

STATE OF NEW YORK
SUPREME COURT COUNTY OF RENSSELAER

JAY BURDICK, CONNIE PLOUFFE,
EMILY MARPE,
as parent and natural guardian of E.Y., an infant,
and, G.Y., an infant, JACQUELINE MONETTE, WILLIAM
SHARPE, EDWARD PERROTTI-SOUSIS,
MARK DENUE and MEGAN DUNN,
individually, and on behalf of all similarly situated

**THIRD AMENDED
CONSOLIDATED
COMPLAINT**

**Index No.: EF2016-
253835**

Plaintiffs,

v.

TONOGA INC., (d/b/a TACONIC),

Defendant.

Plaintiffs, by and through their attorneys, as and for their Third Amended
Consolidated complaint against Defendant, allege as follows:

PARTIES

1. Plaintiff JAY BURDICK is a resident of Petersburg, New York, with a mailing zip code of 12138. Plaintiff Burdick is a homeowner who obtains his drinking water from the Town of Petersburg public water supply.
2. Plaintiff CONNIE PLOUFFE is a resident of Petersburg, New York, with a mailing zip code of 12138. Plaintiff CONNIE PLOUFFE is a homeowner who obtains her drinking water from a private well.
3. Plaintiff EMILY MARPE is a resident of the County of Rensselaer, State of New York with a mailing zip code of 12090 and a former resident of Petersburg, New York. Until early 2017 Plaintiff Marpe obtained her drinking water from a private well located near defendant's facility.

4. Infant Plaintiff E.Y. is an infant and child of Plaintiff Marpe and is a resident of the County of Rensselaer, State of New York with a mailing zip code of 12090. E.Y. was born in 2018.
5. Infant Plaintiff G.Y. is an infant over fourteen (14) years of age and child of Plaintiff Marpe and the County of Rensselaer, State of New York with a mailing zip code of 12090 and a former resident of Petersburg, New York Until early 2017 Plaintiff G.Y. obtained her water from a private well located near defendant's facility.
6. Plaintiff JACQUELINE MONETTE is a resident of Petersburg, New York, with a mailing zip code of 12138. Plaintiff MONETTE is a homeowner who obtains his drinking water from a private well.
7. Plaintiff WILLIAM SHARPE is a resident of Petersburg, New York, with a mailing zip code of 12138. Plaintiff SHARPE is a homeowner who obtains his drinking water from a private well.
8. Plaintiff EDWARD PERROTTI-SOUSIS is a resident of Petersburg, New York, with a mailing zip code of 12138. Plaintiff PERROTTI-SOUSIS is a homeowner who obtains his drinking water from a private well.
9. Plaintiff MARK DENUE is a resident of Petersburg, New York, with a mailing zip code of 12138. Plaintiff DENUE is a homeowner who obtains his drinking water from a private well.
10. Plaintiff MEGAN DUNN is a resident of Petersburg, New York, with a mailing zip code of 12138. Plaintiff DUNN is a homeowner who obtains her drinking water from a private well.

11. Defendant TONOGA INC, doing business as Taconic, is a foreign corporation with its principal place of business in Petersburg, Rensselaer County, New York.

GENERAL FACTUAL ALLEGATIONS

12. Between 1961 and the present, Defendant has owned and operated a facility in Petersburg, New York, located on or near New York State Route 22 and Coon Brook Road. At various times since 1961, Defendant has been known as “Taconic Plastics, Inc.,” “Taconic Plastics Limited,” and/or “Taconic.”

13. At all times mentioned herein, Defendant derived substantial revenue from services rendered in the State of New York.

14. At all times mentioned herein, Defendant Taconic Plastics expected or should have reasonably expected its acts and/or omissions to have consequences within the State of New York.

15. Upon information and belief, from 1961 through the present, Defendant utilized materials containing Perfluorooctanoic acid (“PFOA”) and/or its precursor, Ammonium perfluorooctanoate (“APFO”) (hereinafter jointly referred to as “PFOA”) in various manufacturing processes at its Petersburg Facility.

16. PFOA is a hazardous manmade substance and pollutant not found in nature.

17. Historically, PFOA has been used as a polymerization aid and as a surfactant in aqueous fluoropolymer dispersions (AFDs), including those sold under the trade name Teflon®, and in its pure form, as a wetting agent added by processors in coating AFD onto fabric and other substrates.

18. Companies also used AFD containing PFOA to make, among other things, carpets, clothing, fabrics for furniture, paper packaging for food and other

materials such as cookware that are resistant to water, grease or stains.

19. Due to human health concerns, in 2006 the United States Environmental Protection Agency (“EPA”) initiated the 2010/2015 PFOA Stewardship Program in which eight major companies committed to reduce facility emissions and product contents of PFOA and related chemicals on a global basis by 95% no later than 2010 and to work toward eliminating emissions and product content of these chemicals by 2015.
20. PFOA is a white solid at ambient temperature, but exists as a vapor when heated during the process of coating and Teflon® manufacturing.
21. When PFOA vapors exit through stacks at manufacturing facilities the PFOA vapors cool, condense and coagulate to form micro-sized particulates ranging from 0.1 µm to 1 µm in diameter that are then transported by wind until they precipitate out of the atmosphere and are deposited on the ground, including the soils in and around the vicinity of the facility.
22. Due to their chemical structures, PFOA is biologically and chemically stable in the environment and resistant to environmental degradation processes.
23. PFOA is particularly persistent in water and soil and, because it is water-soluble, migrates readily from soil to groundwater.
24. PFOA, in short, remains present in the environment long after initially discharged.
25. Ingestion of PFOA through drinking contaminated water, eating food cooked in contaminated water, and inhaling particulate matter in air and contaminated bathing water causes these chemicals to invade the body and accumulate in the

