

STATE OF NORTH CAROLINA
CUMBERLAND COUNTY

CUMBERLAND COUNTY,

Plaintiff,

v.

THE CHEMOURS COMPANY, THE
CHEMOURS COMPANY FC, LLC, E. I. DU
PONT DE NEMOURS AND
COMPANY, DUPONT DE NEMOURS, INC.,
AND CORTEVA, INC.,

Defendants.

IN THE GENERAL COURT OF
JUSTICE, SUPERIOR COURT DIVISION
FILE No.: 22 CV 1569

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CUMBERLAND CO., O.S.C.

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COMPLAINT

Plaintiff Cumberland County (“Cumberland County”) brings this action against Defendants The Chemours Company; The Chemours Company FC, LLC; Defendant E. I. du Pont de Nemours and Company; DuPont de Nemours, Inc.; and Corteva, Inc. (collectively, “Defendants”). Plaintiff hereby alleges, upon information and belief, as follows:

I. INTRODUCTION

1. The events giving rise to this Complaint are part of a decades-long history of Defendants’ emissions and discharges of toxic chemicals into Cumberland County air, groundwater, and surface water with blatant disregard for the effects on Cumberland County and its residents. As has been widely reported, Defendants have used the environment surrounding the Fayetteville Works facility as a dumping ground for hundreds of chemicals while assuring the E.P.A. and state agencies that they were doing no such thing.

2. *For nearly forty years*, Defendants secretly pumped millions of pounds of per- and polyfluoroalkyl substances (PFAS) into the air above Fayetteville Works. Winds from the south

carried the bulk of these PFAS compounds into Cumberland County, where they have fallen to the ground – landing on plants and trees along the way – and migrated to groundwater. As a result, groundwater in Cumberland County is contaminated by Defendants’ toxic chemicals, leaving devastated thousands of Cumberland County residents who use groundwater wells as their sole water source.

3. Cumberland County brings this suit to provide its residents with drinking water free of Defendants’ chemicals and to compensate the County for harm it has incurred and will incur as a result of Defendants’ actions.

II. PARTIES

A. PLAINTIFF

4. Plaintiff Cumberland County (“Cumberland County”) is a governmental entity formed under the laws of the State of North Carolina, maintaining its seat in Fayetteville, North Carolina.

B. DEFENDANTS

5. Defendant E. I. du Pont de Nemours and Company is a Delaware corporation with its principal place of business in Wilmington, Delaware, and is registered to do business as a foreign corporation in the State of North Carolina. DuPont owned and operated the Fayetteville Works facility from approximately 1971 until 2015 and currently leases a portion of the Site from Defendant Chemours Company FC, LLC.

6. Defendant The Chemours Company is a Delaware corporation with its principal place of business in Wilmington, Delaware, and is registered to do business as a foreign corporation in the State of North Carolina. Chemours was a wholly owned subsidiary of DuPont when it first took over its Performance Chemicals Business in February 2015. In July 2015,

DuPont completed its spinoff of Chemours as a separate public entity. In connection with the spinoff, Chemours assumed at least some portion of liability for DuPont's decades-long history of causing widespread PFAS contamination in the state and elsewhere.

7. Defendant The Chemours Company FC, LLC is Delaware limited liability company with its principal place of business in Wilmington, Delaware, and is registered to do business as a foreign corporation in the State of North Carolina. Chemours Company FC has owned the Fayetteville Works Site since January 2015. The Chemours Company FC, LLC is a subsidiary of The Chemours Company, and the two entities are referred to in this complaint as "Chemours."

8. Defendant Du Pont de Nemours, Inc., formerly known as Dow-DuPont Inc., is a corporation duly organized under the laws of the State of Delaware, with its principal place of business located at 974 Centre Road, Wilmington, Delaware 19805. New DuPont does business throughout the United States, including conducting business in North Carolina. New DuPont may be served at its principal place of business, or wherever it may be found.

9. Defendant Corteva, Inc. ("Corteva") is a corporation duly organized under the laws of the State of Delaware, with its principal place of business located at P.O. Box 80735, Chestnut Run Plaza 735, Wilmington, Delaware 19805. Corteva does business throughout the United States, including conducting business in North Carolina, and is registered to do business in North Carolina with the Secretary of State. Corteva may be served at its principal place of business, through the North Carolina Secretary of State, or wherever it may be found.

III. JURISDICTION AND VENUE

10. The Superior Court has jurisdiction over this action for costs, damages, and other relief stemming from Defendants' actions that led to the release of pollutants from the Fayetteville

Works because the amount in controversy exceeds twenty-five thousand dollars (\$25,000). See N.C. Gen. Stat. § 7A

11. Cumberland County is a proper venue for this action under North Carolina General Statutes Subchapter IV, Article 7, Section 1-80 because Defendants are foreign corporations, part of the Fayetteville Works property is located in Cumberland County, Plaintiff is located in Cumberland County, and the Plaintiff's cause of action arose in Cumberland County.

IV. FACTUAL ALLEGATIONS

A. THE FAYETTEVILLE WORKS SITE

12. The Fayetteville Works Site is a chemical manufacturing facility located on approximately 2,175 acres of real property located at 22828 NC Highway 87 W, Fayetteville, North Carolina 28306-7332. The Site is located 15 miles southeast of the city of Fayetteville, along the border of Bladen and Cumberland counties, and along the western edge of the Cape Fear River.

13. The Site's first manufacturing area was constructed in the early 1970s. Currently, the Site manufactures plastic sheeting, safety glass, fluorochemicals, and intermediates for plastics manufacturing. A former manufacturing area, which was sold in 1992, produced nylon strapping and elastomeric tape.¹

14. From the early 1970s until 2015, DuPont owned and operated the Fayetteville Works Site. During that time, DuPont discharged millions of pounds of PFAS.

15. In 2015, The Chemours Company, which at the time was a wholly owned subsidiary of DuPont, acquired Fayetteville Works from DuPont.

¹ See "Corrective Measures Study Work Plan," Chemours Fayetteville Works, RCRA Permit No. NCD047368642-R2-M3, PARSONS, December 2016 (hereinafter, "Parsons").

16. In 2015, Defendant Chemours Company FC, LLC, became the owner of the entire 2,177 acre Fayetteville Works Site along with Fluoromonomers, Nafion® membranes, and PPA manufacturing units. The polyvinyl fluoride (PVF) resin manufacturing unit remained with the DuPont Company.²

17. Defendants' manufacturing operations at the Site³ consist of three current perfluorinated chemical ("PFC") manufacturing areas and a former manufacturing area:⁴

a. Chemours Fluoromonomers and Nafion® Membrane – Manufactures Nafion® fluoropolymer membrane—a perfluorosulfonic acid (PFSA) membrane—for use in electronic cells, as well as various fluorochemicals used for Nafion® membrane, Teflon® fluoropolymer, Viton® elastomers, and other fluorinated products.

b. Chemours Polymer Processing Aid (PPA) - Manufactures a fluorochemical that is used as a processing aid for off-site fluoropolymer manufacturing—upon information and belief, the product known as "GenX." This area formerly manufactured ammonium perfluorooctanoate (APFO, the ammonium salt of PFOA, which is also known as "C8"). Chemours publicly maintains that the last date of C8 production at the Site was April 28, 2013, and that the C8 manufactured in this area was never used in any of the other manufacturing facilities at the Site.

c. DuPont Company PVF - Manufactures polyvinyl fluoride (PVF) resin used to produce Tedlar® film.

² *Id.*

³ In two additional manufacturing areas at the Fayetteville Works, Kuraray America manufactures Butacite polyvinyl butyral sheeting and resin, and SentryGlass-branded safety glass products, but upon information and belief does not use or generate the polyfluorinated chemicals at issue.

⁴ See Parsons *supra*.

d. The Polymer Manufacturing Development Facility (PMDF) - Manufactured Teflon® fluorinated ethylene propylene (FEP) for electrical wiring insulation and other applications. Since the PMDF unit was permanently shut down in June 2009, it no longer manufactures DuPont Teflon®. Chemours publicly maintains that the Site did not use C8 in its processes.

18. In addition to the manufacturing operations at the Site, Chemours operates two natural gas-fired boilers and a wastewater treatment plant for the treatment of process and sanitary wastewaters from Chemours and DuPont. Hazardous wastes generated from the Chemours manufacturing processes and laboratories were, as of 2016, managed at the permitted Hazardous Waste Container Storage Area, in four permitted hazardous waste tanks, and at the 90-day ignitable waste accumulation area prior to being shipped offsite for treatment, disposal, or recycling.⁵

19. The Site also has at least one stack that has operated since the 1980s. For the majority of the Site's existence, Defendants used a simple waste gas scrubber which caused millions of pounds of PFAS to be released into the air, much of which ultimately landed in Cumberland County.

B. PFAS: A DANGER TO HUMAN HEALTH AND THE ENVIRONMENT

20. "PFAS" refers to a family of organic chemical compounds containing fluorine and carbon atoms. The carbon-fluorine bond is one of the strongest bonds in chemistry and imparts to PFAS their unique chemical properties. PFAS have been used for decades to produce household and commercial products that are heat resistant, stain resistant, long lasting, and water and oil repellent.

