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## I. INTRODUCTION

1.1. For decades, the Defendants in this case manufactured, marketed, and sold firefighting foams to public agencies and private parties for use in Washington even though they knew their products contained “forever chemicals” that would pollute Washington’s waters and harm people, wildlife, and fish.

1.2. To protect their profits, Defendants hid information from the public about the persistence, bioaccumulation, and toxicity of these “forever chemicals”—per- and polyfluoralkyl substances commonly known as PFAS—claiming that they were “benign” and “biodegradable” when they knew these claims to be false.

1.3. Because of Defendants’ manufacturing, marketing, promoting, distributing, and selling of these dangerous chemicals and their deception about the products’ dangers, these firefighting foams have been used widely throughout Washington for decades and have profoundly contaminated many drinking water sources, including in Airway Heights, Yakima County, the Lower Issaquah Valley, Lakewood, and Whidbey Island. Defendants’ actions have left many Washingtonians ill, many water sources undrinkable, and many fish unsafe to eat. They have forced many Washington families to go to great lengths to obtain safe drinking water, from installing expensive filters to purchasing bottled water.

1.4. Washington brings this case to hold accountable the companies that polluted our State. Washington has already spent many millions of dollars to investigate, mitigate, remediate, restore, treat, monitor, and otherwise respond to contamination in Washington’s waters and other natural resources, and the State anticipates increasing and long-term costs and harms as investigation and testing reveal more PFAS contamination. Washington taxpayers should not bear these costs; instead, they should be borne by the companies that profited from selling these dangerous products.

1.5. By manufacturing, marketing, promoting, distributing, and selling these dangerous chemicals and hiding their dangers, Defendants have created a public nuisance

1 (RCW 7.48) and violated Washington’s Products Liability Act (RCW 7.72), trespass/waste  
2 statute (RCW 4.24.630), Consumer Protection Act (RCW 19.86), Uniform Voidable  
3 Transactions Act (RCW 19.40), and the common law.

## 4 II. PARTIES

5 2.1. Plaintiff State of Washington brings this action, by and through the Attorney  
6 General, pursuant to RCW 43.10.030, RCW 19.86.080, and statutory and common law causes  
7 of action, to vindicate its sovereign, proprietary, public trust, and *parens patriae* rights, to  
8 abate a public nuisance, and to recover for injuries to Washington’s natural resources,<sup>1</sup>  
9 property, public health, and consumers. PFAS contamination in Washington is a matter of  
10 significant public concern.

11 2.2. This action addresses PFAS contamination in Washington attributable in whole  
12 or in part to aqueous film-forming foam (AFFF) commonly used for firefighting. Defendants  
13 3M Company; AGC Chemicals Americas, Inc.; Amerex Corporation; Archroma U.S., Inc.;  
14 Arkema Inc.; BASF Corporation; Buckeye Fire Equipment Company (Buckeye); Carrier Fire  
15 & Security Americas Corporation (Carrier Fire); Carrier Global Corporation (Carrier);  
16 ChemDesign Products, Inc.; Chemguard, Inc.; Clariant Corporation; Dynax Corporation;  
17 EIDP, Inc., f/k/a E. I. du Pont de Nemours and Company (Old DuPont); Kidde PLC, Inc.;  
18 National Foam, Inc.; The Chemours Company; Tyco Fire Products LP (the foregoing  
19 collectively referred to as Manufacturer Defendants)<sup>2</sup>; Corteva, Inc.; DuPont de Nemours, Inc.  
20 (New DuPont); and ABC Corporations 1-10 (names fictitious) (collectively with Manufacturer  
21 Defendants, Defendants) have long understood the dangers of toxic PFAS, including but not  
22 limited to perfluorooctane sulfonic acid (PFOS), perfluorooctanoic acid (PFOA),  
23 perfluorohexane sulfonic acid (PFHxS), perfluorononanoic acid (PFNA), perfluorobutane

24 <sup>1</sup> As used herein, “natural resources” includes, but is not limited, to those resources and lands held in trust by the  
25 State.

26 <sup>2</sup> The State has joined what it understands to be a substantial share of the market with regard to AFFF Product  
manufacturers and/or their corporate relatives.

1 sulfonic acid (PFBS), and hexafluoropropylene oxide dimer acid (HFPO-DA, known  
2 colloquially as GenX).<sup>3</sup> Nevertheless, long after they became aware of these dangers,  
3 Defendants continued to advertise, market, manufacture for sale, offer for sale, and sell PFAS-  
4 containing AFFF and PFAS-containing fluorochemicals and fluorosurfactants<sup>4</sup> (collectively,  
5 AFFF Products) to, inter alia, Washington agencies, counties, municipalities, local fire  
6 departments, businesses, other entities, and residents.

7 2.3. Defendant 3M Company is a corporation organized and existing under the laws  
8 of the State of Delaware, with its principal place of business located at 3M Center, St. Paul,  
9 Minnesota 55144-1000. 3M has designed, manufactured, marketed, promoted, distributed,  
10 and/or sold PFAS-containing AFFF that was transported, stored, used, handled, trained with,  
11 used to test equipment, released, spilled, otherwise discharged, and/or disposed in the State.  
12 3M is registered to do business in Washington.

13 2.4. Defendant AGC Chemicals Americas, Inc. is a corporation organized and  
14 existing under the laws of the State of Delaware, with its principal place of business located at  
15 5 East Uwchlan Avenue, Suite 201, Exton, Pennsylvania 19341. AGC Chemicals is the North  
16 American subsidiary of AGC Inc. (f/k/a Asahi Glass Co., Ltd.). AGC Chemicals and/or its  
17 affiliates have designed, manufactured, marketed, promoted, distributed, and/or sold  
18 fluorochemicals containing PFAS used to manufacture AFFF that was transported, stored,  
19 used, handled, trained with, used to test equipment, released, spilled, otherwise discharged,  
20 and/or disposed in the State.

21 2.5. Defendant Amerex Corporation is a corporation organized and existing under  
22 the laws of the State of Alabama, with its principal place of business located at 2900 Highway

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23 <sup>3</sup> PFAS, as defined here, is not limited to the listed PFAS chemicals but also includes their neutral acid forms,  
24 anionic conjugate base forms, or neutral salt species as well as precursors that can degrade into PFOS, PFOA,  
25 PFHxS, PFNA, PFBS, HFPO-DA and other perfluoroalkyl acids (a family of perfluorinated chemicals that consist  
of a carbon backbone and a charged functional moiety).

26 <sup>4</sup> Fluorochemicals, or fluorinated chemicals, are manmade organic compounds containing fluorine used in the  
manufacture of surfactants. Fluorosurfactants, or fluorinated surfactants, are synthetic organofluorine chemical  
compounds that have multiple fluorine atoms.

1 280 S, Suite 300, Birmingham, Alabama 35223. Amerex manufactures firefighting products.  
2 Beginning in 1971, it manufactured hand portable and wheeled extinguishers for commercial  
3 and industrial application. Amerex has designed, manufactured, marketed, promoted,  
4 distributed, and/or sold PFAS-containing AFFF that was transported, stored, used, handled,  
5 trained with, used to test equipment, released, spilled, otherwise discharged, and/or disposed in  
6 the State. Amerex is registered to do business in Washington.

7 2.6. Defendant Archroma U.S., Inc. is a corporation organized and existing under  
8 the laws of the State of Delaware, with its principal place of business located at 543577 Center  
9 Drive, Suite 10, Charlotte, North Carolina 28217. Archroma U.S., Inc., a subsidiary of  
10 Archroma Management, LLC, has designed, manufactured, marketed, promoted, distributed,  
11 and/or sold fluorochemicals containing PFAS used to manufacture AFFF that was transported,  
12 stored, used, handled, trained with, used to test equipment, released, spilled, otherwise  
13 discharged, and/or disposed in the State. On information and belief, Archroma is a successor to  
14 Clariant, which manufactured fluorochemicals used in AFFF and was formerly known as  
15 Sandoz Chemicals Corporation and as Sodeyeco, Inc.

16 2.7. Defendant Arkema Inc. is a corporation organized and existing under the laws  
17 of the State of Pennsylvania, with its principal place of business located at 900 First Avenue,  
18 King of Prussia, Pennsylvania 19406. Arkema is a successor in interest to Atochem North  
19 America Inc., Elf Atochem North America, Inc., and Atofina Chemicals, Inc. Arkema and/or  
20 its predecessors have designed, manufactured, marketed, promoted, distributed, and/or sold  
21 fluorosurfactants containing PFAS used to manufacture AFFF that was transported, stored,  
22 used, handled, trained with, used to test equipment, released, spilled, otherwise discharged,  
23 and/or disposed in the State. Arkema is registered to do business in Washington.

24 2.8. Defendant BASF Corporation is a corporation organized and existing under the  
25 laws of the State of Delaware, with its principal place of business located at 100 Park Avenue,  
26 Florham Park, New Jersey 07932. On information and belief, BASF is the successor in interest



1 to Ciba Inc. (f/k/a/ Ciba Specialty Chemicals Corporation). On information and belief, Ciba  
2 Inc. designed, manufactured, marketed, promoted, distributed, and/or sold fluorochemicals and  
3 fluorosurfactants containing PFAS used to manufacture AFFF that was transported, stored,  
4 used, handled, trained with, used to test equipment, released, spilled, otherwise discharged,  
5 and/or disposed in the State. BASF is registered to do business in Washington.

6 2.9. Defendant Buckeye Fire Equipment Company is a corporation organized and  
7 existing under the laws of the State of Ohio, with its principal place of business located at 110  
8 Kings Road, Kings Mountain, North Carolina 28086. Buckeye has designed, manufactured,  
9 marketed, promoted, distributed, and/or sold PFAS-containing AFFF that was transported,  
10 stored, used, handled, trained with, used to test equipment, released, spilled, otherwise  
11 discharged, and/or disposed in the State.

12 2.10. Defendant Carrier Fire & Security Americas Corporation is a corporation  
13 organized and existing under the laws of the State of Delaware, with its principal place of  
14 business located at 13995 Pasteur Boulevard, Palm Beach Gardens, Florida 33418. Carrier Fire  
15 is the indirect parent of Kidde-Fenwal, Inc.,<sup>5</sup> which is the successor in interest to Kidde Fire  
16 Fighting, Inc. (f/k/a Chubb National Foam, Inc., f/k/a National Foam System, Inc.)  
17 (collectively, Kidde/Kidde Fire). Carrier Fire is also the successor in interest to UTC Fire &  
18 Security Americas Corporation, Inc., following the spinoff transaction described in  
19 Paragraph 2.11. Carrier Fire, through Kidde/Kidde Fire, has designed, manufactured,  
20 marketed, promoted, distributed, and/or sold AFFF containing PFAS that was transported,  
21 stored, used, handled, trained with, used to test equipment, released, spilled, otherwise  
22 discharged, and/or disposed in the State. Carrier Fire is registered to do business in  
23 Washington.

24  
25 <sup>5</sup> On May 14, 2023, Kidde-Fenwal, Inc. filed for bankruptcy in the case captioned *In re Kidde-Fenwal, Inc.*, Case  
26 No. 23-10638-LSS (D. Del. Bankr.). On May 23, 2023, Kidde-Fenwal filed an adversary proceeding for declaratory  
and injunctive relief seeking to enjoin any filings against Kidde-Fenwal under the automatic stay provisions of the  
bankruptcy code. Out of an abundance of caution, Washington chooses not to name Kidde-Fenwal at this time.

1           2.11. Defendant Carrier Global Corporation is a corporation organized and existing  
2 under the laws of the State of Delaware, with its principal place of business located at 13995  
3 Pasteur Boulevard, Palm Beach Gardens, Florida 33418. On or around April 3, 2020, United  
4 Technologies Corporation completed the spinoff of one of its reportable segments into Carrier,  
5 a separate publicly traded company. Pursuant to the Separation and Distribution Agreement by  
6 and Among United Technologies Corporation, Carrier Global Corporation, and Otis  
7 Worldwide Corporation, Carrier assumed certain liabilities, including those related to the  
8 business operated by Kidde/Kidde Fire. Carrier's operations are classified into three segments:  
9 HVAC, Refrigeration, and Fire & Security. Carrier's Fire & Security products and services are  
10 sold under brand names that include Chubb and Kidde. At all relevant times, Carrier conducted  
11 business throughout the United States, including in Washington. Carrier, through Kidde/Kidde  
12 Fire, manufactured, marketed, promoted, distributed, and/or sold AFFF that contained PFAS  
13 throughout the United States, including in Washington.

14           2.12. Defendant ChemDesign Products, Inc. is a corporation organized and existing  
15 under the laws of the State of Delaware, with its principal place of business located at Two  
16 Stanton Street, Marinette, Wisconsin 54143. On information and belief, ChemDesign designed,  
17 manufactured, marketed, promoted, distributed, and/or sold fluorochemicals containing PFAS  
18 used to manufacture AFFF, primarily to Chemguard Inc., that was transported, stored, used,  
19 handled, trained with, used to test equipment, released, spilled, otherwise discharged, and/or  
20 disposed in the State.

21           2.13. Defendant Chemguard, Inc. is a corporation organized and existing under the  
22 laws of the State of Texas, with its principal place of business located at One Stanton Street,  
23 Marinette, Wisconsin 54143-2542. Chemguard has designed, manufactured, marketed,  
24 promoted, distributed, and/or sold AFFF containing PFAS that was transported, stored, used,  
25 handled, trained with, used to test equipment, released, spilled, otherwise discharged, and/or  
26 disposed in the State and also has designed, manufactured, marketed, and sold

1 fluorosurfactants containing PFAS used to manufacture AFFF that was transported, stored,  
2 used, handled, trained with, used to test equipment, released, spilled, otherwise discharged,  
3 and/or disposed in the State. Chemguard is registered to do business in Washington.

4 2.14. Defendant Clariant Corporation is a corporation organized and existing under  
5 the laws of the State of New York, with its principal place of business located at 500 East  
6 Morehead Street, Suite 400, Charlotte, North Carolina 28202. Clariant has designed,  
7 manufactured, marketed, promoted, distributed, and/or sold fluorochemicals containing PFAS  
8 used to manufacture AFFF that was transported, stored, used, handled, trained with, used to  
9 test equipment, released, spilled, otherwise discharged, and/or disposed in the State. Clariant is  
10 a predecessor to Archroma and was formerly known as Sandoz Chemicals Corporation and as  
11 Sodeyeco, Inc. Clariant is registered to do business in Washington.

12 2.15. Defendant Corteva, Inc. is a corporation organized and existing under the laws  
13 of the State of Delaware, with its principal place of business located at 974 Centre Road,  
14 Wilmington, Delaware 19805. In 2019, New DuPont spun off a new, publicly traded company,  
15 Corteva, which currently holds Old DuPont as a subsidiary. In connection with these transfers,  
16 Corteva assumed certain Old DuPont liabilities—including those relating to PFAS. Corteva is  
17 registered to do business in Washington.

18 2.16. Defendant DuPont de Nemours, Inc. (i.e., New DuPont), formerly known as  
19 DowDuPont Inc., is a corporation organized and existing under the laws of the State of  
20 Delaware, with its principal place of business located at 974 Centre Road, Wilmington,  
21 Delaware 19805. In 2015, after Old DuPont spun off Chemours, Old DuPont merged with The  
22 Dow Chemical Company and transferred Old DuPont's historic assets and liabilities to other  
23 entities, including New DuPont. In connection with these transfers, New DuPont assumed  
24 certain Old DuPont liabilities—including those relating to PFAS. New DuPont does business  
25 throughout the United States, including in the State.

