

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

**IN RE: AQUEOUS FILM-FORMING  
FOAMS PRODUCTS LIABILITY  
LITIGATION**

MDL No. 2:18-mn-2873-RMG

**This Document relates to: ALL Cases**

**PLAINTIFFS' EXPEDITED MOTION TO COMPEL COMPLIANCE WITH RULE  
30(B)(6) NOTICE OF DEPOSITION TO ARKEMA, INC.**

Plaintiffs submit this expedited motion to compel Arkema, Inc. ("Arkema") to comply with Plaintiffs' September 4, 2024, Notice of Deposition pursuant to Rules 30(b)(6) and Rule 37.

**I. INTRODUCTION**

Arkema was a market-leading producer of telomer fluorosurfactants in the United States, a founding member of the Fire Fighting Foam Coalition, and one of only eight signatories to the EPA Stewardship PFOA Stewardship Program. Arkema developed the Forafac line of fluorinated surfactants and gained market dominance by virtue of its AFFF-specific products, including Forafac 1157N and 1210, prior to selling the brand to DuPont in 2002.

Plaintiffs intend to depose Arkema regarding its corporate knowledge of fluorinated surfactants and its interactions with its customers, regulators, and end users. To that end, Plaintiffs served a Notice of Deposition upon Arkema on September 4, 2024,<sup>1</sup> which identified with particularity the subjects of testimony they wish to elicit from Arkema. Plaintiffs requested a deponent designee to speak to matters, without regard to any timeframe, on the issues surrounding Arkema's knowledge of the dangers of their fluorosurfactants, including:

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<sup>1</sup> See Plaintiffs' Notice of Oral and Videotaped Deposition of Defendant Arkema Inc. ("NOD"), attached as Ex. A.

The nature, extent, substance and timing of Defendant's knowledge of the chemical characteristics of PFOA precursors, PFOS, PFOA, and surfactants used in AFFF, including but not limited to their biopersistent and bioaccumulative nature, toxicity, their environmental persistence, their water soluble nature, fate and transport, and their thermal, chemical and biological stability, and resistance to biodegradation.<sup>2</sup>

On November 1, 2024, Arkema responded to Plaintiffs' NOD with improper blanket objections.<sup>3</sup> Therein, Arkema unilaterally refused to produce a witness with knowledge after September 2002, despite itself being a present day PFAS manufacturer.<sup>4</sup> Arkema arrogated onto itself the authority to designate a witness to speak to corporate knowledge "limited to the time period during which Arkema Inc. sold such fluorosurfactants."<sup>5</sup> The parties have met and conferred in an effort to resolve the objection to no avail and thus bring this matter to the Court's attention. Given that this deposition, by agreement, is currently scheduled to be conducted with respect to Topics 1-2 of the NOD on December 13, 2024, Plaintiffs respectfully request consideration of this motion on an expedited basis.<sup>6</sup>

## II. ARGUMENT

Corporations are not natural persons, so Rule 30(b)(6) exists to require a corporate defendant to designate a point person who will be "speaking for the corporation." *United States v. Taylor*, 166 F.R.D. 356, 361 (M.D.N.C.), *aff'd*, 166 F.R.D. 367 (M.D.N.C. 1996). Rule 30(b)(6)

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<sup>2</sup> *Id.* at 6 (topic #1).

<sup>3</sup> See Defendant Arkema Inc.'s Responses and Objections to Plaintiffs' Notice of Oral and Videotaped Deposition ("Responses and Objections"), attached as Ex. B.

<sup>4</sup> Responses and Objections, at ¶ 5.

<sup>5</sup> *Id.* at 4, Response to Subject No.1.

<sup>6</sup> It is also worth pointing out the further urgency in that it has taken a long time to schedule this deposition, there are additional outstanding deposition notices to Arkema that have not yet been scheduled, Arkema is a Defendant in the CMO 26 *Leach* bellwether cases, expert reports are due for the CMO 26 *Leach* Group A plaintiffs on or before January 24, 2025, and it is like that testimony from this deposition (and likely the others that have been noticed) will be necessary for Plaintiffs' experts to consider.

permits a party issuing a deposition notice who “describe[s] with reasonable particularity the matters for examination,” Fed. R. Civ. P. 30(b)(6), “[to] simply name the corporation ... as the deponent,” [then] it becomes “the duty of the corporation to name one or more persons who consent to testify on its behalf ... as to matters known or reasonably available to the corporation.” *Rosenruist-Gestao E Servicos LDA v. Virgin Enterprises Ltd.*, 511 F.3d 437, 445 (4th Cir. 2007), quoting 8A Charles Alan Wright, Arthur R. Miller, & Richard L. Marcus, *Federal Practice and Procedure* § 2102, at 30–31 (2d ed.1994). “The responding entity, here the Defendant, then has an obligation to designate a person or persons prepared to testify “about information known or reasonably available to the organization” regarding those topics. . . . “If the persons designated by the corporation do not possess personal knowledge of the matters set out in the deposition notice, the corporation is obligated to prepare the designees so that they may give knowledgeable and binding answers for the corporation.” *Atanassova v. Gen. Motors LLC*, No. 2:20-CV-01728-RMG, 2021 WL 1946520, at \*1–2 (D.S.C. Mar. 12, 2021), quoting *US v. Taylor*, 166 F.R.D. at 361.

A corporate designee “is required to be reasonably and adequately prepared to answer questions about the relevant deposition topics.” *Butler-Bohn v. Walmart, Inc.*, No. 7:22-CV-156-TMC-KFM, 2023 WL 11922158, at \*2 (D.S.C. Feb. 3, 2023) (citations omitted). The designee must therefore prepare to testify beyond their own personal knowledge to matters known to the corporation as a whole, including opinions and beliefs of the corporation. *Tarokh v. Wal-Mart Stores E., LP*, 342 F.R.D. 383, 386–87 (D.S.C. 2022), citing *Atanassova v. General Motors, LLC*, No. 2:20-cv-01728-RMG, 2021 WL 1946520, at \*1 (D.S.C. Mar. 12, 2021). *See also Chapman v. HHCSC, LLC*, No. 2:14-CV-00051-RMG, 2014 WL 12615705, at \*4 (D.S.C. Dec. 9, 2014) (witness must be prepared to answer questions about Defendant's factual contentions regarding Defendant's claims and affirmative defenses). “Doing so may require extensive preparation,

document review, interviews, and other forms of investigation to reasonably identify the corporation's relevant knowledge and positions and educate the corporate designee on the same.” *Butler-Bohn*, 2023 WL 11922158, at \*2, citing *Taylor*, 166 F.R.D. at 361-62. “[A] corporation is expected to create an appropriate witness or witnesses from information reasonably available to it if necessary.” *Id.* (citations omitted). Even though “preparing for a Rule 30(b)(6) deposition can be burdensome,” that is “merely the result of the concomitant obligation from the privilege of being able to use the corporate form in order to conduct business.” *Taylor*, 166 F.R.D. at 361.

“Producing an unprepared witness is tantamount to a failure to appear under Rule 37(d). *Atanassova*, 2021 WL 1946520, at \*2 (citations omitted). Should Defendant fail to designate a prepared witness, Rule 37(d) permits the court to impose a panoply of sanctions that include: (1) “directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims”; (2) “prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence”; (3) “striking pleadings in whole or in part”; (4) “staying further proceedings until the order is obeyed”; (5) “dismissing the action or proceeding in whole or in part”; or (6) “rendering a default judgment against the disobedient party.” Fed. R. Civ. P. 37(b)(2)(A)(i)–(vi); *see also* Fed. R. Civ. P. 37(d)(3). In addition, the court may impose monetary sanctions related to the fees and costs incurred because of the failure. *Butler-Bohn*, 2023 WL 11922158, at \*2. *See also U.S. v. Taylor*, 166 F.R.D. at 363.

