



3. Plaintiff William S. Cunningham is an individual who is currently 54 years old and resides in Springdale, Pennsylvania.

4. Plaintiff Jeffrey Marietti is an individual who is currently 56 years old and resides in Tarentum, Pennsylvania.

5. Plaintiff David Meixelsberger is an individual who is currently 53 years old and resides in Lower Burrell, Pennsylvania.

6. Plaintiff Benjamin D. Thompson is an individual who is currently 57 years old and resides in Greensburg, Pennsylvania.

7. Plaintiff Richard Csukas is an individual who is currently 59 years old and resides in Evansville, Indiana.

8. Defendant PGW is a Pennsylvania limited liability corporation with its principal place of business located at 30 Isabella Street, Suite 500, Pittsburgh, Pennsylvania 15212. Before its creation in late 2008, the underlying business operations and assets of PGW were formally part of the automotive glass and services business of PPG Industries, Inc. (“PPG”), which is also headquartered in Pittsburgh, Pennsylvania. PPG retains a 40% ownership interest in PGW, with the other 60% being owned by a private equity firm, Kohlberg & Company, L.L.C. (“Kohlberg”).

9. At all relevant times, PGW has continuously been an “employer” within the meaning of 29 U.S.C. § 623 of the ADEA.

10. The Representative Plaintiffs are all former employees of PGW and were previously long-time PPG employees.

11. Once the discovery process in this matter is underway, the roles of other unknown conspirators and participants in the wrongdoing identified herein will likely be

revealed, and plaintiffs reserve their right to seek leave of court to further amend this Complaint to add new parties and/or new claims.

**NATURE OF THIS ACTION AND CORE ALLEGATIONS**

12. This is an action brought by the Representative Plaintiffs, with nearly 130 years of combined experience and dedicated service to PPG and/or PGW, seeking redress on a collective basis for systemic practices engaged in by PGW resulting in discrimination against its older work force in conducting Reductions-in-Force (“RIFs”) and forced retirements over an extended period of time, which practices are continuing in nature. Plaintiffs bring this collective action on behalf of themselves and all other present and former similarly situated salaried employees (the “ADEA Class Members”) against PGW for discrimination in employment, by:

- a. Adopting and employing methods for evaluating, ranking and selecting employees for termination in its RIFs, which methods were highly subjective, unreliable, invalid, and served as mere pretext, resulting in the termination of disproportionately high numbers of older workers who were never informed of the clandestine criteria used to select them for termination;
- b. Failing to exercise appropriate supervision or control over managers who select older workers for termination;
- c. Maintaining a corporate culture which fosters and encourages pervasive ageist stereotypes, implicit age bias, and age-related animus, and which permits managers to practice age discrimination in evaluating older employees and in selecting employees for termination;
- d. Failing to establish policies to ensure compliance with the requirements of ADEA, and to guard against age discrimination, and implicit age bias, including, without limitation, policies requiring proper training of supervisory employees;
- e. Willfully failing to examine or evaluate, in advance of the completion of RIFs (or at any time thereafter), whether the RIFs routinely result in the elimination of a disproportionately high number of older workers, or to

otherwise employ safeguards or exercise oversight of the RIF process to prevent or mitigate such discriminatory outcomes, in violation of ADEA, as well as PGW's own internal RIF policies;

- f. Failing and refusing to reinstate, retrain and/or relocate older employees into positions that matched their job qualifications which became available after their termination, and failing to notify them of such positions when they became available;
- g. Retaliating against employees who oppose PGW's unlawful policies, practices or procedures, in contravention of the ADEA; and
- h. Extracting from employees invalid and improper waivers of claims for liability which are part of its scheme to intimidate and discriminate against older workers and attempt to prevent them from asserting valid claims under ADEA arising from their terminations.

13. The above-described policies, patterns, practices, and omissions which adversely impact older employees constitute willful violations of ADEA. PGW arbitrarily and routinely employs such policies and practices systematically and continuously to discriminate against older workers and select them for termination, in order to replace them with younger workers, without any credible excuse or justification.

### **JURISDICTION**

14. This Court has jurisdiction over the federal question subject matter of this civil rights action pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b), as made applicable by 29 U.S.C. § 626(b).

15. This Court has personal jurisdiction over PGW because PGW systematically and continuously engages in substantial interstate commercial conduct and business activity within Pennsylvania and maintains its principal place of business in Pennsylvania, and because the case arises in part out of PGW's unlawful conduct within this District.

16. Plaintiffs have complied with all conditions precedent to filing a suit under ADEA.

17. The Representative Plaintiffs each filed charges of employment discrimination based on age against PGW with the Equal Opportunity Employment Commission (“EEOC”): Messrs. Karlo, McLure, Cunningham, Thompson and Csukas filed their respective charges on January 22, 2010. Mr. Meixelsberger filed his charge on January 25, 2010. Copies of Plaintiffs’ EEOC charges are attached as Exhibit A.

18. More than 60 days have elapsed since the Representative Plaintiffs filed charges with the EEOC.

19. Each of the Representative Plaintiffs has received a Dismissal and Notice of Rights from the EEOC. Copies of these EEOC Notices are attached hereto as Exhibit B and are incorporated by reference as though fully set forth herein.

20. The Complaint was filed within 90 days of receipt of the first Dismissal and Notice of Rights issued by the EEOC to a Representative Plaintiff.

### VENUE

21. Venue is proper in the Western District of Pennsylvania pursuant to 28 U.S.C. § 1391(b), as the unlawful employment acts and practices complained of by the Plaintiffs were committed or occurred, and continue to occur, within this District. Moreover, PGW maintains its principal place of business in this District, and all but one of the Representative Plaintiffs, as well as a large concentration of the Class Members, reside and/or worked for PGW in this District.