- blood and various organs, causing injury at the cellular and genetic levels.
26. There are a number of health risks associated with exposure to PFOA and these risks are present even when PFOA is ingested or inhaled at seemingly low levels (less than 1.0 parts per trillion (ppt)).
 27. Toxicology studies show that PFOA is readily absorbed after ingestion or inhalation exposure.
 28. PFOA has a long half-life in the human body of 2 to 9 years.
 29. PFOA binds to albumen in the serum and becomes concentrated in the liver and kidneys, which is especially concerning from a human health standpoint precisely because PFOA can stay in the environment and in the human body for long periods of time.
 30. When PFOA invades the human body it is associated with increased risk in humans of testicular cancer, kidney cancer, prostate cancer, non-Hodgkin's lymphoma, and ovarian cancer, as well as thyroid disease, high cholesterol, high uric acid levels, elevated liver enzymes, ulcerative colitis, and pregnancy-induced hypertension, as well as other conditions.
 31. Studies of PFOA exposure in animals have shown the ability to cause other cancers not yet associated with human exposure.
 32. The EPA has advised that exposure to PFOA may result in developmental effects to fetuses during pregnancy or to breastfed infants, liver damage, and various negative immunological effects.
 33. In May 2006, the EPA Science Advisory Board stated that PFOA cancer data are consistent with guidelines suggesting exposure to the chemical is "likely to be

carcinogenic to humans."

34. The health conditions set forth above can arise months or years after exposure to PFOA.

35. In 2009, the EPA identified PFOA as an emerging contaminant of concern and issued a provisional health advisory stating that short term (weeks to months) exposure to PFOA- contaminated water at a concentration of 400 parts per trillion (ppt) can cause human health effects.

36. The provisional health advisory stated that the discovery of PFOA in water above the advisory level should result in the discontinued use of the water for drinking or cooking.

37. Moreover, the EPA has established a PFOA Reference Dose (RID) of 0.000002 mg/kg/day developed from animal studies.

38. The Reference Dose is defined by EPA as an "estimate[] (with uncertainties spanning perhaps an order of magnitude) of the daily exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime."¹

39. Following the EPA's action in 2009, the State of Minnesota established a chronic health risk limit for PFOA in drinking water of 0.3 ppb (300 ppt).

40. In 2013, the State of New Jersey established a preliminary health-based guidance level of 0.04 ppb (40 ppt) in drinking water.

41. In September 2016, the New Jersey Department of Environmental Protection's Drinking Water Quality Institute recommended that the state lower its lifetime

¹ United States EPA, *Health Effects Support Document for Perfluorooctanoic Acid (PFOA)*, p. 4-1 (May 2016).

PFOA exposure level to 0.014 ppb (14 ppt).

42. In 2016, the State of Vermont established a drinking water advisory exposure level for PFOA of 0.02 ppb (20 ppt).
43. In May 2016, the EPA replaced its 2009 provisional health advisory with a new lifetime health advisory establishing that the presence of PFOA in drinking water at an individual or combined concentration greater than 70 ppt should require water systems to undertake remediation and public health officials to promptly notify consumers about the health risks associated with exposure to PFOA.
44. EPA health advisories are non-enforceable on the states.
45. Prior to January 2016, PFOA was an unregulated contaminant within the State of New York. In 2020, New York established a maximum concentration level (MCL) for PFOA in drinking water at 10 ppt.
46. As a result of their ingestion, absorption, inhalation and accumulation of PFOA inside their bodies, Plaintiffs, Infant Plaintiffs, and other class members similarly situated, have each suffered a personal injury by the invasion of their bodies by a toxic substance.
47. Once PFOA is ingested, inhaled or absorbed into the human body, this chemical is persistent, having a long half-life for removal, causing ongoing damage at the cellular and genetic levels as well as injuries to other bodily organs and systems.
48. The toxic invasion injury caused by the ingestion, inhalation or absorption and resulting accumulation of PFOA inside the human body has been associated in the medical and scientific literature with increased incidence of cancerous and non-cancerous conditions in humans and animals.

49. PFOA is a man-made chemical that should not be found in the human body.

Because of general environmental contamination, average PFOA levels found in the general population in 2016 was 1.56 ug/L.

50. Since the 2010/2015 PFOA Stewardship Program was initiated by EPA, the average levels of PFOA found in the general population has been steadily declining.

IMPROPER USE AND DISPOSAL OF PFOA IN PETERSBURGH

51. The Town of Petersburg, New York (the "Town") is located in northeast Rensselaer County.

52. The Town has a population of approximately 1,500 individuals, with approximately 587 households.

53. The Petersburg Water District operates and maintains the municipal water system which serves approximately 74 homes and 250 residents.

54. The remaining households in the Town rely upon private wells for drinking water.

55. Defendant Taconic commenced operations in the Town in or around 1961.

56. Defendant's facility is located at 136 Coon Brook Road, which is near Route 22 and the Little Hoosic River.

57. Since Defendant's facility opened, PFOA has been used in its manufacturing processes.

58. Among other things, Defendant has manufactured AFD-coated fabrics at its Petersburg facility.

59. In this process, Defendant's employees applied PTFE (polytetrafluoroethylene)

and other AFD to fabric materials and/or fiberglass.