1           2.17. Defendant Dynax Corporation is a corporation organized and existing under the  
2 laws of the State of Delaware, with its principal place of business located at 79 Westchester  
3 Avenue, Pound Ridge, New York 10576. Dynax has designed, manufactured, marketed,  
4 promoted, distributed, and/or sold fluorosurfactants containing PFAS used to manufacture  
5 AFFF that was transported, stored, used, handled, trained with, used to test equipment,  
6 released, spilled, otherwise discharged, and/or disposed in the State.

7           2.18. Defendant EIDP, Inc. (i.e., Old DuPont), f/k/a E. I. du Pont de Nemours and  
8 Company, is a corporation organized and existing under the laws of the State of Delaware,  
9 with its principal place of business located at 974 Centre Road, Wilmington, Delaware 19805.  
10 Old DuPont has designed, manufactured, marketed, promoted, distributed, and/or sold  
11 fluorochemicals and/or fluorosurfactants containing PFAS used to manufacture AFFF that was  
12 transported, stored, used, handled, trained with, used to test equipment, released, spilled,  
13 otherwise discharged, and/or disposed in the State. Old DuPont is registered to do business in  
14 Washington.

15           2.19. Defendant Kidde PLC, Inc. is a corporation organized under the laws of the  
16 State of Delaware, with its principal place of business located at Nine Farm Springs Road,  
17 Farmington, Connecticut 06032. Kidde PLC was part of United Technologies Corporation. At  
18 all relevant times, Kidde PLC conducted business throughout the United States, including in  
19 the State. Kidde PLC, through Kidde/Kidde Fire, manufactured, marketed, promoted,  
20 distributed, and/or sold AFFF that contained PFAS throughout the United States, including in  
21 the State. Kidde PLC manufactured, marketed, promoted, distributed, and/or sold AFFF that  
22 contained PFAS throughout the United States, including in the State.

23           2.20. Defendant National Foam, Inc. is a corporation organized under the laws of the  
24 State of Delaware, with its principal place of business located at 141 Junny Road, Angier,  
25 North Carolina 27501. National Foam manufactures the Angus brand of products and is the  
26 successor in interest to Angus Fire Armour Corporation (collectively, National Foam/Angus

1 Fire). National Foam/Angus Fire has designed, manufactured, marketed, promoted, distributed,  
2 and/or sold PFAS-containing AFFF that was transported, stored, used, handled, trained with,  
3 used to test equipment, released, spilled, otherwise discharged, and/or disposed in the State.

4 2.21. Defendant The Chemours Company is a corporation organized under the laws  
5 of the State of Delaware, with its principal place of business located at 1007 Market Street,  
6 Wilmington, Delaware 19899. In 2015, Old DuPont spun off its performance chemicals  
7 business to Chemours, along with vast environmental liabilities. Chemours has designed,  
8 manufactured, marketed, promoted, distributed, and/or sold fluorosurfactants containing PFAS  
9 used to manufacture AFFF that was transported, stored, used, handled, trained with, used to  
10 test equipment, released, spilled, otherwise discharged, and/or disposed in the State. Chemours  
11 is registered to do business in Washington.

12 2.22. Defendant Tyco Fire Products LP is a limited partnership organized under the  
13 laws of the State of Delaware, with its principal place of business located at One Stanton  
14 Street, Marinette, Wisconsin 54143-2542. Tyco manufactures the Ansul brand of products and  
15 is the successor in interest to Ansul Company (together, Tyco/Ansul). Tyco/Ansul has  
16 designed, manufactured, marketed, promoted, distributed, and/or sold PFAS-containing AFFF  
17 that was transported, stored, used, handled, trained with, used to test equipment, released,  
18 spilled, otherwise discharged, and/or disposed in the State and also has designed,  
19 manufactured, marketed, and sold fluorosurfactants containing PFAS used to manufacture  
20 AFFF that was transported, stored, used, handled, trained with, used to test equipment,  
21 released, spilled, otherwise discharged, and/or disposed in the State. Tyco is registered to do  
22 business in Washington.

23 2.23. Defendants ABC Corporations 1 through 10, unknown at this time, are  
24 manufacturers of AFFF, manufacturers of PFAS-containing fluorochemicals and  
25 fluorosurfactants used to make AFFF, and/or distributors of AFFF Products that have resulted  
26

1 in injuries to the State's natural resources, or otherwise share responsibility for such injuries.  
2 When these ABC Corporations are identified, they will be added by name.

### 3 **III. JURISDICTION AND VENUE**

4 3.1. The natural resources that are the subject of this suit are all within the State of  
5 Washington. The State of Washington is not a citizen of any state for diversity purposes, and  
6 thus no diversity jurisdiction exists as a basis for federal jurisdiction. No federal subject matter  
7 jurisdiction is invoked herein.

8 3.2. This Court has personal jurisdiction over Defendants pursuant to  
9 RCW 4.28.185(1)(a)-(b) and RCW 19.86.160.

10 3.3. Venue is proper in King County pursuant to RCW 4.12.010 and RCW 4.12.020  
11 because some part of the property that is subject to the action is located there and because  
12 some part of the cause of action arose there. Property contaminated by Defendants' AFFF  
13 Products is located throughout the State, including in King County. The injury created by  
14 Defendants' conduct is located throughout the State, including in King County. The property  
15 and injury in question includes but is not limited to land, water, aquatic lands, and wildlife,  
16 including those within King County.

17 3.4. Venue is also proper in King County pursuant to RCW 4.12.025 because  
18 Defendants transact or transacted business in King County by, inter alia, selling AFFF  
19 Products in King County.

### 20 **IV. FACTS**

#### 21 **A. AFFF Is Harmful to Human Health, Animals, and the Environment**

22 4.1. AFFF is a fire suppressing foam used to extinguish flammable liquid fires,  
23 including jet-fuel fires, aviation-related fires, hangar fires, ship fires, vehicle fires, train  
24 derailments, and chemical fires, and has been used routinely to train firefighters and test  
25 firefighting equipment.  
26

1 4.2. AFFF Products contain PFAS, which are highly fluorinated synthetic chemical  
2 compounds that include carbon chains containing at least one carbon atom on which all  
3 hydrogen atoms are replaced by fluorine atoms.

4 4.3. The PFAS family, including but not limited to PFOS, PFOA, PFHxS, PFNA,  
5 PFBS, and HFPO-DA, can cause extensive and long-lasting environmental contamination.

6 4.4. The carbon-fluorine bond is one of the strongest bonds in chemistry and gives  
7 PFAS their unique chemical properties. The carbon-fluorine bond in PFAS is human made and  
8 generally does not occur in nature.

9 4.5. On information and belief, AFFF Products have been used and/or stored in  
10 Washington at local, state, and regional fire training centers; at federal military installations; at  
11 the State's five oil refineries; at other petroleum facilities (such as blending facilities, loading  
12 and fueling terminals, and other flammable liquid storage); in highway tunnels; on merchant  
13 ships and oil cargo tankers; and at various facilities for oil spill response.

14 4.6. Defendants' intended use of AFFF for, inter alia, emergency response,  
15 firefighting equipment testing, emergency activation of fire suppression systems, and training  
16 exercises can release hundreds, if not thousands, of gallons of foamy water laced with PFAS.  
17 These releases have occurred, inter alia, at federal military installations, public properties, fire  
18 departments, airports, petroleum facilities and refineries, train derailment sites, bulk storage  
19 terminals, industrial facilities and other facilities handling large volumes of flammable liquid  
20 hydrocarbons, and on merchant ships and oil cargo tankers. Millions more gallons of water  
21 contaminated with PFAS from AFFF Products have been released in Washington as a result of  
22 additional spills and may be released in certain emergency situations. Due to these releases,  
23 PFAS from AFFF Products have been and continue to be released into the environment in a  
24 variety of ways, including but not limited to, through soils, sediment, surface water, and  
25 groundwater.

1           4.7. For example, from at least the 1970s to 1991, Fairchild Air Force Base had fire  
2 training exercises two to three times per month. Approximately 125 gallons of AFFF were  
3 used during each training exercise.

4           4.8. PFAS are mobile and persistent in the environment. By design, they withstand  
5 high temperatures and survive highly corrosive environments. Once introduced into the  
6 environment, PFAS quickly spread because they easily dissolve in water and, thus, have  
7 reached numerous water systems within the State. Many PFAS—such as those used for  
8 firefighting foam—degrade in the environment to form perfluoroalkyl acids that are not broken  
9 down by any known natural mechanism and are thus extraordinarily costly to clean up.  
10 Similarly, removal of PFAS from drinking water sources requires specialized, and expensive,  
11 drinking water treatment systems. In short, once PFAS are used, they migrate through the  
12 environment; ultimately resist natural degradation; contaminate natural resources, including  
13 drinking water; and are difficult and costly to remove. With no known natural processes  
14 capable of destroying PFAS, the toxic and hazardous effects of PFAS will impact Washington  
15 for decades, if not centuries.

16           4.9. PFAS are toxic and cause significant adverse effects to human health. The  
17 presence of these chemicals in drinking water and other natural resources presents a serious  
18 threat to public health. This threat is so serious that for PFOA and PFOS, two of the most well  
19 studied PFAS, the U.S. Environmental Protection Agency (EPA) recently proposed a rule  
20 under the federal Safe Drinking Water Act to set the health-based Maximum Contaminant  
21 Level Goal for PFOA and PFOS in drinking water to zero because “there is no dose below  
22 which either chemical is considered safe.” Depending on the individual PFAS, exposure to  
23 PFAS has been linked to numerous adverse health effects, including but not limited to kidney  
24 cancer; testicular cancer; ulcerative colitis; thyroid disease; medically diagnosed high  
25 cholesterol; pregnancy induced hypertension and preeclampsia; negative impacts on  
26



1 reproduction, liver, thyroid, immune function, and fetal growth and development; and  
2 increased risk of cardiovascular disease, liver disease, and liver cancer.

3 4.10. Some PFAS bioaccumulate and biopersist in animals and are toxic to their  
4 health. Because humans and some other organisms slowly excrete certain PFAS, ongoing low-  
5 level exposure results in a buildup in body burden (i.e., levels of PFAS remaining within the  
6 body). PFAS also can biomagnify, meaning their concentration in organic tissue increases as  
7 they are consumed up the food chain. PFAS also are harmful to the environment and animal  
8 health and can build up in sediments and soils over time, impacting plants, fish, and animals.

9 4.11. These persistent “forever chemicals” have caused and will continue to cause  
10 long-lasting contamination in Washington that adversely impacts human health and harms  
11 Washington’s natural resources.

12 **B. PFAS from AFFF Harms Washington’s People and Its Natural Resources**

13 4.12. Washington’s unique and unparalleled natural resources support Washington’s  
14 public health, ecosystems, economy, and culture.

15 4.13. For example, Washingtonians rely on groundwater for drinking, irrigation, and  
16 agriculture, with over 60 percent of Washingtonians relying on groundwater for at least a  
17 portion of their drinking water. Groundwater also serves essential ecological functions, such as  
18 influencing surface water quality, supporting wetlands, and providing important instream flows  
19 for salmon and other fish species.

20 4.14. Washington’s surface waters—which include all water in the State’s rivers,  
21 lakes, streams, and wetlands—account for 75 percent of Washington’s total water supply and  
22 provide drinking water to over 100 public water systems, including Seattle, Tacoma, and  
23 Everett. These surface waters also support essential ecological functions, fishing, recreation,  
24 tourism, industry, agriculture, and other commercial uses. As one of the largest rivers in North  
25 America, the Columbia River has tremendous economic, cultural, and environmental  
26 importance; it supplies irrigation, supports recreation and fishing, and provides important

1 habitat for salmon, steelhead, and a multitude of other aquatic species. Lake Washington, a  
2 large lake between Seattle and Bellevue, serves as an important destination for fishing,  
3 swimming, and other recreation, as well as an important habitat for Chinook, Coho, and  
4 Sockeye salmon.

5 4.15. Washington is also home to a tremendous diversity of ecosystems, including  
6 prairies, wetlands, estuaries, rainforests, shrubsteppe, marine waters, fresh waters, and  
7 grasslands, which each support an array of plants and animals. These diverse ecosystems serve  
8 the State's economy and provide essential ecological functions. As just one example,  
9 Washington's Puget Sound supports a wide range of fish and wildlife, including the iconic  
10 Southern Resident Killer Whale. In Eastern Washington, shrubsteppe serves as one of the  
11 State's most diverse ecosystems and supports species found nowhere else in the State, such as  
12 the Greater sage grouse and burrowing owl.

13 4.16. The State's sediments, soils, and aquatic lands likewise are critical components  
14 of the State's diverse ecosystems. Sediments provide critical habitat for bottom-dwelling  
15 benthic invertebrates (such as shellfish), which live in or on the sediments; play a key role in  
16 sediment processes; and form a vital link in the marine food web. Many benthic invertebrates  
17 are harvested commercially and are important both economically and culturally in Washington.

18 4.17. The State has an important and direct interest in preserving a healthy  
19 environment for Washingtonians; promoting public health; managing its water resources; and  
20 protecting, restoring, and properly utilizing the State's natural resources. Maintaining access to  
21 clean, safe, and reliable drinking water for all Washingtonians is of critical importance to the  
22 State, particularly as climate change impacts Washington's water resources.

23 4.18. Washington owns and manages lands and natural resources within the State in  
24 its sovereign capacity. Wildlife, fish, shellfish, and aquatic lands are the property of the State.  
25 Washington also owns millions of acres of aquatic lands and uplands, with many of those  
26 uplands subject to fiduciary trust obligations.

1           4.19. The State also preserves, protects, and perpetuates fish, shellfish, wildlife, and  
2 ecosystems while providing sustainable fish, shellfish, and wildlife recreational and  
3 commercial opportunities, including hunting and fishing.

4           4.20. Washington's current and future residents have a right to clean natural resources  
5 and a healthful environment free from PFAS contamination, including clean drinking water.

6           4.21. Washington's tourism, recreation, fishing, and other industries also have an  
7 interest in a clean and healthy environment free of PFAS for their businesses, patrons, and  
8 tourists to visit and enjoy.

9           4.22. Past and ongoing contamination from PFAS attributable to AFFF Products  
10 harms public health and adversely affects Washington's natural resources, damages their  
11 intrinsic value, and impairs the public benefits derived from access to, use, and enjoyment of  
12 them.

13           4.23. PFAS particularly harms Washington's finite drinking water resources. Many  
14 drinking water resources across the State already suffer PFAS contamination that is  
15 challenging and costly to address, requiring long-term or potentially permanent efforts to  
16 ensure drinking water is safe, reliable, and clean for Washingtonians.

17           4.24. In Washington, PFAS attributable to AFFF Products have been found in  
18 drinking water, groundwater, surface water, fresh water and marine sediments, wastewater  
19 treatment plant effluent, biosolids, landfill leachate, soils, freshwater and marine fish tissue,  
20 osprey eggs, and even breast milk.

21           4.25. Washington has already spent millions of dollars studying, monitoring,  
22 investigating, treating, mitigating, regulating, cleaning up, and otherwise addressing PFAS  
23 contamination from AFFF Products, including through efforts to mitigate and reduce human  
24 exposure and to provide communities technical assistance, communication, and advice.  
25 Addressing ongoing and future AFFF Product-related PFAS exposure and contamination will  
26 require the State to continue and expand this work and to incur further significant costs,

1 including through, inter alia, efforts to reduce human exposure to PFAS in drinking water and  
2 from other sources; investigate, monitor, test, and clean up PFAS contamination; provide  
3 communities technical assistance, communication, and advice; conduct biomonitoring studies;  
4 provide grant funding; and implement laws, regulations, and policies that address PFAS  
5 exposure and contamination. Recognizing this, the State Legislature has directed the  
6 Department of Ecology (Ecology) in partnership with the Department of Health (Health) to  
7 develop a legislative report outlining funding strategies to reduce PFAS in the environment,  
8 including through projects related to safe drinking water, managing environmental  
9 contamination, and evaluating PFAS waste management options.