22. In addition, the unlawful employment policies and practices which are the subject of this action, were and are centrally implemented and/or controlled from PGW’s

principal place of business in this District, and remain in effect in this District and nationwide in continuous, systematic violation of the ADEA.

23. Because a large number of the illegal terminations by PGW took place in Pittsburgh and because PGW is headquartered in Pittsburgh, this District is an appropriate forum for this collective action.

### **FACTUAL BACKGROUND**

#### **Mr. Karlo's Tenure at PGW**

24. Mr. Karlo began working for PPG Industries, Inc., whose automotive glass division was the predecessor to Defendant PGW, on October 9, 1978 as a Construction and Maintenance Research Specialist II.

25. In 1983, Mr. Karlo was promoted to Construction and Maintenance Research Specialist I and continued to work in that position until 1990.

26. Mr. Karlo continued to receive several promotions over the subsequent years: to Senior Technical Assistant in 1990; to Engineering Specialist in 1995; and finally, to Senior Engineering Specialist in 2001, a position which he continued to fill following the transition of the automotive glass division to PGW.

27. During Mr. Karlo's career with PPG, he worked with different teams of PPG personnel to develop eight shared patents related to glass processes that have inured to the benefit of PPG and its 40%-owned subsidiary, Defendant PGW.

28. Throughout his more than 30-year career with PPG and/or PGW, Mr. Karlo received consistently positive performance reviews, commendations and awards, commensurate increases to his salary, bonuses (known at PPG as "Personal Performance Grants") and, as described above, multiple promotions.

29. In the last decade or so of Mr. Karlo's employment with PPG, the employee evaluation process was referred to as the Performance & Learning Plan ("P&LP"). Prior to the implementation of the P&LP process, which relies on highly subjective criteria which are not easy to quantify, PPG had employed a numeric system involving more objective criteria, known as "Accountability."

30. A review of Mr. Karlo's P&LP and Accountability documents dating back to 1992 confirm that he was an excellent performer. His past Accountability evaluations consistently reflected that Mr. Karlo "Meets" or "Meets +" expectations or "Exceeds Requirements." His P&LP forms were equally impressive.

31. In fact, Mr. Karlo never received a low performance rating or bad review during his entire tenure at PPG and/or PGW—from October 9, 1978 to March 31, 2009—before he was abruptly terminated at the age of 51.

**Mr. McLure's Tenure at PGW**

32. In 1974, Mr. McLure started his career with PPG as a contract employee at the Glass Research & Technology Laboratory ("GRTL") facility, a division of PPG. On September 1, 1975, Mr. McLure became a full-time, direct PPG employee at the GRTL facility.

33. While at the GRTL facility, Mr. McLure was involved in projects related to fiberglass production. Thus, when PPG closed the GRTL facility in 1980, it transferred Mr. McLure to its Fiberglass Research facility in RIDC Park in O'Hara Township, Pennsylvania.

34. In 1990, Mr. McLure was promoted to the position of Senior Technician for the Fiberglass Reinforcement Group. Although this group was based out of the RIDC Park location, Mr. McLure's position entailed significant travel time to service different PPG facilities, particularly a PPG facility located in Shelby, North Carolina.

35. On June 1, 1999, PPG closed the RIDC Park facility. At that time, Mr. McLure was slated to be transferred permanently to Shelby, North Carolina. However, rather than relocate, Mr. McLure pursued another opportunity within PPG.

36. Mr. McLure was hired by the Automotive Glass/OEM Products Group at PPG's Harmarville, Pennsylvania facility. As an employee of the automotive glass division of PPG—and later as a separate entity, Defendant PGW—Mr. McLure was responsible for conducting validation testing, traveling to satellite facilities for problem-solving and troubleshooting, and providing customer support and technical service directly to customers at their facilities.

37. Throughout his tenure with PPG and/or PGW Mr. McLure was a dedicated and hard-working employee. He consistently received positive performance evaluations, which denoted that he either met or exceeded job requirements.

38. Mr. McLure also received regular salary increases, bonuses and multiple awards and commendations for his service to his employer, and is a named contributor on a patent developed for PPG.

39. Despite his contributions to PPG and/or PGW over a career spanning more than 34 years, Mr. McLure was terminated by PGW without notice or warning on March 31, 2010 at the age of 55.

**Mr. Cunningham's Tenure at PGW**

40. Mr. Cunningham began his career with PPG as a contract employee at PPG's Glass Research & Development Center in Harmarville, Pennsylvania.

41. In April 1996, Mr. Cunningham applied for a position with PPG's automotive glass division and was hired on as a direct, full-time PPG employee.

42. Mr. Cunningham's work at PPG was largely devoted to the Laminated Glass Project which he saw through from its initial product validation study through every aspect of testing until the final product, known as Sungate Coated Laminate, was ready for production at PPG's manufacturing facilities in Crestline, Ohio and Tipton, Pennsylvania. Mr. Cunningham continued to be responsible for monitoring and supporting the launch efforts at these two facilities.

43. Based on Mr. Cunningham's considerable contributions to the Sungate Coated Laminate process, he was promoted on September 1, 2004 to the position of Senior Technical Assistant in the OEM New Product & Process Development Group. The announcement of his promotion was accompanied by numerous accolades acknowledging that Mr. Cunningham had "made significant contributions to the recent success of two key automotive product/process developments" and had made "important technical contributions, technology transfer, productivity improvements and training of manufacturing personnel that led to the success."

44. Mr. Cunningham continued as the Senior Technical Assistant, performing the same job functions after PPG and Kohlberg partnered in the joint venture that came to be known as PGW.

