

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

ROBINSON SMITH, NANCY ANN WILLIAMS,
ROBERT WILLIAMS, ROBERT WILLIAMS JR.,
PATRICIA DUBLIN, WILLIAM DUBLIN, DANIEL
YODER, JASON BOUFFARD, JILL CWIKLIK, MARY
KATHRYN RENDALL, RICHARD REYNOLDS,
LORRIE HODGDON, RENEE GAUTHIER, VANESSA
SULLIVAN, KATIE TSIGOUNIS, CHARLES
BADGER, JONATHAN ROSE, ROBERT HARRIMAN,
BENJAMIN BURKE, ANTHONY DEBLAISE and JEFF
REED

Plaintiffs,

-against -

3M COMPANY, f/k/a Minnesota Mining and
Manufacturing Co., BUCKEYE FIRE EQUIPMENT
COMPANY, CHEMGUARD, INC., TYCO FIRE
PRODUCTS L.P., successor in interest to THE ANSUL
COMPANY, NATIONAL FOAM, INC., E.I DUPONT
DE NEMOURS AND COMPANY, individually and as
successor in interest to DuPont Chemical Solutions
Enterprise, THE CHEMOURS COMPANY, individually
and as successor in interest to DuPont Chemical Solutions
Enterprise, and THE CHEMOURS COMPANY FC,
L.L.C., individually and as successor in interest to DuPont
Chemical Solutions Enterprise,

Defendants.

Case No:

Class Action Complaint

Demand For Jury Trial

**CLASS COMPLAINT WITH INDIVIDUAL CLAIMS AND DEMAND FOR JURY
TRIAL**

Plaintiffs, ROBINSON SMITH, NANCY ANN WILLIAMS, ROBERT WILLIAMS,
ROBERT WILLIAMS, JR., PATRICIA DUBLIN, WILLIAM DUBLIN, DANIEL YODER,
JASON BOUFFARD, JILL CWIKLIK, MARY KATHRYN RENDALL, RICHARD
REYNOLDS, LORRIE HODGDON, RENEE GAUTHIER, VANESSA SULLIVAN, KATIE
TSIGOUNIS, CHARLES BADGER, JONATHAN ROSE, ROBERT HARRIMAN, BENJAMIN

BURKE, ANTHONY DEBLAISE and JEFF REED, by and through their undersigned counsel, hereby file this Class Action Complaint, individually, and on behalf of all others similarly situated, with individual claims and make these allegations based on information and belief against Defendants, 3M COMPANY, f/k/a Minnesota Mining and Manufacturing Co., BUCKEYE FIRE EQUIPMENT COMPANY, CHEMGUARD, INC., TYCO FIRE PRODUCTS L.P., successor in interest to THE ANSUL COMPANY, NATIONAL FOAM, INC., E.I DUPONT DE NEMOURS AND COMPANY, individually and as successor in interest to DuPont Chemical Solutions Enterprise, THE CHEMOURS COMPANY, individually and as successor in interest to DuPont Chemical Solutions Enterprise, and THE CHEMOURS COMPANY FC, L.L.C., individually and as successor in interest to DuPont Chemical Solutions Enterprise (collectively “ Defendants”):

INTRODUCTION

1. Pease Air Force Base (“Pease AFB”) occupies approximately 4,365 acres of land in southeastern New Hampshire. It is bordered on the east by the City of Portsmouth, on the north by the Town of Newington, and on the southeast by the Town of Greenland.

2. From the at least 1970 through 1991, Aqueous film-foaming foam (“AFFF”) was used to extinguish and prevent flammable liquid fires during the firefighting training exercises that were conducted at Pease AFB.

3. Per- and polyfluoroalkyl substances (“PFAS”) such as perfluorooctanoic acid (“PFOA”), perfluorooctane sulfonic acid (“PFOS”) and perfluorohexane sulfonate (“PFHxS”) have been present in various of these foams.

4. Defendants manufactured and distributed the AFFF to Pease AFB, knowing that AFFF containing PFOA and/or PFOS presented an unreasonable risk to human health and the environment and was inherently dangerous.

5. Defendants also knew that PFOA and PFOS were highly soluble and mobile in water, highly likely to contaminate water supplies and other sensitive receptors, were persistent in the environment, and would bio-accumulate in humans causing serious health effects.

6. Defendants marketed and sold their products with knowledge that large quantities of AFFF, containing toxic PFAS, would be used in training exercises and in emergency situations at military bases, including Pease AFB, in such a manner that PFOA and PFOS would contaminate the air, soil, and groundwater.

7. Defendants marketed and sold their products with knowledge that large quantities of AFFF, containing toxic PFC's, would be stored in fire suppressant systems and tanks on United States Air Force ("USAF") Bases, including Pease AFB, and that such systems and storage were used and maintained in such a manner that dangerous chemicals would be released into the air, soil, and groundwater.

8. Defendants failed in their duty to warn users, bystanders, and sensitive receptors of the inherently dangerous properties of their AFFF.

9. On May 2, 2012, the United States Environmental Protection Agency's ("USEPA") published its Third Unregulated Contaminant Monitoring Rule ("UCMR3") which required public water systems nationwide to monitor for thirty (30) contaminants of concern between 2013 and 2015.

10. On May 25, 2016 the USEPA established a drinking water health advisory level ("HAL") of 70 parts per trillion ("ppt") (0.07ug/l) for the combined concentration of PFOA and PFOS. *See* 81 Fed. Reg. 101 (May 25, 2016).

11. New Hampshire currently follows the USEPA level of 70 ppt for combined PFOA and PFOS levels.

12. As a direct and proximate result of Defendant's acts and omissions, Plaintiffs have suffered injury and damages from the presence of PFAS in their drinking water during the time that have lived or worked at Pease AFB.

13. The Putative Class represents all those residents and/or employees at Pease AFB who were exposed to drinking water contaminated with PFOA and/or PFOS, and who suffered bioaccumulation of PFOA and PFOS in their bodies.

The Putative Class and Plaintiffs Exposure and Damages

14. Plaintiffs and the Putative Class have been injured as a result of consuming water with elevated levels of PFC's, including PFOA and PFOS.

15. Plaintiffs and the Putative Class have suffered exposure, personal injury, bioaccumulation of PFC's in their blood which causes known cancers and diseases as a result of the PFC contamination caused by AFFF of the former Pease AFB's water supply.

16. As a result of years of consuming contaminated water, the Plaintiffs and the Putative Class, as residents and/or employees in Pease AFB, have been unknowingly exposed for many years to PFAS at concentrations hazardous to their health through the ingestion and dermal absorption of PFOA and PFOS.

17. Plaintiffs and the Putative Class seek recovery from all Defendants for injuries suffered by the Plaintiffs, each of whom suffered injuries as a direct and proximate result of exposure to and consumption of PFAS-contaminated water from the Pease AFB drinking water supply, in an amount to be determined at trial, exclusive of interest, costs, and attorneys' fees.

JURISDICTION AND VENUE

18. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 (a)(1) and (d)(2) in that this action seeks monetary relief in excess of \$5,000,000.00, exclusive of interest, costs and attorney's fees and is between citizens of different States.

19. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the events or omissions by Defendants giving rise to the claims asserted herein occurred in New Hampshire and caused harm to Plaintiffs and the Class Members, whom resided or reside in this District.

THE PARTIES

Plaintiffs and Class Representatives

20. Plaintiff Robinson Smith is a resident of Hudson, New Hampshire, who currently resides at 48 Burns Hill Road, Hudson, NH 03051. He receives water from the Town of Hudson.

21. Plaintiff Robinson Smith worked at Pease AFB from 2003 to 2010 as Aircraft Mechanic.

22. Plaintiff Robinson Smith has been exposed to elevated levels of PFC's. As a result of his exposure to PFC's in the contaminated water supply, he has been diagnosed with high cholesterol, thyroid problems, weakened immune system and high blood pressure. Also, he is at an increased risk of developing several health conditions, including but not limited to ulcerative colitis, effects on the liver and testicular and kidney cancer.

23. Plaintiffs Robert Williams and Nancy Ann Williams are residents of East Wakefield, New Hampshire, who currently reside at 435 North Desmond Drive CB 44, East Wakefield, NH 03830. Their property receives water from a private well.

24. From 1985 to 1987 Plaintiffs Nancy and Robert Williams lived on Pease AFB.

25. Plaintiff Robert Williams worked for the Fire Department of the USAF for 30

years, 15 of them, at Pease AFB. From 1985 to 2000, he worked at Pease AFB Fire Department as an Assistant Fire Chief and Deputy Fire Chief.

26. Plaintiff Robert Williams has been exposed to elevated levels of PFC's. As a result of his exposure to PFC's, he has been diagnosed with high blood pressure, high cholesterol, kidney disease and is at an increased risk of developing several health conditions, including but not limited to ulcerative colitis, effects on the liver and immune system, changes in thyroid hormone and testicular and kidney cancer.