Here, Plaintiffs set forth with particularity their deposition topics as forth in the NOD. Arkema objected and through those objections is attempting to unilaterally limit the relevant time

period to cease in 2002.<sup>7</sup> That objection is baseless and contrary to the robust scope of discovery permitted in this MDL.

Arkema was a major supplier of C8-based telomer surfactants to AFFF manufacturers including Ansul, National Foam, and Chemguard among others. Arkema sold its Forafac line of surfactants to DuPont in September 2002, but it continues to produce fluorinated products and engage with regulators through to the present day regarding its legacy use of PFOA precursors.<sup>8</sup> Of course, what Arkema may have said to regulators post-2002 about its legacy use of PFOA precursors is central to understanding of “*what Arkema knew and when*” about PFOA precursors both during the time it manufactured same and thereafter. Thus, the artificial time limitation unilaterally imposed by Arkema because of its corporate ownership machinations is baseless and arbitrary. Even today, Arkema denies any liability based on a risible state of the art defense, claiming that it was unknowable whether its Forafac products were capable of degrading into carboxylates such as PFOA, persistence in the environment, bio-accumulating in living beings, or evidencing toxic properties.<sup>9</sup> Thus critical to defeating this defense is discovering if and when Arkema became aware that its products were capable of degrading to carboxylates, including PFOA, and what Arkema may have done (or not done) with such knowledge when it learned of same.

Plaintiffs have asserted multiple theories of recovery including negligence. What Arkema knew *or should have known* regarding the environmental fate and risks posed by fluorinated

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<sup>7</sup> Responses and Objections, at ¶ 5.

<sup>8</sup> <https://www.arkema.com/global/en/social-responsibility/innovation-and-sustainable-solutions/responsible-product-management/pfas/arkema-comments-on-the-ue-pfas-restriction-proposal/>, (last accessed, November 24, 2024).

<sup>9</sup> See General Denial and Preliminary Statement of Affirmative Defenses of Defendant Arkema Inc., at ¶ 21, attached as Ex. C.

products is not confined merely to the time Arkema was an active surfactant supplier to the AFFF market. Surfactants have a shelf-life measured in decades, and Arkema has an ongoing duty to identify the risks posed by its products and, at a minimum, to warn of those risks to its customers and end users who are still using Arkema's legacy products today.

Accordingly, Defendant should be compelled to produce an adequately prepared designee or be subject to an appropriate sanction.

### **III. CONCLUSION**

For the reasons set forth above, Arkema should be compelled to prepare and produce a witness to speak for the corporation regarding each of the Topics identified in the NOD from the date Arkema first began to develop Forafac to present. Further, as set forth above, Plaintiffs respectfully request that this motion be given expedited consideration given that the parties have scheduled Topics 1-2 of the NOD for December 13, 2024, and thus seek the Court's assistance on the proper temporal scope of the inquiry on those topics

Dated: November 25, 2024

Respectfully submitted,

/s/ Fred Thompson  
 Fred Thompson, III  
 Motley Rice LLC  
 28 Bridgeside Blvd.,  
 Mt. Pleasant, SC 29464  
 Tel: (843) 216-9000  
 fthompson@motleyrice.com

*Plaintiffs' Liaison Counsel*

-and-

/s/ Michael A. London  
 Michael A. London  
 Douglas and London P.C.  
 59 Maiden Lane, 6th Floor  
 New York, NY 10038  
 (212) 566-7500

(212) 566-7501 (fax)  
mlondon@douglasandlondon.com

Scott Summy  
Baron & Budd, P.C.  
3102 Oak Lawn Avenue, Suite 1100  
Dallas, TX 75219  
Tel: (214) 521-3605  
ssummy@baronbudd.com

Joseph Rice  
Motley Rice LLC  
28 Bridgeside Blvd.,  
Mt. Pleasant, SC 29464  
Tel: (843) 216-9000  
jrice@motleyrice.com

*Plaintiffs' Co-Lead Counsel*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was electronically filed with this Court's CM/ECF on this 25th day of November, 2024 and was thus served electronically upon counsel of record.

/s/ Fred Thompson, III

# EXHIBIT A



**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

**IN RE: AQUEOUS FILM-FORMING FOAMS  
(AFF) PRODUCTS LIABILITY  
LITIGATION**

**MDL No. 2:18-mn-2873-RMG**

**This Document Relates to  
ALL CASES**

**PLAINTIFFS' NOTICE OF ORAL AND VIDEOTAPED DEPOSITION OF  
DEFENDANT ARKEMA INC.**

Please take notice that, under Federal Rule of Civil Procedure 30, Plaintiffs will take the remote oral and videotaped deposition of Defendant Arkema Inc. ("Defendant") on October 8, 2024 at 9:00am (EST)

Defendant is directed to designate a person or persons to testify on its behalf on the matters listed in Schedule A attached to this Notice of Deposition. Plaintiffs request that Defendant provide the name(s) and title(s) of the person(s) it will designate to give testimony and summaries of the areas in which each designated person will give testimony. Under Federal Rules of Civil Procedure 30(b)(2) and 34, Defendant is requested to produce the documents responsive to the requests listed on Schedule B ten (10) days before the deposition is to take place. Exhibits for this deposition will be marked digitally by video teleconferencing/teleconferencing and all original exhibits will be maintained by the court reporter.

**PLEASE TAKE FURTHER NOTICE, in order to participate in the remote deposition, please contact Laura Rodia at [scheduling@golkow.com](mailto:scheduling@golkow.com) at least three (3) calendar days prior to the deposition to advise how you plan to attend the deposition either by (1) video with speaking privileges (not muted); (2) video without speaking privileges (muted); or (3) telephonically only without speaking privileges (muted). Further, failure to advise how you plan to attend at least three (3) calendar days prior to the deposition could impact your ability to attend because of the nature of remote deposition logistics, confidentiality, and security of the remote deposition.**

Dated: September 4, 2024

s/ Michael A. London  
Michael A. London  
Douglas and London PC  
59 Maiden Lane, 6th Floor  
New York, NY 10038  
212-566-7500  
212-566-7501 (fax)  
[mlondon@douglasandlondon.com](mailto:mlondon@douglasandlondon.com)

Paul J. Napoli  
Napoli Shkolnik PLLC  
360 Lexington Avenue, 11th Floor  
New York, NY 10017  
212-397-1000  
646-843-7603 (fax)  
[pnapoli@napolilaw.com](mailto:pnapoli@napolilaw.com)

Scott Summy  
Baron & Budd, P.C.  
3102 Oak Lawn Avenue, Suite 1100  
Dallas, TX 75219  
214-521-3605  
[ssummy@baronbudd.com](mailto:ssummy@baronbudd.com)

Joseph Rice  
Motley Rice LLC  
28 Bridgeside Blvd.,  
Mt. Pleasant, SC 29464  
[jrice@motleyrice.com](mailto:jrice@motleyrice.com)

*Plaintiffs' Co- Lead Counsel*

-and-

Fred Thompson III  
Motley Rice  
28 Bridgeside Blvd.  
Mount Pleasant, SC 29464  
843-216-9118  
fthompson@motleyrice.com

*Plaintiffs' Liaison Counsel*

**SCHEDULE A**  
**Definitions**

The following definitions apply to this Notice of Deposition and are deemed to be incorporated into each subject listed below:

1. “Documents” as used in this Request is coextensive with the meaning of the terms “documents” and “tangible things” in FRCP 34 and shall have the broadest possible meaning and interpretation ascribed to the terms “documents” and “tangible things” under FRCP 34. Consistent with the above definition, the term document shall include, without limitation, any written, printed, typed, photostatic, photographed, recorded, computer-generated, computer-stored, or otherwise maintained or reproduced communication or representation, any data compilation in any form, whether comprised of letters, words, numbers, pictures, sounds, bytes, e-mails, electronic signals or impulses, electronic data, active files, deleted files, file fragments, or any combination thereof including, without limitation, all memoranda, notes, records, letters, envelopes, telegrams, messages, studies, analyses, contracts, agreements, projections, estimates, working papers, accounts, analytical records, reports and/or summaries of investigations, opinions or reports of consultants, opinions or reports of experts, opinions or reports of accountants, other reports, trade letters, press releases, comparisons, books, diaries, articles, magazines, newspapers, booklets, brochures, pamphlets, circulars, bulletins, notices, forecasts, drawings, diagrams, instructions, minutes of meetings or communications of any type, including inter- and intra-office communications, questionnaires, surveys, charts, graphs, photographs, phonographs, films, tapes, discs, data cells, drums, printouts, all other compiled data which can be obtained (translated, if necessary, through intermediary or other devices into usable forms), documents maintained on,

stored in or generated on any electronic transfer or storage system, any preliminary versions, drafts or revisions of any of the foregoing, and other writings or documents of whatever description or kind, whether produced or authorized by or on behalf of you or anyone else, and shall include all non-identical copies and drafts of any of the foregoing now in the possession, custody or control of you, or the former or present directors, officers, counsel, agents, employees, partners, consultants, principals, and/or persons acting on your behalf.

