IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CAPE FEAR PUBLIC UTILITY AUTHORITY;)
Plaintiff,)
v.) C.A. No
EIDP, INC.; THE CHEMOURS COMPANY; CORTEVA, INC.; DUPONT DE NEMOURS, INC.; AND BUSINESS ENTITIES 1-10,))))
Defendants.))

VERIFIED COMPLAINT

Plaintiff Cape Fear Public Utility Authority, by and through its undersigned counsel, as and for its complaint against Defendants EIDP, Inc., The Chemours Company, Corteva, Inc., and Dupont De Nemours, Inc. (collectively, "Defendants"), alleges as follows:

NATURE OF THE MATTER

1. For over three decades, DuPont and later Chemours, in the course of their fluoroproducts manufacturing processes, have been quietly discharging, emitting, releasing and spilling into the environment toxic perfluoroalkyl and polyfluoroalkyl substances ("PFAS") at their Fayetteville Works Facility in North Carolina.

- 2. During that time, DuPont and Chemours withheld from state regulators and the public information regarding both the identity of the PFAS being discharged, emitted, and released, as well as information related to the safety of those PFAS.
- 3. Moreover, DuPont and Chemours have deliberately evaded accountability for, and scrutiny of, their releases of PFAS. Facing multiple lawsuits and EPA pressure over its use and releases of one PFAS, perfluorooctanoic acid ("PFOA"), DuPont publicly discontinued its manufacture and use of *that* PFAS, but replaced it with "GenX"—a set of structurally and functionally similar PFAS, with similar harmful effects—that DuPont and Chemours then released into the environment without public notice.
- 4. DuPont's liability for use of PFAS contamination across the United States extended to several other manufacturing facilities as well. Knowing it could no longer credibly deny the toxicity of these chemicals by 2011, and facing thousands of pending personal injury lawsuits across the country, DuPont became desperate to spin off its liabilities. Out of this desperation came a calculated three part plan, set out below, to try to avoid liability for dumping PFAS in public waters, including the liability owed to Plaintiff.
- 5. DuPont's and Chemours' strategy amounts to a toxic chemical shell game, played at the expense of the lower Cape Fear River in North Carolina and those who use it for potable water. To protect the citizens it serves, Plaintiff filed a

federal lawsuit in North Carolina seeking to recover the costs—past, present, and future—necessary to manage and remove DuPont's and Chemours' perfluorinated chemicals from its public drinking water supply (the "EDNC Action"). A true and correct copy of Plaintiff's operative complaint in the EDNC Action (the "EDNC Action Complaint") is attached hereto as **Exhibit A**.

6. Plaintiff brings this action to ensure the voidable transfers concocted by Defendants do not preclude Plaintiff from recovering the amounts to which it is entitled from the EDNC Action.

PARTIES

- 7. Plaintiff Cape Fear Public Utility Authority ("CFPUA") is a public utility authority created by New Hanover County and the City of Wilmington pursuant to North Carolina General Statutes Chapter 162A, and is vested with authority to sue in its own name. N.C. Gen. Stat. § 162A-6. CFPUA exercises public and essential governmental functions to provide for the public health and welfare of its customers by providing potable water for residents of New Hanover County and the City of Wilmington. As a result of DuPont's and Chemours' activities, CFPUA's water system (as defined in N.C. Gen. Stat. § 162A-2) has been contaminated, its riparian interests injured, its revenues diminished, and its reputation harmed.
- 8. Defendant EIDP, Inc. ("DuPont") is a corporation organized and existing under the laws of Delaware, and registered to do business as a foreign

corporation in the State of North Carolina. DuPont owned and operated the Fayetteville Works Facility from around 1971, until ownership was transferred to Chemours in 2015. DuPont currently leases a portion of the Fayetteville Works Facility from Chemours, and has ongoing operations at the Facility. Upon information and belief, DuPont's principal place of business is located in Wilmington, Delaware.