27. Plaintiff Nancy Ann Williams worked at Indianhead on Pease AFB from 1985 to 1988.

28. Plaintiff Nancy Ann Williams has been exposed to elevated levels of PFC's. As a result of her exposure to PFC's in the contaminated water supply, she suffers from colon polyps and is at an increased risk of developing several health conditions, including but not limited to high cholesterol, high blood pressure, ulcerative colitis, effects on the liver and immune system, changes in thyroid hormone and kidney cancer.

29. Plaintiff Robert Williams, Jr. is a resident of Maine, who currently resides at 7 Match Play Drive, Wells, ME 04090.

30. Plaintiff Robert Williams, Jr. resided and attended the elementary school at Pease AFB from 1985 to 1987.

31. Plaintiff Robert Williams, Jr. has been exposed to elevated levels of PFC's. As a result of his exposure to PFC's in the contaminated water supply, he has been diagnosed with overactive liver function. Also, he is at an increased risk of developing several health conditions, including but not limited to high cholesterol, high blood pressure, ulcerative colitis, effects on the immune system, changes in thyroid hormone and testicular and kidney cancer.

32. Plaintiffs Patricia Dublin and William Dublin are residents of Dover, New Hampshire, who have been living for over 25 years at 29 Sierra Hill Drive, Dover, NH 03820. They own this property.

33. Plaintiff Patricia Dublin has been working at Pease since January 22, 2006.

34. Plaintiff Patricia Dublin has been exposed to elevated levels of PFC's. As a result of her exposure to PFC's in the contaminated water supply, Plaintiff Patricia Dublin has been diagnosed with high blood pressure and thyroid problems and is at an increased risk of developing several health conditions, including but not limited to high cholesterol, ulcerative colitis, effects on the liver and immune system and kidney cancer.

35. Plaintiff William Dublin has been working at Pease since February 4, 2008.

36. Plaintiff William Dublin has been exposed to elevated levels of PFC's. As a result of his exposure to PFC's in the contaminated water supply, Plaintiff William Dublin suffers from high cholesterol and is at an increased risk of developing several health conditions, including but not limited to high blood pressure, ulcerative colitis, effects on the liver and immune system, changes in thyroid hormone and testicular and kidney cancer.

37. Plaintiff Daniel Yoder is a resident of Rochester, New Hampshire, who currently resides at 14 Deerfield Court, Rochester, NH 03868. He owns the property since 2016 and receives water from a public source.

38. From 1985 to 2012 Plaintiff Daniel Yoder was stationed and worked at Pease AFB.

39. Plaintiff Daniel Yoder has been exposed to elevated levels of PFC's. As a result of his exposure to PFC's in the contaminated water supply, Plaintiff Daniel Yoder suffers from diminished function of kidneys and liver, thyroid disease, ulcerative colitis, high cholesterol, high

blood pressure and is at an increased risk of developing several health conditions, including but not limited to effects on the immune system and testicular and kidney cancer.

40. Plaintiff Jason Bouffard is a resident of Massachusetts, who currently resides at 3 West Whitehall Rd Amesbury, MA 01931.

41. Plaintiff Jason Bouffard has been working at Pease AFB since 2008.

42. Plaintiff Jason Bouffard has been exposed to elevated levels of PFC's. As a result of his exposure to PFC's in the contaminated water supply, Plaintiff Jason Bouffard has been diagnosed with high cholesterol and triglycerides, and is at an increased risk of developing several health conditions, including but not limited to high blood pressure, ulcerative colitis, effects on the liver and immune system, changes in thyroid hormone and testicular and kidney cancer.

43. Plaintiff Jill Cwiklik is a resident of Maine, who resides at 14 Vittum Hill Rd, Eliot, ME 03903 since 1996.

44. Plaintiff Jill Cwiklik has been working as Passport Adjudicator in the National Passport Center at Pease AFB since 1996.

45. Plaintiff Jill Cwiklik has been exposed to elevated levels of PFC's. As a result of her exposure to PFC's in the contaminated water supply, Plaintiff Jill Cwiklik has been diagnosed with high cholesterol and is at an increased risk of developing several health conditions, including but not limited to high blood pressure, ulcerative colitis, effects on the liver and immune system, changes in thyroid hormone and kidney cancer.

46. Plaintiff Mary Kathryn Rendall is a resident of Pennsylvania, who resides at 516 W. 2nd Ave., Parkesburg, PA 19365.

47. Plaintiff Mary Kathryn Rendall lived and worked at Pease AFB from 1977 to 1980.

48. Plaintiff Mary Kathryn Rendall has been exposed to elevated levels of PFC's. As a result of her exposure to PFC's in the contaminated water supply, Plaintiff Mary Kathryn Rendall has been diagnosed with kidney cancer, reproductive issues, and she is at an increased risk of developing thyroid disease.

49. Plaintiff Richard Reynolds is a resident of Missouri, who currently resides at 705 Windmill Ridge Drive, California MO 65018.

50. Plaintiff Richard Reynolds lived and worked at Pease AFB from 1988 to 1991.

51. Plaintiff Richard Reynolds has been exposed to elevated levels of PFC's. As a result of his exposure to PFC's in the contaminated water supply, Plaintiff Richard Reynolds has been diagnosed with thyroid disease, high triglycerides and high cholesterol, and he is at an increased risk of developing testicular and kidney cancer.

52. Plaintiff Lorrie Hodgdon is a resident of Barrington, New Hampshire, who currently resides at 25 Coachman Drive, Barrington, NH 03825.

53. Plaintiff Lorrie Hodgdon resided at Pease AFB from 1985 to 1987.

54. Plaintiff Lorrie Hodgdon has been exposed to elevated levels of PFC's. As a result of her exposure to PFC's in the contaminated water supply, Plaintiff Lorrie Hodgdon has been diagnosed with pregnancy complications and high blood pressure during pregnancy and is at an increased risk of developing several health conditions, including but not limited to high cholesterol, ulcerative colitis, effects on the liver and immune system, changes in thyroid hormone and kidney cancer.

55. Plaintiff Renee Gauthier is a resident of Arizona, who currently resides at 3237 S. Edgemore Road, Gold Canyon, AZ 85118.

56. Plaintiff Renee Gauthier worked at Pease AFB from 1999 to 2001.

57. Plaintiff Renee Gauthier has been exposed to elevated levels of PFC's. As a result of her exposure to PFC's in the contaminated water supply, Plaintiff Renee Gauthier has been diagnosed with high cholesterol, ulcerative colitis, and autoimmune disease and is at an increased risk of developing several health conditions, including but not limited to high blood pressure, effects on the liver, changes in thyroid hormone and kidney cancer.

58. Plaintiff Vanessa Sullivan is a resident of Maine, who resides at 11 Mead Street, Kittery, ME 03904.

59. Plaintiff Vanessa Sullivan worked at Pease AFB from 1998 to 2015.

60. Plaintiff Vanessa Sullivan has been exposed to elevated levels of PFC's. As a result of her exposure to PFC's in the contaminated water supply, Plaintiff Vanessa Sullivan is at an increased risk of developing several health conditions, including but not limited to high cholesterol, high blood pressure, ulcerative colitis, effects on the liver and immune system, changes in thyroid hormone and kidney cancer.

61. Plaintiff Katie Tsigounis and Plaintiff Charles Badger are residents of Dover, New Hampshire, who currently reside at 10 Stiles Lane, Dover, NH 03820. Plaintiff Charles Badger owns the property since 2012 and receive water from a public system.

62. Plaintiff Charles Badger has worked at Pease AFB since November 1992.

63. Plaintiff Charles Badger has been exposed to elevated levels of PFC's. As a result of his exposure to PFC's in the contaminated water supply, Plaintiff Charles Badger is at an increased risk of developing several health conditions, including but not limited to high cholesterol, high blood pressure, ulcerative colitis, effects on the liver and immune system, changes in thyroid hormone and testicular and kidney cancer.

64. Plaintiff Katie Tsigounis has been working at Pease since July 2002.

65. Plaintiff Katie Tsigounis has been exposed to elevated levels of PFC's. As a result of her exposure to PFC's in the contaminated water supply, Plaintiff Katie Tsigounis is at an increased risk of high cholesterol, high blood pressure, developing several health conditions, including but not limited to ulcerative colitis, effects on the liver and immune system, changes in thyroid hormone and kidney cancer.

66. Plaintiff Jonathan Rose is a resident of New York, who currently resides at 6385 Woodhaven Blvd., Rego Park, NY 11374.