10 4.26. PFAS from AFFF Products have contaminated drinking water supplies in urban  
11 and rural communities across the State, rendering some undrinkable and requiring significant  
12 treatment measures at others. At the time of this filing, areas with known impacts include those  
13 near Fairchild Air Force Base, Joint-Base Lewis-McChord, Naval Base Kitsap Bangor, Naval  
14 Air Station Whidbey Island, and Yakima Training Center, as well as the Lower Issaquah  
15 Valley. To give a sense of scale, testing in 2021 showed levels up to 5,300 parts per trillion  
16 (ppt) of PFAS in groundwater under and around Yakima Training Center, and testing in 2017  
17 showed levels up to 1,500 ppt in the drinking water for Airway Heights, near Fairchild Air  
18 Force Base. Both levels far exceed the current state and proposed federal levels for PFAS in  
19 drinking water. The State continues to learn of additionally impacted water supplies on a  
20 regular basis.

21 4.27. As of this filing, Ecology estimates that overall remediation costs could range  
22 between \$5.3 million and \$62.8 million for a single site where AFFF release results in  
23 groundwater contamination. Interim solutions to address the need for potable drinking water  
24 during the period in which remediation is taking place, such as filtering or alternative sources  
25 of drinking water, could result in ten-year costs of \$6.5 million to \$10 million per site.<sup>6</sup>

26 \_\_\_\_\_  
<sup>6</sup> These estimates may change as the State continues to investigate AFFF-related PFAS contamination.

1 4.28. Moreover, for the 2023-2025 biennium alone, the Washington State Legislature  
2 has appropriated more than \$16 million to address PFAS contamination in the State.

3 4.29. These high PFAS levels in drinking water adversely impact Washingtonians. As  
4 just one example, a 2019 federal study, published in 2022, detected high levels of PFAS  
5 associated with AFFF formulations in the blood of study participants that live near Airway  
6 Heights, including up to 56 times higher than national levels. Notably, these study participants  
7 lived near Fairchild Air Force Base, where the U.S. Air Force had used AFFF Products for  
8 firefighter training dating back to the 1970s.

9 4.30. PFAS contamination from AFFF Products can result in additional health and  
10 environmental burdens in communities with cumulative impacts, health disparities, and  
11 environmental justice considerations.

12 4.31. PFAS from AFFF Products also have contaminated Washington's surface  
13 waters. PFAS have been detected in at least 15 of Washington's water bodies, including West  
14 Medical Lake (located only a mile southwest of Fairchild Air Force Base) and Angle Lake  
15 (located southeast of the Seattle-Tacoma International Airport).

16 4.32. Due to high levels of PFOS in fish tissue and evidence that PFOS can harm  
17 human health, in December 2022, Health issued a fish consumption advisory warning against  
18 eating certain types of fish in three King County lakes, including Lake Washington. Health  
19 made this recommendation based on a 2018 study of fish tissue data collected from these lakes,  
20 which found PFOS in all 76 samples analyzed.

21 4.33. PFAS attributable to AFFF Products have also contaminated Washington's soil  
22 and sediments. PFAS in the soil column serve as a continuing source of contamination for  
23 drinking water and other natural resources. PFAS in sediments, as well as surface water, can  
24 increase PFAS concentrations in fish.

25 4.34. The State continues to investigate and address PFAS in Washington and  
26 anticipates discovering additional contamination in the State from PFAS attributable to AFFF

1 Products. Such investigation is necessary to protect public health, to ascertain the scope of  
2 AFFF Products-related contamination, and to return Washington's affected natural resources to  
3 safe levels and to their pre-contamination condition.

4 4.35. Manufacturer Defendants' tortious, deceptive, intentional, and unlawful actions  
5 have caused and/or contributed to and continue to cause and contribute to PFAS contamination  
6 in Washington, including contamination of the State's drinking water, groundwater, surface  
7 water, air, soil, sediment, plants, wildlife, estuaries, aquatic lands, wetlands, other natural  
8 resources and property owned or held in trust by the State.

9 4.36. Manufacturer Defendants' design, manufacture, marketing, promotion,  
10 distribution, or sale of AFFF Products that were transported, stored, used, handled, trained  
11 with, used to test equipment, released, spilled, otherwise discharged, or disposed in the State  
12 have been a substantial factor in causing PFAS contamination and its injuries to Washington's  
13 public health and its natural resources.

14 4.37. Defendants are liable for the cost of investigation, remediation, treatment, and  
15 restoration of all the property, soils, sediments, waters, and other natural resources  
16 contaminated with PFAS from AFFF Products, as well as for the State's loss of past, present,  
17 and future use of such contaminated natural resources, including for all of the costs necessary  
18 to investigate and treat (in perpetuity) any and all drinking water wells and sources of drinking  
19 water impacted by PFAS from AFFF Products in Washington.

20 **C. Washington and the Federal Government Have Taken Significant Actions to**  
21 **Protect Washington's People and Natural Resources from PFAS Contamination,**  
22 **Including from AFFF Products**

23 4.38. State and federal authorities have taken steps to protect the public and the  
24 environment from PFAS contamination. Recognizing the harms of PFAS, Washington has  
25 emerged as a leader in regulating the use of PFAS, including PFAS-containing AFFF Products.

26 4.39. In 2018, the State Legislature adopted restrictions on the use of PFAS-  
containing AFFF by local governments and state agencies for training purposes. As of July 1,

1 2020, State law restricts the manufacturing, sale, and distribution of class B firefighting foam  
2 to which PFAS chemicals have been intentionally added, other than as required by federal law.

3 4.40. Through the Washington State Board of Health, Washington has also  
4 established State Action Levels for five PFAS constituents: PFOS (15 ppt), PFOA (10 ppt),  
5 PFHxS (65 ppt), PFNA (9 ppt), and PFBS (345 ppt). Washington now requires PFAS testing,  
6 monitoring, and reporting for most public water systems.

7 4.41. PFAS qualify as a hazardous substance under Washington's Model Toxics  
8 Control Act, RCW 70A.305 (MTCA). Under MTCA, releases of PFAS, including releases of  
9 AFFF Products, must be reported to Ecology within 90 days of the release. MTCA further  
10 requires cleanup of sites contaminated with hazardous substances. Cleanup standards for PFAS  
11 contamination, including contamination attributable to AFFF Products, are set on a site-by-site  
12 basis and are finalized in a site's Cleanup Action Plan.

13 4.42. At the federal level, Congress passed legislation in 2018 directing the Federal  
14 Aviation Administration to stop requiring airports to use PFAS-containing AFFF by October 4,  
15 2021. Congress also has required the U.S. Department of Defense to phase out AFFF at all  
16 military installations by October 1, 2024.

17 4.43. Federal agencies also are taking action to address PFAS. For example, in March  
18 2021, EPA issued a final determination to regulate PFOS and PFOA as contaminants under the  
19 Safe Drinking Water Act. In March 2023, EPA released those proposed drinking water  
20 standards for PFOS, PFOA, PFHxS, PFNA, PFBS, and HFPO-DA. EPA expects to finalize  
21 that regulation by the end of 2023. If fully implemented, the rule will require U.S. public water  
22 systems, including those in Washington, to monitor for these PFAS, notify the public of the  
23 results, and take action to remove PFAS from the water when they exceed levels set by EPA.  
24 EPA anticipates the rule will prevent thousands of deaths and reduce tens of thousands of  
25 serious PFAS attributable illnesses.  
26

1 4.44. In April 2022, EPA issued a memorandum detailing how it would use the  
2 National Pollutant Discharge Elimination System program established by the Clean Water Act  
3 to restrict PFAS discharges to water bodies by including requirements to monitor for PFAS and  
4 use best management practices and establishing practices to address PFAS-containing AFFF in  
5 storm water for federally issued permits. EPA later issued a companion memorandum  
6 providing guidance to states in December 2022.

7 4.45. In September 2022, EPA proposed to designate PFOS and PFOA as hazardous  
8 substances under the Comprehensive Environmental Response, Compensation, and Liability  
9 Act (CERCLA) and anticipates issuing a final rule in August 2023. This change would require  
10 facilities to report on releases above an assigned threshold. EPA also plans to seek input on  
11 whether the agency should consider designating other PFAS as CERCLA hazardous  
12 substances.

13 4.46. In January 2023, EPA proposed a significant new use rule under the Toxic  
14 Substances Control Act for inactive PFAS, i.e., PFAS that are currently on the statute's  
15 Chemical Substance Inventory but have not been used in manufacturing or processing since  
16 2006. The proposed rule would require any person to notify EPA 90 days in advance before  
17 commencing any manufacture (including import) or processing of any of the designated PFAS  
18 for a significant new use, so that EPA can make a determination that the significant new use  
19 does not pose an unreasonable risk of injury to health or the environment or, if it cannot make  
20 that determination, take regulatory action as necessary.

21 **D. Manufacturer Defendants Have Manufactured and Sold AFFF Products for**  
22 **Decades**

23 4.47. 3M began to produce PFOS and PFOA by electrochemical fluorination in the  
24 1940s. In the 1960s, 3M used its fluorination process to develop AFFF.

25 4.48. 3M manufactured, marketed, and sold AFFF from the 1960s to the early 2000s.  
26 National Foam and Tyco/Ansul began to manufacture, market, and sell AFFF in the 1970s.



1 Angus Fire and Chemguard began to manufacture, market, and sell AFFF in the 1990s.

2 Buckeye began to manufacture, market, and sell AFFF in the 2000s.

3 4.49. Arkema's predecessors supplied fluorosurfactants used to manufacture AFFF  
4 beginning in the 1970s. Ciba Corporation (Ciba) supplied fluorosurfactants used to  
5 manufacture AFFF beginning in the 1970s. Dynax supplied fluorosurfactants used to  
6 manufacture AFFF beginning in the 1990s. Old DuPont acquired Arkema's predecessors'  
7 fluorosurfactants business in 2002, after which it supplied fluorosurfactants used to  
8 manufacture AFFF. Chemguard acquired Ciba's fluorosurfactants business in 2003, after  
9 which it supplied fluorosurfactants used to manufacture AFFF. Following Chemours's spinoff  
10 from Old DuPont, Chemours supplied fluorosurfactants used to manufacture AFFF.

11 4.50. At varying times, AGC Chemicals, Clariant, and Old DuPont supplied  
12 fluorochemicals used to make AFFF.

13 4.51. From the 1960s through 2001, the U.S. Department of Defense purchased AFFF  
14 exclusively from 3M and Tyco/Ansul.

15 4.52. In 2000, 3M announced it was phasing out its manufacture of PFOS, PFOA, and  
16 related products, including AFFF.

17 4.53. After 3M exited the AFFF market, the remaining Manufacturer Defendants  
18 continued to manufacture and sell AFFF Products that contained PFAS. Indeed, Old DuPont  
19 saw an opportunity to grab a share of the AFFF market when 3M exited, although Old DuPont  
20 had decades of evidence that PFAS were highly toxic and dangerous to the environment and  
21 human health.

22 4.54. 3M manufactured its AFFF Products through an electrochemical fluorination  
23 process that makes it possible in some situations to "fingerprint" the PFAS that originated in  
24 3M products. The remaining Manufacturer Defendants' AFFF Products were created using a  
25 telomerization process and contain or break down into PFOA. AFFF Products manufactured by  
26 Manufacturer Defendants other than 3M are fungible and lack traits that would make it

1 possible to identify the product as being manufactured, distributed, or sold by a particular  
2 Manufacturer Defendant. Even with respect to 3M's AFFF Products, transformation in the  
3 environment makes these products difficult to attribute solely to 3M. Due to this fungibility,  
4 Manufacturer Defendants are in the best position to identify the original manufacturer of the  
5 AFFF Products released at any particular site. Any inability of the State to identify the original  
6 manufacturer of the specific AFFF Products released into the State's natural resources in  
7 particular instances at particular sites is a result of the fungibility of the products.

8 **E. Manufacturer Defendants Knew, or Should Have Known, That Their AFFF**  
9 **Products Containing PFAS Were Harmful to the Environment and Human Health**

10 **1. 3M Knew, or Should Have Known, of the Harm Caused by PFAS, and 3M**  
11 **Suppressed Negative Information About These Chemicals**

12 4.55. 3M has known for decades that the PFAS contained in its AFFF are toxic and  
13 adversely affect the environment and human health.

14 4.56. By 1956, 3M's PFAS were found to bind to proteins in human blood, resulting  
15 in bioaccumulation of those compounds in the human body.

16 4.57. 3M knew as early as 1960 that its PFAS waste could leach into groundwater and  
17 otherwise enter the environment. An internal 3M memorandum from 1960 described 3M's  
18 understanding that such wastes "[would] eventually reach the water table and pollute domestic  
19 wells."

20 4.58. As early as 1963, 3M knew that PFAS were highly stable in the environment  
21 and did not degrade after disposal.

22 4.59. By the 1970s, 3M had become concerned about the risks posed to the general  
23 population by exposure to 3M's fluorochemicals.

24 4.60. By no later than 1970, 3M knew that PFAS were hazardous to marine life. Still,  
25 3M refused to take any steps to mitigate these hazards. In fact, around this time, 3M abandoned  
26 a study of its fluorochemicals after the company's release of the chemicals during the study  
caused severe pollution of nearby surface waters.

1           4.61. In 1975, 3M found there was a “universal presence” of PFAS (PFOA and/or  
2 PFOS) in blood serum samples taken from across the United States. Since PFAS are not  
3 naturally occurring, this finding reasonably alerted 3M to the high likelihood that its products  
4 were a source of this PFAS, a scenario 3M discussed internally but did not share outside the  
5 company. The presence of PFAS in human blood serum also alerted 3M to the likelihood that  
6 PFAS are mobile, persistent, bioaccumulative, and biomagnifying.

7           4.62. As early as 1976, 3M began monitoring the blood of its employees for PFAS  
8 based on its concerns about the health effects of PFAS.

9           4.63. In 1978, 3M conducted PFOS and PFOA studies in monkeys and rats. Every  
10 monkey died within the first few days or weeks after being given food contaminated with  
11 PFOS. The studies also showed that PFOS and PFOA affected the livers and gastrointestinal  
12 tracts of the species tested.

13           4.64. In the late 1970s, 3M studied the fate and transport characteristics of PFOS in  
14 the environment, including in surface water and biota. A 1979 report drew a direct line  
15 between effluent from 3M’s plant in Decatur, Alabama and fluorochemicals bioaccumulating  
16 in the tissue of fish taken from the Tennessee River adjacent to the 3M plant.

17           4.65. According to a 3M environmental specialist, Dr. Richard Purdy, who resigned  
18 due to the company’s inaction over PFOS’s environmental impacts, 3M had been resisting  
19 calls from its own ecotoxicologists since 1979 to perform an ecological risk assessment on  
20 PFOS and similar chemicals. At the time of Dr. Purdy’s resignation in 1999, 3M continued its  
21 resistance.

22           4.66. In 1983, 3M scientists opined that concerns about PFAS “give rise to legitimate  
23 questions about the persistence, accumulation potential, and ecotoxicity of fluorochemicals in  
24 the environment.”

