

**U.S. DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY & HEALTH
ADMINISTRATION**

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AMIEL GROSS,	:	
	:	
Complainant,	:	OSHA Case No.:
	:	
-against-	:	
	:	<u>COMPLAINT</u>
COMPAGNIE DE SAINT-GOBAIN, SAINT-	:	
GOBAIN CORPORATION d/b/a SAINT-	:	
GOBAIN NORTH AMERICA, MARK	:	
RAYFIELD and TOM KINISKY, in their	:	
individual and professional capacities,	:	
	:	
Respondents.	:	
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Amiel Gross (“Mr. Gross” or “Complainant”), by and through his attorneys, Wigdor LLP, as and for his complaint against his former employer Respondents Compagnie de Saint-Gobain (“Saint-Gobain” or the “Company”), Saint-Gobain Corporation d/b/a Saint-Gobain North America (“SG North America”), Mark Rayfield, Chief Executive Officer (“CEO”), in his individual and professional capacity, and Tom Kinisky, Chairman, and the former CEO, in his individual and professional capacity, (collectively, “Respondents”), hereby alleges as follows:

NATURE OF ACTION

1. Complainant brings this action to recover damages arising from Respondents’ unlawful termination of his employment, and unlawful post-employment conduct, in retaliation for his protected whistleblower activities in violation of the Safe Drinking Water Act (“SDWA”), 42 U.S.C. § 300j-9(i), the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9610(a), and § 806 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A (the “Sarbanes-Oxley Act”).

2. This case involves a large multinational corporation, Saint-Gobain, that processed a toxic chemical, PFOA, responsible for polluting the environment, contaminating human drinking water supplies and persisting in the blood streams of thousands of adults and children living near at least three of its factories. The national spotlight focused on Saint-Gobain and its legacy of toxic PFOA pollution only because a brave resident, whose father worked at the one of the Company's factories and died of cancer, decided to test the local tap water. Massive media attention, governmental agency scrutiny and class action litigation ensued. Several years later, an internal lawyer for the Company, Complainant, discovered there were in fact other Company factories where the toxic chemical was also processed for decades under similar, pollution-generating conditions. The lawyer immediately sounded an internal alarm and escalated the issue to the highest levels; principally, he warned others that the company had a duty to fully investigate, rule out contamination of nearby drinking water sources and ensure other communities were not unknowingly consuming the same toxic chemical. In response, senior leadership of Saint-Gobain instructed him to look the other way, punished him with termination and continued to retaliate against him to this day. This case seeks to remedy Saint-Gobain's egregious, ongoing corporate misconduct.

PARTIES

3. Complainant Amiel Gross is a former in-house lawyer for Respondents. At all relevant times, Mr. Gross worked at Respondents' U.S. headquarters located in Malvern, Pennsylvania.

4. Respondent Saint-Gobain is a manufacturer of building materials that are primarily supplied to the construction industry. Saint-Gobain is a publicly traded company based in Paris, France, with annual revenue estimated at \$44.2B. It operates in 70 countries and

employs approximately 171,000 individuals. Saint-Gobain's shares are listed on the NYSE Euronext exchange ("SGO"), ISIN Code: FR0000125007. Saint-Gobain is part of the Global Dow Index, a 150-stock index of corporations from around the world, created by Dow Jones & Company.

5. Respondent Saint-Gobain is regulated by the U.S. Security and Exchange Commission ("SEC"), with SEC CIK No. 0001012037 and Ticker: CODYY.

6. Respondent SG North America is a wholly owned and controlled subsidiary of Saint-Gobain located in Malvern, Pennsylvania.

7. Saint-Gobain controls and directs its subsidiary SG North America.¹ Saint-Gobain's Board of Directors ("Board") considers SG North America one of a select number of its subsidiaries that it classifies as entities within the "Saint-Gobain Group." Subsidiaries within the Saint-Gobain Group are "controlled" directly or indirectly by the parent, Saint-Gobain, headquartered in Paris, France.²

8. Respondent Mark Rayfield became the CEO of SG North America in February 2019 and continues in that position through the present. At all relevant times, Mr. Rayfield supervised the employment of Complainant and, accordingly, was an "employer" under the Sarbanes-Oxley Act, the SDWA, CERCLA and any and all other applicable statutes.

9. Respondent Tom Kinisky was the former CEO of SG North America until February 2019 when Mr. Rayfield succeeded him. At that time, Mr. Kinisky took over the role of Chairman of SG North American and also became the Chief Innovation Officer for the parent company, Saint-Gobain. At all relevant times, Mr. Kinisky supervised the employment of

¹ <https://www.saint-gobain.com/en/group/corporate-governance>.

² *Id.*

Complainant and, accordingly, was an “employer” under the Sarbanes-Oxley Act, the SDWA, CERCLA and any and all other applicable statutes.

FACTS

I. SAINT-GOBAIN AND ITS CONTROL OF SG NORTH AMERICA

10. Saint-Gobain is a publicly traded company founded in 1665 and based in Paris, France. Shares in Saint-Gobain are listed on the NYSE Euronext exchange (“SGO”).

11. Presently, Saint-Gobain operates in 70 countries and employs approximately 171,000 individuals. Consistently ranked on the Fortune Global 500 list, it is one of the largest companies in the world.

12. Saint-Gobain’s wealth and resources are staggering. In 2019, the Company increased its profits by 207%, and its annual revenue is estimated at \$44.2B.

13. Saint-Gobain wholly owns and controls a number of subsidiaries across the globe that it classifies as entities within the “Saint-Gobain Group.”³ As explained by Saint-Gobain, all subsidiaries within the Saint-Gobain Group are “effectively controlled” directly or indirectly by Compagnie de Saint-Gobain, the parent company headquartered in Paris.

14. SG North America, headquartered in Malvern, Pennsylvania, is an integral part of the Saint-Gobain Group. Saint-Gobain’s dominance, command and control of its SG North America subsidiary run deep in the organization.

15. First, SG North America executives formally report to Saint-Gobain executives in Paris. Specifically, senior executives of SG North America, including the CEO, Mr. Rayfield,

³ <https://www.saint-gobain.com/en/group/our-main-brands>.

and Mr. Kinisky before him, report directly to senior executives of Saint-Gobain. Control through direct reporting is therefore an institutionalized feature of the group structure.⁴

16. Second, Saint-Gobain executives, including the Chairman and CEO Pierre-André de Chalendar, among others, sit on the SG North America Board of Directors. Thus, decisions on behalf of SG North America are made directly by Saint-Gobain executives, the senior-most of which serves on both Boards.⁵

17. Third, with respect to the most significant corporate actions, SG North America executives lack ultimate decision-making authority and require approval from direct-report Saint-Gobain executives. For example, “Project Horizon,” involved SG North America’s efforts to transfer all of a subsidiary’s asbestos liabilities into a newly formed company. As part of Project Horizon, the new company then filed a pre-planned bankruptcy after approximately 90 days.⁶ Although the execution for Project Horizon took place in the U.S., the final decision-making and authority was made by the top Saint-Gobain executives in Paris, principally Pierre-André de Chalendar, Benoit Bazin, Antoine Vignial and Sreedhar N. Without such approval, SG North America could not have restructured CertainTeed and forced the liability-laden spinoff into bankruptcy.⁷

⁴ <https://www.saint-gobain.com/en/group/corporate-governance>.

⁵ <https://www.saint-gobain.com/en/group/corporate-governance/executive-committee>.

⁶ *See In re DBMP LLC*, No. 20-30080 and 20-03004 (Bankr. W.D.N.C.)

⁷ In late August 2019, Mr. Gross was informed that Saint-Gobain senior executives in Paris were in the process of deciding whether to proceed with Project Horizon. He was further told that once the plan was ultimately approved by Saint-Gobain Chairman and CEO Pierre Andre de Chalendar and COO Benoit Bazin, the CertainTeed restructuring would commence in October 2019 and, after the minimum 90-day waiting period, the bankruptcy filing was a “done deal” in January 2020. Based on his own personal knowledge and experience, Mr. Gross was aware of the fact that ultimate decision-making authority for Project Horizon resided with, and only with, top Saint-Gobain executives in Paris, and that their approval of the CertainTeed restructuring was also a clear directive to file the Old CertainTeed asbestos bankruptcy at the earliest possible opportunity.

18. To be clear on the material issue of full control by Saint-Gobain over SG North America, the recent events in this analogous toxic tort matter show that Chairman and CEO Pierre-André de Chalendar and Benoit Bazin, among others, control the decision-making authority of Mr. Rayfield and other U.S. executives.⁸

19. Undeniably, with respect to the most consequential corporate matters and actions, including and especially significant strategic decisions involving high-profile toxic tort liability in the U.S., Saint-Gobain controls SG North America.