67. Plaintiff Jonathan Rose resided at Pease AFB from 1978 to 1982.

68. Plaintiff Jonathan Rose has been exposed to elevated levels of PFC's. As a result of his exposure to PFC's in the contaminated water supply, Plaintiff Jonathan Rose is at an increased risk of developing several health conditions, including but not limited to high cholesterol, high blood pressure, ulcerative colitis, effects on the liver and immune system, changes in thyroid hormone and testicular and kidney cancer.

69. Plaintiff Robert Harriman is a resident of Maine, who resides at 1 Blear Drive, E. Waterboro, ME 04030.

70. Plaintiff Robert Harriman worked at Pease AFB from 1987 to 1989.

71. Plaintiff Robert Harriman has been exposed to elevated levels of PFC's. As a result of his exposure to PFC's in the contaminated water supply, Plaintiff Robert Harriman has been diagnosed with gastrointestinal stromal tumors and cancer, and he is at an increased risk of developing several health conditions, including but not limited to high cholesterol, high blood pressure, ulcerative colitis, effects on the liver and immune system, changes in thyroid hormone and testicular and kidney cancer.

72. Plaintiff Benjamin Burke is a resident of Massachusetts, who currently resides at

30 Cedar Street Middleborough, MA 02346.

73. Plaintiff Benjamin Burke's mother was transferred to Pease AFB when she was already pregnant. For months before he was born at Pease Air Force Base Hospital, as an embryo and fetus, Plaintiff Benjamin Burke was exposed to PFC's through the water consumed by his mother. Plaintiff Benjamin Burke has been diagnosed with Autism Spectrum Disorder.

74. As a result of his exposure to PFC's in the contaminated water supply, Plaintiff Benjamin Burke is at an increased risk of developing several health conditions, including but not limited to high cholesterol, high blood pressure, ulcerative colitis, effects on the liver and immune system, changes in thyroid hormone and testicular and kidney cancer.

75. Plaintiff Anthony Deblaise is a resident of Florida, who currently resides at 9854 Mar Lago Cir, Fort Myers, FL 33919.

76. Plaintiff Anthony Deblaise resided at Pease AFB from 1986 to 1990.

77. Plaintiff Anthony Deblaise has been exposed to elevated levels of PFC's. As a result of his exposure to PFC's in the contaminated water supply, Plaintiff Anthony Deblaise is at an increased risk of developing several health conditions, including but not limited to high cholesterol, high blood pressure, ulcerative colitis, effects on the liver and immune system, changes in thyroid hormone and testicular and kidney cancer.

78. Plaintiff Jeff Reed is a resident of Florida, who currently resides at 7604 Camden Harbour Drive, Bradenton, FL 34212.

79. Plaintiff Jeff Reed resided at Pease AFB from 1983 to 1988. Plaintiff Jeff Reed worked at the Pease Fire Department from 1983 to 1988 and worked again from 1997 to 2013.

80. Plaintiff Jeff Reed has been exposed to elevated levels of PFC's. As a result of his exposure to PFC's in the contaminated water supply, Plaintiff Jeff Reed is at an increased risk

of developing several health conditions, including but not limited to high cholesterol, high blood pressure, ulcerative colitis, effects on the liver and immune system, changes in thyroid hormone and testicular and kidney cancer.

Defendants

81. When reference is made in this Complaint to any act or omission of any of the Defendants, it shall be deemed that the officers, directors, agents, employees, or representatives of the Defendants committed or authorized such act or omission, or failed to adequately supervise or properly control or direct their employees while engaged in the management, direction, operation, or control of the affairs of Defendants, and did so while acting within the scope of their duties, employment or agency.

82. The term “Defendant” or “Defendants” refers to all Defendants named herein jointly and severally.

83. Upon information and belief, each of the Defendants are responsible, negligently, intentionally and/or in some actionable manner, for the events and happenings referred to herein, and caused and continue to cause injuries and damages legally thereby to Plaintiffs, as alleged, either through each Defendant’s own conduct or through the conduct of their agents, servants or employees, or due to the ownership, maintenance or control of the instrumentality causing them injury, or in some other actionable manner.

84. Defendant 3M Company (f/k/a Minnesota Mining and Manufacturing Company) (“3M”) is a corporation organized and existing under the laws of the state of Delaware, having its principal place of business at 3M Center, St. Paul, Minnesota 55133.

85. Beginning before 1970 and until at least 2002, 3M manufactured, distributed, and sold AFFF containing PFOS.

86. 3M was the only company that manufactured or sold AFFF containing PFOS.

87. Defendant 3M is an American multinational corporation based in Minnesota. 3M was founded in 1902 as the Minnesota Mining and Manufacturing Company. With approximately \$30 billion in annual net sales, 3M employs approximately 90,000 people, operates in approximately 70 countries, and produces more than 55,000 products.

88. Defendant THE 3M COMPANY (“3M”) is, upon information and belief, a Delaware corporation and does business throughout the United States, including conducting business in New Hampshire. 3M designed, manufactured and sold AFFF used for training and to fight fires at numerous military bases and other locations throughout the country, including Pease Air Force Base.

89. 3M is engaged in substantial and not isolated activity in this state; all as more fully alleged herein.

90. Defendant Tyco Fire Products LP (“Tyco”) is a limited partnership formed in the State of Delaware with its principal place of business at 1400 Pennbrook Parkway, Landsdale, Pennsylvania 19446. Tyco is an indirect subsidiary ultimately wholly owned by Johnson Controls International plc, an Irish public limited company listed on the New York Stock Exchange [NYSE: JCI].

91. Tyco is the successor in interest of The Ansul Company (“Ansul”), having acquired Ansul in 1990. (Ansul and Tyco (as the successor in interest to Ansul), will hereinafter be collectively referred to as “Tyco/Ansul.”).

92. Beginning in or around 1975, Ansul manufactured and/or distributed and sold AFFF that contained fluorocarbon surfactants containing PFOA. After Tyco acquired Ansul in 1990, Tyco/Ansul continued to manufacture, distribute and sell AFFF that contained PFOA.

93. At all times relevant, Tyco/Ansul designed, manufactured and sold AFFF used for training and to fight fires at numerous military bases and other locations throughout the country, including Pease Air Force Base.

94. Defendant Buckeye Fire Equipment Company (“Buckeye”) is a foreign corporation organized and existing under the laws of the state of Ohio, with its principal place of business at 110 Kings Road, Kings Mountain, North Carolina 28086.

95. At all times relevant to the present litigation, Buckeye designed, manufactured and sold AFFF used for training and to fight fires at numerous military bases and other locations throughout the country, including Pease Air Force Base.

96. Defendant Chemguard is a Texas corporation with its principal place of business at One Stanton Street, Marinette, Wisconsin 54143.

97. Beginning in or around 1994, Chemguard began manufacturing AFFF that contained PFOA.

98. At all times relevant to the present litigation, Chemguard designed, manufactured and sold AFFF used for training and to fight fires at numerous military bases and other locations throughout the country, including Pease Air Force Base.

99. Defendant National Foam, Inc. (a/k/a Chubb National Foam) (collectively “National Foam”) is a Delaware corporation, having a principal place of business at 144 Junny Road, Angier, North Carolina 27501.

100. At all times relevant to the present litigation, National Foam Inc. designed, manufactured and sold AFFF used for training and to fight fires at numerous military bases and other locations throughout the country, including Pease Air Force Base.

101. DuPont Chemical Solutions Enterprise (“DuPont Chemical”) was a Delaware Corporation, with a principal place of business located at 1007 Market Street Wilmington, Delaware 19898.

102. DuPont Chemical was a member of the Telomer Research Program (“TRP”). As a member, it was required to provide a list and volume of products it was selling in the United States on a yearly basis.

103. In a letter addressed to the Office of Pollution Prevention and Toxics (OPPT) Document Control Office, dated May 14, 2003 and signed by Stephen H. Korzeniowski, DuPont provided its Telomer-based sales products in the United States for the year 2002.

104. The letter, which was redacted and sent to the USEPA under its PFOA Stewardship Program, included Aqueous Fire Fighting Foam (AFFF) sales volume, on an active ingredient pound basis, as well as its Chemical Abstracts Service (CAS) number and chemical name, and is included in the PFOA Stewardship Program Docket.¹

105. Upon information and belief, at all times relevant to the present litigation, DuPont Chemical designed, manufactured and sold AFFF used for training and to fight fires at numerous military bases and other locations throughout the country, including Pease Air Force Base.

106. Defendant, E.I. Du Pont de Nemours & Co. (“DuPont”), successor in interest to DuPont Chemical Solutions Enterprise, is a Delaware Corporation and does business throughout the United States, including conducting business in New Hampshire. Its principal place of business is 974 Centre Road Wilmington, Delaware 19805.

¹ <https://www.regulations.gov/docket?D=EPA-HQ-OPPT-2006-0621>.

107. Upon information and belief, at all times relevant to the present litigation, DuPont designed, manufactured and sold AFFF used for training and to fight fires at numerous military bases and other locations throughout the country, including Pease Air Force Base.

