

**IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS
CIVIL DIVISION**

**STATE OF ARKANSAS, ex rel. TIM GRIFFIN, ATTORNEY
GENERAL**

PLAINTIFF

v. **Case No. 72CV-23-_____**

**3M COMPANY (f/k/a Minnesota Mining and Manufacturing
Co.); AGC CHEMICALS AMERICAS INC.; AGC, INC. (f/k/a
Asahi Glass Co., Ltd.); ANGUS INTERNATIONAL SAFETY
GROUP, LTD; ARCHROMA MANAGEMENT, LLC;
ARCHROMA U.S., INC.; ARKEMA, INC.; BASF
CORPORATION; BUCKEYE FIRE EQUIPMENT
COMPANY; CARRIER GLOBAL CORPORATION;
CENTRAL SPRINKLER, LLC; CHEMDESIGN PRODUCTS,
INC.; CHEMGUARD, INC.; CHEMICALS
INCORPORATED; CHUBB FIRE, LTD.; CLARIANT
CORPORATION; CORTEVA, INC.; DEEPWATER
CHEMICALS, INC.; JOHN DOE DEFENDANTS 1-49;
DUPONT DE NEMOURS, INC.; DYNAX CORPORATION;
E. I. DUPONT DE NEMOURS AND COMPANY; FIRE
PRODUCTS GP HOLDING, LLC; JOHNSON CONTROLS
INTERNATIONAL, PLC; KIDDE PLC, INC.; NATION
FORD CHEMICAL COMPANY; NATIONAL FOAM, INC.;
RAYTHEON TECHNOLOGIES CORPORATION (f/k/a
United Technologies Corporation); THE CHEMOURS
COMPANY; THE CHEMOURS COMPANY FC, LLC; TYCO
FIRE PRODUCTS LP; and UTC FIRE & SECURITY
AMERICAS CORPORATION, INC.**

DEFENDANTS

COMPLAINT

The State of Arkansas, *ex rel.* Tim Griffin, Attorney General (“the State”), for its
Complaint against 3M Company (f/k/a Minnesota Mining and Manufacturing Co.); AGC

Chemicals Americas, Inc.; AGC, Inc. (f/k/a Asahi Glass Co., Ltd.); Angus International Safety Group, Ltd.; Archroma Management, LLC; Archroma U.S., Inc.; Arkema, Inc.; BASF Corporation; Buckeye Fire Equipment Company; Carrier Global Corporation; Central Sprinkler, LLC; ChemDesign Products, Inc.; Chemguard, Inc.; Chemicals Incorporated; Chubb Fire, Ltd.; Clariant Corporation; Corteva, Inc.; Deepwater Chemicals, Inc.; DuPont de Nemours, Inc.; Dynax Corporation; E. I. DuPont De Nemours and Company; Fire Products GP Holding, LLC; Johnson Controls International, plc; Kidde PLC, Inc.; Nation Ford Chemical Company; National Foam, Inc.; Raytheon Technologies Corporation (f/k/a United Technologies Corporation); The Chemours Company; The Chemours Company FC, LLC; Tyco Fire Products LP (individually and as successor-in-interest to The Ansul Company); UTC Fire & Security Americas Corporation, Inc.; and John Doe Defendants 1-49 (collectively, “Defendants”), states:

I. INTRODUCTION

1. The State of Arkansas brings this action on behalf of the people of Arkansas against Defendants for contamination of the State’s natural resources, including land, fish, wildlife, biota, air, surface water, groundwater, drinking water supplies, or any other natural products of the soil or water of Arkansas (collectively, “natural resources”), and other real property owned, maintained, or held in trust by the State (“the State’s Property”) as a result of the release of per- and polyfluoroalkyl substances (“PFAS”) into the environment through the handling, use, disposal, and storage of products containing or producing PFAS.

2. PFAS are a class of man-made chemicals that include perfluorooctane sulfonate (“PFOS”) and perfluorooctanoic acid (“PFOA”).

3. Defendants designed, compounded, produced, manufactured, marketed, packaged, labeled and/or sold PFAS and/or products containing PFAS (collectively, “Fluorosurfactant Products”), including, but not limited to, aqueous film-forming foam (“AFFF”).

4. PFAS are chemicals that resist stains, grease, oil, soil, water, and heat. PFAS are a component of, or present in, a wide array of products and industrial processes, including, but not limited to: food packaging and preparation materials (e.g., sandwich wrappers and other papers and paperboard for packaging); household products; stain and water repellent fabrics and carpets; nonstick products; polishes; waxes; paints; cleaning products; surfactants (including without limitation surfactants used in Class B Firefight foams, known as AFFF); personal care products; in manufacturing and production, including in chrome plating, electronics manufacturing, textile manufacturing, oil recovery; as a wetting agent and fume suppressant; as a processing aid in fluoropolymer production and in textile coating applications; and in many other products and industrial applications.

5. Defendants designed, manufactured, formulated, distributed, marketed, and/or sold Fluorosurfactant Products with the knowledge that these compounds were toxic and that they would be released into the environment even when used as directed and intended by Defendants.

6. PFOS and PFOA present a significant threat to the State’s Property, natural resources, and residents. PFOS and PFOA are highly mobile and persistent in the environment, and they are toxic at extremely low levels. Further, they bioaccumulate and biomagnify up the food chain.

7. For instance, Defendant, 3M Company, began publishing peer reviewed literature in 1980 showing that humans retain PFOS in their bodies for years. By the early 1980s, the industry suspected a correlation between PFOS exposure and human health effects.

8. Similarly, Defendant DuPont, had been studying the potential toxicity of PFOA since at least the 1960s and knew that it was contaminating drinking water drawn from the Ohio River. Despite this knowledge, DuPont did not disclose to the public or to government regulators what they knew about the substance's potential effects on humans, animals, or the environment. By December 2005, the Environmental Protection Agency ("EPA") uncovered evidence that DuPont concealed the environmental and health effects of PFOA, and the EPA assessed the "Largest Environmental Administrative Penalty in Agency History" against DuPont. The EPA fined DuPont \$16,500,000 for violating the Toxic Substances Control Act "Section 8(e): the requirement that companies report to the EPA substantial risk information about chemicals they manufacture, process or distribute in commerce."¹ The EPA found that DuPont had long known of, and concealed, knowledge about human exposure at the plant.²

9. Nevertheless, through the relevant years, Defendants continued to design, manufacture, market, and sell their Fluorosurfactant Products throughout the United States, including in Arkansas.

¹ EPA, *E.I. DuPont de Nemours & Co. PFOA Settlements*, available at <https://www.epa.gov/enforcement/ei-dupont-de-nemours-and-company-pfoa-settlements> (last accessed May 8, 2023).

² *See generally* EPA, Memorandum, Consent Agreement and Proposed Final Order to resolve DuPont's Alleged Failure to submit Substantial Risk Information Under the Toxic Substances Control Act (TSCA) and Failure to Submit Data Requested Under the Resource Conservation and Recovery Act (RCRA), available at <https://www.epa.gov/sites/default/files/2013-08/documents/eabmemodupontpfoasettlement121405.pdf> (last accessed May 8, 2023).

10. Additionally, Defendants failed to provide adequate warnings or instructions with their Fluorosurfactant Products, both before and after selling such products. Defendants failed to adequately advise their customers, the public, and the State about the threats PFOS or PFOA pose to natural resources and human health if released into the environment.

11. PFAS products were ubiquitous. Not only were PFAS used and/or present in AFFF at military sites, fire training facilities, airports, and fire stations, but also in a wide array of products and industrial and manufacturing applications throughout the State, including but not limited to, paper and packaging manufacturing, chemical manufacturing, metal finishing, and hazardous waste facilities.

12. The detection and/or presence of PFAS, and the threat of further presence of PFAS, in the State and its natural resources in varying amounts and at varying times has resulted, and will continue to result, in significant injuries, damages, and costs to the State and its inhabitants.

13. Defendants, by their actions and inactions, bear ultimate responsibility for the presence of PFAS in the State's environment, contaminating its property and natural resources, and threatening the health, safety, and well-being of its residents.

14. Defendants' Fluorosurfactant Products have caused and will continue to cause injury to property owned and maintained by the State.

15. Accordingly, the State, through this action, seeks to require Defendants to pay all past and future costs necessary to fully investigate, assess, monitor, remediate, and restore the various locations contaminated by Defendants' Fluorosurfactant Products, both known and those as yet unidentified, as well as damages for harm to the State's Property and natural resources caused by Defendants' Fluorosurfactant Products.

16. Further, State governmental entities that purchased Defendants' Fluorosurfactant Products will be forced to spend additional money to properly dispose of any remaining inventory. Such costs should rightfully be borne by Defendants and, as such, are also sought to be recovered through this action.