⁵ *Id.*

21. Hundreds of different types of PFAS have been released into the environment by Defendants. Chemours has identified approximately 30 different PFAS compounds associated with Fayetteville Works. Chemours also prepared a report finding over 250 previously unknown PFAS in its process and non-process wastewater and stormwater at Fayetteville Works.

22. All PFAS compounds are entirely manmade and do not occur naturally in the environment. There are thousands of known and suspected PFAS chemical structures, yet because of limited availability of information and standards, regulators have only been able to focus on a small subset of these chemicals thus far.

23. PFAS compounds possess characteristics that cause extensive and long-lasting environmental contamination and harm, including (but certainly not limited to) characteristics of mobility and persistence.

24. PFAS are generally soluble and readily transported through the soil, and then into the groundwater, where they migrate long distances. PFAS are generally persistent in that they do not readily biodegrade or chemically degrade in the environment. Generally, PFAS bioaccumulate, biopersist, and biomagnify in people.

25. Moreover, the PFAS compounds that have been studied the most – PFOA & PFOS – have been shown to be toxic at very low concentrations. Exposure to PFOA in both humans and animals is linked to a number of diseases, including but not limited to the following: kidney and testicular cancer, thyroid disease, ulcerative colitis, high cholesterol, pregnancy-induced hypertension, and immune system impacts.

26. Regulators and the public have little access to information about the commercial applications, potential release mechanisms, and resulting exposure sources and concentrations for many of the individual PFAS, of which there are thousands. As a result, there is little knowledge

of their environmental fate and transport characteristics, or their toxicological properties, because they have not been studied. Most of the data on fate and toxicity has been provided by industry and is limited to the required testing. Non-industry researchers are hindered by the difficulty of obtaining from the manufacturers (who treat these substances as proprietary) the necessary reference standards they need to study the toxicity of these substances in the laboratory and to develop analytical techniques to detect and quantify their presence in the environment.

27. However, generally the PFAS compounds released from Fayetteville Works are expected to exhibit harmful effects given their structural and functional similarities to PFOA, PFOS, and other PFAS compounds that are known to be toxic at low levels. And recent literature suggests as much and show that other PFAS compounds are associated with similar health outcomes as PFOA and PFOS. Consequently, PFAS contamination in drinking water presents a serious threat to the health of those exposed.

28. PFAS compounds may enter the human body through a number of different pathways. In addition to consumption through liquid or food, PFAS compounds may also be inhaled or absorbed through the skin.

29. Newborns are particularly susceptible to PFAS toxicity. Exposures to newborns can be higher—compared to other subpopulations—through breastmilk, or formula that has been prepared with drinking water contaminated with PFAS compounds.

C. DUPONT'S KNOWLEDGE OF THE DANGERS OF PFAS

30. DuPont began using PFOA and other PFAS in the 1950s and, quickly thereafter, developed an understanding of the dangers of using these chemicals.

31. During this time, DuPont was aware that PFOA was toxic to animals and humans and that it bioaccumulates and biopersistent in the environment. DuPont also knew that it had emitted

and discharged PFOA and other PFAS in large quantities into the environment and that tens of thousands of people had been exposed to its PFOA, including via public and private drinking water supplies.

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

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

34. By 1979, DuPont had data indicating that its workers exposed to PFOA had a significantly higher incidence of health issues than did unexposed workers. DuPont did not report this data or the results of its worker health analysis to any government agency or community at that time.

35. The following year, DuPont internally confirmed that PFOA "is toxic," that humans accumulate PFOA in their tissue, and that "continued exposure is not tolerable."

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

37. In fact, DuPont had reported to the EPA in March 1982 that results from a rat study showed PFOA crossing the placenta if present in maternal blood, but DuPont concealed the results of the study of its own plant workers.

38. While DuPont knew about this toxicity danger as early as the 1960s, DuPont was also aware that PFAS was capable of contaminating the surrounding environment, leading to human exposure.

39. By 1980-1981 at the latest, DuPont knew that PFAS compounds could be emitted into the air from its facilities and that those air emissions could travel beyond facility boundaries.

40. Further, by no later than 1984, DuPont was aware that one of its PFAS compounds – PFOA – is biopersistent. DuPont was long aware that the PFAS it was releasing from its facilities was leaching into groundwater used for public drinking water. After obtaining data on these releases and the consequent contamination near DuPont’s plant in West Virginia, DuPont, in 1984, held a meeting at its corporate headquarters in Wilmington, Delaware to discuss health and environmental issues related to PFOA (the “1984 Meeting”). DuPont employees who attended the 1984 Meeting discussed available technologies that were capable of controlling and reducing PFOA releases from DuPont’s manufacturing facilities, as well as potential replacement materials. DuPont chose not to use either available technologies or replacement materials, despite knowing PFOA’s toxicity.

41. During the 1984 Meeting, the DuPont employees in attendance spoke of the PFOA issue as “one of corporate image, and corporate liability.” They were resigned to DuPont’s “incremental liability from this point on if we do nothing” because DuPont was “already liable for the past 32 years of operation.” They also stated that the “legal and medical [departments within

DuPont] will likely take the position of total elimination” of PFOA use in DuPont’s business and that these departments had “no incentive to take any other position.”

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

43. In 2004, the EPA filed an action against DuPont based on its failure to disclose toxicity and exposure information for PFOA, in violation of the Toxic Substances Control Act (“TSCA”) and Resource Conservation and Recovery Act (“RCRA”). DuPont eventually settled the action by agreeing to pay over \$16 million in civil administrative penalties and supplemental environmental projects. EPA called the settlement the “largest civil administrative penalty EPA has ever obtained under any federal environmental statute.”

D. MANUFACTURE OF GENX AT FAYETTEVILLE WORKS

44. Since 1980, DuPont – and later Chemours – has been aware that GenX was released into the environment around the Fayetteville Works Site.⁶

45. Prior to 2002, DuPont purchased PFOA from 3M. In May 2002, because of the threat posed by PFOA to human health and the environment, 3M announced that it would cease to manufacture PFOA altogether. In October 2002—so that it could continue manufacturing a range

⁶ See page 22 of TSCA Compliance Monitoring Inspection Report, April 24, 2018. https://www.epa.gov/sites/default/files/2019-02/documents/chemours_r4_sanitized_report.pdf (last accessed March 10, 2022)

of profitable Teflon® products— DuPont began making PFOA at its Fayetteville Works facility. It continued to do so until 2013.

46. On May 3, 2001, DuPont submitted a National Pollutant Discharge Elimination System (“NPDES”) permit renewal application to North Carolina’s Division of Water Quality, subsequently renamed the Division of Water Resources (the “DWR”), a division of DEQ, stating that it intended to begin manufacturing PFOA at Fayetteville Works. During the application process, DuPont represented that: (1) PFOA does not pose a health concern to humans or animals at levels present in the workplace or environment; (2) DuPont had used PFOA for 40 years with no observed health effects on workers; and (3) PFOA is neither a known developmental toxin nor a known carcinogen. DuPont knew or should have known its representations were false.

47. Thereafter in 2006, the E.P.A. began a voluntary PFOA Stewardship Program, in which DuPont participated, designed to prevent C8 from further entering the environment and to eliminate C8 from consumer products by 2015.

48. In 2008, DuPont submitted to E.P.A. notices pursuant to the TSCA of its intent to manufacture GenX.⁷

49. DuPont generated GenX – in part as a byproduct – and discharged it from the Site for decades by 2008, but in 2009 DuPont began to purposely manufacture GenX as an alternative to C8.

50. On January 28, 2009, EPA and DuPont entered into a Consent Order governing the manufacture of GenX. The Consent Order provides that “EPA has concerns that [GenX] will persist in the environment, could bioaccumulate, and be toxic . . . to people, wild animals, and

⁷ GenX is a name for a chemical known as C3 Dimer Acid (also known as HFPO Dimer Acid). C3 Dimer Acid Fluoride (also known as HFPO Dimer Acid Fluoride) and C3 Dimer Acid Ammonium Salt (also known as HFPO Dimer Acid Ammonium Salt) both convert to GenX in the environment. GenX, C3 Dimer Acid Fluoride, and C3 Dimer Acid Ammonium Salt and/or other similar substances are collectively referred to herein as “GenX.”

birds.” The Consent Order also stated that EPA had “human health concerns” regarding GenX and that “uncontrolled . . . disposal of [GenX] may present an unreasonable risk of injury to human health and the environment.”

51. Due to these risks, the 2009 EPA Consent Order required DuPont to “recover and capture (destroy) or recycle [GenX] at an overall efficiency of 99% from all the effluent process streams and the air emissions (point source and fugitive).”

52. DuPont and Chemours failed to disclose to DWR the discharge of GenX and related compounds into the Cape Fear River.

53. In particular, none of the DuPont or Chemours NPDES permit applications reference “GenX” or any chemical name, formula, or CAS number that identify any GenX or related compounds in the Fayetteville Works’ discharge.