108. Defendant Chemours Company (“Chemours”), successor in interest to DuPont Chemical Solutions Enterprise, is a Delaware Corporation and conducts business throughout the United States, including conduction business in New Hampshire. Its principal place of business is 1007 Market Street, Wilmington, Delaware, 19889.

109. Upon information and belief, at all times relevant to the present litigation, Chemours designed, manufactured and sold AFFF used for training and to fight fires at numerous military bases and other locations throughout the country, including Pease Air Force Base.

110. Defendant The Chemours Company FC L.L.C. (“Chemours Company”), successor in interest to DuPont Chemical Enterprise, is a Delaware Corporation and conducts business throughout the United States, including conduction business in New Hampshire. Its principal place of business is 1007 Market Street Wilmington, Delaware, 19899.

111. Upon information and belief, at all times relevant to the present litigation, Chemours Company designed, manufactured and sold AFFF used for training and to fight fires at numerous military bases and other locations throughout the country, including Pease Air Force Base.

GENERAL AND FACTUAL ALLEGATIONS AS TO ALL COUNTS

A. AFFF Production

112. In the 1940s, 3M began using a process called electrochemical fluorination (“ECF”) to create carbon-fluorine bonds, which are key components of PFOA and PFOS. 3M soon discovered that these types of substances have strong surfactant properties, meaning that they

reduce the surface tension between a liquid and another liquid or solid. This reduced surface tension enabled 3M to develop a myriad of products that resist heat, stains, oil, and water. These products included older forms of Scotch Gard, which contained PFOS and when applied to fabric, furniture, and carpets protected against liquids and stains.

113. Building on these earlier experiments, in the early 1960s 3M began developing firefighting foams containing PFOS to suppress flammable liquid fires, which cannot be effectively extinguished with water alone.

114. AFFF is a Class-B firefighting foam. It is mixed with water and used to extinguish fires that are difficult to fight, particularly those that involve petroleum or other flammable liquids.

115. AFFF is synthetically formed by combining fluorine free hydrocarbon foaming agents with surfactants. When mixed with water, the resulting solution produces an aqueous film that spreads across the surface of hydrocarbon fuel. This film provides fire extinguishment and is the source of the designation aqueous film forming foam.

116. AFFF containing fluorinated surfactants have a better firefighting capability than plain water due to their surface-tension lowering properties- essentially smothering the fire and starving it of its oxygen.

117. However, some fluorinated surfactants have unique properties that cause some of the compounds, if included, not to biodegrade, to bioaccumulate, and are toxic to animals and humans.

118. AFFF was introduced commercially in the mid-1960s and rapidly became the primary firefighting foam in the U.S. and in many parts of the world.

119. Defendants' AFFF was then sold to the USAF for use at fire departments and industrial facilities across the nation, including Pease AFB.

120. In the early 1960's, 3M and the United States Naval Research Laboratory developed AFFF to extinguish jet fuel fires, which are largely impervious to water, by smothering them. 3M's AFFF, which is produced through a 3M process ECF, contained PFOS.

121. 3M is the only manufacturer who used the ECF process, and therefore, produced the only AFFF that contained PFOS, as opposed to PFOA.

122. Therefore, if PFOS is identified at a site where AFFF was used, the AFFF is a 3M product. Other formulations of AFFF manufactured by the non-3M Defendants are synthesized through telomerization and contain PFOA, but not PFOS.

123. Upon information and belief, by at least the 1970s, 3M knew or should have known that PFOA and PFOS are mobile and persistent, bioaccumulative and biomagnifying, and toxic.

124. In 1975, 3M concluded that PFOS was present in the blood of the general population. Since PFOA and PFOS are not naturally occurring, this finding should have alerted 3M to the possibility that their products were a source of this PFOS. The finding also should have alerted 3M to the possibility that PFOS might be mobile, persistent, bioaccumulative, and biomagnifying, as those characteristics could explain the absorption of PFOS in blood from 3M's products.

125. Upon information and belief, 3M concealed this knowledge from the public and government regulators its knowledge of the risk of harm posed by PFOA and PFOS.

126. In 1976, 3M found PFOA in the blood of its workers. This finding should have alerted 3M to the same issues raised by the findings regarding PFOS in the prior year.

127. A 1978 study by 3M showed that PFOA reduced the survival rate of fathead minnow fish eggs. Other studies by 3M in 1978 showed that PFOS and PFOA are toxic to rats,

and that PFOS is toxic to monkeys. In one study in 1978, all monkeys died within the first few days of being given food contaminated with PFOS.

128. Studies by 3M after the 1970s also showed adverse effects from exposure to PFOA and PFOS. In a 1983 study, for example, 3M found that PFOS caused the growth of cancerous tumors in rats.

129. A study proposal by 3M in 1983 stated that the resistance to degradation of PFOA and PFOS made them "potential candidates for environmental regulations, including further testing requirements under laws such as the Toxic Substances Control Act." 3M Environmental Laboratory (EE & PC), Fate of Fluorochemicals - Phase II, at p.6 (E. A. Reiner, ed. May 20, 1983).

130. A 1997 material safety data sheet ("MSDS") for a non-AFFF product made by 3M listed its only ingredients as water, PFOA, and other per-fluoroalkyl substances and warned that the product includes "a chemical which can cause cancer." The MSDS cited "1983 and 1993 studies conducted jointly by 3M and DuPont" as support for this statement. On information and belief, 3M's MSDSs for AFFF did not provide similar warnings.

131. In an attempt to limit liability, 3M opted to stop producing PFOS 2002 because it was aware of the looming chemical exposure and health effects on the public.

132. In 1951, 3M began selling its PFOA to other chemical companies, including DuPont.

133. Other companies, such as Defendants Tyco/Ansul, Buckeye, National Foam, Chemguard and DuPont/Chemours, began manufacturing AFFF using PFOA that they produced themselves or purchased from other companies.

134. In or about 1977, Tyco/Ansul was also aware of the environmental and toxic concerns of its AFFF and undertook a study and investigation on more environmentally improved AFFF.

135. Similarly, PFOA is a man-made, manufactured chemical not found in nature. PFOA was used to make household and commercial products that resist heat and chemical reactions, and has many uses, including repelling oil, stains, grease, and water.

136. PFOA can remain in the environment, particularly in water, for many years and can move through air, soil, and into groundwater.

137. PFOA's extreme persistence in the environment, along with its toxicity, mobility, and bioaccumulation potential, pose probable adverse effects to human health and the environment.

138. PFOA is readily absorbed after consumption or inhalation, and it accumulates primarily in the blood stream, kidney, and liver.

139. Defendants voluntarily elected to include PFOA and/or PFOS in their AFFF.

140. Defendants knew or should have known that PFOA and PFOS are highly soluble in water, extremely mobile, persistent, and very likely to contaminate drinking water wells and present significant risks to human health and welfare if released into the environment.

141. Nevertheless, Defendants manufactured, marketed, and sold their AFFF with the knowledge that PFOS and PFOA would be released into the environment in firefighting training and rescue exercises, inadvertent releases, as well as in emergencies.

142. Upon information and belief, instructions, labels and material safety data sheets were provided with the AFFF by Defendants which, for significant time periods, did not fully

describe the health and environmental hazards of AFFF which Defendants knew or should have known at the time of distribution.

143. Upon information and belief, Defendants knew of these health and environmental hazards for years yet failed to warn the users and other sensitive receptors, such as public water providers.

144. Civilian and military airports, fire departments and industrial facilities, unaware of the environmental and health risk and hazards of using Defendants' AFFF, used AFFF containing PFOA and PFOS for decades for firefighting and training. These sites have been linked to the widespread contamination of surface and groundwater, as well as public drinking water wells, with PFOA, PFOS, and other PFAS throughout the country.

145. Federal law requires chemical manufacturers and distributors to immediately notify the USEPA if they have information that "reasonably supports the conclusion that such substance or mixture presents a substantial risk of injury to health or the environment." Toxic Substances Control Act ("TSCA") § 8(e), 15 U.S.C. § 2607(e).

146. 3M did not comply with its duty under TSCA, and in April 2006 it agreed to pay USEPA a penalty of more than \$1.5 million for its failure to disclose studies regarding PFOA or PFOS and other per-fluoroalkyl substances dating back decades, among other things.

147. DuPont also did not comply with its duty under TSCA and the Resource Conservation and Recovery Act (RCRA), and in 2005 agreed to pay \$10.25 million, the largest civil administrative penalty USEPA had ever obtained to that date under any federal statute. The TSCA violations of Section 8(e) specifically addressed the company's failure to report to the USEPA the substantial risks of PFOA.

