. 1, ¶¶ III.11, IV.4].

Accordingly, Plaintiffs respectfully request that the Court award Class Counsel attorney's fees and litigation expenses as set out in Plaintiffs' Motion for an Award of Attorney's Fees and Expenses to Class Counsel, be paid from the Class Settlement on or before the Effective Date.

iv. Agreements required to be identified under Rule 23(e)(3)

Rule 23(e)(2) requires the Court to consider "any agreement required to be identified by Rule 23(e)(3)," that is, "any agreement made in connection with the proposal." Fed. R. Civ. P. 23(e)(2)(C)(iv). The parties have entered one such agreement that provides that Saint-Gobain shall have the right to terminate the Property Class Settlement Agreement in the event that less than a certain minimum percentage of Property Class Members participate in the Settlement, as determined by the number of properties for which Opt Outs are submitted compared to the total number of properties in the Property Class. [Ex. 1, ¶ D.22.b]. Such provisions are commonly found among class settlements and do not weigh against final approval. *See, e.g., Mikhlin v. Oasmia Pharm. AB,* No. 19CV4349NGGRER, 2021 WL 1259559, at *8 (E.D.N.Y. Jan. 6, 2021) (finding

that such agreements "are not incompatible with class members' receipt of adequate relief"); *Christine Asia Co. v. Yun Ma, No.* 115MD02631CMSDA, 2019 WL 5257534, at *15 (S.D.N.Y. Oct. 16, 2019) ("This type of agreement is standard in securities class action settlements and has no negative impact on the fairness of the Settlement.").

D. The Settlement treats Class Members equitably relative to each other.

After an adequacy assessment, Rule 23(e)(2) requires the Court to consider whether "the proposal treats class members equitably relative to each other." Fed. R. Civ. P 23(e)(2)(D). This may include consideration of "whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief." 2018 Advisory Committee Notes to Fed. R. Civ. P. 23(e)(2)(D).

With respect to the Exposure Class Settlement, eligibility for the Medical Monitoring program is the same for all Exposure Class Members, and all Exposure Class Members who demonstrate eligibility for the program will receive targeted diagnostic monitoring—through annual survey questionnaires and specified clinical testing—that does not duplicate their primary care, for early detection of certain diseases. The Exposure Class Settlement thus treats all Exposure Class Members equitably relative to each other.

Likewise, the Property Class Settlement treats the Property Class Members equitably relative to each other. As set forth in more detail in Plaintiffs' Proposed Method for Allocating Property Settlement and the accompanying detailed matrix previously filed (under seal) with the Court, [Docs. 462, 462-1],[3] Class Counsel have proposed an allocation method based upon the

[3] In addition to these filings, Class Counsel has also filed a written response to questions from the Court regarding the proposed allocation method [Doc. 466] and discussed the allocation method in more detail with the Court, Mr. Schraven and defense counsel on December 8, 2021, in a Chambers Status Conference.

value of each property before March 14, 2016 and which utilizes different percentages of that value for compensation depending upon the category of the property with regard to its water supply and the level of PFOA contamination of groundwater on the property. [Doc. 462]; [Ex. 2, ¶¶ 19-20]. The allocation will be by individual property, and one payment will be made for each eligible property and will be paid to the owners of the property. The criteria to be used to equitably allocate different amounts to different categories of properties in the Property Class listed from lowest compensation to highest compensation are as follows [*Id.*]:

> a. Property was connected to a municipal water supply prior to March 2016 and continues to be connected;
>
> b. Property is vacant and has neither a well nor spring and has not been connected to municipal water supply;
>
> c. Property relied on one or more wells or springs for domestic water supply prior to March 2016, determined to contain less than 20 parts per trillion ("ppt") PFOA, and a municipal water supply has been or will be provided;
>
> d. Property relied on one or more wells or springs for domestic water supply prior to March 2016, determined to contain greater than 20 ppt PFOA, and a municipal water supply has been or will be provided; and
>
> e. Property relied upon one or more wells or springs for domestic water supply prior to March 2016, and the property has been determined unfeasible for connection to a municipal water supply.

Additionally, Property Class Members who resided on their property as of March 2016 will receive an additional payment for upset and inconvenience based upon the category of their property as set out in paragraphs a. – e. Property Class Members in categories set forth in paragraphs c. – d. will receive a payment for their added costs of paying for municipal water as compared to the costs of a well. [Doc. 462]; [Ex. 2, ¶ 21].

Basing recovery on the type of each property's water supply and level of PFOA contamination takes appropriate account of the relevant differences among Property Class

Members and ensures that Property Class Members are treated equitably relative to each other. 2018 Advisory Committee Notes to Fed. R. Civ. P. 23(e)(2)(D) (under this factor, consideration "could include whether the apportionment of relief among class members takes appropriate account of differences among their claims"); *see also In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.,* 330 F.R.D. at 47 (same). Additionally, any funds that are not paid out will be allocated to previously verified Property Class claimants on a *pro rata* basis, which further treats Property Class Members equitably. *See, e.g., id*. Based on the foregoing, and in addition to his recommendation at the preliminary approval stage [Doc. 470, ¶ 17], Mr. Schraven has, for purposes of final approval, provided further assurances to the Court in the form of his opinion as Special Master that the Property Class Settlement treats the members of the Property Class equitably relative to one another. [Ex. 3, ¶¶ 16-17].

The Settlement also provides that the Court may award the Class Representatives Incentive Awards for their time and effort in serving as representatives of the two Classes. "Incentive" or "service" awards for Rule 23 class representatives are "common in class action cases and serve to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by the plaintiffs." *See e.g*., *Knox v. John Varvatos Enterprises Inc*., 520 F.Supp.3d 331, 348 (S.D.N.Y., 2021), *appeal pending* ($20,000 award approved for one class representative); *see also Strougo ex rel. Brazilian Eq. Fund, Inc. v. Bassini*, 258 F. Supp. 2d 254, 263-64 (S.D. N.Y. 2003) (citing cases approving service awards). The Second Circuit recently held that such awards are not prohibited by U.S. Supreme Court precedent. *Melito v. Experian Marketing Solutions, Inc.*, 923 F.3d 85, 96 (2d Cir. 2019). Thus, this Court is authorized to approve such a payment, and the Court should find that the amount requested, $10,000, is within the range of such payments authorized

by the courts. *See e.g.*, cases collected in the *Knox* opinion. *Knox*, 520 F. Supp. 3d at 350-51. The Class Representatives in this case have been closely involved with the litigation since they became Class Representatives: they have produced documents to Defendant, including their personal medical records; they have each given day-long depositions; they have met with Class Counsel numerous times; they have attended Court hearings; and they have been intimately involved with the settlement negotiations and mediation that have produced the Settlement before the Court. Plaintiffs respectfully request that the Court approve this award as part of its Final Approval Order.

E. Additional *Grinnell* factors further support final approval of the Settlement.

The following *Grinnell* factors overlap with the Rule 23(e)(2) factors: the expense, complexity, and likely duration of the litigation; the risks of establishing liability and damages; and the risks of maintaining the class throughout the litigation. *See, e.g., In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.,* 330 F.R.D. at 29 (finding that those *Grinnell* factors are subsumed by the Rule 23(e)(2) factors). Under *Grinnell*, courts in the Second Circuit also consider the reaction of the class to the settlement, the range of reasonableness of the settlement amount considering the best possible recovery and given the risks of litigation, as well as the stage of the proceedings, the amount of discovery completed, and the defendant's ability to withstand a greater judgment.

i. The reaction of the class to the settlement

"It is well-settled that the reaction of the class to settlement is perhaps the most significant factor to be weighed in considering its adequacy." *Maley v. Del Global Techs. Corp.,* 186 F. Supp. 2d 358, 362 (S.D.N.Y. 2002). Indeed, the lack of numerous class member objections "may itself be taken as evidencing the fairness of the settlement." *RMED Int'l Inc. v. Sloan's Supermarkets, Inc.,* No. 94 CIV5587, 2003 WL 21136726, at *1 (S.D.N.Y. May 15, 2003).

Here, the Opt-Out Deadline following settlement notice has passed, and no class members have opted out of the Property Class Settlement. [Ex. 4, ¶ 8]. Furthermore, two of the ten class members who opted out after the initial Notice of Class Certification in May of 2021 have revoked their prior opt outs in order to remain in the Property Class and be eligible to participate in the Property Settlement. *See* [March 25, 2022 Ltr Emily Joselson, Esq. to Court]. Thus, out of 2,365 total Class Members, there are only eight opt outs. *Id.* Similarly, the Objection Deadline has also passed, and there has been only one objection to the settlement. *See* [Doc. 476].[4]

Thus, this factor favors final approval. *See Wright v. Stern,* 553 F. Supp. 2d 337, 344-345 (S.D.N.Y. 2008) ("The fact that the vast majority of class members neither objected nor opted out is a strong indication" of fairness).

ii. The Settlement is within the range of reasonableness in light of the best possible recovery and the risks of litigation.

Under *Grinnell*, courts in the Second Circuit look to the range of reasonableness of the settlement in light of the best possible recovery and in light of all the attendant risks of litigation. *See, e.g., id*. at 47–48 ("these two *Grinnell* factors are often combined for the purposes of analysis"). In some cases, it may be possible to provide a specific figure representing a best possible recovery estimate, as in cases involving easily quantifiable or statutory damages. *See, e.g., Massre v. Mullooly, Jeffrey, Rooney & Flynn LLP,* No. 19CIV4654KAMVMS, 2020 WL 6321480, at *14-15 (E.D.N.Y. Aug. 28, 2020).

In cases such as this, however, where a figure representing the best possible recovery is difficult to generate, courts recognize that "this information . . . is not absolutely necessary." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.,* 330 F.R.D. at 49, n 46; *see also*

[4] Pursuant to Section V.6.e of the Settlement Agreement, Plaintiffs and Saint-Gobain reserve their right to respond to this objection no later than seven (7) days prior to the Final Approval Hearing, or April 11, 2022.

In re Facebook, Inc., IPO Sec. and Derivative Litig., 343 F.Supp.3d 394, 414 (S.D.N.Y. 2018) (finding that although "particularized evidence ha[d] not been adduced to support a 'best possible' judgment, the agreed-upon figure [was] reasonable in light of the substantial risks to recovery"); *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 327 F.R.D. 483, 495 (S.D.N.Y. 2018) (finding that calculation of recoverable damages was "particularly complex" in a complex antitrust conspiracy action and therefore concluding "that an assessment of the 'best possible recovery' would be of little value in assessing the substantive fairness of the settlement"); *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 186 (W.D.N.Y. 2005) ("The determination whether a settlement is reasonable does not involve the use of a 'mathematical equation yielding a particularized sum.'") (quoting *In re Austrian & German Bank Holocaust Litig.*, 80 F.Supp.2d at 178)).

Here, it is impossible to generate a figure representing the best possible recovery because the Property Class's property damages include subjective considerations like each Property Class Member's upset, annoyance and inconvenience, as would be determined by a jury based upon individual testimony. These types of damages are difficult to quantify in advance. Nor is it possible to provide a specific figure representing the best possible recovery for the injunctive relief that the Exposure Class seeks to recover. More importantly, the proposed Settlement Agreement provides a sufficient amount and method of funding for a 15-year Medical Monitoring Program, which will ensure that Exposure Class Members receive the requested diagnostic testing. [Ex. 2, ¶ 24].

Even if Plaintiffs could obtain a greater recovery upon a finding of liability at trial, the risks, costs and delay of litigating through a trial on liability and individual trials on damages, as discussed in Section I.C.i, *supra*, justify the amounts and terms agreed upon in the Settlement Agreement, which provides an immediate and "meaningful benefit to the class." *Zaslavskiy*, 2020 WL 9814083, at *10 ("even though the class could possibly achieve a greater recovery at trial, this

fact 'is not dispositive and does not preclude the [C]ourt from finding that the settlement is within a 'range of reasonableness' that is appropriate for approval'") (quoting *In re Luxottica Group S.p.A. Sec. Litig.*, 233 F.R.D. 306, 316 (E.D.N.Y. 2006). Accordingly, the Settlement is within a range of reasonableness supporting final approval.

ii. The stage of litigation and amount of discovery completed

Under this factor, "the relevant inquiry is whether the plaintiffs have obtained a sufficient understanding of the case to gauge the strengths and weaknesses of their claims and the adequacy of the settlement." *In re GSE Bonds Antitrust Litig.,* 2019 WL 6842332, at *4. This case is nearly ready for trial, and formal discovery has been largely completed. Fact and expert discovery have been extensive, involving dozens of experts, voluminous expert reports and about 30 depositions. This Court has already ruled on dispositive motions, including Defendant's Motion to Dismiss [Doc. 29], Motion for Judgment on the Pleadings [Doc. 35], Motion for Summary Judgment [Doc. 336], as well as Defendant's Motion to Exclude Plaintiffs' Expert Testimony [Doc. 218]. This Court has also ruled on the proper measure of property damages for the Property Class. [Doc. 405]. Finally, the parties have engaged in protracted settlement negotiations. Under these circumstances, Class Counsel is fully aware of the strengths and weaknesses of Plaintiffs' legal claims and Saint-Gobain's defenses, as well as the adequacy of the Settlement Agreement. [Ex. 2, ¶¶ 1-17]. This factor therefore weighs in favor of final approval. *See, e.g., In re GSE Bonds Antitrust Litig.*, 2019 WL 6842332, at *4 (plaintiffs' counsel "sufficiently well informed" following briefing on defendants' motion to dismiss, significant discovery and mediation).

iii. Saint-Gobain's ability to withstand a greater judgment

Saint-Gobain presumably has the ability to withstand a greater judgment. However, a defendant's ability to withstand a greater judgment, standing alone, does not suggest that the

settlement is unfair. *See Charron v. Pinnacle Grp. N.Y. LLC*, 874 F.Supp.2d 179, 201 (S.D.N.Y. 2012).

In sum, the Rule 23(e)(2) and *Grinnell* factors weigh in favor of final approval of the Settlement Agreement and demonstrate that the Court should approve the Settlement Agreement as fair, reasonable and adequate under Rule 23(e)(2).

II. THROUGH THE CLASS SETTLEMENT NOTICE PROCESS, PLAINTIFFS HAVE PROVIDED REASONABLE NOTICE TO CLASS MEMBERS.

In its Preliminary Approval Order, dated December 17, 2021 [Doc. 470], this Court approved Plaintiffs' Proposed Class Settlement Notice Plan [Doc. 461-6], finding, in part:

> [T]he proposed Notice is the best notice that is practicable under the circumstances, especially because most Class Members will receive individual notice by mail to their home address based on available property ownership records. The newspaper and other publication notices will supplement these individual notices and are practicable means of reaching Class members who may not receive the individual mail notice.

[Doc. 470, at 9].

To effectuate the Notice Plan, the Court required Class Counsel, with the assistance of KCC , to "commence mailing-out the approved Notice to Class Members," *id.*, and to "commence publication of the newspaper and other publication notices as soon as practicable." *Id*., at 9-10. This Court also granted the Parties' request to "begin accepting and processing Claim Forms . . . before Final Approval." *Id*., at 10.

Class Counsel has fully complied with this Court's Preliminary Approval Order and completed adequate and reasonable notice of the Class Settlement to Class Members, as described in the Declaration of Gio Santiago, attached hereto as Exhibit 4, as more fully set forth herein. On October 29, 2021, Class Counsel provided KCC a list of 2,735 names and mailing addresses of Property Class Member households ("Class List"). KCC formatted the list for mailing purposes, removed duplicate records, and processed the names and addresses through the National Change

of Address Database ("NCOA"), to update any addresses on file with the United States Postal Service ("USPS"). KCC found and updated a total of 123 addresses via NCOA, resulting in an updated Class List of 2,365 properties. [Ex. 4, ¶ 2].

On January 3, 2022, KCC caused the Class Settlement Notice Packet ("Notice Packet") to be printed and mailed to the 2,365 addresses in the Class List by First Class U.S. Mail. [Ex. 4, ¶ 3]. A true and correct copy of the Notice Packet is attached to the Santiago Declaration as Exhibit A. Since mailing the Notice Packets to Class Members, 182 Notice Packets were returned to KCC by the USPS with undeliverable addresses. Through credit bureau and/or other public source databases, KCC performed address searches for these undeliverable Notice Packets and was able to find updated addresses for 18 Class Members. KCC promptly re-mailed Notice Packets to the found new addresses. [Ex. 4, ¶ 4].

On or about January 3, 2022, KCC also established the Class Action website, www.benningtonvtclassaction.com, to provide Class Members with information regarding the Class Settlement, including important documents such as the Settlement Agreement, the Notice Packet and Claim Form. [Ex. 4, ¶ 5]. As of March 24, 2022, the website had received 6,069 visits. *Id.*

On January 4, 2022, Class Counsel also emailed the Class Settlement Notice to 502 Class Members, for whom email addresses were available. [Declaration of Wendy Radcliff, Ex. 5 at ¶ 5].

Class Counsel also caused to be published in local media the Summary Form of the Class Settlement Notice. [Ex. 5, ¶ 4]. A true and correct copy of the Summary Form of the Class Settlement Notice is attached to the Radcliff Declaration as Exhibit A. The newspaper and other publication notices appeared at least once per week for three weeks, in the following local and

statewide media outlets: The Bennington Banner, The Vermont Digger, Seven Days, and the Bennington, Vermont Front Porch Forum. *Id.*

In addition, on December 30, 2021, Class Counsel distributed a press release agreed upon by the parties to statewide and local media, announcing the Court's Preliminary Approval Order and Class Action Settlement, which appeared in the Bennington Banner, The VT Digger, Vermont Public Radio, The Washington Post and on ABC News. [Ex. 5, ¶¶ 2-3].

On January 18, 2022, Class Counsel also hosted a town hall-style meeting via Zoom. The meeting was organized to discuss and respond to questions regarding the Class Notice and Settlement and was attended by 40 people. The recording of the meeting was later posted on the Class Action Settlement website and has been viewed more than 200 times on YouTube. [Ex. 5, ¶ 6].

In addition, KCC established and continues to maintain a toll-free telephone number (866-726-3778), for potential Class Members to call and obtain information about the Settlement, request a Notice Packet, and/or seek assistance from a live operator during regular business hours. The telephone hotline became operational on January 3, 2022, and as of March 24, 2022, KCC had received 205 calls to the hotline. [Ex. 4, ¶ 6]. Further, Class Counsel have fielded and responded to many additional Class Member telephone and email inquiries and assisted numerous Class Members in filing Claim Forms. [Ex. 4, ¶ 7].

To date, KCC has received 866 timely-filed Claim Forms. This count is subject to change as the filing deadline has not yet passed. [Ex. 4, ¶ 7]. To date, KCC has received no requests from Class Members for exclusion from the Classes, nor any objections to the Settlement. *Id.*, ¶¶ 8-9.

In summary, Class Counsel respectfully submits that they have fully complied with all mandates regarding Notice to the Classes, as set forth in the Preliminary Approval Order. [Doc. 470, ¶¶ 22-25].

CONCLUSION

Plaintiffs respectfully request that the Court approve the Settlement based on a finding that it is fair, reasonable, and adequate under Rule 23(e) of the Federal Rules of Civil Procedure.

Respectfully submitted,

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Class Counsel

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 28, 2022, a copy of the foregoing was filed electronically in the United States District Court for the District of Vermont. Notice of filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

/s/ Gary A. Davis
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

JAMES D. SULLIVAN, *et al*., individually, and on behalf of a Class of persons similarly situated, *Plaintiffs*, v. SAINT-GOBAIN PERFORMANCE PLASTICS CORPORATION, *Defendant*.	Case No. 5:16-cv-00125-GWC Hon. Geoffrey W. Crawford

CLASS SETTLEMENT AGREEMENT

This Class Settlement Agreement is entered into as of this 10th day of November, 2021, by, between and among Plaintiffs, on behalf of themselves and the members of the Exposure Class and Property Class certified by the Court in the above-referenced matter (the "Action"), by and through Class Counsel, and Defendant Saint-Gobain Performance Plastics Corporation ("Saint-Gobain" or "Defendant"), by and through its counsel of record in the Action.

I. RECITALS

WHEREAS, Plaintiffs have asserted claims against Defendant in this Action on behalf of two classes certified by the Court, the Exposure Class and the Property Class;

WHEREAS, Plaintiffs allege that Defendant is liable under various tort theories and statutory causes of action for various damages and other relief based on the presence of Perfluorooctanoic Acid ("PFOA") in their drinking water and/or in groundwater and soil on their property, which Plaintiffs allege was released from two facilities operated by Saint-Gobain and its predecessor in the Town of Bennington and the Village of North Bennington, Vermont (the

EXHIBIT
1

"Facilities");

WHEREAS, Defendant has denied and continues to deny any wrongdoing in connection with the operation of the Facilities, any PFOA in Plaintiffs' drinking water or in groundwater or soil on their property, and further denies any liability in connection with Plaintiffs' claims, including the necessity of medical monitoring and the appropriateness of certifying a class action in this Action;

WHEREAS, on August 23, 2019, the Court certified two classes in this Action, referred to as the "Exposure Class" and the "Property Class" (an issues class for purposes of determining liability only), and approved the following Class Representatives: James D. Sullivan, Leslie Addison, William S. Sumner, Ronald S. Hausthor, Gordon Garrison, Ted Crawford, Linda Crawford, and Billy J. Knight;

WHEREAS, on December 5, 2019, the Court appointed Plaintiffs' attorneys Emily J. Joselson, Gary A. Davis, and David F. Silver as Class Counsel; and

WHEREAS, after carefully considering the facts and applicable law and the risks, costs, delay, and uncertainty of continued litigation, and after engaging in extensive, arm's-length negotiations, with the assistance of a Court-appointed mediator, the Parties desire to settle the Action and the related claims of Plaintiffs and the Classes on the terms and conditions stated herein, which Plaintiffs and Class Counsel believe are fair, reasonable, adequate, and beneficial to and in the best interests of the Class Members.