54. In fact, information provided by DuPont and Chemours led DWR staff to reasonably believe that GenX was not being discharged into the Cape Fear River. On August 26, 2010, representatives of DuPont met with the DEQ staff regarding the company’s anticipated use of GenX technology at the Fayetteville Works as a replacement for PFOA.

55. The information DuPont provided indicated that the GenX would be produced in a closed-loop system that would not result in the discharge of those compounds outside Fayetteville Works, particularly not directly into the Cape Fear River.

56. DuPont represented that the wastewater generated from the manufacture of GenX would be collected and shipped off-site for disposal, and therefore, this wastewater would not be discharged into the Fayetteville Works’ wastewater treatment plant or into the Cape Fear River.

57. On April 29, 2011, DuPont submitted an NPDES permit renewal application confirming that “all process wastewater generated from [the PPA Manufacturing Area] is collected

and shipped off-site for disposal” and that “no process wastewater from this manufacturing facility is discharged to the Site’s biological [waste water treatment plant] or to the Cape Fear River.” The application made no mention of GenX or related compounds being discharged into the Cape Fear River.

58. On February 6, 2012, DWR issued a renewal permit with an effective date of March 1, 2012 (“2012 Permit”). The 2012 Permit makes no mention of GenX as part of the authorized discharge from Fayetteville Works.

59. On November 10, 2016, EPA and Dr. Detlef Knappe, a Professor at N.C. State University, published a study that identified the presence of GenX and other PFAS in the Cape Fear River. The study indicated that levels of GenX in one sample area in the Cape Fear River were as high as 4,500 ng/L, which is more than 30 times higher than the health goal later set by DHHS.

60. Only after substantial media coverage in 2017 regarding the presence of GenX in the Cape Fear River did Chemours inform DEQ that it and DuPont had discharged GenX and other PFAS as byproducts for decades at the Fayetteville Works and routinely discharged those byproducts into the Cape Fear River.

61. Then, only after DEQ’s request did Chemours provide internal health studies it and DuPont had on GenX—studies that DuPont or Chemours had previously conducted (without disclosing).

E. THE 2019 CONSENT ORDER

62. After Dr. Knappe’s discovery of PFAS in the Cape Fear River, public concern focused on contamination in the River rather than groundwater surrounding the Fayetteville Works Site. Eventually, Chemours and the State of North Carolina sampled wells surrounding the

Fayetteville Works Site and found that a number of residential groundwater wells surrounding the Site had elevated levels of GenX – some even above the State of North Carolina’s provisional health goal for drinking water of 140 ng/L.

63. On February 25, 2019, the State of North Carolina & Cape Fear River Watch entered into a Consent Order with The Chemours Company FC, LLC, which required Chemours to pay a \$12 million fine and, among other things, conduct a program to determine the extent of contamination in private groundwater wells around the facility.⁸ The full extent of the contamination has not yet been determined, but Defendants’ PFAS have been detected in Cumberland County as far as 18 miles away from the Site.⁹

64. In addition, the Consent Order requires Chemours to provide replacement drinking water supplies for certain households or entities. For drinking water wells where GenX has been detected at concentrations greater than 140 ng/L, Chemours must provide for connection to a public water supply or, if such connection would cost greater than \$75,000, connection to a whole-house filtration system.

65. For drinking water wells where the combined concentration of certain PFASs exceed 70 ng/L or where any individual PFAS exceeds 10 ng/L (“70/10 health goal”), Chemours must provide up to three under-sink reverse osmosis drinking water systems. In practice, this requirement has allowed Chemours to avoid providing whole house filtration to people who desperately need it; for example, some drinking water wells have total PFAS concentrations of

⁸ Consent Order, February 25, 2019; <https://files.nc.gov/ncdeq/GenX/2019-02-25-Consent-Order---file-stamped-and-fully-executed--b--w-.pdf> (last accessed March 10, 2022)

⁹ See Residential Sampling Map from the week 7-26-2021; <https://edocs.deq.nc.gov/WasteManagement/DocView.aspx?id=1600353&dbid=0&repo=WasteManagement> (last accessed March 10, 2022)

approximately 1000 ppt, but individuals drinking from those wells do not qualify for a whole house filter because GenX concentrations are below 140 ppt.

66. Prior to the Consent Order, the state provisional health goal of 140 ppt was the only available North Carolina standard for GenX. The Consent Order provided a new standard – the 70/10 health goal.

67. The Consent Order only considers 12 of the almost 30 PFAS compounds which have been associated with the Fayetteville Works Site. The 12 PFAS are listed on Attachment C and include: PFMOAA, PMPA/PFMOPrA, PFO2HXA, PEPA/PFMOBA, PFO3OA, PFO4DA, PFESA-BP1/Nafion Byproduct 1, PFESA-BP2/Nafion Byproduct 2, PFECA-G, TAFN4/PF05DA, PFHpA, GenX.

68. The Consent Order also required Chemours to control air emissions of “all PFAS at an efficiency of 99.99%” through installation of a thermal oxidizer. Chemours claims to have started operation of the thermal oxidizer later that year in December 2019.¹⁰ Thermal oxidizer technology has been used by industry members for decades, and DuPont and Chemours could have installed the thermal oxidizer decades earlier. Had they done so, Cumberland County’s harm would have been lessened substantially, if not entirely.

69. Defendants understood the need for technology to control air emissions. When it spun Chemours off in 2015, DuPont knew that the Fayetteville Works Plan had been discharging PFAS into the nearby environment through air emissions for decades. In 2010, DuPont commissioned a “Blue Ribbon Panel” of company managers, scientists and engineers to identify solutions. The Panel provided several recommendations to reduce environmental emissions, one

¹⁰ <https://www.chemours.com/en/-/media/files/corporate/fayetteville-works/fayetteville-works-thermal-oxidizer-startup.pdf> (last accessed March 10, 2022)

of which would have resulted in nearly the same – if not the exact same – technology required by the 2019 Consent Order to control air emissions.

70. Ultimately, DuPont opted for a band-aid solution. Rather than adopt the panel's recommendations, DuPont installed a \$2.3 million gas permeator system to deal with one waste stream (out of many) responsible for certain fluorinated compounds. DuPont terminated the project in late 2013 due to cost concerns. Chemours would have been aware of these facts since its existence in 2015 and failed to control PFAS air emissions until required to do so in the 2019 Consent Order.

71. Even after the 2019 Consent Order, and for the indefinite future, Chemours will continue to emit PFAS compounds, causing additional contamination and a continual and recurring harm to Cumberland County.

72. Paragraph 21 of the Consent Order required Chemours to fund sampling by a third party laboratory of drinking water wells for a distance of at least one-quarter (1/4) mile beyond the nearest well with test results showing the presence of Defendants' PFAS compounds. As a result, Chemours' consultants have discovered PFAS contamination in thousands of residential wells in Cumberland County since 2019.

F. DEFENDANTS' STATUTORY VIOLATIONS

73. Defendants violated their ongoing duty under both North Carolina and Federal law to disclose to the State of North Carolina any known constituents in their discharges that posed a potential risk to human health, in connection with their NPDES Permit. See, e.g., 15A N.C.A.C. 2H.0105(j)(requiring applicants to disclose "all known toxic components that can be reasonably expected to be in the discharge, including but not limited to those contained in a priority pollutant analysis"); 14A N.C.A.C. 2B.0202(64) (defining toxic substances to include "any substance or

combination of substances...which after discharge and upon exposure...has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their offspring”); 40 C.F.R. § 122.41(l)(8) (requiring, as a standard NPDES permit condition, that “[w]here the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application . . . it shall promptly submit such facts or information.”); U.S. Env’tl Prot. Agency, “Revised Policy Statement on Scope of Discharge Authorization and Shield Associated with NPDES Permits,” available at <https://www3.epa.gov/npdes/pubs/owm0131.pdf>.

74. Defendants also violated, and continue to violate, their duty under the NPDES Permit to take “all reasonable steps to minimize or prevent any discharge . . . in violation of [its] permit with a reasonable likelihood of adversely affecting human health or the environment,” 40 C.F.R. § 122.41(d), as well as their duty under North Carolina groundwater regulations to take action to terminate and control any discharge of “waste or hazardous substance to the groundwaters of the State, or in proximity thereto,” mitigate any resulting hazards, and notify State regulators. 15A N.C.A.C. 2L .0106(b).

75. Defendants’ ongoing discharges into the Cape Fear River have violated, and continue to violate, North Carolina water quality standards for surface water, in that they:

a. render the Cape Fear River waters injurious to aquatic life or wildlife, recreational activities, public health, or impair the waters for one or more of their designated uses, 15A N.C.A.C. 02B .0208(a); and

b. preclude, on a short term and/or long term basis, one or more of the best uses of the water, including as “a source of water supply for drinking, culinary, or food-processing

purposes” and for “aquatic life propagation and maintenance of biological integrity (including fishing and fish), wildlife, secondary recreation, [and] agriculture.” See 15A N.C.A.C. 2B.0216(2) and 15A N.C.A.C. 2B .0216(1) & .0211(1).