II. SAINT-GOBAIN'S PAST AND ONGOING ENVIRONMENTAL POLLUTION

20. As discussed *infra*, certain Saint-Gobain companies use a class of products that historically contained a dangerous chemical in its manufacturing operations called Perfluorooctanoic Acid (“PFOA”). On numerous occasions, Saint-Gobain has been accused of contaminating the environment with this chemical. Saint-Gobain has been ordered by federal, state and local agencies and regulators to pay tens of millions of dollars cleaning up and remediating toxic PFOA contamination of drinking water supplies in three local communities in Hoosick Falls, New York, Bennington, Vermont and Merrimack, New Hampshire.

21. The list of critical PFOA-related decisions made by Saint-Gobain for SG North America are extensive, but, by way of example only, include the following: (i) large capital expenditures for environmental remediation projects and infrastructure upgrades to deliver clean drinking water to local communities, (ii) blood testing of its own exposed employees, (iii) timing of pollution self-reporting to EPA, (iv) purchase of pollution control equipment – or failure to do so – for its U.S. factories emitting PFOA and other toxic PFAS, (v) moving or shutting down

⁸ Saint-Gobain’s ubiquitous control on similar issues extends to other global regions, for example, its decisions involving the UK Grenfell Tower fire tragedy.

facilities to avoid governmental agency regulations and (vi) toxicity evaluation and health monitoring.

22. Relevant in this case, also discussed *infra*, Saint-Gobain is a suspected responsible contributor to the contamination and pollution of other large public municipal drinking water supplies with PFOA in excess of allowable regulatory requirements, specifically Ridgewood New Jersey Water.⁹ Further, Saint-Gobain is aware that the subject facility in Wayne, New Jersey also presents a substantial, ongoing risk of PFOA contamination of nearby private drinking water wells, and yet willfully continues to take no meaningful action to investigate the problem.

23. Publicly, for at least the past four years, Saint-Gobain has consistently maintained in its principal external disclosure to, *e.g.*, shareholders, investors, financial analysts, ratings agencies and the global market, that its PFOA liability exposure and environmental impacts in the United States is limited and contained to three sites in Hoosick Falls, New York, Bennington, Vermont and Merrimack, New Hampshire. *See* Saint-Gobain Universal Registration Documents, Annual Financial and Corporate Social Responsibility Reports, 2016-2020. Based on the issues, Mr. Gross raised and sought to fully investigate, this position likely is materially incomplete and misleading.¹⁰

24. As discussed *infra*, it is within this context that Mr. Gross found himself at the helm of managing high profile litigation for Saint-Gobain surrounding serious allegations of

⁹ *See Ridgewood Water v. 3M Company, et al.*, BER-L-001447-19, Superior Court of New Jersey, filed Feb. 25, 2019; *see also Ridgewood Water v. 3M Company, et al.*, No. 19 Civ. 09651 (D.NJ) (Docket #5, Ex. 2, Declaration of David Terry).

¹⁰ It is also likely that the current reserve provision for PFOA matters is significantly under-reported based on the August 2020 estimated liability as quantified by the CFO of SG North America, Bob Panaro.

environmental contamination and human health at several manufacturing plants located in the U.S.

III. THE DANGERS OF PFOA

25. PFOA is a toxic, man-made compound that has been used in commercial products and industrial processes for over 60 years. PFOA is used in a variety of consumer products, including carpets, paper, and non-stick cookware. PFOA's resistance to chemical and thermal degradation makes it useful in the manufacture of water-, soil-, and stain-resistant coatings; fire-fighting foams; and other industrial uses.

26. Because carbon-fluoride bonds are among the strongest found in organic chemistry, PFOA is extremely stable and resistant to chemical reactions.

27. PFOA is not easily biodegradable, persistent in the environment and poses a significant risk to human health and safety.

28. Because PFOA is so persistent in the environment, it is able to travel far distances in surface and groundwater as well as in soil. PFOA can move rapidly in water and can migrate for decades. PFOA's properties mean that it does not bind well to soil and therefore migrates easily from soil to groundwater. Moreover, PFOA does not chemically degrade in the conventional treatment systems for drinking water.

29. When PFOA is applied or discharged in the manufacturing process, the chemical compound is frequently released into the environment, contaminating surface water and groundwater used as drinking water sources.

30. Unlike other environmental contaminants, PFOA emitted in the air can contaminate distant groundwater wells and can migrate through soil into groundwater.

31. PFOA has a half-life in the human body that is several years and can remain in the human body for up to eight years. PFOA, therefore, remains in the human body many years after exposure.

IV. THE HARM OF PFOA EXPOSURE TO HUMANS VIA DRINKING WATER

32. Drinking water contaminated with PFOA is toxic to humans and is particularly dangerous to young children and pregnant women.

33. Laboratory and epidemiological studies have consistently found that PFOA poses severe human health risks. Experiments conducted by the Environmental Protection Agency (“EPA”) have found that PFOA causes detrimental reproductive and developmental effects in animals.

34. Likewise, human epidemiological studies published by the EPA in 2016 found associations between PFOA exposure and heightened cholesterol, thyroid disorders and testicular and kidney cancers.

35. In 2015, as the scientific evidence of the toxicity of PFOA mounted, the EPA announced a safe drinking-water level of 400 parts per trillion. The EPA subsequently announced a safe drinking-water level health advisory of just 70 parts per trillion due to the extreme toxicity of PFOA, its persistence in the environment and its ability to migrate within water supplies.

36. Many states have gone even further than the EPA in defining how much PFOA is safe in drinking water. In 2017, for example, the State of New Jersey announced that drinking water could have no more than 14 parts per trillion to be considered safe. New Jersey’s standard is based on the recommendation of the Drinking Water Quality Institute (“DWQI”) within the New Jersey Department of Environmental Protection.

37. The DWQI has noted that PFOA has been connected to liver, bladder and testicular cancers, and has also been connected with non-carcinogenic conditions including delayed mammary gland development and increased liver weight.

38. PFOA has also been shown to have detrimental developmental impacts for young infants. Specifically, the DWQI has documented the high rate at which PFOA levels rise in infants through the first four months of life, often through breast milk and has also noted the presence of PFOA in umbilical cord blood.

39. Several other states, including New York, Michigan, New Hampshire, Vermont, California, Pennsylvania and others have proposed or enacted legislative measures to further regulate PFOA, lower standards and establish MCLs (Maximum Contaminant Levels).

40. Governmental health agencies in the United States and globally have consistently and increasingly warned of the toxicity of PFOA:

- PFOA and PFOS have been the most extensively produced and studied of these chemicals. Both chemicals are very persistent in the environment and in the human body – meaning they don't break down and they can accumulate over time. There is evidence that exposure to PFAS can lead to adverse human health effects... Studies indicate that PFOA and PFOS can cause reproductive and developmental, liver and kidney, and immunological effects in laboratory animals. Both chemicals have caused tumors in animals. The most consistent findings are increased cholesterol levels among exposed populations, with more limited findings related to: low infant birth weights, effects on the immune system, cancer (for PFOA), and thyroid hormone disruption (for PFOS)... Drinking water can be a source of exposure in communities where these chemicals have contaminated water supplies. Such contamination is typically localized and associated with a specific facility, for example, an industrial facility where PFAS were produced or used to manufacture other products... (U.S. Environmental Protection Agency) (<https://www.epa.gov/pfas/basic-information-pfas>).

- Today [February 22, 2021], the U.S. Environmental Protection Agency (EPA) issued two actions to protect public health by addressing per- and polyfluoroalkyl substances (PFAS) in drinking water, highlighting the agency's commitment to address these long-lasting "forever chemicals" that can enter drinking water supplies and impact communities across the United States. The Biden-Harris administration is committed to addressing PFAS in the nation's drinking water and will build on these actions by advancing science and using the agency's authorities to protect public health and the environment. (U.S. Environmental Protection Agency) (<https://www.epa.gov/newsreleases/epa-takes-action-address-pfas-drinking-water>).
- Research involving humans suggests that high levels of certain PFAS may lead to the following: increased cholesterol levels, decreased vaccine response in children, changes in liver enzymes, increased risk of high blood pressure or pre-eclampsia in pregnant women, small decreases in infant birth weights, increased risk of kidney or testicular cancer. (Agency for Toxic Substances and Disease Registry (ATSDR), CDC, U.S. Dept. Health & Human Services) (<https://www.atsdr.cdc.gov/pfas/health-effects/index.html>).
- The International Agency for Research on Cancer (IARC 2017) concluded that PFOA is possibly carcinogenic to humans (Group 2B) and EPA (2016e, 2016f) concluded that there was suggestive evidence of the carcinogenic potential of PFOA and PFOS in humans. Increases in testicular and kidney cancer have been observed in highly exposed humans. (Agency for Toxic Substances and Disease Registry (ATSDR), CDC, U.S. Dept. Health & Human Services) (<https://www.atsdr.cdc.gov/ToxProfiles/tp200.pdf>).
- The research conducted to date reveals possible links between human exposures to PFAS and adverse health outcomes. These health effects include altered metabolism, fertility, reduced fetal growth and increased risk of being overweight or obese, and reduced ability of the immune system to fight infections... [I]n 2016, NTP concluded that PFOA and PFOS were a hazard to immune system function in humans, based on evidence from prior studies. (U.S. National Institute of Environmental Health Sciences) (<https://www.niehs.nih.gov/health/topics/agents/pfc/index.cfm>).