2. "Relating to," "relate to," "referring to," "refer to," "reflecting," "reflect," "concerning," or "concern" shall mean evidencing, regarding, concerning, discussing, embodying, describing, summarizing, containing, constituting, showing, mentioning, reflecting, pertaining to, dealing with, relating to, referring to in any way or manner, or in any way logically or factually, connecting with the matter described in that paragraph of these demands, including documents attached to or used in the preparation of or concerning the preparation of the documents.

3. "You" and "your" means Arkema Inc. or its predecessors in interest, and any of their directors, officers, sales representatives, agents (including attorneys, accountants, consultants, investment advisors or bankers), employees, representatives and any other person purporting to act on their behalf. In the case of business entities, these defined terms include divisions, affiliates, subsidiaries, predecessor entities, acquired entities, related entities, or any other entity acting or purporting to act on your behalf.

4. "Or" and "and" will be used interchangeably.

5. Unless otherwise indicated, the relevant time period for the information sought for each request is from the date you first conceived or began to research or develop YOUR earliest Per- and/or Polyfluorinated Substances, Perfluorooctane Sulfonate and Perfluorooctanoic Acid and/or Perfluorohexanoic acid, and / or their precursors and derivatives, whichever is earliest, to the present.

Pursuant to Federal Rule of Civil Procedure 30(b)(6), Defendant shall be prepared to testify regarding the following subjects:

1. The nature, extent, substance and timing of Defendant's knowledge of the chemical characteristics of PFOA precursors, PFOS, PFOA, and surfactants used in AFFF, including but not limited to their biopersistent and bioaccumulative nature, toxicity, their environmental persistence, their water soluble nature, fate and transport, and their thermal, chemical and biological stability, and resistance to biodegradation.
2. The nature, extent, substance and timing of any changes over time to any applicable industry standards that affected in any way Defendant's assessment or understanding of any potential hazards or risks of harm to humans from exposure to PFOS, PFOA or its precursors including surfactants manufactured for use in AFFF.
3. The nature, extent, substance and timing of Defendant's interactions with regulators regarding the use of fluorosurfactants in AFFF.
4. Defendant's membership or participation in industry trade groups, organizations, associations, including but not limited to the Fire Fighting Foam Coalition or any entity engaged in lobbying, industry technical reviews, development of industry positions, or interactions with other organizations including environmental agencies, militaries, approval agencies, and standards bodies, on behalf of AFFF manufacturers, fluorosurfactant manufacturers, perfluoroalkyl substance manufacturers, and distributors.
5. The nature, extent, substance and timing of Defendant's interactions with any association or entity which develops training materials, best practices guidance, industry standards or provides training instruction to fire fighters, including but not limited to the International Fire Service Training Association and National Fire Protection Association.
6. The content of any promotional materials, training manuals, manuals, material safety datasheets and / or guidance you provided to salespersons, territory managers, marketing and communications (Marcom) teams, distributors, or end users regarding the use, handling, and disposal of AFFF or fluorosurfactants.

**SCHEDULE B:**

**REQUESTS FOR PRODUCTION:**

1. All documents discussing, referring, relating and/or pertaining to the chemical characteristics of PFOS, PFOA, PFOA precursors, and surfactants used in AFFF, including but not limited to their biopersistent and bioaccumulative nature, toxicity, their environmental persistence, their water soluble nature, fate and transport, and their thermal, chemical and biological stability, and resistance to biodegradation.
2. A bates listing of all documents reviewed by the corporate witness(es).
3. All documents discussing, referring, relating and/or pertaining to industry standards that affected in any way Defendant's assessment or understanding of any potential hazards or risks of harm to humans from exposure to PFOS, PFOA or its precursors.
4. All documents discussing, referring, relating and/or pertaining to Defendant's interactions with regulators regarding the use of fluorosurfactants in AFFF.
5. All documents discussing, referring, relating and/or pertaining to Defendant's membership or participation in industry trade groups, organizations, associations, including but not limited to the Fire Fighting Foam Coalition or any entity engaged in lobbying, industry technical reviews, development of industry positions, or interactions with other organizations including environmental agencies, militaries, approval agencies, and standards bodies, on behalf of AFFF manufacturers, fluorosurfactant manufacturers, perfluoroalkyl substance manufacturers, and distributors.
6. All documents discussing, referring, relating and/or pertaining to Defendant's interactions with any association or entity which develops training materials, best practices guidance, industry standards or provides training instruction to fire fighters, including but not limited to the International Fire Service Training Association and National Fire Protection Association.
7. All documents discussing, referring, relating and/or pertaining to content of Defendant's promotional materials, training manuals, manuals, material safety datasheets and / or guidance you provided to salespersons, territory managers, marketing and communications (Marcom) teams, distributors, or end users regarding the use, handling, and disposal of AFFF or fluorosurfactants.

**CERTIFICATE OF SERVICE**

I hereby certify that on September 4, 2024, a true and correct copy of the foregoing Plaintiffs' Notice of Oral and Videotaped Remote Deposition of Defendant Arkema Inc. was served via electronic mail upon the following:

Lisa M. Gilford  
Daniel A. Spira  
Sidley Austin LLP  
One South Dearborn Street  
Chicago, IL 60603  
P: (312) 853-7000  
lgilford@sidley.com  
dspira@sidley.com

*Counsel for Defendant Arkema Inc.*

Joseph G. Petrosinelli  
Williams & Connolly LLP  
725 Twelfth Street, N.W.  
Washington, DC 20005  
P: (202) 434-5547  
F: (202) 434-5029  
jpetrosinelli@wc.com

Michael A. Olsen  
Mayer Brown LLP  
71 South Wacker Drive  
Chicago, IL 60606  
P: (312) 701-7120  
F: (312) 706-8742  
molsen@mayerbrown.com

*Co-lead Counsel for Defendants*

Brian Duffy  
Duffy & Young LLC  
96 Broad Street  
Charleston, SC 29401  
P: (843) 720-2044  
F: (843) 720-2047  
bduffy@duffyandyoung.com

David E. Dukes  
Nelson Mullins Riley & Scarborough LLP  
1320 Main Street, 17th Floor  
Columbia, SC 29201  
P: (803) 255-9451  
F: (803) 256-7500  
david.dukes@nelsonmullins.com

*Co-liaison Counsel for Defendants*

s/ Michael A. London  
Michael A. London  
Douglas and London, P.C.  
59 Maiden Lane, 6th Floor  
New York, NY 10038  
P: (212) 566-7500  
F: (212) 566-7501

*Plaintiffs' Co-Lead Counsel*

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# EXHIBIT B

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

IN RE: AQUEOUS FILM-FORMING	)	MDL No. 2:18-mn-2873-RMG
FOAMS PRODUCTS LIABILITY	)	
LITIGATION	)	
	)	This Document relates to:
	)	ALL CASES
	)	
	)	

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**DEFENDANT ARKEMA INC.'S RESPONSES AND OBJECTIONS TO PLAINTIFFS'  
NOTICE OF ORAL AND VIDEOTAPED DEPOSITION OF DEFENDANT  
ARKEMA INC.**

Pursuant to Federal Rules of Civil Procedure 26, 30, and 34, Defendant Arkema Inc. hereby responds and objects to Plaintiffs' Notice of Deposition of Defendant Arkema Inc. (the "Notice"), including the topics for examination set forth in Schedule A to the Notice ("Topics") and the Requests for Production for Documents set forth in Schedule B to the Notice ("Requests"). The objections and responses set forth below are based on information Arkema Inc. has gathered to date. Discovery is ongoing, and Arkema Inc. reserves any and all rights pursuant to Fed. R. Civ. P. 26(e), 30, and 34 to amend, revise, correct, supplement, and/or clarify any of its general or specific responses and/or objections herein.