60. One form of AFD utilized by Defendant was sold under the tradename Teflon®.

61. During this coating process, fabric materials and/or fiberglass were coated with AFD containing PFOA.

62. The coated fabric material and/or fiberglass was then run through coating ovens that dried, baked and sintered the fluoropolymer particles in the dispersions onto the material.

63. Taconic used over one dozen of these large ovens as part of its manufacturing process, some of which were heated with hot air and others by infrared radiation.

64. During the coating and drying process, heat would vaporize the PFOA, which was then discharged through the facility's stacks.

65. After exiting Defendant's stacks and cooling, PFOA vapors condensed and coagulated into fine particulate matter that was then transported by wind to the community and precipitated out of the air onto the ground throughout the Town.

66. Minute particles of PFOA discharged from Defendant's stacks were transported throughout Petersburg and deposited on the soil throughout the town. Many of these particles dissolved into rainwater percolating through the soil allowing PFOA to be transported to the groundwater.

67. During the 1990s, Defendant was fined by the New York Department of Environmental Conservation (DEC) on at least three separate occasions for excessive air emissions.

68. In 1997, DEC received complaints from individuals living near the Defendant's

facility who reported that they were experiencing illnesses caused by toxic chemicals emanating from Defendant's stacks.

69. DEC officials became aware at this time that Defendant's facility's high-heat processes rendered PFOA even more toxic as it left the plant's smokestacks.

70. Defendant also discharged wastewater containing PFOA into a septic system on the property which contributed to the PFOA contamination of the groundwater in the general vicinity of the Defendant's facility.

71. Until at least the late 1990s, water and liquid washed into the sinks and drains at the facility traveled into the septic system which allowed PFOA to seep into the groundwater.

72. Defendant's employees also disposed of liquid wastes, sludge, soiled rags, washcloths, paper towels, etc. containing PFOA that ultimately went into the Petersburg municipal landfill.

73. Upon information and belief, for decades waste containing PFOA was improperly sent to the Petersburg landfill from Defendant for disposal.

74. PFOA ultimately migrated from the landfill into the surrounding environment, including the soil and groundwater.

PFOA DISCOVERED IN THE MUNICIPAL WATER AND WATER OF PRIVATE WELL OWNERS

75. As early as 2004, Defendant obtained test results from wells on-site showing that PFOA was present in well water at concentrations as high as 152,000 ppt.

76. At or around this time, Defendant tested the drinking water at several residential properties it owned located adjacent to the facility and learned that most, if not

all, of the private wells in close proximity to its facility contained high concentrations of PFOA.

77.

78. Upon information and belief, Defendant rented these same properties out to unsuspecting tenants but advised them not to drink the water.

79. In 2005, Defendant installed a carbon-filtration system on the wells at its plant to remove PFOA from the water before it was used at the facility.

80. Around this same time, Defendant sent a letter to the DEC stating that it had detected PFOA in groundwater, with some tests showing concentrations as high as 13,700,000 ppt.

81. Defendant took no steps at this time to install carbon filtration systems on the private wells of the residential properties it owned.

82. Although Defendant informed tenants of homes it leased on its property not to drink the water, it did not convey the danger posed by exposure to PFOA to those residents.

83. Furthermore, Defendant took no steps at this time to inform residents of the Town generally that it had discovered high concentrations of PFOA at and around its facility and in the drinking water wells of nearby homes it owned.

84. Defendant tested its on-site wells again in January 2006, following installation of the carbon filtration system. At this time, PFOA was detected at concentrations of 18,000 ppt, 25,000 ppt, and 1,480 ppt.

85. In or around February 18, 2016, the Town began testing the municipal water supply for the presence of PFOA.

86. On February 20, 2016, New York State officials recommended that the approximately 74 households dependent on municipal water stop drinking water from their taps or cooking with their tap water.
87. Tests of the municipal water ultimately returned results showing PFOA concentrations of approximately 95 ppt.
88. Spurred by a PFOA contamination crisis in nearby Hoosick Falls, New York, on January 27, 2016, Governor Andrew Cuomo announced an emergency regulation to classify PFOA as a hazardous substance.
89. The State set a temporary exposure level of 100 ppt-above which individuals should not drink or cook with the water.
90. On February 21, 2016, Rensselaer County officials announced that the County would test 47 homes on private wells within a half mile radius of the Taconic facility.
91. The County also began providing free bottled water to Town residents on February 21, 2016.
92. On March 8, 2016, Defendant agreed to pay for installation of a carbon filtration system for the municipal water supply.
93. On March 15, 2016, County officials said that they had tested the water at approximately 50 homes within a half mile of the Taconic facility, and nearly half of those samples showed PFOA concentrations above 100 ppt.
94. Over the course of the next several weeks, the County continued to test additional private wells for the presence of PFOA and other chemicals and gradually expanded the geographic scope of its testing to properties within a one

mile radius of the facility.