V. TOXIC TORT CLASS ACTION LITIGATION AGAINST SAINT-GOBAIN

41. Saint-Gobain has been subjected to numerous Class Action litigation as well as litigation brought by individual personal injury plaintiffs in connection with Saint-Gobain's release of PFOA into the environment and drinking water supplies.

42. The first such Class Action, *Baker et al. v. Saint-Gobain Performances Plastics Corp.*, No. 16 Civ. 220, filed in the Northern District of New York in February 2016, involved a manufacturing facility owned by Saint-Gobain Performance Plastics ("SGPP"), a subsidiary of Saint-Gobain in Hoosick Falls, New York ("Hoosick Falls"). In that case, the plaintiffs alleged that SGPP negligently used and disposed of a chemical, PFOA, in a manner that contaminated the municipal water supply.

43. Three more class actions regarding the Hoosick Falls facility followed that year in the Northern District of New York: *Tift et al. v. Saint-Gobain Performance Plastics Corp.*, No. 16 Civ. 292, in March 2016; *Hickey v. Saint-Gobain Performances Plastics Corp.*, No. 16 Civ. 394, in April 2016; and *Schrom et al. v. Saint-Gobain Performance Plastics Corp.*, No. 16 Civ. 476, also in April 2016.

44. All four cases were consolidated into a single class action, *Baker et al. v. Saint-Gobain Performance Plastics Corp.*, No. 16 Civ. 917, in July 2016. *Baker* remains in active litigation after the Second Circuit upheld the District Court's order denying the defendants' motion to dismiss claims for future medical monitoring of plaintiffs' PFOA blood levels, in June 2020. *See Baker v. Saint-Gobain Performance Plastics Corp.*, 959 F.3d 70, 71 (2d Cir. 2020).

45. Additionally, apart from these Class Actions, residents living near Hoosick Falls have filed over 50 individual tort claims against SGPP in the Northern District of New York,

alleging personal injuries caused by PFOA contamination, almost all of which remain in active litigation.

46. Further class action lawsuits followed, alleging PFOA contamination caused by the Bennington, Vermont (“Bennington”) and Merrimack, New Hampshire (“Merrimack”) facilities.

47. In May 2016, residents living near Bennington filed a class action, *Sullivan et al. v. Saint-Gobain Performance Plastics Corp.*, No. 16 Civ. 125, in the District of Vermont. This case remains in discovery on issues related to the extensive property damage caused by the PFOA contamination, with a trial scheduled for the fall of 2021.

48. In June 2016, residents living near Merrimack filed a class action, *Brown v. Saint-Gobain Performance Plastics Corp.*, No. 16 Civ. 242, in the District of New Hampshire. The court consolidated *Brown* with two separately filed tort claims late in 2016 and, after extensive discovery, the case is currently scheduled for trial in spring of 2022.

49. After the contamination was discovered in Hoosick Falls in 2014, the situation and ensuing lawsuits received immense media coverage, including about whether the Saint-Gobain sites would be classified as Superfund sites. For example, as detailed in a May 2017 article in *The Intercept*, the health issues were complex and innocent citizens were subjected to further uncertainty by the politics surrounding the issues:

Since the contamination was discovered in 2014, “there’s been a lot of fear,” said Rob Allen, the mayor of Hoosick Falls. Testing has shown many people in Hoosick Falls, including Allen’s four children, have elevated levels of PFOA in their blood. Allen and others in the town are still awaiting the official Superfund designation, which they hope will help speed the process of cleaning up the pollution and securing a new water source. “We need all the help we can get,” he explained.

Susan Bodine, whom Trump nominated on May 12 to be assistant administrator for the [Environmental Protection Agency's] Office of Enforcement and Compliance Assurance, according to lobbying records, Bodine also lobbied for Saint-Gobain Containers, a division of Saint-Gobain, one of two companies blamed for contaminating the drinking water in Hoosick Falls, New York. She represented the company from 2010-2014 while she was a partner at Barnes & Thornburg In a written statement provided to The Intercept, Saint-Gobain emphasized that it does not want its property in Hoosick Falls to be designated a Superfund site.¹¹

50. In fact, media coverage of the PFOA litigation continues through the present. In an article published by *The Guardian* on February 15, 2021, concern about physical damages from the contamination continues to haunt residents of Hoosick Falls:

Maryann Jacobs' heart was pounding as she opened her letterbox one snowy morning last year in Hoosick Falls, a small town in upstate New York bordering Vermont and Massachusetts. Inside was an envelope from the New York state department of health which she knew would reveal the results from a second round of testing for several chemicals that are part of a group of about 5,000 perfluoroalkyl substances, or PFAS (often referred to as "forever chemicals"), in her family's blood. Inside that envelope was devastating news that her baby son Oliver's results were worse than she had feared....

By breastfeeding Oliver from 2017 to 2019, Jacobs had unwittingly transferred the chemical to him – a chemical she had come to know was classified as a carcinogen by the International Agency for Research on Cancer. Even low exposures of PFOA had been linked to several types of cancers, many of which had become common in Hoosick Falls.¹²

51. In addition to initial and ongoing media coverage about the Class Actions, Saint-Gobain faced intense pressure and oversight from New York State, including legislative hearings and the state's declaration that Hoosick Falls was designated as a Superfund site:

¹¹ <https://theintercept.com/2017/05/24/donald-trumps-pick-for-epa-enforcement-office-was-a-lobbyist-for-superfund-polluters/>.

¹² <https://www.theguardian.com/us-news/2021/feb/15/forever-chemicals-breastfeeding-contamination-pfas>.

“This enabled us to declare the Saint-Gobain site and the state superfund site only two days after listing PFOA as a substance. We’re holding the polluters accountable, Saint-Gobain and Honeywell, by placing them under consent orders, and to investigate and remediate their contamination.

See September 7, 2016 Joint Legislative Public Hearing before the NYS Assembly and Senate Committees on Water Quality and Contamination.

52. United States Senators Chuck Schumer and Kirsten Gillibrand from New York have commented publicly a number of times with respect to the Saint-Gobain situation in Hoosick Falls, as well as other U.S. Senators and Representatives with respect to the sites in Vermont and New Hampshire.

53. It is against this backdrop of intense pressure from the media, state environmental and government bodies, federal and state lawmakers and the court system that Mr. Gross entered the Class Action litigation on behalf of Saint-Gobain. As detailed below, from on or around January 2016 through his termination, Mr. Gross worked tirelessly and relentlessly to defend Saint-Gobain against the allegations in the Class Actions and related personal injury actions.

VI. MR. GROSS’S EMPLOYMENT AND ROLE IN THE PFOA LITIGATION

54. Mr. Gross graduated from the University of Texas School of Law in 1999.

55. Following graduation, Mr. Gross entered private practice where he spent over a decade at two prominent law firms defending product liability and mass tort actions.

56. There is no dispute that Mr. Gross is a highly accomplished and experienced lawyer in his field with a track record of success spanning well over a decade.

57. Saint-Gobain hired Mr. Gross in 2014 hoping to benefit from his unique experience and perspective as an attorney.

58. Mr. Gross quickly put his wealth of legal experience to use by handling a significant portion of a large mass tort docket for a Saint-Gobain subsidiary, CertainTeed Corporation in his first year with the company.

59. When Saint-Gobain first received notice of the potential Class Actions, Mr. Gross voluntarily stepped up to the immense challenge (the “Litigation”).

60. Notably, not a single one of Saint-Gobain’s in-house litigation lawyers – most of whom had worked at the company for years – came forward to defend Saint-Gobain against massive liability exposure.