25           4.67. In 1984, 3M’s internal analyses proved that fluorochemicals were likely  
26 bioaccumulating in 3M’s employees.

1 4.68. Despite its understanding of the hazards associated with the PFAS in its  
2 products, 3M suppressed scientific research on the hazards associated with them and mounted  
3 a campaign to control the scientific dialogue on the fate, exposure, analytics, and effects to  
4 human health and the ecological risks of PFAS.

5 4.69. At least one scientist funded by 3M saw his goal as “keep[ing] ‘bad’ papers  
6 [regarding PFAS] out of the literature” because “in litigation situations,” those articles “can be  
7 a large obstacle to refute.”

8 4.70. Thus, 3M deceived others and hid the negative effects of PFAS. When he  
9 resigned, Dr. Purdy wrote a letter detailing, without limitation: (1) 3M’s tactics to prevent  
10 research into the adverse effects of its PFOS; (2) 3M’s submission of misinformation about its  
11 PFOS to EPA; (3) 3M’s failure to disclose substantial risks associated with its PFOS to EPA;  
12 (4) 3M’s failure to inform the public of the widespread dispersal of its PFOS in the  
13 environment and population; (5) 3M’s production of chemicals it knew posed an ecological  
14 risk and a danger to the food chain; and (6) 3M’s attempts to keep its workers from discussing  
15 the problems with the company’s fluorochemical projects to prevent their discussions from  
16 being used in the legal process.

17 4.71. Dr. Purdy described PFOS as “the most insidious pollutant since PCB  
18 [polychlorinated biphenyl]. It is probably more damaging than PCB because it does not  
19 degrade, whereas PCB does; it is more toxic to wildlife; and its sink in the environment  
20 appears to be biota and not soil and sediment, as is the case with PCB.”

21 4.72. By the late 1990s, 3M’s own toxicologist had calculated a “safe” level for PFOS  
22 in human blood to be 1.05 parts per billion, at a time when 3M was well aware that the average  
23 level of PFOS being found in the blood of the general population of the United States was  
24 approximately 30 times higher than this “safe” blood level, but 3M did not disclose that  
25 information to regulatory authorities or the public.

1 4.73. Despite its knowledge of the risks associated with exposures to PFAS, when 3M  
2 announced it would phase out its PFOS, PFOA, and related products (including AFFF) in  
3 2000, it falsely asserted that “our products are safe,” instead of disclosing what it knew about  
4 the substantial threat posed by PFOS and PFOA. In its press release announcing the phase-out,  
5 3M stated that its decision was “based on [its] principles of responsible environmental  
6 management” and that “the presence of these materials at very low levels does not pose a  
7 human health or environmental risk.” In communications with EPA at that time, 3M stated that  
8 it had “concluded that . . . other business opportunities were more deserving of the company’s  
9 energies and attention.”

10 4.74. 3M knew, or should have known, that its AFFF, in its intended use, would  
11 release PFAS that would dissolve in water; reach Washington’s water systems and natural  
12 resources; resist degradation; bioaccumulate and biomagnify; and harm human, ecological, and  
13 animal health in Washington due to their toxicity. Such knowledge was accessible to 3M, but  
14 not to the State or ordinary consumers purchasing AFFF Products.

15 **2. Old DuPont Knew, or Should Have Known, of the Harms Caused by PFAS,**  
16 **and It Concealed Its Knowledge from Regulators and Users of AFFF**  
17 **Products**

18 4.75. Old DuPont began using PFOA and other PFAS in its specialty chemical  
19 productions applications in the 1950s and, quickly thereafter, developed an understanding of  
20 the dangers of using these chemicals.

21 4.76. During this time, Old DuPont was aware that PFOA was toxic to animals and  
22 humans and that it bioaccumulates and persists in the environment. Old DuPont also knew that  
23 Teflon, which was manufactured using PFOA and/or other PFAS, and related industrial  
24 facilities emitted and discharged PFOA and/or other PFAS in large quantities into the  
25 environment and that many people had been exposed to its PFAS, including via public and  
26 private drinking water supplies.

1 4.77. Old DuPont scientists issued internal warnings about the toxicity associated  
2 with PFOA as early as 1961, including that PFOA caused adverse liver reactions in rats and  
3 dogs. Old DuPont's Toxicology Section Chief opined that such products should be "handled  
4 with extreme care" and that contact with the skin should be "strictly avoided."

5 4.78. In 1978, based on information it received from 3M about elevated and persistent  
6 organic fluorine levels in workers exposed to PFOA, Old DuPont initiated a plan to review and  
7 monitor the health conditions of potentially exposed workers to assess whether any negative  
8 health effects were attributable to PFOA exposure. This monitoring plan involved obtaining  
9 blood samples from the workers and analyzing the samples for the presence of fluorine.

10 4.79. By 1979, Old DuPont had data indicating that, not only was organic  
11 fluorine/PFOA building up in the blood of its exposed workers (and was, thus, "biopersistent"),  
12 but that those workers exposed to PFOA had a significantly higher incidence of health issues  
13 than did unexposed workers. Old DuPont did not share these data or the results of its worker  
14 health analysis with the general public or government entities, including the State, at that time.

15 4.80. The following year, Old DuPont internally confirmed, but did not make public,  
16 that PFOA "is toxic," that humans accumulate PFOA in their tissues, and that "continued  
17 exposure is not tolerable."

18 4.81. Not only did Old DuPont know that PFOA accumulated in humans, it was also  
19 aware that PFOA could cross the placenta from an exposed mother to her gestational child. In  
20 1981, Old DuPont conducted a blood sampling study of pregnant or recently pregnant  
21 employees. Of the eight women in the study who worked with Teflon, two—or 25 percent—  
22 had children with birth defects in their eyes or face, and at least one had PFOA in the umbilical  
23 cord.

24 4.82. Old DuPont reported to EPA in March 1982 that results from a rat study showed  
25 PFOA crossing the placenta if present in maternal blood, but Old DuPont concealed the results  
26 of the study of its own workers.

1 4.83. Not only did Old DuPont know about PFOA's toxicity as early as the 1960s, it  
2 was also aware that PFAS was capable of contaminating the surrounding environment, leading  
3 to human exposure. For example, no later than 1984, Old DuPont was aware that PFOA  
4 released from its manufacturing operations was contaminating local drinking water supplies,  
5 but said nothing to regulators or the affected communities.

6 4.84. Old DuPont was long aware that the PFAS it was releasing from its facilities  
7 could leach into groundwater used for public drinking water. After obtaining data on these  
8 releases and the consequent contamination near Old DuPont's Washington Works plant in  
9 West Virginia, Old DuPont held a meeting at its corporate headquarters in Wilmington,  
10 Delaware in 1984 to discuss health and environmental issues related to PFOA. Old DuPont  
11 employees in attendance spoke of the PFOA issue as "one of corporate image, and corporate  
12 liability." They were resigned to Old DuPont's "incremental liability from this point on if we  
13 do nothing" because Old DuPont was "already liable for the past 32 years of operation." They  
14 also stated that the "legal and medical [departments within Old DuPont] will likely take the  
15 position of total elimination" of PFOA use in Old DuPont's business and that these  
16 departments had "no incentive to take any other position." Nevertheless, Old DuPont not only  
17 decided to keep using and releasing PFOA, but affirmatively misrepresented to regulators, the  
18 scientific community, and the public that its PFOA releases presented no risks to human health  
19 or the environment.

20 4.85. In 2004, EPA filed an administrative enforcement action against Old DuPont  
21 based on its failure to disclose toxicity and exposure information for PFOA, in violation of the  
22 federal Toxic Substances Control Act and Resource Conservation and Recovery Act. Old  
23 DuPont eventually settled the lawsuit by agreeing to pay over \$16 million in civil  
24 administrative penalties and supplemental environmental projects. EPA called the settlement  
25 the "largest civil administrative penalty EPA has ever obtained under any federal  
26 environmental statute."

1 4.86. Old DuPont’s own Epidemiology Review Board repeatedly raised concerns  
2 about Old DuPont’s statements to the public that there were no adverse health effects  
3 associated with human exposure to PFOA. For example, in February 2006, the Epidemiology  
4 Review Board “strongly advise[d] against any public statements asserting that PFOA does not  
5 pose any risk to health” and questioned “the evidential basis of [Old DuPont’s] public  
6 expression asserting, with what appears to be great confidence, that PFOA does not pose a risk  
7 to health.”

8 4.87. Despite its knowledge regarding PFOA’s toxicity, Old DuPont continued to  
9 claim that PFOA posed no health risks and, in fact, only began to sell AFFF Products after 3M  
10 announced its phase out of PFOA and PFOS in 2000 (due to 3M’s knowledge of the  
11 compounds’ toxicity and threats of further enforcement action by EPA). In 2008, an Industrial  
12 Fire World magazine article regarding AFFF quoted Old DuPont literature, stating that Old  
13 DuPont “believes the weight of evidence indicates that PFOA exposure does not pose a health  
14 risk to the general public” because “there are no human health effects known to be caused by  
15 PFOA.” Old DuPont knew these statements were not true, but did not correct them.

16 4.88. Old DuPont knew, or should have known, that its PFAS would spread through  
17 water; reach Washington’s water systems and natural resources; resist degradation;  
18 bioaccumulate and biomagnify; and harm human, ecological, and animal health in the State  
19 due to their toxicity.

20 **3. The Remaining Manufacturer Defendants Knew, or Should Have Known, of**  
21 **the Harm Caused by the Release of PFOA from Their AFFF Products**

22 4.89. The remaining Manufacturer Defendants knew, or should have known, that in  
23 their intended and/or common use, their AFFF Products containing PFAS would harm the  
24 environment and human health.

25 4.90. Information regarding PFAS was readily accessible to each of the remaining  
26 Manufacturer Defendants for decades because each is an expert in the field of AFFF Products’  
manufacture and/or the PFAS-containing materials needed to manufacture AFFF Products, and



1 each has detailed information and understanding about the PFAS in AFFF Products. Ordinary  
2 consumers of AFFF Products, by contrast, did not have access to such information.

3 4.91. The remaining Manufacturer Defendants knew, or should have known, that their  
4 AFFF Products released PFAS that would spread through water; reach Washington's water  
5 systems and natural resources; resist degradation; bioaccumulate and biomagnify; and harm  
6 human, ecological, and animal health in the State due to their toxicity.

7 **4. Manufacturer Defendants Worked Together Through the Firefighting**  
8 **Foam Coalition to Protect AFFF Products from Scrutiny**

9 4.92. The Firefighting Foam Coalition (FFFC), a Virginia-based national AFFF trade  
10 group, was formed in 2001 to advocate for AFFF's continued viability. National Foam, Kidde-  
11 Fenwal, Tyco/Ansul, Chemguard, Dynax, Old DuPont, and Chemours (collectively, FFFC  
12 Members) were members of the FFFC, as were others in the industry. Through their  
13 involvement in the FFFC and other trade associations and groups, FFFC Members shared  
14 knowledge and information regarding PFOA and its precursors released from AFFF Products  
15 but did not share that information with the general public, AFFF Product customers, or  
16 government entities, including the State.

17 4.93. FFFC Members worked together to protect AFFF Products from scrutiny by,  
18 among other things, coordinating their messaging on PFOA's toxicological profile and on their  
19 AFFF Products' contribution of PFOA into the environment. All of this was done as part of the  
20 FFFC's efforts to shield its members and the AFFF industry from the detrimental impact of the  
21 public and government entities' learning the truth about the harms of PFOA to the environment  
22 and human health. FFFC Members regularly published newsletters promoting their AFFF  
23 Products, while also regularly attending trade group conferences to disseminate misleading  
24 messaging.

25 4.94. FFFC Members' coordinated messaging and publishing efforts were meant to  
26 dispel concerns about the impact AFFF Products had on the environment and human health.

1 They worked in concert to conceal from the general public and government entities, including  
2 the State, the known risks of their AFFF Products.

3 4.95. FFFC Members repeated the same messaging for years with the result that only  
4 one PFAS chemical—PFOS, which FFFC Members’ products did not contain—was taken off  
5 the market.

6 4.96. FFFC Members knew, however, that their messaging regarding their AFFF  
7 Products was false. Each of the FFFC Members knew that PFOA was released directly into the  
8 environment from the use of their AFFF Products and that PFOA presented a similar threat to  
9 the environment and public health as that posed by PFOS. While FFFC Members knew this, it  
10 was not similarly understood by the public and government entities, including the State,  
11 because FFFC Members would not share their knowledge about the dangers of PFAS and their  
12 AFFF Products.

13 **F. Manufacturer Defendants Made Affirmative Misrepresentations and Material**  
14 **Omissions in their Marketing of AFFF Products**

15 4.97. Manufacturer Defendants marketed, promoted, offered for sale, sold, and  
16 distributed AFFF Products to entities in Washington for use in the State, including but not  
17 limited to Washington agencies, counties, municipalities, local fire departments, businesses,  
18 other entities, and residents. Manufacturer Defendants knowingly sold their AFFF Products to  
19 end users within the State and delivered their AFFF Products into the AFFF market with the  
20 expectation that they would be purchased by consumers in the State.

21 4.98. Manufacturer Defendants knew their customers stored large stockpiles of AFFF  
22 Products. In fact, Manufacturer Defendants marketed their AFFF Products by promoting their  
23 long shelf life. Even after Manufacturer Defendants fully understood the toxicity of PFAS—  
24 and their injurious impacts when released into the environment through use of AFFF Products  
25 exactly as they had marketed and intended for them to be used—Manufacturer Defendants  
26 concealed the true harmful nature of PFAS. Even while Manufacturer Defendants phased out  
production or transitioned to other formulas, they did not advise their customers that they

1 should not use AFFF Products that contained PFAS, did not issue a recall, and did not  
2 otherwise reveal the dangers posed by the AFFF Products. Manufacturer Defendants further  
3 did not attempt to remove their harmful products from the market. Manufacturer Defendants  
4 did not warn the State or others that the use of AFFF Products with PFAS would harm the  
5 environment, endanger human health, or result in substantial costs to investigate and clean up  
6 groundwater contamination and damage to other natural resources.

7 4.99. Accordingly, for many years after their original sale, AFFF Products were still  
8 being applied directly to the ground and washed into Washington’s waters, sediments, and  
9 soils, endangering human health, and harming the environment. Manufacturer Defendants  
10 never advised their customers that they needed to properly dispose of their stockpiles of AFFF  
11 Products, and they did not advise them on how to properly dispose of AFFF Products.

12 4.100. In product descriptions and marketing materials distributed to purchasers of  
13 their AFFF Products, Manufacturer Defendants made affirmative misrepresentations about  
14 their products, including but not limited to: (1) their products were biodegradable and/or  
15 “environmentally neutral;” (2) their products were nontoxic; (3) their products were not  
16 bioaccumulative; (4) their products were not persistent; (5) their products could be disposed of  
17 in conventional wastewater treatment systems or poured down the drain; (6) their products  
18 were appropriate for use for training purposes; (7) their telomer-based AFFF Products were  
19 safe in contrast to AFFF Products manufactured using electrochemical fluorination processes;  
20 and (8) their products purportedly produced pursuant to military specifications were  
21 appropriate for use in civilian applications.

22 4.101. In product descriptions and marketing materials, Manufacturer Defendants  
23 omitted material information including, but not limited to: (1) failing to disclose the persistent,  
24 bioaccumulative, and toxic nature of PFAS contained in AFFF Products; (2) failing to disclose  
25 that their AFFF Products contained PFAS; and (3) failing to disclose how to safely clean up  
26 and dispose of AFFF Products.