**GENERAL OBJECTIONS**

1. Arkema Inc. objects to, and will not be bound by, the "Definitions" in the Notice to the extent they attempt to impose duties and obligations on Arkema Inc. that exceed, or are different from, those imposed or authorized by the Federal Rules of Civil Procedure, the Local Rules of this Court, agreements between the Parties, or the Court's orders, including, but not limited to, the extent to which they exceed the permissible scope of discovery.

2. Arkema Inc. objects to, and will not be bound by, the "Definitions" in the Notice, to the extent that they vary, differ, or deviate from those provided in Federal Rule of Evidence

1001, from the ordinary and customary use or meaning of the referenced terms, and/or from definitions or usages that are widely accepted in the scientific community.

3. Arkema Inc. objects to Definition No. 1 (purporting to define “Documents”), as overly broad, unduly burdensome, and oppressive to the extent it calls for the production of duplicative documents, or electronic or hard copy documents that are not reasonably accessible because of undue burden and cost. Arkema Inc. further objects to this definition to the extent it is inconsistent with CMO No. 4 and the “Order Establishing Protocol for Document Collection and Production” entered by the Court, and/or purports to impose obligations beyond those set forth in the Federal Rules of Civil Procedure, Local Rules, or this Court’s orders. Arkema Inc. further objects to this definition to the extent it seeks information that is neither relevant nor proportional to the needs of this litigation, and/or seeks information that is not in the possession, custody, or control of Arkema Inc.

4. Arkema Inc. objects to Definition No. 3 (purporting to define “You” and “your”) as overly broad and unduly burdensome, to the extent that it encompasses entities other than Arkema Inc. and purports to require Arkema Inc. to produce information or documents that may be in the possession, custody, or control of “divisions, affiliates, subsidiaries, predecessor entities, acquired entities, related entities,” or other third parties. Arkema Inc. will respond to the Notice, including the Topics and Requests, based on information within its own possession, custody, and control.

5. Arkema Inc. objects to Definition No. 5 (purporting to define the “relevant time period” as being “from the date you first conceived or began to research or develop YOUR earliest Per- and/or Polyfluorinated Substances, Perfluorooctane Sulfonate and Perfluorooctanoic Acid and/or Perfluorohexanoic acid, and/or their precursors and derivatives, whichever is

earliest, to the present”), as being overly broad, unduly burdensome, and oppressive to the extent it seeks information that is neither relevant nor proportional to the needs of this litigation, including insofar as it purports to encompass time periods during which Arkema Inc. neither manufactured nor sold products incorporated into AFFF or relevant to Plaintiffs’ claims. Arkema Inc. has not manufactured or processed any products that it reasonably believes have been incorporated into AFFF or AFFF Products. Additionally, since 2002, Arkema Inc. has not sold any products in the United States that it reasonably believes have been incorporated into AFFF or AFFF products. Arkema Inc. therefore defines the relevant time period as ending in September 2002. Except where otherwise stated, Arkema Inc. will provide information and produce relevant, responsive, non-privileged documents for the time period through September 2002.

6. Arkema Inc.’s Responses are based upon its good faith interpretation of the Notice. Should a different interpretation of any Topic or Request be asserted, Arkema Inc. reserves the right to add to, modify, or otherwise change or amend these Responses.

7. Arkema Inc.’s Responses to this Notice are based only upon facts known at this time. Discovery in this matter is ongoing, and during the course of subsequent discovery, Arkema Inc. may become aware of supplemental, additional, or other responsive information or documents. Arkema Inc. reserves the right to update, amend, or supplement these Responses. In addition, these Responses are made without prejudice to Arkema Inc.’s right to present further additional or other evidence or contentions in a motion for summary judgment, at trial, or otherwise, based upon information hereafter identified, obtained, or developed.

8. In furnishing these responses, Arkema Inc. does not admit or concede the relevance, materiality, or admissibility in evidence of any Topic or Request, any information

included in response thereto, or any document disclosed. All objections to the use, at trial or otherwise, of any document or piece of information disclosed in response to the Notice are expressly reserved.

These General Objections are hereby incorporated into each Response below.

**RESPONSES AND OBJECTIONS TO PLAINTIFFS' TOPICS**

**SUBJECT NO. 1:**

The nature, extent, substance and timing of Defendant's knowledge of the chemical characteristics of PFOA precursors, PFOS, PFOA, and surfactants used in AFFF, including but not limited to their biopersistent and bioaccumulative nature, toxicity, their environmental persistence, their water soluble nature, fate and transport, and their thermal, chemical and biological stability, and resistance to biodegradation.

**RESPONSE:** In addition to its General Objections, Arkema Inc. objects to this Topic on the grounds that it is overbroad, unduly burdensome, seeks irrelevant information, and is not proportional to the needs of this litigation, insofar as it seeks information without limitation to (i) the time period during which Arkema Inc. sold fluorosurfactants that it reasonably believes were incorporated into AFFF products by AFFF manufacturers, or (ii) the fluorosurfactants that Arkema Inc. sold to AFFF manufacturers or that AFFF manufacturers incorporated into AFFF products. Arkema Inc. further objects to the term "PFOA precursors" on the grounds that it is vague and ambiguous.

Subject to the limitations set forth in the foregoing general and specific objections, Arkema Inc. will produce a witness to testify concerning this Topic, as it relates to fluorosurfactants sold by Arkema Inc. that it reasonably believes were incorporated by AFFF manufacturers into AFFF products, and limited to the time period during which Arkema Inc. sold such fluorosurfactants.

**SUBJECT NO. 2:**

The nature, extent, substance and timing of any changes over time to any applicable industry standards that affected in any way Defendant's assessment or understanding of any potential

hazards or risks of harm to humans from exposure to PFOS, PFOA or its precursors including surfactants manufactured for use in AFFF.

**RESPONSE:** In addition to its General Objections, Arkema Inc. objects to this Topic on the grounds that it is overbroad, unduly burdensome, seeks irrelevant information, and is not proportional to the needs of this litigation, insofar as it seeks information without limitation to (i) the time period during which Arkema Inc. sold fluorosurfactants that it reasonably believes were incorporated into AFFF products by AFFF manufacturers, or (ii) the fluorosurfactants that Arkema Inc. sold to AFFF manufacturers or that AFFF manufacturers incorporated into AFFF products. Arkema Inc. further objects to the terms “PFOA or its precursors” and “applicable industry standards” on the grounds that they are vague, ambiguous, and undefined.

Subject to the limitations set forth in the foregoing general and specific objections, Arkema Inc. will produce a witness to testify concerning this Topic, as it relates to fluorosurfactants sold by Arkema Inc. that it reasonably believes were incorporated by AFFF manufacturers into AFFF products, and limited to the time period during which Arkema Inc. sold such fluorosurfactants.

**SUBJECT NO. 3:**

The nature, extent, substance and timing of Defendant’s interactions with regulators regarding the use of fluorosurfactants in AFFF.