76. The Fayetteville Works is a major source of air pollution and is required to obtain and operate within a Clean Air Act Title V operating permit. *See* 42 U.S.C. § 7661 et seq.; *see also* N.C. Gen. Stat. §§ 143-215.107(a)(10), 143-215.3(c); 40 C.F.R. pt. 70, app. A. Further, the permit requires the submission of annual emissions inventories to DEQ detailing the Fayetteville Works’ actual emissions of various air pollutants into the environment for the previous calendar year. *See* 15A N.C.A.C. 2Q .0207. The accuracy of these reports is required to be certified by a responsible official from the Fayetteville Works. *See id.*

77. DuPont and Chemours have emitted GenX and other PFAS compounds into the air at levels that far exceed emission rates that they had previously reported to the North Carolina Department of Environmental Quality and its predecessor agencies.

78. Chemours continues to violate regulations and requirements regarding air pollution from Fayetteville Works. On August 26, 2021, North Carolina Department of Environmental Quality’s Division of Air Quality issued a Notice of Violation to Chemours regarding air emissions. Under the Fayetteville Works facility’s air permit, Chemours must demonstrate compliance with the GenX emission limit of 23.027 pounds per year. In March 2021, excess GenX emissions resulted in noncompliance with the rolling 12-month totals for March, April, May and June of 2021. As of June 30, 2021, Chemours reported annual GenX emissions of 32.024 pounds.

79. Starting in 2017, Chemours’s annual emissions inventories were required to include GenX. Testing revealed that Chemours was emitting into the air thousands of pounds of GenX per year. Upon information and belief, the PFAS Defendants emitted PFAS for several decades prior

to GenX being included in the annual emissions inventories. Such emissions led to widespread dispersal of PFAS. This dispersal of PFAS has harmed Cumberland County.

80. Defendants' ongoing and recurring discharges and emissions of PFAS causing contamination of groundwater have violated, and continue to violate, North Carolina groundwater standards in that these discharges/emissions are comprised of substances which are not naturally occurring and for which no standard is specified, but are contaminating groundwater at or above the practical quantitation limit (PQL), as prohibited by 15A N.C.A.C. 2L .0202(c).

81. Defendants have also violated provisions of the Toxic Substances Control Act. On February 13, 2019, the United States Environmental Protection Agency issued a Notice of Violation to The Chemours Company concerning the company's manufacture of new chemicals – including GenX and other PFAS compounds – without proper reporting. The Notice specifically references Chemours' "release of [GenX] to the environment and the [] requirement for Chemours to use [GenX] in an enclosed process." At least some of the violations noted by the EPA related to air emissions from the Fayetteville Works Site.

G. CONTAMINATION IN CUMBERLAND COUNTY

82. Defendants have contaminated groundwater across much of Cumberland County. Thousands of Cumberland County residents live on properties served by contaminated wells.

83. Defendants' PFAS chemicals have contaminated Cumberland County resident wells located at least 18 miles away from the plant. And Defendants' PFAS have been found in wells located as deep as 300+ feet. Investigation is ongoing, so the full scope of harm caused by Defendants' is unknown.

84. Cumberland County residents have been exposed to Defendants' PFAS for decades – and not only through drinking water. Defendants' PFAS have been in the air, the rainwater,

surface water, and vegetation. Therefore, any additional intake of PFAS through residential groundwater wells may pose a health hazard.

a. One of Defendants' PFAS chemicals – GenX – has been detected in Cumberland County rainwater five miles from the Fayetteville Works Site with concentrations as high as 810 ng/L --- that is over five times the provisional health goal for drinking water (140 ng/L). GenX has been detected in rainwater as far as 21 miles from the Fayetteville Works Site, which is the only known source of GenX in North Carolina.

b. Multiple lakes, ponds, and other surface water bodies in Cumberland County have been shown to contain PFAS chemicals.

c. Tests conducted by the State of North Carolina's Department of Air Quality in Cumberland County have shown that rainwater collected under vegetation tends to have much higher concentrations of PFAS compared to rainwater collected from open areas, suggesting that at least some vegetation accumulates PFAS compounds on the surface.¹¹

d. Defendants have also contaminated local produce. PFAS have been detected in a number of fruits and vegetables grown within 10 miles of the Fayetteville Works facility. GenX was found in produce at levels as high as 200 parts per trillion, with total PFAS concentrations hitting 1,100 ppt.¹²

85. PFAS compounds do not easily break down in the environment. Defendants' PFAS that have been deposited in groundwater, soil, and sediments, and bioaccumulated in vegetation will provide a continuing source of pollution to groundwater in Cumberland County for decades.

¹¹ See NC DAQ March 19-20, 2018 Rainwater GenX, NC DEQ (<https://files.nc.gov/ncdeq/GenX/Data/2018-03-19%20DAQ%20GenX%20rainwater%20sampling.pdf>) (August 23, 2021) and NC DAQ March 10-12, 2018 Rainwater GenX , NC DEQ (<https://deq.nc.gov/media/10484/download>) (last accessed March 10, 2022).

¹² "FDA: GenX, 14 types of perfluorinated compounds found in produce grown within 10 miles of Chemours" http://pulse.ncpolicywatch.org/2019/06/03/fda-genx-14-types-of-perfluorinated-compounds-found-in-produce-grown-within-10-miles-of-chemours/?fbclid=IwAR014LNqCzCOPu0lPYR7BacKExEPPuVMHsc176l-dsLhcoF3SYfFq_Xk_gA (last accessed March 10, 2022).

86. Cumberland County has the authority “to remove, abate, or remedy everything that is dangerous or prejudicial to the public health or safety.” N.C. Gen. Stat. Ann. § 153A-140. PFAS contamination in Cumberland County groundwater is dangerous or prejudicial to the public health and safety of Cumberland County and its residents.

87. To protect public health and the safety of those in unincorporated areas, Cumberland County creates and administers water and sewer districts for those whose well water pose a health hazard.

88. Cumberland County is authorized by North Carolina law to establish water systems to provide water to its residents. See, e.g., N.C. Gen. Stat. Ann. § 153A-275; N.C. Gen. Stat. Ann. § 153A-274.

89. Cumberland County is in the process of providing public water to thousands whose drinking water is affected by Defendants’ chemicals. The County has incurred significant costs to investigate the contamination and options for providing water to all Cumberland County residents using wells contaminated by Defendants’ PFAS chemicals. Cumberland County will incur significant costs in the future to ensure its residents have access to safe drinking water.

90. Defendants’ PFAS chemicals have been detected in at least two Cumberland County schools: Alderman Elementary School and Gray’s Creek Elementary School. The County has and will continue to incur significant costs to address this contamination.

91. As a result of Defendants’ PFAS emissions, Cumberland County has lost and will continue to lose property tax revenue. Defendants’ actions have caused a reduction of property value for many properties in Cumberland County. As a result, the taxable value of many Cumberland County properties are lower than they would be had Defendants’ not caused PFAS

contamination in Cumberland County. Due to lower taxable values, Cumberland County has suffered and will suffer a reduction in tax revenue.

92. Due to this reduction in property value, Cumberland County has begun reducing the taxable value of properties contaminated by Defendants' PFAS compounds – therefore, many Cumberland County residents living on properties contaminated by Defendants are paying – and will pay – lower property taxes than they were before. As a result, Cumberland County has and will receive considerably less revenue from property tax payments.

93. Defendants' PFAS have been detected in leachate at Cumberland County's Ann Street Landfill. The leachate at Ann Street contains PFAS compounds that are generated at and emitted from Defendants' Fayetteville Works facility, including GenX, Nafion Byproduct 2, and HydroEve, among others. The County has incurred and will incur costs to investigate and address Defendants' PFAS compounds in its leachate.

94. The county's public water system serving the Southpoint community in Gray's Creek Township gets water from the public water system of Bladen County, which draws its water from groundwater wells. Chemours tested water from a Southpoint customer and discovered it had contamination from Du Pont/Chemours chemicals. This contamination of the public water caused the Board of Commissioners to require the developer of further subdivisions desiring to connect to this public system to include a notice of the potential contamination to be placed on the recorded plat as a public notice to prospective buyers of lots or homes connected to the public system

95. The county is actively negotiating a bulk water purchase agreement from the Fayetteville Public Works Commissioner (PWC) to provide public water to the Gray's Creek Water and Sewer District. The PWC reports that its public water contains Du Pont/Chemours

chemical contaminants in quantities less than the current health safety thresholds established by the North Carolina Department of Health and Human Services. This contamination of the public water to be supplied to those households in the Gray's Creek Water and Sewer District with the same Du Pont/Chemours chemicals for which the public water systems is intended to remediate makes it difficult to convince potential customers that the PWC water is an acceptable measure to address the groundwater contamination.

96. The widespread level of contamination of the county's groundwater and surface water sources, as demonstrated by the Southpoint and PWC examples, will require the development of new, clean water sources, such as deep wells with RO filtration and treatment systems to fully remediate the groundwater contamination.

H. DUPONT'S MULTI-STEP, FRAUDULENT SCHEME TO ISOLATE ITS VALUABLE TANGIBLE ASSETS FROM ITS PFAS LIABILITIES

97. DuPont's and Chemours's liabilities for PFOA and other PFAS contamination account for a substantial portion of their environmental liabilities nationwide.