45. During his tenure at PPG and/or PGW, Mr. Cunningham never received a bad review as part of any employee evaluation process. He consistently rated high for performance and routinely received merit bonuses for outstanding performance and annual pay increases, including one year in which he received a 9% salary increase.

46. Despite this demonstrated record of success, Mr. Cunningham was terminated by PGW on March 31, 2010 at the age of 53.

**Mr. Marietti's Tenure at PGW**

47. Mr. Marietti began his career at PPG as a contract employee in the construction and maintenance shop at PPG's Harmarville automotive glass facility in 1984.

48. In 1990, Mr. Marietti transferred to the Mold Shop at the Harmarville facility, where he was then responsible for building tooling and doing division maintenance.

49. In 1994, Mr. Marietti became a direct PPG employee. He continued to work in the Mold Shop, but was given a PPG title of Construction & Maintenance ("C&M") Research Specialist II.

50. Mr. Marietti was promoted to C&M Research Specialist I in 1996 and was again promoted in 2002 to the position of Senior C&M Specialist in the OEM Technology Transfer Group.

51. In 2003, although his job title did not change, Mr. Marietti was given greater responsibility and was, essentially, performing the job functions of a Technical Assistant, a role in which he continued after the transition to PGW.

52. Over the course of his career as a PPG employee, Mr. Marietti received high ratings on his P&LPs, and never during his tenure with PPG and/or PGW did he receive a poor performance review.

53. Mr. Marietti was abruptly terminated, without explanation, by PGW on March 31, 2009 at the age of 55.

**Mr. Meixelsberger's Tenure at PGW**

54. Mr. Meixelsberger began his career with PPG in 1987.

55. Over the course of the next 22 years, Mr. Meixelsberger came to be regarded as one of the industry's leading experts in the windshield bending process.

56. Although it was customary for employees in Mr. Meixelsberger's job classification to work in tandem with a research engineer, Mr. Meixelsberger was routinely trusted to address production issues alone while working in PPG's various production plants.

57. Throughout his tenure at both PPG and PGW, Mr. Meixelsberger received excellent performance evaluations and commendations for a job well done. In fact, at one point, Mr. Meixelsberger was hand-selected by Gary Cannon—who at the time had just been named the Director of Manufacturing Technology—to serve in a specialized manufacturing group made up of five employees plucked out of the automotive division at PPG's Harmarville facility.

58. In fact, Mr. Meixelsberger was consistently in high demand at PPG's facilities around the country because of his well-known expertise and demonstrated record of success. Even though this demand meant significant travel, long work days and time away from his family, Mr. Meixelsberger never faltered in his commitment to PPG and/or PGW.

59. However, despite Mr. Meixelsberger's track-record of valuable contributions, first to PPG and then to PGW, on March 31, 2009, he was terminated by PGW, without explanation, at the age of 52.

**Mr. Thompson's Tenure at PGW**

60. Mr. Thompson began his career with PPG as a part-time employee, while attending college, in June 1971 at PPG's Works 25 facility in Greensburg, Pennsylvania.

61. Although Mr. Thompson's part-time position was eliminated in January 1972, a few short months later, in April 1972, Mr. Thompson was hired by PPG as a permanent production employee at the Greensburg facility.

62. Mr. Thompson continued his employment at the Greensburg facility until it was closed in January 1994. During his tenure at that location, he held various positions in the production and warehouse departments and was involved in a variety of projects, committees and work teams. He also served as a production supervisor for seven years.

63. While at the Greensburg facility, Mr. Thompson was regularly awarded the maximum yearly salary increases, along with additional merit-based performance increases.

64. In September 1996, Mr. Thompson was retained as a bender operator at PPG's Works 1 facility in Creighton, Pennsylvania. The bender operator holds one of the highest paid positions in production at PPG.

65. Not long after starting at Creighton, Mr. Thompson was offered the position of hourly Production Supervisor in March 1997.

66. In 2000, Mr. Thompson was made a salaried Production Supervisor.

67. In 2003, Mr. Thompson was again promoted, this time to the position of Shift Supervisor, and in 2004, he was asked by the Plant Manager to take on additional responsibilities assisting the plant's Lean Practitioner.

68. Between 2006 and 2008, during the time PPG was seeking a buyer for its automotive glass division, before it entered into the joint venture with Kohlberg to form PGW, Mr. Thompson served as a Warehouse Supervisor, a Final Supervisor and the Ergonomics Team Leader.

69. Throughout his time at the Creighton facility, Mr. Thompson received various awards and commendations, served on the Safety team and was involved in employee training renvironThom.

68.

72. Given that Mr. Thompson was, himself, just 56 years-old and the oldest tenured production supervisor, he had concerns that essentially he was being phased out.

73. This concern only increased when PGW retained new, younger employees—or made younger temporary employees full-time salaried employees—to fill the production supervisory role that Thompson had been forced to vacate when he was relegated to the storeroom position.

74. In the weeks that followed, Mr. Thompson was repeatedly called upon to fill in as a production supervisor when other employees were absent or increased production warranted additional assistance. Mr. Thompson willingly and gladly fulfilled these duties, which he had ably accomplished during his many successful years as a production supervisor.

75. Then, on March 31, 2009, like Phyllis Ligda before him, Mr. Thompson was told that his position with PGW had been eliminated and he was terminated from employment at the age of 56.

**Mr. Csukas' Tenure at PGW**

76. Mr. Csukas started working at PPG as a member of the controller Trainee Program (in Computer Systems & Finance) in June of 1973. The position was located at PPG's Creighton, Pennsylvania facility.

77. In March, 1974, Mr. Csukas was promoted to the position of General Accountant for PPG's flat glass facility in Wichita Falls, Texas.

78. Three years later, in 1977, Mr. Csukas returned to Pennsylvania to take the position of Project Accountant at PPG's Greensburg facility for automotive replacement windshield fabrication.