61. Despite having worked for Saint-Gobain for only one year, Mr. Gross willingly threw himself into the Litigation. Because of Mr. Gross’s initiative and willingness to take on great responsibility, Saint-Gobain avoided having to hire a new lawyer to handle the Litigation.

62. Thereafter, Mr. Gross quickly distinguished himself as a highly capable litigator and proceeded to effectively navigate the explosive and complex claims.

63. With respect to the PFOA Litigation, Mr. Gross effectively reported to Carol Gray, at the time North America’s Deputy General Counsel, as well as North America’s General Counsel (“GC”), Tim Feagans.

64. For over four years, Mr. Gross managed the high-profile litigation day in and day out. The demands of the Litigation caused Mr. Gross to work countless 12-14 hour days and weekends, regularly responding to emails by 5:00 am every morning.

65. During these years of being “on call” 24/7, Mr. Gross made his personal and family sacrifices without complaint. Indeed, his tireless work was recognized by Saint-Gobain leaders, including Ms. Gray, Mr. Feagans and the CEO, Tom Kinisky.

66. Mr. Gross consistently received stellar reviews and feedback about the phenomenal work he performed on behalf of Saint-Gobain. He was well-liked and respected by his outside counsel and Saint-Gobain's internal lawyers and business personnel.

67. By all objective metrics, Mr. Gross was advancing squarely on a path to the role of North America's Assistant GC and a solid future at Saint-Gobain.

68. Throughout his employment with Saint-Gobain, no other litigation lawyer in the U.S. handled a case load even close to the responsibilities that Mr. Gross performed. Defending the Company against some of the largest and most aggressive plaintiffs' class action firms in the country, in a novel and sprawling new mass tort across multiple jurisdictions, Mr. Gross supervised all work performed by outside counsel, including prominent lawyers at among the leading law firms in the country.

69. Mr. Gross was the primary manager of a large outside counsel team, including nationally recognized partners and dozens of associates.

70. Mr. Gross's day-to-day work managing the Class Actions included all aspects of the defense and was extremely broad in scope, including, *inter alia*, fact development, e-discovery, document discovery, fact witnesses, current and former employees, regulatory, communications, government relations, pleadings, depositions, experts, internal reporting and ongoing business operations, among many other functions and responsibilities.

71. Despite the intense demands, year after year, Mr. Gross delivered an exceptional performance.

VII. PROTECTED ACTIVITY: MR. GROSS RAISES THE ALARM REGARDING RISK OF PFOA CONTAMINATION FROM OTHER SAINT-GOBAIN SITES

72. During the course of his work to reduce the exposure risk for Saint-Gobain in the Class Actions, Mr. Gross became aware that witnesses in the Litigation were providing

testimony about Saint-Gobain sites other than Hoosick Falls, Bennington and Merrimack (the “Other PFOA Sites”), where products associated with PFOA were historically present or used as a raw material in the manufacturing process.

73. After becoming aware of the issue, Mr. Gross immediately brought it to the attention of other Saint-Gobain lawyers. Specifically, in or around January of 2019, Mr. Gross raised the issue of Other PFOA Sites on a call, referred to internally as the “Weekly PFOA Lawyers Call.” Among the Saint-Gobain lawyers on the call were Brett Slensky and Ms. Gray. In fact, Mr. Gross included the topic of Other PFOA Sites on the call agenda.

74. Also around this time, Mr. Gross confided in another in-house lawyer that there may be a contamination issue with Other PFOA Sites and that he was looking into it.

75. In late February or early March 2019, Mr. Gross attended a late morning meeting with Ms. Gray and Mr. Kinisky in the Saint-Gobain Board Room at the North American corporate headquarters in Malvern, Pennsylvania. The purpose of the meeting was to discuss the status of a class certification hearing in connection with the Bennington, Vermont case. Mr. Gross vividly recalls the details of this meeting, including where he sat at the conference table, opposite Ms. Gray and Mr. Kinisky.

76. During the meeting, Mr. Gross stated that it would be advisable to look at the Other PFOA Sites where PFOA may have been historically processed. He indicated that the existence of these Other PFOA Sites was becoming known internally through the Litigation by way of documents and depositions. It was Mr. Gross’s recommendation that the Other PFOA Sites should be systematically examined for potential off-site environmental and drinking water contamination.

77. Disturbingly, Mr. Kinisky said in response:

**“Don’t do that. You know why?
If you look, you will find it.
If you don’t, you can say you didn’t know.”**

78. Equally troubling is that Ms. Gray said nothing. Of course, her silence was support for what Mr. Kinisky had just said.

79. In disbelief at the order to perpetuate intentional ignorance, Mr. Gross was at a loss for words. The conversation turned away from potential contamination related to the Other PFOA Sites.

80. Mr. Gross was more than disappointed at the clear directive issued by Mr. Kinisky and undeniably backed up by Ms. Gray’s tacit approval.

81. Ms. Gray’s silence and her subsequent conduct as discussed below, is further confounding and troubling based on the fact that as GC, she held the highest legal position in the Company, but also because at that time, she held a dual role as the Head of Environmental, Health and Safety for SG North America.

82. Nevertheless, because of his day-to-day involvement in the Litigation and knowledge about the information being developed, Mr. Gross understood the massive potential liability exposure faced by Saint-Gobain, as well as the potential for environmental and community exposure to PFOA in drinking water.

83. At a minimum, Saint-Gobain was on notice that additional drinking water contamination was a clear, identifiable risk.

84. Because of the potential impacts to public health and the possible contamination of drinking water sources located near the Other PFOA Sites, the head-in-the-sand strategy was not a responsible option. Mr. Gross was extremely conflicted by his instructions from the CEO

and enabling affirmation by the GC, but felt compelled by a moral duty to continue looking into the issue of the Other PFOA Sites.

85. Further, Mr. Gross was keenly aware of allegations in the Litigation seeking to hold Saint-Gobain liable for failure to test drinking water supplies at any point in time during the prior two decades. This duty, as one example only, is summarized as follows:

Despite almost certain knowledge that large quantities of PFOA had been emitted from McCaffrey Street and spread to the Hoosick Falls community, Saint-Gobain never tested the drinking water or soil in that community to ensure residents were not at risk until it was essentially forced to do so in 2015.... And Saint-Gobain continued to pay close attention (from afar) as the C-8 Science Panel conducted its work, the EPA Science Advisory Board issued a draft report characterizing PFOA as likely human carcinogen, and the C-8 Science Panel ultimately linked a number of human health conditions to PFOA exposure.... Yet with all this information, between 2003 and 2015, Saint-Gobain never took any action to investigate whether PFOA had contaminated the Hoosick Falls water supply. It never once during this time tested the Village drinking water, let alone the groundwater on its own site.... Because Saint-Gobain opted not to act on its near-certain knowledge of contamination in 2003, Hoosick Falls residents were needlessly exposed to PFOA for more than a decade. *Baker, et al. v. Saint-Gobain, et al.*, No. 16 Civ. 00917 (LEK)(DJS) (N.D.N.Y.) (Docket # 145 at pp. 31-32).

86. Mr. Gross knew steps had to be taken to assess whether there was a serious problem at the Other PFOA Sites. If there was an obvious problem, Saint-Gobain could address it. If there was not an obvious problem, then the Company would have maintained its duty to act reasonably based on the notice it had, and would have reasonable assurances that no further action was necessary.

87. Mr. Gross was extremely concerned about the potential for PFOA contamination at the Other PFOA Sites. Accordingly, he took it upon himself to investigate the potential for drinking water contamination surrounding these locations.

88. Because of how seriously Mr. Gross viewed this issue and because of the high-level of attention he devoted to uncovering latent liability and public health threats, it would be impossible to detail every action he took in connection with investigating the Other PFOA Sites.

For the purposes of providing examples of, we include the following:

- Mr. Gross tasked outside counsel to draft and provide him with memos on historical PFOA usage at the Other PFOA Sites based on information developed in the Litigation, including documents and witness testimony from depositions (“Law Firm Memos”).
- Specifically, Mr. Gross requested targeted electronic searches among the millions of documents collected in the Litigation to determine what other Saint-Gobain Performance Plastics sites processed PFOA-containing materials.
- Drafts of the Law Firm Memos were provided to Mr. Gross in late May and early June 2019. The findings revealed there were at least approximately ten current or former Saint-Gobain sites where PFOA-containing products were processed.
- Around that same time, Mr. Gross spoke with Mr. Slensky, an in-house environmental lawyer, about Saint-Gobain’s obligations to investigate sites where PFOA was used.
- Based on information in the Law Firm Memos, Mr. Gross began to prioritize his attention on two facilities where PFOA coating operations occurred, the processes most likely to result in PFOA release, one located in Wayne, NJ (“Wayne”) and another in New Haven, CT (“New Haven”).
- Wayne was a high priority for Mr. Gross because for approximately 40 years, PTFE liquid dispersions were used in a coating operation at the site. At the time of the Law Firm Memos, it was understood that PTFE liquid dispersions contained substantially more PFOA by volume (as opposed to granular and fine powder resins). Release *via* air dispersion was an obvious pathway, as evidenced by the giant air dispersion plumes experienced in Bennington and Merrimack. This was an especially likely scenario since the thermal degradation temperatures (*i.e.*, those at which PFOA is destroyed in the process) was becoming more clearly understood from experts in the Litigation to be potentially higher than previously known.