17. The State seeks from Defendants all damages, including but not limited to, damage to State's Property and natural resources, economic damages, all costs necessary to remediate the damages created to the State's Property and natural resources and abate future contamination, punitive damages, and all other damages, fees, costs, and equitable relief to which the State may be entitled.

II. PARTIES

18. Plaintiff is the State of Arkansas, *ex rel.* Tim Griffin, Attorney General.

19. Upon information and belief, the following Defendants designed, manufactured, formulated, marketed, distributed, sold, and/or assumed or acquired liabilities for the manufacture and/or sale of Fluorosurfactant Products that have contaminated, and continue to contaminate, the State's Property and natural resources:

- a. Defendant 3M Company (f/k/a Minnesota Mining and Manufacturing Company) ("3M") is a Delaware corporation authorized to conduct business in the State of Arkansas, with its principal place of business located at 3M Center, St. Paul, Minnesota 55144. 3M Company is registered to do business in the State of Arkansas. Upon information and belief, 3M is the only company that manufactured and/or sold AFFF containing PFOS in the United States, including Arkansas.

- b. Defendant E. I. DuPont De Nemours and Company (“Old DuPont”) is a Delaware corporation with its principal place of business located at 974 Centre Road, Wilmington, Delaware 19805. Upon information and belief, Old DuPont does and/or has done business throughout the United States, including Arkansas.
- c. Defendant The Chemours Company (“Chemours”) is a Delaware corporation with its principal place of business located at 1007 Market Street, Wilmington, Delaware 19899. Chemours is registered to do business in the State of Arkansas.
- d. In 2015, Old DuPont spun off its “Performance Chemicals” business to Chemours, along with certain environmental liabilities. Upon information and belief, at the time of the transfer of its Performance Chemicals business to Chemours, Old DuPont had been sued, threatened with suit and/or had knowledge of the likelihood of litigation to be filed regarding Old DuPont’s liability for damages and injuries arising from the manufacture and sale of fluorosurfactants and the products that contain fluorosurfactants.
- e. Defendant The Chemours Company FC, LLC (“Chemours FC”), successor-in-interest to DuPont Chemical Solutions Enterprise, is a Delaware limited liability company with its principal place of business located at 1007 Market Street Wilmington, Delaware, 19899. Chemours FC is registered to do business in the State of Arkansas.
- f. Defendant DuPont de Nemours, Inc. is a Delaware corporation with its principal place of business located at 974 Centre Road, Building 730, Wilmington, Delaware 19805. Upon information and belief, DowDuPont, Inc. was formed in 2017 as a result of the merger of Dow Chemical and Old DuPont. DowDuPont,

Inc. was subsequently divided into three publicly traded companies and in June 2019, DowDuPont, Inc. changed its registered name to DuPont de Nemours, Inc. (“New DuPont”). New DuPont is believed to have assumed some of the PFAS liabilities of Old DuPont. Upon information and belief, New DuPont does and/or has done business throughout the United States, including Arkansas.

- g. Defendant Corteva, Inc. is a Delaware corporation with its principal place of business located at 974 Centre Road, Wilmington, Delaware 19805. Upon information and belief, Corteva, Inc. is one of the aforementioned spin-off companies from DowDuPont, Inc., and is believed to have assumed some of the PFAS liabilities of Old DuPont. Corteva, Inc. is registered to do business in the State of Arkansas.
- h. Defendant Chemguard, Inc. (“Chemguard”) is a Texas corporation with its principal place of business located at One Stanton Street, Marinette, Wisconsin 54143. Upon information and belief, Chemguard conducts and/or avails itself of doing business throughout the United States, including the State of Arkansas.
- i. Upon information and belief, Chemguard acquired Williams Fire and Hazard Control, Inc. (“WFHC”). Upon information and belief, WFHC has and continues to sell and/or distribute AFFF throughout the United States, including in Arkansas.
- j. Defendant Tyco Fire Products LP (“Tyco”) is a Delaware limited partnership with its principal place of business at 1400 Pennbrook Parkway, Lansdale, Pennsylvania 19446. Tyco acquired Chemguard in 2011. Tyco is registered to do business in the State of Arkansas.

- k. Tyco is the successor-in-interest to The Ansul Company (“Ansul”) and manufactures the Ansul brand of products (Ansul and/or Tyco as the successor-in-interest to Ansul will be referred to collectively as “Tyco/Ansul”). Upon information and belief, Tyco/Ansul conducts and/or avails itself of doing business throughout the United States, including Arkansas.
- l. Defendant Johnson Controls International, plc is an Irish public limited company with its principal place of business located at One Albert Quay, Cork, Ireland. Upon information and belief, Johnson Controls International, plc is the parent company of Tyco.
- m. Defendant Central Sprinkler, LLC is a Delaware limited liability company with its principal place of business located at 1400 Pennbrook Parkway, Lansdale, Pennsylvania 19446. Upon information and belief, this Defendant is a limited partner of Tyco. Upon information and belief, Chemguard is wholly-owned by Central Sprinkler, LLC. Upon information and belief, Central Sprinkler, LLC has conducted and/or availed itself of doing business throughout the United States, including in Arkansas.
- n. Defendant Fire Products GP Holding, LLC is a Delaware limited liability company with its principal place of business located at 5757 N Green Bay Ave., Milwaukee, Wisconsin 53209. Upon information and belief, this Defendant is a general partner of Tyco. Fire Products GP Holding, LLC is registered to do business in Arkansas.
- o. Defendant Kidde PLC, Inc. is a Delaware corporation with its principal place of business located at 9 Farm Springs Road, Farmington, Connecticut 06032. Upon

information and belief, Kidde PLC, Inc. was part of UTC Fire & Security Americas Corporation, Inc. Upon information and belief, Kidde PLC, Inc. conducts and/or avails itself of doing business throughout the United States, including Arkansas.

- p. Defendant Chubb Fire, Ltd. (“Chubb”) is a foreign private limited company, United Kingdom registration number 134210, with offices at Littleton Road, Ashford, Middlesex, United Kingdom TW15 1TZ. Upon information and belief, Chubb is or has been composed of different subsidiaries and/or divisions, including but not limited to, Chubb Fire & Security Ltd., Chubb Security, PLC, Red Hawk Fire & Security, LLC, and/or Chubb National Foam, Inc. Upon information and belief, Chubb was part of UTC Fire & Security Americas Corporation, Inc. Upon information and belief, Chubb Fire, Ltd. conducts and/or avails itself of doing business throughout the United States, including Arkansas.
- q. Defendant UTC Fire & Security Americas Corporation, Inc. (“UTC”) is a Delaware corporation with its principal place of business at 13995 Pasteur Blvd., Palm Beach Gardens, Florida 33418. Upon information and belief, UTC was a division of United Technologies Corporation. Upon information and belief, UTC conducts and/or avails itself of doing business throughout the United States, including Arkansas.
- r. Defendant Carrier Global Corporation is a Delaware corporation with its principal place of business located at 13995 Pasteur Boulevard, Palm Beach Gardens, Florida 33418. Upon information and belief, Carrier Global

Corporation conducts and/or avails itself of doing business throughout the United States, including the State of Arkansas.

- s. Defendant Raytheon Technologies Corporation (f/k/a United Technologies Corporation) (“Raytheon Tech f/k/a United Tech”) is a Delaware corporation with its principal place of business at 870 Winter Street, Waltham, Massachusetts 02451. Upon information and belief, Raytheon Tech f/k/a United Tech conducts and/or avails itself of doing business throughout the United States, including the State of Arkansas.
- t. Defendant National Foam, Inc. is a Delaware corporation with its principal place of business located at 141 Junny Road, Angier, North Carolina 27501. National Foam, Inc. is a subsidiary of Angus International Safety Group, Ltd. Upon information and belief, National Foam, Inc. manufactures the Angus brand of AFFF products. Upon information and belief, National Foam, Inc. conducts and/or avails itself of doing business throughout the United States, including the State of Arkansas.
- u. Defendant Angus International Safety Group, Ltd. is a foreign private limited company, United Kingdom registration number 8441763, with offices at Station Road, High Bentham, Near Lancaster, United Kingdom. Upon information and belief, Angus International Safety Group, Ltd. is the parent company of National Foam, Inc.
- v. Defendant Buckeye Fire Equipment Company (“Buckeye”) is an Ohio corporation with its principal place of business at 110 Kings Road, Kings Mountain, North Carolina 28086. Upon information and belief, Buckeye

conducts and/or avails itself of doing business throughout the United States, including the State of Arkansas.