- 9. Defendant The Chemours Company ("Chemours") is a corporation organized and existing under the laws of Delaware, and 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 DuPont's 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.
- 10. Defendant DuPont De Nemours, Inc., formerly known as Dow-DuPont, Inc. ("New DuPont") is a corporation organized and existing under the laws of Delaware, and registered to do business as a foreign corporation in the State of North Carolina. New DuPont's principal place of business is located at 974 Centre Road, Wilmington, Delaware 19805. New DuPont does business throughout the United States, including conducting business in North Carolina.

- 11. Defendant Corteva, Inc. ("Corteva") is a corporation organized and existing under the laws of Delaware, and registered to do business as a foreign corporation in the State of North Carolina. Corteva's principal place of business is 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.
- 12. This Court has subject matter jurisdiction pursuant to, *inter alia*, 6 Del. C. § 1307, 10 Del. C. § 341, and the equitable clean-up doctrine. *See*, *e.g.*, *Am*. *Appliance*, *Inc.* v. *State ex rel. Brady*, 712 A.2d 1001, 1003 (Del. 1998); *Hogg v. Walker*, 622 A.2d 648, 652 (Del. 1993); *Wilmont Homes, Inc. v. Weiler*, 42 Del. Ch. 8, 14, 202 A.2d 576, 580 (1964).
- 13. The Court has personal jurisdiction over each of the Defendants, because each of the Defendants is incorporated or organized under the laws of Delaware, and each of the Defendants' principal places of business is in Delaware. Daimler AG v. Bauman, 571 U.S. 117, 137, 134 S. Ct. 746, 760, 187 L. Ed. 2d 624 (2014).

BACKGROUND

- II. DUPONT AND CHEMOURS CONTAMINATE THE CAPE FEAR RIVER WITH PERFLUOROALKYL SUBSTANCES INCLUDING GEN X.
- 14. In 1970, DuPont purchased and constructed a manufacturing plant known as the Fayetteville Works Facility in Bladen County, North Carolina. DuPont owned and operated the Fayetteville Works Facility from the 1970s through approximately July 2015. Chemours was a wholly owned subsidiary of DuPont when it acquired the Fayetteville Works Facility from DuPont on February 1, 2015.
- 15. The Fayetteville Works Facility manufactures "fluoroproducts" involving or consisting of PFAS, which do not occur in nature (*i.e.*, are man-made). Examples of these fluoroproducts include Nafion, Polymer Processing Aid ("PPA"), and Polyvinyl Fluoride ("PVF"). PFAS are used to make products resistant to stains, grease, and water, for instance in carpets, clothing, and mattresses. PFAS are also used for non-stick products such as Teflon.
- 16. A list of the PFAS generated, used, and/or disposed of by either or both of DuPont and Chemours at the Fayetteville Works Facility, including "Gen X," is set out in paragraphs 24 and 25 of the EDNC Action Complaint.
- 17. PFAS can persist in air, surface water, soil, and groundwater thousands if not millions of years once produced.

- 18. PFAS also bioaccumulate, meaning their concentration increases over time in the blood and organs of fish and other living organisms, including humans. Exposure pathways include ingestion through food or water, inhalation, and contact with consumer goods.
- 19. PFAS are also associated with numerous negative health effects in humans including but not limited to liver toxicity, disruption of lipid metabolism and the immune and endocrine systems, adverse neurobehavioral effects, neonatal toxicity and death, and tumors in multiple organ systems.
- 20. For decades, DuPont has known that exposure to PFAS created a significant risk to human health and the environment.
- 21. In 1980—unbeknownst to state or federal regulators or the public—DuPont began to discharge, emit, spill, and release Gen X at the Fayetteville Works Facility site into the Cape Fear River as a byproduct of one or more of its manufacturing processes there. DuPont later began to discharge, emit, spill, and release other PFAS from the Fayetteville Works Facility as well, resulting in contamination of the water (including the Cape Fear River), air, soil, plants, and animals in the vicinity of the Fayetteville Works Facility.
- 22. As early as 2004, DuPont knew that, although its wastewater treatment plant ("WWTP") at the Fayetteville Works Facility was ineffective at removing PFAS from wastewater, alternate technologies such as a granular activated carbon

filtration ("GAC") system would effectively remove PFAS. Nevertheless, Defendants failed to install a GAC or other abatement technology at the Fayetteville Works Facility sufficient to eliminate or reduce PFAS from its effluent.