79. In July 1978, Mr. Csukas was promoted to Supervisor of Cost Accounting for PPG's flat glass facility in Meadville, Pennsylvania, where he was responsible for all of the activities related to the cost accounting function at the plant, as well as for managing three controller trainees.

80. In 1981, Mr. Csukas was given another promotion, to the position of Financial Analyst in the Glass Controllers Department, located at PPG's general office headquarters in downtown Pittsburgh.

81. A few years later, in March, 1984, Mr. Csukas was elevated to the role of Director of Information & Financial Services and was moved to PPG's automotive fabrication plant in Evansville, Indiana. As the Director, Mr. Csukas managed the entire Accounting & Information Systems departments and supervised eight direct reports.

82. Mr. Csukas continued in the Director position at the Evansville facility until 1994. However, in 1985, not long after assuming that role, PPG asked Mr. Csukas to take on certain additional responsibilities by assuming the leadership position for the Quality Leadership Team. In that capacity, Mr. Csukas attended the Phillip Crosby Quality College and was certified as a Quality Education System trainer/facilitator. Thereafter, Mr. Csukas became responsible for managing the QES training efforts (which involved 10 hour sessions) for 450 employees at the plant.

83. Realizing that he had a real talent for and strong interest in quality control and efficiency management at PPG, in November, 1994, Mr. Csukas applied for and was awarded the position of Manager of Breakthrough Process in the Automotive OEM Quality Department. In this job, Mr. Csukas was certified as a Breakthrough Process trainer/facilitator by a consulting company Rath & Strong. Thereafter, he conducted over 60

Breakthrough teams throughout the Automotive OEM business unit, collectively achieving productivity improvements valued in excess of \$15 Million in savings to PPG. Mr. Csukas' efforts also opened up new business opportunities for the company.

84. In November, 1997, Mr. Csukas became the Manager of Value Focus for Enterprise Excellence & Quality. He was certified as a Rapid Improvement Workshop trainer/facilitator by a consulting company, Delta Point Corporation, and conducted over 70 workshops throughout the automotive business unit, and achieved savings for PPG upward of \$8 Million from productivity improvements.

85. While in this latest managerial role, Mr. Csukas was designated as PPG's representative at the Bluegrass Automotive Manufacturing Association ("BAMA"), which is sponsored by Toyota. Ultimately, Mr. Csukas became the Chair of the BAMA Heartland Region 6 group in 2006.

86. As the Manager of Value Focus for Enterprise Excellence & Quality, Mr. Csukas reported to a director position initially held by John Banks. When Banks retired in or about 2004, Mr. Csukas was an obvious candidate for Mr. Bank's replacement. However, PPG passed over Mr. Csukas and appointed Dave King, a man nearly 10 years his junior with far less experience or expertise in quality control or productivity/efficiency analysis and management.

87. Despite being unfairly denied this opportunity for advancement, Mr. Csukas continued as a dedicated and well regarded PPG employee until 2008 when, by virtue of PPG's partial sale of its interests in the automotive glass division to Kohlberg, he became an employee of PGW—with the same job title and job functions.

88. Although he had a well-established track record of top performance and measurable success in making the business operate more efficiently and had historically saved the company tens of millions of dollars, Mr. Csukas was terminated by PGW on March 30, 2009 at the age of 58.

**The Joint Venture Between PPG and Kohlberg to Form PGW**

89. Upon information and belief, at some point in 2006, PPG formed an intention to divest itself, in full or in part, of its automotive glass division.

90. At that time, PPG instituted a “transfer freeze” in automotive glass, which meant that all the employees in that division were supposedly barred from applying for open positions in other business units at PPG. Employees in the automotive glass division were told that they were essentially human capital, an “asset of the automotive glass division and, as such, would be sold with them,” because whatever company acquired the division would need good personnel in place after the sale. PPG further emphasized to its employees in automotive glass that it was marketing the division as a “world class company” with an experienced research organization possessing fine-tuned skills and expertise.

91. During this time, PPG also dispensed with the P&LP employee evaluative process, which was declared by PPG Management to be “non-essential.” Employees were instructed to stay focused on working hard and making improvements in the business in order to make it marketable to prospective buyers.

92. In 2007, PPG originally brokered a deal for the sale of the automotive glass division to a California-based firm, Platinum Equity. However, in the last days of December 2007, the sale was abruptly cancelled by the prospective purchaser.

93. Thereafter, PPG leadership discontinued open discussions with its employees about the possible sale of the business unit, in part, because the failed deal with Platinum Equity had spawned litigation between the two organizations in which Platinum Equity alleged that PPG had made fraudulent misrepresentations in connection with the failed sale.

94. PPG, however, clearly remained determined to negotiate some deal whereby it would divest itself of its automotive glass division.

95. Some time in 2008, PPG began negotiations with Kohlberg, which culminated in a joint venture agreement between the two entities, pursuant to which PPG retained a 40% ownership interest in automotive glass and Kohlberg acquired the remaining 60% ownership interest. In November 2008, PPG and Kohlberg established a jointly owned successor entity—PGW.

96. Following the formation of PGW, the general operations of the business remained the same. The former PPG employees essentially worked for the same supervisors, managers and other leadership personnel.

97. However, there were certain notable changes. Even as rumors that PGW intended to conduct a RIF or multiple RIFs arose, PGW began populating the production facilities with younger, less experienced workers, who were provided with minimal training. The more seasoned employees found themselves being marginalized.

98. In or about early December 2008, PGW held a mandatory meeting for all employees at which they described its intent to engage in a so-called “forced ranking” process.

99. At that time, PGW management (which was comprised of the same individuals as the management team in place when the automotive glass division was still exclusively part of PPG) indicated that the forced rating and ranking process was being implemented in order to make decisions about employee raises and promotions.