98. DuPont sought to insulate itself from billions of dollars of legacy PFAS liabilities, especially those arising from PFOA and other PFAS contamination at chemical plants that it owned and operated throughout the country.

99. Upon information and belief, DuPont's potential cumulative liability related to PFOA and other PFAS is likely billions of dollars due to the persistence, mobility, bioaccumulative properties, and toxicity of these "forever chemicals," as well as DuPont's decades-long attempt to hide the dangers of PFAS from the public.

100. For more than five decades, DuPont manufactured, produced, or utilized PFOA and other PFAS at plants in New Jersey and West Virginia and at Fayetteville Works. As alleged above, throughout this time, DuPont was aware that PFOA was toxic, harmful to animals and humans,

bio-accumulative, and bio-persistent in the environment. DuPont also knew that it had emitted and discharged PFOA and other PFAS in large quantities into the environment and that tens of thousands of people had been exposed to PFOA, including through public and private drinking water supplies, which DuPont had contaminated. Thus, DuPont knew, or reasonably should have known, that it faced billions of dollars in liabilities arising from its use of PFOA.

101. For example, in 1999, members of the Tennant family, who owned property impacted by PFOA contamination adjacent to DuPont's Washington Works plant in Parkersburg, West Virginia, sued DuPont in West Virginia federal court.

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

103. In 2005, after confidentially settling the Tennant case, DuPont agreed to pay \$10.25 million to resolve eight counts brought by the EPA alleging violations of TSCA and RCRA. DuPont also was required to commit an additional \$6.25 million to supplemental environmental projects.¹³

104. Also in 2005, DuPont finalized a settlement of a class action lawsuit, which had been filed on behalf of 70,000 residents of Ohio and West Virginia who had been exposed to PFOA

¹³ See <https://www.nytimes.com/2005/12/15/politics/dupont-to-pay-165-million-for-unreported-risks.html> (last accessed August 20, 2021)

that DuPont had discharged from Washington Works, for total class member benefits valued at over \$300 million. Under the terms of the settlement, DuPont agreed to fund a panel of scientists (the “Science Panel”) to confirm which if any diseases were linked to PFOA exposure, to filter local water for as long as PFOA concentrations exceeded regulatory thresholds, and to pay up to \$235 million for ongoing medical monitoring of the affected community for diseases that the Science Panel confirmed to be linked to PFOA exposures (the “Linked Diseases”). The settlement also provided that any class members who developed one or more of the Linked Diseases would be entitled to sue for personal injury and punitive damages, and DuPont could not contest that the class members’ exposure to PFOA could cause those Linked Diseases.

105. By 2012, the Science Panel had confirmed that several human diseases had “probable links” to PFOA exposure, including high cholesterol, ulcerative colitis, pregnancy induced hypertension, thyroid disease, testicular cancer, and kidney cancer.

106. Following the completion of the Science Panel’s work in 2012, more than 3,500 individual personal injury and punitive damage claims were filed against DuPont in Ohio and West Virginia by class members who had been diagnosed with one or more of the Linked Diseases under the terms of the 2005 class settlement. These claims were consolidated in the federal multidistrict litigation styled *In Re: E. I. du Pont de Nemours and Company C-8 Personal Injury Litigation* (MDL No. 2433) in the United States District Court for the Southern District of Ohio. Forty “bellwether” trials were scheduled to take place in 2015 and 2016.

107. DuPont knew that it faced substantial exposure at these trials, as well as liability related to PFOA and other PFAS contamination at other sites throughout the country, including Fayetteville Works, and that its liability was likely billions of dollars.

108. In light of this significant exposure, upon information and belief, by 2013, DuPont's management began to consider restructuring the company in order to, among other things, avoid responsibility for the widespread environmental harm that DuPont's PFAS had caused and shield billions of dollars in assets from these substantial liabilities.

109. In or about 2013, DuPont and The Dow Chemical Company ("Old Dow") began discussions about a possible "merger of equals." DuPont's management decided to pursue a strategy specifically designed to isolate DuPont's massive legacy liabilities from its valuable tangible assets in order to shield those assets from creditors and entice Old Dow to pursue the proposed merger.

110. DuPont engaged in a three-part plan, which in summary proceeded as follows: The first step in DuPont's plan was to transfer its Performance Chemicals Business (which included Teflon and other products, the manufacture of which involved the use of PFOA and other PFAS) into its wholly owned subsidiary, Chemours. And then, in July 2015, DuPont "spun-off" Chemours as a separate public entity and saddled Chemours with DuPont's massive legacy liabilities (the "Chemours Spinoff").

111. DuPont knew that Chemours was undercapitalized and could not satisfy the massive liabilities that it caused Chemours to assume. DuPont also knew that the Chemours Spinoff alone would not isolate its own assets from its PFAS liabilities and that DuPont still faced direct liability for its own conduct.

112. Accordingly, DuPont moved on to the next step of its plan, designed to further distance itself from the exposure it had created over its decades-long bad conduct with regard to the environment and PFAS.

113. The second step involved DuPont and Old Dow entering into an “Agreement and Plan of Merger” in December 2015, pursuant to which DuPont and Old Dow merged with subsidiaries of a newly formed holding company, DowDuPont, Inc. (“DowDuPont”). DuPont and Old Dow became subsidiaries of DowDuPont.

114. Then, through a series of subsequent agreements, DowDuPont engaged in numerous business segment and product line “realignments” and “divestitures.” The net effect of these transactions was to transfer, either directly or indirectly, a substantial portion of DuPont’s assets to DowDuPont.

115. The third step involved DowDuPont spinning off two new companies: (i) Corteva, which currently holds DuPont as a subsidiary, and (ii) Dow, Inc. (“New Dow”), which currently holds Old Dow. DowDuPont was then renamed DuPont de Nemours, Inc. (“New DuPont”).

116. As a result of these transactions, between December 2014 (pre-Chemours Spinoff) and December 2019 (post-Dow merger), the value of DuPont’s tangible assets decreased by \$20.85 billion.

117. New DuPont and New Dow now hold the vast majority of the tangible assets that DuPont formerly owned.

118. Many of the details about these transactions are hidden from the public in confidential schedules and exhibits to the various agreements. Upon information and belief, DuPont, New DuPont, and Corteva have intentionally buried these details in an attempt to hide from potential judgment creditors, like Cumberland County, details regarding where DuPont’s valuable assets went and the inadequate consideration that DuPont received in return.

119. In greater detail, the restructuring was implemented as follows:

Step 1: The Chemours Spinoff

120. Prior to July 1, 2015, Chemours was a wholly owned subsidiary of DuPont. On July 1, 2015, DuPont completed the spinoff of its Performance Chemicals Business, and Chemours became a separate, publicly traded entity.

121. The Performance Chemicals Business included the business units that had manufactured, used, and discharged PFOA into the environment.

122. To effectuate the Chemours Spinoff, DuPont and Chemours entered into the June 26, 2015 Separation Agreement (the “Chemours Separation Agreement”).

123. Pursuant to the Chemours Separation Agreement, DuPont agreed to transfer to Chemours all businesses and assets related to the Performance Chemicals Business, including 37 active chemical plants. Upon information and belief, the Fayetteville Works was one of the 37 sites referenced in the Separation Agreement and one or more schedules to that Agreement.

124. DuPont completed a significant internal reorganization prior to the Chemours Spinoff to ensure the transfer of all of its Performance Chemicals Business assets to Chemours.

125. At the same time, Chemours accepted a broad assumption of DuPont’s massive liabilities relating to DuPont’s Performance Chemicals Business, including those arising from its discharge of contaminants, such as PFOA and other PFAS, into the environment. The specific details regarding the nature and value of probable maximum loss, and anticipated timing of the liabilities that Chemours assumed, are set forth in the nonpublic schedules and exhibits to the Chemours Separation Agreement.

126. Notwithstanding the billions of dollars in environmental and PFAS liabilities that Chemours would face, on July 1, 2015, Chemours transferred to DuPont approximately \$3.4

billion as a cash dividend, along with a “distribution in kind” of promissory notes with an aggregate principal amount of \$507 million.

127. Thus, in total, Chemours distributed approximately \$3.9 billion to DuPont. Chemours funded these distributions by entering into approximately \$3.995 billion of financing transactions on May 12, 2015. Also, Chemours distributed common stock to DuPont shareholders on July 1, 2015.

128. The Chemours Separation Agreement requires Chemours to indemnify DuPont against, and assume for itself, all “Chemours Liabilities,” which include DuPont’s liabilities relating to and arising from its decades of emitting pollution, including PFOA, into the environment from its dozens of facilities.

129. Notably, Chemours sued DuPont in Delaware state court in 2019, alleging among other things, that if (i) the full value of DuPont’s PFAS and environmental liabilities were properly estimated, and (ii) the liabilities that the Chemours Separation Agreement imposes were not limited by a court, then Chemours would have been insolvent at the time it was spun off from DuPont.

130. It is apparent that DuPont’s goal with respect to the Chemours Spinoff was to segregate a large portion of DuPont’s legacy environmental liabilities, including liabilities related to its PFAS chemicals and products and, in so doing, shield DuPont.