23. As alleged more fully in the EDNC Action Complaint, DuPont mislead regulators in multiple instances, failing to explain that the Fayetteville Works Facility had been contaminating the Cape Fear River with PFAS such as Gen X and Nafion® Byproducts 1 and 2 since approximately 1980. DuPont knew that regulators had serious concerns about the effects of these substances on human health and understood that its discharges were contaminating the drinking water used by hundreds of thousands of North Carolinians. All the while, Chemours and DuPont have discharged PFAS, directly and via the groundwater and air emissions, into the North Carolina's groundwater and the Cape Fear River.

III. PLAINTIFF IS FORCED TO CLEAN UP DUPONT'S AND CHEMOURS' MESS TO PROTECT ITS CITIZENS.

24. CFPUA owns in fee simple a tract of land that touches the Cape Fear River ("CFPUA Riparian Land"). CFPUA utilizes a water supply intake located on the Cape Fear River to supply the Sweeney Water Treatment Plant located on CFPUA Riparian Land, downstream of the Fayetteville Works Facility. CFPUA, as owner of the CFPUA Riparian Land, owns riparian rights including, but not limited to, the right to access and use the natural flow of the Cape Fear River undiminished

in quality except as may be occasioned by the reasonable use of the water by other riparian owners.

- 25. Beginning in 2008, CFPUA undertook a substantial upgrade and expansion project to its Sweeney Water Treatment Plant, which was completed in 2012 and cost more than \$65 million. The Sweeney Plant is now a state-of-the-art system.
- 26. Conventional water treatment technologies do not effectively remove PFAS from drinking water.
- 27. CFPUA was unaware at the time of the upgrade that DuPont had been contaminating the Cape Fear River with PFAS for decades, and the Sweeney Plant was therefore not designed for, and is largely ineffective at, removing PFAS from the water. The concentration levels of PFAS in the raw water and in the finished water following treatment are therefore comparable.
- 28. In November 2016, environmental scientists published the results of water testing that showed high levels of PFAS in the Cape Fear River downstream of the Fayetteville Works, at the intake for the raw water that is used to generate drinking water for thousands of North Carolinians. These levels exceed state and federal health goals and occurred at levels believed to be unsafe for human consumption.

- 29. Only after the public study in 2016 did Plaintiff realize its water system has been significantly contaminated with PFAS, including the Sweeney Plant and related water treatment equipment, as well as CFPUA's aquifer storage and recovery ("ASR") system.
- and operate it to protect the public from PFAS contamination. Plaintiff's damages include but are not limited to \$64,206,949.40 in costs incurred or committed through June 30, 2023, and approximately \$174,471,652.98 in known future costs; plus punitive damages. A true and correct copy of Plaintiff's supplemented initial disclosures (the "Damages Calculation") in the EDNC Action is attached as **Exhibit B**. These damages calculations will continue to increase as additional information becomes known regarding PFAS impacts on the groundwater in New Hanover and the required treatment of that water from groundwater extraction wells that provide a part of the total drinking water supply of Plaintiff.

IV. DUPONT FACES SUBSTANTIAL LEGAL LIABILITY FOR ITS PFAS CONTAMINATION ACROSS THE COUNTRY.

- 31. DuPont's and Chemours' liabilities for PFAS contamination account for a substantial portion of their environmental liabilities nationwide.
- 32. Upon information and belief, DuPont's potential cumulative liability related to PFAS is likely billions of dollars due to the persistence, mobility, bio-

accumulative properties, and toxicity of these "forever chemicals," as well as DuPont's decades-long attempt to hide the dangers of PFAS from the public.