- w. Defendant Arkema, Inc. is a Pennsylvania corporation with its principal place of business at 900 1st Avenue, King of Prussia, Pennsylvania 19406. Arkema, Inc. is registered to do business in the State of Arkansas.
- x. Defendant BASF Corporation (“BASF”) is a Delaware corporation with its principal place of business at 100 Park Avenue, Florham Park, New Jersey 07932. BASF is registered to do business in the State of Arkansas. Upon information and belief, BASF acquired Ciba-Geigy Corporation and/or Ciba Specialty Chemicals. Upon information and belief, Ciba-Geigy Corporation and/or Ciba Specialty Chemicals conducts and/or avails itself of doing business throughout the United States, including Arkansas.
- y. Defendant ChemDesign Products, Inc. (“CDPI”) is a Delaware corporation with its principal place of business located at 2 Stanton Street, Marinette, Wisconsin 54143. Upon information and belief, CDPI conducts and/or avails itself of doing business throughout the United States, including the State of Arkansas.
- z. Defendant Clariant Corporation is a New York corporation with its principal place of business located at 4000 Monroe Road, Charlotte, North Carolina 28205. Clariant Corporation is registered to do business in the State of Arkansas.
- aa. Defendant Chemicals Incorporated is a Texas corporation with its principal place of business located at 12321 Hatcherville Road, Baytown, Texas 77521. Upon information and belief, Chemicals Incorporated conducts and/or avails itself of doing business throughout the United States, including the State of Arkansas.

- bb. Defendant Nation Ford Chemical Company is a South Carolina corporation with its headquarters located at 2300 Banks Street, Fort Mill, South Carolina 29715. Upon information and belief, Nation Ford Chemical Company conducts and/or avails itself of doing business throughout the United States, including the State of Arkansas.
- cc. Defendant AGC Chemicals Americas, Inc. (“AGC America”) is a Delaware corporation with its principal business office at 55 E. Uwchlan Avenue, Suite 201, Exton, Pennsylvania 19341. Upon information and belief, AGC America is a subsidiary of AGC, Inc., a Japanese corporation formerly known as Asahi Glass Company, Ltd. Upon information and belief, AGC America conducts and/or avails itself of doing business throughout the United States, including the State of Arkansas.
- dd. Defendant AGC, Inc. f/k/a Asahi Glass Co., Ltd. (“AGC”), is a corporation organized under the laws of Japan and does business throughout the United States. AGC has its principal place of business at 1-5-1, Marunouchi, Chiyoda-Ku, Tokyo 100-8405 Japan.
- ee. Defendant Deepwater Chemicals, Inc. (“Deepwater”) is a Delaware corporation with its principal place of business located at 196122 East County Road 40, Woodward, Oklahoma 73801. Upon information and belief, Deepwater conducts and/or avails itself of doing business throughout the United States, including the State of Arkansas.
- ff. Defendant Dynax Corporation is a Delaware corporation with its principal place of business located at 103 Fairview Park Drive, Elmsford, New York 10523. In

1991, Dynax Corporation entered the market, quickly becoming a leading global producer of fluorosurfactants and fluorochemical foam stabilizers used in AFFF. Upon information and belief, Dynax Corporation conducts and/or avails itself of doing business throughout the United States, including the State of Arkansas.

gg. Defendant Archroma Management, LLC, is a foreign limited liability company registered in Switzerland, with a principal business address of Neuhofstrasse 11, 4153 Reinach, Basel-Land, Switzerland.

hh. Defendant Archroma U.S., Inc. is a Delaware corporation with its principal place of business located at 5435 77 Center Dr., #10, Charlotte, North Carolina 28217. Upon information and belief, Archroma U.S., Inc. is a subsidiary of Archroma Management, LLC, and supplied Fluorosurfactant Products for use in AFFF. Archroma U.S., Inc. is registered to do business in the State of Arkansas.

ii. Upon information and belief, Defendants John Doe 1 through 49 were designers, manufacturers, marketers, distributors, and/or sellers of Fluorosurfactant Products that have and continue to contaminate the State's Property and natural resources. Although the identities of the John Doe Defendants are currently unknown, it is expected that their names will be ascertained during discovery, at which time the State will move for leave of this Court to add those individuals' actual names to the Complaint as Defendants.

20. Any and all references to a Defendant or Defendants in this Complaint include any predecessors, successors, parents, subsidiaries, affiliates, and divisions of the named Defendants.

21. When the term “Defendants” is used alone, it refers to all Defendants named in this Complaint jointly and severally. When reference is made to any act or omission of the Defendants, it shall be deemed to mean that the officers, directors, agents, employees, or representatives of the Defendants committed or authorized such act or omission, or failed to adequately supervise or properly control or direct their employees while engaged in the management, direction, operation, or control of the affairs of Defendants, and did so while acting within the scope of their employment or agency.

III. JURISDICTION AND VENUE

22. This Court has jurisdiction over this matter under Ark. Code Ann. §§ 4-88-104, and 16-13-201, and the common law of the State of Arkansas.

23. Defendants are companies that have transacted business in the State of Arkansas.

24. This Court has personal jurisdiction over Defendants under Ark. Code Ann. § 16-4-101. Defendants have availed themselves of the benefit of transacting business in Arkansas through the manufacturers, compounders, marketers, labelers or sellers of Fluorosurfactant Products.

25. Venue is properly in Washington County pursuant to Ark. Code Ann. §§ 4-88-104 and 16-60-103, and the common law of the State of Arkansas.

IV. FACTUAL ALLEGATIONS

A. THE CONTAMINANTS: PFOA & PFOS

26. PFOA and PFOS are man-made chemicals within a class known as perfluoroalkyl acid (“PFAA”). PFAAs are part of the larger chemical family known as PFAS. PFAAs are composed of a chain of carbon atoms in which all but one of the carbon atoms are bonded to fluorine atoms, and the last carbon atom is attached to a functional group. The carbon-

fluorine bond is one of the strongest chemical bonds that occur in nature, which is one reason that these molecules are so persistent. PFOA and PFOS contain eight carbon-fluorine bonds. For this reason, they are sometimes referred to as “C8.”

27. PFOA and PFOS are highly water-soluble, which increases the rate at and ease with which they spread throughout the environment, contaminating soil, groundwater, and surface water. Their mobility is made more dangerous by their persistence in the environment and resistance to biological, environmental, or photochemical degradation.³

28. PFOA and PFOS are readily absorbed in animal and human tissues during oral exposure and accumulate in the serum, kidney, and liver. They have been found globally in water, soil, and air, as well as in human food supplies, breast milk, umbilical cord blood, and human serum.⁴

29. PFOA and PFOS are persistent in the human body. A short-term exposure can result in a body burden that persists for years and can increase with additional exposures.⁵

30. Since they were first produced, information has emerged showing negative health effects caused by exposure to PFOA and PFOS.

31. According to the EPA, “studies indicate that exposure of PFOA and PFOS over certain levels may result in...developmental effects to fetuses during pregnancy or to breastfed infants (e.g., low birth weight, accelerated puberty, skeletal variations), cancer (e.g., testicular,

³ See EPA, *Drinking Water Health Advisory for Perfluorooctanoic Acid (PFOA)*, EPA Document Number: 822-R-16-005 (May 2016) at 16, available at <https://nepis.epa.gov/Exe/ZyPURL.cgi?Dockkey=P100OM40.txt> (last accessed May 8, 2023); see also EPA, *Drinking Water Health Advisory for Perfluorooctane Sulfonate (PFOS)*, EPA Document Number: 822-R-16-004 (May 2016) at 16, available at <https://nepis.epa.gov/Exe/ZyPURL.cgi?Dockkey=P100OM28.txt> (last accessed May 8, 2023).

⁴ See *id.*, EPA 822-R-16-005 at 18-20, 25-27; see also EPA 822-R-16-004 at 19-21, 26 28.

⁵ See *id.*, EPA 822-R-16-005 at 55; see also EPA 822-R-16-004 at 55.

kidney), liver effects (e.g., tissue damage), immune effects (e.g., antibody production and immunity), thyroid effects and other effects (e.g., cholesterol changes).”⁶

32. The EPA has also warned that “there is suggestive evidence of carcinogenic potential for PFOS.”⁷

33. In 2016, the EPA issued Health Advisory Levels of 70 parts per trillion (“ppt”) for PFOA and PFOS found in drinking water. When both PFOA and PFOS are found in drinking water, the combined concentrations should not exceed 70 ppt.

34. In June 2022, the EPA issued interim, updated drinking water health advisories of 0.004 ppt for PFOA and 0.02 ppt PFOS that replace those the EPA issued in 2016.⁸ In March 2023, the EPA announced its first-ever proposed national drinking water standards for six PFAS, setting the health-based value, the maximum contaminant level goal (“MCLG”), for PFOA and PFOS at zero. Considering feasibility, including currently available analytical methods to measure and treat these chemicals in drinking water, the EPA proposed individual maximum contaminant levels (“MCLs”) of 4.0 ppt. for PFOA and PFOS. Additionally, the EPA proposed using a Hazard Index (“HI”) approach to protecting the public from mixtures of [four specific PFAS. . .]. The EPA proposed an HI of 1.0 as the MCLs for these four PFAS and any mixture containing one or more of them [. . .]. The EPA determined it was also feasible to set

⁶ See EPA, *Fact Sheet PFOA & PFOS Drinking Water Health Advisories*, Document No. 800-F-16-003, available at <https://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=P100OR9W.txt> (last accessed May 8, 2023).