1 4.102. Acting for commercial gain, Manufacturer Defendants manipulated, obfuscated,  
2 and failed to disclose scientific studies and results relating to the persistence, bioaccumulation,  
3 and toxicity of their AFFF Products. Manufacturer Defendants sought to create a deceptive net  
4 impression that their AFFF Products were safer than they were and thereby delay the  
5 development of safe or safer alternatives to AFFF Products for civilian use.

6 **G. Old DuPont Undertook a Multi-Step, Years-Long Fraudulent Scheme to Isolate Its**  
7 **Valuable Tangible Assets from Its PFAS Liabilities and Hinder Creditors**

8 4.103. Beginning in or about 2013 and continuing through at least June 2019, Old  
9 DuPont planned and executed a series of corporate restructurings designed to separate its  
10 valuable assets from its billions of dollars of legacy environmental liabilities—especially those  
11 arising from PFOA and other PFAS contamination.

12 4.104. Old DuPont’s potential cumulative liability related to PFOA and other PFAS,  
13 including PFAS-containing AFFF, is likely billions of dollars due to the persistence, mobility,  
14 bioaccumulative properties, and toxicity of these “forever” compounds, as well as Old  
15 DuPont’s decades-long attempt to hide the dangers of PFAS from the public.

16 4.105. For more than five decades, Old DuPont manufactured, produced, or utilized  
17 PFOA and other PFAS at plants in New Jersey, West Virginia, and North Carolina, among  
18 others. As alleged above, throughout this time, Old DuPont was aware that PFOA was toxic,  
19 harmful to animals and humans, bioaccumulative, and persistent in the environment. Old  
20 DuPont also knew that it had emitted and discharged PFOA and other PFAS in large quantities  
21 into the environment and that many people had been exposed to PFOA, including through  
22 public and private drinking water supplies, like those in Washington, which Old DuPont had  
23 contaminated. Thus, Old DuPont knew, or reasonably should have known, that it faced billions  
24 of dollars in liabilities arising from its use of PFAS, including PFAS-containing AFFF.

25 4.106. Beginning in at least 1999 and continuing to the present, Old DuPont has faced  
26 mounting litigation arising from its historic manufacture, production, and use of PFAS. In  
1999, members of the Tennant family, who owned property affected by contamination from a

1 landfill that had accepted PFOA wastes from Old DuPont's nearby Washington Works plant,  
2 sued Old DuPont in West Virginia federal court.

3 4.107. Old DuPont's in-house counsel were very concerned about Old DuPont's  
4 exposure to liability related to PFOA. In November 2000, one of Old DuPont's in-house  
5 lawyers handling PFOA issues wrote to his co-counsel: "We are going to spend millions to  
6 defend these lawsuits and have the additional threat of punitive damages hanging over our  
7 head. Getting out in front and acting responsibly can undercut and reduce the potential for  
8 punitives . . . . Our story is not a good one, we continued to increase our emissions into the  
9 river in spite of internal commitments to reduce or eliminate the release of this chemical into  
10 the community and the environment because of our concern about the biopersistence of this  
11 chemical."

12 4.108. In 2005, after settling the Tennant case, Old DuPont settled the claims brought  
13 by EPA for violations of the Toxic Substances Control Act and Resource Conservation and  
14 Recovery Act related to its failure to disclose toxicity and exposure information for PFOA, as  
15 discussed in Paragraph 4.85.

16 4.109. Also in 2005, a West Virginia court entered a final order approving a 2004  
17 settlement of a class action lawsuit filed against Old DuPont on behalf of 70,000 Ohio and  
18 West Virginia residents who had been exposed to PFOA that Old DuPont had discharged from  
19 Washington Works.

20 4.110. Under the terms of the settlement, which provided class benefits in excess of  
21 \$300 million, Old DuPont agreed to fund a panel of scientists (the Science Panel) to confirm  
22 which diseases were linked to PFOA exposure, to filter local water from impacted public and  
23 private drinking water supplies, and to pay up to \$235 million for medical monitoring of the  
24 affected community for any diseases that the Science Panel linked to PFOA exposure. The  
25 settlement also provided that any class members who developed the diseases linked by the  
26 Science Panel would be entitled to sue for personal injury, and Old DuPont agreed not to

1 | contest the fact that the class members’ exposure to PFOA could have caused each of the  
2 | linked diseases.

3 |         4.111. By 2012, after seven years of studies, the Science Panel confirmed “probable  
4 | links” between exposure to PFOA and the following serious human diseases: medically  
5 | diagnosed high cholesterol, ulcerative colitis, pregnancy induced hypertension, preeclampsia,  
6 | thyroid disease, testicular cancer, and kidney cancer.

7 |         4.112. After the Science Panel confirmed such probable links with human disease,  
8 | more than 3,500 personal injury claims were filed against Old DuPont in Ohio and West  
9 | Virginia by class members with one or more of those linked diseases under the terms of the  
10 | 2005 class settlement. In 2013, these claims were consolidated in federal multidistrict litigation  
11 | styled *In Re: E. I. du Pont de Nemours and Company C-8 Personal Injury Litigation* (MDL  
12 | No. 2433) in the U.S. District Court for the Southern District of Ohio (Ohio MDL). Forty  
13 | bellwether trials were scheduled to take place in 2015 and 2016.

14 |         4.113. The first three trials in the Ohio MDL ended in plaintiffs’ verdicts. Each jury  
15 | awarded damages in a larger amount than the one before it—the first awarded \$1.6 million, the  
16 | second awarded \$5.6 million, and the third awarded \$12.5 million. The second and third jury  
17 | awards included punitive damages. Old DuPont then settled the remaining, pending claims for  
18 | \$670.7 million dollars.

19 |         4.114. Old DuPont knew or should have known that it faced substantial exposure at  
20 | these trials, as well as the liability related to PFOA and other PFAS contamination caused by  
21 | its manufacturing operations at other sites throughout the country and globally and that its  
22 | liability likely measured in the billions of dollars.

23 |         4.115. Anticipating this significant liability exposure, Old DuPont had convened an  
24 | internal initiative known as “Project Beta” in or about 2013 for Old DuPont’s management to  
25 | consider restructuring the company in order to, among other things, avoid responsibility for the  
26 |

1 | widespread environmental harm that Old DuPont’s PFAS had caused and shield billions of  
2 | dollars in assets from these substantial liabilities.

3 |         4.116. In furtherance of possible restructuring opportunities, including potential  
4 | mergers, Old DuPont and The Dow Chemical Company (Old Dow) began to discuss a possible  
5 | “merger of equals” in or about 2013.

6 |         4.117. However, neither Old Dow, nor any other rational merger partner, would agree  
7 | to a transaction that would result in exposing it to the substantial PFAS and environmental  
8 | liabilities that Old DuPont faced.

9 |         4.118. Accordingly, Old DuPont’s management decided to pursue a multiyear  
10 | corporate restructuring specifically orchestrated to isolate Old DuPont’s massive legacy  
11 | liabilities from its valuable tangible assets in an attempt to shield those assets from creditors  
12 | and entice Old Dow to pursue the proposed merger.

13 |         4.119. Old DuPont engaged in a coordinated three-part restructuring plan that  
14 | consisted of: (1) Old DuPont’s attempt to cast off its massive environmental liabilities onto  
15 | Chemours and spinning off Chemours as a separate publicly traded company; (2) the creation  
16 | of New DuPont to facilitate a purported merger with Old Dow; and (3) a series of internal  
17 | restructurings and divestitures that culminated with the spinoff of Old DuPont to its newly  
18 | formed parent, Corteva.

19 |         4.120. The first step in Old DuPont’s fraudulent scheme was to transfer its  
20 | performance chemicals business, which included Teflon and other products (Performance  
21 | Chemicals Business) into its wholly owned subsidiary, Chemours. Then, in July 2015, Old  
22 | DuPont “spun off” Chemours as a separate public entity and saddled Chemours with Old  
23 | DuPont’s massive legacy liabilities (the Chemours Spinoff).

24 |         4.121. Old DuPont knew that Chemours was undercapitalized and could not satisfy the  
25 | massive liabilities that it caused Chemours to assume. Old DuPont also knew that the  
26 |

1 Chemours Spinoff alone would not insulate its own assets from its PFAS liabilities as Old  
2 DuPont still faced direct liability for its own conduct.

3 4.122. The second step involved Old DuPont and Old Dow entering into an  
4 “Agreement and Plan of Merger” in December 2015, pursuant to which Old DuPont and Old  
5 Dow merged with subsidiaries of a newly formed holding company, DowDuPont, Inc.  
6 (DowDuPont), which was created for the sole purpose of effectuating the merger. Old DuPont  
7 and Old Dow became subsidiaries of DowDuPont.

8 4.123. In the third step, DowDuPont engaged in numerous business segment and  
9 product line “realignments” and “divestitures.”

10 4.124. Those realignments and divestitures culminated in DowDuPont spinning off  
11 two new publicly traded companies: (1) Corteva, which currently holds Old DuPont as a  
12 subsidiary, and (2) Dow, Inc. (New Dow), which currently holds Old Dow. DowDuPont was  
13 then renamed DuPont de Nemours, Inc. (i.e., New DuPont).

14 4.125. Old DuPont’s restructuring—beginning with the spinoff of Chemours in 2015,  
15 and ending with the spinoff of Corteva in 2019—was designed to separate Old DuPont’s  
16 massive historic PFAS liabilities from its valuable, non-PFAS assets and thereby hinder, delay,  
17 and defraud creditors.

18 4.126. As a result of this restructuring, between December 2014 (i.e., before the  
19 Chemours Spinoff) and December 2019 (i.e., after the Dow merger), the value of Old DuPont’s  
20 tangible assets decreased by \$20.85 billion, or by approximately one-half.

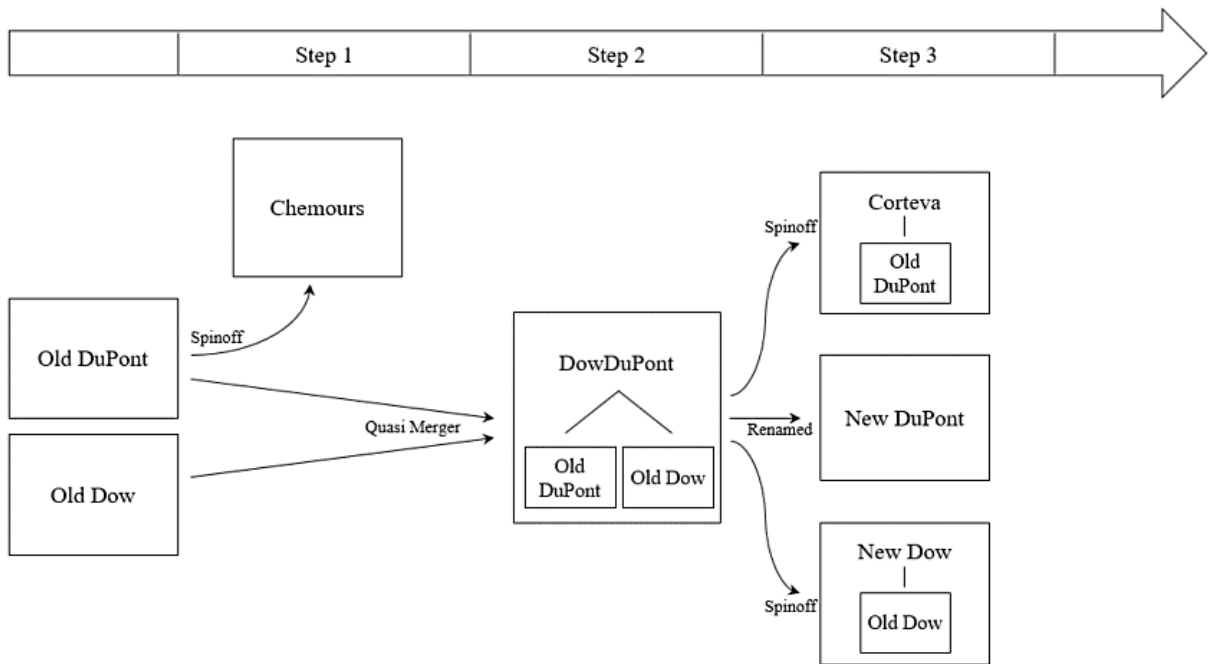
21 4.127. New DuPont and Corteva now hold a significant portion of the tangible assets  
22 that Old DuPont formerly owned.

23 4.128. Many of the details about these transactions are hidden from the public in  
24 confidential schedules and exhibits to the various restructuring agreements. Old DuPont, New  
25 DuPont, and Corteva have, likely intentionally, buried these details in an apparent attempt to  
26



1 hide from creditors, like the State, where Old DuPont's valuable assets went and the  
2 inadequate consideration that Old DuPont received in return.

3 4.129. The below graphic depicts the restructuring as it progressed through each of the  
4 three steps:



16 4.130. In greater detail, the restructuring scheme was implemented as follows.

17 **1. Step 1: The Chemours Spinoff**

18 4.131. In February 2014, Old DuPont formed Chemours as a wholly owned subsidiary.

19 4.132. On April 30, 2015, Chemours was converted from a limited liability company to  
20 a corporation named "The Chemours Company."

21 4.133. On July 1, 2015, Old DuPont completed the spinoff of Chemours, and  
22 Chemours became a separate, publicly traded entity.

23 4.134. At the time of the spinoff, the Performance Chemicals Business consisted of  
24 Old DuPont's Titanium Technologies, Chemical Solutions, and Fluoroproducts segments,  
25 including business units that had manufactured, used, and discharged PFOA into the  
26 environment.

1 4.135. Prior to the Chemours Spinoff, Chemours’s Board of Directors was dominated  
2 by Old DuPont employees.

3 4.136. As a result, during the period of time that the terms of its separation from Old  
4 DuPont were being negotiated, Chemours did not have an independent Board of Directors or  
5 management independent of Old DuPont.

6 4.137. To effectuate the Chemours Spinoff, Old DuPont and Chemours entered into the  
7 June 26, 2015 Separation Agreement (the Chemours Separation Agreement).

8 4.138. Pursuant to the Chemours Separation Agreement, Old DuPont agreed to transfer  
9 to Chemours all businesses and assets related to the Performance Chemicals Business,  
10 including 37 active chemical plants.

11 4.139. At the same time, Chemours accepted a broad assumption of Old DuPont’s  
12 massive liabilities relating to Old DuPont’s Performance Chemicals Business. The specific  
13 details regarding the nature and value of probable maximum loss and the anticipated timing of  
14 the liabilities that Chemours assumed are set forth in the nonpublic schedules and exhibits to  
15 the Chemours Separation Agreement.

16 4.140. Notwithstanding the billions of dollars in environmental and PFAS liabilities  
17 that Chemours would face, on July 1, 2015, Old DuPont caused Chemours to transfer to Old  
18 DuPont approximately \$3.4 billion as a cash dividend, along with a “distribution in kind” of  
19 promissory notes with an aggregate principal amount of \$507 million.

20 4.141. Thus, in total, Chemours distributed approximately \$3.9 billion to Old DuPont.  
21 On May 12, 2015, Old DuPont required Chemours to fund these distributions through  
22 financing transactions, including senior secured term loans and senior unsecured notes totaling  
23 approximately \$3.995 billion. Also, Chemours distributed approximately \$3.0 billion in  
24 common stock to Old DuPont’s shareholders on July 1, 2015 (181 million shares at \$16.51 per  
25 share price).  
26

1 4.142. Accordingly, most of the valuable assets that Chemours may have had at the  
2 time of the Chemours Spinoff were unavailable to creditors with current or future PFAS  
3 claims, like those of the State, and Old DuPont stripped Chemours's value for itself and its  
4 shareholders. Old DuPont, however, transferred only \$4.1 billion in net assets to Chemours. In  
5 addition to requiring Chemours to assume billions of dollars of Old DuPont's PFAS liabilities,  
6 the Chemours Separation Agreement includes an indemnification of Old DuPont in connection  
7 with those liabilities, which is uncapped and does not have a survival period.