- 33. For more than five decades, DuPont manufactured, produced, or utilized PFAS variants at plants in New Jersey and West Virginia and at Fayetteville Works. DuPont was aware that at least a subset of these PFAS variants and their byproducts were toxic, harmful to animals and humans, bio-accumulative, and bio-persistent in the environment. DuPont also knew that it had emitted and discharged PFAS in large quantities into the environment and that tens of thousands of people had been exposed to PFAS, 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 PFAS.
- 34. 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 PFAS that DuPont had discharged from its Washington Works Facility, 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 PFAS 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 PFAS could cause those Linked Diseases.

- 35. By 2012, the Science Panel had confirmed that several human diseases had "probable links" to at least some variants of PFAS exposure, including high cholesterol, ulcerative colitis, pregnancy induced hypertension, thyroid disease, testicular cancer, and kidney cancer.
- 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. DuPont knew that it faced substantial exposure at these cases, as well as liability related to other PFAS contamination at other sites throughout the country, including Fayetteville Works, and that its liability was likely billions of dollars.

- V. ANTICIPATING DUPONT'S AND CHEMOURS' SUBSTANTIAL PFAS LIABILITIES, DEFENDANTS RESTRUCTURE IN AN EFFORT TO SHIELD DUPONT'S ASSETS FROM JUDGMENTS.
- 37. In light of its significant exposure to liability for PFAS contamination, including at its Washington Works Facility and other facilities (including the Fayetteville Works Facility), in 2013, DuPont's management began consideration of restructuring transactions in an initiative entitled "Project Beta." Upon information and belief, the purpose of Project Beta was to avoid responsibility for the widespread environmental harm that DuPont's PFAS contamination had caused and shield billions of dollars in assets from these substantial liabilities.
- 38. 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 three-step strategy designed to isolate DuPont's massive PFAS liabilities from its valuable tangible assets in order to shield those assets from creditors and entice Old Dow to pursue the proposed merger. In greater detail, the restructuring was implemented as follows:
 - A. DuPont "spun-off" Chemours as a separate public entity and saddled Chemours with DuPont's massive legacy PFAS liabilities (the "Chemours Spinoff").
- 39. 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 PFAS) to Chemours. Prior to taking this step, DuPont

completed a significant internal reorganization ensure the transfer of all of its Performance Chemicals Business assets to Chemours. The Performance Chemicals Business included the business units that had manufactured, used, and discharged PFAS into the environment.

- 40. Prior to July 1, 2015, Chemours was a wholly owned subsidiary of DuPont.
- 41. On June 26, 2015, DuPont and Chemours entered into a Separation Agreement (the "Chemours Separation Agreement"), pursuant to which DuPont would spinoff of its Performance Chemicals Business to Chemours, and Chemours would become a separate, publicly traded entity holding DuPont's massive legacy PFAS liabilities (the "Chemours Spinoff").
- 42. On July 1, 2015, DuPont and Chemours completed the Chemours Spinoff, which resulted in the following:
 - a. DuPont transferred to Chemours all businesses and assets related to the
 Performance Chemicals Business, including 37 active chemical plants.
 Upon information and belief, the Fayetteville Works Facility was one
 of the 37 sites transferred pursuant to the Chemours Separation
 Agreement and one or more schedules to that Agreement.
 - b. Chemours accepted a broad assumption of DuPont's massive liabilities relating to DuPont's Performance Chemicals Business, including those

arising from its decades of discharging contaminants, such as PFAS, into the environment from its dozens of facilities (the "Assumed Liabilities"). 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.