131. Not surprisingly, given DuPont’s extraction of nearly \$4 billion from Chemours immediately prior to the Spinoff, Chemours was thinly capitalized and unable to satisfy the substantial liabilities that it assumed from DuPont.

132. At the end of 2015, following the Chemours Spinoff, Chemours reported that it had total assets of \$6.298 billion and total liabilities of \$6.168 billion, yielding a total net worth of \$130 million.

133. However, Chemours significantly underestimated its liabilities, including the liabilities that it had assumed from DuPont with respect to PFAS and that DuPont and Chemours knew or should have known would be billions of dollars in addition to other environmental liabilities for other contaminants discharged at DuPont and Chemours facilities.

134. Had the full extent of DuPont's legacy liabilities been taken into account, as they should have been, at the time of the Chemours Spinoff, Chemours would have been rendered insolvent at that time.

Step 2: The Old Dow/ DuPont "Merger"

135. After the Chemours Spinoff, DuPont publicly claimed that the PFAS liabilities associated with the Performance Chemicals Business that DuPont had transferred to Chemours rested solely with Chemours, and not with DuPont.

136. Of course, DuPont could not contractually discharge all of its historical liabilities through the Chemours Spinoff, and DuPont remained liable for the liabilities it had caused and Chemours had assumed. So DuPont moved to the next phase of its fraudulent scheme.

137. On December 11, 2015, less than six months following the Chemours Spinoff, DuPont and Old Dow announced that they would combine in an "all-stock merger of equals" and that the combined company would be named DowDuPont, Inc. ("the Dow-DuPont Merger"). As a result of the Dow-DuPont Merger, and in accordance with the Dow-DuPont Merger Agreement, Old Dow and DuPont each became wholly owned subsidiaries of DowDuPont.

Step 3: The Shuffling, Reorganization, and Transfer of Valuable Assets Away from DuPont and Separation of Corteva and New Dow

138. Following the Dow-DuPont Merger, DowDuPont engaged in numerous business segment and product line “realignments” and “divestitures.” The net effect of these transactions has been the transfer, either directly or indirectly, of a substantial portion of DuPont’s assets out of the company.

139. While, again, the details of these transactions remain hidden from Cumberland County and other judgment creditors, it is apparent that the transactions were intended to frustrate and hinder creditors with claims against DuPont, including with respect to its PFAS liabilities.

140. DuPont’s assets, including its remaining business segments and product 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 three distinct divisions: (i) the “Agriculture Business,” (ii) the “Specialty Products Business,” and (iii) the “Materials Science Business.”

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

142. DowDuPont then incorporated, and ultimately spun off, Corteva and New Dow, to hold two of the three newly formed business lines.

143. The April 1, 2019 Separation and Distribution Agreement among Corteva, New Dow, and DowDuPont (the “DowDuPont Separation Agreement”) governs the separations of Corteva and New Dow. The agreement generally allocates the assets primarily related to the respective business divisions to Corteva (Agriculture Business), New Dow (Materials Science

Business), and New DuPont (Specialty Products Business). New DuPont also retained several “noncore” business segments and product lines that once belonged to DuPont.

144. The separation of New Dow was completed on or about April 1, 2019.

145. On or about May 2, 2019, DowDuPont consolidated the Agricultural Business line into DuPont, and then, on or about May 31, 2019, it “contributed” DuPont to Corteva. The following day, on June 1, 2019, DowDuPont spun off Corteva as an independent public company. On or about June 1, 2019, DowDuPont changed its registered name to Du Pont de Nemours, Inc. (i.e., New DuPont).

146. Pursuant to the DowDuPont Separation Agreement, Corteva and New DuPont assumed direct financial liability of DuPont, including liability that was not related to the Agriculture, Materials Science, or Specialty Products Businesses, including upon information and belief, DuPont’s legacy PFAS liabilities. These assumed PFAS liabilities are allocated on a pro rata basis between Corteva and New DuPont pursuant to the DowDuPont Separation Agreement, such that, after both companies have satisfied certain conditions, liabilities are allocated 71% to New DuPont and 29% to Corteva.

147. While New DuPont and Corteva have buried the details in nonpublic schedules, upon information and belief, this allocation applies to DuPont’s legacy liabilities for PFAS contamination and its former Performance Chemicals Business, including Cumberland County’s claims in this case. Cumberland County can therefore bring claims against New DuPont and Corteva directly for DuPont’s contamination in and harm to Cumberland County.

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The Effect of the Years-Long Scheme to Defraud Cumberland County and Avoid Financial Responsibility for Legacy Liabilities

148. The net result of these transactions was to strip away valuable tangible assets from DuPont and transfer those assets to New DuPont and Corteva for far less than the assets were worth. As a result, DuPont was left with substantially fewer tangible assets than it had prior to the restructuring.

149. In addition, DuPont owes a debt to Corteva of approximately \$4 billion. Recent SEC filings demonstrate the substantial deterioration of DuPont's finances and the drastic change in its financial condition before and after the above transactions.

150. For example, for the year ended 2014, prior to the Chemours Spinoff, DuPont reported \$3.6 billion in net income and \$3.7 billion in cash provided by operating activities. For the year ended 2019, just months after the Corteva separation, however, DuPont reported a net loss of \$1 billion and only \$996 million in cash provided by operating activities. That is a decrease of 128% in net income and a decrease of 73% in annual operating cash flow.

151. The value of DuPont's tangible assets further underscores DuPont's precarious financial situation. For the year ended 2014, prior to the Chemours Spinoff, DuPont owned nearly \$41 billion in tangible assets. For the year ended 2019, DuPont owned just under \$21 billion in tangible assets.

152. Moreover, DuPont's reported liabilities for the same period totaled \$21.869 billion. DuPont's tangible net worth had declined to negative \$1.125 billion.

153. Cumberland County cannot take comfort in any allocation of liability to New DuPont and Corteva. Neither of those Defendants has publicly conceded that it assumed any portion of DuPont's historical environmental and PFAS liabilities. And it is far from clear that either entity will be able to satisfy future judgments.

154. Indeed, New DuPont is in the process of divesting tangible assets that it received from DuPont and for which DuPont has received less than reasonably equivalent value.

155. New DuPont has received or will receive significant proceeds on the sales of DuPont's former business segments and product lines.

156. As just one example, in December 15, 2019, New DuPont agreed to sell the Nutrition and Biosciences business to International Flavors & Fragrances for \$26.2 billion, and that transaction is scheduled to close in early 2021.

157. Corteva—to which 29% of PFAS liabilities are “allocated” under the DowDuPont Separation Agreement once certain conditions are satisfied—holds as its primary tangible asset the debt owed to it by DuPont. But DuPont does not have sufficient tangible assets to satisfy this debt obligation.

CAUSES OF ACTION
COUNT I: NEGLIGENCE
(AS TO DUPONT AND CHEMOURS)

158. Plaintiff incorporates by reference all other paragraphs of this Complaint as fully set forth here, and further allege as follows.

159. Defendants owed Plaintiff a duty of reasonable care in the manufacture, management, use, storage, handling, and disposal of PFAS chemicals used/created/manufactured at Fayetteville Works, in the release of these substances in and around the Fayetteville Works facility, and in the remediation of contamination those releases caused.

160. Defendants had a duty, in particular, to: (1) identify the potentially harmful PFAS compounds associated with their operations that were released into the air, soil, groundwater, and surface water; (2) investigate and understand the characteristics of the PFAS chemicals associated with their operations before releasing those substances into the environment, including into the

Cumberland County environment; (3) conduct their operations in a manner that would not unreasonably endanger human health and the environment; (4) investigate and remediate environmental releases that they knew posed a potential risk to human health and the environment; and (5) warn Plaintiff of environmental releases that created a probable risk to human health in groundwater in Cumberland County, due to the persistence and toxicity of these substances and the fact that they are not removed through conventional water treatment processes.

161. Defendants failed to exercise ordinary and reasonable care in the manufacture, management, use, storage, and handling of their PFAS chemicals and in the release of these substances from Fayetteville Works, and in the remediation of contamination in Cumberland County that those releases caused.

162. Defendants knew or, in the exercise of reasonable care, should have known that their manufacturing operations at the Fayetteville Works Site were causing the type of contamination now found in groundwater in Cumberland County. Defendants knew of the bioaccumulative, persistent properties of PFAS, knew of the wind pattern around Fayetteville Works, and knew that the Fayetteville Works Site had emitted PFAS chemicals for decades, such that PFAS compounds would persist in the Cumberland County environment for a long time into the future. Defendants knew that their PFAS chemicals would contaminate the water supply of thousands in Cumberland County. In addition, Defendants knew that at least some PFAS chemicals – like PFOA – are associated with serious toxic effects and cancers in humans exposed through drinking water, and that other PFAS compounds – like GenX among others – are associated with serious toxic effects in animals, have not been studied in humans, and present a likely risk to human health. As a result, it was foreseeable to Defendants that humans may be exposed to PFAS chemicals by water drawn from groundwater wells in Cumberland County.

