

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

CITY AND COUNTY OF BUTTE-
SILVER BOW, et al.,

Plaintiffs,

v.

3M COMPANY (F/K/A
MINNESOTA MINING AND
MANUFACTURING COMPANY);
DUPONT DE NEMOURS, INC.;
THE CHEMOURS COMPANY;
THE CHEMOURS COMPANY FC,
LLC; CORTEVA, INC.; GLOBE
MANUFACTURING COMPANY
LLC; W.L. GORE & ASSOCIATES,
INC.; LION GROUP INC.; FIRE-
DEX LLP; MORNING PRIDE
MANUFACTURING LLC; and
INNOTEX CORP,

Defendants.

CV-25-36-BU-BMM

**ORDER ON MOTION FOR
INTERIM CLASS COUNSEL
APPOINTMENT**

INTRODUCTION

Plaintiffs City and County of Butte-Silver Bow, Montana (“Butte-Silver Bow”), Santa Monica, California (“Santa Monica”), City of Stamford, Connecticut

(“Stamford”), Old Mystic Fire District, Connecticut (“Old Mystic”), Mayor and City Council of Baltimore, Maryland (“Baltimore”), Charles County, Maryland (“Charles County”), and City of St. Louis, Missouri (“St. Louis” and collectively “Plaintiffs”) and their counsel, jointly move the Court pursuant to Federal Rule of Civil Procedure 23(g)(3) to appoint Steve Berman of Hagens Berman Sobol Shapiro LLP (“HBSS”), Kyle McGee of Grant & Eisenhofer, P.A. (“G&E”), and Ian W. Sloss and Jennifer Sclar of Silver Golub & Teitell LLP (“SGT”) (together the “Proposed Co-Lead Counsel”) as Interim Co-Lead Counsel, and John Heenan of Heenan & Cook, PLLC (“Heenan & Cook”) and Michael Bliven of Bliven Law Firm, P.C. (“Bliven Law Firm” and together with Heenan & Cook, “Proposed Liaison Counsel”) as Liaison Counsel, (together Proposed Co-Lead Counsel and Proposed Liaison Counsel, the “Firms”), for the putative class and subclasses (the “Class”) alleged in the operative Second Amended Complaint. (Doc. 220.) Plaintiffs filed the motion on April 21, 2026. (*Id.*) Defendant 3M Company (f/k/a Minnesota Mining and Manufacturing Company) (“3M”), on its own behalf and on behalf of all Defendants, opposes the motion. (Doc. 233.) The Court held a hearing on the matter on May 22, 2026. (Doc. 293.)

BACKGROUND

Plaintiffs bring this nationwide class action against Defendants for the alleged sale, manufacture, and distribution of protective firefighter gear (“turnout gear”)

containing per- and polyfluoroalkyl substances (“PFAS”) to fire departments and fire responding agencies. (Doc. 1 ¶¶ 1-9; Doc. 234 ¶¶ 1-9.) Plaintiffs allege that PFAS, found in the firefighter turnout gear, are associated with serious health effects, including cancer. (Doc. 234 ¶¶ 4-7.) Plaintiffs contend that Defendants concealed the known dangers of PFAS and failed to provide adequate safety warnings to the public and class members, despite having knowledge for decades of the risks and harms of PFAS. (*Id.* ¶¶ 10-12.)

Plaintiffs originally brought claims in separate cases in the District of Montana and the District of Connecticut. (*See* Doc. 190; *see Uniformed Pro. Fire Fighters Ass’n v. 3M Co.*, No. 3:24-cv-01101 (D. Conn.) (“UPFFA”).) Connecticut Plaintiffs filed the Connecticut action first, on June 25, 2024, and proceeded through the early stages of litigation including removal proceedings, discovery discussions, and Rule 12(b)(2) motions. *See* Complaint, UPFFA, No. 3:24-cv-01101, (D. Conn. June 25, 2024), Doc. 1 (*see generally* the complete docket). The Connecticut action originally involved both municipalities (“Connecticut Purchaser Plaintiffs”) and individual firefighters and firefighter unions bringing claims in Connecticut. *Id.*