- c. Notwithstanding the billions of dollars in Assumed Liabilities that Chemours would face, 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.
- 43. 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.
- 44. Given that DuPont extracted nearly \$4 billion from Chemours immediately prior to the Chemours Spinoff, Chemours was thinly capitalized and unable to satisfy the substantial liabilities that it assumed from DuPont. 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.

- 45. 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. 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.
- 46. Notably, Chemours sued DuPont in this Court in 2019 (the "Chemours Lawsuit"), 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. A true and correct copy of Verified First Amended Complaint in the Chemours Lawsuit is attached hereto as **Exhibit C**.
- 47. 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.

- B. DuPont begins the effort to shield its assets from direct liability by merging with Old Dow.
- 48. 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.
- 49. However, 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. So DuPont took additional steps to sequester its assets.
- 50. 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 Dow DuPont, 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 Defendant New DuPont.
 - C. New DuPont shuffles, reorganizes, and transfers valuable assets away from DuPont.
- 51. Following the Dow-DuPont Merger, New DuPont engaged in numerous business segment and product line "realignments" and "divestitures." These "realignments" and "divestitures" included New DuPont spinning off two new

companies: (i) Corteva, which currently holds DuPont as a subsidiary (the "Corteva Spinoff"), and (ii) Dow, Inc. ("New Dow"), which currently holds Old Dow. 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.

- 52. While, again, the details of these transactions remain hidden from Plaintiff 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.
- 53. DuPont's assets, including its remaining business segments and product lines, were transferred either directly or indirectly to New DuPont, 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."
- 54. 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, DuPont transferred a substantial portion of its valuable assets to New DuPont for far less than the assets were worth.
- 55. New DuPont then incorporated, and ultimately spun off, Corteva and New Dow, to hold two of the three newly formed business lines.

- 56. On April 1, 2019, New Dow, Corteva, and New DuPont entered a Separation and Distribution Agreement (the "DowDuPont Separation Agreement"). Pursuant to the DowDuPont Separation Agreement, the parties thereto engaged in the following transactions:
 - a. Upon information and belief, on or about April 1, 2019, New DuPont consolidated the Materials Science Business line into Old Dow, and then, on or about April 1, 2019, contributed Old Dow to New Dow.
 - b. On or about May 2, 2019, New DuPont consolidated the "Agriculture Business" into DuPont, and then, on or about May 31, 2019, it "contributed" DuPont to Corteva.
 - c. On June 1, 2019, New DuPont spun off Corteva as an independent public company.
 - d. New DuPont retained the "Specialty Products Business." New DuPont also retained several "noncore" business segments and product lines that once belonged to DuPont.
 - e. 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.

57. While New DuPont and Corteva have buried the details in nonpublic schedules, upon information and belief, the 71/29 allocation of DuPont's liabilities applies to DuPont's legacy liabilities for PFAS contamination and its former Performance Chemicals Business, including Plaintiff's claims in this case. Plaintiff can therefore bring claims against New DuPont and Corteva directly for DuPont's contamination and harm to Plaintiff.

VI. DEFENDANTS' RESTRUCTURING EFFORTS SEEK TO LEAVE PLAINTIFF AND OTHERS HARMED BY PFAS HOLDING THE BAG.

- 58. The net result of the DowDuPont Separation Agreement 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.
- 59. 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.

- 60. 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.
- 61. The value of DuPont's tangible assets further underscores DuPont's financial situation. For the year ended 2014, prior to the Chemours Spinoff, DuPont owned nearly \$41 billion in tangible assets, and reported \$3.6 billion in net income and \$3.7 billion in cash provided by operating activities.
- 62. For the year ended 2019, just months after the Corteva Spinoff, DuPont owned just under \$21 billion in tangible assets, and reported a net loss of \$1 billion and only \$996 million in cash provided by operating activities. 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.
- 63. 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.

- 64. Meanwhile, 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.
- 65. New DuPont has received or will receive significant proceeds on the sales of DuPont's former business segments and product lines.
- 66. 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.