95. By May 16, 2016 the County had collected at least 25 tests from private wells which showed PFOA concentrations between 21 and 100 ppt, 32 tests between 101 and 1000 ppt, and 15 tests showing PFOA over 1,000 ppt.
96. On May 19, 2016, the New York DEC declared the Taconic facility on Coon Brook Road a State Superfund site, designating it as a Class 2 Inactive Hazardous Waste Disposal Site constituting a significant threat to public health and/or the environment.
97. In early July of 2016, DEC confirmed that preliminary testing on the leachate from the Town landfill showed PFOA concentrations in excess of 4,000 ppt.
98. By mid-July of 2016, County officials had determined that over 50 private wells tested since February of 2016 showed PFOA concentrations between 71 and 1,000 ppt. Another 29 wells had tested between 21 and 70 ppt.
99. On November 10, 2016, the DEC and Taconic entered an Order on Consent and Administrative Settlement, which required Taconic to take certain steps to remediate the drinking water and provide filtration devices to residents of the Town.
100. Throughout the course of its operation of the Petersburg Facility, Defendant released PFOA into the environment. Such release caused contamination of the aquifer below the Petersburg facility and also contaminated soil when the PFOA particulate matter released into the air settled to the ground.

INDIVIDUAL CLASS PLAINTIFF ALLEGATIONS

101. Upon information and belief, the presence of PFOA contamination in the

drinking water of Petersburg residents and in the soil on their properties has had a profound impact upon the Town's property values, including the properties owned by the plaintiffs, and this impact will be lasting.

102. Furthermore, the PFOA concentrations found in Petersburg's drinking water, both municipal and private, pose a serious and substantial human health risk.

103. During their residency in Petersburg, all residents, including plaintiffs, regularly drank water from their tap, and used tap water for cooking and to make coffee, bathed and showered in water from their drinking water supply, cleaned their homes and watered their lawns and gardens with this water causing them to ingest and inhale PFOA and to disperse PFOA throughout their homes and properties.

104. During their residency in Petersburg, all residents, including plaintiffs, inhaled particulate matter containing PFOA discharged from defendant's facility and such particulate matter settled into the soils on their properties.

105. In recognition of likely ingestion by Petersburg residents of water contaminated with PFOA, the New York Department of Health (DOH) offered free blood testing for Petersburg residents beginning in July 2016 and such testing continues.

106. As of the date of this filing, not all residents have yet been tested or have received the results of their blood tests.

107. In the Village of Hoosick Falls, which is also the subject of widespread PFOA drinking water contamination, recent blood testing has shown alarming

concentrations of PFOA in residents' blood with a median range of 64.2 µg/L-a level that is 30 times higher than the national average.

108. Virtually all long-time residents of Hoosick Falls were found to have PFOA blood levels that were an order of magnitude or more above background levels.

109. Because many private wells in Petersburg have been found to contain levels of PFOA far in excess of the levels found in the municipal water supply in Hoosick Falls, it is likely residents of homes using contaminated water in Petersburg will have PFOA blood levels substantially higher than those in Hoosick Falls.

110. The Marpe family drinking water well in Petersburg was tested for PFOA and found to contain PFOA levels of 2,100 ppt.

111. Infant Plaintiff E.Y.'s blood was tested after birth in 2018 and was found to contain PFOA at a level of 75.9 ug/L - 40 times greater than average background levels. Infant E.Y. was exposed to PFOA through her mother's blood while in gestation. E.Y.'s mother Emily Marpe's PFOA blood level measured in 2016 was 322 ug/L and in 2018 was 175 ug/L.

112. Infant Plaintiff G.Y.'s blood was tested and was found to contain PFOA at a level of 207 ug/L - 100 times greater than average background levels.

113. Plaintiff Monette's drinking water well in Petersburg was tested for PFOA by Rensselaer County officials and found to contain PFOA levels of 435 ppt.

114. Plaintiff Monette's blood was tested and was found to contain PFOA at 224 ug/L - 110 times greater than average background levels.

115. Plaintiff Sharpe's drinking water well in Petersburg was tested for PFOA

by Rensselaer County officials and found to contain PFOA levels of 420 ppt.

116. Plaintiff Sharpe's blood was tested and was found to contain PFOA at 65 ug/L - 32 times greater than average background levels.

117. Plaintiff Perrotti-Sousis' drinking water well in Petersburg was tested for PFOA by Rensselaer County officials and found to contain PFOA levels of 21 ppt.

118. Plaintiff Denué's drinking water well in Petersburg was tested for PFOA and found to contain PFOA levels of 900 ppt.

119. Plaintiff Denué's blood was tested and was found to contain PFOA at a level of 170 ug/L - 85 times greater than average background levels.

120. Plaintiff Dunn's drinking water well in Petersburg was tested for PFOA and found to contain PFOA levels of 900 ppt.

121. Plaintiff Dunn's blood was tested and was found to contain PFOA at a level of 345 ug/L - over 170 times greater than average background levels.

122. The market values of all properties in Petersburg whose water supply and soil have been contaminated with PFOA have been damaged and reduced.

CLASS ACTION ALLEGATIONS

123. Plaintiffs incorporate the foregoing paragraphs as though the same were set forth at length herein.

124. Plaintiffs bring this lawsuit as a class action on their own behalf, and on behalf of all other persons similarly situated as members of the proposed class under New York CPLR Article 9. This action satisfies the requirements of CPLR 901. Plaintiffs bring this class action on behalf of the classes set forth below:

Town Water Property Damage Class

All individuals who are or were owners of real property and who obtain or obtained their drinking water from the Town of Petersburg, New York Public Water System, and who purchased their property on or before February 20, 2016.

Private Well Water Property Damage Class

All individuals who are or were owners of real property located in the Town of Petersburg, New York within a seven (7) mile radius of Defendants' Taconic Plastics Facility in Petersburg, New York, and who obtain or obtained their drinking water from a privately owned well contaminated with PFOA, and who occupied that property at or around February 20, 2016.