⁷ See EPA, *Health Effects Support Document for Perfluorooctane Sulfonate (PFOS)*, Document No. 822-R-16-002, available at https://www.epa.gov/sites/default/files/2016-05/documents/pfos_hesd_final_508.pdf (last accessed May 8, 2023).

⁸ See EPA, *Technical Fact Sheet: Drinking Water Health Advisories for Four PFAS (PFOA, PFOS, GenX chemicals, and PFBS)*, Document No. 822-F-22-002, available at <https://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=P10154ST.txt> (last accessed May 8, 2023).

the MCLGs for these four PFAS and for a mixture containing one or more of them as an HI of unitless 1.0.⁹

B. DEFENDANTS' FLUOROSURFACTANT PRODUCTS

35. PFOA, PFOS, and their chemical precursors are used to make a variety of consumer and industrial goods sold, supplied, used, and disposed of in the State, including but not limited to, nonstick cookware, waterproofing waxes, stain-preventing coatings, and AFFF.

36. AFFF is a type of water-based foam that was first developed in the 1960s to extinguish flammable liquid fuel fires at airports and military bases, among other places.

37. The Fluorosurfactant Products designed, manufactured, marketed, distributed, and/or sold by Defendants contained either or both PFOA and PFOS, or the chemical precursors to PFOA and/or PFOS.

38. PFOS and/or the chemical precursors to PFOS contained in 3M's AFFF were manufactured by 3M's patented process of electrochemical fluorination ("ECF").

39. For decades, 3M manufactured, designed, marketed, distributed, and sold Fluorosurfactant Products containing PFOS, PFOA, and/or their chemical precursors within the United States, and raw materials containing PFOA and/or its chemical precursors for use in the production of Fluorosurfactant Products within the United States.

40. All other Defendants manufactured PFAS through the process of telomerization and/or manufactured Fluorosurfactant Products containing PFAS manufactured through the process of telomerization. Telomerization produces fluorotelomers, including PFOA and/or the chemical precursors to PFOA.

⁹ See EPA, *Fact Sheet: Proposed PFAS National Primary Drinking Water Regulation FAQs for Drinking Water Primacy Agencies*, available at <https://www.epa.gov/sdwa/and-polyfluoroalkyl-substances-pfas> (last accessed May 9, 2023).

41. Upon information and belief, by the early 1970s, National Foam and Tyco/Ansul began to manufacture, design, market, distribute, and/or sell AFFF containing PFOA and/or its chemical precursors within the United States.

42. Upon information and belief, by the 1980s, Chemguard began to manufacture, design, market, distribute, and/or sell AFFF containing PFOA and/or its chemical precursors within the United States, and fluorosurfactants containing PFOA and/or its chemical precursors for use in the production of AFFF within the United States.

43. Upon information and belief, by the 1990s, Buckeye began to manufacture, design, market, distribute, and/or sell AFFF containing PFOA and/or its chemical precursors within the United States.

44. AFFF can be made without PFOA, PFOS, or their precursor chemicals. Fluorine-free foams and short-chains foams do not release PFOA, PFOS, and/or their precursor chemicals into the environment.

45. AFFF is used to extinguish fires that are difficult to fight, particularly fires that involve petroleum or other flammable liquids. AFFF is typically sprayed directly onto a fire, where it works by coating the ignited fuel source, preventing its contact with oxygen, and suppressing combustion.

46. When used as the Defendants intended and directed, Defendants' AFFF releases PFOA, PFOS, and/or their precursor chemicals into the environment.

47. Once PFOA and PFOS are free in the environment, these chemicals do not hydrolyze, photolyze, or biodegrade under typical environmental conditions and are extremely persistent in the environment. As a result of their persistence, they are widely distributed throughout soil, air, and groundwater.

48. The use of Defendants' Fluorosurfactant Products as directed and intended by the Defendants allowed PFOA, PFOS, and/or their precursor chemicals to enter into and onto the State's Property and natural resources where these compounds migrated through the subsurface and into the groundwater, thereby ultimately contaminating the surface water, soil, sediment, and groundwater, as well as causing other extensive and ongoing damage to the State's Property and natural resources.

49. Due to the chemicals' persistent nature, among other things, these chemicals have, and continue to cause injury and damage to the State's Property and natural resources.

C. DEFENDANTS' KNOWLEDGE OF PFAS HAZARDS

50. On information and belief, by the early 1980s, Defendants knew, or reasonably should have known, among other things, that: (a) PFOA and PFOS are toxic; and (b) when sprayed in the open environment or otherwise used per the instructions given by the manufacturer, PFOA and PFOS readily migrate through the subsurface, mix easily with groundwater, resist natural degradation, render drinking water unsafe and/or non-potable, and find their way into effluent (including treated effluent), and can be removed only at substantial expense.

51. Defendants also knew or reasonably should have known that PFOA and PFOS could be absorbed into the lungs and gastrointestinal tract, potentially causing severe damage to the liver, kidneys, and central nervous system, in addition to other toxic effects, and that PFOA and PFOS are known carcinogens that cause genetic damage.

52. In 1980, 3M published data in peer reviewed literature showing that humans retain PFOS in their bodies for years. Based on that data, 3M estimated it could take a person

up to 1.5 years to clear just half of the accumulated PFOS from their body after all exposures had ceased.¹⁰

53. By the early 1980s, the industry suspected a correlation between PFOS exposure and human health effects. Specifically, manufacturers observed bioaccumulation of PFOS in workers' bodies and birth defects in children of workers.

54. In 1981, Old DuPont tested for and found PFOA in the blood of female plant workers in Parkersburg, West Virginia. Old DuPont observed and documented pregnancy outcomes in exposed workers, finding two of seven children born to female plant workers between 1979 and 1981 had birth defects—one an “unconfirmed” eye and tear duct defect, and one a nostril and eye defect.¹¹

55. Beginning in 1983, 3M documented a trend of increasing levels of PFOS in the bodies of 3M workers. In an internal memo, 3M's medical officer warned, “we must view this present trend with serious concern. It is certainly possible that ... exposure opportunities are providing a potential uptake of fluorochemicals that exceeds excretion capabilities of the body.”¹²

¹⁰ See Office of Minnesota Attorney General, Exhibit List, No. 1588, Letter from 3M to Office of Pollution Prevention and Toxics, EPA titled “TSCA 8e Supplemental Submission, Docket Nos. 8EHQ-0373/0374 New Data on Half Life of Perfluorochemicals in Serum,” available at <https://www.ag.state.mn.us/Office/Cases/3M/docs/PTX/PTX1588.pdf> (last accessed May 8, 2023).

¹¹ See DuPont, *C-8 Blood Sampling Results*, available at https://static.ewg.org/files/PFOA_013.pdf?_gl=1*anldwl*_ga*NTgxNzgZMTc3LjE2ODI2ODk5ODk.*_ga_CS21GC49KT*MTY4MzU4Nzg2OC4yLjEuMTY4MzU4Nzk0MC4wLjAuMA..&_ga=2.26293428.885409355.1683587869-581783177.1682689989 (last accessed May 8, 2023).

¹² See 3M, Internal Memorandum, *Organic Fluorine Levels*, (August 31, 1984), available at https://static.ewg.org/files/226-0483.pdf?_gl=1*1u237yp*_ga*NTgxNzgZMTc3LjE2ODI2ODk5ODk.*_ga_CS21GC49KT*MTY4MzU4Nzg2OC4yLjEuMTY4MzU4Nzk0MC4wLjAuMA..&_ga=2.39402538.885409355.1683587869-581783177.1682689989 (last accessed May 8, 2023).

56. Based on information and belief, in 2000, under pressure from the EPA, 3M announced that it was phasing out PFOS and U.S. production of PFOS; 3M's PFOS-based AFFF production did not fully phase out until 2002.

57. After 3M exited the AFFF market in the United States, the remaining AFFF manufacturer Defendants continued to manufacture and sell AFFF containing PFOA and/or its chemical precursors.

58. From 1951, Old DuPont, and on information and belief, Chemours, designed, manufactured, marketed, and sold Fluorosurfactant Products, including Teflon nonstick cookware, and more recently PFAS feedstocks such as Forafac 1157 N, for use in the manufacture of AFFF products.

59. Based on information and belief, by no later than 2001, Old DuPont manufactured, produced, marketed, and sold Fluorosurfactant Products and/or PFAS feedstocks containing or degrading into PFOA to some or all of the AFFF product manufacturers for use in their AFFF products that were discharged into the environment and contaminated the State's Properties.