FIRST CAUSE OF ACTION

(Voidable Transfer — Chemours Spinoff — As Against All Defendants; Intent to Hinder, Delay or Defraud)

- 67. Plaintiff incorporates by reference each of the preceding paragraphs of this Complaint as if fully set forth in their entirety.
 - 68. Plaintiff is and was a creditor of Chemours at all relevant times.
- 69. 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").
- 70. The Chemours Transfers and Assumed Liabilities were undertaken for the benefit of DuPont.

- 71. 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.
- 72. Chemours made the Chemours Transfers and incurred the Assumed Liabilities with the intent to hinder, delay, and defraud the creditors or future creditors of Chemours.
 - 73. Plaintiff has been harmed as a result of the Chemours Transfers.
- 74. Upon information and belief, Corteva and New DuPont assumed DuPont's liability described above.
- 75. Under 6 *Del. C.* §§ 1304(a)(1) and 1307(a)(1), Plaintiff is entitled to void the Chemours Transfers and to recover property or value transferred to DuPont.
- 76. Under 6 *Del. C.* §§ 1304(a)(1) and 1307(a)(3), Plaintiff is further entitled to an injunction against Defendants prohibiting further disposition of assets and other property transferred from Chemours to DuPont.
- 77. Under 6 Del. C. §§ 1304(a)(1) and 1307(a)(3), Plaintiff is further entitled to a constructive trust against Defendants imposed upon the assets transferred from Chemours to DuPont.
- 78. Under 6 Del. C. §§ 1304(a)(1) and 1308(b), Plaintiff is further entitled to a judgment for the amount of the Chemours Transfers, or the amount of Plaintiff's judgment in the EDNC Action, whichever is less.

SECOND CAUSE OF ACTION

(Voidable Transfer — Chemours Spinoff — As Against All Defendants; Failure to Receive Reasonably Equivalent Value)

- 79. Plaintiff incorporates by reference each of the preceding paragraphs of this Complaint as if fully set forth in their entirety.
 - 80. Plaintiff is and was a creditor of Chemours at all relevant times.
- 81. Chemours did not receive reasonably equivalent value from DuPont in exchange for the Chemours Transfers and Assumed Liabilities.
- 82. The Chemours Transfers and Chemours' assumption of the Assumed Liabilities were undertaken for the benefit of DuPont.
- 83. 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.
- 84. Chemours was insolvent at the time or became insolvent as a result of the Chemours Transfers and its assumption of the Assumed Liabilities.
- 85. 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.
 - 86. Plaintiff has been harmed as a result of the Chemours Transfers.

- 87. Upon information and belief, Corteva and New DuPont assumed DuPont's liability described above.
- 88. Under 6 *Del. C.* §§ 1304(a)(2) and 1307(a)(1), Plaintiff is entitled to void the Chemours Transfers and to recover property or value transferred to DuPont.
- 89. Under 6 *Del. C.* §§ 1304(a)(2) and 1307(a)(3), Plaintiff is further entitled to an injunction against Defendants prohibiting further disposition of assets and other property transferred from Chemours to DuPont.
- 90. Under 6 *Del. C.* §§ 1304(a)(2) and 1307(a)(3), Plaintiff is further entitled to a constructive trust against Defendants imposed upon the assets transferred from Chemours to DuPont.
- 91. Under 6 Del. C. §§ 1304(a)(2) and 1308(b), Plaintiff is further entitled to a judgment for the amount of the Chemours Transfers, or the amount of Plaintiff's judgment in the EDNC Action, whichever is less.

THIRD CAUSE OF ACTION

(Voidable Transfer — Dow-DuPont Merger and Subsequent Restructurings, Asset Transfers, and Separations — As Against DuPont, New DuPont, and Corteva; Intent to Hinder, Delay or Defraud)

- 92. Plaintiff incorporates by reference each of the preceding paragraphs of this Complaint as if fully set forth in their entirety.
 - 93. Plaintiff is and was a creditor of DuPont at all relevant times.
- 94. 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").