- Mr. Gross asked Jim Smith, an Environmental Health and Safety professional at Saint-Gobain, for information on the Wayne site. Mr. Smith provided Mr. Gross with certain information related to the New Jersey LSRP site investigation at Wayne. Notably, extremely high readings of PFOA were found in monitoring wells onsite.
- Mr. Gross's review of the Wayne file revealed a potable well survey indicating multiple open well permits within a half-mile and one mile radius of the site. The map further reflected a dense residential neighborhood beginning approximately a quarter-mile from the Wayne site.
- In this regard, Mr. Gross spoke to Mr. Smith and asked if people were actively using the open wells for drinking water. Mr. Smith did not know the answer. Even more concerning was the fact that Mr. Smith was completely unaware that air dispersion was a potential pathway for PFOA to groundwater.
- Further, Mr. Gross obtained the site's air permit, reflecting there were never any effective pollution controls (*i.e.*, "scrubbers" or reverse thermal oxidizers), which would have prevented or minimized PFOA release to the environment via air dispersion.
- Alarmed, in June 2019, Mr. Gross discussed the Wayne site with Ms. Gray and Mr. Slensky. Specifically, Mr. Gross said he was concerned that Mr. Smith was not adequately monitoring the LSRP or the site for potential PFOA release.
- In connection with the New Haven site, there were also extremely high PFOA readings onsite. However, unlike Wayne, there was no obvious indication in New Haven of residential drinking water sources in close proximity of the site. It was unclear whether the adjoining waterway, which apparently was highly contaminated with PFOA, served any drinking water sources, aquifers or watersheds.
- In connection with the Mantua, Ohio site, Mr. Gross asked Mr. Smith about the Company's responsibilities for environmental monitoring. He learned that Saint-Gobain was obligated to remediate the site.
- Disturbingly, Mr. Gross realized from a report that the Mantua Village municipal drinking water source well-field serving 1,200 residents was approximately 500 feet to 1,000 feet downgradient from the site. The similarities with Hoosick Falls, *i.e.*, immediate

proximity between the facility and the municipal drinking water source wells, was striking. However, Mr. Smith indicated PFOA was not being investigated in Mantua, and he was flummoxed even by the question being asked.

- Mr. Gross sent the Law Firm Memo detailing usage of PFOA at the Other PFOA Sites to Ms. Gray and Mr. Slensky.
- In fact, during the summer of 2019, Mr. Gross sent the memo to Ms. Gray at least twice, including once in response to her request for it.
- Mr. Gross also sent Ms. Gray and Mr. Slensky the Wayne off-site well survey and air permit showing inadequate controls for PFOA emissions.
- At this time, Mr. Gross told Saint-Gobain's lead environmental engineer for PFOA in Hoosick Falls, Bennington and Merrimack, about his concerns regarding the Other PFOA Sites.
- Mr. Gross conferred with Saint-Gobain's former general manager in Hoosick Falls and sector business leader, about his concerns regarding the Other PFOA Sites.

89. Undeniably, Saint-Gobain had knowledge of Mr. Gross's inquiries and the level of seriousness surrounding the potential environmental contamination from the Other PFOA Sites.

90. In July 2019, during a meeting in Ms. Gray's office, Mr. Gross specifically raised the prospect of punitive damages and even criminal liability in the event Saint-Gobain was deemed to have actual or constructive knowledge of drinking water contamination near the Other PFOA Sites and failed to act responsibly. Although Ms. Gray was visibly distressed by the topic, she failed to provide any indication that she intended to do anything about it.

91. Critically, Ms. Gray also failed to give Mr. Gross any clear guidance on how to proceed, leaving him to serve as the internal voice to the problem that undoubtedly led to a label as a "troublemaker."

92. Ms. Gray's intentional avoidance of the issue and failure to act was all the more egregious because, by this time, it was publicly known, for example, that the Saint-Gobain Wayne site was suspected by a local municipal water authority in nearby Ridgewood, New Jersey of polluting the Brunswick Aquifer, its sole public drinking water source, with PFOA.¹³

93. Despite the fact that the Ridgewood Municipal Water source wells were located a substantial distance from the Wayne facility and far outside the immediate one-mile zone where dozens of open potable drinking water wells had been identified on the Wayne off-site well survey, the only action item generated was that Mr. Slensky would look into it. In or around September 2019, Mr. Slensky, after claiming to consult with Saint-Gobain's Licensed Site Remediation Professional ("LSRP"), indicated that off-site PFOA contamination was being investigated on an abutting-property by abutting-property basis.

94. In Mr. Gross's view, this slow-motion plan was wholly insufficient. Ms. Gray and Mr. Slensky failed to suggest that they would expedite any investigation, content with hiding behind the plausible deniability of the LSRP's approach. But based on what Saint-Gobain knew, Mr. Gross believed that at a minimum, the Company was compelled to expedite off-site testing, move beyond abutting properties and prioritize residential properties shown on the survey within a quarter-mile, half-mile or one mile radius to be using potable drinking water wells. In short, Mr. Gross did not believe Saint-Gobain's duties, based on the considerable experience and corporate knowledge gained in Hoosick Falls, Bennington and Merrimack were in any way discharged by the passive reliance on the LSRP's lethargic and inadequate approach that lacked any sense of public health urgency.

¹³ *Ridgewood Water v. 3M Company, et al.*, No. 19 Civ. 02198 (U.S. District Court for the District of New Jersey) (the "Ridgewood Water Action").

95. In the fall of 2019, Mr. Slensky acknowledged in an email that the LSRP investigation of the Wayne facility could be subject to scrutiny from a toxic tort litigation perspective should off-site PFOA contamination of drinking water supplies ultimately be discovered. However, he was all too easily satisfied that reliance on the LSRP would give Saint-Gobain sufficient cover for any future claim that it should have done more, and done more earlier. Mr. Gross did not agree with or support this assessment, and he continued to question the failure to conduct off-site well testing in an expedited manner farther away from the facility.¹⁴

96. By 2020, Mr. Gross had communicated on numerous occasions with his superior Ms. Gray, as well as with other in-house Saint-Gobain lawyers, Saint-Gobain environmental engineers and business management, about the environmental and public health issues he ethically believed were imperative to examine.

97. Opting to ignore Mr. Gross's persistence about the Other PFOA Sites, Saint-Gobain acted in line with Mr. Kinisky's directive not to look because they may find something.

¹⁴ In contrast to Ms. Gray's rubber-stamp approval of Mr. Slensky's few and perfunctory updates on the Wayne site, Mr. Gross specifically continued to question the rigor of the offsite investigation. By this time, there was precedent in New Jersey that the NJDEP expected PFAS processors to, at a minimum, direct their LSRPs to expedite and enhance environmental and public health investigations to address suspected off-site PFAS drinking water contamination. Faced with knowledge of a similar problem arising from its New Jersey facility, Solvay Specialty Polymers and its LSRP embarked on a rigorous program of self-reporting and proactivity, *e.g.*, "expedited well search and sampling of private drinking water supply wells to assess possible PFAS drinking water impacts, regardless of source and in advance of any site-related environmental investigation." (see <https://d1lung6i9j8i9xc.cloudfront.net/wp-content/blogs.dir/123/files/2020/01/Solvay-Statewide-PFAS-Directive-Info-Request-Notice-to-Insurers-Public-Copy.pdf>).

VIII. PROTECTED ACTIVITY: MR. GROSS RAISES DUTY TO AMEND DISCLOSURES TO GOVERNMENTAL REGULATORS REGARDING QUANTITY OF PFOA USAGE AT SAINT-GOBAIN SITES

98. In early 2020, Mr. Gross was tasked with performing an analysis of options for shifting some of Saint-Gobain's mounting financial and legal liability to raw material suppliers who manufactured PFOA-containing products, principally 3M.