60. Old DuPont had been studying the potential toxicity of PFOA since at least the 1960s and knew that it was contaminating drinking water drawn from the Ohio River and did not disclose to the public or to government regulators what they knew about the substance's potential effects on humans, animals, or the environment.¹³

¹³ EPA, Consent Agreement and Final Order, *In re E.I. DuPont de Nemours & Co.*, TSCA Docket TSCA-HQ-2004-0016 (Dec. 14, 2005), available at <https://www.epa.gov/sites/default/files/documents/duPontpfoasettlement121405.pdf> (last accessed May 8, 2023).

61. By December 2005, the EPA uncovered evidence that Old DuPont concealed the environmental and health effects of PFOA, and the EPA announced the “Largest Environmental Administrative Penalty in Agency History.” The EPA fined Old DuPont \$16,500,000 for violating the Toxic Substances Control Act “Section 8(e): the requirement that companies report to the EPA substantial risk information about chemicals they manufacture, process or distribute in commerce.”¹⁴

62. By July 2011, Old DuPont could no longer credibly dispute the human toxicity of PFOA, which it continued to manufacture. The “C8 Science Panel—created as part of the settlement of a class action over Old DuPont’s releases from the Washington Works plant—had reviewed the available scientific evidence and notified Old DuPont of a “probable link”¹⁵ between PFOA exposure and the extremely serious and potentially fatal conditions of pregnancy-induced hypertension and preeclampsia.¹⁶ By October 2012, the C8 Science Panel had notified Old DuPont of a probable link between PFOA and five other conditions—high cholesterol, kidney cancer, thyroid disease, testicular cancer, and ulcerative colitis.¹⁷

63. In July 2015, Old DuPont spun off its chemicals division by creating Chemours as a new, publicly-traded company, dumping its perfluorinated chemical liabilities into its lap.

¹⁴ *Id.*

¹⁵ Under the settlement, “probable link,” means that given the available scientific evidence, it is more likely than not that among class members a connection exists between PFOA/C8 exposure and a particular human disease. See C8 Panel, *C8 Probable Link Reports*, available at http://www.c8sciencepanel.org/prob_link.html (last accessed May 8, 2023).

¹⁶ See C8 Science Panel, Status Report: PFOA (C8) exposure and pregnancy outcome among participants in the C8 Health Project (July 15, 2011), available at http://www.c8sciencepanel.org/pdfs/Status_Report_C8_and_pregnancy_outcome_15July2011.pdf (last accessed May 8, 2023).

¹⁷ “The state of scientific and technological knowledge available to the manufacturer or supplier at the time the product was placed on the market, rather than at the time of injury, may be considered as evidence.” Ark. Code Ann. § 16-116-204(a)(1).

64. Notwithstanding this knowledge, Defendants negligently and carelessly: (1) designed, manufactured, marketed, distributed, and/or sold Fluorosurfactant Products; (2) issued instructions on how Fluorosurfactant Products should be used and disposed of (including washing AFFF into the soil or wastewater system), thus improperly permitting PFOA and/or PFOS to contaminate the surface water, soil, and groundwater; (3) failed to recall and/or warn the users of Fluorosurfactant Products, negligently designed products containing or degrading into PFOA and/or PFOS of the dangers to surface water, soil, and groundwater, as a result of standard use and disposal of these products; and (4) further failed and refused to issue the appropriate warnings and/or recalls to the users of Fluorosurfactant Products, notwithstanding the fact that Defendants knew the identity of the purchasers of the Fluorosurfactant Products.

65. As a direct result of Defendants' acts and omissions alleged in this Complaint, the State's Property and natural resources have been and will continue to be contaminated with PFAS, including PFOA and PFOS, creating environmental and health hazards, unless and until all such contamination is remediated. As a direct and proximate result of Defendants' actions and inactions, the State must assess, evaluate, investigate, monitor, remove, clean up, correct, treat, and remediate PFOA and PFOS contamination on the State's Property and natural resources at significant expense, loss, and damage.

66. Defendants had a duty and breached their duty to evaluate and test such Fluorosurfactant Products adequately and thoroughly to determine their potential human health and environmental impacts before they sold such products. They also had a duty and breached their duty to minimize the environmental harm caused by Fluorosurfactant Products.

D. OLD DUPONT'S FRAUDULENT PLANS TO SHIELD ITS ASSETS FROM ITS PFAS LIABILITIES

67. By 2013, Old DuPont faced mounting liabilities arising out of its long-running manufacture, use, marketing, distribution, and sale of PFOA and/or its chemical precursors throughout the country. These liabilities included, among other things, clean-up costs, remediation obligations, tort damages, natural resources damages, and potential punitive damages.

68. Upon information and belief, by 2013, in order to shield its assets from these liabilities and make itself a more appealing merger partner, Old DuPont began to consider and/or engage in a complex series of corporate restructurings and spin-offs.

69. In or around 2014, Old DuPont formed The Chemours Company as a wholly-owned and operated subsidiary. Shortly thereafter, Old DuPont transferred its "Performance Chemicals" business (which included Teflon® and other products, the manufacture of which involved the use of PFOA and other PFAS) to Chemours.

70. At the time of the transfer of its Performance Chemicals business to Chemours, Old DuPont had been sued, threatened with suit, and/or had knowledge of the likelihood of litigation to be filed regarding Old DuPont's liabilities for damages and injuries arising from its manufacture and sale of its PFAS products, including PFOA and its chemical precursors.

71. Upon information and belief, prior to the spinoff, Chemours was a wholly-owned subsidiary of Old DuPont, and its four-member Board of Directors consisted of three Old DuPont employees and a former member of Old DuPont's Board of Directors. Then, effective immediately prior to the spinoff, the Chemours Board of Directors doubled in size, the three Old DuPont employees resigned, and seven new members were appointed to fill the

vacancies. This new Chemours Board of Directors did not take part in negotiating the Separation Agreement.¹⁸

72. On or around July 1, 2015, Old DuPont completed the spin-off of Chemours as a separate public entity and saddled Chemours with Old DuPont's massive PFAS liabilities.

73. As part of the Separation Agreement, Chemours accepted broad assumption of Old DuPont's environmental liabilities arising out of its long-running manufacture, use, discharge, marketing, distribution, and sale of PFAS.¹⁹

74. Additionally, Chemours agreed to assume for itself and indemnify Old DuPont against all liabilities relating to or arising from the operation of the Performance Chemicals business at any time and regardless of which entity is named in any action or against whom such liabilities are asserted or determined.²⁰

75. Further, Chemours agreed to assume for itself and indemnify Old DuPont from all environmental liabilities that arose prior to the spinoff if Old DuPont reasonably determined that 50.1% of the liabilities were attributable to the Performance Chemicals business.²¹

76. Upon information and belief, the value of the assets Chemours transferred to Old DuPont was substantially more than the value of the assets it received from Old DuPont, and Chemours assumed billions of dollars of Old DuPont's PFAS and other liabilities.

77. Old DuPont knew that Chemours was undercapitalized and unable to satisfy the massive liabilities that it assumed from Old DuPont. In addition to the assumption of such

¹⁸ A copy of the complaint was posted by NC Newswire. It is available at: <https://ncnewswire.com/wp-content/uploads/2019/07/Chemours-Complaint.pdf> (accessed on June 4, 2023).

¹⁹ The Separation Agreement can be found at: <https://www.sec.gov/Archives/edgar/data/30554/000003055415000065/exhibit21separationagreeme.htm>. *See also, Supra* fn 18 at ¶ 37.

²⁰ *Id.*

²¹ *Id.* at ¶ (19).

liabilities, Chemours was required to provide broad indemnification to Old DuPont in connection with these liabilities, which is uncapped and does not have a survival period.²²

78. In or around December 2015, Old DuPont entered into an agreement with Dow, Inc. (“Old Dow”) pursuant to which Old DuPont and Old Dow merged with subsidiaries of a newly formed holding company, DowDuPont, Inc. (“DowDuPont”), which was created solely for the purpose of effectuating the merger. Old DuPont and Old Dow became subsidiaries of DowDuPont.

79. Following its creation, DowDuPont engaged in a number of realignments and divestitures, the details of which remain largely hidden from the State and other creditors, intended to frustrate and/or hinder creditors with claims against Old DuPont. Upon information and belief, the net effect of these transactions was the transfer, directly or indirectly, of a substantial portion of Old DuPont’s assets to DowDuPont for far less than these assets were worth.

80. By 2019, DowDuPont spun-off two new publicly traded companies, Corteva, Inc. and Dow, Inc. (“New Dow”). DowDuPont was then renamed DuPont de Nemours, Inc. (“New DuPont”).

81. Upon information and belief, Corteva currently holds Old DuPont as a subsidiary.²³

82. Upon information and belief, as part of the DowDuPont Separation Agreement, Corteva and New DuPont also assumed direct financial liability of Old DuPont that was not

²² *Id.* at Section 6.9. See also *Supra* fn. 18 at ¶ 10.