163. Defendants' conduct in secretly releasing their persistent, bioaccumulative, and toxic perfluoroalkyl substances into Cumberland County and contaminating the drinking water for thousands of Cumberland County residents, all the while misleading state and Federal regulators and the public, was willful and wanton, in that Defendants acted with a conscious disregard for and indifference to the rights and safety of others, which Defendants knew or should reasonably have known was reasonably likely to result in injury, damage or harm.

164. Defendants' willful and wanton conduct caused Plaintiff to suffer injury, damages, and harm as set forth above, for which Plaintiff seeks punitive damages as allowed by law.

165. Plaintiff seeks all legal and equitable relief as allowed by law, including inter alia actual damages in an amount to be proven at trial, and all costs and expenses of suit and pre- and post-judgment interest.

166. Upon information and belief, Corteva and New DuPont assumed Dupont's liability described above.

**COUNT II: TRESPASS TO REAL PROPERTY
(AS TO DUPONT AND CHEMOURS)**

167. Plaintiff incorporates by reference all other paragraphs of this Complaint as fully set forth here, and further allege as follows.

168. Defendants' operation of the Fayetteville Works facility, and their discharges, emissions, and releases of PFAS chemicals, have resulted in an unauthorized entry by Defendants upon real property owned by Plaintiff or in which Plaintiff has a property interest.

169. Defendants' unauthorized entry upon Plaintiff's property has resulted in substantial injury, damage, and harm to Plaintiff and constitutes a trespass to real property.

170. Defendants' conduct in secretly releasing their persistent, bioaccumulative, and toxic perfluoroalkyl substances into Cumberland County and contaminating the drinking water for

thousands of Cumberland County residents, all the while misleading state and Federal regulators and the public, was willful and wanton, in that Defendants acted with a conscious disregard for and indifference to the rights and safety of others, which Defendants knew or should reasonably have known was reasonably likely to result in injury, damage or harm.

171. Defendants' willful and wanton conduct caused Plaintiff to suffer injury, damages, and harm as set forth above, for which Plaintiff seeks punitive damages as allowed by law.

172. Plaintiff seeks all legal and equitable relief as allowed by law, including inter alia actual damages in an amount to be proven at trial, and all costs and expenses of suit and pre- and post-judgment interest.

173. Upon information and belief, Corteva and New DuPont assumed Dupont's liability described above.

174. Plaintiff seeks all legal and equitable relief as allowed by law, including inter alia actual damages in an amount to be proven at trial, and all costs and expenses of suit and pre- and post-judgment interest.

**COUNT III: PRIVATE NUISANCE
(AS TO DUPONT AND CHEMOURS)**

175. Plaintiff incorporates by reference all other paragraphs of this Complaint as fully set forth here, and further allege as follows.

176. Defendants' operation of the Fayetteville Works facility, and their discharges, emissions, and releases of PFAS chemicals constitute an unreasonable use of Defendants' land which has caused substantial and unreasonable interference with Plaintiff's use and enjoyment of their property and the health of its residents.

177. As a direct and proximate result of Defendants' conduct that created a nuisance, Plaintiff has incurred injuries, damage, and harm as set forth above. Defendants are liable for damages in an amount to be proven at trial.

178. The nuisance Defendants have created is ongoing and the harm to Plaintiff will continue indefinitely.

179. Defendants' conduct in secretly releasing their persistent, bioaccumulative, and toxic perfluoroalkyl substances into Cumberland County and contaminating the drinking water for thousands of Cumberland County residents, all the while misleading state and Federal regulators and the public, was willful and wanton, in that Defendants acted with a conscious disregard for and indifference to the rights and safety of others, which Defendants knew or should reasonably have known was reasonably likely to result in injury, damage or harm.

180. Defendants' willful and wanton conduct caused Plaintiff to suffer injury, damages, and harm as set forth above, for which Plaintiff seeks punitive damages as allowed by law.

181. Plaintiff seeks all legal and equitable relief as allowed by law, including inter alia actual damages in an amount to be proven at trial, and all costs and expenses of suit and pre- and post-judgment interest.

182. Upon information and belief, Corteva and New DuPont assumed Dupont's liability described above.

**COUNT IV: PUBLIC NUISANCE
(AS TO DUPONT AND CHEMOURS)**

183. Plaintiff incorporates by reference all other paragraphs of this Complaint as fully set forth here, and further allege as follows.

184. Defendants' conduct in secretly releasing persistent, bioaccumulative, and toxic perfluoroalkyl substances into Cumberland County, all the while misleading state and Federal

regulators and the public, was willful and wanton, in that Defendants acted with a conscious disregard for and indifference to the rights and safety of the public by contaminating the drinking water for thousands of Cumberland County residents, which Defendants knew or should reasonably have known was reasonably likely to result in injury, damage or harm and constitute a public nuisance

185. Defendants' operation of the Fayetteville Works facility, and their discharges, emissions, and releases of PFAS chemicals, therefore, caused a public nuisance that unreasonably contaminated the groundwater in Cumberland County and endangers the health of thousands of Cumberland County residents.

186. The condition created by Defendants affects a substantial number of people who use groundwater in Cumberland County as a drinking water supply and interferes with the rights of the public at large to clean and safe drinking water.

187. An ordinary person would be reasonably annoyed or disturbed by the presence of PFAS chemicals in their drinking water.

188. The seriousness of the environmental and human health risk Defendants have created far outweighs any social utility of Defendants' conduct.

189. Continuing harm caused by Defendants includes not only their ongoing emissions and releases of PFAS chemicals but also the continued propagation of Defendants' historical releases of PFAS chemicals through migration in groundwater, leaching from soil, and release from sediments.

190. Defendants knew or, in the exercise of reasonable care, should have known that their manufacturing operations at the Fayetteville Works Site were causing the type of contamination now found in groundwater in Cumberland County. Defendants knew of the

bioaccumulative, persistent properties of PFAS and that the Fayetteville Works Site had emitted PFAS chemicals for decades. Defendants knew that their PFAS chemicals would contaminate the water supply of thousands in Cumberland County. In addition, Defendants knew that at least some PFAS chemicals – like PFOA – are associated with serious toxic effects and cancers in humans exposed through drinking water, and that other PFAS compounds – like GenX among others – are associated with serious toxic effects in animals, have not been studied in humans, and present a likely risk to human health. As a result, it was foreseeable to Defendants that humans may be exposed to PFAS chemicals by water drawn from groundwater wells in Cumberland County. Defendants thus knew, or should have known, that their contamination would seriously and unreasonably interfere with the ordinary comfort, use, and enjoyment of groundwater in Cumberland County.

191. Defendants’ interference has caused a public health hazard in Cumberland County and damaged one of its natural resources. The condition created by Defendants adversely affects the quality of the water drawn from groundwater in Cumberland County, and thus injuriously affects the community at large and the public health.

192. Pursuant to N.C. General Statute § 153A-140, as a county of North Carolina, Cumberland County “shall have authority . . . to remove, abate, or remedy everything that is dangerous or prejudicial to the public health or safety.”

193. Cumberland County “may define and abate nuisances” pursuant to N.C. General Statute § 153A-121.

194. As a direct and proximate result of Defendants’ creation of this public nuisance, Plaintiff has incurred and will incur substantial costs to protect the public health and safety of thousands of Cumberland County residents whose sole source of drinking water is contaminated

by Defendants' PFAS chemicals. Additionally, as a result of this public nuisance, the County will receive substantially less money through tax revenue.

195. Defendants' willful and wanton conduct caused Plaintiff to suffer injury, damages, and harm as set forth above, for which Plaintiff seeks punitive damages as allowed by law.

196. Plaintiff seeks all legal and equitable relief as allowed by law, including inter alia actual damages in an amount to be proven at trial, all amounts necessary to abate the public nuisance Defendants created, and all costs and expenses of suit and pre- and post-judgment interest.

197. Upon information and belief, Corteva and New DuPont assumed Dupont's liability described above.

**COUNT V: NEGLIGENCE PER SE
(AS TO DUPONT AND CHEMOURS)**

198. Plaintiff incorporates by reference all other paragraphs of this Complaint as fully set forth here, and further allege as follows.

199. Defendants' conduct violates federal and state public safety requirements that are intended to protect human health and the environment, as set forth above. Relevant legal requirements include, but are not limited to, those provided by Defendants' NPDES permit, the North Carolina Water and Air Pollution Control, and North Carolina Groundwater Standards.

200. Plaintiff is within the class of persons the violated state and federal statutes and regulations are intended to protect, and their injuries are of the nature contemplated by the statutes and regulations.

201. Defendants' negligence per se directly and proximately caused Plaintiff's injury, damage, and harm as set forth above.

202. Defendants' conduct in secretly releasing their persistent, bioaccumulative, and toxic perfluoroalkyl substances into Cumberland County and contaminating the drinking water for thousands of Cumberland County residents, all the while misleading state and Federal regulators and the public, was willful and wanton, in that Defendants acted with a conscious disregard for and indifference to the rights and safety of others, which Defendants knew or should reasonably have known was reasonably likely to result in injury, damage or harm.