99. As a first step, Mr. Gross requested outside counsel perform targeted electronic searches among the millions of documents collected in the Class Action Litigation for historical evidence of 3M sales of PFOA products to Saint-Gobain sites in Hoosick Falls, New York, Bennington, Vermont and Merrimack, New Hampshire. Mr. Gross also interviewed several Saint-Gobain fact witnesses with first-hand knowledge of 3M product usage.

100. Notably, the investigation revealed purchases and use of a particular 3M fluorosurfactant ("F-143" or "Fluorad"), which contained 100% PFOA, in quantities substantially greater than previously known. Specifically, the research conducted by Mr. Gross uncovered the fact that Saint-Gobain historically purchased and used hundreds if not thousands of pounds of 3M Fluorad across the three sites.

101. Since this product was pure PFOA, it contained orders of magnitude more PFOA by volume than even the highest-content PTFE aqueous dispersions typically used in Saint-Gobain's operations.

102. Mr. Gross reported to Ms. Gray that, due to the internal findings of Saint-Gobain's relatively high intake of 3M's pure PFOA materials, the emissions output calculations and data previously disclosed to and relied upon by environmental regulators could be materially inaccurate and significantly understated. In the aggregate, unreported use of hundreds upon hundreds of pounds of material containing 100% PFOA could substantially enlarge the size,

characterization, intensity and scope of the known groundwater contamination plumes, as well as render existing air dispersion and hydrogeological models invalid.

103. Mr. Gross warned Ms. Gray that the applicable regulatory oversight bodies may be relying on flawed input data and failing to consider the relative potency of different PFOA-containing products used by Saint-Gobain. In the interest of transparency to regulators, Mr. Gross therefore suggested an update be provided regarding the recently discovered potency and large quantities of 3M F-143 now known in granular detail to have been historically processed at the Saint-Gobain sites.

104. Among the multiple agencies relying on quantitative and qualitative PFOA usage data provided by Saint-Gobain (and supporting expert reports derived therefrom) were New York Department of Environmental Conservation, Vermont Agency of Natural Resources, New Hampshire Department of Environmental Protection, and the U.S. EPA.

105. Ms. Gray opposed proactively raising or self-reporting the issue with any governmental agency or otherwise amending prior disclosures or consulting expert reports, and Mr. Rayfield did not disagree. Yet again, when Mr. Gross attempted to engage in responsible, protected environmental and public health-related activity, he was stymied by leadership, further sidelined and ultimately ousted.

IX. RETALIATION: MR. GROSS IS SIDELINED AND SAINT-GOBAIN BEGINS PUSHING HIM OUT

106. Prior to expressing his concerns about the Company's PFOA usage history and contamination risks at the Other PFOA Sites to Ms. Gray, Mr. Kinisky and others at Saint-Gobain, Mr. Gross's performance and commitment to Saint-Gobain were highly regarded. He received exemplary feedback about his relentless defense against the Class Actions and his management of the high profile, sensitive matter remained outstanding.

107. Yet, from the moment Mr. Gross expressed his belief that Saint-Gobain had a duty to fully investigate sites that presently or historically processed PFOA, Ms. Gray failed to take any effective or proactive position on the topic. Careful to never put in writing or an express verbal directive to cease working on the issues raised by the Law Firm Memos, Ms. Gray conveyed her wishes through less overt methods, such as by displaying annoyance, impatience and reluctance to get involved. Ms. Gray clearly let Mr. Gross know that she was angered to be saddled with the burden of dealing with the difficult issue and appeared to wish it had never been brought to her attention.¹⁵

108. Unquestionably, Ms. Gray's displeasure was transparent when, in October 2019, she bypassed Mr. Gross for an anticipated promotion. Saint-Gobain wanted Mr. Gross to know that he was no longer its rising star. He was allowed to continue managing the Litigation, but it was clear he was raising too many difficult questions to ever assume a more strategic role at Saint-Gobain.

109. Recognizing the adverse employment decision for the obvious retaliation it was, Mr. Gross met with Ms. Gray two days later to express his concerns about being effectively demoted and the implications for his management of the PFOA Litigation. During this meeting over coffee, Mr. Gross referenced, among other things, the possibility that the Department of Justice could someday investigate Saint-Gobain's handling of PFOA. Ms. Gray became defensive and offended that he would even suggest such a possibility. It was clear that Ms. Gray had no interest in Mr. Gross's efforts to investigate the Other PFOA Sites or critically evaluate the conduct of the Company.

¹⁵ Later in time, Ms. Gray was equally dismissive of any suggestion that governmental regulators should be updated on Saint-Gobain's evolving internal knowledge of exactly how much (more) PFOA was contained in the raw materials it used for decades.

110. Ms. Gray operated in line with Mr. Kinisky's directive to not look for problems in order to not find problems.

111. In January and February 2020, Mr. Gross sent Ms. Gray two memos regarding his then current job description, roles and responsibilities, and proposals for the expansion of his duties. In addition to describing his core job function of managing existing PFOA Class Action and personal injury litigation, Mr. Gross included the likelihood of future work handling new litigation potentially arising from the Other PFOA Sites. Mr. Gross specifically referenced the Wayne, New Jersey site.

112. Shortly thereafter, Mr. Gross met with Ms. Gray in her office. Her demeanor was cold and detached. To Mr. Gross's surprise and dismay, Ms. Gray reminded him that if he were to leave the Company, he would need to give two weeks' notice. Mr. Gross was blind-sided. Ms. Gray then asked Mr. Gross how long he thought it would take to find a replacement for him if he were to leave suddenly. It was clear Ms. Gray intended to push Mr. Gross out of the Company.

113. Having made clear that he was seeking to obtain increased responsibilities, it was jarring to discover that Ms. Gray viewed him as a liability for suggesting that more PFOA Litigation was possible or that environmental regulators should be updated with PFOA usage data. Mr. Gross left the meeting knowing he was permanently blacklisted by Ms. Gray.

114. Also in February 2020, Mr. Gross attended a meeting in the Board Room in Malvern with Mr. Rayfield, Mr. Kinisky and Ms. Gray regarding the existing PFOA litigation. During the meeting, Mr. Rayfield expressed his view dismissively that PFOA was just another "asbestos problem" and raised the prospect of a Project Horizon-style bankruptcy plan to address it.

115. However, having previously been instructed by Mr. Kinisky to stop any investigation of the Other PFOA Sites, an order Ms. Gray ratified, Mr. Gross was unable to freely express his concerns at the meeting. Nor was he able to fully express his views on a duty to update regulators on Saint-Gobain's PFOA usage, which had been summarily vetoed by Ms. Gray.

116. Just weeks later, Ms. Gray announced her sudden retirement, to be effective July 31, 2020. No replacement was announced.

117. Later that week, the Malvern offices closed indefinitely due to Covid-19. The following weeks and months were spent, like many other professionals and organizations, adjusting to remote work conditions and learning how to conduct business in the new Covid-19 era.

118. In approximately May or June 2020, Ms. Gray instructed Mr. Gross to integrate and train another litigator in the department, Tom Field, on the PFOA Litigation. It was clear Mr. Gross's fate had been sealed by Ms. Gray, forcing him to endure the unenviable task of training his own replacement. Nevertheless, Ms. Gray undoubtedly made Mr. Gross's eventual termination a *fait accompli*.

119. During the summer of 2020, undeterred by Saint-Gobain's refusal to recognize the severity of potential public health risks, and indeed, by its hostility towards him for challenging the code of silence, Mr. Gross continued internal drafts of a memo of his Annual Goals.

120. Specifically, his memo included reference to his primary goal for the remainder of 2020, namely, to fully and properly have investigated all the Other PFOA Sites where PFOA may have been used and released.

121. The format of Mr. Gross's memo reflected that he intended to present the issue formally and transparently to Saint-Gobain and, hopefully, rule out the possibility of ongoing PFOA contamination. Further, Mr. Gross planned to formally recommend a hydrogeology expert be retained as a consultant to systematically assess the risk of contamination at Saint-Gobain's Other PFOA Sites.

122. After Ms. Gray's July 2020 departure, Mr. Gross felt a new sense of urgency to present these articulated goals to management – especially with the new leadership handling the PFOA issue in the GC and CEO positions.

123. While Mr. Gross sought the right time and opportunity to raise these issues with the new GC, he continued to formalize his Annual Goals.

124. Mr. Gross continued to further his efforts to learn about whether there could be a contamination of drinking water at the Other PFOA Sites. By way of one example, Mr. Gross routinely checked the Ohio Environmental Protection Agency website for well testing results in Mantua Village.