²³ *See Supra* fn 18 at ¶ 14.

related to the Agriculture, Material Science, or Specialty Products Businesses, including the PFAS liabilities which are allocated on a pro rata basis between Corteva and New DuPont.²⁴

E. THE IMPACT OF PFOA AND PFOS ON THE STATE OF ARKANSAS

83. PFAS, including PFOA and PFOS, have been detected in the State's Property and natural resources. The detection and/or presence of PFAS, and the threat of continued and/or undetected presence of PFAS in the State's Property and natural resources in varying amounts and at varying times has resulted, and will continue to result, in significant costs, injuries and damage to the State.

84. The invasion of the State's Property and natural resources with PFAS is recurring, resulting in continued harm as well as future harm to the State, beginning anew on each occasion.

85. The injuries to the State caused by Defendants' conduct and Fluorosurfactant Products constitute an unreasonable interference with, and damage to, the State and the State's Property and natural resources. The State's interests in protecting its Property and natural resources constitute a reason for seeking damages sufficient to restore such Property and resources to their pre-contamination conditions, in addition to the other damages sought herein.

²⁴ See generally *Supra* fn. 19.

V. VIOLATIONS OF LAW

COUNT I

STRICT LIABILITY OF SUPPLIER FOR DEFECTIVE DESIGN PURSUANT TO ARK. CODE ANN. § 16-116-101 through § 16-116-207

86. The State repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

87. Defendants were/are “manufacturers” and “suppliers” engaged in the business of manufacturing, assembling, selling, or otherwise distributing Fluorosurfactant Products.²⁵

88. The State was harmed by Fluorosurfactant Products which were designed, manufactured, formulated, prepared, packaged, labeled, marketed, sold and/or distributed by Defendants, or that Defendants assumed or acquired liabilities for, and which were defectively designed, did not include sufficient instructions, and did not include sufficient warning of potential safety hazards.

89. Upon information and belief, Defendants’ Fluorosurfactant Products used on or in the vicinity of the State’s Property and natural resources were utilized in an ordinary and reasonably foreseeable manner and without substantial change in the condition in which the products were sold.

90. Defendants knew, or should have known, that use of Defendants’ Fluorosurfactant Products in their intended manner would result in the spillage, discharge, disposal, or release of PFOA, PFOS, and/or their chemical precursors into the surface water, soil, and groundwater.

²⁵ Ark. Code Ann. § 16-116-202.

91. Furthermore, Defendants knew, or should have known, that their Fluorosurfactant Products were toxic, could not be contained, and do not readily degrade in the environment, rendering the Fluorosurfactant Products defective and unreasonably dangerous to an extent beyond that which would be contemplated by the ordinary reasonable user who acquired the product.

92. The State was, is, and will continue to be harmed by Defendants' defectively designed Fluorosurfactant Products.

93. The design of Defendants' Fluorosurfactant Products was a substantial factor in causing harm to the State.

94. The gravity of the environmental harm resulting from Defendants' Fluorosurfactant Products was, is, and will be enormous because this contamination in Arkansas is widespread, persistent, and toxic.

95. The likelihood that this harm would occur was, is, and will be very high because Defendants knew and/or should have known that Defendants' Fluorosurfactant Products were toxic, could not be contained, and do not readily degrade in the environment.

96. At the time of manufacture, there were safer alternative designs that were feasible, cost effective, and advantageous, including not using PFOS, PFOA and/or their precursor chemicals in products.

97. Defendants' conduct lacked any care and was an extreme departure from what a reasonably careful company would do in the same situation to prevent harm to others and the environment, and thus Defendants were grossly negligent.

98. As a direct and proximate result of Defendants' above described acts and omissions, the State has incurred, continues to incur, and/or will incur costs and damages related

to the PFAS contamination of its Property and natural resources, including but not limited to the following and for which the State seeks recovery: investigation, monitoring, treatment, testing, remediation, removal, filtration, and/or disposal of the PFAS contamination, operating, maintenance and consulting costs, legal fees, punitive damages, diminution of property value, and all other equitable and applicable damages.

COUNT II

STRICT LIABILITY – FAILURE TO WARN PURSUANT TO ARK.CODE ANN. § 16-116-101 through § 16-116-207

99. The State repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

100. As manufacturers, distributors, suppliers, sellers, and marketers of Fluorosurfactant Products, Defendants had a duty to issue warnings to the State, the public, water providers, and public officials of the risks posed by these products, including PFOA and PFOS.

101. Defendants knew that their Fluorosurfactant Products would be purchased, transported, stored, handled, and used without notice of the hazards that these products, including PFOA and PFOS, pose to human health and the environment.

102. Defendants breached their duty to warn by unreasonably failing to provide the State, public officials, purchasers, downstream handlers, and/or the general public with warnings about the potential and/or actual contamination of the environment by their Fluorosurfactant Products, including PFOA and PFOS, despite Defendants' knowledge that these products were real and potential threats to the environment.

103. Fluorosurfactant Products purchased or otherwise acquired from Defendants were used, discharged, and/or released at and/or in the vicinity of the State's Property and natural resources.

104. Defendants' Fluorosurfactant Products were used in an ordinary and reasonably foreseeable manner and without substantial changes in the condition in which the products were sold.

105. Defendants' Fluorosurfactant Products used on and/or in the vicinity of the State's Property and natural resources were defective in design and unreasonably dangerous for the reasons set forth above.

106. Despite the known and/or foreseeable environmental and human health hazards associated with the use and/or disposal of Defendants' Fluorosurfactant Products at, near, and/or in the vicinity of the State's Property and natural resources, including contamination of the State's Property and natural resources with PFOA and/or PFOS, Defendants failed to provide adequate warnings of, or take any other precautionary measures to mitigate, those hazards.

107. In particular, Defendants failed to describe such hazards or provide any precautionary statements regarding such hazards in the labeling of their Fluorosurfactant Products.

108. As a direct and proximate result of Defendants' above described acts and omissions, the State has incurred, continues to incur, and/or will incur costs and damages related to the PFAS contamination of its Property and natural resources, including but not limited to the following and for which the State seeks recovery: investigation, monitoring, treatment, testing, remediation, removal, filtration, and/or disposal of the PFAS contamination, operating,

maintenance and consulting costs, legal fees, punitive damages, diminution of property value, and all other equitable and applicable damages.

COUNT III

ARKANSAS DECEPTIVE TRADE PRACTICES ACT PURSUANT TO ARK.CODE ANN. § 4-88-101, *et seq.*

109. The State repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

110. Defendants, and each of them have engaged in and continue to engage in business acts or practices that constitute deceptive trade practices as defined in the Arkansas Deceptive Trade Practices Act (“ADTPA”), Ark. Code Ann. § 4-88-107 and § 4-88-108, in that such business acts and practices are unlawful within the meaning of that statute.

111. Fluorosurfactant Products are “goods” as defined by Ark. Code Ann. § 4-88-102(4).

112. Defendants knew that, when used as intended and directed, their Fluorosurfactant Products would allow PFOA and PFOS to escape into the environment, contaminating Arkansas’s soil, water, air, and other natural resources and presenting exposure pathways to humans.

113. Defendants knew that their Fluorosurfactant Products would be sold, purchased, transported, stored, handled, and used in the State of Arkansas without notice of the hazards that these products, including PFOA and PFOS, pose to Arkansans’ health and the State’s Property and natural resources.

114. Such information is a material fact relied upon by purchasers, users, and consumers.

115. Defendants concealed, suppressed, and omitted all information regarding the human health and environmental risks associated with these Fluorosurfactant Products, including PFOA and PFOS, and deceptively, fraudulently, and false presented Fluorosurfactant Products as safe for use in violation of Ark. Code Ann. § 4-88-108(a)(1).

116. Defendants' concealment, suppression, or omission of each material fact with the intent that others rely on their concealment, suppression, or omission when utilized in connection with the sale or advertisement of Fluorosurfactant Products violates Ark. Code Ann. § 4-88-108(a)(2).

117. Defendants' sale of Fluorosurfactant Products and failure to disclose accurate safety information violates Ark. Code Ann. § 4-88-107(a)(1) because Defendants knowingly made false representations as the characteristics, ingredients, uses, benefits, of Fluorosurfactant Products and whether the Fluorosurfactant Products are of a particular standard, quality, or grade.