203. Defendants' willful and wanton conduct caused Plaintiff to suffer injury, damages, and harm as set forth above, for which Plaintiff seeks punitive damages as allowed by law.

204. Plaintiff seeks all legal and equitable relief as allowed by law, including inter alia actual damages in an amount to be proven at trial, and all costs and expenses of suit and pre- and post-judgment interest.

205. Upon information and belief, Corteva and New DuPont assumed Dupont's liability described above.

COUNT VI: FRAUDULENT TRANSFER

(Actual Fraudulent Transfer in Relation to the Chemours Spinoff – As Against DuPont, Chemours, Corteva, and New DuPont)

206. Plaintiff repeats each allegation above as though fully set forth in its entirety herein.

207. Cumberland County is and was a creditor of Chemours at all relevant times.

208. Through its participation in the Chemours Spinoff, as detailed above, Chemours transferred valuable assets to DuPont, including the \$3.9 billion dividend (the "Chemours Transfers"), while simultaneously assuming significant liabilities pursuant to the Separation Agreement (the "Assumed Liabilities").

209. The Chemours Transfers and Assumed Liabilities were made for the benefit of DuPont.

210. At the time that the Chemours Transfers were made and the Assumed Liabilities were assumed, and until the Chemours Spinoff was complete, DuPont was in a position to control Chemours.

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

212. Cumberland County has been harmed as a result of the Chemours Transfers.

213. Upon information and belief, Corteva and New DuPont assumed Old DuPont's liability described above.

214. Under Del. Code tit. 6 §§ 1301 to 1312 and N.C. Gen. Stat. §§ 39-23.4, -23.5, and -23.7, Cumberland County is entitled to void the Chemours Transfers and to recover property or value transferred to DuPont.

COUNT VII: FRAUDULENT TRANSFER

(Constructive Fraudulent Transfer in Relation to the Chemours Spinoff – As Against DuPont, Chemours, Corteva, and New DuPont)

215. Plaintiff repeats each allegation as though fully set forth in its entirety herein.

216. Cumberland County is and was a creditor of Chemours at all relevant times.

217. Chemours did not receive reasonably equivalent value from DuPont in exchange for the Chemours Transfers and Assumed Liabilities.

218. Each of the Chemours Transfers and Chemours' assumption of the Assumed Liabilities was made to or for the benefit of DuPont.

219. At the time that the Chemours Transfers were made and the Assumed Liabilities were assumed, and until the Spinoff was complete, DuPont was in a position to control Chemours.

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

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

222. At the time that the Chemours Transfers were made and Chemours assumed the Assumed Liabilities, DuPont and Chemours intended Chemours to incur or believed or reasonably should have believed that Chemours would incur debts beyond its ability to pay as they became due.

223. Cumberland County has been harmed as a result of the Chemours Transfers.

224. Upon information and belief, Corteva and New DuPont assumed DuPont's liability described above.

225. Under Del. Code tit. 6 §§ 1301 to 1312 and N.C. Gen. Stat. §§ 39-23.4, -23.5, and -23.7, Cumberland County is entitled to void the Chemours Transfers and to recover property or value transferred to DuPont.

COUNT VIII: FRAUDULENT TRANSFER

(Actual Fraudulent Transfer in Relation to the Dow-DuPont Merger and Subsequent Restructurings, Asset Transfers, and Separations – As Against DuPont, New DuPont, and Corteva)

226. Plaintiff repeats each allegation above as though fully set forth in its entirety herein.

227. Cumberland County is and was a creditor of DuPont at all relevant times.

228. Through its participation in the Dow-DuPont Merger, and through the separations of New DuPont, New Dow, and Corteva, DuPont sold or transferred, directly or indirectly, valuable assets and business lines to Corteva and New DuPont (the "DuPont Transfers").

229. The DuPont Transfers were made for the benefit of New DuPont and/or Corteva.

230. At the time that the DuPont Transfers were made, New DuPont was in a position to control DuPont and Corteva.

231. DuPont, New DuPont, and Corteva acted with the actual intent to hinder, delay, and defraud creditors or future creditors.

232. Cumberland County has been harmed as a result of the DuPont Transfers.

233. DuPont engaged in acts in furtherance of a scheme to transfer its assets out of the reach of parties such as Cumberland County that have been damaged as a result of the actions described in this Complaint.

234. Under Del. Code tit. 6 §§ 1301 to 1312 and N.C. Gen. Stat. §§ 39-23.4, -23.5, and -23.7, Cumberland County is entitled to void the DuPont Transfers and to recover property and value transferred to New DuPont and Corteva.

235. Cumberland County also seeks to enjoin New DuPont and Corteva, as transferees, from distributing, transferring, capitalizing, or otherwise disposing of any proceeds from the sale of any business lines, segments, divisions, or other assets that formerly belonged to DuPont, and seeks a constructive trust over such proceeds for the benefit of Cumberland County.

COUNT IX: FRAUDULENT TRANSFER

(Constructive Fraudulent Transfer in Relation to the Dow-DuPont Merger and Subsequent Restructurings, Asset Transfers, and Separations – As Against DuPont, New DuPont, and Corteva)

236. Plaintiff repeats each allegation above as though fully set forth in its entirety herein.

237. Cumberland County is and was a creditor of DuPont at all relevant times.

238. DuPont did not receive reasonably equivalent value from New DuPont and Corteva in exchange for the DuPont Transfers.

239. Each of the DuPont Transfers was made to or for the benefit of New DuPont and/or Corteva.

240. At the time that the DuPont Transfers were made, New DuPont was in a position to control DuPont and Corteva.

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

242. DuPont was insolvent at the time or became insolvent as a result of the DuPont Transfers.

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

244. Cumberland County has been harmed as a result of the DuPont Transfers.

245. Under Del. Code tit. §§ 1301 to 1312 and N.C. Gen. Stat. §§ 39-23.4, -23.5, and -23.7, Cumberland County is entitled to void the DuPont Transfers and to recover property or value transferred to New DuPont and Corteva.

246. Cumberland County also seeks to enjoin New DuPont and Corteva, as transferees, from distributing, transferring, capitalizing, or otherwise disposing of any proceeds from the sale of any business lines, segments, divisions, or other assets that formerly belonged to DuPont, and seeks a constructive trust over such proceeds for the benefit of Cumberland County.

JURY TRIAL

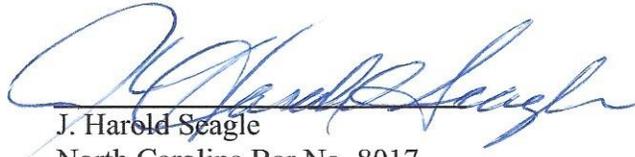
Plaintiff respectfully demands a jury trial pursuant to North Carolina Rule of Civil Procedure 38.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court grant the following relief:

1. Entry of judgment for Plaintiff and against Defendants for compensatory and punitive damages. Relief demanded is for damages incurred or to be incurred in excess of twenty-five thousand dollars (\$25,000);
2. Entry of relief as necessary to abate the nuisance caused by Defendants and to prevent continuing injury and damages to Plaintiff;
3. Granting of equitable relief to cure DuPont's and Chemours's deceptive practices and ordering disgorgement of DuPont's and Chemours's profits from its unfair and deceptive acts and practices;
4. Enjoining New DuPont from distributing, transferring, capitalizing, or otherwise disposing of any proceeds from the sale of any business lines, segments, divisions, or other assets that formerly belonged to Old DuPont;
5. Imposing a constructive trust over any such proceeds for the benefit of Cumberland County;
6. Ordering that Plaintiff is entitled to avoid the DuPont Transfers and the Chemours Transfers to the extent necessary to satisfy the Plaintiff's claims;
7. Awarding Plaintiff prejudgment interest and attorneys' fees and costs; and
8. For such other and further relief as the Court deems just and proper.

Dated: March 18, 2022



J. Harold Seagle
North Carolina Bar No. 8017
SEAGLE LAW, PLLC
P.O. Box 15307
Asheville, N.C. 28813
Tel.: 828-774-5711
haroldseagle@charter.net

Scott Summy (North Carolina Bar No. 27171)
Cary McDougal (Texas Bar No. 13569600)
(pending pro hac vice)
Stephen Johnston (Texas Bar No. 00796839)
(pending pro hac vice)
Brett D. Land (Texas Bar No. 24092664)
(pending pro hac vice)
BARON & BUDD, P.C.
3102 Oak Lawn Avenue, Suite 1100
Dallas, Texas 75219-4281
Tel.: (214) 521-3605
ssummy@baronbudd.com
cmcdougal@baronbudd.com
sjohnston@baronbudd.com
csanchez@baronbudd.com
bland@baronbudd.com

Charles J. Crueger (pending pro hac vice)
Erin K. Dickinson (pending pro hac vice)
Benjamin A. Kaplan (pending pro hac vice)
CRUEGER DICKINSON LLC
4532 North Oakland Avenue
Whitefish Bay, WI 53211
Tel.: (414) 210-3886
cjc@cruegerdickinson.com
ekd@cruegerdickinson.com
bak@cruegerdickinson.com

Attorneys for Plaintiff