8 4.143. Specifically, the Chemours Separation Agreement requires Chemours to  
9 indemnify Old DuPont against, and assume for itself, all "Chemours Liabilities," which are  
10 defined broadly to include, among other things, "any and all Liabilities relating . . . primarily  
11 to, arising primarily out of or resulting primarily from, the operation or conduct of the  
12 Chemours Business, as conducted at any time prior to, at or after the Effective Date . . .  
13 including . . . any and all Chemours Assumed Environmental Liabilities," which includes Old  
14 DuPont's historic liabilities relating to and arising from its decades of emitting pollution,  
15 including PFOA, into the environment from its dozens of facilities.

16 4.144. Under the Chemours Separation Agreement, Chemours must indemnify Old  
17 DuPont against and assume for itself the Chemours Liabilities regardless of: (1) when or where  
18 such liabilities arose; (2) whether the facts upon which they are based occurred prior to, on, or  
19 subsequent to the effective date of the Chemours Spinoff; (3) where or against whom such  
20 liabilities are asserted or determined; (4) whether arising from or alleged to arise from  
21 negligence, gross negligence, recklessness, violation of law, fraud, or misrepresentation by any  
22 member of the Old DuPont group or the Chemours group; (5) the accuracy of the maximum  
23 probable loss values assigned to such liabilities; and (6) which entity is named in any action  
24 associated with any liability.  
25  
26

1 4.145. The Chemours Separation Agreement also requires Chemours to indemnify Old  
2 DuPont from, and assume all, environmental liabilities that arose prior to the Chemours  
3 Spinoff if they were “primarily associated” with the Performance Chemicals Business.

4 4.146. In addition, Chemours agreed to use its best efforts to be fully substituted for  
5 Old DuPont with respect to “any order, decree, judgment, agreement or Action with respect to  
6 Chemours Assumed Environmental Liabilities.”

7 4.147. The Chemours Spinoff was so one-sided that, in May 2019, Chemours sued Old  
8 DuPont, New DuPont, and Corteva in Delaware Chancery Court. *See The Chemours Company*  
9 *v. DowDuPont, et al.*, C.A. No. 2019-0351 (Del. Ch. Ct., filed May 13, 2019).

10 4.148. In its Amended Complaint—which was verified by Chemours’s current Chief  
11 Executive Officer, Mark Newman—Chemours alleged that the primary motivation for the  
12 Chemours Spinoff, the subsequent creation of New DuPont, and the final separation of Corteva  
13 was to enable Old DuPont to “wash its hands of its environmental liabilities.”

14 4.149. Chemours also alleged, among other things, that if (1) the full value of Old  
15 DuPont’s PFAS and environmental liabilities was properly estimated and (2) the Delaware  
16 court did not limit the liability that the Chemours Separation Agreement imposed on it, then  
17 Chemours would have been insolvent at the time it was spun off from Old DuPont.

18 4.150. There was no meaningful, arm’s-length negotiation of the Chemours Separation  
19 Agreement, and Old DuPont largely dictated its terms.

20 4.151. In its Delaware lawsuit, Chemours alleged that Old DuPont refused to allow any  
21 procedural protections for Chemours in the negotiations, and Old DuPont and its outside  
22 counsel prepared all of the documents to effectuate the Chemours Spinoff. Indeed, during the  
23 period in which the terms of the commercial agreements between Chemours and Old DuPont  
24 were negotiated, Chemours did not have an independent board of directors or management  
25 independent of Old DuPont.  
26

1 4.152. Old DuPont's apparent goal with respect to the Chemours Spinoff was to  
2 segregate a large portion of Old DuPont's legacy environmental liabilities, including liabilities  
3 related to its PFAS chemicals and products such as PFAS-containing AFFF, and in so doing,  
4 shield Old DuPont.

5 4.153. Not surprisingly, given Old DuPont's extraction of nearly \$4 billion from  
6 Chemours immediately prior to the Chemours Spinoff, Chemours was thinly capitalized and  
7 unable to satisfy the substantial liabilities that it assumed from Old DuPont. Indeed, Chemours  
8 disclosed in public filings with the U.S. Securities and Exchange Commission (SEC) that its  
9 "significant indebtedness" arising from its separation from Old DuPont restricted its current  
10 and future operations.

11 4.154. Shortly after the Chemours Spinoff, market analysts described Chemours as "a  
12 bankruptcy waiting to happen" and a company "purposely designed for bankruptcy."

13 4.155. At the end of December 2014, Chemours reported it had total assets of \$5.959  
14 billion and total liabilities of \$2.286 billion. At the end of 2015, following the Chemours  
15 Spinoff, Chemours reported that it had total assets of \$6.298 billion and total liabilities of  
16 \$6.168 billion, yielding a total net worth of \$130 million.

17 4.156. For the year 2015, Chemours reported \$454 million in "other accrued  
18 liabilities," which in turn included \$11 million for accrued litigation and \$68 million for  
19 environmental remediation. Chemours separately reported \$553 million in "other liabilities,"  
20 which included an additional \$223 million for environmental remediation and \$58 million for  
21 accrued litigation.

22 4.157. Chemours significantly underestimated its liabilities, including the liabilities  
23 that it had assumed from Old DuPont with respect to PFAS, which Old DuPont and Chemours  
24 knew or should have known would be billions of dollars in addition to other environmental  
25 liabilities for other contaminants discharged at Old DuPont's and Chemours's facilities.  
26

1 4.158. For example, in 2017, Chemours and Old DuPont amended the Chemours  
2 Separation Agreement in connection with the settlement of the Ohio MDL brought by  
3 thousands of residents who had been exposed to PFOA from Old DuPont’s Washington Works  
4 plant. Per the amendment, Chemours paid \$320.35 million to the plaintiffs in the settlement on  
5 August 21, 2017, and Old DuPont paid an additional \$320.35 million on September 1, 2017.

6 4.159. Had the full extent of Old DuPont’s legacy liabilities been taken into account, as  
7 they should have been at the time of the Chemours Spinoff, Chemours would have had  
8 negative equity (that is, total liabilities greater than total assets), not only on a tangible basis,  
9 but also on a total equity basis, and Chemours would have been rendered insolvent at that time.

## 10 **2. Step 2: The Old Dow/Old DuPont “Merger”**

11 4.160. After the Chemours Spinoff, Old DuPont took the untenable position that it was  
12 somehow no longer responsible for the widespread PFAS contamination that it had caused  
13 over several decades.

14 4.161. Of course, Old DuPont could not contractually discharge all of its historical  
15 liabilities through the Chemours Spinoff, and Old DuPont remained liable for the liabilities it  
16 had caused and Chemours had assumed.

17 4.162. Old DuPont knew that it could not escape liability and would still face exposure  
18 for PFAS liabilities, including for potentially massive punitive damages. So Old DuPont  
19 moved to the next phase of its fraudulent scheme.

20 4.163. On December 11, 2015, less than six months after the Chemours Spinoff, Old  
21 DuPont and Old Dow announced that their respective boards had approved an agreement  
22 “under which the companies [would] combine in an all-stock merger of equals” and that the  
23 combined company would be named DowDuPont, Inc. (the DowDuPont Merger). The  
24 companies disclosed that they intended to subsequently separate the combined companies’  
25 businesses into three publicly traded companies through further spinoffs, each of which would  
26 occur 18 to 24 months following the closing of the merger.

1 4.164. To effectuate the transaction, Old DuPont and Old Dow entered into an  
2 Agreement and Plan of Merger (the DowDuPont Merger Agreement) that provided for (1) the  
3 formation of a new holding company Diamond-Orion HoldCo, Inc., later named DowDuPont,  
4 and then renamed DuPont de Nemours, Inc. (i.e., New DuPont), and (2) the creation of two  
5 new merger subsidiaries into which Old Dow and Old DuPont each would merge.

6 4.165. Thus, as a result of the merger, and in accordance with the DowDuPont Merger  
7 Agreement, Old Dow and Old DuPont each became wholly owned subsidiaries of  
8 DowDuPont.

9 4.166. Although Old DuPont and Old Dow referred to the transaction as a “merger of  
10 equals,” the two companies did not actually merge at all, likely because doing so would have  
11 infected Old Dow with all of Old DuPont’s historical PFAS liabilities. Rather, Old DuPont and  
12 Old Dow became affiliated sister companies that were each owned by the newly formed  
13 DowDuPont. DowDuPont was aware of Old DuPont’s historical PFAS liabilities.

14 4.167. The corporate organization following the “merger” is depicted under “Step 2” in  
15 the graphic in Paragraph 4.129.

16 **3. Step 3: The Shuffling, Reorganization, and Transfer of Valuable Assets**  
17 **Away from Old DuPont and Separation of Corteva and New Dow**

18 4.168. Following the DowDuPont Merger, DowDuPont underwent a significant  
19 internal reorganization and engaged in numerous business segment and product line  
20 “realignments” and “divestitures.” The net effect of these transactions has been the transfer,  
21 either directly or indirectly, of a substantial portion of Old DuPont’s assets out of the company.

22 4.169. It is apparent that the transactions were intended to further frustrate and hinder  
23 creditors with claims against Old DuPont, including with respect to its substantial  
24 environmental and PFAS liabilities.

25 4.170. Old DuPont’s assets, including its remaining business segments and product  
26 lines, were transferred either directly or indirectly to DowDuPont, which reshuffled the assets  
and combined them with the assets of Old Dow, and then reorganized the combined assets into

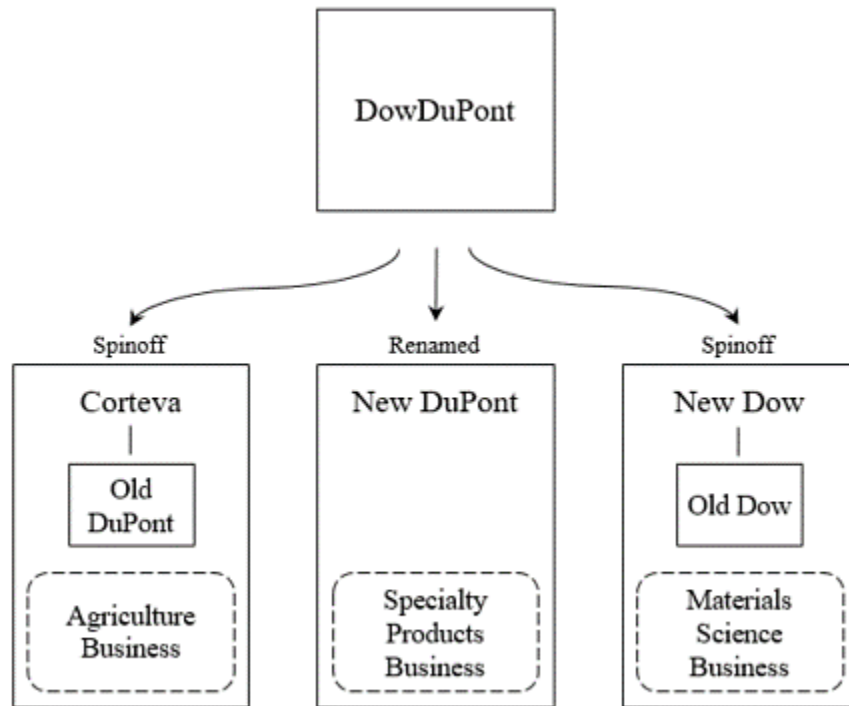
1 three distinct divisions: (1) the “Agriculture Business,” (2) the “Specialty Products Business,”  
2 and (3) the “Materials Science Business.”

3 4.171. While the precise composition of these divisions, including many details of the  
4 specific transactions, the transfer of business segments, and the divestiture of product lines  
5 during this time, are not publicly available, it is apparent that Old DuPont transferred a  
6 substantial portion of its valuable assets to DowDuPont for far less than the assets were worth.

7 4.172. Once the assets of Old DuPont and Old Dow were combined and reorganized,  
8 DowDuPont incorporated two new companies to hold two of the three newly formed business  
9 lines: (1) Corteva, which became the parent holding company of Old DuPont, which in turn  
10 holds the Agriculture Business, and (2) New Dow, which became the parent holding company  
11 of Old Dow and holds the Materials Science Business. DowDuPont retained the Specialty  
12 Products Business and prepared to spin off Corteva and New Dow into separate, publicly  
13 traded companies.



1 4.173. The below graphic depicts the structure of DowDuPont after the internal  
2 reorganization and realignment (and notes the planned disposition of the new companies):



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15 4.174. The mechanics of the separations are governed by the April 1, 2019 Separation  
16 and Distribution Agreement among Corteva, New Dow, and DowDuPont (the DowDuPont  
17 Separation Agreement).

18 4.175. The DowDuPont Separation Agreement generally allocates the assets primarily  
19 related to the respective business divisions to Corteva (Agriculture Business), New Dow  
20 (Materials Science Business), and New DuPont (Specialty Products Business). New DuPont  
21 also retained several “non-core” business segments and product lines that once belonged to Old  
22 DuPont.

23 4.176. Similarly, Corteva, New Dow, and New DuPont each retained the liabilities  
24 primarily related to their respective business divisions: (1) Corteva retained and assumed the  
25 liabilities related to the Agriculture Business; (2) New DuPont retained and assumed the  
26

1 liabilities related to the Specialty Products Business; and (3) New Dow retained and assumed  
2 the liabilities related to the Materials Science Business.

3 4.177. Corteva and New DuPont also assumed direct financial liability of Old DuPont  
4 that was not related to the Agriculture, Materials Science, or Specialty Products Businesses,  
5 including the PFAS liabilities. These assumed PFAS liabilities are allocated between Corteva  
6 and New DuPont pursuant to the DowDuPont Separation Agreement.

7 4.178. This “allocation” applies to Old DuPont’s legacy liabilities for PFAS  
8 contamination and its former Performance Chemicals Business, including the State’s claims in  
9 this case.

10 4.179. While New DuPont and Corteva have buried the details in nonpublic schedules,  
11 New DuPont and Corteva each assumed these liabilities under the DowDuPont Separation  
12 Agreement, along with other liabilities related to Old DuPont’s discontinued and divested  
13 businesses. The State can therefore bring claims against New DuPont and Corteva directly for  
14 Old DuPont’s contamination of and damage to the State’s natural resources.

15 4.180. The separation of New Dow was completed on or about April 1, 2019, when  
16 DowDuPont distributed all of New Dow’s common stock to DowDuPont stockholders as a pro  
17 rata dividend.

18 4.181. DowDuPont then consolidated the Agricultural Business line into Old DuPont,  
19 and “contributed” Old DuPont to Corteva.

20 4.182. On June 1, 2019, DowDuPont spun off Corteva as an independent public  
21 company, when DowDuPont distributed all of Corteva’s common stock to DowDuPont  
22 stockholders as a pro rata dividend.

23 4.183. Corteva now holds 100 percent of the outstanding common stock of Old  
24 DuPont.

1 4.184. The corporate structures of New DuPont, New Dow and Old Dow, and Corteva  
2 and Old DuPont, respectively, following the separations are depicted in “Step 3” of the graphic  
3 in Paragraph 4.129.

4 4.185. Also, on or about June 1, 2019, DowDuPont changed its registered name to  
5 DuPont de Nemours, Inc. (i.e., New DuPont).