Plaintiffs filed the action in the District of Montana on April 3, 2025. (Doc. 1.) The action in the District of Montana began later than the Connecticut action, yet it has progressed more quickly. For example, the Court already has addressed in their entirety the first round of motions to dismiss. (*See* Doc. 159.) The parties also briefed

one motion to appoint interim counsel. (*See* Doc. 88, Doc. 99, Doc. 102.) Montana Plaintiffs and Connecticut Purchaser Plaintiffs jointly decided to proceed forward only in the District of Montana. (*See* Doc. 235.) Other municipalities with similar claims also joined the litigation in the District of Montana. (*See* Doc. 190, Doc. 234.) Connecticut Purchaser Plaintiffs voluntarily dismissed their claims in Connecticut. (Doc. 243 at 6.) The personal injury case on behalf of Connecticut firefighters remains in the District of Connecticut. (*Id.*)

Montana Plaintiffs filed an earlier motion for interim class counsel appointment on September 30, 2025. (Doc. 88.) Montana Plaintiffs withdrew this motion on October 28, 2025, following a dispute with Defendants and Connecticut Purchaser Plaintiffs about alleged representations within the motion. (Doc. 114; *see also* Doc. 110.)

LEGAL STANDARD

Rule 23 of the Federal Rules of Civil Procedure states that “[t]he court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.” Fed. R. Civ. P. 23(g)(3). FRCP 23 does not provide a standard for determining whether the appointment of interim counsel is appropriate. *Id.* Courts considering motions to appoint interim class counsel under Rule 23 typically rely on the factors set out in Rule 23(g)(1) for the appointment of class counsel upon certification. *See Lindstrom v. Polaris Inc.*, No.

CV 23-137-BLG-SPW-TJC, 2025 WL 2469546, at *1 (D. Mont. June 2, 2025); *see also Alejnikov v. WaterStreet Co.*, No. CV 25-110-M-KLD, 2025 WL 2996184, at *1 (D. Mont. Oct. 24, 2025). Rule 23(g)(1) directs courts to consider the following factors:

- (i) the work counsel has done in identifying or investigating potential claims in the action;
- (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
- (iii) counsel’s knowledge of the applicable law; and
- (iv) the resources that counsel will commit to representing the class[.]

Fed. R. Civ. P. 23(g)(1)(A). Courts also “may consider any other matter pertinent to counsel’s ability to fairly and adequately represent the interests of the class.” Fed. R. Civ. P. 23(g)(1)(B).

DISCUSSION

Plaintiffs argue that appointment of the Proposed Co-Lead Counsel and Proposed Liaison Counsel proves “appropriate and warranted” for several reasons. (Doc. 221 at 2.) Plaintiffs first assert that the Proposed Interim Co-lead Counsel “have expended the most effort and resources by far in advancing these claims to date.” (*Id.*) Plaintiffs next argue that three purchaser plaintiff actions currently are pending (in Montana, Minnesota, and California), and that this action proves “by far the most procedurally advanced.” (*Id.*) Plaintiffs argue that Proposed Interim Co-lead Counsel “have substantial PFAS-related litigation experience that far

surpasses the relevant experience of counsel involved in the other actions,” and that the “Firms’ collective resources meet or exceed those of counsel in the [Minnesota action] and the [California action]. (*Id.* at 3.) Plaintiffs further assert that the Montana action represents the most appropriate lead action because “the size and scope of Plaintiffs’ claims here, involving purchasers in five states, are orders of magnitude larger than the claims of the plaintiffs” in Minnesota and California. (*Id.*)

The Court agrees with Plaintiffs. District courts throughout this circuit have noted that “[t]he appointment of interim class counsel is discretionary and is particularly suited to complex actions.” *Lindstrom*, 2025 WL 2469546, at *1 (citing *Raddue v. Liberty Media Corp.*, 2024 WL 1765041, at *3 (D. Nev. Apr. 23, 2024); *Smith v. Kaye-Smith Enters., Inc.*, 2023 WL 11959471, at *2 (D. Or. Jan. 6, 2023); *In re Google Assistant Privacy Litig.*, 2020 WL 7342713, at *1 (N.D. Cal. Dec. 14, 2020); *McFadden v. Microsoft Corp.*, 2020 WL 5642822, at *1 (W.D. Wash. Sept. 22, 2020); *see also Wilson v. Inv. & Admin. Comm. of Walt Disney Co.*, 2016 WL 11000049, at *1 (C.D. Cal. Aug. 19, 2016) (substantially same proposition)). The Court determines that the Proposed Co-Lead Counsel and Proposed Liaison Counsel meet the Rule 23(g)(1) factors. The Court first will address Defendants’ arguments against appointment of interim class counsel and then address each factor in turn.