NOW THEREFORE, subject to approval by the Court pursuant to Federal Rule of Civil Procedure 23, the Parties hereby agree that, in consideration of the promises and mutual covenants set forth in this Agreement and upon occurrence of the Effective Date, the Action and the related claims of Plaintiffs and the Class shall be settled, compromised, dismissed with prejudice, and

released on the following terms and conditions:

II. DEFINITIONS

1. "Claim Form" means the form attached hereto as Exhibit A and made available on the Settlement Website.

2. "Claim Period" means the period running from 30 days after Preliminary Approval to 90 days after the Effective Date.

3. "Class Counsel" means Emily J. Joselson, Gary A. Davis, and David F. Silver.

4. "Designated Representatives" means the individuals identified by the Parties for notices and other communications about the Settlement after it is approved by the Court and is being administered.

5. The "Effective Date" for each class shall be 35 days after final approval by the Court of a Settlement resolving any and all objections by absent class members, provided that no objecting class member has filed a timely notice of appeal. In the event that an objecting class member files a timely notice of appeal, the Effective Date shall be 30 days from the date that no further appeal lies from an order affirming the approval of the Settlement.

6. The "Escrow Account" means the account established and administered by KCC Class Action Services LLC ("KCC"), the Property Settlement Administrator, into which Saint-Gobain shall deposit funds, within twenty (20) days of Preliminary Approval, to the extent the Qualified Settlement Fund has not been established and opened at the time Saint-Gobain is required by this Settlement Agreement to deposit funds for the benefit of the members of the Property and Exposure Classes. The Escrow Account shall become, or be transferred to, the Qualified Settlement Fund (once established and opened), and in no event later than the Effective Date.

7. "The Parties" means Plaintiffs and Defendant collectively.

8. "Plaintiffs" means James D. Sullivan, Leslie Addison, William S. Sumner, Ronald S. Hausthor, Gordon Garrison, Ted Crawford, Linda Crawford, and Billy J. Knight.

9. The "Qualified Settlement Fund" shall be an Escrow Account established by the Court as a Qualified Settlement Fund within the meaning of United States Treasury Regulation § 1.468B-1, 26 C.F.R. § 1.468B-1 and subject to the Court's jurisdiction and authority to facilitate the effectuation of this Settlement.

10. "Released Parties" means Saint-Gobain and its current, former, and future direct and indirect parents, subsidiaries, divisions, affiliates, affiliated business entities, joint ventures, successors, predecessors, including without limitation, Chemfab Corp., and any entity identified as a predecessor to Saint-Gobain in the Third Amended Complaint and/or for which the Third Amended Complaint alleges that Saint-Gobain has succeeded to liability on the basis of any legal theory; and all of their current, former, and future agents, employees, officers, directors, partners, shareholders, owners, members, promoters, representatives, distributors, trustees, attorneys, insurers, subrogees, and assigns, individually or in their corporate or personal capacity, and anyone acting on their behalf, including in a representative or derivative capacity.

11. "Releasing Parties" means the Plaintiffs and all members of the Exposure Class and the Property Class and any Person or entity with the right, capacity, or obligation to assert any claim by, on behalf of, for the benefit of, or derived from any alleged damage or injury to the members of the Exposure Class and/or the Property Class, including without limitation any guardians, next friends, trusts, corporate parents, subsidiaries, divisions, affiliates, affiliated business entities, predecessors, successors, and all of their current or former agents, employees, officers, directors, partners, shareholders, owners, members, promoters, representatives, trustees,

executors, heirs, attorneys, insurers, subrogees, and assigns, individually or in their corporate or personal capacity, and anyone acting on their behalf, including in a representative or derivative capacity.

12. "Zone of Concern" is those areas of North Bennington, Bennington, and Shaftsbury, Vermont, designated by the State of Vermont as Corrective Action Areas I and II in the Consent Order and Final Judgment Order of May 23, 2019, entered in the case of *State of Vermont, Agency of Natural Resources v. Saint-Gobain Performance Plastics Corporation*, Vermont Superior Court, Bennington Unit, No. 9Z-419, as shown in the map attached as Appendix B to that Order, and as attached as Exhibit B to this Settlement Agreement.

III. EXPOSURE CLASS SETTLEMENT

1. **Exposure Class.** An individual is a member of the Exposure Class if, as of August 23, 2019, he or she (a) has resided within the Zone of Concern, (b) ingested water with PFOA within the Zone of Concern, and (c) experienced an accumulation of PFOA in his or her body as demonstrated by blood serum tests disclosing a PFOA level in his or her blood above 2.1 parts per billion ("ppb"). *See* Aug. 23, 2019 Decision on Motion for Class Certification (Dkt. 303) at 5, 35. An individual will also be deemed to satisfy membership criterion (c) above if a blood serum test by the Medical Monitoring Program during the first 90 days of the Medical Monitoring Program reveals a PFOA level above 2.1 ppb. The Zone of Concern is shown on the map attached as Exhibit B to this Settlement Agreement. An accompanying list of constituent addresses shall be prepared by Class Counsel prior to final approval.

2. **Exclusions.** The following are excluded from the Exposure Class:

a. Defendant and any entities in which Defendant has a controlling interest, and their legal representatives, corporate officers, directors, successors, or assigns;

b. The Judge to whom this case is assigned and any member of the Judge's immediate family and any other judicial officer assigned to this case;

c. Any attorneys, or their immediate family, representing Plaintiffs or Members of the Class; and

d. Any person who has filed a personal injury lawsuit for manifest personal injury for alleged PFOA-related illness related to exposure to water containing PFOA and alleging that it was caused by Saint-Gobain.

3. **Injunctive Relief.** The Exposure Class was certified pursuant to Fed. R. Civ. P. 23(b)(2), and the Parties agree to present a proposed Order to the Court establishing a Court-Supervised Medical Monitoring Program as attached as Exhibit D to this Agreement.

4. **Medical Monitoring Program.** The Medical Monitoring Program to be established by Settlement of this Action shall include the following:

a. The Program will be subject to the Court's continuing jurisdiction and will be administered by a Court-appointed Administrator.

b. The Parties agree to recommend to the Court the appointment of Edgar C. Gentle, III, as Administrator of the Program.

c. The Program shall be designed to provide participating Exposure Class members with targeted diagnostic monitoring, through annual survey questionnaires and specified clinical testing that does not duplicate their current primary care, for early detection of certain diseases for which Plaintiffs allege these Exposure Class members are at higher risk due to their PFOA exposure. These diseases and program services are specified in Exhibit C to this Agreement. The Program shall also provide for tests of PFOA blood serum levels, during the first 90 days of the Program to determine membership in the Exposure Class (as described more fully above). In

addition, during the first ten (10) years of the Program, Exposure Class members shall be eligible for PFOA blood serum tests once every two (2) calendar years, the cost of which shall be capped at a maximum amount not to exceed THREE HUNDRED AND FIFTY THOUSAND DOLLARS ($350,000) in total.

d. Members of the Exposure Class shall be permitted to enroll in the Program and receive the foregoing benefits, to the extent they are deemed eligible, at no cost to them, by submitting during the Claim Period a compliant Claim Form to the Program Administrator, who shall in his sole discretion determine the individual member's eligibility for the Program.

e. The Program shall continue for 15 years from its initiation.

f. The Program shall be conducted by physicians and staff at the Occupational Health Clinic of the Southwestern Vermont Medical Center ("SVMC") located in Bennington, Vermont, which has been selected because it has experience with similar initiatives and as well as strong ties to the community. Exposure Class members who reside more than fifty (50) miles from SVMC shall be permitted to participate via telemedicine with Program Physicians at SVMC; and all testing may be conducted locally and submitted to the central lab/vendor as instructed by the Program Administrator as detailed in Exhibit C to this Agreement.

g. The Program shall provide incentive payments of ONE HUNDRED DOLLARS ($100) to any Exposure Class member who enrolls in the Program, is found eligible, and completes the Initial Informational Survey and Screening Consultation (as defined in Exhibit C), to be paid by Class Counsel and not from any Medical Monitoring Program Payment by Saint-Gobain. Saint-Gobain shall not pay any incentive payments and shall have no responsibility for any incentive payments, including those described in this paragraph.

h. To further essential Program functions, the Program shall retain an Overseeing Program Physician knowledgeable with medical monitoring in relation to PFOA exposure, the total expense for whose services shall not exceed $125,000 for the duration of the Program.

i. As set forth more fully in Exhibit C, the Program Administrator's duties shall be to: (i) work with stakeholders to establish the Program following Court approval and ensure the proper administration of the Program over its duration; (ii) provide updates to participating Exposure Class members about the Program through newsletters and in-person meetings; (iii) budget for and financially administer the Program, including the preparation of budgets, financial reports, accountings, and tax returns for the Program; (iv) review and pay Program expenses; and (v) conduct such other activities as the Parties may agree in writing.

5. **Maximum Medical Monitoring Program Payment Amount.** Saint-Gobain shall pay no more than a maximum of SIX MILLION DOLLARS ($6,000,000) ("Maximum Medical Monitoring Program Payment Amount") for the Medical Monitoring Program in exchange for the release and resolution of all claims of the Exposure Class as set forth below. Any and all administrative costs and expenses, whether incurred by the Program Administrator or by any other party, shall be included in the Maximum Medical Monitoring Program Payment Amount. In connection with the Exposure Class Settlement, under no circumstances shall Saint-Gobain be liable for any amount in excess of the Maximum Medical Monitoring Payment Amount.

6. **Initial Settlement Payment.** Within twenty (20) days of Preliminary Approval, Saint-Gobain shall pay, for the benefit of the members of the Exposure Class, to the Escrow Account and/or Qualified Settlement Fund the sum of ONE MILLION, SIX HUNDRED THOUSAND DOLLARS ($1,600,000) to initially fund the Medical Monitoring Program.

7. **Evergreen Funding Model.** After the Initial Settlement Payment set forth above, Saint-Gobain's funding for the Medical Monitoring Program shall be based upon an "Evergreen" funding model. If the initial funding of ONE MILLION, SIX HUNDRED THOUSAND DOLLARS ($1,600,000) is depleted to TWO HUNDRED AND FIFTY THOUSAND DOLLARS ($250,000), it will be replenished in increments of ONE HUNDRED THOUSAND DOLLARS ($100,000) not to exceed the Maximum Medical Monitoring Program Payment Amount. Saint-Gobain will provide reasonable assurances and guarantees, in the form of a bond, that it will make the funding available for the duration of the Program up to the Maximum Medical Monitoring Program Payment Amount. The bond will be submitted to the Court and to Class Counsel prior to the filing of a Motion for Final Approval of Class Settlement and shall be approved by the Court as part of Final Approval.

8. **Payment to Qualified Settlement Fund.** The Initial Settlement Payment and subsequent payments shall be paid to the Qualified Settlement Fund. The Initial Settlement Payment to fund the Medical Monitoring Program shall not be withdrawn until the Effective Date. Further, in the case of termination of this Agreement in accordance with Section V.22, the Initial Settlement Payment shall be returned to Saint-Gobain.

9. **Program Budgeting, Accounting, and Reporting.** The Program Administrator shall prepare budgets and track expenditures and participation rates for the Program and shall serve reports of same upon the Parties twice per calendar year (biannual report). Those reports shall not include the results of any testing provided by the Program. If it is anticipated that the initial funding will be depleted to $250,000, the Administrator shall provide written notice to the Parties and the Court requesting a $100,000 incremental funding payment at least ninety (90) days before the additional funding will be needed to maintain the Program. In addition to any biannual report,

upon request of the Defendant, the Program Administrator shall provide Saint-Gobain with an accounting before any further deposits shall be required under the Evergreen Funding Model. Saint-Gobain shall pay the additional increments of funding to the Qualified Settlement Fund within thirty (30) days after the written notice from the Program Administrator. It is within Saint-Gobain's discretion to fully fund the Program to the Maximum Medical Monitoring Program Payment Amount at any time during the duration of the Program or to provide greater payment increments than those required by this Agreement. If Saint-Gobain fails to fund the Program as required, the Program Administrator shall provide notice to the Parties, including via email and Federal Express to the Designated Representatives for Saint-Gobain listed in Section V.32 below and an opportunity shall be provided to Saint-Gobain to cure within thirty (30) days after notice is given. If Saint-Gobain fails to cure within thirty (30) days after notice is given, the Program Administrator may be heard and may seek Court approval to execute on the bond provided by Saint-Gobain for the remaining balance necessary to fund the Program under this Agreement. The costs, if any, of executing the bond shall be paid out of the bond as an administrative expense.

10. **Right of Reversion.** Any unused funds contributed by Saint-Gobain to the Medical Monitoring Qualified Settlement Fund after 15 years of the initial payment date shall revert to Saint-Gobain through payment from the Medical Monitoring Qualified Settlement Fund.

11. **Class Counsel's Fees and Costs.** Saint-Gobain agrees not to oppose an application by Class Counsel for an award of attorneys' fees and costs up to ONE MILLION, NINE HUNDRED AND FIFTY THOUSAND DOLLARS ($1,950,000) with respect to the Exposure Class Settlement, to be paid by Saint-Gobain. Any award approved by the Court shall be in addition to the Medical Monitoring Program Payments and shall be paid to Class Counsel on or before the Effective Date.

IV. PROPERTY CLASS SETTLEMENT

1. **Property Class.** An individual is a member of the Property Class if he or she is "a natural person (not a corporation) and owned residential real property in the Zone of Concern on March 14, 2016." May 10, 2021 Class Notice (Dkt. 445) at 6. He or she is "also a member of the Property Class if [he or she] purchased property after March 14, 2016 that was subsequently added to the Zone of Concern." *Id*.

2. **Exclusions.** The following are excluded from the Property Class:

a. Defendant and any entities in which Defendant has a controlling interest, and their legal representatives, corporate officers, directors, successors, or assigns;

b. The Judge to whom this case is assigned and any member of the Judge's immediate family and any other judicial officer assigned to this case;

c. Any attorneys, or their immediate family, representing Plaintiffs or Members of the Class; and

d. Any person who has filed a personal injury lawsuit for manifest personal injury for alleged PFOA-related illness related to exposure to water containing PFOA and alleging that it was caused by Saint-Gobain.

3. **Total Property Settlement Payment.** Within twenty (20) days of Preliminary Approval, Saint-Gobain shall pay, for the benefit of the members of the Property Class, to the Escrow and/or Qualified Settlement Fund, a total of TWENTY SIX MILLION, TWO HUNDRED THOUSAND DOLLARS ($26,200,000) to resolve all claims of the Property Class. The Total Property Settlement Payment Amount is intended to satisfy all Court-approved fees and costs of Class Counsel and any and all administrative costs and expenses, whether incurred by the Special Master, the Property Settlement Administrator, or by any other party, which shall be included in

the Total Property Settlement Payment Amount. In connection with the Property Class Settlement, under no circumstances shall Saint-Gobain be liable for any amount in excess of the Total Property Settlement Payment Amount.

4. **Class Counsel's Fees and Costs.** Saint-Gobain agrees not to oppose an application by Class Counsel for an award of attorneys' fees up to FIVE MILLION, ONE HUNDRED THOUSAND DOLLARS ($5,100,000) to be paid from the Total Property Settlement Payment. In addition, Saint-Gobain agrees not to oppose an application by Class Counsel for reimbursement of Class Counsel's expenses and costs up to FIVE HUNDRED NINETY THOUSAND DOLLARS ($590,000) to be paid from the Total Property Settlement Payment.

5. **Incentive Awards for Class Representatives.** Plaintiffs may request, and Defendant will not oppose, incentive awards of up to $10,000 for each Class Representative as additional compensation for their effort in this Action to be paid from the Total Property Settlement Payment.

6. **Payment to a Qualified Settlement Fund.** The Total Property Settlement Payment shall be paid to the Qualified Settlement Fund on or before the Effective Date. The Property Settlement Payment shall not be withdrawn until the Effective Date. Further, in the case of termination of this Agreement in accordance with Section V.22, the Property Settlement Payment shall be returned to Saint-Gobain.

7. **Allocation of the Settlement Payment to Property Class Members.** Class Counsel shall propose a method for allocation of the share of the Total Property Settlement Payment to Property Class Members, after deduction of Court-approved attorneys' fees, litigation expense reimbursements, and incentive awards. Although Saint-Gobain recognizes the need to consider individual circumstances in determining an allocation, it takes no position on the

allocation method proposed by Class Counsel or its method of application to Property Class Members. The allocation method will be based upon the value of each property before March 14, 2016, and will utilize different percentages of that value for compensation depending upon the category of the property with regard to its water supply and the level of PFOA contamination of groundwater on the property. The allocation will be by individual property, and one payment will be made for each eligible property and will be paid to the owners of the property. The criteria to be used for the allocation are as follows:

a. Property was connected to a municipal water supply prior to March 2016 and continues to be connected;

b. Property is vacant and has neither a well nor spring and has not been connected to municipal water supply;

c. Property relied on one or more wells or springs for domestic water supply prior to March 2016, determined to contain less than 20 parts per trillion ("ppt") PFOA, and a municipal water supply has been or will be provided;

d. Property relied on one or more wells or springs for domestic water supply prior to March 2016, determined to contain greater than 20 ppt PFOA, and a municipal water supply has been or will be provided; and

e. Property relied upon one or more wells or springs for domestic water supply prior to March 2016, and the property has been determined unfeasible for connection to a municipal water supply.

f. Additionally, Property Class Members who resided on their property as of March 2016 will receive an additional payment for upset and inconvenience based upon the category of their property as set out in paragraphs a.– e.

g. Additionally, Property Class Members in the categories in paragraphs c. – d. will receive a payment for their added costs of paying for municipal water.

h. Class Counsel will prepare a matrix showing the proposed allocation method and provide it for review by the Court. The Court may employ a Special Master in this review.

i. The Class Settlement Notice will contain a description of the proposed allocation method and state, in general, an estimate or example of the compensation amount for the categories of Property Class Members.

8. **Special Master and Property Class Settlement Administrator.** The Parties will request the Court to appoint Mr. John Schraven as Special Master to assist the Court in its review of the proposed allocation of the Settlement Payment to the Property Class Members and to make a recommendation to the Parties and the Court prior to Final Approval concerning whether the proposal treats Class Members equitably relative to each other. In addition, the Parties will also request the Court to appoint KCC as Property Class Settlement Administrator ("Property Settlement Administrator") to administer the claims process and the allocation of the Settlement Payment to the Property Class Members. All fees, costs, and expenses incurred in the administration of the Property Class Settlement, including hourly fees, and expenses of the Administrator, shall be paid solely from the Property Class Settlement Fund, and shall not exceed ONE HUNDRED THOUSAND DOLLARS ($100,000), unless approved by the Court. The Administrator shall make monthly reports to the Court and a final report concerning the claims, payments to class members, and the fees and expenses incurred.

9. **Claims Process.** Members of the Property Class shall receive their allocated share of the Total Property Settlement Payment by submitting within the Claim Period a compliant Claim Form to the Property Settlement Administrator, who shall in its sole discretion determine

the claimant's eligibility for the Program. All claim forms must be submitted no later than 90 days from the Effective Date. Claim Forms postmarked 90 days from the Effective Date shall be deemed timely submitted so long as received by the Property Settlement Administrator within 14 days thereof. The Property Settlement Administrator shall verify that the claimant meets the eligibility criteria as a Class Member and determine their share of the settlement proceeds based on the pre-determined allocations. The Property Settlement Administrator shall then issue payment to members of the Property Class who submit compliant claim forms, and shall use all reasonable efforts to complete the process of payments for all claims within 180 days after the Effective Date. Any allocated funds not claimed by Class Members within the Claim Period shall be allocated to previously approved claimants on a *pro rata* basis.

V. ADDITIONAL TERMS

1. **Cooperation.** The Settling Parties and their respective counsel agree to cooperate in the process of seeking final approval of the Class Settlement by the Court, as set out below.

2. **Preliminary Approval of Settlement and Notice.** No later than November 10, 2021, or any earlier date set by the Court, Class Counsel shall file a motion for preliminary approval of the Settlement, Proposed Notice, and entry of the Preliminary Approval Order. The motion shall seek an order:

a. Preliminarily approving the terms and conditions of the Settlement embodied in this Agreement subject to the Final Approval Hearing and final approval by the Court in the Final Approval Order;

b. Finding that the Notice Plan and Notice developed by Class Counsel fairly and adequately describe the terms and effect of this Agreement; give notice of Property Class Members' right to opt out of the Property Class Settlement; describe how Class Members may

object to approval of the Settlement; give notice of the time and place of the Final Approval Hearing for final approval of the Settlement; and satisfy the requirements of Fed. R. Civ. P. 23(e) regarding notice to Class Members of the Settlement;

c. Preliminarily approving the plan for distributing the Property Class Settlement proceeds to Property Class Members, on a per property basis, as effective and equitable in its treatment of Class Members equitably relative to each other;

d. Preliminarily approving the form of the Order for establishing the Court-Supervised Medical Monitoring Program;

e. The motion for preliminary approval shall ask the Court to enter the following schedule: (i) a Notice of Proposed Settlement ("Notice Date") of no more than fifteen (15) days after entry of the Preliminary Approval Order; (ii) a Secondary Settlement Opt-Out Deadline for the Property Class (the "Opt Out Deadline") of thirty (30) days after the Notice Date; (iii) an Objection Deadline of thirty (30) days after the Notice Date; (iv) a deadline of twenty-one (21) days prior to the Objection Deadline for Class Counsel to file any requests for attorneys' fees, costs, or expenses related to the Action or the Settlement; (v) a deadline of twenty-one (21) days prior to the Final Approval Hearing for filing a motion for final approval; (vi) a Final Approval Hearing to be held as early as practicable but no earlier than one-hundred (100) days after entry of the Preliminary Approval Order;

f. The motion for preliminary approval order shall also request an order of the Court providing authority under Vermont law for parents and guardians of all absent class members to sign Claim Forms and releases on behalf of their minor children and wards; and

g. The motion for preliminary approval order shall also request an order from the Court for the establishment of a Qualified Settlement Fund.