6 4.186. On or about January 1, 2023, Old DuPont changed its registered name to EIDP,  
7 Inc.

8 **H. Old DuPont, Chemours, New DuPont, and Corteva’s Years-Long Conspiracy to**  
9 **Defraud the State and Other Creditors Has Stripped Away Valuable Assets**  
10 **Otherwise Available to Satisfy Old DuPont’s Legacy Liabilities**

11 4.187. The net result of these transactions, including the June 1, 2019 Corteva spinoff,  
12 was to strip away valuable tangible assets from Old DuPont and transfer those assets to New  
13 DuPont and Corteva for far less than the assets are worth.

14 4.188. Old DuPont estimated that the DowDuPont Merger created “goodwill” worth  
15 billions of dollars. When the Corteva separation was complete, a portion of this “goodwill”  
16 was assigned to Old DuPont in order to prop up its balance sheet. But, in reality, Old DuPont  
17 was left with substantially fewer tangible assets than it had prior to the restructuring.

18 4.189. In addition, Old DuPont owes a debt to Corteva of approximately \$4 billion.  
19 SEC filings demonstrate the substantial deterioration of Old DuPont’s finances and the drastic  
20 change in its financial condition before and after the above transactions.

21 4.190. For example, for the 2014 fiscal year, prior to the Chemours Spinoff, Old  
22 DuPont reported \$3.6 billion in net income and \$3.7 billion in cash provided by operating  
23 activities. For the 2019 fiscal year, just months after the Corteva separation, however, Old  
24 DuPont reported a net loss of \$1 billion and only \$996 million in cash provided by operating  
25 activities. That is a decrease of 128 percent in net income and a decrease of 73 percent in  
26 annual operating cash flow.

1 4.191. Additionally, Old DuPont reported a significant decrease in Income from  
2 Continuing Operations Before Income Taxes (a/k/a Earnings Before Tax, or EBT). Old DuPont  
3 reported \$4.9 billion in EBT for the period ending December 31, 2014. For the period ending  
4 December 31, 2019, Old DuPont reported EBT of negative \$422 million.

5 4.192. Also, for the 2014 fiscal year, prior to the Chemours Spinoff, Old DuPont  
6 owned nearly \$41 billion in tangible assets. For the 2019 fiscal year, Old DuPont owned just  
7 under \$21 billion in tangible assets.

8 4.193. That means in the five-year period over which the restructuring occurred, when  
9 Old DuPont knew that it faced billions of dollars in environmental and PFAS liabilities, Old  
10 DuPont transferred or divested approximately half of its tangible assets—totaling \$20 billion.

11 4.194. As of September 2019, just after the Corteva spinoff, Old DuPont reported  
12 \$43.251 billion in assets. But almost \$21.835 billion of these assets were composed of  
13 intangible assets, including “goodwill” from its successive restructuring activities.

14 4.195. At the same time, Old DuPont reported liabilities totaling \$22.060 billion. Thus,  
15 when the Corteva spinoff was complete, Old DuPont’s tangible net worth (excluding its  
16 intangible assets) was negative \$644 million.

17 4.196. In addition, neither New DuPont nor Corteva has publicly conceded that they  
18 assumed Old DuPont’s historical environmental and PFAS liabilities. And it is far from clear  
19 that either entity will be able to satisfy future judgments.

20 4.197. Indeed, New DuPont—to which PFAS liabilities are allocated under the  
21 DowDuPont Separation Agreement—has divested numerous business segments and product  
22 lines, including tangible assets that it received from Old DuPont and for which Old DuPont has  
23 received less than reasonably equivalent value, and is in the process of divesting more.

24 4.198. Old DuPont’s parent holding company, Corteva—to which PFAS liabilities are  
25 also allocated under the DowDuPont Separation Agreement once certain conditions are  
26 satisfied—holds as its primary tangible asset the intercompany debt owed to it by its wholly

1 owned subsidiary, Old DuPont. But Old DuPont does not have sufficient tangible assets to  
2 satisfy this debt obligation.

3 4.199. The Chemours Spinoff, the DowDuPont Merger, and the final separation of  
4 Corteva were part of a single coordinated fraudulent scheme to hinder, delay, and defraud Old  
5 DuPont's creditors. The Chemours Spinoff constitutes a fraudulent transfer, which entitles the  
6 State to, among other things, void the transaction and recover property or value transferred  
7 from Chemours in the transaction. The DowDuPont Merger and separation of Corteva from  
8 New DuPont likewise constitute a fraudulent transfer that entitles the State to, among other  
9 things, recover property and value transferred to New DuPont and Corteva.

## 10 V. CAUSES OF ACTION

### 11 COUNT I 12 PUBLIC NUISANCE – RCW 7.48 & COMMON LAW (ALL DEFENDANTS)

13 5.1. The State incorporates and reaffirms the preceding paragraphs.

14 5.2. The State brings this claim under its statutory public nuisance law,  
15 RCW 7.48.020, and the common law.

16 5.3. Under RCW 7.48.120, “[n]uisance consists in unlawfully doing an act, or  
17 omitting to perform a duty, which act or omission either annoys, injures or endangers the  
18 comfort, repose, health or safety of others, offends decency, or unlawfully interferes with,  
19 obstructs or tends to obstruct, or render dangerous for passage, any lake or navigable river,  
20 bay, stream, canal or basin, or any public park, square, street or highway; or in any way renders  
21 other persons insecure in life, or in the use of property.” An actionable nuisance subject to  
22 damages and other relief includes “whatever is injurious to health or indecent or offensive to  
23 the senses . . . so as to essentially interfere with the comfortable enjoyment of the life and  
24 property.” *Id.* 7.48.010. “A public nuisance is one which affects equally the rights of an entire  
25 community or neighborhood, although the extent of the damage may be unequal.” *Id.* 7.48.130.  
26 Water pollution is an enumerated public nuisance. *See id.* 7.48.140(2).

1           5.4. Under Washington common law, public nuisance is a substantial and  
2 unreasonable interference with a public right.

3           5.5. Under both RCW 7.48 and common law, a public nuisance occurs when:  
4 (1) defendants engaged in tortious or unlawful conduct (2) that proximately caused (3) a  
5 substantial and unreasonable interference (4) with a public right.

6           5.6. Each Manufacturer Defendant engaged in unlawful, intentional, and tortious  
7 conduct by manufacturing, marketing, promoting, distributing, and selling AFFF Products that  
8 exposed and continues to expose Washingtonians to the toxic PFAS family of chemicals,  
9 polluted and continues to pollute drinking water, and contaminated and continues to  
10 contaminate the State's natural resources.

11           5.7. Manufacturer Defendants' above-described unlawful, intentional, and tortious  
12 conduct directly and proximately caused a substantial and unreasonable interference with the  
13 public rights of health and safety, the comfortable enjoyment of life and property, and access to  
14 uncontaminated drinking water and other natural resources.

15           5.8. Past and ongoing PFAS contamination from Manufacturer Defendants' AFFF  
16 Products is substantial and unreasonable because it endangers the health, welfare, and safety of  
17 Washingtonians by exposing them to toxic chemicals and causes significant injuries to  
18 Washington's irreplaceable natural resources, which outweighs any social utility of  
19 Defendants' intentional and tortious conduct in manufacturing, marketing, promoting,  
20 distributing, and selling AFFF Products while hiding their bioaccumulative, persistent, and  
21 toxic nature.

22           5.9. Manufacturer Defendants' above-described unlawful, intentional, and tortious  
23 conduct directly and proximately caused and will continue to cause actual and substantial  
24 damages to the State, its people, its public health, and its natural resources.

25           5.10. The public nuisance was reasonably foreseeable to Manufacturer Defendants,  
26 who knew or should have known that their above-described unlawful, intentional, and tortious

1 conduct would create and continue to create a public nuisance and otherwise harm Washington  
2 and its people.

3 5.11. As described above, Corteva and New DuPont assumed Old DuPont's nuisance  
4 liability.

5 **COUNT II**  
6 **PRODUCTS LIABILITY, DESIGN DEFECT – RCW 7.72 & COMMON LAW**  
7 **(ALL DEFENDANTS)**

8 5.12. The State incorporates and reaffirms the preceding paragraphs.

9 5.13. Washington brings this claim under the Washington Products Liability Act,  
10 RCW 7.72 (WPLA), and the common law.

11 5.14. Under WPLA, “[a] product is not reasonably safe as designed, if, at the time of  
12 manufacture, the likelihood that the product would cause the claimant’s harm or similar harms,  
13 and the seriousness of those harms, outweighed the burden on the manufacturer to design a  
14 product that would have prevented those harms and the adverse effect that an alternative design  
15 that was practical and feasible would have on the usefulness of the product.”

16 RCW 7.72.030(1)(a).

17 5.15. Under Washington common law, a claim arises if: (1) the defendant’s products  
18 were defectively designed; (2) the defect existed at the time the products left the defendant’s  
19 control; (3) the defect was not known to the user; (4) the defect rendered the products  
20 unreasonably dangerous for their intended use; and (5) the design defect proximately caused  
21 the plaintiff’s injury.

22 5.16. Manufacturer Defendants’ AFFF Products were not reasonably safe as designed  
23 because, at the time of manufacture, the likelihood that AFFF Products would cause harm—  
24 including but not limited to significant and pervasive contamination of Washington’s natural  
25 resources—outweighed the burden on the Manufacturing Defendants to design a product that  
26 would have prevented such harm and the adverse effect that a practical and feasible alternative  
design would have on the usefulness of AFFF Products.

1 5.17. Despite the reasonably foreseeable harm connected with their AFFF Products,  
2 the design defect with Manufacturer Defendants' AFFF Products existed at the time such  
3 products left Manufacturer Defendants' control.

4 5.18. Due to Manufacturer Defendants' omissions, misrepresentations, and failures to  
5 warn consumers or regulators of the harms posed by their AFFF Products, the design defect  
6 was not known to users of their AFFF Products.

7 5.19. Manufacturer Defendants' AFFF Products were unsafe to an extent beyond that  
8 which would be contemplated by the ordinary user and, therefore, unreasonably dangerous for  
9 their intended use.

10 5.20. Manufacturer Defendants' AFFF Products have directly and proximately caused  
11 and continue to cause injury to the State. Manufacturer Defendants' AFFF Products released  
12 PFAS into the environment, after which this PFAS have migrated and continue to migrate  
13 through the environment and contaminate natural resources. Contamination of natural  
14 resources, including drinking water sources from PFAS from AFFF, endangers the public's  
15 health and safety and threatens the viability of natural resources.

16 5.21. As a direct and proximate result of Manufacturer Defendants' acts and  
17 omissions, the State has incurred, is incurring, and will continue to incur in the future damages  
18 related to PFAS contamination.

19 5.22. As described above, New DuPont and Corteva assumed Old DuPont's design  
20 defect liability.

21 **COUNT III**  
22 **PRODUCTS LIABILITY, FAILURE TO WARN – RCW 7.72 & COMMON LAW**  
23 **(ALL DEFENDANTS)**

24 5.23. The State incorporates and reaffirms the preceding paragraphs.

25 5.24. Washington brings this claim under WPLA and the common law.

26 5.25. Under WPLA, a manufacturer is liable for failure to warn if its product was not  
reasonably safe because adequate warnings or instructions were not provided, and the product



1 caused harm to the plaintiff. A failure to warn at the time of manufacture occurs when:  
2 (1) defendants' products were not reasonably safe at the time of manufacture because of  
3 defendants' failure to adequately warn of those products' risks; and (2) the failure to  
4 adequately warn caused harm. *See* RCW 7.72.030(1)(b). A failure to warn also can occur after  
5 manufacture when a manufacturer learns of or should have learned of a danger connected with  
6 its product after it was manufactured. In that instance, a duty arises for the manufacturer to  
7 provide a warning as a reasonably prudent manufacturer would have done under similar  
8 circumstances, and the manufacturer is liable for failing to warn when a plaintiff is proximately  
9 harmed from the manufacturer's failure to warn of the subsequently learned danger connected  
10 with the product. *See* RCW 7.72.030(1)(c).

11         5.26. Under the common law, a product, although faultlessly manufactured and  
12 designed, may not be reasonably safe when placed in the hands of the ultimate user without  
13 first giving an adequate warning concerning the manner in which to safely use the product. A  
14 manufacturer is liable under the common law if it: (1) failed to sufficiently warn of dangers  
15 inherent in its product; (2) the product was rendered unreasonably dangerous; (3) plaintiff  
16 suffers harm; and (4) manufacturer's failure to warn was the proximate cause of plaintiff's  
17 damages.

18         5.27. At the time of manufacture, the likelihood that AFFF Products would cause  
19 harm—including but not limited to significant and pervasive contamination of Washington's  
20 natural resources—and the seriousness of that harm rendered any warnings that Manufacturer  
21 Defendants provided inadequate. As such, Manufacturer Defendants' AFFF Products were not  
22 reasonably safe because adequate warnings or instructions were not provided. Manufacturer  
23 Defendants knew or should have known that their AFFF Products were not safe at the time  
24 they left Manufacturer Defendants' control because they contained persistent, bioaccumulative,  
25 and toxic chemicals that would be released into the environment.  
26



1 5.34. Washington brings this claim under RCW 4.24.630 and the common law.

2 5.35. Under RCW 4.24.630(1), “[e]very person who goes onto the land of another  
3 and who removes timber, crops, minerals, or other similar valuable property from the land, or  
4 wrongfully causes waste or injury to the land, or wrongfully injures personal property or  
5 improvements to real estate on the land, is liable to the injured party for treble the amount of  
6 the damages caused by the removal, waste, or injury.”

7 5.36. At common law, trespass is an intentional, unprivileged invasion of the  
8 plaintiff’s interest in the exclusive possession of property. A common law trespass occurs  
9 when there is: (1) an invasion of property affecting an interest in exclusive possession; (2) an  
10 intentional act; (3) reasonable foreseeability that the act would disturb the possessory interest;  
11 and (4) actual and substantial damages.

12 5.37. Each Manufacturer Defendants’ intentional, unreasonable, and tortious actions  
13 in manufacturing, marketing, promoting, distributing, and selling AFFF Products directly and  
14 proximately caused PFAS to wrongfully contaminate and cause waste and injury to State lands  
15 and natural resources.

16 5.38. Manufacturer Defendants knew, or had reason to know, that they lacked  
17 authorization to take the above-described actions that would and continue to contaminate and  
18 cause waste and injury to State lands and natural resources.

19 5.39. At all pertinent times, the State owned or otherwise held in trust lands and  
20 natural resources contaminated by Manufacturer Defendants’ AFFF Products. PFAS from  
21 Manufacturer Defendants’ AFFF Products disturb the State’s possessory interest over its land  
22 and natural resources, as large quantities of PFAS have been and continue to be introduced into  
23 these State properties.

24 5.40. It was reasonably foreseeable to the Manufacturer Defendants that their above-  
25 described tortious acts would disturb the State’s possessory interest over its land and other  
26

1 natural resources, as large quantities of PFAS have been and continue to be introduced into  
2 these State properties.

3 5.41. As a direct and proximate result of Manufacturer Defendants' acts and  
4 omissions, the State has incurred, is incurring, and will continue to incur in the future actual  
5 and substantial damages related to PFAS contamination.

6 5.42. Manufacturer Defendants have trespassed on and otherwise wrongfully caused  
7 waste, damage, and injury to State lands and natural resources, and are liable to the State for all  
8 damages from their unlawful acts and other relief.

9 5.43. As described above, Corteva and New DuPont assumed Old DuPont's trespass  
10 and waste liability.