Defendants first argue that Plaintiffs' motion proves premature as no indication exists that the pending actions in Minnesota and California will be, or could be, consolidated with the Montana action. (Doc. 233 at 4.) Defendants cite *Stasi v. Inmediata Health Grp. Corp.*, No. 19CV2353 JM (LL), 2021 WL 5861563 (S.D. Cal. Mar. 10, 2021), to support their contentions. *Stasi* rejected the plaintiffs' motion to be appointed interim class counsel. *Id.* *Stasi* cited several reasons for its denial, including the notion that “[t]o the extent [p]laintiffs’ argument for appointment relies on the simple fact that a competing case exists in a different court, for various reasons, district courts in California have consistently rejected this argument.” *Id.* at *4.

The procedural history in *Stasi* proves very different from this case. A “competing case” based on the same incident existed in *Stasi* but had been filed before the instant case. *Id.* at *2. The court in *Stasi* also observed that the timing of the plaintiffs’ motion “suggest[ed] the possibility that [the] [p]laintiffs’ attorneys [sought] appointment as co-lead interim class counsel in order to exert greater control over a purportedly pending settlement in [the other pending case].” *Id.* at *3. *Stasi* cites several cases that reach the same conclusion and none prove similar to the facts here.

Appointment of interim class counsel proved unnecessary in *In re Nissan N. Am., Inc. Litig.*, No. 18-CV-07292-HSG, 2019 WL 4601557, at *2 (N.D. Cal. Sept.

23, 2019), as the relevant cases already had been consolidated before the court, settlement was pending, and no rivalry or signs of any rivalry existed between the involved plaintiffs' firms. Appointment of interim class counsel also proved unnecessary in *Wong v. Trader Joe's Co.*, No. 18-CV-869 JLS (JLB), 2018 WL 9516044, at *1 (S.D. Cal. July 27, 2018), where the court cited the *Manual for Complex Litigation*'s statement that "[i]f the lawyer who filed the suit is likely to be the only lawyer seeking appointment as class counsel, appointing interim class counsel may be unnecessary." *Manual for Complex Litigation* § 21.11 (4th ed. 2004). Appointment of interim class counsel proved unnecessary in *In re S.C. Johnson & Son, Inc. Windex Non-Toxic Litig.*, No. 20-CV-03184-HSG, 2020 WL 6081722 (N.D. Cal. Oct. 15, 2020), as the plaintiffs based their motion on settlement discussions in a related action filed in state court that may have involved at least one product relevant to the instant case but otherwise had little connection to their pending case.

The Manual for Complex Litigation (Fourth) § 21.11 states that if "there are a number of overlapping, duplicative, or competing suits pending in other courts, and some or all of those suits *may be consolidated*, a number of lawyers may compete for class counsel appointment." *The Manual for Complex Litigation* (Fourth) § 21.11 further states that "[i]n such cases, designation of interim counsel clarifies responsibility for protecting the interests of the class during

precertification activities, such as making and responding to motions, conducting any necessary discovery, moving for class certification, and negotiating settlement.” *Id.* The Court determines that nothing in the *Manual for Complex Litigation* requires that consolidation of cases be pending or that outstanding conflicts exist between ongoing cases.