125. Mr. Gross continued to be concerned about Mantua Village because PFOA had been used there for many years and, troublingly, it was located in extremely close proximity to the municipal well-field. Mr. Gross wanted to know whether PFOA had been detected at elevated levels or levels that exceeded regulatory requirements.

126. Just weeks before being terminated, Mr. Gross specifically asked Mr. Slensky about the status of the Wayne, New Jersey site. There was no update in activity for the entire year, confirming that off-site well testing was still not progressing in a meaningful way, if at all.

127. Further, Mr. Gross followed the public disclosures surrounding PFOA groundwater contamination that was discovered in and around Garden Grove, California, the

location of another Saint-Gobain Performance Plastics site processing PFOA-containing raw materials for decades.

X. INCREASED RETALIATION: SHAM INSUBORDINATION INVESTIGATION AND MR. GROSS'S FIRING WITHOUT WARNING

128. On October 19, 2020, Mr. Gross was asked to be on a 10:00 am call with Natalie Abbot, the Head of Business Compliance, and Caitlyn Sylvestri, an employee in Human Resources (“HR”).

129. During this call, Mr. Gross heard for the first time that he was under “investigation.” The purported basis of the inquiry was “insubordination.” Principally, Mr. Gross was asked about certain disparaging words that he allegedly used regarding another employee.

130. Responding to the allegation of insubordination and attempting to explain his conduct, Mr. Gross provided Ms. Abbot and Ms. Sylvestri a summary of what he learned in the Class Actions and the work he had done, and planned to continue to do, in order to address Saint-Gobain’s potential for future liability exposure, as well determine whether public health threats existed at the Other PFOA Sites.

131. Mr. Gross detailed the chain of events for over half an hour, including his disclosures to Mr. Kinisky and Ms. Gray. The call ended at 11:15 am. After hanging up the phone, Mr. Gross immediately memorialized the conversation and specifically what he said about the Other PFOA Sites in an email that he sent at 12:31 pm to Ms. Abbott and Ms. Sylvestri.

132. At the same time Mr. Gross sent the email, Ms. Sylvestri and a different individual called Mr. Gross back and fired him.

133. As a result of the sudden termination, Mr. Gross's ability to earn income has been negatively impacted, and he has experienced emotional distress for being fired for simply doing his job in an ethical and conscientious manner.

XI. THE BASELESS, RETALIATORY THREATS TO BULLY AND SILENCE MR. GROSS POST-TERMINATION

134. Even after unlawfully terminating Mr. Gross, Saint-Gobain continued to relentlessly attack and threaten Mr. Gross as retaliation for his bravery in speaking the truth about the full extent of Saint-Gobain's harmful PFOA drinking water contamination.

135. This retaliation continues to the present.

136. Moments after being fired, Mr. Gross downloaded his Microsoft Outlook account (the "Outlook File") in order to preserve his contacts and calendar appointments.

137. Despite Saint-Gobain's knowledge that Mr. Gross did not download any data except what is contained within the Outlook File, of which Saint-Gobain is in possession at all times and therefore knows exactly what is contained therein, Saint-Gobain has relentlessly threatened Mr. Gross and made unsubstantiated accusations of misconduct related to the Outlook File.

138. In this regard, after he was fired, Saint-Gobain retained an outside law firm, Morgan, Lewis & Bockius LLP, to harass and threaten Mr. Gross.

139. These allegations were made in spite of the fact that it was Mr. Gross himself who voluntarily disclosed the existence of the Outlook File and affirmed in writing to counsel for Saint-Gobain that at no time did he duplicate or disseminate Saint-Gobain's confidential information or otherwise violate proprietary information protocols in connection with the Outlook File or the external drive on which the data was placed. Mr. Gross further affirmed that no Saint-Gobain data was stored on his mobile phone.

140. As Saint-Gobain knows, Mr. Gross’s work-related data was consistently backed-up and Saint-Gobain therefore has possessed the data *via* cloud storage at all times.

141. Despite Mr. Gross’s transparency and the fact that Saint-Gobain has had within its possession copies of all data and information accessed by Mr. Gross for the entire six years of his employment, Saint-Gobain has continued to baselessly harass, threaten and seek to punish Mr. Gross.

142. In a November 10, 2020 letter to Mr. Gross, Saint-Gobain wrote:

An off-boarding letter to you dated October 19, 2020 reiterated your ongoing obligations with respect to confidentiality and also reminded you of your continuing obligations to adhere to the Rules of Professional Conduct that governs you in your capacity as counsel. For the avoidance of doubt, this correspondence serves as an additional reminder that your obligations extend not only to Saint-Gobain **but also to your state bars. As of the date of this letter, the Company has not reported your conduct to any Disciplinary Boards or law enforcement authorities.**

143. To be clear, Saint-Gobain explicitly threatened to:

- Report Mr. Gross to his “state bars;”¹⁶
- Report Mr. Gross’s alleged conduct to Disciplinary Boards; and
- Report his alleged conduct to law enforcement authorities.

144. These reprehensible threats unquestionably “cross the line” from what ethics lawyers classify as “simply confirming” conduct to threatening to file an ethics complaint “to gain a tactical advantage.”¹⁷

¹⁶ Mr. Gross is a member of the state bars of New York, Pennsylvania and Texas.

¹⁷ As detailed in the 2015 New York City bar opinion widely referenced and relied on by numerous courts, it explains: “Threatening to file a disciplinary complaint against an adversary in order to gain a strategic advantage violates this rule, if the threat serves no substantial purpose other than to embarrass or harm the other lawyer or his client;” and “[u]nder certain circumstances, threatening to file a disciplinary complaint may violate New York’s law against extortion or other criminal statutes.” N.Y.C. Bar Assoc. Formal Op. 2015-5 (June 2015).

145. Brazenly, Saint-Gobain also threatened to harm Mr. Gross because he failed to return his laptop hard-drive until he received assurances that his personal family data would be appropriately safeguarded as a basis for heightened retaliation. Based on the retaliation to date, such concern by Mr. Gross was more than reasonable. In fact, Mr. Gross returned the hard-drive and all his devices by November 14, 2020, making clear that his fears about what Saint-Gobain would do with such things as his family photos caused him first to copy a portion of his personal information onto an external drive. Mr. Gross voluntarily told Saint-Gobain that at no time did he duplicate or disseminate Company confidential information or otherwise violate proprietary information protocols.

146. Thereafter, throughout December 2020 and January 2021, Saint-Gobain continued to threaten and harass Mr. Gross with the repercussions set forth in the November 10, 2020 letter *supra*, but then added the additional order that Mr. Gross submit his personal external drive to a forensic examination as well as sign a declaration under oath (“Declaration”) allegedly to “prove” exactly what he did or did not do between the time he was fired to the date of the signed Declaration, *i.e.*, to the present.

147. Justifiably concerned that Saint-Gobain would maliciously follow through with the outlandish threats of criminal conduct and reports to bar associations, disciplinary committees and “law enforcement,” as outlined in the November 10, 2020 letter, and even baseless assertions would decimate his reputation, Mr. Gross expressed his willingness in good faith to attest to his conduct – knowing that he did nothing wrong.

148. After receiving drafts of the proposed Declaration from Saint-Gobain, Mr. Gross disagreed with certain representations of his conduct and did not agree to sign it as written. Thereafter, Saint-Gobain continued to harass, threaten and seek to punish Mr. Gross.

149. In a letter dated February 6, 2021, Saint-Gobain continued its retaliation and claimed that Mr. Gross “wrongly saved” data belonging to Saint-Gobain:

“Given the file name and size, and considering the fact that it was created on the date of your termination from the Company, we have good reason to believe that you wrongly saved privileged and/or confidential emails (and associated materials) belonging to Saint-Gobain.”

150. The baselessness of such claims is demonstrated by the undeniable fact that at all times, Saint-Gobain had within its possession copies of all data and information accessed by Mr. Gross for the entire six years of his employment, and knows exactly what he downloaded and when, including on October 19, 2020 when it fired him. By this time, having been in possession of his laptop’s hard-drive for months, Saint-Gobain knew that Mr. Gross had downloaded less than 500 GB of data to an external device that consisted of years of his family photos (247 GB), personal family records (6.75 GB), family videos (43.2 GB), another file of family photos (15 GB) and backups of his family documents and photos (another 155 GB). Nevertheless, Saint-Gobain somehow required an invasive forensic examination of the entire external drive to confirm what they already knew and had been told by Mr. Gross.