**RESPONSE:** In addition to its General Objections, Arkema Inc. objects to this Topic on the grounds that it is overbroad, unduly burdensome, seeks irrelevant information, and is not proportional to the needs of this litigation, insofar as it seeks information without limitation to the time period during which Arkema Inc. sold fluorosurfactants that it reasonably believes were incorporated into AFFF products by AFFF manufacturers, or (ii) the fluorosurfactants that Arkema Inc. sold to AFFF manufacturers.

Subject to the limitations set forth in the foregoing general and specific objections, Arkema Inc. will produce a witness to testify concerning this Topic, as it relates to fluorosurfactants sold by Arkema Inc. that it reasonably believes were incorporated by AFFF manufacturers into AFFF products, and limited to the time period during which Arkema Inc. sold such fluorosurfactants.

**SUBJECT NO. 4:**

Defendant's membership or participation in industry trade groups, organizations, associations, including but not limited to the Fire Fighting Foam Coalition or any entity engaged in lobbying, industry technical reviews, development of industry positions, or interactions with other organizations including environmental agencies, militaries, approval agencies, and standards bodies, on behalf of AFFF manufacturers, fluorosurfactant manufacturers, perfluoroalkyl substance manufacturers, and distributors.

**RESPONSE:** In addition to its General Objections, Arkema Inc. objects to this Topic on the grounds that it is overbroad, unduly burdensome, seeks irrelevant information, and is not proportional to the needs of this litigation, insofar as it seeks information without limitation to (i) the time period during which Arkema Inc. sold fluorosurfactants that it reasonably believes were incorporated into AFFF products by AFFF manufacturers, or (ii) the fluorosurfactants that Arkema Inc. sold to AFFF manufacturers or that AFFF manufacturers incorporated into AFFF products. Arkema Inc. further objects to the terms "industry positions," "environmental agencies," "approval agencies," and "standards bodies" on the grounds that they are vague, ambiguous, and undefined.

Subject to the limitations set forth in the foregoing general and specific objections, Arkema Inc. will produce a witness to testify concerning this Topic, as it relates to fluorosurfactants sold by Arkema Inc. that it reasonably believes were incorporated by AFFF manufacturers into AFFF products, and limited to the time period during which Arkema Inc. sold such fluorosurfactants.

**SUBJECT NO. 5:**

The nature, extent, substance and timing of Defendant's interactions with any association or entity which develops training materials, best practices guidance, industry standards or provides training instruction to fire fighters, including but not limited to the International Fire Service Training Association and National Fire Protection Association.

**RESPONSE:** In addition to its General Objections, Arkema Inc. objects to this Topic on the grounds that it is overbroad, unduly burdensome, seeks irrelevant information, and is not proportional to the needs of this litigation, insofar as it seeks information without limitation to (i) the time period during which Arkema Inc. sold fluorosurfactants that it reasonably believes were incorporated into AFFF products by AFFF manufacturers, or (ii) "interactions with any association or entity" related to the use of fluorosurfactants in AFFF products.

Subject to the limitations set forth in the foregoing general and specific objections, Arkema Inc. will produce a witness to testify concerning this Topic, as it relates to fluorosurfactants sold by Arkema Inc. that it reasonably believes were incorporated by AFFF manufacturers into AFFF products, and limited to the time period during which Arkema Inc. sold such fluorosurfactants.

**SUBJECT NO. 6:**

The content of any promotional materials, training manuals, manuals, material safety datasheets and / or guidance you provided to salespersons [sic], territory managers, marketing and communications (Marcom) teams, distributors, or end users regarding the use, handling, and disposal of AFFF or fluorosurfactants.

**RESPONSE:** In addition to its General Objections, Arkema Inc. objects to this Topic on the grounds that it is overbroad, unduly burdensome, seeks irrelevant information, and is not proportional to the needs of this litigation, to the extent it seeks information without limitation to (i) the time period during which Arkema Inc. sold fluorosurfactants that it reasonably believes were incorporated into AFFF products by AFFF manufacturers, or (ii) the fluorosurfactants that



Arkema Inc. sold to AFFF manufacturers. Arkema Inc. further objects to the term “guidance” on the grounds that it is vague, ambiguous, and undefined.

Subject to the limitations set forth in the foregoing general and specific objections, Arkema Inc. will produce a witness to testify concerning this Topic, as it relates to fluorosurfactants sold by Arkema Inc. that it reasonably believes were incorporated by AFFF manufacturers into AFFF products, and limited to the time period during which Arkema Inc. sold such fluorosurfactants.

## **RESPONSES AND OBJECTIONS TO PLAINTIFFS’ REQUESTS FOR PRODUCTION**

### **REQUEST FOR PRODUCTION NO. 1:**

All documents discussing, referring, relating and/or pertaining to the chemical characteristics of PFOS, PFOA, PFOA precursors, and surfactants used in AFFF, including but not limited to their biopersistent and bioaccumulative nature, toxicity, their environmental persistence, their water soluble nature, fate and transport, and their thermal, chemical and biological stability, and resistance to biodegradation.

**RESPONSE:** In addition to its General Objections, Arkema Inc. objects to this Request on the grounds that it is overbroad, unduly burdensome, seeks irrelevant information, and is not proportional to the needs of this litigation, insofar as it seeks all documents without limitation to (i) the time period in which Arkema Inc. sold fluorosurfactants that it reasonably believes were incorporated into AFFF products by AFFF manufacturers, or (ii) the fluorosurfactants that Arkema Inc. sold to AFFF manufacturers. Arkema Inc. further objects to the term “PFOA precursors” on the grounds that it is vague and ambiguous. Arkema Inc. further objects to this Request as duplicative of Plaintiffs’ prior requests for production, and refers Plaintiffs to Arkema Inc.’s prior responses and the documents produced by Arkema Inc. and other parties to this litigation.

Subject to the foregoing general and specific objections, Arkema Inc. will produce any additional responsive, non-privileged documents in its possession, custody, or control, should any be located through a reasonably diligent search.

**REQUEST FOR PRODUCTION NO. 2:**

A bates listing of all documents reviewed by the corporate witness(es).

**RESPONSE:** Arkema Inc. objects to this Request to the extent it seeks documents protected by the attorney-client privilege, attorney work product doctrine, common interest privilege, or any other protection from discovery, and expressly reserves and does not waive such protections.

Arkema Inc. additionally objects to this Request on the grounds that it is overbroad, unduly burdensome, seeks irrelevant information, and is not proportional to the needs of the litigation, insofar as it is not limited to documents produced in or relevant to this litigation, or documents reviewed or relied upon by the witness(es) in preparation for this deposition.

Subject to the foregoing general and specific objections, Arkema Inc. will produce a listing of the documents reviewed by the corporate witness(es) in preparation for this deposition.

**REQUEST FOR PRODUCTION NO. 3:**

All documents discussing, referring, relating and/or pertaining to industry standards that affected in any way Defendant's assessment or understanding of any potential hazards or risks of harm to humans from exposure to PFOS, PFOA or its precursors.

**RESPONSE:** In addition to its General Objections, Arkema Inc. objects to this Request on the grounds that it is overbroad, unduly burdensome, seeks irrelevant information, and is not proportional to the needs of this litigation, insofar as it seeks all documents without limitation to (i) the time period in which Arkema Inc. sold fluorosurfactants that it reasonably believes were incorporated into AFFF products by AFFF manufacturers, or (ii) the fluorosurfactants that Arkema Inc. sold to AFFF manufacturers. Arkema Inc. further objects to the terms "PFOA or its precursors" and "applicable industry standards" on the grounds that they are vague, ambiguous,

and undefined. Arkema Inc. further objects to this Request to the extent that it seeks documents which are not in Arkema Inc.'s possession, custody, or control; documents which have already been produced by other parties in this litigation; and/or documents which are already in the possession of Plaintiffs, or are otherwise publicly available.

Subject to the foregoing general and specific objections, Arkema Inc. refers to its previous document productions, and responds that it will produce any additional responsive, non-privileged documents in its possession, custody, or control, should any be located through a reasonably diligent search.