148. On information and belief, all defendants knew or should have known that in its intended and/or common use, AFFF containing PFOA or PFOS would very likely injure and/or threaten public health and the environment. On information and belief, this knowledge was accessible to all defendants. For example, in 1970 a well-established firefighting trade association was alerted to the toxic effects on fish of a chemical compound related to PFOS. On information and belief, at least the following defendants are and/or were members of this trade association: 3M, Tyco/Ansul, Chemguard, and National Foam/Angus.

149. Additionally, on information and belief, all defendants knew or should have known that their AFFF products and the PFOA and PFOS the products contained, easily dissolve in water, because the products were designed to be mixed with water; are mobile, because the products were designed to quickly form a thin film; resist degradation, because that is the nature of the products' chemical composition, and on information and belief the products had long shelf-lives; and tend to bioaccumulate, because studies regarding the presence of substances with carbon-fluorine bonds in the blood of the general population were publicly available beginning in at least 1976.

150. AFFF does not have the same problems that water alone does in extinguishing flammable liquid fires. AFFF concentrate containing PFOA or PFOS forms foam when it is mixed with water and ejected from a nozzle. That foam is then sprayed so that it coats the fire, blocking the supply of oxygen feeding the fire and creating a cooling effect and evaporation barrier to extinguish the vapors on fire. A film also forms to smother the fire after the foam has dissipated.

151. There is no natural sink for the Manufacturing Defendants' AFFF containing PFOS and PFOA. Except for incineration above 10,000 degrees, Defendants' PFOS and PFOA will eventually accumulate in the water and all living organisms - including the blood and organs of humans and livestock.

152. Plumes of PFOA and PFOS can persist in underground aquifers for many decades. Once the plume reaches a well, it continues to contaminate the water drawn from that well.

153. Defendants designed, manufactured and sold AFFF that was used at Pease AFB.

B. The Chemical Manufacture of PFAS

154. PFAS are a group of chemicals used to make fluoropolymer coatings and products that resist heat, oil, stains, grease, and water. Many chemicals in this group, including PFOS and PFOA have been a concern because they do not break down in the environment, and they build up in wildlife. PFAS have been found in rivers and lakes and in many types of animals on land and in the water

155. Defendants marketed, developed, manufactured, distributed, released, trained users, produced instructional materials, sold, and/or otherwise handled and/or used PFAS, including PFOA and/or PFOS in their AFFF.

156. PFAS chemicals manufactured and released into the environment by Defendants 3M, DuPont, and Chemours (hereinafter the “PFAS Chemical Manufacturers”) through the AFFF include but are not limited to Perfluorobutanesulfonic acid (“PFBS”), Perfluorohexanesulfonic acid (“PFHxS”) and Perfluorononanoic acid (“PFNA”), which are all man-made PFAS chemicals.

157. PFNA, is a synthetic perfluorinated carboxylic acid and fluorosurfactant that is also an environmental contaminant found in people and wildlife along with PFOS and PFOA.

158. PFAS that are released to the environment, such as the foreseeable use of training with AFFF, can reach potable water wells through migration through the soil and groundwater.

159. Defendants knew or should have known that PFASs are highly soluble in water, extremely mobile, persistent, and very likely to contaminate drinking water wells and present significant risks to human health and welfare if released into the environment.

160. Nevertheless, Defendants marketed, developed, manufactured, distributed, released, trained users, produced instructional materials, sold and/or otherwise handled their AFFF products with the knowledge that PFAS would be released into the environment reaching rivers, lakes, groundwater, soil, wells and/or aquifers.

161. Plumes of PFAS can persist in underground aquifers for many decades. Once the plume reaches a well, it continues to contaminate the water drawn from that well.

C. AFFF Containing PFOA and PFOS is Fungible and Commingled in the Groundwater

162. AFFF containing PFOA and/or PFOS, once it has been released to the environment and groundwater, lacks characteristics that would enable identification of the company that manufactured that particular batch of AFFF.

163. The process of manufacture and distribution of AFFF, including that which contains PFOA and/or PFOS, sometimes includes complex arrangements whereby Defendants sell product for delivery through specific military bases and/or third-party logistic intermediaries throughout the country, including to Pease AFB.

164. A subsurface plume, even if it comes from a single location, such as a retention fire training area, most likely originates from mixed batches of AFFF coming from different manufacturers.

165. The case here at Pease AFB is typical: even though several areas were located at the base where the AFFF was used and entered the groundwater, neither the federal or state investigators could determine the identity of the manufacturers whose AFFF containing PFOA and PFOS contributed to the resulting groundwater contamination plume.

166. Because precise identification of the specific manufacture of any given AFFF that was the source of PFOA and PFOS found in found in Class members' blood or the groundwater is

impossible, Plaintiffs must pursue all Defendants, jointly and severally, for those indivisible injuries which Defendants have collectively visited upon Plaintiffs and the Class.

167. Defendants are also jointly and severally liable because they conspired to conceal the true toxic nature of PFOS and PFOA, to profit from the use of AFFF containing PFOA and PFOS, at Plaintiffs' and the Class members' expense and to attempt to avoid liability for such contamination of the groundwater and poisoning of the Plaintiffs and the Class.

D. Background of PFOA and PFOS and the Known Risk to Groundwater

168. PFAS are chemical compounds containing fluorine and carbon atoms. These substances have been used for decades in the manufacture of, among other things, household and commercial products that resist heat, stains, oil, and water. These substances are not naturally occurring and must be manufactured.

169. The two most widely studied types of these substances are PFOA and PFOS, which each contain eight carbon atoms.

170. PFOA and PFOS have unique properties that cause them to be: (i) mobile and persistent, meaning that they readily spread into the environment where they break down very slowly; (ii) bioaccumulative and biomagnifying, meaning that they tend to accumulate in organisms and up the food chain; and (iii) toxic, meaning that they pose serious health risks to humans and animals. Because PFOA and PFOS have these properties, they pose significant threats to public health and the environment.

171. PFOA and PFOS easily dissolve in water, and thus they are mobile and readily spread in the environment. PFOA and PFOS also readily contaminate soils and leach from the soil into groundwater, where they can travel significant distances.

172. PFOA and PFOS are characterized by the presence of multiple carbon-fluorine bonds, which are exceptionally strong and stable. As a result, PFOA and PFOS are thermally, chemically, and biologically stable and they resist degradation due to light, water, and biological processes.

173. Bioaccumulation occurs when an organism absorbs a substance at a rate faster than the rate at which the substance is lost by metabolism and excretion. Biomagnification occurs when the concentration of a substance in the tissues of organisms increases as the substance travels up the food chain.

174. PFOA and PFOS bioaccumulate/biomagnify in numerous ways. First, they are relatively stable once ingested, so that they bioaccumulate in individual organisms for significant periods of time. Because of this stability, any newly ingested PFOA and PFOS will be added to any PFOA and PFOS already present. In humans, PFOA and PFOS remain in the body for years.

175. Third, they biomagnify up the food chain, such as when humans eat fish that have ingested PFOA or PFOS.

176. The chemical structure of PFOA and PFOS makes them resistant to breakdown or environmental degradation. As a result, they are persistent when released into the environment.

177. Exposure to PFOA and PFOS can be toxic and may pose serious health risks to humans and to animals.

E. Health Effects of PFOS and PFOA Exposure

178. As discussed above, neither 3M nor, upon information and belief, the other Defendants, complied with their obligations to notify USEPA about the "substantial risk of injury to health or the environment" posed by their AFFF products containing PFOA/S. *See* TSCA § 8(e).

179. In or around 1998, USEPA began investigating the safety of PFOA and PFOS after some limited disclosures by 3M and others.

180. Some PFC's, such as PFOS and PFOA, have been found to bioaccumulate in humans and animals. In 2005, the U.S. Department of Health and Human Services found that "human exposure to PFOA and PFOS lead to the buildup of these chemicals in the body."

181. Because of its toxicity, eight major PFOA manufacturers agreed in 2006 to participate in the USEPA PFOA Stewardship Program. The participating companies made voluntary commitments to reduce product content and facility emissions of PFOA and related chemicals by 95%, no later than 2010.

182. The recommendations in USEPA's health advisories evolved as USEPA learned more about PFOA and PFOS.

183. On January 8, 2009 USEPA issued Provisional Health Advisories for PFOA and PFOS, advising that "action should be taken to reduce exposure" to drinking water containing levels of PFOA and PFOS exceeding 400 parts per trillion ("ppt") and 200 ppt, respectively. Provisional Health Advisories for Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonate (PFOS), *available at <https://www.epa.gov/sites/production/files/2015-09/documents/pfoa-pfos-provisional.pdf>*, at p. 1, n. 1 (last visited June 5, 2018).

184. Many parties have studied PFOA, also known as C8, including a Science Panel formed out of a class action settlement arising from contamination from DuPont's Washington Works located in Wood County, West Virginia.