Private Well Water Nuisance Class

All individuals who are or were owners or lessors of real property located in the Town of Petersburg, New York within a seven (7) mile radius of the Defendant's Taconic Plastics Facility in Petersburg, New York, and who obtain or obtained their drinking water from a privately owned well contaminated with PFOA, and who occupied that property at or around February 20, 2016.

PFOA Invasion Injury Class

All individuals who have (i) ingested PFOA-contaminated water from the Petersburg Public Water System or from a contaminated private well located in the Town of Petersburg within a seven (7) mile radius of the Taconic Plastic's Facility in Petersburg, New York, and (ii) who have suffered invasion of their bodies and accumulation of PFOA in their blood as demonstrated by blood serum testes disclosing a PFOA level in their blood above the recognized average background level of 1.86 ug/L; or any natural child born to a female who meets and/or met this criteria at the time of the child's birth and whose blood serum was tested after birth disclosing a PFOA level above the average background level of 1.86 ug/L..

125. Excluded from the classes set forth above are: (a) Defendant, any entity or division in which Defendant has a controlling interest, and its legal representatives, officers, directors, assigns, and successors; (b) Justice Patrick J. McGrath and his court staff; (c) any class counsel or their immediate family members; (d) any State or any of its agencies; and (e) any individual who

otherwise would be included under the class descriptions above but who has filed a lawsuit for personal injury for a PFOA -related illness stemming from bodily invasion of PFOA discharged from Defendant's facility.

126. This action satisfies the requirements of CPLR 901 in that:
1. The classes are so numerous that joinder of all members is impracticable;
 2. Questions of law and fact are common and predominate over any questions affecting individual members;
 3. The claims of the representative plaintiffs are typical of the claims of the class;
 4. The representative parties will fairly and adequately protect the interest of the class;
 5. A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

Numerosity

127. The population of the Town of Petersburg is approximately 1500 people and there are at least 74 homes that receive drinking water from the Town water supply, with at least 215 additional homes using private wells that are contaminated. Although the exact number of class members is uncertain and can be ascertained through a claims process, the number is great enough such that joinder is impracticable. The disposition of the claims of these class members in a single action will provide substantial benefit to all parties and to the Court.
128. Further, class members are readily identifiable from publicly available information regarding property ownership and from the results of private well

and blood testing being offered by the County of Rensselaer, New York State Department of Environmental Conservation and New York State Department of Health to any current or former residents of Petersburg.

Typicality

129. Plaintiff Burdick's claims for property damage and devaluation due to PFOA contamination of the Petersburg Town Water Supply, the invasion of his home by PFOA contaminated water and soil contamination is typical of the claims of the Town Water Supply Property Damage Class in that Plaintiff Burdick, like all class members, owned or owns property that was supplied with water by the contaminated Town of Petersburg water supply, has had his home invaded by PFOA through the contaminated Town water supply, has dispersed PFOA throughout his home and property as a result of this invasion, has had his soil contaminated by PFOA particulate matter, and has had his property value diminished by such contamination.

130. Plaintiffs Connie Plouffe's, Monnette's Sharpe's, Perrotti-Sousis's, Denué's and Dunn's claims for property damage and devaluation due to PFOA contamination of their private wells and soil are typical of the claims of the Private Well Water Property Damage Class in that these Plaintiffs, like all class members, own or owned property that is supplied with water by a private well contaminated with PFOA and have had their homes invaded by PFOA through the contaminated groundwater, have dispersed PFOA throughout their homes and properties as a result of this invasion, have had their soil contaminated by PFOA and/or PFOS particulate matter, and have had their property values diminished by such contamination.

131. Plaintiffs Connie Plouffe's, Monnette's Sharpe's, Perrotti-Sousis's, Denué's and Dunn's claims for nuisance damages due to PFOA contamination of their homes' drinking water supply is typical of the claims of the Private Well Water Nuisance Class in that these Plaintiffs, like all class members, own or owned property that is or was supplied with water from a private well contaminated with PFOA and they have suffered annoyance, inconvenience, and loss of the quiet enjoyment of their property as a result of the nuisance created by Defendant in releasing PFOA into the environment and onto their properties.

132. All Plaintiffs' claims for injury due to invasion and accumulation of PFOA in their bodies are typical of the claims of the PFOA Invasion Injury Class in that plaintiffs, like all class members, ingested, absorbed, and inhaled PFOA into their bodies as a result of drinking, cooking with, bathing in PFOA contaminated water, and inhaling PFOA or PFOS contaminated air.

133. The factual basis of Defendant's misconduct is common to all class members and represents a common thread of misconduct resulting in injury to all members of the Class.

Adequate Representation

134. Plaintiffs will fairly and adequately represent and protect the interests of the Class. Plaintiffs have retained counsel with substantial experience litigating both environmental torts and class actions, including actions, like this one, representing plaintiffs who have ingested, inhaled, and absorbed environmental contaminants into their bodies, producing injury.

135. Plaintiffs and their counsel are committed to vigorously prosecuting this

action on behalf of the Class and have the financial resources to do so. Neither Plaintiffs nor their counsel have interests adverse to those of the Class.