The case law further clarifies that courts often appoint interim counsel when copycat cases have been filed in other courts. *See e.g., Tolmasoff v. Gen. Motors, LLC*, No. 16-11747, 2016 WL 3548219 (E.D. Mich. June 30, 2016); *Olosoni v. HRB Tax Grp., Inc.*, No. 19-CV-03610-SK, 2019 WL 7576680 (N.D. Cal. Nov. 5, 2019), *aff'd sub nom. Snarr v. HRB Tax Grp., Inc.*, 839 F. App'x 53 (9th Cir. 2020); *Mogull v. Pete & Gerry's Organics, LLC*, No. 21 CV 3521 (VB), 2022 WL 4661454 (S.D.N.Y. Sept. 30, 2022). The Western District of Washington in *McFadden*, 2020 WL 5642822, at *2, noted that, “[t]he [c]ourt does not find the absence of any competing cases or applications for appointment of counsel particularly helpful to the resolution of [the] plaintiff’s motion. As reflected in the parties’ briefing, district courts routinely reach opposite conclusions under these same circumstances [where no competing cases or applications exist].” The Court thus finds unpersuasive Defendants’ argument that it lacks authority to appoint interim class counsel because it would bind parties who are not before the Court.

The Court recognizes that it lacks input from the plaintiffs in the pending actions in California or Minnesota. The Court determines that such input proves unnecessary on a motion to appoint interim class counsel and that the procedural, and scale-based differences, between the Montana case and the other cases, warrant appointment at this point. The Court recognizes the value of designating interim counsel to “clarif[y] responsibility for protecting the interests of the class during precertification activities, [which may include] making and responding to motions, conducting any necessary discovery, moving for class certification, and negotiating settlement.” *Manual for Complex Litigation* (Fourth) § 21.11. ““Given the significant work that has already been done in this case and the [existence] of [multiple] potentially overlapping action[s], granting this [m]otion will provide the parties and their counsel with needed certainty regarding further litigation of this matter’ and is necessary to protect the interests of the putative class.” *Mogull*, 2022 WL 4661454, at *2 (quoting *Bitzko v. Weltman, Weinberg, & Reis Co., LPA*, No. 117CV458BKSDJS, 2018 WL 10593815, at *1 (N.D.N.Y. May 18, 2018) (cleaned up)). The Court additionally finds irrelevant Defendants’ discussion of Montana Plaintiffs’ earlier motion to appoint interim counsel as the involved counsel clearly have resolved any previous dispute. The Court also notes that it appears a leadership conflict may exist between Plaintiffs’ counsel in the Montana action and

plaintiffs' counsel in the Minnesota action which may be relevant to the extent other courts find important the existence of such disputes or rivalries.

The Court further concludes that the Proposed Co-Lead Counsel and Proposed Liaison Counsel will fairly and adequately represent the interests of the putative class as interim class counsel. Defendants "take no position on the appropriateness or adequacy of Plaintiffs' counsel to serve as interim class counsel under Fed. R. Civ. P. 23(g)(1)-(2)." (Doc. 233 at 4.) The Court determines that Proposed Co-Lead Counsel and Proposed Liaison Counsel have contributed significant hours and resources to identify and investigate potential claims and litigate the early proceedings in Montana and Connecticut. Fed. R. Civ. P. 23(g)(1)(A)(i). The Court concludes that Proposed Co-Lead Counsel and Proposed Liaison Counsel possess sufficient experience in handling class actions, other complex litigation, and the types of claims asserted in this action. Fed. R. Civ. P. 23(g)(1)(A)(ii). The Court further concludes that Proposed Co-Lead Counsel and Proposed Liaison Counsel present sufficient knowledge of the applicable law and have committed sufficient resources to representing the putative class. Fed. R. Civ. P. 23(g)(1)(A)(iii-iv).

The Court determines that it proves appropriate to appoint Proposed Co-Lead Counsel and Proposed Liaison Counsel at this time. Interim Class Counsel shall be responsible for the following as it pertains to this matter:

1. Coordinating the work of preparing and presenting the proposed class's claims;
2. Determining and presenting the positions of the proposed class during this litigation;
3. Acting as spokespersons for all communications between Defendants and the proposed class;
4. Initiating and entering settlement discussions/negotiations; and
5. Conducting discovery and otherwise litigating this matter to resolution.

The Court's list of responsibilities does not purport to bind any persons who are not parties to this action.

ORDER

Accordingly, **IT IS ORDERED** that Plaintiffs' Motion for Interim Co-Lead Class Counsel Appointment (Doc. 220) is **GRANTED**.

DATED this 28th day of May, 2026.



Brian Morris, Chief District Judge
United States District Court