**REQUEST FOR PRODUCTION NO. 4:**

All documents discussing, referring, relating and/or pertaining to Defendant's interactions with regulators regarding the use of fluorosurfactants in AFFF.

**RESPONSE:** In addition to its General Objections, Arkema Inc. objects to this Request on the grounds that it is overbroad, unduly burdensome, seeks irrelevant information, and is not proportional to the needs of this litigation, insofar as it seeks all documents without limitation to (i) the time period during which Arkema Inc. sold fluorosurfactants that it reasonably believes were incorporated into AFFF products by AFFF manufacturers, (ii) the fluorosurfactants that Arkema Inc. sold to AFFF manufacturers. Arkema Inc. further objects to this Request as duplicative of Plaintiffs' prior requests for production, and refers Plaintiffs to Arkema Inc.'s prior responses and the documents produced by Arkema Inc. and other parties to this litigation.

Subject to the foregoing general and specific objections, Arkema Inc. refers to its previous document productions, and responds that Arkema Inc. has not identified additional responsive documents, based on a reasonable search.

**REQUEST FOR PRODUCTION NO. 5:**

All documents discussing, referring, relating and/or pertaining to Defendant's membership or participation in industry trade groups, organizations, associations, including but not limited to the Fire Fighting Foam Coalition or any entity engaged in lobbying, industry technical reviews,

development of industry positions, or interactions with other organizations including environmental agencies, militaries, approval agencies, and standards bodies, on behalf of AFFF manufacturers, fluorosurfactant manufacturers, perfluoroalkyl substance manufacturers, and distributors.

**RESPONSE:** In addition to its General Objections, Arkema Inc. objects to this Request on the grounds that it is overbroad, unduly burdensome, seeks irrelevant information, and not proportional to the needs of this litigation, insofar as it seeks all documents without limitation to (i) the time period during which Arkema Inc. sold fluorosurfactants that it reasonably believes were incorporated into AFFF products by AFFF manufacturers, or (ii) the fluorosurfactants that Arkema Inc. sold to AFFF manufacturers or that AFFF manufacturers incorporated into AFFF products. Arkema Inc. further objects to the terms “industry positions,” “environmental agencies,” “approval agencies,” and “standards bodies” on the grounds that they are vague, ambiguous, and undefined. Arkema Inc. further objects to this Request as duplicative of Plaintiffs’ prior requests for production, and refers Plaintiffs to Arkema Inc.’s prior responses and the documents produced by Arkema Inc. and other parties to this litigation.

Subject to the foregoing general and specific objections, Arkema Inc. refers to its previous document productions, and responds that Arkema Inc. has not identified additional responsive documents, based on a reasonable search.

**REQUEST FOR PRODUCTION NO. 6:**

All documents discussing, referring, relating and/or pertaining to Defendant’s interactions with any association or entity which develops training materials, best practices guidance, industry standards or provides training instruction to fire fighters, including but not limited to the International Fire Service Training Association and National Fire Protection Association.

**RESPONSE:** In addition to its General Objections, Arkema Inc. objects to this Request on the grounds that it is overbroad, unduly burdensome, seeks irrelevant information, and is not proportional to the needs of this litigation, insofar as it seeks all documents without limitation to (i) the time period in which Arkema Inc. sold fluorosurfactants that it reasonably believes were

incorporated into AFFF products by AFFF manufacturers, or (ii) “training materials, best practices guidance, industry standards or . . . training instruction” related to the fluorosurfactants that Arkema Inc. sold to AFFF manufacturers or that AFFF manufacturers incorporated into AFFF products. Arkema Inc. further objects to this Request as duplicative of Plaintiffs’ prior requests for production, and refers Plaintiffs to Arkema Inc.’s prior responses and the documents produced by Arkema Inc. and other parties to this litigation.

Subject to the foregoing general and specific objections, Arkema Inc. refers to its previous document productions, and responds that Arkema Inc. has not identified additional responsive documents, based on a reasonable search.

**REQUEST FOR PRODUCTION NO. 7:**

All documents discussing, referring, relating and/or pertaining to content of Defendant’s promotional materials, training manuals, manuals, material safety datasheets and / or guidance you provided to salespersons, territory managers, marketing and communications (Marcom) teams, distributors, or end users regarding in the use, handling, and disposal of AFFF or fluorosurfactants.

**RESPONSE:** In addition to its General Objections, Arkema Inc. objects to this Request on the grounds that it is overbroad, unduly burdensome, seeks irrelevant information, and is not proportional to the needs of this litigation, to the extent it seeks all documents without limitation to (i) the time period in which Arkema Inc. sold fluorosurfactants that it reasonably believes were incorporated into AFFF products by AFFF manufacturers, or (ii) the fluorosurfactants that Arkema Inc. sold to AFFF manufacturers. Arkema Inc. further objects to the term “guidance” on the grounds that it is vague, ambiguous, and undefined. Arkema Inc. further objects to this Request as duplicative of Plaintiffs’ prior requests for production, and refers Plaintiffs to Arkema Inc.’s prior responses and the documents produced by Arkema Inc. and other parties to this litigation.

Notwithstanding and without waiver of the foregoing general and specific objections, Arkema Inc. refers Plaintiffs to its previous document productions, and responds that it will produce any additional responsive, non-privileged documents in its possession, custody, or control, should any be located through a reasonably diligent search.

Dated: November 1, 2024

/s/ Daniel A. Spira

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Lisa M. Gilford  
SIDLEY AUSTIN LLP  
350 S Grand Ave  
Los Angeles, CA 90071  
Tel: (213) 896-6000  
lgilford@sidley.com

Daniel A. Spira  
SIDLEY AUSTIN LLP  
One South Dearborn Street  
Chicago, IL 60603  
Tel: (312) 853-7000  
dspira@sidley.com

*Counsel for Arkema Inc*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 1, 2024, I caused a true and correct copy of the foregoing **RESPONSES AND OBJECTIONS TO PLAINTIFFS' NOTICE OF ORAL AND VIDEOTAPED DEPOSITION OF DEFENDANT ARKEMA INC.** to be served via email on

Lead Counsel and Liaison Counsel of record in the above-captioned action:

Michael A London  
DOUGLAS & LONDON PC  
59 Maiden Lane  
6th Floor  
New York, NY 10038  
P: (212) 566-7500  
F: (212) 566-7501  
Email: [mlondon@douglasandlondon.com](mailto:mlondon@douglasandlondon.com)

Paul J. Napoli  
NAPOLI SHKOLNIK PLLC  
1301 Avenue Of The Americas  
10th Floor  
New York, NY 10019  
P: (212) 397-1000  
F: (646) 843-7603  
Email: [pnapoli@napolilaw.com](mailto:pnapoli@napolilaw.com)

Scott Summy  
BARON & BUDD, P.C.  
3102 Oak Lawn Avenue  
Suite 1100  
Dallas, TX 75219  
P: (214) 521-3605  
Email: [ssummy@baronbudd.com](mailto:ssummy@baronbudd.com)

*Co-Lead Counsel for Plaintiffs*

Fred Thompson, III  
MOTLEY RICE LLC  
28 Bridgeside Boulevard  
Mt Pleasant, SC 29464  
P: (843) 216-9000  
F: (843) 216-9440  
Email: [fthompson@motleyrice.com](mailto:fthompson@motleyrice.com)

*Liaison Counsel for Plaintiffs*

Joseph G. Petrosinelli  
WILLIAMS &CONNOLLY LLP  
725 Twelfth Street, N.W.  
Washington, DC 20005  
P: (202) 434-5547  
F: (202) 434-5029  
Email: [jpetrosinelli@wc.com](mailto:jpetrosinelli@wc.com)

*Co-Lead Counsel for Defendants*

David E. Dukes  
NELSON MULLINS RILEY &SCARBOROUGH LLP  
1320 Main Street  
17th Floor  
Columbia, SC 29201  
P: (803) 255-9451  
F: (803) 256-7500  
Email: [david.dukes@nelsonmullins.com](mailto:david.dukes@nelsonmullins.com)