118. Defendants' marketing and sale of Fluorosurfactant Products in Arkansas is an unconscionable, false, deceptive act or practices in business, commerce or trade that violates Ark. Code Ann. § 4-88-107(a)(10).²⁶

119. As a direct and proximate result of Defendants' above-described acts and omissions, the State has incurred, continues to incur, and/or will incur costs and damages related to the PFAS contamination of its Property and natural resources, including but not limited to

²⁶ An unconscionable act is one that "affronts the sense of justice, decency, or reasonableness, including acts that violate public policy or a statute." *Independence County v. Pfizer, Inc.*, 534 F.Supp.2d 882, 886 (E.D.Ark. 2008) *aff'd* 552 F.3d 659 (8th Cir. 2009). A claim under the catch-all provision of the ADTPA proscribing unconscionable, false, or deceptive acts or practices in business, commerce, or trade does not require knowledge of a false or deceptive practice or specific intent to deceive. *Curtis Lumber Co. Inc. v. Louisiana Pacific Corp.*, 618 F3d 762, 776-777 (8th Cir. 2010).

the following and for which the State seeks recovery: investigation, monitoring, treatment, testing, remediation, removal, filtration, and/or disposal of the PFAS contamination, operating, maintenance and consulting costs, legal fees, punitive damages, diminution of property value, and all other equitable and applicable damages.

120. Every Defendant “who directly or indirectly controls or controlled another person who is in violation of or liable under” the ADTPA or every Defendant “who directly or indirectly facilitated, assisted, acted as intermediary for, or in any way aids another person who is in violation of or liable under” the ADTPA “in the operation or continuance of the act or practice for which the violations or liability exists shall be jointly and severally liable for any penalties assessed and any monetary judgment awarded” because Defendants “knew or reasonably should have known of the existence of the facts by reason of which the violation or liability exists.” Ark. Code Ann. § 4-88-113(d)(1).

121. The State of Arkansas is entitled to civil penalties not to exceed \$10,000 for each violation of the ADTPA, in accordance with Ark. Code Ann. §§ 4-88-104 and 4-88-113(a)(3).

COUNT IV

PUBLIC NUISANCE PURSUANT TO ARK. CODE ANN. § 8-4-107

122. The State repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

123. The statutory provision of Ark. Code Ann. § 8-4-107 provides that “in any legal action arising from, relating to, or including violations of laws or rules charged to the enforcement authority of the DEQ that also alleges the existence of a public nuisance at common law,” the Attorney General is authorized to initiate and prosecute such action.

124. Defendants designed, manufactured, distributed, marketed, sold, and/or assumed or acquired liabilities for the manufacture and/or sale of Fluorosurfactant Products in a manner that created, or participated in creating, a public nuisance that unreasonably and substantially interferes with the use and enjoyment of the State's Property and natural resources, and unreasonably endangers or injures the health, safety, and comfort of the general public and the State, causing inconvenience and annoyance.

125. The unreasonable and substantial interference with the use and enjoyment of the State's Property and natural resources includes but is not limited to the contamination of the State's Property and natural resources, including the State's water supply, with Fluorosurfactant Products, including PFOS, PFOA, and/or their chemical precursors, and the exposure to known toxic chemicals manufactured and/or sold by Defendants.

126. The presence of Defendants' Fluorosurfactant Products, including PFOS, PFOA, and/or their chemical precursors, causes significant costs, inconvenience, and annoyance to the State, which is charged with protection of the State's natural resources, including the State's drinking water supply.

127. This contamination affects a substantial number of people within the State of Arkansas who rely upon the Attorney General to protect the State's natural resources, and it interferes with the rights of the public at large to clean and safe natural resources.

128. The seriousness of the environmental and human health risk far outweighs any social utility of Defendants' conduct in manufacturing Fluorosurfactant Products and concealing the dangers those products posed to human health and the environment.

129. As a result of the actual and threatened contamination by Defendants' Fluorosurfactant Products, including PFOA and PFOS contamination, caused by Defendants'

conduct, the State has suffered, and will continue to suffer, harm that is different from the type of harm suffered by the general public, and the State has incurred, and will continue to incur, substantial costs to remove the contamination from its Property and natural resources.

130. Arkansas did not consent to the conduct that resulted in the contamination of its Property and natural resources.

131. Defendants' conduct was a substantial factor in causing harm to the State.

132. Defendants have, by their acts and omissions set forth above, among other things, knowingly unleashed long-lasting and ongoing Fluorosurfactant contamination, including PFOS and PFOA contamination, and threat of this contamination, upon the State's Property and natural resources.

133. Defendants knew or, in the exercise of reasonable care, should have known that the use and introduction of their Fluorosurfactant Products into the environment would endanger, and has continuously, unreasonably and seriously endangered and interfered with the ordinary safety, use, benefit, and enjoyment of the State's Property and natural resources.

134. As a direct and proximate result of Defendants' above described acts and omissions, the State has incurred, continues to incur, and will incur costs and damages related to the PFAS contamination of its Property and natural resources, including but not limited to the following and for which the State seeks recovery: investigation, monitoring, treatment, testing, remediation, removal, filtration, disposal, and/or abatement of the PFAS contamination, operating, maintenance and consulting costs, legal fees, punitive damages, diminution of property value, and all other equitable and applicable damages.

COUNT V

NEGLIGENCE – FAILURE TO WARN

135. The State repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

136. As manufacturers, refiners, formulators, distributors, suppliers, sellers, marketers, shippers, and/or handlers of Fluorosurfactant Products, and/or as those who assumed or acquired liabilities for the manufacture and sale of Fluorosurfactant Products, Defendants owed a duty to the State, as well as to all persons whom Defendants' Fluorosurfactant Products might foreseeably harm, to exercise due care in the instructing, labeling, and warning of the handling, control, use, and disposal of Defendants' Fluorosurfactant Products.

137. Despite the fact that Defendants knew that these Fluorosurfactant Products, including PFOA and PFOS, are toxic, can contaminate natural resources, and present significant risks to human health and the environment, Defendants negligently: (a) designed, manufactured, formulated, handled, labeled, instructed, controlled, marketed, promoted, and/or sold Fluorosurfactant Products; (b) issued instructions on how Fluorosurfactant Products should be used and disposed of, thus improperly permitting these products, including PFOA and/or PFOS, to enter and contaminate the State's Property and natural resources; (c) failed to warn the users of Fluorosurfactant Products of the dangers of soil and water contamination as a result of standard use and disposal of these products; and (d) failed and refused to issue the appropriate warnings to the users of Fluorosurfactant Products regarding the proper use and disposal of these products, notwithstanding the fact that Defendants knew, or could determine with reasonable certainty, the identity of the purchasers of their Fluorosurfactant Products.

138. The State was a foreseeable victim of the harm caused by Defendants' Fluorosurfactant Products.

139. A reasonable manufacturer, seller, or distributor, under the same or similar circumstances would have warned of the danger or instructed on the safe use of Fluorosurfactant Products.

140. The State was, is, and will continue to be harmed by the Defendants' conduct.

141. Defendants' failure to warn or instruct was a substantial factor in causing the State's harm.

142. Defendants' conduct lacked any care and was an extreme departure from what a reasonably careful company would do in the same situation to prevent harm to others and the environment, and thus Defendants were grossly negligent.

143. As a direct and proximate result of Defendants' above described acts and omissions, the State has incurred, continues to incur, and/or will incur costs and damages related to the PFAS contamination of its Property and natural resources, including but not limited to the following and for which the State seeks recovery: investigation, monitoring, treatment, testing, remediation, removal, filtration, and/or disposal of the PFAS contamination, operating, maintenance and consulting costs, legal fees, punitive damages, diminution of property value, and all other equitable and applicable damages.

COUNT VI

NEGLIGENCE – FAILURE TO RECALL

144. The State repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

145. As manufacturers, refiners, formulators, distributors, suppliers, sellers, marketers, shippers, and/or handlers of Fluorosurfactant Products, and/or as those who assumed or acquired liabilities for the manufacture and sale of Fluorosurfactant Products, Defendants owed a duty to the State, as well as to all persons whom Defendants' Fluorosurfactant Products

might foreseeably harm, to exercise due care in the instructing, labeling, and warning of the handling, control, use, and disposal of Defendants' Fluorosurfactant Products.

146. Defendants' Fluorosurfactant Products were designed, manufactured, marketed, distributed, and sold without adequate warning of toxicity, potential human health risks and environmental hazards.

147. Defendants were negligent by not using reasonable care to warn or instruct about the risks associated with their Fluorosurfactant Products.

148. Defendants knew or reasonably should have known that their Fluorosurfactant Products were dangerous or likely to be dangerous when used or misused in a reasonably foreseeable manner.

149. Defendants knew or reasonably should have known that users and third parties would not realize the dangers.

150. Defendants became aware of the human health risks and environmental hazards presented by their Fluorosurfactant Products by no later than the year 2000.

151. Despite the fact that Defendants became aware of the human health risks and environmental hazards presented by their Fluorosurfactant Products by no later than the year 2000, Defendants (a) failed to recall and/or warn the users of Fluorosurfactant Products of the dangers of soil and water contamination as a result of standard use and disposal of these products; and (b) failed and refused to issue the appropriate warnings and/or recalls to the users of Fluorosurfactant Products regarding the proper use and disposal of these products, notwithstanding the fact that Defendants knew, or could determine with reasonable certainty, the identities of the purchasers of their Fluorosurfactant Products.