185. The C8 panel consisted of three epidemiologists specifically tasked with determining whether there was a probable link between PFOA exposure and human diseases. In 2012, the panel found probable links between PFOA and kidney cancer, testicular cancer,

ulcerative colitis, thyroid disease, pregnancy induced hypertension (including preeclampsia), and hypercholesterolemia.

186. Human health effects associated with PFOS exposure include immune system effects, changes in liver enzymes and thyroid hormones, low birthweight, high uric acid, and high cholesterol. In laboratory testing on animals, PFOA and PFOS have caused the growth of tumors, changed hormone levels, and affected the function of the liver, thyroid, pancreas, and immune system.

187. Health effects of PFOS are the same as PFOA.

188. These injuries can arise months or years after exposure to PFOA.

189. Even after the “C8 Science Panel,” publicly announced in the 2010s that human exposure to 0.05 parts per billion or more of one PFAS, PFOA, in drinking water for one year or more had “probable links” with certain human diseases, including kidney cancer, testicular cancer, ulcerative colitis, thyroid disease, preeclampsia, and medically-diagnosed high cholesterol, Defendants repeatedly assured and represented to governmental entities, their customers, and the public (and continue to do so) that the presence of PFAS in human blood at the levels found within the United States presents no risk of harm and is of no legal, toxicological, or medical significance of any kind, and have represented to and assured such governmental entities, their customers, and the public (and continue to do so) that the work of the independent C8 Science Panel was inadequate to satisfy the standards of Defendants to prove such adverse effects upon and/or any risk to humans with respect to PFAS in human blood.

190. At all relevant times, Defendants, through their acts and/or omissions, controlled, minimized, trivialized, manipulated, and/or otherwise influenced the information that was published in peer-review journals, released by any governmental entity, and/or otherwise made

available to the public relating to PFAS materials in human blood and any alleged adverse impacts and/or risks associated therewith, effectively preventing Plaintiffs from discovering the existence and extent of any injuries/harm as alleged herein.

191. In the May 2015 “Madrid Statement on Poly- and Perfluoroalkyl Substances (PFAS’s),” scientists and other professionals from a variety of disciplines, concerned about the production and release into the environment of PFOA, called for greater regulation, restrictions, limits on the manufacture and handling of any PFOA containing product, and to develop safe non-fluorinated alternatives to these products to avoid long-term harm to human health and the environment.²

192. On or around May 19, 2016, the USEPA issued updated Drinking Water Health Advisories for PFOA and PFOS, recommending that drinking water concentrations for PFOA and PFOS, either singly or combined, should not exceed 70 ppt. See Lifetime Health Advisories and Health Effects Support Documents for PFOA and PFOS, 81 Fed. Reg. 33, 250-51 (May 25, 2016).

193. In June 2018, the Agency for Toxic Substances and Disease Registry (“ATSDR”) and USEPA released a draft toxicological profile for PFOS and PFOA and recommended the drinking water advisory levels be lowered to 11 ppt for PFOA and 7 ppt for PFOS.

194. New Hampshire currently follows the USEPA level of 70 ppt for combined PFOA and PFOS levels. In November 2016, New Hampshire Code of Administrative Rules finalized Ambient Groundwater Quality Standards (AGQS) values of 0.07ug/l for PFOA and PFOS if both are present. New Hampshire Code of Administrative Rules Env-OR 603.3 (2).

F. Pease Air Force Base

² Blum A, Balan SA, Scheringer M, Trier X, Goldenman G, Cousins IT, Diamond M, Fletcher T, Higgins C, Lindeman AE, Peaslee G, de Voogt P, Wang Z, Weber R. 2015. The Madrid statement on poly- and perfluoroalkyl substances (PFASs). *Environ Health Perspect* 123:A107–A111; <http://dx.doi.org/10.1289/ehp.1509934>.

195. The City of Portsmouth developed a municipal airport in the 1930s. In War World II the airport was used by the US Navy for military activities.

196. The Pease AFB was established in 1951 by the USAF as a Strategic Air Command (“SAC”) facility.

197. Additional land was purchased for expansion of the base and it was officially opened in 1956 as Portsmouth Air Force Base, until 1957, when the installation was renamed to Pease AFB.

198. The Fire Training Area 1 (FTA-1) was used from 1956 to 1961 and the Fire Training Area 2 (FTA-2), from 1961 to 1988.

199. In 1970, the USAF began using AFFF at Pease AFB for extinguishing and preventing petroleum fires, during fire-fighting training activities and in the fire suppression systems at several buildings in the event of a fire or spill.

200. Pease AFB closed on March 31, 1991 as part of the Secretary of Defense’s Commission on Base Realignment and Closure.

201. Pease AFB was subdivided among 3 entities: the New Hampshire Air National Guard, the United States Department of the Interior and the Pease Development Authority (“PDA”).

202. In 1992, 1,702 acres of the property was transferred to the PDA for the development of the public airport; 1,100 acres of undeveloped land was transferred to the US Fish and Wildlife Service for the creation of the Great Bay National Wildlife Refuge and 1,300 acres of the property were transferred to the PDA for commercial development.³

³ Tetra Tech, Inc, *Final Work Plan: Accelerated Site Completion Activities at Site SS016* (February 2015), available at <http://afcec.publicadmin-record.us.af.mil/Search.aspx>.

203. The USAF retained 229 acres of the former Pease AFB for use by the New Hampshire Air National Guard.

204. In 1993, business and operation industrial park began to operation. The City of Portsmouth entered into a long-term lease and operation agreement with the PDA to operate and maintain the public water system serving the Tradeport.

205. The Pease International Tradeport, contains over 250 companies employing more than 9,525 people.

206. The Portsmouth Fire Department reopened the former Pease AFB municipal firefighting station in 1993. Also, the station contained a truck washing stall.

207. The former crash fire station was located on the installation flight line, south of the control tower and was in service from 1954 to 2006. AFFF was stored at the station from 1974 to the closure of the installation.⁴

208. The New Hampshire Air National Guard Fire Department (“NHANGFD”) continues to man a crash fire station on the flight line and is located north of the control tower. The NHANGFD stores AFFF in 2 mobile trailers at the current crash fire station that was opened in 2006.

G. Pease Aquifer Southern Well Field

209. Three major supply wells provided drinking water to the Pease AFB: the Haven, Smith and Harrison wells.

210. The Haven, Smith and Harrison provided drinking water to the Pease Tradeport.

⁴ Amec Foster Wheeler Environment & Infrastructure, Inc. *Final Perfluorinated Compounds Preliminary Assessment Former Pease Air Force Base Portsmouth, New Hampshire* (December 2015) available at <http://afcec.publicadmin-record.us.af.mil/Search.aspx>.

211. The Haven well is the largest producer of the three wells and an original public drinking water source for the City of Portsmouth that dates back 1875.⁵

212. Until it was taken out of service in May 2014, the Haven well supplied water for 8,000 persons, about the half of the water supply.

213. In June 2013, two rounds of sampling were conducted at 22 locations, including 20 monitoring wells, Groundwater Treatment System effluent and Watering Spring. The PFOA and PFOS were detected in all samples collected ranging from 0.0055 to 120 µg/L and 0.032 to 95 µg/L respectively.⁶

214. In September 2013, two rounds of sampling were conducted at 22 locations, including 20 monitoring wells, Groundwater Treatment System effluent and Watering Spring. PFOA and PFOS were detected in all samples, slightly lower than the June 2013 values. The PFOA and PFOS ranged from 0.0021 to 72 µg/L and 0.015 to 42 µg/L respectively.

215. In January 2014, the USAF issued a report presenting concentrations of PFAS in groundwater samples taken from monitoring wells located at the Fire Department Training Area 2, Site 8. The results showed concentrations of PFOS and PFOA, with the highest concentration detected at 95 µg/L for PFOS and 120 µg/L for PFOA.

216. Also, PFAS were found in the groundwater near Pickering Brook, which enters Flagstone Brook, which discharges to Little Bay near its confluence with the Piscataqua River.⁷

⁵Weston & Sampson, City of Portsmouth Pease Treatment Cost Alternative Report, (June, 2017), [http://files.cityofportsmouth.com/publicworks/Pease%20Well%20Treatment%20Cost%20Alternative%20Report%20-%20June%202017%20\(Final\).pdf](http://files.cityofportsmouth.com/publicworks/Pease%20Well%20Treatment%20Cost%20Alternative%20Report%20-%20June%202017%20(Final).pdf).

⁶ CB & I Federal Services LLC., *Final Perfluorinated Compound Investigation Work Plan Site 8, AT008 Fire Department Training Area 2 Former Pease Air Force Base, Portsmouth, New Hampshire* (April 2015), available at <http://afcec.publicadmin-record.us.af.mil/Search.aspx>.