Predominance of Common Questions

136. Plaintiffs bring this action under CPLR Article 9 because there are numerous questions of law and fact common to Plaintiffs and the class members that predominate over any question affecting only individual class members. The answers to these common questions will advance resolution of the litigation as to all class members. These common legal and factual issues include, but are not limited to:

- a. Whether Defendant owed a duty to Plaintiffs and members of the Class to refrain from conduct reasonably likely to cause contamination of class members' air, soil and drinking water;
- b. Whether Defendant knew or should have known that it was unreasonably dangerous to dispose of PFOA containing waste into the environment;
- c. Whether Defendant knew or should have known that disposing PFOA containing waste in the manner alleged herein was reasonably likely to cause contamination of class members' drinking water;
- d. Whether Defendant breached a legal duty to Plaintiffs and the Classes by disposing of PFOA -containing waste in the manner described herein;
- e. Whether Defendant breached a legal duty to Plaintiffs and the Classes by discharging PFOA out of its stacks and allowing particulate matter containing the chemicals to disperse in the wind and settle onto

- Plaintiffs' properties;
- f. Whether Defendant's breach of a legal duty caused class members' air, soil, and/or drinking water to become contaminated with PFOA;
 - g. Whether it was reasonably foreseeable that Defendant's release into the environment of PFOA -containing waste would cause class members' air, soil, and/or drinking water to become contaminated and/or unreasonably dangerous for normal and foreseeable uses;
 - h. Whether Defendant knew or should have known that Class members' drinking water was contaminated or could be contaminated long before actual testing was done to establish such contamination;
 - l. Whether Defendant had a duty to inform all residents in close proximity to the homes owned by Defendant where PFOA-contaminated drinking water was found in or about 2005 of the need to test their own water supply for such contamination;
 - J. Whether Defendant purposely discharged PFOA into the air at night to avoid obvious detection by class members and regulators;
 - k. What effect the PFOA-contamination of the Petersburg Town water supply had and will continue to have on property values of homes and businesses supplied with water from this source.
 - l. What effect the invasion and contamination of homes by PFOA -contaminated drinking water being used for cleaning and watering had and will continue to have on property values of homes and businesses;
 - m. What effect PFOA -contaminated soil had and will continue to have on

- propelily values of homes and businesses;
- n. What effect the PFOA -contamination of private drinking water wells in Petersburg had and will continue to have on property values of homes and businesses supplied with water from this source.
 - o. Whether Defendant's discharge of PFOA into the environment, causing it to invade the properties of the Plaintiffs and private well class members, created a private nuisance on each such property and what damages have been suffered by class members as a result of that nuisance.
 - p. What increased risks of future illness and harm the toxic invasion and accumulation injuries sustained by Plaintiffs and the Class have caused;
 - q. What medical monitoring and surveillance is reasonable and necessary to assure early diagnosis and treatment of such future illnesses and hmm; and
 - r. Whether Defendant's conduct warrants the imposition of punitive damages.

Superiority

137. Plaintiffs and members of the Class have all suffered and will continue to suffer harm and damages as a result of Defendant's unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.
138. Absent a class action, some class members would likely find the cost of litigating their claims to be prohibitively high and, therefore, would have no effective remedy at law.
139. Class treatment of common questions of law and fact will conserve the resources of the courts and the litigants, and will promote consistency and

efficiency of adjudication. Class treatment will not only promote consistency of outcome, but will also spare Defendant from being held to different standards of conduct.

140. Class treatment of the property devaluation claims of residents utilizing Town of Petersburg water and those with contaminated private drinking water wells is the most cost-effective method of ensuring that all property owners are compensated for their loss of value in a consistent manner.

141. Class treatment of the nuisance claims of residents utilizing Town of Petersburg water and those with contaminated private drinking water wells is the most cost-effective method of ensuring that all residents are compensated for their nuisance damages in a consistent manner.

142. Class treatment of a medical monitoring program is the most cost-effective method of ensuring that all affected individuals receive early diagnosis and treatment of illnesses caused by the injuries sustained through PFOA invasion and accumulation in their bodies.

Injunctive or Declaratory Relief

143. In addition or in the alternative to the above, Plaintiffs bring this class action because Defendant has acted or refused to act on grounds that apply generally to the Class, such that final injunctive relief or declaratory relief is appropriate with respect to the Class as a whole. Such injunctive relief includes, but is not limited to, an injunction to require preventative measures to limit the damage to class members' health and property values, the cleanup and mitigation of harm to class members' homes and personal property to the extent possible,

including remediation of the aquifer upon which plaintiffs and class members depend for their drinking water, and an order requiring Defendant Taconic to institute remedial measures sufficient to permanently prevent PFOA from contaminating class members' drinking water and/or properties and requiring Defendant Taconic to fund a medical monitoring and surveillance program for all persons injured by PFOA accumulation in their bodies. Plaintiffs seek injunctive relief for mitigation and remediation only to the extent such injunctive relief is not duplicative of or contrary to remediation and mitigation measures put in place by State and Federal regulatory agencies through Consent Orders or other means.

144. Plaintiffs and the Class also seek a declaration that Defendant acted with negligence, gross negligence, and/or willful, wanton, and careless disregard for the health, safety, and property of Plaintiffs and members of the Class.

CPLR §906(1) Certification of Particular Issues

145. In the alternative to certification under CPLR § 902, Plaintiffs and the Class seek to maintain a class action with respect to particular issues under CPLR §906(1).

146. Specifically, the liability of Defendant for the contamination of the environment with PFOA is suitable for issue certification under CPLR §906(1).

FIRST CAUSE OF ACTION

NEGLIGENCE

147. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint as if they were set forth at length herein.