11 **COUNT V**  
12 **NEGLIGENCE**  
13 **(ALL DEFENDANTS)**

14 5.44. The State incorporates and reaffirms the preceding paragraphs.

15 5.45. Washington brings this claim under the common law.

16 5.46. Under Washington law, a cause of action arises for negligence when a  
17 defendant: (1) owes a duty to a plaintiff; (2) breaches that duty; and (3) proximately causes the  
18 resulting injury.

19 5.47. Manufacturer Defendants owed a duty of care to the State, including but not  
20 limited to the duty to exercise reasonable care in the research, design, formulation, handling,  
21 manufacture, marketing, sale, testing, labeling, use, distribution, promotion, and/or instructions  
22 for use of their AFFF Products containing PFAS.

23 5.48. Manufacturer Defendants knew or should have known that use of AFFF  
24 Products would result in the release of PFAS into the environment and injure the State by  
25 contaminating drinking water, groundwater, surface water, air, soil, sediment, plants, wildlife,  
26 estuaries, aquatic lands, wetlands, and other natural resources in the State with PFAS.



1 5.58. Manufacturer Defendants engaged in unfair and/or deceptive acts or practices  
2 within the meaning of RCW 19.86.020 by, inter alia, omitting and/or failing to update their  
3 information and marketing materials with known, material risks associated with the use of  
4 AFFF Products.

5 5.59. Manufacturer Defendants' misrepresentations are deceptive because they have  
6 the capacity to mislead a substantial number of consumers.

7 5.60. An act or practice may be unfair if it offends public policy; is immoral,  
8 unethical, oppressive, unconscionable; or causes injury to consumers. Manufacturer  
9 Defendants' acts or practices as alleged in this Complaint are unfair.

10 5.61. Manufacturer Defendants' unfair and deceptive conduct in the manufacturing,  
11 marketing, promoting, distributing, and sale of AFFF Products affects the public interest.

12 5.62. Manufacturer Defendants' acts and practices in this Complaint violate RCW  
13 19.86.020.

14 5.63. As described above, New DuPont and Corteva assumed Old DuPont's CPA  
15 liability.

16 **COUNT VII**  
17 **ACTUAL FRAUDULENT TRANSFER, CHEMOURS SPINOFF – RCW 19.40**  
18 **(OLD DUPONT, CHEMOURS, CORTEVA, AND NEW DUPONT)**

19 5.64. The State incorporates and reaffirms the preceding paragraphs.

20 5.65. The State brings this claim under its former Uniform Fraudulent Transfer Act  
(UFTA), which was in effect at the time of Chemours Spinoff.

21 5.66. Under the UFTA's actual fraudulent transfers provision, a transaction made by a  
22 debtor "with actual intent to hinder, delay, or defraud any creditor of the debtor" is voidable as  
23 to the creditor's claim. RCW 19.40.041(1)(a) (2015).

24 5.67. A "creditor" is "a person who has a claim." *Id.* 19.40.011. A "claim" is "a right  
25 to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed,  
26

1 contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.”

2 *Id.*

3 5.68. The State is and was a creditor of Chemours at all relevant times.

4 5.69. The Chemours Spinoff was the first step in the overall scheme to separate Old  
5 DuPont’s assets from its massive liabilities. Through its participation in the Chemours Spinoff,  
6 as detailed above, Chemours transferred valuable assets to Old DuPont, including the \$3.9  
7 billion dividend (the Chemours Transfers), while simultaneously assuming significant  
8 liabilities pursuant to the Separation Agreement (the Assumed Liabilities).

9 5.70. The Chemours Transfers and Assumed Liabilities were made for the benefit of  
10 Old DuPont.

11 5.71. At the time of the Chemours Transfers and Assumed Liabilities, and until  
12 completion of the Chemours Spinoff, Old DuPont was in a position to, and in fact did, control  
13 and dominate Chemours.

14 5.72. Chemours made the Chemours Transfers and incurred the Assumed Liabilities  
15 with the actual intent to hinder, delay, and defraud the creditors or future creditors of  
16 Chemours.

17 5.73. The State has been harmed as a result of the Chemours Transfers.

18 5.74. As described above, Corteva and New DuPont assumed Old DuPont’s actual  
19 fraudulent transfer liability.

20 **COUNT VIII**  
21 **CONSTRUCTIVE FRAUDULENT TRANSFER, CHEMOURS SPINOFF – RCW 19.40**  
22 **(OLD DUPONT, CHEMOURS, NEW DUPONT, AND CORTEVA)**

23 5.75. The State incorporates and reaffirms the preceding paragraphs.

24 5.76. The State brings this claim under its former UFTA, which was in effect at the  
25 time of Chemours Spinoff.

26 5.77. Under the UFTA’s constructive fraudulent transfer provision, a transaction  
made by a debtor “without receiving a reasonably equivalent value in exchange for the

1 transfer or obligation” is voidable if the debtor: (1) “[w]as engaged or was about to engage in  
2 a business or a transaction for which the remaining assets of the debtor were unreasonably  
3 small in relation to the business or transaction,” RCW 19.40.041(a)(2)(i) (2015);  
4 (2) “[i]ntended to incur, or believed or reasonably should have believed that he or she would  
5 incur, debts beyond the his or her ability to pay as they became due,” *id.* 19.40.041(a)(2)(ii);  
6 or (3) “if the debtor made the transfer or incurred the obligation without receiving a  
7 reasonably equivalent value in exchange for the transfer or obligation and the debtor was  
8 insolvent at that time or the debtor became insolvent as a result of the transfer or obligation,”  
9 *id.* 19.40.051(a).

10 5.78. The State is and was a creditor of Chemours at all relevant times.

11 5.79. Chemours did not receive reasonably equivalent value from Old DuPont in  
12 exchange for the Chemours Transfers and Assumed Liabilities.

13 5.80. Each of the Chemours Transfers and Chemours’s assumption of the Assumed  
14 Liabilities was made to benefit, or for the benefit of, Old DuPont.

15 5.81. At the time of the Chemours Transfers and Assumed Liabilities, and until  
16 completion of the Chemours Spinoff, Old DuPont was in a position to, and in fact did, control  
17 and dominate Chemours.

18 5.82. Chemours made the Chemours Transfers and acquired the Assumed Liabilities  
19 when it was engaged or about to be engaged in a business for which its remaining assets were  
20 unreasonably small in relation to its business.

21 5.83. Chemours was insolvent at the time or became insolvent as a result of the  
22 Chemours Transfers and its assumption of the Assumed Liabilities.

23 5.84. At the time of the Chemours Transfers and Assumed Liabilities, Old DuPont  
24 and Chemours intended Chemours to incur or believed or reasonably should have believed  
25 that Chemours would incur debts beyond its ability to pay as they became due.

26 5.85. The State has been harmed as a result of the Chemours Transfers.



1 5.86. As described above, Corteva and New DuPont assumed Old DuPont's  
2 constructive fraudulent transfer liability.

3 **COUNT IX**  
4 **ACTUAL VOIDABLE TRANSACTION, CORTEVA SPINOFF – RCW 19.40**  
5 **(OLD DUPONT, CORTEVA, AND NEW DUPONT)**

6 5.87. The State incorporates and reaffirms the preceding paragraphs.

7 5.88. The State brings this claim under its current Uniform Voidable Transactions Act  
(UVTA).

8 5.89. The UVTA's and UFTA's definitions of "creditor" and "claim," and provisions  
9 voiding transfers made with actual fraudulent intent, are substantively identical. *Compare*  
10 ¶¶ 5.67-5.68, *with* RCW 19.40.011 (2017), RCW 19.40.041(a)(1) (2017).

11 5.90. The State is and was a creditor of Old DuPont at all relevant times.

12 5.91. Old DuPont knew that the Chemours Spinoff alone would not isolate its  
13 valuable assets and business lines from the Chemours Assumed Liabilities. Thus, the  
14 Chemours Spinoff was the first step in the overall scheme to separate Old DuPont's assets  
15 from its massive liabilities. Through its participation in the DowDuPont Merger and the  
16 subsequent reorganizations, divestitures, and separation of Corteva from New DuPont, Old  
17 DuPont sold or transferred, directly or indirectly, valuable assets and business lines to Corteva  
18 and New DuPont (the Old DuPont Transfers).

19 5.92. The Old DuPont Transfers were made for the benefit of New DuPont and/or  
20 Corteva.

21 5.93. At the time of the Old DuPont Transfers, New DuPont was in a position to, and  
22 in fact did, control and dominate Old DuPont and Corteva.

23 5.94. Old DuPont, New DuPont, and Corteva acted with the actual intent to hinder,  
24 delay, and defraud creditors or future creditors, including the State.

25 5.95. The State has been harmed as a result of the Old DuPont Transfers.  
26

1 5.96. Old DuPont engaged in acts in furtherance of a scheme to transfer its assets out  
2 of the reach of parties such as the State such that they have been damaged as a result of Old  
3 DuPont's actions.

4 **COUNT X**  
5 **CONSTRUCTIVE VOIDABLE TRANSACTION, CORTEVA SPINOFF – RCW 19.40**  
6 **(OLD DUPONT, NEW DUPONT, AND CORTEVA)**

7 5.97. The State incorporates and reaffirms the preceding paragraphs.

8 5.98. The State brings this claim under its current voidable transactions statute.

9 5.99. The UVTA's and UFTA's provisions voiding constructively fraudulent  
10 transfers are substantively identical. *Compare* ¶ 5.77, with RCW 19.40.041(a)(1) (2017), RCW  
11 19.40.051(1) (2017).

12 5.100. Old DuPont knew that the Chemours Spinoff alone would not isolate its  
13 valuable assets and business lines from the Chemours Assumed Liabilities. Thus, the  
14 Chemours Spinoff was the first step in the overall scheme to separate Old DuPont's assets  
15 from its massive liabilities. Through its participation in the DowDuPont Merger and the  
16 subsequent reorganizations, divestitures, and separation of Corteva from New DuPont, Old  
17 DuPont engaged in the Old DuPont Transfers.

18 5.101. The State is and was a creditor of Old DuPont at all relevant times.

19 5.102. Old DuPont did not receive reasonably equivalent value from New DuPont and  
20 Corteva in exchange for the Old DuPont Transfers.

21 5.103. Each of the Old DuPont Transfers was made to benefit, or for the benefit of,  
22 New DuPont and/or Corteva.

23 5.104. At the time of the Old DuPont Transfers, New DuPont was in a position to, and  
24 in fact did, control and dominate Old DuPont and Corteva.

25 5.105. Old DuPont made the Old DuPont Transfers when it was engaged or about to be  
26 engaged in a business for which its remaining assets were unreasonably small in relation to its  
business.

1 5.106. Old DuPont was insolvent at the time or became insolvent as a result of the Old  
2 DuPont Transfers.

3 5.107. At the time that the Old DuPont Transfers were made, Old DuPont intended to  
4 incur, or believed, or reasonably should have believed that it would incur debts beyond its  
5 ability to pay as they became due.

6 5.108. The State has been harmed as a result of the Old DuPont Transfers.

7 **VI. PRAYER FOR RELIEF**

8 WHEREFORE, the State asks that this Court:

9 6.1. Find Defendants liable for all past and future costs to investigate, mitigate,  
10 remediate, restore, treat, monitor, and otherwise respond to PFAS contamination resulting  
11 from Manufacturer Defendants' AFFF Products so the contaminated natural resources are  
12 restored to their pre-contamination condition, or are replaced by reasonably equivalent  
13 resources, and for all damages to compensate the State and its people for the lost use and  
14 value of these natural resources during all times of injury caused by PFAS contamination  
15 from Manufacturer Defendants' AFFF Products and for such orders as may be necessary to  
16 provide full relief to address the threat of contamination to the State;

17 6.2. Find Defendants liable for all past and future costs to investigate and assess  
18 AFFF-related PFAS contamination in Washington;

19 6.3. Order Defendants to abate the public nuisance, including but not limited to  
20 funding an abatement fund to be managed by the State, so that the State's public health and  
21 natural resources are remediated and restored to their pre-contamination condition;

22 6.4. Otherwise order Defendants to fund future investigation, mitigation,  
23 restoration, monitoring, testing, treatment, and remediation of all AFFF-related PFAS  
24 contaminated sites and natural resources in Washington to their pre-contamination condition;

25 6.5. Order Defendants to reimburse the State for its past costs of responding to  
26 AFFF-related PFAS contamination, without regard to fault, including but not limited to all

1 costs to investigate, mitigate, remediate, restore, treat, monitor, and otherwise respond to  
2 contamination of the State's natural resources, including costs to ensure public health as a  
3 result of that contamination, so that such natural resources are remediated and restored to their  
4 pre-contamination condition;

5 6.6. Award the State treble damages caused by trespass, waste, and injury to State  
6 lands and natural resources and the cost of restoration pursuant to RCW 4.24.630;

7 6.7. Order Defendants to pay for all other damages sustained by Washington in its  
8 sovereign, proprietary, *parens patriae*, public trust, and other capacities as a direct and  
9 proximate result of Defendants' acts and omissions alleged herein;

10 6.8. Declare that Defendants' acts described above are unfair acts or practices in  
11 trade or commerce, affecting the public interest, and in violation of the CPA, RCW 19.86;

12 6.9. Enjoin Defendants from engaging in any acts that violate the CPA, pursuant to  
13 RCW 19.86.080(1), including, but not limited to, the unfair acts and practices alleged herein;

14 6.10. Order Defendants to restore to any person an interest in any moneys or  
15 property, real or personal, which may have been acquired by means of an act prohibited by the  
16 CPA, pursuant to RCW 19.86.080(2);

17 6.11. Order Defendants to pay a civil penalty of \$7,500 per violation under the CPA;

18 6.12. Enjoin Defendants from future violations of RCW 7.48 and hold Defendants  
19 liable for all actual and substantial damages from their public nuisance;

20 6.13. Order Defendants to pay the State's investigation and litigation fees and costs,  
21 including attorneys' fees and court costs;

22 6.14. Order equitable relief requiring restitution and disgorgement of the revenues  
23 resulting from Defendant's wrongful conduct;

24 6.15. Void the Chemours Transfers and recover property and value transferred to  
25 Old DuPont;

1           6.16. Void the Old DuPont Transfers and recover property and value transferred to  
2 New DuPont;

3           6.17. Void the Old DuPont Transfers and recover property and value transferred to  
4 Corteva;

5           6.18. Enjoin Old DuPont, as transferee, from distributing, transferring, capitalizing,  
6 or otherwise disposing of any property or value that Chemours transferred to Old DuPont, and  
7 seeks a constructive trust over such property or value for the benefit of the State;

8           6.19. Enjoin New DuPont, as transferee, from distributing, transferring, capitalizing,  
9 or otherwise disposing of any proceeds from the sale of any business lines, segments,  
10 divisions, or other assets that formerly belonged to Old DuPont;

11           6.20. Enjoin Corteva, as transferee, from distributing, transferring, capitalizing, or  
12 otherwise disposing of any proceeds from the sale of any business lines, segments, divisions,  
13 or other assets that formerly belonged to Old DuPont;

14           6.21. Impose a constructive trust over the proceeds of the Chemours Transfers to Old  
15 DuPont for the benefit of the State;

16           6.22. Impose a constructive trust over the proceeds of the Old DuPont Transfers to  
17 New DuPont for the benefit of the State;

18           6.23. Impose a constructive trust over the proceeds of the Old DuPont Transfers to  
19 Corteva for the benefit of the State; and

20           6.24. Grant the State all other relief to which it is entitled.  
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1 DATED this 30th day of May, 2023.

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