100. It was unclear to most employees how the rating and ranking could be effectuated, given that employee evaluations had not been performed by PPG since 2006 and were not resumed by PGW after its formation. PGW did little to offer much of an explanation of the mechanics of the ranking process beyond advising employees that their respective supervisors would gather together in a single meeting and attempt to simply rate and rank all the employees against each other.

101. However it was to be accomplished, the announcement that something was being done to effectuate salary increases was welcome news to many employees, given that these automotive glass employees had been subject to a salary freeze both before and after the acquisition. However, some employees, including a number of the Plaintiffs, silently questioned whether this was the real purpose of the forced ranking process.

102. In late December 2008, Plaintiffs' suspicions that the forced ranking might actually be used for a more nefarious purpose were sadly confirmed when PGW unexpectedly conducted a RIF among employees at several facilities.

103. Then, over a two-day period in March 2009, PGW conducted another RIF, affecting more than 100 employees working in a number of different facilities, including each of the Representative Plaintiffs.

***Mr. Csukas' Termination by PGW***

104. Of the Representative Plaintiffs, Mr. Csukas was the first to be terminated.

105. On March 30, 2009, Mr. Csukas was summoned to an office at the Evansville, Indiana facility where he was met by PGW supervisor (and former PPG supervisor), Dave King. Immediately upon Mr. Csukas' entry into the office, King unceremoniously tried to hand Mr. Csukas an envelope with his name on it.

106. Mr. Csukas was initially reluctant to take the envelope, when no explanation as to its contents had been offered by King, although Mr. Csukas suspected in that moment that he was being terminated.

107. After he had succeeded in getting Mr. Csukas to physically take possession of the documents, King told him that his job had been "eliminated."

108. When Mr. Csukas challenged that explanation, stating that he thought it "impossible" that his job would be eliminated given that his function had become even more critical in the face of the downturn in the economy, King responded only that Mr. Csukas' job had been eliminated and that his termination was "not based on performance."

109. Among the papers that were provided to Mr. Csukas in this termination session with King was a severance agreement, which Mr. Csukas was expected to sign in order to get his full severance. The agreement also came with a document entitled "Information Regarding Employment Termination Program," which stated that it was attaching a list of the job titles and ages of all those who were terminated in the RIF, and a similar list for all those who were retained. What Mr. Csukas did not immediately realize was that the lists of employees provided to him were missing every other page.

110. After more than 35 years with the organization, that comprised the sum total of the information provided to Mr. Csukas when he was terminated by PGW.

***Mr. Thompson's Termination by PGW***

111. On March 31, 2009, Mr. Thompson was called into a meeting with the Creighton Plant Manager, Craig Barnett, and the Human Resources Manager, Myrtle Smith (both of whom had occupied those positions at PPG before the formation of PGW). At this meeting, Mr. Thompson was told that he was being terminated because the “new” position into which he had been involuntarily transferred had been eliminated.

112. When Mr. Thompson inquired whether he was being let go because of something he did—or something he failed to do—the PGW representatives assured him that the decision had nothing to do with job performance and simply repeated that his position had been eliminated.

113. Mr. Thompson specifically asked why it was he had been selected to be terminated from a position that PGW had forced him to take, while the person then occupying the position from which he had been displaced just months before was retained. Mr. Thompson received no answer to this question.

114. Instead, Barnette and Smith presented Mr. Thompson with a document entitled Separation Agreement and Release which stated that he would receive a lump sum severance payment of \$76,962.09 if he signed the Agreement and release any and all claims against PGW. Sixteen days later, Smith called Mr. Thompson and informed him that PGW had made a calculation error and that his lump sum payment would be reduced by \$22,000, but that it would still require him to sign the agreement and waive his claims.

115. Notably, Mr. Thompson was not provided with any of the “Information Regarding Employment Termination Program,” including the accompanying lists, which was given to Mr. Csukas, despite the fact that PGW was engaging in a full-scale RIF across its

organization and had, in fact, terminated three other employees at the Creighton facility (including two in their fifties) on the same day that Mr. Thompson was terminated.

***PGW's Termination of Messrs. Karlo, McLure, Cunningham, Marietti and Meixelsberger***

116. On the same day that Mr. Thompson was terminated, and the day after Mr. Csukas was terminated, the other Representative Plaintiffs were also terminated by PGW.

117. Because many of its employees travel to other facilities and/or customer plants as part of their job duties, PGW took steps to insure that all those to be affected by the RIF would be on-site for their termination sessions. On March 26, 2009, Jim Schwartz sent out an email on behalf of Gary Cannon (the Director of Manufacturing) to all of the auto-glass associates commanding them to be present at the facility on Tuesday, March 31 and Wednesday, April 1, 2009 for mandatory "organizational meetings."

121. Cannon immediately explained that there had been a delay due to last minute ministerial problems and that the “lawyers were working on the paperwork,” but that the five of them were in fact losing their jobs.

122. Thereafter, Cannon simply read from a script and informed the Representative Plaintiffs present in the meeting that they were being eliminated. At no time did Cannon offer any explanation for how or why they were selected for termination.

123. Instead, each of these Plaintiffs was handed a package of documents—only after Cannon excused himself several times from the session to try to collect all the proper paperwork from the printer—including, among other things, a Separation Agreement and Release, as well as a document entitled “Information Regarding Employment Termination Program” which stated that it was attaching a list of the job titles and ages of all those who were terminated in the RIF, and a similar list for all those who were retained.

124. Each of the Representative Plaintiffs found it, not only degrading, but also stressful and confusing to have to sit in a room with their other terminated coworkers while they waited for PGW representatives to try to gather all the termination papers with which they were supposed to be provided. Moreover, there was no human resources representative present to answer questions about the documents and what they were intended to convey.