148. This Claim is brought under New York law.
149. Defendant knew or should have known the release of PFOA -containing waste into the environment was potentially hazardous to human health and required Defendant to take adequate safety precautions to ensure that PFOA was not released into the surrounding environment.
150. Defendant further knew or should have known it was unsafe and/or unreasonably dangerous to discharge PFOA into the environment where it could be inhaled by nearby residents and washed into the aquifer used for their drinking water.
151. Defendant further knew or should have known it was unsafe and/or unreasonably dangerous to exhaust, wash out and/or discharge into the environment the PFOA and PFOS residue from its manufacturing process.
152. Defendant further knew or should have known that it was unsafe and/or unreasonably dangerous to permit PFOA vapors to exit from air stacks at the Taconic facility without adequate control measures.
153. Defendant further knew or should have known that it was unsafe and/or unreasonably dangerous to discard PFOA -soiled and/or used materials into the municipal landfill.
154. Defendant had a duty to take all reasonable measures to ensure that PFOA would be effectively contained and not discharged into the surrounding environment.
155. Defendant further had a duty to ensure that the manufacturing processes it chose to employ did not unreasonably endanger the air and drinking water relied

upon by residents of the Town of Petersburg and the surrounding area.

156. Defendant had a duty to take all reasonable measures to ensure PFOA -containing waste would be effectively disposed of and not discharged into the surrounding environment and onto plaintiffs' properties.

157. Defendant breached the above-stated duties by unreasonably releasing PFOA vapors and PFOA -containing waste into the environment and contaminating the groundwater, soil, and air in the vicinity of its Petersburg facility.

158. Defendant was negligent, grossly negligent, reckless, and acted with utter disregard for the health and safety of Plaintiffs and the Class in releasing PFOA vapors and PFOA -containing waste into the environment and contaminating the soil and the aquifer in Petersburg with unsafe levels of PFOA.

159. The PFOA released into the environment by Defendant caused the soil and Town of Petersburg water supply to become contaminated with PFOA and such contaminated water supplied by the Town Water District to invade the homes of Plaintiffs and PFOA to be dispersed throughout their properties, causing Plaintiffs Burdick and the Class to suffer injury and damage to their properties, including devaluation of their real property.

160. The PFOA released into the environment by Defendant caused the soil and ground water utilized by private well owners to become contaminated with PFOA and such contaminated water, supplied by private wells, to invade the homes of Plaintiffs and Class members and PFOA was dispersed throughout their properties, causing Plaintiffs Plouffe, Monette, Sharpe, Perrotti-Sousis,

Denue and Dunn and the Class to suffer injury and damage to their properties, including devaluation of their real property.

161. These unsafe levels of PFOA in the air, soil and in their drinking water have caused Plaintiffs, Infant Plaintiffs and the Class to suffer a toxic invasion injury and damage at the cellular and genetic level by the accumulation of PFOA in their bodies.

162. Defendant also had a duty to advise propeliy owners located near its facility and the community at large of its discovery of high levels of PFOA in the groundwater and wells on its property and on the properties it purchased, to advise such property owners to cease drinking and using the water for cooking until the drinking water was tested for PFOA, and to explain the danger to human health posed by exposure to and ingestion of PFOA.

163. Defendant was negligent, grossly negligent, reckless, and acted with utter disregard for the health and safety of Plaintiffs and the Class in failing to advise property owners located near its facility and the community at large of its discovery of high levels of PFOA in the groundwater and wells on its propeliy and on the properties it purchased and to advise such propeliy owners and the community to cease drinking and using the water for cooking until the drinking water was tested for PFOA.

164. As a direct and proximate result of Defendant's actions and omissions described herein, Plaintiffs, Infant Plaintiffs, and the Class have suffered and continue to suffer damages; personal injury due to the toxic invasion and accumulation of PFOA in their bodies; damage to their properties as a result of

the invasion and distribution of PFOA throughout their homes and properties, including the loss of property value; monetary damages associated with the investigation, treatment, remediation, and monitoring of drinking water and the contamination of their respective properties; as well as compensatory and consequential damages set forth below.

SECOND CAUSE OF ACTION

PRIVATE NUISANCE

165. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint as if they were set forth at length herein.
166. This Claim is brought under New York law on behalf of Plaintiffs and the Private Well Water Nuisance Class.
167. Defendant, through the negligent, reckless, and/or intentional acts and omissions alleged herein, has contaminated the soil and the drinking water of private wells in Petersburg and the surrounding area with PFOA.
168. The invasion of their homes and properties by the PFOA -contaminated drinking water through their taps, shower heads and outdoor water spigots has caused the dispersion of PFOA throughout their properties.
169. The air contamination with PFOA particulate matter by Defendant has been transported to Plaintiffs' and class members' properties and contaminated their soil.
170. The contamination of Plaintiffs' and class members' drinking water, invasion of their properties by this contaminated water, distribution of the contamination throughout their properties and air contamination depositing

PFOA on their soil has interfered with the rights of Plaintiffs and the class members to use and enjoy their individual properties. Indeed, this interference is substantial in nature. It has caused and is causing Plaintiffs and the class members to, inter alia, refrain from using water to drink, cook, or bathe, which has, in turn, caused significant inconvenience and expense. Defendant's conduct has also substantially interfered with Plaintiffs' and class members' ability to enjoy their property, to avail themselves of their property's value as an asset and/or source of collateral for financing, and to use their property in the manner that each Plaintiff or class member so chooses.

171. Defendant's negligent, reckless, and/or intentional acts and omissions were unreasonable and constitute a continuous invasion of the property rights of Plaintiffs and the class members.