⁷ Amec Foster Wheeler Environment & Infrastructure, Inc. *Final Perfluorinated Compounds Preliminary Assessment Former Pease Air Force Base Portsmouth, New Hampshire* (December 2015) available at <http://afcec.publicadmin-record.us.af.mil/Search.aspx>.

217. On April 16, 2014 the USAF sampled the Haven, Harrison and Smith wells for PFAS.

218. The Haven well sampling detected the presence of PFOS at 2.5 micrograms per liter, 12.5 times higher than USEPA's Provisional Health Advisory of 0.2 micrograms per liter.

219. Also, the Harrison and Smith wells showed the presence of PFAS, but at levels below the USEPA's Provisional Health Advisory.⁸

220. Additional PFAS were also detected at the three wells, including PFHxS.

221. The Harrison, Smith, Collins and Portsmouth wells are collectively known as the Pease Aquifer southern well field.

222. The Haven well is up-gradient of the Harrison and Smith wells, so the high levels of PFAS contaminations detected in the Haven migrate towards the Harrison and Smith wells.

223. Collins and Portsmouth #1 well exist adjacent and downgradient of the Haven well.⁹

224. Samples taken from Pease Aquifer Southern Well Field indicate the presence of PFA in all four wells: Harrison, Smith, Collins and Portsmouth. Three of these wells provided drinking water to the former Pease AFB or Tradeport and other developed portions of the facility and to supplement the City of Portsmouth water supply.

225. In May 12, 2014 the USAF notified New Hampshire Department of Environmental Services ("NHDES") that water sample collected on April 2014 detected levels of PFOS at 2,500

⁸ *New Hampshire Department of Health and Human Services. Pease Tradeport Water System, <https://www.dhhs.nh.gov/dphs/investigation-pease.htm>.*

⁹ United States Environmental Protection Agency, In the matter of United States Air Force, Respondent. Former Pease Air Force Base, The Facility, SDWA-01-2015-0061, Administrative Order For Response Action, (August 3, 2015), available at <https://semspub.epa.gov/work/01/584719.pdf>.

ppt in the Haven water supply well located on the Pease Tradeport. PFOA was at 350 ppt, also elevated but a level just below the provisional health advisory (PHA) at the time. Also, PFHxS was found at concentrations of 830 ppt in the Haven well.¹⁰

226. NHDES notified the City of Portsmouth of the laboratory results on May 12, 2014 and city officials closed the Haven well, and determined that the Haven would will remain offline until a new water treatment system funded by the USAF is brought online by the City of Portsmouth.¹¹

227. The closure of the Haven well resulted in a 46% decrease in the water supply for the Pease Tradeport and a 10% decrease in the water supply for the City of Portsmouth.

228. After May 2014, the Smiths and Harrison wells supplied 56% of the water and the City of Portsmouth provided the other 44%.

229. Since May 12, 2014 50% of water demand is supplied by the City of Portsmouth.¹²

230. City of Portsmouth continues to use the Smith, Collins and Harrison as part of the Portsmouth water system.¹³

231. The Portsmouth Regional Water System supplies with potable water the former Pease AFB, Greenland, New Castle, Newington, Portsmouth and portions of Rye and Madbury.¹⁴

¹⁰ State of New Hampshire Department of Healty and Human Services Division of Public Health Services. June 16, 2016. *Pease PFC Blood Testing Program: April 2015-October 2015*.

¹¹ Scott Johnston. July 24, 2017 Air Force continue attack on PFOS/PFOA issues at Pease available at <https://www.afcec.af.mil/News/Article-Display/Article/1255851/air-force-continues-attack-on-pfospfoa-issues-at-pease/>

¹² <http://files.cityofportsmouth.com/publicworks/PeaseTradePortWaterSystemOverviewandHistory.pdf>

¹³ Amec Foster Wheeler Environment & infrastructure, Inc, Final Basewide Site Investigation Report: Perfluorinated Compounds Release Response Former Pease Air Force Base, June 2017.

¹⁴ *City of Portsmouth NH Department of Public Works. Water Operations,* <https://www.cityofportsmouth.com/publicworks/water>.

232. In September 2014, the USAF issued the Final Five-Year Review Report (2009-2014) Former Pease AFB.¹⁵ At that moment, there were no remedies in place at the Former Pease AFB with remedial action objectives for PFCs, so they were not addressed. However, the USAF stated that had begun the process to identify locations with potential releases using the Preliminary Assessment and Site Inspection process under CERCLA.

233. On July 9, 2015 USEPA issued an administrative order for responsive action requiring USAF to undertake Emergency Response Actions and Feasibility Studies, Design and Remedial Actions to abate the threat to public health presented by the presence of contamination of a groundwater source from sources of contaminants emanating from Former Pease AFB.

234. As part of the administrative order, USAF must submit immediately to USEPA and the State of New Hampshire, upon receipt, the results of all sampling or tests and all other data generated in the course of implementing the order.

235. In August 3, 2015 USEPA issued a final order that modified an administrative order for responsive action.

236. In December 2015, the USAF submitted the Final Perfluorinated Compounds Preliminary Assessment, in which identified 21 AFFF areas at former Pease AFB. One of these areas, the FTA-2 or Site 8, was associated with possible receiving bodies of water and down-gradient wells, such as Knight's Brook, Pickering Brook, Flagstone Brook, McIntyre Brook, Peverly Brook, Haven Well and Recharge Trenches.¹⁶

¹⁵ CB & I Federal Services LLC., *Final Five-Year Review Report (2009-2014), Former Pease AFB* (September 2014), available at <http://afcec.publicadmin-record.us.af.mil/Search.aspx>.

¹⁶ Amec Foster Wheeler Environment & Infrastructure, Inc. *Final Perfluorinated Compounds Preliminary Assessment Former Pease Air Force Base Portsmouth, New Hampshire* (December 2015) available at <http://afcec.publicadmin-record.us.af.mil/Search.aspx>.

237. Also, the USAF submitted the Basewide Site Investigation Report: Perfluorinated Compounds Release Response. The objective of the Basewide investigation program was to determine the presence/absence of PFOS and PFOA at the potential AFFF areas identified in the Preliminary Assessment report and develop understanding of the nature, extent and receptor pathways to facilitate the design of an interim groundwater treatment plant for the Haven aquifer.

238. In September 2016 the City of Portsmouth finished installing two granular activated carbon vessels to filter and remove PFAS from the Smith and Harrison wells. Since then, the activated carbon demonstration filters for the Harrison and Smith wells have been on the line and the activated carbon in both of the filters was changed out in November 2018.

239. The City of Portsmouth and the USAF entered in an agreement to treat PFOS and PFOA from water supplied by the Smith, Harrison and Haven Wells. The agreement provides the city up to \$14.3 million to reimburse the cost of the construction and engineering administration of the final treatment system for all three wells, which will include a dual filtration system consisting of resin and granular activated carbon filters. ¹⁷

240. The Haven well is scheduled for a reactivation in 2021. ¹⁸

H. The Contamination of Pease Airforce Base

241. In 2014 the USAF conducted a survey to identify residential wells within the approximate 1-mile radius of the boundaries of the former Pease AFB.

242. In April of 2015 the Governor of New Hampshire made PFC blood testing available to anyone on Pease AFB that drank the contaminated water prior to Haven well closing in May 2014.

¹⁷ <http://files.cityofportsmouth.com/files/ww/PeaseWaterSupplyandPFCDemonstrationProjectUpdate19Feb21.pdf>

¹⁸ Messmer, Mindi. "Portsmouth NH water threats and responses." *Seacoastline.com*, February 13, 2019.

243. In 2015 the New Hampshire Department of Health and Human Services (“NHDHHS”) began a blood testing program for people who had lived on, worked on or attended childcare on the Pease Tradeport.

244. A total of 1,578 persons submitted a blood sample for analysis between April to October 2015 and results indicated that the exposed population had higher serum levels of PFOS, PFOA and PFHxS than did the United States population tested in 2011-2012 as part of the CDC’s National Health and Nutrition Examination Survey.¹⁹

245. PFOS, PFOA and PFHxS were detected in more than 94% of participants’ serum samples.²⁰

246. Out of all participants, 1,171 (74%) reported at least one place of business where they worked or attended childcare on Pease.

247. Thereafter, ATSDR began assessing whether epidemiological studies focusing on populations at former Pease AFB were feasible.

248. Since the summer of 2016, NHDHHS has reopened PFAS blood testing for those exposed on the Pease Tradeport.

249. In November 2017, the ATSDR issued its feasibility assessment for epidemiological studies concluded in that it is *possible* to evaluate some health-related endpoints if a sufficient number of children and adults from at Pease population participate.