- 95. The DuPont Transfers were made for the benefit of New DuPont and/or Corteva.
- 96. At the time that the DuPont Transfers were made, New DuPont was in a position to control DuPont and Corteva.
- 97. DuPont, New DuPont, and Corteva acted with the intent to hinder, delay, and defraud creditors or future creditors of DuPont.
 - 98. Plaintiff has been harmed as a result of the DuPont Transfers.
- 99. DuPont, New DuPont, and/or Corteva executed the DuPont Transfers in furtherance of a scheme to transfer DuPont's assets out of the reach of parties such as Plaintiff that have been damages as a result of the actions described in this Complaint.
- 100. Under 6 Del. C. §§ 1304(a)(1) and 1307(a)(1), Plaintiff is entitled to void the DuPont Transfers and to recover property or value transferred to New DuPont and/or Corteva.
- 101. Under 6 *Del. C.* §§ 1304(a)(1) and 1307(a)(3), Plaintiff is further entitled to an injunction against Defendants prohibiting further disposition of assets and other property transferred from DuPont to New DuPont and/or Corteva.

- 102. Under 6 *Del. C.* §§ 1304(a)(1) and 1307(a)(3), Plaintiff is further entitled to a constructive trust against Defendants imposed upon the assets transferred from DuPont to New DuPont and/or Corteva.
- 103. Under 6 *Del. C.* §§ 1304(a)(1) and 1308(b), Plaintiff is further entitled to a judgment for the amount of the DuPont Transfers, or the amount of Plaintiff's judgment in the EDNC Action, whichever is less.

FOURTH CAUSE OF ACTION

- (Voidable Transfer Dow-DuPont Merger and Subsequent Restructurings, Asset Transfers, and Separations As Against DuPont, New DuPont, and Corteva; Failure to Receive Reasonably Equivalent Value)
- 104. Plaintiff incorporates by reference each of the preceding paragraphs of this Complaint as if fully set forth in their entirety.
 - 105. Plaintiff is and was a creditor of DuPont at all relevant times.
- 106. DuPont did not receive reasonably equivalent value from New DuPont and Corteva in exchange for the DuPont Transfers.
- 107. The DuPont Transfers were made to or for the benefit of New DuPont and/or Corteva.
- 108. At the time that the DuPont Transfers were made, New DuPont was in a position to control DuPont and Corteva.
- 109. 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.

- 110. DuPont was insolvent at the time or became insolvent as a result of the DuPont Transfers.
- 111. At the time that the DuPont Transfers were made, DuPont intended to incur or believed or reasonably should have believed that DuPont would incur debts beyond its ability to pay as they became due.
 - 112. Plaintiff has been harmed as a result of the DuPont Transfers.
- 113. Under 6 Del. C. §§ 1304(a)(2) and 1307(a)(1), Plaintiff is entitled to void the DuPont Transfers and to recover property or value transferred to New DuPont and/or Corteva.
- 114. Under 6 *Del. C.* §§ 1304(a)(2) and 1307(a)(3), Plaintiff is further entitled to an injunction against Defendants prohibiting further disposition of assets and other property transferred from DuPont to New DuPont and/or Corteva.
- 115. Under 6 *Del. C.* §§ 1304(a)(2) and 1307(a)(3), Plaintiff is further entitled to a constructive trust against Defendants imposed upon the assets transferred from DuPont to New DuPont and/or Corteva.
- 116. Under 6 Del. C. §§ 1304(a)(2) and 1308(b), Plaintiff is further entitled to a judgment for the amount of the DuPont Transfers, or the amount of Plaintiff's judgment in the EDNC Action, whichever is less.