3. **Providing Class Notice.** Subject to Court approval, Class Counsel shall at its expense provide Notice of Proposed Settlement under Rule 23(e) in accordance with the approved Notice Plan.

4. **Revocation of Prior Opt Outs.** The Notice of Proposed Settlement shall provide the opportunity for Property Class Members who opted out after the initial Class Notice, issued on or around May 27, 2021, to revoke their prior opt out and remain in the Property Class and be eligible to participate in the Property Class Settlement as long as their revocation notice is received by Class Counsel within thirty (30) days after the Notice of Proposed Settlement Date.

5. **Settlement Opt Outs.**

a. A member of the Property Class may Opt Out by submitting to Class Counsel a timely and valid request that complies with the Opt Out procedure described in the Notice of Proposed Settlement. To be timely and valid, an Opt Out request must have a verified submission date on or before the Secondary Settlement Opt-Out Deadline for the Property Class and must include (i) the full name, current address, and telephone number of the requestor; (ii) a statement of the facts that make the requestor a Property Class member; (iii) a statement requesting exclusion from the Property Class; and (iv) the signature of the requestor.

b. Any member of the Property Class who submits a timely and valid Opt Out request shall not (i) be bound by any orders or judgments entered in the Action to implement and effectuate the Settlement; (ii) be entitled to any of the relief or other benefits provided under this Settlement; (iii) gain any rights by virtue of this Settlement; or (iv) be entitled to submit an Objection.

c. Any Property Class member who does not submit a timely and valid Opt Out request submits to the jurisdiction of the Court and shall be bound by the terms of this Settlement and by all orders and judgments in the action to implement and effectuate the Settlement.

d. If a Property Class member submits a timely and valid Opt Out request, and that individual owns qualifying property jointly with one or more other members of the Property Class, all members of the Property Class owning such property shall be deemed to have submitted a timely and valid Opt Out.

e. No "mass" or "class" Opt Out requests shall be valid, and no Property Class member may submit an Opt Out request on behalf of any other member; provided, however, that a Property Class member who is the legal representative of a minor, incompetent, or deceased class member may submit an Opt Out request on behalf of that individual.

f. Any Property Class Member who submits a Property Class Settlement Opt Out request may revoke the request by submitting to Class Counsel a statement of revocation with a verified submission date no later than twenty (20) days after the Opt-Out Deadline; provided, however, that Class Counsel shall have discretion to extend this deadline on a case-by-case basis.

g. As soon as practicable and no later than twenty-four (24) days before the Final Approval Hearing, Class Counsel shall furnish Saint-Gobain with a final list of all timely and valid Opt Out requests that have been submitted and not revoked.

6. **Objections.**

a. A class member may make an Objection by serving on the Parties a timely and valid statement of Objection that complies with the Objection procedure described in the Class Notice. Class Counsel shall file all such Objections with the Court at least twenty (20) days prior to the Final Approval Hearing.

b. To be timely and valid, a statement of Objection must be postmarked or received on or before the Objection Deadline and must include (i) the full name, current address, and telephone number of the objector; (ii) a statement of the facts that make the objector a class

member; (iii) a statement describing all of the objector's challenges to the Settlement and the reasons for those challenges; (iv) all of the papers and evidence the objector intends to submit in support of those challenges; (v) a statement of whether the objector intends to appear at the Final Approval Hearing; (vi) the signature of the objector; (vii) a statement that the objector is willing to be deposed, upon request, on a mutually acceptable date at least ten (10) days before the Final Approval Hearing; (viii) the caption of each case in which the objector or counsel representing the objector have objected to a class action settlement within the preceding five years and a copy of all orders related to or ruling upon those objections; and (ix) all agreements that relate to the Objection, whether written or verbal, between or among the objector, counsel for the objector, and/or any other Person.

c. No "mass" or "class" Objections shall be valid, and no class member may submit a statement of Objection on behalf of any other class member; provided, however, that a class member who is the legal representative of a minor, incompetent, or deceased class member may submit a statement of Objection on behalf of that class member.

d. Unless the Court orders otherwise, only those class members whose statements of Objection express an intention to appear at the Final Approval Hearing shall have the right to present their Objections orally at the Final Approval Hearing.

e. Plaintiffs and Saint-Gobain shall have the right, but not the obligation, to respond to any timely-filed objection no later than seven (7) days prior to the Final Approval Hearing. Any Party who wishes to respond shall file a copy of the written response with the Court, and shall serve a copy, by hand or overnight delivery, to the objecting class member (or his or her counsel) and by email to counsel for Plaintiffs and/or Saint-Gobain.

f. A class member who does not submit a timely and valid Objection shall have waived, and shall be foreclosed from making, any challenge to this Settlement in the action or any other proceeding.

7. **Motion for Final Approval of Class Settlement.** Unless the Court orders otherwise, no later than twenty-one (21) days before the Final Approval Hearing, the parties shall jointly file a motion for final approval of the Settlement and entry of the Final Approval Order. The motion shall seek an order:

a. Approving the Settlement as fair, adequate, and reasonable under Federal Rule of Civil Procedure 23(e);

b. Approving the plan of distribution of Settlement proceeds to Property Class Members on a per property basis;

c. Ordering the establishing of the Court-Supervised Medical Monitoring Program;

d. Dismissing the Action with prejudice;

e. Ruling that each of the Releasing Parties has released, waived, compromised, settled, and discharged all Released Claims;

f. Awarding any attorneys' fees, costs, and expenses;

g. Reserving the Court's exclusive and continuing jurisdiction over the interpretation, performance, enforcement, and administration of this Settlement and the Court's orders in the Action;

h. Confirming the appointment of the Program Administrator, the Special Master, and the Property Settlement Administrator;

i. Settling the claims of all absent minor, incompetent, and deceased class members;

j. Barring and enjoining each class member from commencing, asserting, and/or prosecuting any and all Released Claims against any Released Party;

k. Entering final judgment as to Saint-Gobain and the claims against it in the Action pursuant to Federal Rule of Civil Procedure 54(b);

l. Confirming that Saint-Gobain has complied with and otherwise discharged its obligations under the Class Action Fairness Act, 28 U.S.C. § 1715(b);

m. Confirming that the Court retains continuing jurisdiction over the Medical Monitoring Program and the Qualified Settlement Fund; and

n. Expressly incorporating the terms of this Settlement and providing that the Court retains continuing and exclusive jurisdiction over the Parties, the class members, and this Settlement, to interpret, implement, administer, and enforce the Settlement in accordance with its terms.

8. **Dismissal, Release, and Related Provisions.**

a. **Dismissal.** In the motion for final approval of the Settlement, Plaintiffs, on behalf of themselves and the Exposure Class and the Property Class, shall request that the Final Approval Order dismiss the Action with prejudice as to Saint-Gobain and enter a final judgment as to Saint-Gobain.

b. **Release.** Upon the Effective Date, the Releasing Parties shall have expressly, intentionally, voluntarily, fully, finally, irrevocably, and forever released, relinquished, waived, compromised, settled, and discharged the Released Parties from each and every past, present, and future claim and cause of action, including without limitation causes of action and/or relief created or enacted in the future—whether known or unknown, whether direct or indirect, individual or class, in constitutional, federal, state, local, statutory, civil, or common law or in equity, or based

on any other law, rule, regulation, ordinance, directive, contract, or the law of any foreign jurisdiction, whether fixed or contingent, known or unknown, liquidated or unliquidated, suspected or unsuspected, asserted or unasserted, matured or unmatured, or for compensatory damages, consequential damages, incidental damages, statutory damages, punitive, special, multiple, treble, or exemplary damages, nominal damages, disgorgement, restitution, indemnity, contribution, penalties, injunctive relief, declaratory relief, attorneys' fees, court costs, or expenses—that were or could have been asserted in this action or any other forum, arising out of or related to, either directly or indirectly or in whole or in part: (i) the subject matter of any allegations contained in the Third Amended Complaint, any allegations otherwise asserted in this action, or the subject matter of any discovery obtained in the action; (ii) the alleged presence of PFAS (including PFOA) in drinking water or the environment (including but not limited to in air, groundwater, surface water, municipal water, private well water, or soil) within Bennington or North Bennington and/or the Zone of Concern; (iii) the sale, purchase, use, handling, transportation, release, discharge, migration, emission, spillage, or disposal of PFAS (including PFOA) to, at, or from a Facility in or near Bennington or North Bennington, including any such PFAS (including PFOA) present as a result of disposal at or discharge to, directly or indirectly, any landfill, sewage system, water treatment facility, or any other location in and around Bennington or North Bennington, and/or resulting in any alleged exposure of any class member to PFAS (including PFOA) through drinking water, inhalation, dermal contact, or otherwise; (iv) for any type of relief with respect to the acquisition, installation, maintenance, operation, or presence of, including the cost or purported inconvenience or loss of enjoyment of, property associated with whole-house filters, point-of-entry (POET) filters, point-of-use filters, municipal water, private well water, bottled water, alternative water supplies, or remediation; (v) for property damage or property-value diminution, including

without limitation stigma, purportedly attributable to the alleged presence of PFAS (including PFOA) in any municipal water system or any private well, or in the air, groundwater, surface water, municipal water, private well water, or soil in or around Bennington or North Bennington and/or the Zone of Concern and/or (vi) based on PFAS (including PFOA) in the blood or tissue of any class member (the "Released Claims"). Provided, however, that the "Released Claims" shall not include any future personal injury claims for any class member or any other person arising out of alleged exposure to chemicals from Saint-Gobain's Facilities that are the subject of this action. Further provided, however, that the "Released Claims" do not include any of Saint-Gobain's duties and obligations contained in the Consent Order and Final Judgment Order of May 23, 2019, entered in the case of *State of Vermont, Agency of Natural Resources v. Saint-Gobain Performance Plastics Corporation*, Vermont Superior Court, Bennington Unit, No. 9Z-419.

c. **Covenant Not to Sue.** In exchange for accepting the relief stated herein, class members individually or together, or in combination with others, shall not sue or seek to institute, maintain, prosecute, argue, or assert in any action or proceeding (including but not limited to an arbitration or a proceeding before any state or federal court), any cause of action, demand, or claims stating or involving the Released Claims against the Released Parties.

d. **Minor, Incompetent, and Deceased Class Members.** An Order from the Court finally approving the Settlement shall effectuate a settlement under Vermont law for all absent minor, incompetent, and deceased class members.

e. **No Waiver of Defenses.** Saint-Gobain does not waive or forfeit any claims, defenses or arguments that they could assert, including as to any claims or causes of action that are outside the definition of "Released Claims."

f. **Exclusive Remedy.** The relief provided for in this Settlement shall be the sole and exclusive remedy for all Releasing Parties with respect to any Released Claims, and the Released Parties shall not be subject to liability or expense of any kind with respect to any Released Claims other than as set forth in this Agreement.

g. **Waiver of Statutory Rights.** To the extent the provisions apply, the Releasing Parties expressly, knowingly, and voluntarily waive the provisions of Section 1542 of the California Civil Code, which provides as follows:

> A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

To the extent the provisions apply, the Releasing Parties likewise expressly, knowingly, and voluntarily waive the provisions of Section 20-7-11 of the South Dakota Codified Laws, which provides:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

To the extent the laws apply, the Releasing Parties expressly waive and relinquish all rights and benefits that they may have under, or that may be conferred upon them by, Section 1542 of the California Civil Code, Section 20-7-11 of the South Dakota Codified Laws, and all similar laws of other States, to the fullest extent that they may lawfully waive such rights or benefits pertaining to the Released Claims. In connection with such waiver and relinquishment, the Releasing Parties acknowledge that they are aware that they or their attorneys may hereafter discover claims or facts in addition to or different from those that they now know or believe to exist with respect to the Released Claims, but that it is their intention to accept and assume that risk and fully, finally, and forever release, waive, compromise, settle, and discharge all of the

Released Claims against Released Parties. The release thus shall remain in effect notwithstanding the discovery or existence of any additional or different claims or facts.

h. **Full and Complete Defense.** To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, arbitration, or other proceeding that may be instituted, prosecuted, or attempted in breach of or contrary to this Settlement, or that asserts any Released Claims against any of the Released Parties.

9. **Final Approval Hearing.** On the date and time set by the Court, Class Counsel and counsel for Defendant shall participate in the Final Approval Hearing. Class Counsel and counsel for Defendant will reasonably cooperate with one another to obtain a Final Approval Order.

10. **Conflict of Interest.** Class Counsel recognizes the risk that they could have a conflict of interest if they represented (directly or indirectly) any client in connection with an effort to Opt Out, file an Objection, or otherwise challenge the Settlement. Because Class Counsel believes that the Settlement is in the best interests of each class member, Class Counsel shall not solicit, or assist others in soliciting, class members to Opt Out, file an Objection, or otherwise challenge the Settlement nor shall Class Counsel represent any individual in connection with same. In addition, except pursuant to Court Order, Class Counsel shall not assist, provide work product, or other information to any lawyer or person in connection with any Opt Out, Objection, or other challenge to the Settlement.

11. **Communication Plan.** The Settling Parties and their respective counsel agree to the following Communication Plan for the Settlement:

a. At the time the Settlement Agreement is executed, the Parties may issue a joint press release, jointly agreed upon in writing, announcing the Settlement Agreement, a general summary of its terms, and stating that it is subject to approval by the Court after a Final Approval Hearing.

b. Class Counsel shall be responsible for compliance with the approved Notice Plan, including publishing the Class Settlement Notice on the Class Action website. The expenses incurred by Class Counsel in providing Notice shall be reimbursed as a litigation expense on a pro rata basis from the Property Settlement Payment and from the Exposure Class attorney fee and expense award (77% from the Property Settlement Payment, 23% from the Medical Monitoring attorney fee and expense payment).

c. Class Counsel will cooperate with Defendant on additional joint press releases or other joint media communications during the Notice period, consistent with paragraph d. below, with the intent of fully informing Class Members about the Settlement and its potential benefits. To the extent Defendant seeks additional communications, the costs of such additional communications will be borne by Defendant.

d. Except as authorized by this Agreement or the Court, the Parties and their counsel shall issue no publicity, press release, or other public statement regarding the Settlement unless jointly agreed to in writing by all Parties; provided, however, that nothing in this provision shall limit (i) Defendant's ability to provide information about the Settlement to its employees, accountants, lawyers, insurers, customers, shareholders, or other stakeholders or in accordance with legal requirements (including the rules of securities exchanges); (ii) Plaintiffs' or Class Members' ability to provide information about the Settlement to their accountants, lawyers, or insurers, to Class Members, or in accordance with legal requirements; or (iii) Class Counsels'

ability to provide information about the Settlement to Class Members (including through Class Counsels' website) or in accordance with legal requirements.

12. **Providing Notice Pursuant to CAFA.** Within ten (10) days after Plaintiffs file the Preliminary Approval Motion with the Court, Defendant shall provide the notice required by the Class Action Fairness Act, 28 U.S.C. § 1715, to the Appropriate Federal Official and Appropriate State Official, as defined in 28 U.S.C. § 1715(a). Defendant agrees to provide copies to Class Counsel at the same time.

13. **Claim Forms and Claim Period.** Members of the Exposure Class or the Property Class shall receive the benefits provided by this Settlement by submitting compliant Claim Forms, with all required documentation, within the Claim Period, unless permitted later for good cause as determined by the Program Administrator or Property Settlement Administrator. Each claimant shall identify on the Claim Form the Class or Classes to which he, she, or it, or in their capacity as a representative, purports to belong. The Program Administrator and Property Settlement Administrator shall review the Claim Form and any supporting documentation and determine whether the claimant is an eligible member of the Exposure Class or the Property Class, respectively. A Claim Form postmarked after the Claim Period concludes will be rejected as untimely, and the claimant submitting such Claim Form cannot qualify to receive payment, participate in the Medical Monitoring Program and/or otherwise qualify for benefits pursuant to this Settlement, unless permitted later for good cause as determined by the Program Administrator or Property Settlement Administrator. Where a legal representative of a minor, incompetent, or deceased absent class member submits a Claim Form on that class member's behalf, that legal representative shall attest to their authority to act for the absent class member.

14. **Confidentiality.** The Settling Parties, Class Counsel, and Counsel for Saint-Gobain shall keep strictly confidential and not disclose to any third party any non-public information received during litigation of the Action, or negotiations, discussions, actions, and proceedings leading up to the execution of this Settlement Agreement.

15. **Arm's-Length Agreement.** The Settling Parties have engaged in substantial arm's length negotiations in an effort to resolve the Action, including conducting numerous meetings and telephone conferences where the terms of the agreements detailed herein were extensively debated and negotiated by their respective counsel, with the assistance of a Special Master.

16. **Jurisdiction and Venue.** The United States District Court for the District of Vermont shall retain jurisdiction over the Settling Parties to interpret, implement, administer, and enforce the terms of this Settlement Agreement, and resolve any dispute regarding this Settlement Agreement. All proceedings related to this Settlement Agreement shall be initiated and maintained in the United States District Court for the District of Vermont.

17. **Governing Law.** The Settlement Agreement shall be governed by and construed in accordance with the law of the State of Vermont without regard for choice-of-law or conflict-of-laws principles.

18. **No Admission of Wrongdoing or Liability.** This Settlement Agreement is not in any way an admission or concession of the truth of any allegation, the validity of any claim asserted in the Action, or any fault on the part of Saint-Gobain or any other Released Parties related to the claims alleged in this Action. This Settlement Agreement is not in any way an admission that class certification was required or appropriate in this Action or that class medical monitoring is necessary or warranted. Any and all such allegations are expressly denied. This Settlement Agreement is entered into solely for the purposes of avoiding the time and expense associated with

litigation. In no event shall Class Representatives, Class Counsel, class members, Saint-Gobain or its counsel have any liability for the administration of the Settlement Fund or for acts or omissions of the Program Administrator, the Special Master, or the Property Settlement Administrator. Payment of the monies stated in Sections III and IV shall be Saint-Gobain's sole monetary obligation under this Settlement and in no circumstances shall Saint-Gobain be required to pay anything more than those amounts. Nothing in this Settlement, any negotiations, statements, communications, proceedings, filings, or orders relating thereto, or the fact that the Parties entered the Settlement shall be construed, deemed, or offered as an admission or concession by any of the Parties, class members, or Saint-Gobain or as evidentiary, impeachment, or other material available for use or subject to discovery in any suit, action, or proceeding (including this action) before any civil or criminal court, administrative agency, arbitral body, or other tribunal, except (i) as required or permitted to comply with or enforce the terms of this Settlement, the Preliminary Approval Order, or the Final Approval Order, or (ii) in connection with a defense based on *res judicata*, claim preclusion, collateral estoppel, issue preclusion, release, or other similar theory asserted by any of the Released Parties. The limitations described in this paragraph shall apply whether or not the Court enters the Preliminary Approval Order or the Final Approval Order, or any such order is affirmed, reversed, vacated, or overturned by an appellate court.

19. **Qualified Settlement Fund.** The Qualified Settlement Fund at all times is intended to be a "Qualified Settlement Fund" within the meaning of United States Treasury Regulation § 1.468B-1, 26 C.F.R. § 1.468B-1 and shall be established pursuant to an order of the Court and will be subject to the continuing jurisdiction and supervision of the Court for the life of the Qualified Settlement Fund. Neither the Parties nor the Program Administrator nor the Property Settlement Administrator shall take a position in any filing or before any tax authority that is inconsistent with

such treatment. Saint-Gobain is a "transferor" to the Qualified Settlement Fund within the meaning of United States Treasury Regulation § 1.468B-1(d)(1). The Qualified Settlement Fund shall be segregated into separate funds for the Exposure Class and the Property Class. The Program Administrator and the Property Settlement Administrator shall be the "administrators" of the Qualified Settlement Fund within the meaning of United States Treasury Regulation § 1.468B-2(k)(3) and, as administrators, shall: (a) timely make or join in any and all filings or elections necessary to make the Qualified Settlement Fund a qualified settlement fund at the earliest possible date (including, if requested by Saint-Gobain, a relation-back election within the meaning of United States Treasury Regulation § 1.468B-1(j)); (b) timely file all necessary or advisable tax returns, reports, or other documentation required to be filed by or with respect to the Qualified Settlement Fund; (c) timely pay any taxes (including any estimated taxes, and any interest or penalties) required to be paid by or with respect to the Qualified Settlement Fund; and (d) comply with any applicable information reporting or tax withholding requirements imposed by applicable law, in accordance with United States Treasury Regulation § 1.468B-2(l). Any such taxes, as well as all other costs incurred by the Program Administrator or the Property Settlement Administrator in performing the obligations created by this subsection, shall be paid out of the Qualified Settlement Fund. Saint-Gobain shall have no responsibility or liability for paying such taxes, except for the $1,750 tax liability to be borne by Saint-Gobain to the extent deposits are made by Saint-Gobain to the Qualified Settlement Fund in 2021, and in no event shall Saint-Gobain have responsibility to file tax returns with respect to the Qualified Settlement Fund or to comply with information-reporting or tax-withholding requirements with respect thereto. Saint-Gobain shall provide the Program Administrator and the Property Settlement Administrator with the combined statement described in United States Treasury Regulation § 1.468B-3(e)(2)(ii). Saint-Gobain

makes no representations to class members concerning any tax consequences or treatment of any allocation or distribution of funds to class members pursuant to this Settlement. The payments required of Saint-Gobain under this Settlement constitute remediation (as defined in 26 U.S.C. § 162(f)) for the claims alleged by Plaintiffs on behalf of themselves and the class members. No portion of those payments constitutes a fine, penalty, punitive damages, disgorgement of profits, or reimbursement for investigation or litigation costs within the meaning of 26 U.S.C. § 162(f), or an amount paid in settlement of any claim for any of the foregoing; and if a determination were made to the contrary, the amounts paid would qualify under the exceptions in Subsections 162(f)(2) and (3).