151. Under no circumstances does such conduct render Saint-Gobain justified in its relentless threats to go to law enforcement authorities or state bar associations or disciplinary boards. By way of example only, the grounds for discipline in Pennsylvania are: conviction of a crime; willful failure to appear before the Supreme Court, Board, or Disciplinary Counsel; private or public informal admonition or reprimand; failure to continue meeting the requirements for licensure; lying on your state bar application; and failure to provide a statement of the respondent/attorney’s position after request by Disciplinary Counsel. *See* Pennsylvania Rules of Disciplinary Enforcement.

152. Despite Mr. Gross's attempts in good faith to address these post-termination retaliation matters, Saint-Gobain continued to ruthlessly threaten him.

153. As recently as March 8, 2021, Saint-Gobain continued to demand that Mr. Gross sign the Declaration.

154. Such malicious retaliation tactics are unlawful, and Saint-Gobain must be held accountable.

155. Saint-Gobain's ongoing severe and vicious retaliation against him for daring to speak out about the Company's obligations to further investigate potential PFOA contamination of drinking water at other sites owned by Saint-Gobain, has left Mr. Gross no option other than to seek legal recourse for Saint-Gobain's intentional harm.

156. Further, this heightened ongoing punitive retaliation has exacerbated the harm caused by the termination.

157. Mr. Gross was attacked for doing the right thing by placing the safety and health of potentially thousands of PFOA exposed residents ahead of the corporate bottom line. Fortunately, the law provides Mr. Gross a remedy.

FIRST CAUSE OF ACTION
(Retaliation in Violation of the Safe Drinking Water Act)
Against All Respondents

158. Complainant incorporates by reference all paragraphs above, as though fully set forth herein.

159. The Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300j-9(i), bars retaliation against an employee who assists in any "action to carry out the purposes of this chapter."

160. The U.S. Environmental Protection Agency ("EPA") promulgates guidance regarding PFOA and requires that state water systems monitor for PFOAs, by way of example

only, as explained at <https://www.epa.gov/pfas/basic-information-pfas#difference> (“*Drinking water* can be a source of exposure in communities where these chemicals have contaminated water supplies. Such contamination is typically localized and associated with a specific facility, for example, an industrial facility where PFAS were produced or used to manufacture other products, ... PFOA, PFOS, and GenX have been found in a number of drinking water systems due to localized contamination”).

161. Additionally, state regulatory authorities, including New Jersey, (*see* New Jersey Administrative Code, N.J.A.C. 7:10, Safe Drinking Water Act Rules) have specific directives regarding PFOA. *See* 7:10-5.2, *et seq.*

162. By Complainant’s actions as set forth above, Complainant engaged in protected activity. Mr. Gross had assisted or participated or was about to assist or participate to carry out the purposes of the SDWA when Respondents retaliated against him. Respondents’ retaliation is ongoing.

163. Mr. Gross suffered adverse employment action as a result of his efforts, and as such, the remedies provided by the whistleblower provision of the SDWA are available.

164. As a direct result of Saint-Gobain’s adverse employment actions, Mr. Gross suffered damages to his compensation, terms, conditions or privileges of employment, and he has and continues to suffer ongoing and further harassment.

165. Respondents are required to reinstate Mr. Gross to his former position together with the compensation (including back pay), terms, conditions and privileges of his employment, and he is further entitled to an award of compensatory damages, exemplary damages and attorneys’ fees and costs.

SECOND CAUSE OF ACTION
**(Retaliation in Violation of the Comprehensive Environmental Response, Compensation,
and Liability Act)**
Against All Respondents

166. Complainant incorporates by reference all paragraphs above, as though fully set forth herein.

167. The Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9610(a), bars retaliation against an employee who “causes to be filed or instituted any proceeding under this chapter.”

168. 42 U.S.C. § 9604(a)(1) of the CERCLA authorizes the U.S. government to investigate and remove hazardous and potentially hazardous substances.

169. The U.S. Environmental Protection Agency (“EPA”) promulgates guidance regarding PFOA and recommends that federal cleanup sites, by way of example only, screen for PFOA and set minimum remediation goals for addressing PFOAs, as explained at <https://www.epa.gov/pfas/interim-recommendations-addressing-groundwater-contaminated-pfoa-and-pfos> (“The guidance recommends: . . . Using a screening level of 40 parts per trillion (ppt) to determine if PFOA and/or PFOS is present at a site and may warrant further attention . . . Using EPA’s PFOA and PFOS Lifetime Drinking Water Health Advisory level of 70 ppt as the preliminary remediation goal (PRG) for contaminated groundwater . . .”).

170. By Complainant’s actions as set forth above, Complainant engaged in protected activity pursuant to the CERCLA. Thereafter, Respondents retaliated against Complainant. Respondents’ retaliation is ongoing.

171. Mr. Gross suffered adverse employment action as a result of his efforts, and as such, the remedies provided by the whistleblower provision of the CERCLA are available.

172. As a direct result of Saint-Gobain's adverse employment actions, Mr. Gross suffered damages to his compensation, terms, conditions or privileges of employment, and he has and continues to suffer ongoing further harassment.

173. Respondents are required to reinstate Mr. Gross to his former position together with the compensation (including back pay), terms, conditions and privileges of his employment, and he is further entitled to an award of compensatory damages, exemplary damages and attorneys' fees and costs.

THIRD CAUSE OF ACTION
(Retaliation in Violation of the Sarbanes-Oxley Act)
Against All Respondents

174. Plaintiff incorporates by reference all paragraphs above, as though fully set forth herein.

175. Mr. Gross was an employee of Saint-Gobain North America, a wholly owned and controlled subsidiary of Saint-Gobain that is a publicly traded company under the whistleblower protection of the Sarbanes-Oxley Act, 18 U.S.C. § 1514A(a). Saint-Gobain North America was and is under the direct control of Saint-Gobain.

176. Mr. Gross engaged in activity protected under 15 U.S.C. § 1514A because he provided information, caused information to be provided or otherwise assisted in an investigation regarding conduct that he reasonably believed constituted violations of 18 U.S.C. § 1341 (mail fraud), § 1343 (wire fraud), § 1344 (bank fraud), § 1348 (securities fraud), any rule or regulation of the SEC or any provision of federal law relating to fraud against shareholders. The information or assistance was provided to (or the investigation was conducted by) a federal regulatory or law enforcement agency, any member of Congress or any committee of Congress

or a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover or terminate misconduct).

177. Mr. Gross had both a subjectively and objectively reasonable belief that the conduct being reported violated a listed law, rule or regulation.

178. Saint-Gobain North America, including its CEO, Mr. Rayfield, its former CEO, Mr. Kinisky, as well as its General Counsel, Ms. Gray, and others, knew or suspected that Mr. Gross engaged in such protected activity.

179. At all times, the Board of Saint-Gobain controlled Saint-Gobain North America's CEO and its former CEO, as well as its former General Counsel, Ms. Gray.

180. Respondents unlawfully terminated Mr. Gross's employment in retaliation for his protected activity.

181. Mr. Gross's protected activity was a contributing factor to, and indeed the reason for, his termination and subsequent retaliation.

182. As a proximate result of Respondents' actions against Mr. Gross, as alleged above, Mr. Gross has been harmed in that he has suffered the loss of wages, benefits and additional amounts of money he would have received if he had not been subjected to said treatment.

183. Mr. Gross has also been harmed in that he has suffered reputational damage, economic and non-economic distress.

184. As a result of such conduct, Mr. Gross has suffered damages in an amount according to proof.

PRAYER FOR RELIEF

185. Complainant incorporates by reference all paragraphs above, as though fully set forth herein.

186. Respondents' aforementioned conduct was in violation of laws and regulations, including the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300j-9(i), the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9610(a) and Section 806 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A, entitling Complainant to an award of damages, including exemplary damages, in an amount to be established at a hearing, plus interest, and attorney's fees, costs and disbursements.

187. Complainant is seeking the following relief:

- A. Reinstatement;
- B. Back-pay, raises, bonuses, deferred compensation, benefits, reinstatement of seniority and tenure and other orders necessary to make him whole;
- C. An Order requiring the Respondents to abate and refrain from any further violations of the whistleblower provisions of the SWDA, the CERCLA and the Sarbanes-Oxley Act;
- D. An Order prohibiting the Respondents from disclosing any disparaging information about him ;
- E. Compensatory monetary damages in an amount according to proof;
- F. An award of punitive damages in an amount according to proof;


and

G. Reasonable attorney's fees for Complainant's attorneys and the costs of this litigation, including reimbursement of deposition fees, witness fees, travel expenses and other expenses to collect and produce evidence in this matter.

Dated: April 6, 2021
New York, New York

Respectfully submitted,

WIGDOR LLP

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