172. As a direct and proximate result of Defendant's acts and omissions as alleged herein, Plaintiffs and the class members have incurred, and will continue to incur, costs and expenses related to the investigation, treatment, remediation, and monitoring of drinking water and the contamination of their respective properties, as well as the damages set forth below.

THIRD CAUSE OF ACTION

TRESPASS

173. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint as if they were set forth at length herein.

174. This Claim is brought under New York law.

175. Plaintiffs and the Town Water and Private Well Water Property Damage

Class members are owners of real property with the right of possession.

176. Defendant negligently, recklessly, and/or intentionally failed to properly control, apply, use and/or dispose of PFOA wastewater and/or other waste containing PFOA and PFOA vapors discharged from its stacks, such that Defendant Taconic proximately caused PFOA contaminants to enter, invade, intrude upon and injure the right of Plaintiffs and the Town Water and Private Well Water Property Damage Class members to use, possess and enjoy their property.

177. Plaintiffs and the Town Water and Private Well Water Property Damage Classes have not consented, and do not consent, to the contamination alleged herein. Defendant knew or reasonably should have known that Plaintiffs and the class members would not consent to this trespass.

178. As a direct and proximate result of Defendant's acts and omissions as alleged herein, the soil, drinking water, homes and properties of Plaintiffs and the Town Water and Private Well Water Class have been contaminated with PFOA, causing significant property damage, including actual, consequential, and nominal damages, as well as those set forth in more detail below.

DAMAGES SOUGHT BY THE CLASS

179. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint as if they were set forth at length herein.

180. Plaintiff Burdick, and the Town Water Property Damage Class seek damages for the loss of use and enjoyment and devaluation of their properties supplied with contaminated Town water which invaded their properties through

their taps, showerheads and outdoor spigots and disbursed contamination throughout their properties as well as contamination of their soil by airborne particulate matter containing PFOA and PFOS.

181. Plaintiffs Plouffe, Monette, Sharpe, Perrotti-Sousis, Denué and Dunn and the Private Well Water Property Damage Class, seek damages for the loss of use and enjoyment and devaluation of their properties supplied with contaminated private well water which invaded their properties through their taps, showerheads and outdoor spigots and dispersed contamination throughout their properties as well as contamination of their soil by airborne particulate matter containing PFOA.

182. Plaintiffs Plouffe, Monette, Sharpe, Perrotti-Sousis, Denué and Dunn and the Private Well Water Nuisance Damage Class, seek damages for their annoyance, inconvenience, and loss of the quiet enjoyment of their property as a result of the contamination of their private drinking water wells.

183. Plaintiffs and all class members seek consequential damages sufficient to fund a medical monitoring program that is reasonably tailored to the risks posed by the invasion and accumulation of PFOA inside Plaintiffs' and the Class members' bodies.

184. Further, because Defendant's acts were done maliciously, oppressively, deliberately, and in reckless disregard of the rights, health, and safety of Plaintiffs, Infant Plaintiffs, and the Class, Defendant's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future.

185. In addition to the above, Plaintiffs and the Class seek injunctive relief including, but not limited to the establishment of a medical testing protocol for Class Members to monitor their health and diagnose at an early stage any illnesses or conditions associated with exposure, inhalation, or ingestion of PFOA; and to take additional steps, to be proven at trial, that are determined necessary to remediate all class members' properties and/or residences to eliminate the presence of PFOA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and Infant Plaintiffs, individually, and on behalf of all others similarly situated, request the Court to enter judgment against Defendant, as follows:

- A. An order certifying the proposed Classes, designating Plaintiffs as the named representatives of the Classes, and designating the undersigned as Class Counsel;
- B. A declaration that Defendant Taconic acted with negligence, gross negligence, and/or willful, wanton, and careless disregard for the health and safety of Plaintiffs and the Class;
- C. An order requiring Defendant Taconic to establish a medical monitoring and surveillance protocol for Plaintiffs and Class members to monitor their health and diagnose at an early stage any ailments associated with exposure, inhalation or ingestion of PFOA;
- D. An award to Plaintiffs and Class members of compensatory, exemplary, and consequential damages, including interest, in an amount to be proven at trial;
- E. An award of attorneys' fees and costs, as permitted by law;
- F. An award of post-judgment interest, as provided by law;
- G. Leave to amend this Complaint to conform to the evidence produced at trial;

and

H. Such other relief as may be appropriate under the circumstances and/or permitted by law or as the Court deems just and proper.

Dated: September 14, 2021

Respectfully submitted,



Stephen G. Schwarz
sschwarz@faraci.com
Hadley L. Matarazzo
hmatarazzo@faraci.com
FARACI LANGE, LLP
28 E. Main Street, Suite 1100
Rochester, NY 14614
Telephone: (585) 325-5150
Facsimile: (585) 325-3285

SEEGER WEISS, LLP
James J. Bilsborrow
jbilsborrow@SeegerWeiss.com
100 Church Street, 8th Fl.
New York, NY 10007
Telephone: (212) 584-0755

Attorneys for Plaintiffs

To: **HOLLINGSWORTH, LLP**
Donald W. Fowler, Esq.
dfowler@hollingsworthllp.com Ann
Marie Duffy, Esq.
aduffy@hollingsworthllp.com
1350 I Street, NW
Washington, DC 20005
Telephone: (202) 898-5800
Facsimile: (202) 682-1639

*Attorneys for Defendant Tonoga
Inc.(d/b/a Taconic)*