20. **Representations and Warranties.**

a. Plaintiffs represent and warrant to Saint-Gobain as follows:

i. Each of the Plaintiffs is a class member.

ii. Each of the Plaintiffs has received legal advice from Class Counsel regarding the advisability of entering into this Settlement and the legal consequences of this Settlement.

iii. No portion of any of the Released Claims possessed by any of the Plaintiffs and no portion of any relief under this Settlement to which any of the Plaintiffs may be entitled has been assigned, transferred, or conveyed by or for any of the Plaintiffs to any other Person, except pursuant to any contingency fee agreement with Class Counsel.

iv. None of the Plaintiffs is relying on any statement, representation, omission, inducement, or promise by Saint-Gobain, its agents, or its representatives, except those expressly stated in this Settlement.

v. Each of the Plaintiffs, through Class Counsel, has investigated the law and facts pertaining to the Released Claims and the Settlement.

vi. Each of the Plaintiffs, or for named Minor Plaintiffs their legal guardians, has carefully read, and knows and understands, the full contents of this Settlement and is voluntarily entering into this Settlement after having consulted with Class Counsel or other attorneys.

vii. Each of the Plaintiffs has all necessary competence and authority to enter into this Agreement on his or her own behalf and on behalf of the respective classes they represent.

viii. None of the Plaintiffs will Opt Out or file an Objection.

b. Class Counsel represents and warrants to Saint-Gobain as follows:

i. Class Counsel believes the Settlement is fair, reasonable, adequate, and beneficial to each class member and that participation in the Settlement would be in the best interests of each class member.

ii. Class Counsel is not currently aware of any represented client or clients that plan to, or are considering whether to, Opt Out, file an Objection, or otherwise challenge the Settlement.

iii. Class Counsel recognizes the risk that they could have a conflict of interest if they represented (directly or indirectly) any client in connection with an effort to Opt Out, file an Objection, or otherwise challenge the Settlement.

iv. Because Class Counsel believes that the Settlement is in the best interests of each class member, Class Counsel will not solicit, or assist others in soliciting, class members to Opt Out, file an Objection, or otherwise challenge the Settlement.

v. Class Counsel has all necessary authority to enter into and execute this Agreement on behalf of Plaintiffs and the Exposure Class and Property Class.

vi. Each of the Plaintiffs has approved and agreed to be bound by this Agreement.

vii. The representations in Section V.20(a) of this Settlement are true and correct to the best of Class Counsel's knowledge.

c. Saint-Gobain represents and warrants to Plaintiffs as follows:

i. Saint-Gobain has received legal advice from its attorneys regarding the advisability of entering into this Settlement and the legal consequences of this Settlement.

ii. Saint-Gobain is not relying on any statement, representation, omission, inducement, or promise by Plaintiffs, class members, or Class Counsel, except those expressly stated in this Settlement.

iii. Saint-Gobain, with the assistance of its attorneys, has investigated the law and facts pertaining to the Released Claims and the Settlement.

iv. Saint-Gobain has carefully read, and knows and understands, the full contents of this Agreement and is voluntarily entering into this Settlement after having consulted with its attorneys.

v. Saint-Gobain has all necessary authority to enter into this Settlement and has authorized the execution and performance of this Settlement.

21. **Liens and Medicare Obligations.**

a. Any liens or subrogation interests as to any damage to real property or other property of a class member shall be the responsibility of that individual.

b. Any liens or subrogation interests as to any costs, expenses, or fees incurred by a class member in connection with any alleged exposure to PFAS (including PFOA) shall be the responsibility of that individual.

c. Nothing in this Settlement is intended to create or give rise to any liens or subrogation claims not otherwise provided by law or contract.

d. Due to the nature of the claims at issue in the action and the Released Claims, the Parties agree that the Settlement does not give rise to any reporting requirements under Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, and therefore that no Party will make any such report.

e. The Parties have sought to draft this Settlement to avoid any impacts to the rights of any public or private program (e.g., Medicare) or to class members' rights thereunder. However, by choosing not to Opt Out, class members acknowledge that (i) the Settlement could impact, limit, or preclude their rights to receive certain future Medicare benefits arising out of the allegations in this lawsuit; and (ii) they want to proceed with the Settlement and voluntarily waive any and all claims against the Saint-Gobain for denial of Medicare benefits related to the Settlement. It is understood that the intent of this Agreement is that the Releasing Parties will protect, defend, and hold the Released Parties harmless from any future or further payments or exposure with regard to claims for reimbursement of public or private medical insurance benefits paid on behalf of the Releasing Parties. The Releasing Parties voluntarily waive any and all claims of any nature against Saint-Gobain related to any effort by Medicare or a Medicare Advantage Organization to demand payment of covered medical expenses that are asserted to be related to this Settlement, including but not limited to a private cause of action under 42 U.S.C. § 1395y(b)(3)(A).

f. The Parties have considered Medicare's interest in any potential Medicare-covered medical expenses occurring before or after the Effective Date. The Parties are satisfied that no allocation for expenses to protect Medicare's interest now or in the future is necessary and will not allocate any amount of the proceeds of this Settlement for past or future medical expenses, but reserve the right to do so in the future if necessary and appropriate in the sole discretion of the Program Administrator.

22. **Termination of Agreement.**

a. Any of the Parties may terminate this Agreement if any of the following events happen: (i) the Court declines to approve any part of the Settlement; (ii) the Court declines to approve or changes a material term of the requested Preliminary Approval Order or the requested Final Approval Order; (iii) an appellate court reverses, vacates, or otherwise overturns the Final Approval Order in whole or in part; or (iv) another Party materially breaches this Agreement before the Effective Date and fails to promptly cure the breach after receiving written notice of the breach.

b. Saint-Gobain shall have the right to terminate this Settlement Agreement with respect to the Property Class Settlement in the event that less than a certain minimum percentage of the Property Class Members participate in the Settlement, as determined by the number of properties subject to Opt Outs compared to the total number of properties in the Property Class, as set forth in the Supplemental Agreement Regarding Settlement Termination Rights.

c. In order to exercise a right to terminate this Agreement, a Party must deliver written notice of termination to counsel for all other Parties within ten (10) days after the later of the event creating the right to terminate or the Party learning of the event creating the right to terminate, unless that deadline is extended by written consent of counsel for the Parties.

d. If a Party exercises a right to terminate this Agreement, (i) the Parties shall have thirty (30) days to resume settlement negotiations and determine if the Parties can reach an amended agreement; (ii) all deadlines under this Agreement shall be stayed for the duration of the negotiations; (iii) the Parties shall jointly request a stay of all Court deadlines for the duration of the negotiations; and (iv) the Parties shall jointly advise the Court of the status of this Agreement or any amendment to Agreement within seven (7) days after the conclusion of the thirty-day negotiation period.

23. **Counterparts.** This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Undersigned Counsel warrant that they have the full authority to execute this Settlement Agreement on behalf of the Settling Parties.

24. **Financial Obligation.** Saint-Gobain shall have no financial obligations under the Settlement other than as set forth above.

25. **No Liability.** No Person shall have any claim against any Plaintiffs, class members, Class Counsel, Released Parties, counsel for Saint-Gobain, the Program Administrator, the Special Master, or the Property Settlement Administrator, based on actions that any Plaintiffs, class members, Class Counsel, Released Parties, counsel for Saint-Gobain, the Program Administrator, the Special Master, or the Property Settlement Administrator were required or permitted to take under this Settlement, the Preliminary Approval Order, or the Final Approval Order. No Person shall have any claim against any Released Parties or counsel for Saint-Gobain related to administration of the Settlement, including the Medical Monitoring Program or the allocation or distribution of settlement proceeds. No Person shall have any claim against Plaintiffs, Class Counsel, the Program Administrator, the Special Master, or the Property Settlement Administrator related to the administration of the Settlement (including making payments to class members), except for in the presence of proven willful misconduct. No Person shall have any claim against Class Counsel, the Program Administrator, the Special Master, the Property Settlement Administrator, the Released Parties, or counsel for Saint-Gobain related to representations made by a guardian pursuant to Section V.20(a) or on the Claim Form regarding authority to represent a minor, incompetent, or deceased class member.

26. **Materiality of Appendices and Exhibits.** All of the Appendices and Exhibits to the Settlement Agreement are material and integral parts hereof.

27. **Severability.** The provisions of this Agreement are not severable, except as provided in the Agreement.

28. **Third-Party Beneficiaries.** This Agreement does not create any third-party beneficiaries, except class members and the Released Parties other than Saint-Gobain, who are intended third-party beneficiaries.

29. **Force Majeure.** The failure of any Party to perform any of its obligations hereunder shall not subject any Party to any liability or remedy for damages, or otherwise, where such failure is occasioned in whole or in part by Acts of God, fires, accidents, pandemics, other natural disasters, interruptions or delays in communications or transportation, labor disputes or shortages, shortages of material or supplies, governmental laws, rules or regulations of other governmental bodies or tribunals, acts or failures to act of any third parties, or any other similar or different circumstances or causes beyond the reasonable control of such Party.

30. **Entire Agreement.** This Settlement Agreement constitutes the entire agreement among the Settling Parties and their respective counsel with respect to the subject matter hereof, supersedes all written or oral communications, agreements or understandings that may have existed prior to the execution of this Settlement Agreement, and may be modified or amended only by a writing signed by the parties hereto. This Settlement Agreement shall be binding upon and inure to the benefit of the Settling Parties and their respective counsel, agents, executors, heirs and assigns, provided that no party shall assign or delegate its rights or responsibilities under this Settlement Agreement without the prior written consent of the other parties.

31. **Amendment of Agreement.**

a. Prior to entry of the Final Approval Order, this Agreement may be amended only by a writing executed by all Parties.

b. After entry of the Final Approval Order, this Agreement may be amended only by a writing executed by all Parties and approved by the Court.

32. **Designated Representatives.** The Parties designate the following persons to receive communications and notices and to monitor the implementation of the Settlement Agreement after its Final Approval and during its administration:

For Plaintiffs:

Emily J. Joselson, Esq.
LANGROCK SPERRY & WOOL, L.L.P.
P.O. Drawer 351
Middlebury, VT 05753
T: (802) 388-6356
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ejoselson@langrock.com
jswift@langrock.com

David F. Silver, Esq.
BARR STERNBERG MOSS SILVER & MUNSON, P.C.
507 Main Street
Bennington, VT 05201
T: (802) 442-6341
F: (802) 442-1151
dsilver@barrsternberg.com

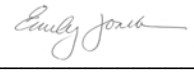
For Defendant:

La-Toya Hackney
Thomas Field
Saint-Gobain Corporation
20 Moores Road
Malvern, PA 19355
latoya.hackney@saint-gobain.com
thomas.g.field@saint-gobain.com

Rachel B. Passaretti-Wu
Dechert LLP
Three Bryant Park
1095 Avenue of the Americas
New York, NY 10036
rachel.passaretti-wu@dechert.com

APPROVED AND AGREED TO:

For Plaintiffs and Class Counsel:



_____
Emily Joselson
Class Counsel
Date: 11/10/21

_____
Gary Davis
Class Counsel
Date: 11/10/21

_____
David Silver
Class Counsel
Date: 11/10/21

For Defendant Saint-Gobain Performance Plastics Corp.

_____
Marc A. Aerts
Vice President, Saint-Gobain Performance Plastics Corp.
Date:

_____
Mark S. Cheffo
Counsel to Saint-Gobain Performance Plastics Corp.
Date:

For Defendant:

La-Toya Hackney
Thomas Field
Saint-Gobain Corporation
20 Moores Road
Malvern, PA 19355
latoya.hackney@saint-gobain.com
thomas.g.field@saint-gobain.com

Rachel B. Passaretti-Wu
Dechert LLP
Three Bryant Park
1095 Avenue of the Americas
New York, NY 10036
rachel.passaretti-wu@dechert.com

APPROVED AND AGREED TO:

For Plaintiffs and Class Counsel:

_____
Emily Joselson
Class Counsel
Date:

_____
Gary Davis
Class Counsel
Date:

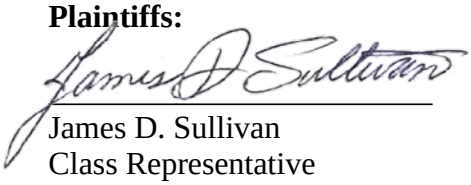
_____
David Silver
Class Counsel
Date:

For Defendant Saint-Gobain Performance Plastics Corp.

Marc Aerts
_____
Marc A. Aerts
Vice President, Saint-Gobain Performance Plastics Corp.
Date: Nov 10th 2021

/s/ Mark S. Cheffo
Mark S. Cheffo
Counsel to Saint-Gobain Performance Plastics Corp.
Date: Nov. 10, 2021

Plaintiffs:



James D. Sullivan
Class Representative
Date: November 8, 2021

_____
Leslie Addison
Class Representative
Date:

_____
Ronald S. Hausthor
Class Representative
Date:

_____
Gordon Garrison
Class Representative
Date:

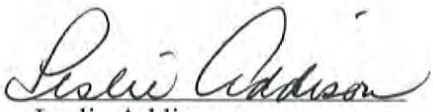
_____
Ted Crawford
Class Representative
Date:

_____
Linda Crawford
Class Representative
Date:

_____
Billy J. Knight
Class Representative
Date:

Plaintiffs:

_____
James D. Sullivan
Class Representative
Date:



Leslie Addison
Class Representative
Date: 11/9/2021

_____
Ronald S. Hausthor
Class Representative
Date:

_____
Gordon Garrison
Class Representative
Date:

_____
Ted Crawford
Class Representative
Date:

_____
Linda Crawford
Class Representative
Date:

_____
Billy J. Knight
Class Representative
Date:

Plaintiffs:

James D. Sullivan
Class Representative
Date:

Leslie Addison
Class Representative
Date:

Ronald S. Hausthor
Class Representative
Date: 11/8/21

Gordon Garrison
Class Representative
Date:

Ted Crawford
Class Representative
Date:

Linda Crawford
Class Representative
Date:

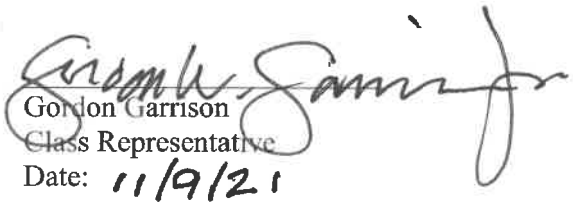
Billy J. Knight
Class Representative
Date:

Plaintiffs:

James D. Sullivan
Class Representative
Date:

Leslie Addison
Class Representative
Date:

Ronald S. Hausthor
Class Representative
Date:



Gordon Garrison
Class Representative
Date: 11/9/21

Ted Crawford
Class Representative
Date:

Linda Crawford
Class Representative
Date:

Billy J. Knight
Class Representative
Date:

Plaintiffs:

James D. Sullivan
Class Representative
Date:

Leslie Addison
Class Representative
Date:

Ronald S. Hausthor
Class Representative
Date:

Gordon Garrison
Class Representative
Date:

Ted Crawford
Class Representative
Date: 11-8/2021

Linda Crawford
Class Representative
Date: 11-08-21

Billy J. Knight
Class Representative
Date:

Plaintiffs:

James D. Sullivan
Class Representative
Date:

Leslie Addison
Class Representative
Date:

Ronald S. Hausthor
Class Representative
Date:

Gordon Garrison
Class Representative
Date:

Ted Crawford
Class Representative
Date:

Linda Crawford
Class Representative
Date:

Billy J. Knight
Class Representative
Date: 11/9/21

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

JAMES D. SULLIVAN, *et al*., individually, and on behalf of a Class of persons similarly situated, *Plaintiffs*, v. SAINT-GOBAIN PERFORMANCE PLASTICS CORPORATION, *Defendant*.	Case No. 5:16-cv-00125-GWC Hon. Geoffrey W. Crawford

JOINT DECLARATION OF CLASS COUNSEL IN SUPPORT OF FINAL APPROVAL OF CLASS SETTLEMENT

We, Gary A. Davis, Emily J. Joselson, and David F. Silver, as appointed Class Counsel for the Classes certified by the Court in this case declare as follows:

STATUS OF THE LITIGATION

1. We were appointed as Class Counsel on December 5, 2019, following the certification of the Property Class and the Exposure Class by the Court on August 23, 2019. Before class certification and our appointment as Class Counsel, we represented the Plaintiffs in the putative class action since its original filing on May 6, 2016.

2. For over five years, the Plaintiffs and Defendant Saint-Gobain Performance Products Corporation ("Defendant" or "Saint-Gobain") (collectively "the Parties") have vigorously litigated this case, engaging in substantial and voluminous discovery and motion practice.

3. During the course of the litigation significant dispositive motions were filed by Defendant and responded to by the Plaintiffs, based on in-depth research and briefing by the

EXHIBIT
2

Parties, which resulted in rulings by the Court concerning the merits of Plaintiffs' claims, including Defendant's Motion to Dismiss [12/28/16, Doc. 29], Motion for Judgment on the Pleadings [1/25/17, Doc. 35], and Motion for Summary Judgment [12/27/19, Doc. 336].

4. Fact and expert discovery have been extensive, including production of tens of thousands of documents, depositions of Defendant's current and former employees, depositions taken of each of the Plaintiffs, voluminous expert witness reports from 20 expert witnesses for both Plaintiffs and Defendant, and depositions of each of Plaintiffs' expert witnesses, some more than once.

5. Defendant filed a motion to exclude the testimony of most of Plaintiffs' expert witnesses, and, after a three-week hearing in April 2019, involving live testimony from multiple experts on both sides, the Court ruled that nearly all their testimony is not subject to exclusion under *Daubert* [Doc. 300].

6. Plaintiffs filed their motion for class certification on October 2, 2017, which was contested by Defendant with voluminous discovery materials and expert reports. The Court held a hearing on class certification, in conjunction with the *Daubert* hearing in April 2019, during which expert witnesses testified for both sides, and later ruled in favor of certification of two classes: the Property Class and the Exposure Class [Doc. 303].

7. Defendant then filed a Rule 23(f) petition to appeal class certification, opposed by Plaintiffs, which resulted in denial of the immediate appeal by the U.S. Court of Appeals for the Second Circuit [Doc. 337].

8. A trial date was set for July 6, 2020, and was continued to October 5, 2020, then postponed further, due to COVID-19. Plaintiffs made substantial preparations for trial before the trial dates were continued, even as settlement negotiations were being conducted.

9. We have recited this summary of the litigation to demonstrate that after over five years of litigation, we are well aware of the strength and weaknesses of Plaintiffs' claims and Saint-Gobain's defenses. We know what claims would likely go to the jury, and we have a good idea of what the jury instructions would say. We know what the fact witnesses and expert witnesses would say at trial. The timing of the Settlement achieved by the Parties at this stage is almost the proverbial settlement on the courthouse steps.

10. We are also well aware of the uncertainties of continued litigation and the likelihood of delays in achieving benefits for Class Members. Even if Plaintiffs prevail in the first trial on liability and recover damages for the Class Representatives, it is likely that Defendant will appeal the judgment, as well as the decision to certify the two Classes and other decisions of the Court over the course of the litigation. These appeals could delay any compensation and medical monitoring by at least two years. Then, assuming Plaintiffs prevail, the Court would need to determine a mechanism, whether individual trials, additional bellwether trials, or proceedings before a special master, to determine property damages for the remainder of the Property Class before compensation would be available for all Property Class Members. Although we believe it would be likely that the Parties would achieve a settlement before conducting proceedings for awarding damages to individual Property Class Members, the process could take years.

11. Two relatively recent decisions by the Court have created further uncertainties for Property Class Members. In one, the Court ruled that Defendant can bypass the Class Representatives and Class Counsel and make a direct settlement offer to members of the Property Class [Doc. 385]. Although this direct settlement offer was delayed, it poses a risk to the continued viability of the Property Class if a majority of the Property Class members accepted the offer despite the opposition of the Class Representatives and Class Counsel. In the other decision, the

Court significantly limited the potential property damages that could be obtained by Property Class Members with PFOA contaminated wells who were connected to town water by setting the date for determining the after-contamination value of the property as the date the property was connected to town water, in some cases years after the contamination was discovered and after market values had increased for other reasons [Doc. 405].

SETTLEMENT NEGOTIATIONS

12. The Court appointed Mr. John Schraven as Settlement Master in this case on April 6, 2017. Mr. Schraven is an experienced mediator, who was recommended by the Court and accepted by the Parties.