*Co-Liaison Counsel for Defendants*

/s/ Daniel A. Spira



# EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

**IN RE: AQUEOUS FILM-FORMING  
FOAMS PRODUCTS LIABILITY  
LITIGATION**

MDL NO: 2:18-MN-2873-RMG

This filing relates to:

2:19-cv-1275-RMG

2:19-cv-1382-RMG

2:19-cv-1850-RMG

2:19-cv-2784-RMG

2:19-cv-3047-RMG

**GENERAL DENIAL AND PRELIMINARY STATEMENT OF AFFIRMATIVE  
DEFENSES OF DEFENDANT ARKEMA INC.**

Defendant Arkema Inc. (“Arkema” or “Defendant”), by and through its undersigned counsel, and pursuant to the Court’s instructions at the July 26, 2019 status conference, hereby submits this general denial and statement of affirmative defenses in response to Plaintiffs’ Complaints filed in the above-referenced actions, and to any other Complaint filed by any other Plaintiff against Arkema that becomes subject to the administration of this MDL (“Plaintiffs”), as follows:

**GENERAL DENIAL**

Pursuant to Federal Rule of Civil Procedure 8(b)(3), Arkema denies generally and specifically each and every allegation set forth in the Complaints, and the whole thereof, and each and every alleged cause of action therein, and Arkema demands strict proof of the same by a preponderance of the evidence and/or by clear and convincing evidence as required by law. Arkema further denies that Plaintiffs have sufficiently alleged grounds upon which any relief could be granted. Arkema further denies that Plaintiffs have sustained damages in any sums

alleged, or any sums at all, or are entitled to relief of any type, by reason of any act, breach, or omission on the part of Arkema or anyone acting on its behalf. Arkema reserves its rights to assert cross-claims and/or third-party claims, and does not waive its ability to separately and fully answer or otherwise respond to each Complaint in accordance with any scheduling order to be entered by the Court.

### **AFFIRMATIVE DEFENSES**

1. The Complaints, and each cause of action or count alleged therein, fail to state facts sufficient to constitute a claim upon which relief may be granted against Defendant.

2. The court in which the actions were filed, or which Plaintiffs have designated as the “Home Venues,” lack personal jurisdiction over Defendant, and the Complaints should therefore be dismissed under Rule 12(b)(2) of the Federal Rules of Civil Procedure.

3. Plaintiffs’ claims are barred or limited for lack of standing.

4. The Complaints, and each alleged claim contained therein, are barred, in whole or in part, by the applicable statutes of limitations.

5. The Complaints, and each alleged claim contained therein, are barred, in whole or in part, by the applicable statutes of repose.

6. The Complaints, and each cause of action or count alleged therein, fail to join all necessary and indispensable parties.

7. The Complaints, and each alleged claim contained therein, are barred, in whole or in part, by the doctrine of laches.

8. The Complaints, and each alleged claim contained therein, are barred, in whole or in part, because Plaintiffs are not the real parties in interest or lack capacity to bring their claims,

including claims indirectly maintained on behalf of their citizens and/or customers and claims brought as *parens patriae*.

9. Plaintiffs' claims are not ripe and/or have been mooted.

10. Plaintiffs' claims are or may be barred, in whole or in part, to the extent they have failed to exhaust administrative remedies.

11. Plaintiffs may be barred by the doctrine of unclean hands from all forms of relief sought in the Complaints.

12. Plaintiffs may be barred by the doctrines of estoppel and/or waiver from all forms of relief sought in the Complaints.

13. Plaintiffs may be barred by the doctrines of res judicata and collateral estoppel from all forms of relief sought in the Complaints.

14. Plaintiffs' claims are barred in whole or in part under the bulk supplier, component part supplier, sophisticated-purchaser, sophisticated-user, sophisticated intermediary, and/or knowledgeable-user doctrines or other similar or related doctrines available under applicable law.

15. Any injuries and/or damages sustained by Plaintiffs may have been caused or contributed to by the negligence or actual conduct of Plaintiffs and/or other persons, firms, corporations, or entities over whom Defendant had no control or right of control and for whom Defendant is not responsible.

16. Any injuries and/or damages sustained by Plaintiffs are barred by the doctrines of intervening cause and/or superseding cause.

17. Plaintiffs' claims are or may be barred, in whole or in part, to the extent that Defendant's products were unforeseeably misused or altered.

18. Plaintiffs' claims are or may be barred, in whole or in part, by the doctrine of election of remedies.

19. Plaintiffs' claims are subject to all defenses that could be asserted if Plaintiffs' claims were properly made by individuals on whose behalf or for whose alleged damages Plaintiffs seek to recover.

20. Plaintiffs' claims are or may be barred, in whole or in part, under applicable common law or statutory doctrines, including but not limited to avoidable consequences, voluntary exposure, assumption of risk, and open and obvious risk.

21. Plaintiffs' claims are or may be barred, in whole or in part, because Defendant has not designed, tested, or manufactured AFFF, has not designed, tested, or manufactured PFAS to which Plaintiffs were allegedly exposed, and used proper methods in designing, testing, and manufacturing its products in conformity with (i) federal and state regulations, standards, specifications, and laws in effect; (ii) available knowledge and research of the scientific and industrial communities; (iii) generally recognized and prevailing industry standards; and (iv) state of the art in existence at the time the design was prepared and the products were manufactured and tested.

22. Plaintiffs' claims are or may be barred, in whole or in part, because any alleged levels of contamination did not exceed any applicable laws or binding regulatory standards at the relevant times.

23. Plaintiffs' claims are or may be barred, in whole or in part, because federal, state, and/or local authorities authorized, ratified, or were aware of and acquiesced in actions by Defendant that are the subject of Plaintiffs' claims. Defendant is not responsible or liable for any acts or omissions undertaken by or at the direction of any governmental authority or agency.

24. Plaintiffs' claims are or may be barred, in whole or in part, by the doctrine of primary jurisdiction.

25. Plaintiffs' claims are or may be barred, in whole or in part, under the doctrine of federal preemption, including, without limitation, express preemption, implied conflict preemption, and field preemption, pursuant to any applicable statutes, regulations, guidance documents, notices, military specification, and policy statements, enacted and/or promulgated and/or issued by Congress, federal agencies, or the executive branch, including, without limitation, to the extent Plaintiffs' claims constitute an impermissible challenge to a response or remediation action under CERCLA, 42 U.S.C. § 9613(h).

26. Plaintiffs' claims are or may be barred, in whole or in part, to the extent that any warranties were disclaimed and/or are limited by applicable provisions of the UCC.

27. Plaintiffs' warranty claims, if any, are or may be barred, in whole or in part, because Plaintiffs did not provide Defendant reasonable notice of any alleged breach.

28. Plaintiffs' warranty claims, if any, are or may be barred, in whole or in part, by the voluntary payment doctrine and/or the partial payment doctrine.

29. Plaintiffs' damages, if any, were caused by the active, direct, and proximate negligence or actual conduct of entities or persons other than Defendant, and in the event that Defendant is found to be liable to Plaintiffs, Defendant will be entitled to indemnification, contribution, and/or apportionment.

30. Defendant asserts its rights to allocation or apportionment of fault pursuant to applicable state law, as well as its right to a proportionate reduction of any damages found against Defendant based on the negligence or other conduct of any settling tortfeasor and/or responsible third party and/or Plaintiffs.

31. Plaintiffs' claims against Defendant are barred or limited by the economic loss rule.

32. Plaintiffs may have failed or refused to exercise reasonable care and diligence to avoid loss and minimize damages and, therefore, may not recover for losses that could have been prevented by reasonable efforts on their part, or by expenditures which might reasonably have been made. Recovery, if any, should therefore be reduced by Plaintiffs' failure to mitigate damages, if any.