125. With nearly 130 years of combined experience and dedicated service to PPG and/or PGW, Messrs. Karlo, McLure, Cunningham, Marietti and Meixelsberger were summarily dismissed, without any explanation, among a flurry of shuffling papers that might have been almost humorous were it not for the tragic circumstances of their lost careers.

***PGW's RIF Was Conducted in a Manner Giving Rise to an Inference of Age Discrimination***

126. PGW uniformly concealed from the Representative Plaintiffs—and presumably all other employees terminated in the RIFs it has conducted—the basis by which they were selected for termination.

127. At no time has PGW articulated for its current or former employees (including the Representative Plaintiffs) the selection criteria utilized in conducting the RIF. Even as it attempted to extract waivers of ADEA claims, PGW failed to apprise its terminated employees of the factors relied upon in selecting them for termination, in direct contravention of the OWBPA and its supporting regulations. (In fact, given that PGW has not been forthcoming about these factors or criteria, the Representative Plaintiffs specifically reserve the right to amend their claims to address any further unlawfulness that might be revealed when the selection process is revealed more fully through the discovery process.)

128. To date, the Representative Plaintiffs are at a loss to understand how and why they were selected, particularly given that fact that there had been almost no formal review process at PPG for nearly two years prior to the formation of PGW, and no such process at all after PGW became their employer.

129. This absence of data regarding employee performance, which, if the selection process is to be considered legitimate at all, must have been present, would alone raise the inference that improper considerations, such as age, may have been at work.

130. Moreover, despite the general discontinuation of employee evaluations as a “non-essential” function or process, there were at least a handful of preferred PPG/PGW employees who were specifically instructed to complete the P&LP process by their supervisor, Jim Willey. Willey revealed this information to another PGW employee, John

Bender, but immediately attempted to retreat from his comment, indicating that he had “said too much.”

131. Similarly, the “transfer freeze” that was purportedly imposed on all employees of the automotive glass division during the time leading up to the sale was not uniformly applied. A number of younger employees were spared the RIF because they were permitted to pursue other opportunities at PPG, while the chance to transfer was specifically denied to the older, Representative Plaintiffs—and perhaps others who were also ultimately terminated in the RIFs conducted by PGW.

132. Specifically, the Representative Plaintiffs are aware, at a minimum that Debby Almasy, Dennis O’Shaughnessy, Gary Donowski, Dave Claasen, Bob Evans, Harry Nasaab, and Steve Harman were spared because they were not subject to the transfer freeze.

133. By contrast, a number of the Representative Plaintiffs were repeatedly told that they would not be permitted to seek alternative employment elsewhere in PPG. In fact, when Mr. Csukas expressly pointed out this inconsistency to his superior, Dave King, King responded that “there is a fence around the automotive business with a few holes in it.” To which Mr. Csukas replied that he could only presume that he was “too old to get through one of those holes.”

134. In addition to concealing the method by which employees were selected for termination or retention, PGW also provided the unsupported and fabricated explanation to many of the Representative Plaintiffs that their jobs had been “eliminated.” In most instances, this proffered explanation—the only one given by PGW—is demonstrably false.

135. For example, with respect to the position last held by Mr. Csukas—Manager of Value Focus for Enterprise Excellence & Quality—PGW claimed that the job had

been eliminated. In reality, PGW moved a younger employee, Mark Soderberg into the position, which it had renamed "Manager of Enterprise Excellence" in an attempt to conceal the falsity of its statements to Mr. Csukas at his termination session. However, the job duties for the two positions are identical.

136. A similar bait-and-switch occurred with respect to the work that had previously been performed by Mr. Thompson. After his termination, Mr. Thompson learned that the day he was let go Ed Watson, the man who had replaced him as Final Supervisor (before Mr. Thompson was moved into the storeroom position that had purportedly been "eliminated" when it was held by Ms. Ligda) had also been terminated. Instead of moving Mr. Thompson back to his prior position, PGW replaced Mr. Watson with another employee, Chuck Weleski, who had been transferred from his position as CVS Supervisor. Weleski's prior position of CVS Supervisor was filled by Bob Pinchock, who was simultaneously given responsibilities for the storeroom functions that were previously being managed by Ms. Ligda and then Mr. Thompson. Upon information and belief, Mr. Pinchock, similar to Ms. Ligda and Mr. Thompson before him, has since been terminated. That position is now filled by Bill Sickenberger. Thus, the revolving door from the storeroom to unemployment continues to turn at PGW.

137. Likewise, the critical job functions being performed by Mr. Karlo with respect to managing the mold shop bending rolls are still being performed. In fact, after terminating Mr. Karlo, while retaining younger employees to whom PGW hoped to transition his work, PGW came to realize that it had lost a valuable and experienced employee. Thereafter, PGW re-hired Mr. Karlo as a contract employee through an agency in order to avail itself of the knowledge and experience it had been so quick to toss away. However,

when Mr. Karlo refused to withdraw his charge of discrimination against PGW, the defendant summarily dismissed him again after the EEOC closed its investigation and notified Mr. Karlo of his right to proceed with his claims before this Court.

138. Similarly, Mr. McLure was later retained as a contract employee after PGW discovered that it could not make do with the younger employees it elected to retain in the RIF. Like Mr. Karlo, Mr. McLure was again terminated by PGW after the EEOC close its investigation and notified him of his right to sue.

139. Mr. Meixelsberger was also called back to PGW service when the employees retained in his stead were unable to perform his job functions satisfactorily. Fortunately, Mr. Meixelsberger was able to retain alternative employment, so PGW was not given the opportunity to retaliate against him further for his participation in this lawsuit.