13. It was not until after the Court's decisions on class certification and the Daubert motions that settlement negotiations began with the Court's first settlement conference held in person on January 21, 2020. After this, the Parties began engaging in back-and-forth negotiations with Mr. Schraven's assistance, and the Court held another Settlement Conference on March 2, 2020.

14. Negotiations continued throughout 2020, and an in-person mediation was held with Mr. Schraven in Saratoga, New York, on August 26, 2020, with Class Representatives and a high-level executive for Saint-Gobain attending. Although an agreement was not reached at that time, negotiations continued, and there were numerous sessions with Mr. Schraven who communicated offers and counteroffers back and forth between the Parties.

15. Negotiations continued in 2021, until the Parties reached an agreement in principle on July 9, 2021, resulting in the Settlement Term Sheet provided to the Court. The time between July 2021 and the date of the Motion for Preliminary Approval of Class Settlement has been spent

negotiating the details of the Settlement Agreement and all its attachments to fill in the details of this complex, comprehensive Settlement.

16. For both Classes, the Parties negotiated the amount of Class benefits prior to any discussion of attorney fees and reimbursement of litigation expenses. Only after there was an agreement on Class benefits, including the amount of compensation for Property Class Members and the amount of funding for the Medical Monitoring Program, did the Parties discuss attorney fees and arrive at levels that Defendant has agreed not oppose when Class Counsel make an application for approval by the Court.

17. We can say without hesitation that the negotiations leading to the Settlement have been as hard fought as the litigation.

THE PROPERTY SETTLEMENT AND PROPOSED METHOD OF ALLOCATION

18. As described in the Settlement Agreement, the total Settlement for the Property Class is $26,200,000. If the Court approves the requested attorney fees, reimbursement of litigation expenses, administrative costs, and Incentive Awards to Class Representatives, there will be over $20,000,000 for allocation to Property Class Members.

19. Based upon our knowledge of the different damages in kind and degree that different Property Class Members have suffered as a result of the PFOA contamination, and with the assistance of our expert Property Appraiser, Mr. Michael Bailey, we have developed a proposed method for equitable allocation of the Property Class Settlement payment to Class Members. Defendant has not been involved in this allocation method and has expressed no opinion about the method in the Settlement Agreement. Because Class Counsel cannot make the final decision about the fairness of the allocation of damages among the Property Class, we have

requested the Court to appoint Mr. Schraven as Special Master to review the proposed allocation method and make a recommendation to the Court concerning its fairness.

20. As discussed in the Settlement Agreement, the allocation is to the owner(s) of property in the Zone of Concern, and we are proposing five categories of property based upon our assessment of the damages from PFOA contamination:

a. Property was connected to a municipal water supply prior to March 2016 and continues to be connected;

b. Property is vacant and has neither a well nor spring and has not been connected to municipal water supply;

c. Property relied on one or more wells or springs for domestic water supply prior to March 2016, determined to contain less than 20 parts per trillion ("ppt") PFOA, and a municipal water supply has been or will be provided;

d. Property relied on one or more wells or springs for domestic water supply prior to March 2016, determined to contain greater than 20 ppt PFOA, and a municipal water supply has been or will be provided; and

e. Property relied upon one or more wells or springs for domestic water supply prior to March 2016, and the property has been determined unfeasible for connection to a municipal water supply.

We believe the starting point for equitable allocation of property damages should be the value of the property before the discovery of PFOA contamination in the Zone of Concern, which would be used to determine diminution of property value. Mr. Bailey has not performed an evaluation of class-wide property value diminution, but he has determined through the standard appraisal methodology of comparable sales that the diminution for the 6 properties owned by the Class

Representatives immediately after the discovery of PFOA contamination was in the range of approximately 11-14% as compared to the values prior to the discovery. This amount of diminution applied to the property values of the whole Property Class would have yielded a much higher overall compensation for the Property Class than $26.2 million, which Defendant was not willing to pay.

21. In addition to the diminution in value, we believe those property owners who have resided on the property before and after the discovery of the contamination should receive compensation for loss of use and enjoyment, upset and inconvenience, and that those who consumed well water contaminated with PFOA should receive a higher amount. Additionally, as recommended by Plaintiffs' expert economist Robert Unsworth, we believe that those properties with wells that were required to connect to municipal water should receive compensation for a portion of their added costs for municipal water.

22. We believe we have developed an equitable method for allocating the Property Settlement, taking into account the different types of damages for different categories of properties, and request the Court to preliminarily approve the allocation methodology with further review by the Special Master and the Court prior to the Final Approval Hearing.

THE EXPOSURE CLASS SETTLEMENT AND THE MEDICAL MONITORING PROGRAM

23. As described in detail in the Settlement Agreement, the Exposure Class Settlement will involve the establishment of a Court-Supervised Medical Monitoring Program funded by Saint-Gobain up to a total of $6,000,000 for fifteen years. The details of the program have been developed by Plaintiffs' medical monitoring expert Alan Ducatman, M.D., and, with the Court's approval, will be administered by Mr. Edgar C. Gentle, III, who has experience in administering medical monitoring programs established through settlement of similar litigation involving

chemical exposure. Although the Settlement is less than the projections for the cost of the medical monitoring program provided in Plaintiffs' expert reports, we believe that with Mr. Gentle's experience in contracting with testing laboratories and with the likely number of eligible participants having declined with time, the Settlement funding should be sufficient.

24. Consistent with this Court's decision concerning the availability of medical monitoring as a remedy for the PFOA contamination of the water supplies of Exposure Class Members, the Program shall be designed to provide participating Exposure Class members with targeted diagnostic monitoring, through annual survey questionnaires and specified clinical testing that does not duplicate their current primary care, for early detection of certain diseases for which Plaintiffs allege these Exposure Class members are at higher risk due to their PFOA exposure.

25. The Program shall also provide for tests of PFOA blood serum levels during the first 90 days of the Program to determine membership in the Exposure Class for potential Class Members who meet the other criteria for membership, but who have not yet had a blood test. In addition, as recommended by Dr. Ducatman, during the first ten years of the Program, Exposure Class members shall be eligible for PFOA blood serum tests once every two years, with a cap on the expense of this Program element. The purpose of these subsequent blood serum tests is to determine whether PFOA levels are declining as expected.

26. Plaintiffs have agreed to the so-called "Evergreen" funding mechanism for the Medical Monitoring Program, which results in Saint-Gobain paying for the Program in increments, with an initial payment of $1,600,000. We have agreed to this incremental funding approach as long as Saint-Gobain provides financial assurances that the funds will be available for the fifteen-year period by posting a bond acceptable to the Court.

27. Finally, although we anticipate all the funds will be necessary, Plaintiffs have agreed that if there are funds remaining in the account for the Medical Monitoring Program at the end of the 15-year period, the amount will revert to Saint-Gobain.

RECOMMENDATION FOR FINAL APPROVAL OF CLASS SETTLEMENT

28. As this Court has recognized, Class Counsel are experienced litigators in complex environmental contamination cases. It is our combined judgment, based upon this experience and our extensive knowledge of the facts of this case and the law as determined by the Court, that the Settlement with Saint-Gobain is in the best interests of all members of the two Classes, and preliminary approval should be granted.

29. If approved, this Settlement will provide immediate cash payments to Property Class members for their property diminution and other property damages due to the PFOA contamination and will provide fifteen years of medical monitoring for Exposure Class members, which will allow for early diagnosis and treatment of diseases and conditions related to PFOA exposure.

30. We have compared this Settlement to the somewhat similar proposed settlement of the Hoosick Falls, New York, PFOA contamination lawsuits pending in the Northern District of New York, and we believe the Bennington Settlement is comparable. Differences there include, but are not limited to, the contamination of the municipal water supply with PFOA, differences in damages available in New York nuisance cases as compared to Vermont, and the inclusion in the Hoosick Falls settlement of two additional major corporate defendants in addition to Saint-Gobain. If the Court is interested in details of how these two proposed settlements compare, we will provide the details upon the Court's request.

AGREEMENT BY CLASS REPRESENTATIVES

31. The Class Representatives in this case include James D. Sullivan, Leslie Addison, William S. Sumner, Ronald S. Hausthor, Gordon Garrison, Ted Crawford, Linda Crawford, and Billy J. Knight. We are sorry to inform the Court that Mr. Sumner passed away on August 21, 2021, after a brief illness.

32. We have had ongoing discussions with the Class Representatives about the negotiations with Saint-Gobain and have fully discussed the provisions of the Settlement Agreement with them before they evidenced their agreement by signing the Settlement Agreement.

PROPOSED SERVICE AWARDS FOR CLASS REPRESENTATIVES

33. All the Class Representatives have been fully engaged in this litigation since they were first named as putative Class Representatives. They each have been subject to probing discovery by Defendant, producing confidential medical records, and sitting for full-day depositions with many very personal questions about their medical histories and behaviors. They have attended Court hearings and have participated in numerous consultations with Class Counsel concerning discovery, strategy, and settlement negotiations. Given the time and effort they have spent to secure substantial benefits for the Classes they represent, we request they should receive an Incentive Award or Service Award for their service in this litigation to be paid from the Property Settlement, which each represents. We are proposing $10,000 per person for each Class Representative for the Award, with Mr. Sumner's Award being paid to his estate. Defendant has agreed not to oppose this request. We believe this is a modest amount given their contribution to achieving this Settlement for the Classes.

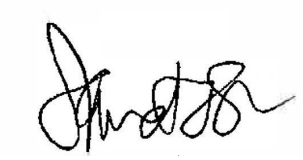
We declare under penalty of perjury that the foregoing is true and correct.

Dated: March 28, 2022

Gary A. Davis
Class Counsel

Dated: March 28, 2022

Emily J. Joselson
Class Counsel



Dated: March 28, 2022

David F. Silver
Class Counsel

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JAMES D. SULLIVAN and LESLIE ADDISON, WILLIAM S. SUMNER, JR., RONALD S. HAUSTHOR, GORDON GARRISON, TED and LINDA CRAWFORD, and BILLY J. KNIGHT, Individually and on behalf of Class of persons similarly situated,
Plaintiffs,

v.

SAINT-GOBAIN PERFORMANCE PLASTICS CORPORATION,
Defendant.

Civil Action No. 5:16-cv-000125-GWC

DECLARATION OF JOHN A. SCHRAVEN

I, John A. Schraven, declare as follows:

1. On April 26, 2017, I was appointed Settlement Master in the above-captioned matter [Doc. 68].

2. Beginning in January 2020, the Court conducted settlement conferences with the parties and myself, both in person and by videoconference.

3. I conducted a formal, in-person mediation with the parties on August 26, 2020.

4. Thereafter, I conducted further discussions with the parties until, on July 9, 2021, the parties reached a settlement agreement in principle, and executed a Confidential Settlement Term Sheet.

5. On November 11, 2021, the parties filed a detailed Settlement Agreement and exhibits [Docs. 461 to 461-8], which I have carefully reviewed.

6. Pursuant to the Settlement Agreement, the parties requested the Court to appoint me as Special Master to assist the Court in its review of the proposed allocation of the Settlement

EXHIBIT
3

Payout to the Property Class Members and to make a recommendation to the Parties and the Court prior to Final Approval concerning whether the proposal treats Class Members equitably relative to each other. [Doc. 461, ¶ 8].

7. On November 18, 2021, the Plaintiffs filed under seal a Proposed Method for Allocating Property Settlement [Docs. 461, 462-1], which I have carefully reviewed.

8. On December 8, 2021, I attended a Chambers Conference via videoconference, during which the Court and the parties discussed discuss the proposed Settlement and the Proposed Method for Allocation Property Settlement [Doc. 467]. Following this conference, as reflected in the Court's Preliminary Approval Order [Doc. 470], I recommended to the Court that preliminary approval of the Settlement was appropriate as Plaintiffs' proposed allocation method treats Property Class members equitably relative to each other.

9. The Settlement resolves all claims alleged by Plaintiffs against Defendant and provides, among other things, that as consideration for the release from Property Class Members, Defendant will pay $26,200,000 into a Property Settlement Fund to compensate Property Class Members for alleged property damages, and that as consideration for the release from Exposure Class Members, Defendant will pay up to $6,000,000, plus $1,950,000 in attorneys' fees and expenses, to fund a Court-Supervised Medical Monitoring Program for Exposure Class Members over a period of fifteen years.

10. I have reviewed in detail the Settlement Agreement and the exhibits attached thereto, and the Proposed Method for Allocating Property Settlement and the exhibit attached thereto, and have determined that the Settlement is substantively fair, reasonable, and adequate in that the relief provided is substantial, particularly when taking into account the costs, risks and delays of a liability trial, multiple damages trials, and any appeals.

11. The proposed method of distributing monetary relief to the Property Class Members appears to be adequate, because it is relatively streamlined, requiring only submission of a Claim Form, with appropriate evidence of property ownership and residency, and few supporting documents, as specified in the Settlement.

12. Similarly, for the Exposure Class, the eligibility criteria and the procedure for enrollment in the Medical Monitoring Program are straightforward, and the Settlement provides for a blood test to determine eligibility for those potential Class Members meeting other eligibility criteria who have not yet been tested for PFOA.

13. The proposed allocation method is based on the value of each residential property before March 14, 2016, and utilizes different percentages of that value for compensation, depending on the nature of the property (developed or undeveloped), the property's water supply (well or municipal) at that time and the level of PFOA contamination in such wells. The allocation is on a per property basis: one payment for each eligible property, paid to the property owners. Property owners will receive an additional payment for upset and inconvenience, based on the property category. Those Property Class Members moving from wells to municipal water will also receive a payment for a portion of these added costs.

14. Based upon my review and in my opinion as Special Master, the Settlement is fair, reasonable, and adequate, and I have so advised the Court.

15. Based upon my review and in my opinion as Special Master, the Settlement treats each Member of the two Classes equitably relative to one another, as required by Fed. R. Civ. P. 23(e)(2)(D), and I have so advised the Court.

16. Based upon my review and in my opinion as Special Master, the Property Class Settlement treats the Property Class Members equitably relative to each other, as required by Fed. R. Civ. P. 23(e)(2)(D), and I have so advised the Court.

17. I submit this Declaration in satisfaction of the requirements set forth in Paragraph 18 of the Court's Preliminary Approval Order [Doc. 470].

I declare under penalty of perjury under the laws of the State of Vermont and the United States that the above is true and correct, and that this Declaration was executed on March 24th, 2022.

John A. Schraven

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

JAMES D. SULLIVAN and LESLIE ADDISON,
WILLIAM S. SUMNER, JR., RONALD S. HAUSTHOR, GORDON GARRISON, TED and
LINDA CRAWFORD, and BILLY J. KNIGHT,
Individually and on behalf of Class of persons
similarly situated,

Plaintiff,

vs.

SAINT-GOBAIN PERFORMANCE PLASTICS
CORPORATION,

Defendant.

Case No. 5:16-cv-00125-gwc

CLASS ACTION

DECLARATION OF GIO SANTIAGO RE: NOTICE PROCEDURES

EXHIBIT
4

I, Gio Santiago, declare and state as follows:

1. I am a Senior Project Manager with KCC Class Action Services, LLC ("KCC"). Pursuant to the Preliminary Approval Order dated December 17, 2021, the Court appointed KCC as the Claims Administrator in connection with the proposed Settlement of the above-captioned Action.[1] I have personal knowledge of the matters stated herein and, if called upon, could and would testify thereto.

CLASS LIST

2. On October 29, 2021, KCC received from plaintiff counsel a list of 2,735 properties identified as the Class List. The Class List included names and mailing addresses. KCC formatted the list for mailing purposes, removed duplicate records, and processed the names and addresses through the National Change of Address Database ("NCOA") to update any addresses on file with the United States Postal Service ("USPS"). A total of 123 addresses were found and updated via NCOA. KCC updated its proprietary database with the Class List. After removing all duplicate addresses, the total class list included 2,365 properties.

MAILING OF THE NOTICE PACKET

3. On January 3, 2022, KCC caused the Long Form Notice (the "Notice Packet") to be printed and mailed to the 2,365 properties in the Class List. A true and correct copy of the Notice Packet is attached hereto as Exhibit A.

4. Since mailing the Notice Packets to the Class Members, KCC has received 182 Notice Packets returned by the USPS with undeliverable addresses. Through credit bureau and/or other public source databases, KCC performed address searches for these undeliverable Notice Packets and was able to find updated addresses for 18 Class Members. KCC promptly re-mailed Notice Packets to the found new addresses.

SETTLEMENT WEBSITE

5. On or about January 3, 2022, KCC established a website

[1] All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Settlement Agreement and/or the Preliminary Approval Order.

[www.benningtonvtclassaction.com] dedicated to this matter to provide information to the Class Members and to answer frequently asked questions. The website URL was set forth in the Notice and Claim Form. Visitors of the website can download copies of the Notice, Claim Form, and other case-related documents. Visitors can also submit claims online and upload supporting documentation. As of March 24, 2022, the website has received 6,069 visits.

TELEPHONE HOTLINE

6. KCC established and continues to maintain a toll-free telephone number (866-726-3778) for potential Class Members to call and obtain information about the Settlement, request a Notice Packet, and/or seek assistance from a live operator during regular business hours. The telephone hotline became operational on January 3, 2022. As of March 24, 2022, KCC has received a total of 205 calls to the telephone hotline.

CLAIM FORMS

7. To date, KCC has received 866 timely-filed claim forms. This count is subject to change as the claim filing deadline has not yet passed. KCC has not yet determined whether any of the claims are valid or duplicative submissions.

REPORT ON EXCLUSION REQUESTS RECEIVED TO DATE

8. The Notice informs Class Members that requests for exclusion from the Class must be postmarked no later than February 2, 2022. As of the date of this declaration, KCC has received no requests for exclusion.

OBJECTIONS TO THE SETTLEMENT

9. The postmark deadline for Class Members to object to the settlement was February 2, 2022. As of the date of this declaration, KCC has received no objections to the settlement.

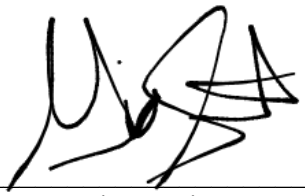
QUALIFIED SETTLEMENT FUND

10. On December 22, 2022 Saint-Gobain Ceramics and Plastics Inc. deposited

$27,800,000.00 into the Sullivan v. Saint-Gobain Performance Plastics Corporation Settlement Fund.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on March 25, 2022.



Gio Santiago

EXHIBIT

A

Sullivan v. Saint-Gobain Performance Plastics Corporation
Settlement Administrator
P.O. Box 43434
Providence, RI 02940-3434

SIV

«3of9 barcode »
«BARCODE»
Postal Service: Please do not mark barcode
SIV «Claim Number»
«FIRST1» «LAST1»
«ADDRESS LINE 1» «ADDRESS LINE 2»
«CITY», «STATE»«PROVINCE» «POSTALCODE» «COUNTRY»

Claim ID: <<ClaimNumber>>
PIN Code: <<PIN>>

CLASS ACTION SETTLEMENT NOTICE

If you have lived or owned real property in or around Bennington, or North Bennington, Vermont, in the area of PFOA exposure, you could get benefits from a class action settlement.

A federal court authorized this Notice. It is not a solicitation from a lawyer.

A Settlement has been reached with Saint-Gobain Performance Plastics Corporation ("Saint-Gobain") in a class action lawsuit by residents in the Bennington area alleging contamination of their property and drinking water with a chemical called Perfluorooctanoic Acid ("PFOA"). The Settlement provides:

- **Money for property damages** to people who: (1) owned residential real property in the Zone of Concern—an area of PFOA exposure defined by the Vermont Department of Environmental Conservation (DEC) in Bennington, North Bennington and some properties with a Shaftsbury address—on March 14, 2016; or (2) purchased residential real property after March 14, 2016, that was later added to the Zone of Concern ("Property Class").
- **Funding for a Court-Supervised Medical Monitoring Program** for Exposure Class Members, providing free testing and monitoring that does not duplicate their current primary care for the early detection of certain diseases. You are an Exposure Class Member if you: (a) resided in the Zone of Concern on or before August 23, 2019; (b) ingested drinking water with PFOA in the Zone of Concern; and (c) have a blood serum test with a PFOA blood level above 2.1 parts per billion ("ppb"). If you meet these two criteria, but have not yet had a blood test, the Medical Monitoring Program will make one available to you free of charge within the first 180 days of the Program. **If you are eligible, enroll in the Program, and complete the Initial Informational Survey and Screening Consultation, you will receive a $100 incentive payment.**
- You may be a member of both the Exposure Class and the Property Class.

Read this Notice carefully. Your legal rights are affected whether you act or don't act.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM	This is the only way you can get a payment or other benefits from this Settlement.
EXCLUDE YOURSELF FROM THE PROPERTY SETTLEMENT ("OPT OUT")	If you do, you will not get a payment for property damages. However, you would have the option of filing your own lawsuit against Saint-Gobain for the legal claims made in this lawsuit with your own attorney at your own expense. You may choose whether or not to participate in the Medical Monitoring Program, but you don't need to opt out if you choose not to participate.
OBJECT TO THE SETTLEMENT	Write to the Court with reasons why you do not agree with the Settlement.
GO TO THE FINAL APPROVAL HEARING	You may ask the Court for permission for you or your attorney to speak about your objection at the Final Approval Hearing.
DO NOTHING	You will not get a payment or other benefits from this Settlement, and you will give up certain legal rights.

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court overseeing this case still must decide whether to approve the Settlement.