33. Plaintiffs' claims are barred, in whole or in part, by the doctrines of acquiescence, accord and satisfaction, ratification, settlement, or release.

34. Plaintiffs have not alleged an injury that, as a matter of law, supports a recovery in tort.

35. To the extent that Plaintiffs have split their claims, Plaintiffs' claims are barred in whole, or in part, by the doctrine prohibiting claim splitting.

36. Plaintiffs' claims are barred, in whole or in part, because Defendant did not owe a legal duty to Plaintiffs or, if they owed such a duty, did not breach and/or fully discharged that duty.

37. Plaintiffs' claims are barred, in whole or in part, because, at all relevant times, Defendant exercised due care with respect to its activities and took reasonable precautions against foreseeable acts or omissions of others.

38. Plaintiffs' claims are barred, in whole or in part, because none of the alleged acts or omissions of Defendant proximately caused the purported injuries and damages allegedly sustained by Plaintiffs.

39. Plaintiffs' claims are barred, in whole or in part, because to the extent Defendant owed any cognizable duty to warn, Defendant adequately discharged any such duty.

40. Plaintiffs' claim for alleged injuries and damages are barred, in whole or in part, because the claims are speculative and conjectural.

41. The relief that Plaintiffs seek, in whole or in part, violates Defendant's due process rights.

42. Defendant denies any negligence, culpable conduct, or liability on its part but, if Defendant ultimately is found liable for any portion of Plaintiffs' alleged damages, Defendant shall only be liable for its equitable share of Plaintiffs' alleged damages.

43. Defendant denies any liability, but in the event Defendant is found to have any liability to Plaintiffs, Defendant is entitled to an offset against any such liability on its part for the greatest of: (1) any amounts actually paid by any person or entity heretofore or hereafter for any of the injuries, costs, damages and expenses alleged in the Complaints; (2) any amounts stipulated or otherwise agreed to in any release or covenant not to sue any person or entity heretofore or hereafter for any of the injuries, costs, damages and expenses alleged in the complaint; or (3) the equitable share of the liability of any person or entity that heretofore has received, or hereafter receives, any release from liability or covenant not to sue with respect to any of the injuries, costs, damages and expenses alleged in the complaint.

44. Defendant cannot be held jointly and severally liable for the acts or omissions of third parties because their acts or omissions were separate and distinct and the alleged harm is divisible from and greater than any harm allegedly caused by acts or omissions of Defendant.

45. Plaintiffs' claims are barred, in whole or in part, for failing to link any of their alleged exposure to any product(s) manufactured by Defendant.



46. Plaintiffs' claims are barred, in whole or in part, to the extent Plaintiffs cannot establish that their alleged injuries were caused by exposure to PFAS from any product(s) attributable to Defendant.

47. Plaintiffs' claims are barred, in whole or in part, to the extent that Plaintiffs cannot establish that PFAS has been reliably established, through scientific means, to be capable of causing their alleged injuries.

48. Plaintiffs' claims are barred, in whole or in part, to the extent that Plaintiffs cannot establish that they were exposed to a sufficient concentration or amount of PFAS, and/or for a sufficient duration, that has been reliably established, through scientific means, to be capable of causing their alleged injuries.

49. Plaintiffs' claims are barred, in whole or in part, because Defendant acted reasonably and in good faith.

50. Plaintiffs' damages, if any, were caused or contributed to by third parties over whom Defendant has no control and no legal duty to control.

51. Plaintiffs' claims are barred, in whole or in part, to the extent that Plaintiffs seek to retroactively impose liability for conduct that was not actionable at the time it occurred, and Defendant may not be held liable under retroactive theories not requiring proof of fault or causation.

52. Any damages Plaintiffs may have suffered were not reasonably foreseeable by Defendant at the time of the conduct alleged.

53. To the extent any of the substances to which Plaintiffs were allegedly exposed are purportedly hazardous or harmful, Plaintiffs' claims are barred, in whole or in part, because Defendant neither knew, nor should have known, that any of the substances to which Plaintiffs

were allegedly exposed were hazardous or constituted a reasonable or foreseeable risk of physical harm by virtue of the prevailing state of the medical, scientific, technical, and/or industrial knowledge available to Defendant at all times relevant to the claims or causes of action asserted by Plaintiffs.

54. Defendant is entitled to all the procedural, substantive, and other protections, caps, and limitations provided by the state statutes and other state and federal law regarding Plaintiffs' claims for compensatory and punitive damages.

55. The Complaint fails to state a claim upon which punitive or exemplary damages may be awarded.

56. Defendant did not engage in any conduct which would warrant or form a valid basis for an award of punitive damages.

57. Plaintiffs have failed to adequately plead and/or allege that Defendant acted with the requisite state of mind to warrant an award of punitive damages.

58. Defendant has complied with all applicable statutes and regulations set forth by local, state, and/or federal government(s) with regard to the conduct alleged in the complaint, and, therefore, to the extent that consideration is given to Plaintiffs' claims, punitive damages are unwarranted in law and fact.

59. Punitive damages are not available because all conduct and activities of Defendant related to matters alleged in the complaint conformed to industry standards based upon the state of medical, scientific, and/or industrial knowledge which existed during the relevant and material time period.

60. To the extent any of the substances to which Plaintiffs were allegedly exposed are purportedly hazardous or harmful, punitive damages are not available because Defendant neither

knew nor should have known that the substances to which Plaintiffs were allegedly exposed were hazardous or constituted a reasonable or foreseeable risk of physical harm, and Defendant therefore lacked notice that its conduct was unlawful or subject to punishment and an award of punitive damages would violate Defendant's constitutional right to due process.

61. Plaintiffs' claims for punitive or exemplary damages are barred or reduced by applicable law or statute, or are unconstitutional insofar as they violate the due process protections afforded by the United States Constitution, including without limitation the Fifth, Eighth, and Fourteenth Amendments to and the Excessive Fines Clause and Full Faith and Credit Clause of the United States Constitution, and other applicable provisions of the Constitution of any other state whose laws may apply.

62. Plaintiffs' claims are barred, in whole or in part, to the extent that the alleged injuries and damages, if any, were due to preexisting conditions, for which Defendant cannot be held responsible.

63. Some or all of the claims in some or all of the Complaints may be governed by arbitration clauses and may be subject to arbitration.

64. Defendant reserves the right to assert all applicable defenses under Federal Rules of Civil Procedure 8(c) and 12(b), as investigation and discovery proceeds.

65. Defendant adopts by reference any additional applicable defense pleaded by any other Defendant not otherwise pleaded herein.

66. Defendant adopts by reference any additional applicable defense asserted by Defendant prior to transfer in any case transferred to this MDL.

Defendant does not admit or acknowledge that it bears the burden of proof and/or burden of persuasion with respect to any of the above defenses. All the preceding defenses are pled in

the alternative and none constitute an admission that Defendant is liable to Plaintiffs, that Plaintiffs have been or will be injured or damaged in any way, or that Plaintiffs are entitled to any relief whatsoever. Defendant reserves its rights to (i) rely on any and all defenses and presumptions set forth in or arising from any rule of law or statute of any state whose substantive law might control the relevant action, (ii) rely upon any other defenses set forth in any Answer or disclosure of affirmative defenses of any Defendants in the above-captioned action (including, without limitation, any case transferred to the above-captioned action), (iii) rely upon any other defenses that may become apparent during fact or expert discovery in this matter, and (iv) to amend this document to assert any such defenses.

Dated: November 13, 2019

Respectfully Submitted,

/s/ Maja C. Eaton

**SIDLEY AUSTIN LLP**

Maja C. Eaton, Esq.

Sara J. Gourley, Esq.

Daniel A. Spira, Esq.

One South Dearborn Street

Chicago, Illinois 60603

Tel: (312) 853-7000

**CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing was electronically filed with this Court's CM/EMF system on November 13, 2019, and accordingly served automatically upon all counsel of record.

/s/ Maja C. Eaton