140. PGW's own documents support a conclusion that an unlawful age bias is at play in its RIF decisions. The decisional unit information, complete versions of which were not provided to any of the Representative Plaintiffs with their respective Separation Agreement and Release documents, reveal that the RIF had a more deleterious impact on the older members of the PGW workforce, affecting them in far greater numbers than would be likely to occur in the absence of some unlawful bias.

***PGW's Invalid and Unenforceable Waiver Agreements***

141. The Representative Plaintiffs anticipate that PGW will attempt to shield its unlawful conduct from this Court's scrutiny by arguing that the Plaintiffs have waived their ADEA claims by signing Separation Agreements.

142. PGW has already invoked these agreements, which do not contain valid or enforceable ADEA waivers, to dissuade the EEOC investigation from conducting a thorough or complete investigation, in direct contravention of the OWBPA, 29 U.S.C. § 626(f)(4).

143. As the Representative Plaintiffs have already explained to the EEOC, the Separation Agreements fail to comply with the OWBPA in a number of respects. *See* Plaintiffs' May 27, 2010, Letter to EEOC, attached as Exhibit C, which is incorporated by reference as though fully set forth herein.

144. Principally, the Separation Agreements failed to provide the Representative Plaintiffs with complete decisional unit information for the group termination program conducted in the RIF, as required by 29 U.S.C. § 626(f)(1)(H). Mr. Thompson was not provided any such information, despite the fact that he was terminated at the same time as more than 100 other PGW employees, including the Representative Plaintiffs. The other Representative Plaintiffs were given only half of the requisite information, as the decisional unit information that PGW purported to provide to them was missing every other page. Thus, the waivers in the Separation Agreements are wholly invalid and entirely unenforceable as to the Plaintiffs' ADEA claims.

### **COLLECTIVE ACTION ALLEGATIONS**

145. The Representative Plaintiffs bring this action as a collective action under the ADEA pursuant to section 216(b) of the Fair Labor Standards Act, 29 U.S.C. § 216(b) ("FLSA").

146. The Representative Plaintiffs have instituted claims for disparate treatment and disparate impact pursuant to ADEA arising out of the previously described systemic practices engaged in by PGW to discriminate against its older work force in conducting RIFs.

147. Pursuant to Section 216(b) of the FLSA, the Representative Plaintiffs bring this ADEA claim on behalf of themselves and all former salaried employees of PGW whose employment with PGW within the United States was terminated by PGW and who were at least 50 years of age at the time of such termination (the “ADEA Class Members”).

148. The Representative Plaintiffs and the ADEA Class Members are similarly situated in that they have been the victims of the challenged policies, practices and procedures through which PGW has violated the ADEA.

149. Under Section 216(b), ADEA Class Members must specifically opt-in to this collective action in order to be benefited or bound by the outcome. Thus, this Court need not make any inquiries beyond whether the Representative Plaintiffs and the ADEA Class Members are similarly situated.

## COUNT I

### **Disparate Treatment Under the Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq**

150. Plaintiffs hereby repeat and incorporate by reference the allegations of Paragraphs 1 through 149 above as if fully set forth herein.

151. Because the Representative Plaintiffs ranged in age from 51 to 58 years-old at the time of their terminations, the Representative Plaintiffs are all members of a class of individuals protected under the ADEA.

152. Each of the Representative Plaintiffs was well-qualified for his position with PGW and had a demonstrated and well-established record of success with the company prior to termination.

153. Each of the Representative Plaintiffs suffered an adverse employment action when his employment was terminated by PGW, while other, substantially younger employees were treated more favorably—either because they were retained by PGW, were permitted to transfer to positions at PPG in order to continue in employment, or were hired to replace the older workers terminated in the RIF.

154. Thus, each of the Representative Plaintiffs' termination occurred under circumstances giving rise to an inference that PGW terminated them because of their age, in violation of the ADEA, 29 U.S.C. § 621, *et seq.*

155. To date, PPG has not offered any explanation for its decision to terminate the Representative Plaintiffs and other older workers in the March 2009 RIF, other than to state that their positions had been eliminated. However, the job duties being performed by each of the Representative Plaintiffs were critical to the ongoing operations of PGW. Therefore, while their job titles may have been “eliminated,” their job functions certainly were not. Thus, this stated explanation for the terminations of the Representative Plaintiffs was merely a pretext designed to disguise PGW's true motive—the elimination of older workers.

156. PGW has similarly discriminated against all ADEA Class Members in the terms and conditions of employment, on the basis of their age, in violation of ADEA.

157. As a consequence of the unlawful policy, pattern and practice, and unlawful conduct of PGW as described herein, Representative Plaintiffs and ADEA Class Members have suffered damages in the form of lost compensation and seek front-pay and back pay, attorneys' fees and costs, declaratory and injunctive relief, lost pension benefits, liquidated damages, and such other relief as the Court may deem appropriate.

## COUNT II

### **Disparate Impact Under the Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq.**

158. Plaintiffs hereby repeat and incorporate by reference the allegations of Paragraphs 1 through 157 above as if fully set forth herein.

159. The Representative Plaintiffs are members of a protected class under the ADEA.

160. Each of the Representative Plaintiffs suffered an adverse employment action when his employment was terminated by PGW in a RIF, while younger employees were treated more favorably.

161. Upon information and belief, in identifying the Representative Plaintiffs and other PGW employees for termination in the RIF, PGW utilized selection criteria that appear neutral on their face, but which, based on the outcome of the selection process, clearly had an adverse impact on older workers.

162. Moreover, PGW utilized subjective and standard-less evaluation practices in a secretive and inherently unfair, unreliable and invalid RIF ranking process which were applied unchecked by any established ADEA compliance policies or training programs, and failed to properly credit the employees' historical performance and length of tenure with the company.