BASIC INFORMATION

1. Why is this Notice being provided?

The Court directed that this Notice be provided because you have a right to know about a proposed Settlement reached in this class action lawsuit, and all of your options, before the Court decides whether to grant final approval to the Settlement. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of this case is the United States District Court for the District of Vermont. The case is known as *Sullivan, et al. v. Saint-Gobain Performance Plastics Corporation*, No. 5:16-cv-125, United States District Court for the District of Vermont. The Honorable Judge Geoffrey W. Crawford is overseeing this action.

The people who filed the lawsuit are called Plaintiffs. The company they sued, Saint-Gobain, is called the Defendant. This Settlement is between Plaintiffs and the Defendant.

2. What is this lawsuit about?

For several decades, Chemfab Corporation, owned by Saint-Gobain since 2000, manufactured coated fabric and other products in North Bennington and Bennington using a compound called Ammonium Perfluorooctanoate ("APFO"). Plaintiffs allege that the use of APFO at these plants resulted in the release of Perfluorooctanoic Acid ("PFOA") into the environment, contaminating the soil and groundwater in the Zone of Concern in and around Bennington and North Bennington, as delineated by the Vermont DEC. (Please see enclosed map.)

PFOA is classified as a hazardous material in Vermont due to its potential health risks and persistence in the environment, and the State has set a limit on how much PFOA can be in drinking water.

The **Property Class** seeks to hold Saint-Gobain liable for the PFOA contamination in the Zone of Concern and to recover money compensation for property damages. More information on who is included in the Property Class is available on page 2-3.

The **Exposure Class** alleges that people who drank PFOA-contaminated water, and have levels of PFOA in their blood above 2.1 ppb, should be able to have testing and monitoring that does not duplicate their current primary care for the early detection of certain diseases. More information on who is included in the Exposure Class is available on page 3.

More information on the potential health and environmental effects of PFOA can be found at the Vermont DEC's website at https://dec.vermont.gov/pfas. You can read important court filings, including the Plaintiffs' Complaint, at the website for this class action: www.BenningtonVTclassaction.com.

3. What is a class action and who is involved?

In a class action lawsuit, one or more people called "Class Representatives" sue on behalf of other people who have similar claims. In this case, the Class Representatives are James D. Sullivan, Leslie Addison, Ronald S. Hausthor, Gordon Garrison, Ted and Linda Crawford, and Billy J. Knight, property owners in the Zone of Concern. All other unnamed people who are represented in the lawsuit (possibly including you) are members of the "Class" or "Class Members." One court presides over and resolves the claims for everyone in the Class (except those who chose to exclude themselves). That court is the U.S. District Court for the District of Vermont in Rutland, Vermont, which certified two classes (Property Class and Exposure Class) on August 23, 2019.

4. Why is there a Settlement?

There has not yet been a trial, and neither the Court nor a jury has decided the question of Saint-Gobain's liability for the PFOA contamination. The Class Representatives, with the advice of Class Counsel, and Saint-Gobain have agreed to the terms of this Settlement to avoid the cost, delay and uncertainty that come with further litigation and trial. The Class Representatives and Class Counsel think the Settlement is the best option for Class Members because it provides certain relief now. The agreement to settle is not an admission of liability by Saint-Gobain, and Saint-Gobain disputes the claims asserted in this case.

WHO IS INCLUDED IN THE SETTLEMENT?

5. How do I know if I am part of the Settlement?

The Court has certified two classes in this action: (1) a Property Class and (2) an Exposure Class. **In order to be included in the Settlement, you must be a member of one of these classes.** The benefits available to you in the Settlement will depend upon which class you are a member of (you may be a member of both classes).

1. **Property Class:** You are a member of the Property Class if:

   1) You are a natural person (not a corporation); and

   2) You:

(a) Owned residential real property in the Zone of Concern on March 14, 2016; OR

(b) Purchased residential real property after March 14, 2016, that was subsequently added to the Zone of Concern.

The "Zone of Concern" is defined by the Vermont DEC to include portions of the Towns of Bennington, North Bennington, and Shaftsbury, Vermont. You may view the Zone of Concern on a map attached to the Claim Form; the map is also attached as Exhibit B to the Class Settlement Agreement, a copy of which is available at www.BenningtonVTclassaction.com.

Property Class Members include people who receive water from the municipal water supply as well as people who use private wells (even if your well is or was not contaminated with PFOA or has or had low levels of PFOA). You are also included if you purchased vacant land after March 14, 2016, and it was subsequently added to the Zone.

2. **Exposure Class:** You are a member of the Exposure Class if:

   1) you resided in the Zone of Concern on or before August 23, 2019;

   2) you ingested water with PFOA in the Zone; and

   3) you have a blood serum test showing a PFOA blood level above 2.1 ppb.

   If you meet the first two criteria, above, but have not yet had a blood test, the Medical Monitoring Program will make one available to you free of charge within the first 180 days of the Program.

3. **Can I be a member of both classes?** Yes, if you meet the requirements of both Classes.

6. Are there exceptions to being included in the Settlement?

Yes. The Property Class ONLY includes people who own real property. It does NOT include renters, guests, or visitors.

The Property Class does NOT include businesses or commercial entities. It does not include legal entities, such as corporations, not-for-profits, or governmental entities, who are not "natural persons." In other words, Class Members must be human beings. If you run a business out of your residence, you are included; however, you are still only entitled to the types of damages discussed under question 8 below.

If you bought your property AFTER March 14, 2016, you are NOT included, unless your property was subsequently added to the Zone of Concern by the Vermont DEC. If you own an apartment building or multi-unit dwelling and rent it out, you are NOT included.

If you own a mobile home and NOT the land it sits upon, you are NOT included. But if you owned a mobile home as of March 14, 2016 AND the land it sits upon in the Zone, or purchased the land after March 14, 2016 before it was added to the Zone of Concern, you are included.

Only current or past residents of the Zone of Concern are eligible for membership in the Exposure Class. Guests and visitors are NOT included.

If you have filed a personal injury lawsuit for an illness alleging that it was caused by Saint-Gobain's PFOA, you are NOT included.

If you are the legal representative, officer, director, successor or assignee of Saint-Gobain, you are NOT included. If you are a member of the immediate family of Judge Crawford or any other judicial officer assigned to this case, you are NOT included. If you are a member of the immediate family of any of the attorneys representing Plaintiffs, you are NOT included.

If you have already opted out of the Property Class, after receiving the initial Notice of Class Action, you are not included in the Settlement, **but you may** revoke your opt-out and become a Class Member (see Paragraph 17, below).

7. What if I'm still not sure I'm included in either Class?

If you are still unsure whether you are included in either Class, you can get free help at www.BenningtonVTclassaction.com, by calling 866-726-3778, or by email to info@benningtonvtclassaction.com.

THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

8. What does the Property Settlement provide?

The Settlement provides a total Property Settlement Fund of $26,200,000 (Twenty-Six Million Two Hundred Thousand Dollars) to provide property damages to owners of over 2,200 properties (Property Class). Property damages include payment for diminished property value, lost use and enjoyment of property, and upset, aggravation and inconvenience alleged to be caused by the PFOA contamination and, for those connecting to town water, payment for some of the costs of town water. After deducting attorneys' fees and costs, service awards for Class Representatives, and the costs of administration, the rest of the Settlement Fund will be divided among Property Class Members. The division will be based on the value of each property as of March 14, 2016, and will assign different percentages for compensation, depending upon the type of property, its water supply and, if supplied by a well, the level of PFOA contamination in the well water. One payment will be made for each eligible property, and payment will be paid to the owner or owners of the property. This process has been reviewed for fairness by a neutral Special Master and has been preliminarily approved by Judge Crawford.

9. How much will Property Class Members receive?

The allocation method proposed by Class Counsel and preliminarily approved by the Court will be based upon the Grand List assessed value of each property as of March 14, 2016, and will utilize different percentages of that value for compensation depending upon the category of the property with regard to its water supply and the level of PFOA contamination of groundwater on the property. The allocation will be by individual property, and one payment will be made for each eligible property and will be paid to the owners of the property. Depending on the Grand List value of your property, and subject to Court approval the proposed allocations will take into consideration the following criteria:

a. Property is vacant and has neither a well nor spring and has not been connected to municipal water supply;

b. Property was connected to a municipal water supply prior to March 2016 and continues to be connected;

c. Property relied on one or more wells or springs for domestic water supply prior to March 2016, determined to contain less than 20 parts per trillion ("ppt") PFOA, and a municipal water supply may have been provided;

d. Property relied on one or more wells or springs for domestic water supply prior to March 2016, determined to contain greater than 20 ppt PFOA, and a municipal water supply has been or will be provided; and

e. Property relied upon one or more wells or springs for domestic water supply prior to March 2016, determined to contain greater than 20 ppt PFOA, and the property has been determined unfeasible for connection to a municipal water supply.

f. Property Class Members who resided on their property as of March 2016 will also receive an additional payment for upset and inconvenience, depending on the category of their property as set out in paragraphs b.– e.

g. Property Class Members in the categories in paragraphs c. – d. may also receive payment for a portion of their added costs of paying for municipal water.

The calculations used to determine payments for each property category are as follows:

a.	Vacant Property	Payment = property value X 0.016
b.	Mun. Water	Payment = (property value X 0.016) + up to $2,000
c.	Well <20 ppt	Payment = (property value X 0.027) + up to $9,000
d.	Well >20 ppt	Payment = (property value X 0.055) + up to $14,000
e.	Well >20 ppt, Unfeas.	Payment = (property value X 0.11) + up to $20,000

Property Class Members can call the office of Class Counsel, David Silver (802-442-6341), for additional information on their approximate payments.

In addition, payments not claimed by Property Class Members will be reallocated to eligible Class Members, so that all Settlement Funds will be awarded to eligible Property Class Members. So, you may receive a second payment based on the amount of your first payment.

If your well has not been tested for PFOA and you would like to have it tested, or you would like to have your well retested for PFOA, you should contact the Vermont Department of Conservation (DEC) (802-249-5620) for assistance; or you may arrange to have your own well tested by a laboratory certified by the State for PFOA testing (call DEC to confirm laboratory certification). Any new test results received by the Effective Date of the Settlement will be considered in the allocation of the Property Settlement to eligible Class Members.

10. How does the Medical Monitoring Program work?

The Settlement creates a Court-Supervised Medical Monitoring Fund of up to $6,000,000 (Six Million Dollars). This will fund a 15-year Medical Monitoring Program, to provide Exposure Class Members who choose to participate with free testing and monitoring that does not duplicate their current primary care for the early detection of certain diseases. The Program will be conducted at the Occupational Health Clinic of Southwestern Vermont Medical Center ("SVMC"), in Bennington, Vermont. People living outside the Bennington area will be able to participate remotely. Program participants will fill out questionnaires, consult with a Program physician, and get specific blood and urine tests. For those who have not yet had a PFOA blood serum test, the Medical Monitoring Program will make one available to them free of charge within the first 180 days of the Program. Attorneys' fees and costs for the Program will be paid separately by Saint-Gobain. If money remains in the Medical Monitoring Program at the end of the 15-year period, the money will revert to Saint-Gobain.

Eligible Exposure Class Members who enroll in the Program will also receive a $100 incentive payment, to be paid by Class Counsel.

HOW TO GET SETTLEMENT BENEFITS—SUBMITTING A CLAIM FORM

11. How do I get a Property Settlement payment?

To qualify for a Property Settlement payment, you must complete and submit a Claim Form within 125 days after the Court finally approves of the Settlement. The date will be posted on the website www.BenningtonVTclassaction.com. You may complete and submit your Claim Form as soon as January 18, 2022 online at www.BenningtonVTclassaction.com OR email a completed Claim Form to info@BenningtonVTclassaction.com OR mail a completed Claim Form to *Sullivan v. Saint-Gobain Performance Plastics Corporation* Settlement Administrator, P.O. Box 43434, Providence, RI 02940-3434. Claim Forms are available to download on the website and also available by calling 1-866-726-3778 or by writing to the Settlement Administrator at info@benningtonvtclassaction.com.

12. How do I participate in the Medical Monitoring Program?

To qualify for the Medical Monitoring Program, you must complete and submit a Claim Form within 125 days after the Court finally approves of the Settlement. The date will be posted on the website www.BenningtonVTclassaction.com. You may complete and submit your Claim Form, which includes eligibility questions, as soon as January 18, 2022, online at www.BenningtonVTclassaction.com OR email a completed Claim Form to info@BenningtonVTclassaction.com OR mail a completed Claim Form to *Sullivan v. Saint-Gobain Performance Plastics Corporation* Settlement Administrator, P.O. Box 43434, Providence, RI 02940-3434. Claim Forms are available to download on the website and also available by calling 1-866-726-3778 or by writing to the Settlement Administrator at info@benningtonvtclassaction.com. If you require a blood test to determine whether you have a PFOA level of over 2.1 ppb, you must get a blood test within the first 180 days of the Medical Monitoring program, which will be provided free of charge.

13. What am I giving up to get a Property Settlement payment, or participate in the Medical Monitoring Program?

If you stay in the Settlement (*i.e.*, do nothing, or do not exclude yourself), you give up your right to hire your own attorney and sue Saint-Gobain on your own for the claims made in this lawsuit or about the legal issues resolved by this Settlement.

The Court will hold a Final Approval Hearing on April 18, 2022 to decide whether to approve the Settlement. If approved, there may be appeals. Settlement payments will be distributed, and the Medical Monitoring Program will begin as soon as possible after the Court grants final approval to the Settlement, and after any appeals are resolved.

Unless you exclude yourself, you will be bound by the terms of the Settlement. If the Settlement is approved and becomes final, all the Court's orders will apply to you, including the Court's final order dismissing the Class Action.

If you wish to receive a Property Settlement payment, or participate in the Medical Monitoring Program, you will be required to sign a Release, releasing Saint-Gobain from any and all past, present, and future claims and causes of action, including without limitation causes of action and/or relief created or enacted in the future, that were or could have been asserted in this action, arising out of or related to, either directly or indirectly or in whole or in part, the Released Claims. The "Released Claims" include those relating to: (i) the subject matter of any allegations contained in the Third Amended Complaint in this case, any allegations otherwise asserted in this action, or the subject matter of any discovery obtained in the action; (ii) the alleged presence of Per- and Polyfluoroalkyl substances ("PFAS") (including PFOA) in drinking water or the environment (including but not limited to in air, groundwater, surface water, municipal water, private well water, or soil) within Bennington or North Bennington and/or the Zone of Concern; (iii) the sale, purchase, use, handling, transportation, release, discharge, migration, emission, spillage, or disposal of PFAS (including PFOA) to, at, or from a Facility in or near Bennington or North Bennington, including any such PFAS (including PFOA) present as a result of disposal at or discharge to, directly or indirectly, any landfill, sewage system, water treatment facility, or any other location in and around Bennington or North Bennington, and/or resulting in any alleged exposure of any Class Member to PFAS (including PFOA) through drinking water, inhalation, dermal contact, or otherwise; (iv) for any type of relief with respect to the acquisition, installation, maintenance, operation, or presence of, including the cost or purported inconvenience or loss of enjoyment of, property associated with whole-house filters, point-of-entry (POET) filters, point-of-use filters, municipal water, private well water, bottled water, alternative water supplies, or remediation; (v) property damage or property-value diminution, including without limitation stigma, purportedly attributable to the alleged presence of PFAS (including PFOA) in any municipal water system or any private well, or in the air, groundwater, surface water, municipal water, private well water, or soil in or around Bennington or North Bennington and/or the Zone of Concern and/or (vi) based on PFAS (including PFOA) in the blood or tissue of any Class Member. However, the "Released Claims" DO NOT include any future personal injury claims for any Class Member or any other person arising out of alleged exposure to chemicals from Saint-Gobain's Facilities that are the subject of this action. The "Released Claims" ALSO DO NOT include any of Saint-Gobain's duties and obligations contained in the Consent Order and Final Judgment Order of May 23, 2019, in the case of *State of Vermont, Agency of Natural Resources v. Saint-Gobain Performance Plastics Corp.*, Vt. Sup. Ct., Bennington Unit, No. 9Z-419.

THE LAWYERS REPRESENTING YOU

14. Do I have a lawyer in this case?

Yes. The Court appointed the following attorneys as Class Counsel, to represent you and other Class Members: David F. Silver of Barr, Sternberg, Moss, Silver & Munson, P.C. of Bennington, Vermont; Emily J. Joselson of Langrock, Sperry & Wool, L.L.P. of Burlington and Middlebury, Vermont; and Gary A. Davis of Davis & Whitlock, P.C. of Asheville, North Carolina. These lawyers and their firms are experienced in handling similar cases. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

15. How will Class Counsel be paid?

As part of the final approval of this Settlement, Class Counsel will ask the Court to approve payment of their reasonable attorneys' fees and expenses for their work in this case. Class Counsel will request attorneys' fees and expenses through a motion filed with the Court before the date of the Final Approval Hearing, and before the deadline for Class Members to file their objections. Class Members will receive reasonable notice of the motion and will have the opportunity to object. The motion will also be made available at www.BenningtonVTclassaction.com.

The Court will decide if Class Counsel's request for attorneys' fees and expenses is appropriate. Any award of attorneys' fees and costs for the Exposure Class Settlement will be *in addition* to the Medical Monitoring Program Payments and will not reduce the amount Saint-Gobain has agreed to pay for the Program. Any award of attorneys' fees and expenses for the Property Class Settlement will be paid from the Total Property Settlement.

EXCLUDING YOURSELF FROM THE SETTLEMENT

16. How do I opt out of the Property Settlement?

To exclude yourself from the Property Settlement, you must send a letter by mail stating (1) you want to be excluded from *Sullivan, et al. v. Saint-Gobain Performance Plastics Corporation*, No. 5:16-cv-125, (2) your full name, current address and telephone number, (3) the facts that prove you are a Property Class Member, and (4) your signature. You must mail your exclusion request postmarked no later than thirty (30) days after the date of this Class Settlement Notice, or by February 2, 2022 to:

Sullivan v. Saint-Gobain Performance Plastics Corporation Settlement Administrator
P.O. Box 43434
Providence, RI 02940-3434

If you are a Property Class Member and you submit a timely and valid exclusion request for property you own jointly with others, all others owning the property will also be considered to have submitted a timely and valid exclusion request.

Saint-Gobain has the right to terminate the Property Settlement if a certain percentage of Property Class Members exclude themselves from the Settlement. If this occurs, the Settlement will be terminated, and no Class Member will receive any payment.

17. If I previously opted out of the Property Class, can I revoke my opt-out and receive a payment?

Yes. If you already opted out of the Property Class when you received the initial Class Notice, you may still participate in the Property Class Settlement and receive money from this Settlement by revoking your prior opt-out. If you previously opted out, you will receive a separate letter from Class Counsel with a Revocation Form, which you must complete and submit to Class Counsel, within thirty (30) days after the date of this Class Settlement Notice, or by February 2, 2022.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement, or some part of it.

18. How do I tell the Court I do not agree with the Settlement?

If you are a Property or Exposure Class Member, you can object to the Settlement if you do not agree with it or a portion of it. The Court will consider your views. You must send a letter by mail stating: (1) your full name, current address, and telephone number; (2) a statement of facts that indicate you are a Property or Exposure Class Member; (3) your objections and the reasons for them; (4) copies of any papers or evidence to support your objections; (5) whether you plan to appear at the Final Approval Hearing; (6) that you are willing to have your deposition taken, upon request, on a mutually acceptable date at least 10 days before the Final Approval Hearing; (7) a list containing the case name, court, and docket number of any other class action settlements you or your counsel have objected to in the past five (5) years, with a copy of all orders related to or ruling on those objections; (8) all written and verbal agreements between you, your counsel or any other person related to your objection; and (9) your signature.

Your objection must be mailed to the Court, to Class Counsel and Saint-Gobain's Counsel and postmarked no later than February 2, 2022. The addresses to which objections must be sent are as follows:

Jeffrey S. Eaton, Clerk of Court Re: *Sullivan v. Saint-Gobain* No. 5:16-cv-125 United States District Court District of Vermont U.S. District Court, Room 200 11 Elmwood Avenue Burlington, VT 05401	Class Counsel: Barr Sternberg, PC Attn: Didi Gingue 507 Main St. Bennington, VT 05201	Saint-Gobain's Counsel: Dechert LLP Attn: Rachel Passaretti-Wu Three Bryant Park 1095 Avenue of the Americas New York, NY 10036

19. May I come to Court to speak about my objection?

Yes. You or your attorney may request to speak about your objection at the Final Approval Hearing. To do so, you must include a statement in your objection indicating that you or your attorney intend to appear at the Final Approval Hearing.

20. What is the difference between objecting to the Settlement and asking to be excluded from it?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object to something about the Property Class Settlement only if you remain in the Property Class (that is, do not exclude yourself or opt out). Excluding yourself is telling the Court that you don't want to be part of the Settlement. If you exclude yourself from the Property Class, you cannot object, because the Settlement of the Property Class no longer affects you.

THE COURT'S FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you don't have to do either.

21. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing on April 18, 2022, at the U.S. District Court, 151 West Street, Main Courtroom in Rutland, Vermont. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. It will also consider whether to approve Class Counsel's request for attorneys' fees and expenses, as well as the Representative Plaintiffs' service awards. If there are objections, the Court will consider them. The Court may listen to people who have asked to speak at the hearing (see Question 19 above). After the hearing, the Court will decide whether to approve the Settlement.

22. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. However, you are welcome to come to the hearing at your own expense. If you send an objection, you do not have to come to court to talk about it. If you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

IF YOU DO NOTHING

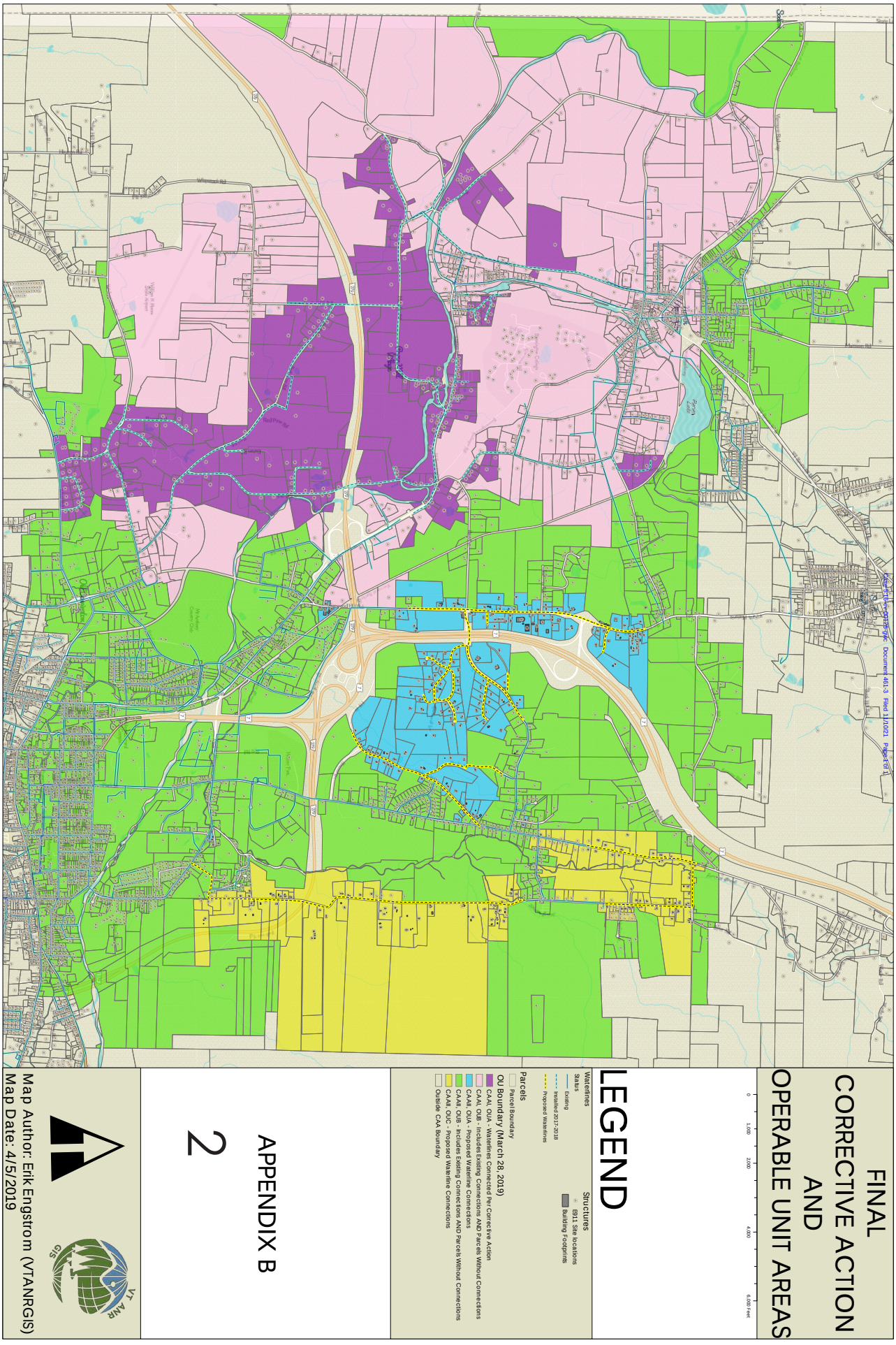
23. What happens if I do nothing at all?

If you are a Property Class Member or an Exposure Class Member and you do nothing, you will not receive a payment from the Property Settlement or be eligible to participate in the Medical Monitoring Program. In addition, you will give up the rights explained in Question 13, including your right to start a lawsuit or be part of any other lawsuit against Saint-Gobain about the legal issues resolved by this Settlement.

GETTING MORE INFORMATION

24. How do I get more information?

This Notice summarizes the proposed Settlement. Complete details are provided in the Class Settlement Agreement. The Settlement Agreement and other documents are available at www.BenningtonVTclassaction.com. Additional information is also available by calling 1-866-726-3778 or by writing to *Sullivan v. Saint-Gobain Performance Plastics Corporation* Settlement Administrator, P.O. Box 43434, Providence, RI 02940-3434. Publicly-filed documents can also be obtained by visiting the Office of the Clerk of the United States District Court for the District of Vermont or reviewing the Court's online docket.


FINAL
CORRECTIVE ACTION
AND
OPERABLE UNIT AREAS
LEGEND
Waterlines
Status
Existing
Installed 2017-2018
Proposed Waterlines
Structures
E911 Site locations
Building Footprints
Parcels
Parcel Boundary
OU Boundary (March 28, 2019)
CAAI, OUA - Waterlines Connected Per Corrective Action
CAAI, OUB - Includes Existing Connections AND Parcels Without Connections
CAAI, OUA - Proposed Waterline Connections
CAAI, OUB - Includes Existing Connections AND Parcels Without Connections
CAAI, OUC - Proposed Waterline Connections
Outside CAA Boundary
0
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2,000
4,000
6,000 Feet
APPENDIX B
2
Map Author: Erik Engstrom (VTANRGIS)
Map Date: 4/5/2019

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

JAMES D. SULLIVAN, *et al*., individually, and on behalf of a Class of persons similarly situated, *Plaintiffs*, v. SAINT-GOBAIN PERFORMANCE PLASTICS CORPORATION, *Defendant*.	Case No. 5:16-cv-00125-GWC Hon. Geoffrey W. Crawford

DECLARATION OF WENDY E. RADCLIFF, ESQ.

I, Wendy E. Radcliff, after first being duly sworn, do hereby state, under oath, as follows:

1. I am an associate with Langrock Sperry & Wool, LLP.

2. On December 30, 2021, in accordance with the Preliminary Approval Order [Doc. 470] and Plaintiffs' Proposed Class Settlement Notice Plan [Doc. 461-6], I emailed a press release agreed upon by the parties regarding the Court's preliminary approval of the Class Settlement to Vermont statewide media and the Bennington Banner newspaper.

3. News stories appeared in print in the Bennington Banner and The Vermont Digger, and were broadcast on WCAX television, television stations in nearby New York, and on Vermont Public Radio. In addition, the Associated Press picked up the story and components of the press release appeared in newspapers across the region, including national coverage in The Washington Post and ABC News.

4. I requested and paid for a legal advertisement of the summary form of the Class Settlement Notice, which was published in local and statewide media in the following outlets: The Bennington Banner, The Vermont Digger, Seven Days, and the Bennington, Vermont Front

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Porch Forum. The legal advertisement appeared at least once per week for three weeks per the Class Notice Plan. A copy of the Summary Form of the Class Settlement Notice is attached hereto as Exhibit A.

5. On January 4, 2022, I emailed the Class Settlement Notice to 502 Class Members for whom email addresses were available.

6. On January 18, 2022, Class Counsel hosted a public town hall meeting via Zoom for Class Members, providing information regarding the Settlement, Class Member eligibility, instructions for filing claims, and the benefits available to eligible Class Members. The meeting was recorded and later prominently posted on the Class website, www.benningtonvtclassaction.com, and on YouTube. The video recording of the informational meeting has been viewed more than 200 times.

7. Since January 2022, our law office has fielded and responded to numerous telephone and email inquiries from Class Members and has been able to answer questions and assist in the filing of Claim Forms.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and that this declaration was executed in Middlebury, Vermont this 25th day of March, 2022.

Wendy E. Radcliff

Wendy E. Radcliff, Esq.

1418826.1

LEGAL NOTICE

United States District Court for Vermont

If you have lived or owned real property in or around Bennington or North Bennington, Vermont, in the area of PFOA exposure, you could get benefits from a class action settlement.

A settlement has been reached in *Sullivan v. Saint-Gobain Performance Plastics Corp.,* a class action lawsuit filed by residents in the Bennington area alleging contamination of their property and drinking water with a chemical called Perfluorooctanoic Acid ("PFOA"). The U.S. District Court for the District of Vermont will hold a Final Approval Hearing on April 18, 2022, 10:00 am, at the Rutland Federal Courthouse.

The settlement provides:

- **Money for property damages** to Property Class members, people who: (1) owned residential real property in the Zone of Concern—an area of PFOA exposure defined by the Vermont Department of Environmental Conservation (DEC) in Bennington, North Bennington and some properties with a Shaftsbury address—on March 14, 2016; or (2) purchased residential real property after March 14, 2016, that was later added to the Zone of Concern.
- **Funding for a Court-Supervised Medical Monitoring Program** for Exposure Class members, providing free testing and monitoring, which does not duplicate their current primary care, for early detection of certain diseases. You are an Exposure Class member if you: (a) resided in the Zone of Concern on or before August 23, 2019; (b) ingested drinking water with PFOA in the Zone of Concern; and (c) have a blood serum test with a PFOA blood level above 2.1 parts per billion ("ppb"). If you meet the first two criteria, but have not yet had a blood test, the Medical Monitoring Program will make one available to you free of charge within the first 90 days of the Program.
- **You may be a member of both the Property Class and the Exposure Class.**

A more detailed Class Settlement Notice, the Settlement Agreement, a Claim Form, and an Opt-Out form can be found at www.BenningtonVTClassAction.com, or requested by emailing info@benningtonvtclassaction.com, or by calling 866-726-3778.

Your legal rights are affected regardless of whether you act or don't act. If you are a property owner in the Zone of Concern, you must file a Claim Form to receive money for property damages. Unless you ask to be excluded (opt out) from the Property Class, no later than February 2, 2022, to maintain your right to pursue your own separate lawsuit against Saint-Gobain, you will be bound by the Settlement and Release of Claims, whether you file a Claim Form or not. If you are an Exposure Class member, you must file a Claim Form to participate in the Medical Monitoring Program. If you are an Exposure Class member, there is no opportunity to opt out and you will be bound by the Settlement and Release of Claims whether you file a Claim Form or not. You also have a right to object to the Settlement, no later than February 2, 2022. If you do nothing you will not get a payment or other benefits from this Settlement, and you will give up certain legal rights.

More information, including a detailed notice, is available at:
www.BenningtonVTClassAction.com , by emailing info@benningtonvtclassaction.com ,
or by calling 866-726-3778.

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UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

JAMES D. SULLIVAN, *et al*., individually, and on behalf of a Class of persons similarly situated, *Plaintiffs*, v. SAINT-GOBAIN PERFORMANCE PLASTICS CORPORATION, *Defendant*.	Case No. 5:16-cv-00125-GWC Hon. Geoffrey W. Crawford

[PROPOSED] ORDER GRANTING INJUNCTIVE RELIEF

This is an environmental contamination case arising from the Perfluorooctanoic Acid ("PFOA") contamination in and around Bennington, Vermont. Plaintiffs James D. Sullivan, Leslie Addison, William Sumner, Ronald S. Hausthor, Gordon Garrison, Ted Crawford, Linda Crawford, and Billy J. Knight, on behalf of themselves and others similarly situated, brought this action against Defendant Saint-Gobain Performance Plastics Corporation alleging that Saint-Gobain is liable for the PFOA contamination of their properties under various tort and statutory causes of action. Plaintiffs consist of two certified classes: (1) an issue class for the purpose of determining liability only under Fed. R. Civ. P. 23(c)(4) consisting of owners of residential real property in the Zone of Concern seeking compensation for property damages allegedly caused by the PFOA contamination ("Property Class"); and (2) an Exposure Class of residents of the Zone of Concern who drank PFOA-contaminated water and have elevated PFOA levels in their blood and who are seeking medical monitoring.

Plaintiffs have reached a Class Settlement Agreement with Defendant Saint-Gobain that will resolve the action. The Settlement Agreement provides, among other things, for the establishment of a Court-supervised Medical Monitoring Program to provide specified clinical testing that does not duplicate primary care for the early detection of certain diseases for which Plaintiffs allege the Exposure Class members are at a higher risk due to their PFOA exposure.

WHEREAS, the Exposure Class was certified under Rule 23(b)(2) consisting of all persons who, as of August 23, 2019: (1) have resided within the Zone of Concern;[1] (2) ingested water with PFOA within the Zone of Concern; (3) and experienced an accumulation of PFOA in their bodies as demonstrated by blood serum tests disclosing a PFOA blood level above 2.1 parts per billion ("ppb") [Doc. 445 at 6 (May 10, 2021 Class Notice)];

WHEREAS, the Court has considered the Settlement Agreement and accompanying exhibits and other documents, which set forth the terms and conditions for the proposed settlement of the Exposure Class Claims;

WHEREAS, the Court preliminarily approved the terms and conditions of the Settlement on December 17, 2021 [Doc. 470];

WHEREAS, the Court held a Final Approval Hearing on April 18, 2022, with the Parties present through Counsel, heard presentations by Counsel concerning the Settlement, the implementation of the Notice Plan, Class Counsels' Motion for Attorney Fees and Expenses, and objections filed with the Court and the arguments of objectors;

WHEREAS, the Court issued a Final Approval Order on _____ approving the Settlement as fair, reasonable and adequate under Rule 23(e) and applicable case law [Doc. __];

[1] The Zone of Concern is defined in the Settlement Agreement, ¶ II.11, and is shown on the map previously filed as [Doc. 461-3].

Based on these considerations, as well as the considerations for the Preliminary and Final Approval Orders, [Docs. 470 & __],

IT IS HEREBY ORDERED THAT:

1. A Court-supervised Medical Monitoring Program shall be established according to the terms and conditions set forth in the Settlement Agreement and Exhibit C [Doc. 461-2]. The Medical Monitoring Program will provide specified clinical testing that does not duplicate primary care for the early detection of certain diseases for which Plaintiffs allege the Exposure Class members are at a higher risk due to their PFOA exposure. The Program will be subject to the Court's continuing jurisdiction and shall be administered by Edgar C. Gentle, III, according to the terms and conditions set forth in the Settlement Agreement and Exhibit C.

2. Saint-Gobain shall fund the Court-supervised Medical Monitoring Program up to a maximum of SIX MILLION DOLLARS ($6,000,000), as set forth below and in the Settlement Agreement and its Exhibit C:

i. **Initial Settlement Payment.** Saint-Gobain has, in accordance with the terms of the Settlement Agreement and the Court's Preliminary Approval Order, paid to a Qualified Settlement Fund (as defined in the Class Settlement Agreement, ¶ II.9), the sum of ONE MILLION, SIX HUNDRED THOUSAND DOLLARS ($1,600,000) to initially fund the Medical Monitoring Program.

ii. **Evergreen Funding Model.** If the initial funding of ONE MILLION, SIX HUNDRED THOUSAND DOLLARS ($1,600,000) is depleted to TWO HUNDRED AND FIFTY THOUSAND DOLLARS ($250,000), Saint-Gobain shall replenish it by making payments in increments of ONE HUNDRED THOUSAND DOLLARS ($100,000) to the Qualified Settlement Fund, not to exceed the Maximum Medical Monitoring Program Payment

Amount. Saint-Gobain shall pay the additional increments of funding to the Qualified Settlement Fund within thirty (30) days after the written notice from the Program Administrator.

iii. Saint-Gobain has provided reasonable assurances and guarantees, in the form of a bond, that it will make the funding available for the duration of the Program up to the Maximum Medical Monitoring Program Payment Amount. Saint-Gobain has submitted the bond to the Court and to Class Counsel, which has been approved by the Court as part of Final Approval.

Dated, the ____ day of _____, 2022.

_____
Geoffrey W. Crawford, Chief Judge
U.S. District Court

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

JAMES D. SULLIVAN, *et al*., individually, and on behalf of a Class of persons similarly situated, *Plaintiffs*, v. SAINT-GOBAIN PERFORMANCE PLASTICS CORPORATION, *Defendant*.	Case No. 5:16-cv-00125-GWC Hon. Geoffrey W. Crawford

[PROPOSED] FINAL APPROVAL ORDER

Plaintiffs James D. Sullivan, Leslie Addison, Ronald S. Hausthor, Gordon Garrison, Ted Crawford, Linda Crawford, and Billy J. Knight, on behalf of themselves and Members of the Property Class and Exposure Class, by and through Class Counsel, and Defendant Saint-Gobain Performance Plastics Corporation ("Saint-Gobain"), by and through its counsel, have submitted a Settlement Agreement ("Settlement") to this Court, and, pursuant to Plaintiffs' Motion for Preliminary Approval, the Court (1) preliminarily approved the Class Settlement on December 17, 2021 [Doc. 470]; (2) approved the Notice Plan and Notice; (3) appointed Mr. John Schraven as Special Master to review the fairness of the allocation of compensation to the Property Class; (4) appointed KCC Class Action Services LLC ("KCC") as the Property Settlement Administrator and directed Class Counsel to commence the Notice Program with KCC's assistance; (5) preliminarily appointed Mr. Edward Gentle as Administrator of the Court-Supervised Medical Monitoring Program for the Exposure Class; (6) approved the submitted Qualified Settlement Fund for deposit of Settlement funds by Saint-Gobain; (7) authorized parents or guardians to execute claims forms and other documents on behalf of minor children; and (8) and scheduled a

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Final Approval Hearing for April 18, 2022, to consider final approval of the Settlement, the application for attorneys' fees, expenses, and Class Representative Incentive Awards. Class Counsel filed their application for attorneys' fees and expenses on January 12, 2022 [Doc. 474]. The Court, pursuant to Fed. R. Civ. P. 23(e), has considered the terms of the Settlement, the exhibits to the Settlement Agreement, the record of proceedings, and all papers and arguments submitted in support, and now finds that the Motion for Final Approval should be, and hereby is, GRANTED.

ACCORDINGLY, THE COURT FINDS AND ORDERS:

1. This Court has jurisdiction over the subject matter of this lawsuit and jurisdiction over the Plaintiffs, including Members of the Property Class and Exposure Class, and Defendant Saint-Gobain, (the "Parties") for purposes of the Settlement.

SUMMARY OF THE LITIGATION AND SETTLEMENT

2. Plaintiffs filed this lawsuit against Saint-Gobain on May 6, 2016, [Doc. 1], alleging that, for over 20 years, Perfluorooctanoic Acid ("PFOA") was released from two facilities operated by Saint-Gobain and its predecessor in the Town of Bennington and the Village of North Bennington, Vermont, contaminating Plaintiffs' properties and blood with PFOA. Plaintiffs allege that Saint-Gobain is liable for the PFOA contamination of their properties and blood under various tort and statutory causes of action, including negligence, nuisance, and trespass. The Complaint was amended April 27, 2017, [Doc. 71], June 30, 2017, [Doc. 89], and October 5, 2017, [Doc. 113]. The substance and history of the litigation have been described in various Court Orders, including Docket Entries 29, 74, 300, and 303, and will not be repeated here.

3. Plaintiffs seek to obtain monetary compensation for their property damages, including diminution in value and loss of use and enjoyment of their properties, annoyance, upset

and inconvenience, and out-of-pocket expenses. Plaintiffs also seek damages and equitable relief for the unreasonable harm to groundwater caused by Saint-Gobain in violation of the Vermont Groundwater Protection Act, 10 V.S.A. § 1410. Plaintiffs further seek injunctive relief, including a medical monitoring program to monitor their health and diagnose, at an early stage, certain ailments.

4. Following a combined hearing on *Daubert* challenges to Plaintiffs' expert witnesses and class certification, this Court certified two Classes in 2019. [Doc. 303 (8/23/19)]. The Exposure Class was certified under Rule 23(b)(2), consisting of all persons who, as of August 23, 2019: (1) have resided within the Zone of Concern;[1] (2) ingested water with PFOA within the Zone of Concern; (3) and experienced an accumulation of PFOA in their bodies as demonstrated by blood serum tests disclosing a PFOA blood level above 2.1 parts per billion ("ppb"). [Doc. 445 at 6 (May 10, 2021 Class Notice)]. The Property Class was certified for purposes of liability only under Rule 23(c)(4) and consists of natural persons who owned residential real property in the Zone of Concern on March 14, 2016, as well as natural persons who purchased residential real property after March 14, 2016, that was subsequently added to the Zone of Concern. *Id.*

5. This Court appointed Mr. John Schraven as Settlement Master on April 6, 2017, and beginning in January 2020, the Court has conducted settlement conferences with Mr. Schraven and the Parties, both in-person and by video conference. A formal, in-person, mediation was held with Mr. Schraven and the Parties on August 26, 2020. Further discussions continued between the Parties with Mr. Schraven's assistance, until on July 9, 2021, the Parties reached an agreement in principle and executed a Confidential Settlement Term Sheet.

[1] The Zone of Concern is defined in the attached Settlement Agreement, ¶ II.12, and is shown on the map attached to the Settlement Agreement as Exhibit B.