FIFTH CAUSE OF ACTION

(Successor Liability — New DuPont and Corteva)

- 117. Plaintiff incorporates by reference each of the preceding paragraphs of this Complaint as if fully set forth in their entirety.
- 118. Prior to the transactions, DuPont and Chemours were large conglomerates. While their PFAS liabilities likely exceeded several billion dollars, DuPont and Chemours probably had the assets to satisfy the PFAS liabilities in full.
- 119. None of these transactions were made at arms-length. The primary motivation for the Chemours Spinoff; the later creation of New DuPont; and the final Corteva Spinoff was to isolate Chemours and DuPont's PFAS liabilities from performing assets.
- 120. In other words, DuPont and Chemours entered into these transactions fraudulently with the primary purpose of evading the PFAS creditors.
- 121. The net result of the fraudulent transactions was to leave economically healthy corporations largely free from PFAS liability (New DuPont and Corteva) and thinly capitalized corporations lacking the ability to pay the PFAS creditors.
- 122. In equity, New DuPont and Corteva should be held liable for Chemours and DuPont's PFAS debts.

SIXTH CAUSE OF ACTION

(Invalid Assignment for the Benefit of Creditors — Chemours Transfers — All Defendants)

- 123. Plaintiff incorporates by reference each of the preceding paragraphs of this Complaint as if fully set forth in their entirety.
 - 124. Plaintiff is and was a creditor of DuPont at all relevant times.
- 125. The Chemours Transfers were a voluntary assignment of Chemours' property to DuPont, another creditor entitled to compensation under the Chemours Separation Agreement for the transfer of the Performance Chemicals Business.
- 126. In contemplation of insolvency occasioned by PFAS liabilities, Chemours made the Chemours Transfers for the benefit of DuPont.
 - 127. The Chemours Transfers prefer DuPont over Plaintiff.
- 128. The Chemours Transfers paid to DuPont a greater proportion of its debt than that secured or paid to Plaintiff.
- 129. Upon information and belief, Corteva and New DuPont assumed DuPont's liability described above.
- 130. DuPont failed to carry out the statutorily mandated steps for an assignment for benefit of creditors, including filing the necessary inventory, affidavit, surety bond, and accounting. 10 *Del. C.* § 7381 et. seq.
- 131. Pursuant to 10 *Del. C.* § 7387, the Chemours Transfers give a preference to DuPont over Plaintiff and therefore are fraudulent and absolutely void.

132. Plaintiff is entitled to a ratable share of the Chemours Transfers.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests and prays that the Court:

- a. Enter judgment against Defendants in an exact amount to be proven at trial;
- b. Order that Plaintiff is entitled to avoid the Chemours Transfers and DuPont Transfers to the extent necessary to satisfy the Plaintiff's claims;
- c. Enjoining Defendants 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 Chemours.
- d. Enjoining New DuPont and Corteva 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.
- e. Imposing a constructive trust over any such proceeds for the benefit of Plaintiff;
- f. Order that Plaintiff have and recover from Defendants postjudgment interest as allowed by law, and require that all partial payments be applied first to accrued interest;
 - g. Tax all costs of this action against Defendants;

h. Order such other or further relief as the Court deems just and

PRICKETT, JONES & ELLIOTT, P.A.

OF COUNSEL:

proper.

BROOKS, PIERCE, MCLENDON, HUMPHREY& LEONARD, LLP Alexander Elkan Clint S. Morse 230 North Elm Street 2000 Renaissance Plaza Greensboro, NC 27401 (336) 373-8850

BROOKS, PIERCE, MCLENDON, HUMPHREY& LEONARD, LLP William A. Robertson 150 Fayetteville Street 1700 Wells Fargo Capitol Center Raleigh, NC 27601 (919) 839-0300

Dated: March 24, 2023

/s/ DRAFT

Bruce E. Jameson (No. 2931) Robert B. Lackey (No. 6843) 1310 King Street Wilmington, Delaware 19801 (302) 888-6500

Counsel for Plaintiff