152. The State was a foreseeable victim of the harm caused by Defendants' Fluorosurfactant Products.

153. A reasonable manufacturer, seller, or distributor, under the same or similar circumstances would have warned of the dangers or instructed on the safe use of Fluorosurfactant Products.

154. The State was, is, and will continue to be harmed as a result of Defendants' negligence.

155. Defendants' failure to recall their Fluorosurfactant Products was a substantial factor in causing the State's harm.

156. Defendants' conduct lacked any care and was an extreme departure from what a reasonably careful company would do in the same situation to prevent harm to others and the environment, and thus Defendants were grossly negligent.

157. As a direct and proximate result of Defendants' above described acts and omissions, the State has incurred, continues to incur, and/or will incur costs and damages related to the PFAS contamination of its Property and natural resources, including but not limited to the following and for which the State seeks recovery: investigation, monitoring, treatment, testing, remediation, removal, filtration, and/or disposal of the PFAS contamination, operating, maintenance and consulting costs, legal fees, punitive damages, diminution of property value, and all other equitable and applicable damages.

COUNT VII

VIOLATION OF THE UNIFORM VOIDABLE TRANSACTIONS ACT (AGAINST UVTA DEFENDANTS ONLY)

158. The State repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

159. The State seeks equitable and other relief pursuant to the Uniform Voidable Transactions Act (“UVTA”), as adopted by the State of Arkansas in Ark. Code Ann. §§ 4-59-215, *et seq.*, against Old DuPont; The Chemours Company; The Chemours Company FC, LLC; Corteva, Inc.; and New DuPont (collectively the “UVTA Defendants”).

160. Pursuant to Ark. Code Ann. § 4-59-204, “(a) transfer made or an obligation incurred by a debtor is voidable as to a creditor, whether the creditor’s claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

- (1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or
- (2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
 - i. was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
 - ii. intended to incur or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor’s ability to pay as they became due.”

161. Further, Ark. Code Ann. § 4-59-204(b) states that, “[i]n determining actual intent under subdivision (a)(1) of this section, consideration may be given, among other factors, to whether: [...] before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit; the transfer was of substantially all of the debtor’s assets; [...] the value of the consideration received by the debtor was reasonably equivalent to the value of the asset

transferred or the amount of the obligation incurred; [and] the transfer occurred shortly before or shortly after a substantial debt was incurred.”

162. Upon information and belief, in February 2014, Old DuPont formed The Chemours Company as a wholly-owned subsidiary and used it to spin off Old DuPont’s “Performance Chemicals” business line in July 2015.

163. Upon information and belief, at the time of the spinoff, Old DuPont’s Performance Chemicals division contained the Fluorosurfactant Products business segments. In addition to the transfer of the Performance Chemicals division, The Chemours Company accepted broad assumption of liabilities for Old DuPont’s historical use, manufacture, and discharge of PFAS.

164. Upon information and belief, at the time of the transfer of its Performance Chemicals business to The Chemours Company, Old DuPont had been sued, threatened with suit and/or had knowledge of the likelihood of litigation to be filed regarding Old DuPont’s liability for damages and injuries from the manufacture and sale of Fluorosurfactant Products.

165. The UVTA Defendants acted with actual intent to hinder, delay and to defraud any creditor of the UVTA Defendants because: (1) they were engaged and or about to engage in a business for which the remaining assets of The Chemours Company were unreasonably small in relation to the business and; (2) intended to incur, or believed or reasonably should have believed or reasonably should have believed that the Chemours Company would incur, debts beyond its ability to pay as they became due.

166. The UVTA Defendants engaged in actions in furtherance of a scheme to transfer Old DuPont’s assets out of the reach of the State, and other similar parties, that have been damaged as a result of UVTA Defendants’ conduct, omissions, and actions described herein.

167. As a result of the transfer of assets and liabilities described in this Complaint, the UVTA Defendants have attempted to limit the availability of assets to cover judgments for all of the liability for damages and injuries from the manufacturing, marketing, distribution and/or sale of Fluorosurfactant Products.

168. Pursuant to Ark. Code Ann. § 4-59-207, the State seeks avoidance of the transfer of Old DuPont's liabilities for the claims brought in this Complaint and to hold the UVTA Defendants liable for any damages or other remedies that may be awarded by the Court or jury to the State in this action.

169. The State further seeks all other rights and remedies that may be available to it under UVTA, including prejudgment remedies as available under applicable law, as may be necessary to fully compensate the State for the damages and injuries it has suffered as alleged in this Complaint.

VI. PUNITIVE DAMAGES

170. The State seeks punitive damages pursuant to Ark. Code Ann. § 16-55-206 for the acts of Defendants as set forth and alleged throughout this Complaint. Such acts demonstrate that Defendants' conduct would naturally and probably result in the damage that in fact occurred, and those acts were made with reckless disregard of the consequences.

VII. PRAYER FOR RELIEF

WHEREFORE, the State prays for judgment against Defendants, jointly and severally, for each of the causes of action raised herein. The State respectfully requests that the Court enter judgment in its favor and that the Court:

- A. Declare that Defendants' actions are deceptive and unconscionable to Arkansas consumers under the ADTPA, Ark. Code Ann. § 4-88-101, *et seq.*;

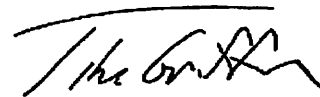
- B. Permanently enjoin Defendants from continuing to treat Arkansas consumers unconscionably and deceptively in the ways described in these allegations in accordance with Ark. Code Ann. §§ 4-88-104 and 4-88-113(a)(1);
- C. Award the State civil penalties of not more than ten thousand dollars per each violation of the ADTPA, in accordance with Ark. Code Ann. § 4-88-113(a)(3);
- D. Award the State compensatory damages according to proof including, but not limited to:
 - 1. Costs and expenses related to the past, present, and future investigation, sampling, testing, monitoring, and assessment of the extent of PFAS contamination on and within the State's Property and natural resources;
 - 2. Costs and expenses related to the past, present, and future treatment, filtration, remediation, and abatement of PFAS contamination of State's Property and natural resources; and
 - 3. Costs and expenses associated with and related to the removal and disposal of the PFAS contamination from the State's Property and natural resources;
- E. Award the State costs and expenses related to the past, present, and future installation and maintenance of monitoring mechanisms to assess and evaluate PFAS on and within the State's Property and natural resources;
- F. Award the State costs and expenses associated with and related to the removal and disposal of Fluorosurfactant Products purchased by State agencies;
- G. Award the State diminished property value;
- H. Award the State consequential damages;
- I. Award the State punitive damages;

- J. Award the State the costs incurred in investigating and pursuing this action, including the expenses for expert witnesses, reasonable attorneys' fees, reasonable and necessary costs of the suit, and prejudgment and post-judgment interest at the highest lawful rates in accordance with Ark. Code Ann. § 4-88-113(e);
- K. The State demands a jury trial; and
- L. Grant such other and further relief as this Court deems just and appropriate.

Respectfully submitted,

TIM GRIFFIN
Attorney General

By:



Tim Griffin, Ark. Bar No. 95110
Attorney General
Office of the Arkansas Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201
Phone: (501) 682-2007
Fax: (501) 682-8118
Tim.Griffin@ArkansasAG.gov

Charles J. Harder, Ark. Bar No. 86080
Deputy Attorney General
Phone: (501) 682-4058
Fax: (501) 682-8118
Chuck.Harder@ArkansasAG.gov

Kate Donovan, Ark. Bar No. 98189
Senior Assistant Attorney General
Phone: (501) 682-8114
Fax: (501) 682-8118
Kate.Donoven@ArkansasAG.gov

Brian Reddick, Ark. Bar No. 94057
Heather Zachary, Ark. Bar No. 2004216
Reddick Law, PLLC
One Information Way, Suite 105
Little Rock, AR 72202

Telephone: 877-907-7790
Fax: 501-907-7793

Philip F. Cossich, Jr., La. Bar No. 1788*
Darren D. Sumich, La. Bar No. 23321*
Christina Cossich, La. Bar No. 32407*
Cossich, Sumich, Parsiola & Taylor, LLC
8397 Highway 23, Suite 100
Belle Chasse, LA 70037
Phone: (504) 394-9000
Fax: (504) 394-9110

Roderick "Rico" Alvendia, LA Bar 25554*
Alvendia, Kelly & Demarest, LLC
909 Poydras Street, Suite 1625
New Orleans, LA 70112
Phone: (504) 200-0000
Fax: (504) 200-0001

Counsel for Plaintiff, State of Arkansas
*Applications for admission *pro hac vice*
forthcoming