6. The Parties then negotiated the detailed written Settlement Agreement and exhibits that are now before the Court.

7. The Settlement resolves all claims alleged by Plaintiffs against Saint-Gobain. It provides, among other things, that as consideration for the release from Property Class Members, Saint-Gobain will pay $26,200,000 (TWENTY-SIX MILLION TWO HUNDRED THOUSAND DOLLARS) into a Property Settlement Fund to compensate Property Class Members for alleged property damages, and that as consideration for the release from Exposure Class Members, Saint-Gobain will pay up to $6,000,000 (SIX MILLION DOLLARS), plus $1,950,000 (ONE MILLION NINE HUNDRED FIFTY THOUSAND DOLLARS) in attorney fees and expenses, to fund a Court-Supervised Medical Monitoring Program for Exposure Class Members over a period of fifteen years.

FINAL APPROVAL

8. Federal Rule of Civil Procedure 23(e) requires court approval of class action settlements. In general, the approval process involves three stages: (1) notice of the settlement to the class after "preliminary approval" by the Court; (2) an opportunity for class members to opt out of, or object to, the proposed settlement; and (3) a subsequent hearing at which the Court grants "final approval" upon finding that the settlement is "fair, reasonable, and adequate," after which judgment is entered, class members receive the benefits of the settlement, and the settling defendant obtains a release from liability. Fed. R. Civ. P. 23(e)(1)-(2), (4)-(5).

9. In deciding whether to grant final approval of a proposed settlement, the Court evaluates whether the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). "A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery."

Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96, 116 (2d Cir. 2005); *Hernandez v. Between the Bread 55th Inc.*, 496 F.Supp.3d 791, 798 (S.D.N.Y., 2020).

10. Under Federal Rule of Civil Procedure 23(e)(2), in considering whether a proposed settlement is "fair, reasonable, and adequate," the Court considers whether:

> (A) the class representatives and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the class is adequate, taking into account:
> (i) the costs, risks, and delay of trial and appeal;
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> (iii) the terms of any proposed award of attorneys' fees, including timing of payment; and
> (iv) any agreement required to be identified under Rule 23(e)(3); and
> (D) the proposal treats class members equitably relative to each other.

11. Based upon the Unopposed Motion for Final Approval and the final hearing held on April 18, 2022, the Settlement is procedurally fair, reasonable, and adequate in that the Class Representatives and Class Counsel have adequately represented the Property and Exposure Classes in litigating the merits of the dispute and in obtaining a Settlement of significant value through arm's-length negotiations between sophisticated counsel and under the auspices of an experienced mediator as well as the Court's oversight. Fed. R. Civ. P. 23(e)(2)(A)-(B).

12. Likewise, the Settlement is substantively fair, reasonable, and adequate in that the relief provided is substantial, particularly when taking into account the costs, risks, and delays of a liability trial, multiple damages trials, and any appeals. Fed. R. Civ. P. 23(e)(2)(C)(i).

13. The proposed method of distributing monetary relief to the Property Class Members is adequate, because it is relatively streamlined, requiring only submission of a Claim Form, with appropriate evidence of property ownership and residency, and few supporting documents, as specified in the Settlement. Similarly, for the Exposure Class, the eligibility criteria and the

procedure for enrollment in the Medical Monitoring Program are straightforward, and the Settlement provides for a blood test to determine eligibility for those potential Class Members meeting other eligibility criteria who have not yet been tested for PFOA. Fed. R. Civ. P. 23(e)(2)(C)(ii).

14. The Settlement is fair, reasonable, and adequate when taking into account the proposed award of attorneys' fees. Attorneys' fees will be paid only after Final Approval and only upon approval of the Court, which has considered and evaluated the request for fees in conjunction with final approval. Fed. R. Civ. P. 23(e)(2)(C)(iii).

15. The Parties have represented that there is one agreement required to be identified under Fed. R. Civ. P. 23(e)(3), which provides that Saint-Gobain shall have the right to terminate the Property Class Settlement Agreement in the event that less than a certain minimum percentage of Property Class Members participate in the Settlement, as determined by the number of properties for which the owners opt out of the Property Settlement as compared to the total number of properties in the Property Class. Due to the extremely low number of opt outs, Saint-Gobain has not invoked its right to terminate, and the Court finds that this provision of the Settlement Agreement is not relevant to the final approval.

16. Finally, the Court finds that the Settlement treats each Member of the two Classes equitably relative to one another, as required by Fed. R. Civ. P. 23(e)(2)(D). With respect to the Exposure Class Settlement, all Class Members who demonstrate eligibility and enroll in the Medical Monitoring Program will receive targeted diagnostic monitoring that does not duplicate their primary care, for early detection of certain diseases for which Plaintiffs allege these Exposure Class Members are at higher risk due to their PFOA exposure. The Exposure Class Settlement thus treats all Exposure Class Members equitably relative to each other.

17. Likewise, the Property Class Settlement treats the Property Class Members equitably relative to each other. Class Counsel have proposed an allocation method based upon the value of each property before March 14, 2016, which will utilize different percentages of that value for compensation depending upon the category of the property with regard to its water supply and the level of PFOA contamination of groundwater on the property. Additionally, Property Class Members who resided on their property will receive an additional payment for upset and inconvenience, and those who previously used wells, but were required to connect to municipal water, will receive a payment for some of their added costs of paying for municipal water as compared to the costs of a well. The Special Master has recommended that this allocation method for the different categories of Property Class Members is equitable, and the Court agrees.

18. In addition to satisfying the requirements of Rule 23(e)(2), the Court also finds that the proposed Settlement satisfies the Second Circuit's factors for class settlement approval set forth in *City of Detroit v. Grinnell Corp*., 495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds* by *Goldberger v. Integrated Res., Inc*., 209 F.3d 43 (2d Cir. 2000).

19. The Court has considered the Due Process rights of absent Class Members and finds that such rights are adequately protected.

NOTICE TO THE CLASSES SATISFIED RULE 23

20. Upon granting preliminary approval under Federal Rule of Civil Procedure 23(e)(1), the Court approved the proposed Notice and Notice Plan as being "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B).

21. The Court has reviewed the efforts of the Plaintiffs to provide Notice to Class Members pursuant to the Notice Plan and finds that the Plaintiffs satisfied the Notice Plan and the

requirements of Fed. R. Civ. P. 23(e)(1) and Due Process. The Notice provided incorporates the "plain language" guidelines and elements of the illustrative notice forms that the Federal Judicial Center developed for use in federal courts. The notice contained clear and concise information about the Settlement, including: (a) the fact of the Settlement of the Exposure Class and Property Class claims; (b) definitions of the Exposure and Property Classes; (c) a summary of the Settlement benefits; (d) a brief description of the case; (e) a statement concerning how attorneys' fees will be paid; (f) the options available to Class Members, including their right to obtain independent counsel at their expense; (g) the deadlines by which class members may object, (h) and the date, time, and location for the Final Approval Hearing. The Notice provided accurately summarized the key elements of the Settlement and was relatively simple and easily understood by the average class member.

22. The Court finds that the proposed Notice was the best notice that was practicable under the circumstances, especially because most Class Members received individual notice by mail to their home address based on available property ownership records. The newspaper and other publication notices supplemented these individual notices and were practicable means of reaching Class Members who may not receive the individual mail notice.

PLAN OF DISTRIBUTION FOR PROPERTY SETTLEMENT

23. The Court has carefully considered the plan of distribution for the proceeds of the Property Settlement to Property Class Members. Prior to Preliminary Approval, the Court and the Special Master discussed this plan with the Parties, and the Parties modified the plan based on these discussions. Prior to this Final Approval Order, the Special Master has further reviewed the plan and has recommended to the Court that the plan should be approved. The Court finds that the plan of distribution is fair and equitable among Property Class Members and is therefore approved.

COURT-SUPERVISED MEDICAL MONITORING PROGRAM

24. The Court has considered the Settlement Agreement for the Exposure Class, which provides details for the establishment and operation of a Court-Supervised Medical Monitoring Program after the Effective Date of the Settlement. The Court hereby approves the Exposure Class Settlement, and a separate Order Granting Injunctive Relief has been entered for the payments by Saint-Gobain for the establishment and operation of the Medical Monitoring Program.

25. Pursuant to the Settlement Agreement, Saint-Gobain has provided reasonable assurances and guarantees in the form of a bond to secure its agreed-upon payments during the fifteen-year Medical Monitoring Program. The Court has reviewed the bond and approves it as providing reasonable assurances for payment of Saint-Gobain's obligations under the Settlement Agreement.

EXCLUSIONS FROM AND OBJECTIONS TO THE SETTLEMENT

26. Class Counsel have furnished the Court with a final list of all timely and valid opt out requests for the Property Settlement. There were no Property Class Members requesting exclusion from the Property Settlement after Notice was given, and two out of ten of the Property Class Members who had previously opted out when the Property Class was certified opted back into the Property Class after the Notice of Class Settlement and receiving a letter from Class Counsel with an Opt-Out Revocation Form. Out of 2,345 properties in the Property Class, only eight property owners have excluded themselves from the Property Settlement. The Court finds this extremely small number of opt outs and the fact there were no new exclusions after the Notice of Property Class Settlement additional factors favoring final approval of the Settlement as fair. *See Wright v. Stern,* 553 F. Supp. 2d 337, 344-345 (S.D.N.Y. 2008) ("The fact that the vast majority of class members neither objected nor opted out is a strong indication" of fairness).

27. One untimely objection was filed with the Court and provided to Class Counsel by the Court. Class Counsel have addressed the substance of this objection in their response, and the Court has considered the objection, which pertains to the individual property owners' circumstances and assertion that their losses were greater than the amount they will receive under the Settlement. The Court sympathizes with the objectors but finds that the objection is not well taken because it would be impracticable in the administration of the Settlement to consider individual damages evidence for all Class Members who believe they have sustained greater damages than the Settlement provides. The Settlement generally treats class members equitably relative to each other based on the allocation methodology recommended by the Special Master and approved by the Court.

FILING CLAIMS

28. In the Preliminary Approval Order the Court approved the Parties' request to begin accepting and processing Claim Forms beginning thirty (30) days after the Preliminary Approval of the Settlement and before Final Approval. As the Parties have shown, this process has expedited the claims process.

29. As set out in the Settlement Agreement, Class Members may file claims for either the Property Settlement or the Exposure Class Settlement (or both) on or before [125 days after Final Approval].

30. As set out in the Settlement Agreement, potential Exposure Class Members filing timely claims who meet the other criteria for eligibility, but who have not had a blood test for PFOA, may request a blood test during the first 180 days of the Medical Monitoring Program.

INCENTIVE AWARDS FOR CLASS REPRESENTATIVES

31. The Settlement Agreement provides for Plaintiffs to seek Incentive Awards for Class Representatives to compensate them for their service to the Classes in this case. The Court finds that Incentive Awards are common in class settlements and that they are authorized by the Second Circuit Court of Appeals. *See e.g.*, *Knox v. John Varvatos Enterprises Inc*., 520 F.Supp.3d 331, 348 (S.D.N.Y., 2021), *appeal pending* ($20,000 award approved for one class representative); *see also Strougo ex rel. Brazilian Eq. Fund, Inc. v. Bassini*, 258 F. Supp. 2d 254, 263-64 (S.D. N.Y. 2003) (citing cases approving service awards). The Second Circuit recently held that such awards are not prohibited by U.S. Supreme Court precedent. *Melito v. Experian Marketing Solutions, Inc*., 923 F.3d 85, 96 (2d Cir. 2019). The Court finds that the Class Representatives have given time and effort to the prosecution of this class action, including responding to detailed discovery, appearing for depositions, and appearing for hearings before the Court. The Court therefore approves as reasonable an award of $10,000 to each of the Class Representatives, to be paid from the Property Settlement. The payment for Sandy Sumner, who is deceased, shall be paid to his estate.

ATTORNEY FEES AND EXPENSES

32. The Court has considered Class Counsel's Motion for an Award of Attorney's Fees and Expenses to Class Counsel filed on January 12, 2022 [Doc. 474], which was unopposed by Saint-Gobain. There were no objections from any Class Member to this Motion.

33. The Court has adopted the percentage-of-recovery method and has used the lodestar method as a baseline or cross check for the percentage requested, which is the trend in the Second Circuit for awards of attorney fees in common fund settlements. *See In re Eastman Kodak ERISA Litig*., 2016 WL 5746664, *2 (W.D.N.Y. 2016); *In re Colgate-Palmolive Co. ERISA Litig*., 36 F.

Supp. 3d 344, 348 (S.D.N.Y. 2014) (The "'percentage of the fund' method, [] is the trend in this Circuit," *citing Wal-Mart Stores, Inc. v. Visa U.S.A., Inc*., 396 F.3d 96, 121 (2d Cir. 2005).

34. Class Counsel have requested fees of $5,100,000 to be paid from the $26.2 million common fund for the Property Class Settlement and $1,500,000 to be paid in addition to the $6 million fund for the Exposure Class Settlement. The Court finds that these fee requests represent approximately 19% of the total benefits recovered for the two Classes in the Settlement, well below the 25% "benchmark" applied by courts within the Second Circuit.

35. Courts in the Second Circuit evaluate the reasonableness of attorney fees according to the following "*Goldberger* factors": "(1) the time and labor expended by counsel; (2) the size and complexity of the matter; (3) the risks involved in the litigation; (4) the quality of representation; (5) the relationship between the requested fee and the settlement; and (6) considerations of public policy." *Goldberger v. Integrated Resources, Inc*., 209 F.3d 43, 50 (2nd Cir. 2000); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc*., 396 at 121-22 (citing *Goldberger*, 209 F.3d at 47–48 ("What constitutes a reasonable fee is properly committed to the sound discretion of the district court . . . which is intimately familiar with the nuances of the case.")).

36. Based on the submissions of Class Counsel, the Court finds that each of these factors support the requested fees: (1) Class Counsel have spent more than 20,000 hours in this litigation over more than five years, including lengthy settlement negotiations; (2) the size and complexity of this environmental contamination class action are beyond dispute with over 2,000 properties involved and, as is typical of environmental contamination cases, numerous complex factual and legal questions, including class certification and *Daubert* challenges; (3) Class Counsel have taken great risk in prosecuting this case, involving arguably unsettled areas of Vermont law and highly technical questions of fact, on a fully contingent basis, and have advanced over $1

million of their own funds to finance this action with the risk that they would recover nothing; (4) Class Counsel have provided a high quality of representation in this case, which is reflected in the results obtained; (5) the requested fee for the Property Settlement, which is 19.5% of the total $26.2 million Settlement, and the fee for the Exposure Class Settlement, which is 18.9% of the total $7.95 million Settlement ($6 million + $1.95 million), are well below the 25% "benchmark" applied by courts within the Second Circuit. *See e.g. In re Warner Communications Securities Litigation*, 618 F. Supp. 735, 749 (S.D.N.Y. 1985) (collecting cases). *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litig.*, 991 F. Supp. 2d 437, 445 (E.D.N.Y. 2014); *Velez v. Novartis Pharm. Corp.*, 2010 WL 4877852, at *21 (S.D.N.Y. Nov. 30, 2010) (collecting cases); *Collins v. Olin Corp.*, 2010 WL 1677764, at *6 (D. Conn. Apr. 21, 2010); *Strougo ex rel. Brazilian Equity Fund, Inc. v. Bassini*, 258 F. Supp. 2d 254, 262 (S.D.N.Y. 2003); and (6) public policy considerations justify a substantial fee award because this case has presented issues of importance to the Bennington community and to Vermont as a whole, and the award of legal fees to class counsel serves to support the significant public policies in favor of identifying and compensating incidents of environmental contamination.

37. The Court has also considered the lodestar (hours reasonably expended times reasonable hourly rates) submitted by Class Counsel as a cross check of the percentage fee, which further demonstrates the reasonableness of the fees requested. Here, the aggregate lodestar for the three firms appointed as Class Counsel is nearly the same as the fee requested based on the percentage method. To perform the cross check, courts "divid[e] the proposed fee award by the lodestar calculation, resulting in a lodestar multiplier." *Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172, 183-86 (W.D.N.Y. 2011). Courts routinely recognize that a multiplier from two to six times the lodestar is reasonable. *See*, *e.g.*, *In re Telik, Inc. Securities Litigation,* 576 F.Supp.2d

570, 590 (S.D.N.Y. 2008) (citing cases); *Maley v. Del Glob. Techs. Corp*., 186 F. Supp. 2d 358, 369 (S.D.N.Y. 2002); *Athale v. Sinotech Energy Ltd*., 2013 WL 11310686, at *8 (S.D.N.Y. Sept. 4, 2013); *Johnson v. Brennan*, 2011 WL 4357376, at *20 (S.D.N.Y. Sept. 16, 2011) (collecting cases). Here, Class Counsel request a lodestar multiplier of just 1.19, which is at the low end of the range of what courts in this Circuit typically award.

38. The Court approves the requested fees as reasonable and awards Class Counsel $5,100,000 to be paid from the Property Settlement and $1,500,000 to be paid by Saint-Gobain in conjunction with the Exposure Settlement.

39. In addition to attorney's fees, the Court finds that Plaintiffs may also recover their expenses, including expert fees and incidental and necessary out-of-pocket expenditures. "Courts routinely note that counsel is entitled to reimbursement from the common fund for reasonable litigation expenses." *Fleisher v. Phoenix Life Ins. Co*., 2015 WL 10847814, at *23 (S.D.N.Y. Sept. 9, 2015). *See also In re Nortel Networks Corp. Sec. Litig*., 539 F.3d 129, 132 (2d Cir. 2008) (affirming award of $3.75 million in expenses); *In re Global Crossing Sec. & ERISA Litig*., 225 F.R.D. 436, 468 (S.D.N.Y. 2004); *Allen v. Dairy Farmers of Am., Inc*., No. 5:09-CV-230, 2016 WL 3361544, at *10 (D. Vt. June 14, 2016) ("Although [Plaintiffs'] expenses are substantial, they were 'incidental and necessary' to providing adequate representation, are not artificially inflated or otherwise in bad faith, and are therefore reasonable."). Class Counsels' declarations contain a summary of litigation expenses incurred for their representation of each Class, with an allocation of expenses for the Property Class and Exposure Class. Given the complexity and scale of this litigation, the need for several expert witnesses to assist in carrying Plaintiffs' burden of proof, and the lengthy evidentiary hearing on class certification and *Daubert* challenges, the Court finds these expenses are reasonable and approves their reimbursement as follows: $589,998 to be paid from

the Property Class Settlement and $445,107 to be paid in addition to the $6 million for the Exposure Class Settlement.

SETTLEMENT REVIEW AND ADMINISTRATION

40. The Court confirms the appointment of Mr. John Schraven as Special Master to review the proposed allocation of the Property Settlement, the appointment of KCC Class Action Services LLC ("KCC") as the Property Settlement Administrator, and the appointment of Edgar C. Gentle III as the Medical Monitoring Program Administrator.

SETTLEMENT PAYMENTS

41. The Court has previously approved a Qualified Settlement Fund within the meaning of United States Treasury Regulation § 1.468B-1, 26 C.F.R. § 1.468B-1 to be administered by KCC for payments by Saint-Gobain as required by the Settlement Agreement. The Parties have provided the Court documentation that Saint-Gobain has paid $26,200,000 into the Qualified Settlement Fund for the benefit of the Property Class and $1,600,000 as the initial payment for the benefit of the Exposure Class.

42. The Court directs payments from the Qualified Settlement Fund beginning on or before [35 days after Final Approval or the Effective Date, as defined in the Settlement Agreement, whichever is later] as follows:

a. $10,000 to be paid to each of the Class Representatives from the Property Settlement with the payment for Sandy Sumner, deceased, to be paid to his estate;

b. Payments to eligible Property Class Claimants to be distributed by KCC in accordance with the distribution plan;

c. Payments to establish and operate the Court-Supervised Medical Monitoring Program to be administered by Edgar C. Gentle III, as set out in the Settlement

Agreement.

d. $5,100,000 to be paid to Class Counsel as fees from the Property Settlement;

e. $589,998 to be paid to Class Counsel as expenses from the Property Settlement;

f. Payments up to $100,000 from the Property Settlement for KCC for administration of the Property Settlement, including the processing and payment of Claims and 77% of the costs of the Notice;

43. The Court directs Saint-Gobain to pay to Class Counsel on or before [35 days after Final Approval or the Effective Date, as defined in the Settlement Agreement, whichever is later] the attorney fees and expenses awarded for the Exposure Class as follows:

a. $1,500,000 as fees for the Exposure Settlement; and

b. $445,107 as expenses to be reimbursed for the Exposure Settlement.

OTHER PROVISIONS

44. The Court hereby adopts and incorporates the provisions of the Settlement Agreement as part of the Final Approval of the Settlement, including the release for members of the Exposure Class and Property Class.

45. The Court hereby approves the Settlement for all absent minor, incompetent and deceased members of the Exposure Class and Property Class.

46. The Court hereby bars and enjoins each member of the Exposure Class and Property Class from commencing, asserting, and/or prosecuting any and all Released Claims against any Released Party, as defined in the Settlement Agreement.

47. The Court approves the Litigation Settlement Bond previously sent to the Court and secured by Saint-Gobain in accordance with Section III.7 of the Settlement Agreement.

DISMISSAL AND FINAL JUDGMENT

48. THEREFORE, the Court hereby approves the Settlement Agreement and dismisses this action with prejudice and enters final judgment as to Saint-Gobain and the claims against it in this action pursuant to Federal Rule of Civil Procedure 54(b).

49. The Court retains continuing jurisdiction over the Medical Monitoring Program and the Qualified Settlement Fund, and retains continuing and exclusive jurisdiction over the Parties, the class members, and this Settlement, to interpret, implement, administer, and enforce the Settlement in accordance with its terms.

Dated at _____, in the District of Vermont, this ___ day of _____, 2022.

_____
Geoffrey W. Crawford, Chief Judge
U.S. District Court