163. The group termination information which should have been provided to each of the Representative Plaintiffs at the time of his termination—but which, as discussed above, was incomplete, thereby invalidating any waiver—will demonstrate that the selection process had a demonstrably significant impact upon older workers during the RIF.

164. Plaintiffs plead that their terminations were the direct result of the application of one or more facially neutral policies that had a disparate impact on older workers.

165. As a consequence of PGW's unlawful and secretive use of policies or selection criteria that have a disproportionate effect on older workers, the Representative Plaintiffs—and other ADEA Class Members—have suffered damages in the form of lost compensation and, therefore, seek front-pay and back pay, attorneys' fees and costs, declaratory and injunctive relief, lost pension benefits, liquidated damages, and such other relief as the Court may deem appropriate.

### COUNT III

**(Plaintiffs Karlo and McLure v. PGW)  
Retaliation Under the  
Age Discrimination in Employment Act, 29 U.S.C. § 623(d)**

166. Plaintiffs hereby repeat and incorporate by reference the allegations of Paragraphs 1 through 165 above as if fully set forth herein.

167. As described above, in January 2010, the Representative Plaintiffs filed charges of discrimination with the EEOC, complaining of and opposing employment practices at PGW as violations of the ADEA. As such, they were engaging in activity that is protected under the ADEA

168. While those charges were pending, Plaintiffs Karlo and McLure were then working for PGW, albeit as employees of a subcontractor, rather than for PGW directly.

169. PGW was well aware during this time that Messrs. Karlo and McLure, along with the other five Representative Plaintiffs, had initiated an EEOC investigation into their charges of discrimination.

170. Apparently emboldened by the EEOC's decision to dismiss those charges without further investigation, based on PGW's assertion of its invalid release agreements as an obstacle to any resolution of the claims, shortly after the EEOC Notices of Dismissal and Rights, attached as Exhibit B, were issued, PGW caused Plaintiffs Karlo and McLure to be terminated from their contract positions.

171. Specifically, Plaintiff Karlo was told, prior to his termination, that he would be considered for a full-time position directly with PGW if he would "make the whole thing go away."

172. The timing of these second terminations by PGW, coming as they do on the heels of the EEOC's decision not to pursue the matter further, but before the filing of this Complaint, supports not only a finding of a direct nexus between these Plaintiffs' protected activity and the adverse employment action, but also the conclusion that PGW hoped to discourage the Representative Plaintiffs from filing this lawsuit.

173. PGW has discriminated against Plaintiffs Karlo and McLure because they have opposed PGW's unlawful and discriminatory conduct, because they filed charges with the EEOC, and because PGW anticipated that they would further pursue their claims by filing this Complaint.

174. As a consequence of PGW's unlawful retaliation against Plaintiffs Karlo and McLure for the exercise of their rights under the ADEA, Plaintiffs Karlo and McClure have suffered damages in the form of lost compensation and, therefore, seek front-pay and back pay, attorneys' fees and costs, declaratory and injunctive relief, lost pension benefits, liquidated damages, emotional distress, punitive damages, and such other relief as the Court may deem appropriate

**PRAYER FOR RELIEF**

WHEREFORE, the Representative Plaintiffs, on behalf of themselves and prospective members of this collective action, pray that this Court:

- a. Enter a judgment declaring this action to be a collective action properly maintained pursuant to 29 U.S.C. §216(b), that the Representative Plaintiffs be designated as representatives of the ADEA Class, and that their counsel of record be designated as ADEA Class Counsel;
- b. Enter a judgment declaring that PGW's patterns, practices and omissions, as above-described, in terminating the employment of ADEA Class Members of the collective action who were 50 years of age or older at the time of their termination or forced retirement violates ADEA;
- c. Enter a judgment declaring that PGW's extraction of purported releases in connection with the terminations of ADEA Class Members of the collective action are non-compliant with the requirements of OWBPA and controlling authority, and are invalid and unenforceable;
- d. Issue a permanent prohibitory injunction ordering PGW and its officers, agents, employees and successors to cease and desist from the unfair discriminatory employment patterns, practices, policies and omissions complained of herein, which result in the termination of employees fifty-years of age or older;
- e. Issue a permanent mandatory injunction requiring PGW to take such affirmative action as will effectuate the purposes of ADEA, including adopting employment practices in accord with ADEA's requirements;
- f. Enter a judgment and award in favor of the Representative Plaintiffs and the ADEA Class Members, and against PGW for reasonable monetary damages, including back pay (plus interest or an appropriate inflation factor and an enhancement to offset any adverse tax consequences associated with lump sum receipt of back pay), front pay, benefits and all other damages owed to the Representative Plaintiffs and the ADEA Class Members, in an amount proven at trial, resulting from PPG's unlawful and discriminatory acts or omissions, including unlawful retaliation for opposing such practices;
- g. Enter a judgment and award in favor of each of the Representative Plaintiffs and each ADEA Class Member for the maximum statutory amount of liquidated damages available under ADEA;

- h. Enter a judgment and award in favor of the Representative Plaintiffs and the ADEA Class for costs, including, but not limited to, reasonable attorney's fees, experts' fees, and other costs and expenses of this litigation;
- i. Enter a judgment and award in favor of the Representative Plaintiffs and the ADEA Class for pre-judgment and post-judgment interest;
- j. Award such other and further legal and equitable relief as may be found appropriate and as this Court may deem just and proper; and
- k. Retain jurisdiction over this action until such time as it is satisfied that PGW has remedied the practices complained of and is determined to be in full compliance with the law.

**JURY TRIAL DEMANDED ON ALL ISSUES SO TRIABLE**

Respectfully submitted,

OBERMAYER REBMANN MAXWELL & HIPPEL LLP

Date: September 29, 2010

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