250. In May 2018 the ATSDR announced that it would do a health study on adults and children exposed to PFAs at Pease.

¹⁹ U.S. Department of Health and Human Services, *Feasibility Assessment for Epidemiological Studies at Pease International Tradeport, Portsmouth, New Hampshire*, https://www.atsdr.cdc.gov/sites/pease/documents/Pease_Feasibility_Assessment_November-2017_508.pdf

²⁰ NH Department of Health and Human Services, *Division of Public Health Services*. PFC Blood Testing Report, June 16, 2016. Available at <https://www.dhhs.nh.gov/media/pr/2016/pease-final-06162016.htm>

251. Pease AFB would therefore become the first site to participate in the multi-state PFAS study with ATSDR.²¹

252. The NHDES proposed lowering the drinking water quality standard of PFOA to 38 ppt, while keeping at 70 ppt the PFOS and the combined PFOS and PFOA. It also proposed setting the drinking water standard for PFHxS at 85 ppt and 23 ppt for PFNA.²²

253. As part of the rulemaking process, NHDES scheduled 3 public comment hearings in March 2019 and had been accepting written comments on all the proposed rules until April 12, 2019.²³

254. Upon information and belief, Defendants sold their AFFF products and they were used at the Pease AFB.

255. At any given time, Pease AFB stored and used thousands of gallons of AFFF concentrate, designed, manufactured and sold by each of the Defendants.

256. The AFFF was expected to, and did, reach Pease AFB without substantial change in the condition in which it was sold to the USAF.

257. For decades, USAF personnel conducted training exercises at Pease AFB including firefighting training that used AFFF designed, manufactured and sold by each of the Defendants.

258. The FTA-1 was used from 1956 to 1961 and the FTA-2, Site 8, from 1961 to 1988.

259. AFFF was released into the environment and into the air, soil and groundwater at locations including but not limited to FT-2 or Site 8, which was associated with possible receiving bodies of water and down-gradient wells, such as Haven Well.

²¹ Liebeskind, Ken. "PFAS study to be funded by \$10M grant." *The Telegraph*, August 12, 2018.

²² <https://www4.des.state.nh.us/nh-pfas-investigation/?p=918>

²³ <https://www4.des.state.nh.us/nh-pfas-investigation/?p=947>

260. AFFF was additionally introduced into the environmental and groundwater via aircraft hangers containing fire suppressions systems utilizing AFFF. During function testing AFFF was permitted to enter the air, soil, and groundwater and further contaminate down-gradient wells.

261. Upon information and belief, Defendants each manufactured AFFF containing PFC's for sale to the Department of Defense or the United States Air Force with knowledge that it would be used in training and for emergency fire-fighting situations.

262. As a direct and proximate result of the failure to warn the USAF, or local sensitive receptors, the AFFF and its constituents were permitted to enter the air, soil, and groundwater, and ultimately enter Plaintiffs' and the Putative Classes' bodies.

263. Upon information and belief, instructions, warning labels and material safety data sheets that were provided with the AFFF by the Defendants, did not reasonably nor adequately describe the health and environmental hazards of AFFF, which Defendants knew or should have known.

CLASS ACTION ALLEGATIONS

264. Plaintiffs incorporate the foregoing paragraphs as though the same were forth at length herein.

265. Plaintiffs bring this action as a class action on their own behalf and on behalf of all other persons similarly situated as members of the proposed subclasses and seek to certify and maintain it as a class action under Rules 23(a); (b)(1) and/or (b)(2); and (b)(3) of the Federal Rules of Civil Procedure, subject to amendment and additional discovery as follows:

a. **Medical Monitoring Class:** Individuals who have ingested PFAS-contaminated water from the Portsmouth Regional Water System. This Class is composed of the following subclasses:

- 1) All individuals who live or have lived on the former Pease AFB who have consumed water provided by the public water system.
- 2) All individuals who work or have worked on the former Pease AFB who have consumed water provided by the public water system.

266. Plaintiffs are members of the proposed Sub-Classes they seek to represent. This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

267. Excluded from the Class are:

a. Defendants, including any entity or division in which Defendants have a controlling interest, along with their legal representative, employees, officers, directors, assigns, heirs, successors, and wholly or partly owned subsidiaries or affiliates;

b. The Judge to whom this case is assigned, the Judge's staff, and the Judge's immediate family;

c. Any class counsel or their immediate family members; and

d. All governmental entities.

e. Plaintiffs reserve the right to amend the Class definition if discovery and further investigation reveal that any Class should be expanded, divided into additional subclasses, or modified in any other way.

Numerosity and Ascertainability

268. This action meets the numerosity requirement of Fed. R. Civ. P. 23(a)(1), given that the number of impacted individuals, upon information and belief, has reached the thousands, making individual joinder of class members' respective claims impracticable. While the exact

number of class members is not yet known, a precise number can be ascertained from U.S. Federal Census records, the State of New Hampshire and the public records of the municipal entities, and through other appropriate discovery. The resolution of the claims of the class members in a single action will provide substantial benefits to all parties and the Court. It is expected that the class members will number in the tens of thousands.

269. Finally, Class members can be notified of the pendency of this action by Court-approved notice methods.

Typicality

270. Pursuant to Federal Rules of Civil Procedure 23(a)(3), Plaintiffs' claims are typical of the claims of class members and arise from the same course of conduct by Defendants.

271. Plaintiffs' persons, like all Class Members, have been damaged by Defendants' misconduct in that they have incurred damages and losses related to the introduction of PFOA, PFOS, and other PFC's into the potable water they had consumed at the former Pease AFB , causing personal injury damages.

272. Furthermore, the factual bases of Defendants' actions and misconduct are common to all Class Members and represent a common thread of misconduct resulting in common injury to all Class Members.

273. Therefore, Plaintiffs' claims derive from the same course of conduct as the class members' claims and are based on the same cause of action.

274. The relief Plaintiffs seek is typical of the relief sought for absent Class Members.

275. While the amount of exposure may differ, factual inconsistencies between the class members are not enough to defeat typicality. Since the named Plaintiffs assert claims reflective of those of the members of the putative classes, the factor of typicality is satisfied.

Adequacy of Representation

276. Plaintiffs will serve as fair and adequate class representatives as their interests, as well as the interests of their counsel, do not conflict with the interest of other members of the class they seek to represent.

277. Further, Plaintiffs have retained counsel competent and well experienced in class action and environmental tort litigation.

278. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the Class and have the financial resources to do so. Neither the Plaintiffs nor their counsel have interests adverse to the Class.

Predominance of Common Issues

279. There are numerous questions of law and fact common to Plaintiffs and Class Members that predominate over any question affecting only individual Class Members, making it appropriate to bring this action under Rule 23(b)(3).

280. The basis for all of Plaintiffs' claims is Defendant's course of conduct and its knowledge of the potential hazards. All class members suffered a common injury—contamination of their drinking water_ as a result of the release of AFFF from Pease AFB. The method of contamination is uniform. The common contaminant is PFAS, specially PFOS, PFOA and PFHxS.

281. It is Defendants' common course of conduct which caused injury to all of the proposed members of the medical monitoring class. The claims of the Plaintiffs arise from the same practice or course of conduct that gives rise to the claims of the proposed class members, so the entire matter of liability can be disposed of to avoid a waste of judicial resources and inconsistent judgements.

282. While damages may vary between the Plaintiffs, individualized damages inquiries do not obviate the utility of the class mechanism for this action, given the predominant common issues of injury, causation and liability.

283. The answers to these common questions will advance resolution of the litigation as to all Class Members. Common legal and factual issues include:

- A. Whether Defendants engaged in the conduct alleged herein.
- B. Whether Defendants knew or should have known that exposure to PFOA and PFOS could increase health risks.
- C. Whether Manufacturing Defendants knew or should have known that their manufacture of AFFF containing PFOA and PFOS was unreasonably dangerous.
- D. Whether Manufacturing Defendants knew or should have known that their AFFF contained persistent, stable, and mobile chemicals that were likely to contaminate groundwater water supplies.
- E. Whether Manufacturing Defendants failed to sufficiently warn of the potential for harm that resulted from use of their products.
- F. Whether Defendants became aware of health and environmental harm caused by PFOA and PFOS and failed to warn users and Plaintiffs and the Class of same.
- G. The extent to which Defendants knew about the PFOA and PFOS contamination in the water on the periphery of the former Pease AFB.
- H. The extent to which Defendants knew about the PFOA and PFOS contamination in the water supply systems on the periphery of the former Pease AFB.
- I. The extent to which Defendants knew about the PFOA and PFOS contamination in the water supplied to Pease AFB and the surrounding communities.

- J. Whether the Defendants owed a duty to the Plaintiffs and the Class to refrain from the actions that caused the contamination of the drinking water with PFOA and PFOS.
- K. Whether Defendants made unlawful and misleading representations or material omissions with respect to the health impacts of PFOA and PFOS.
- L. Whether Plaintiffs and Class Members were exposed to water containing elevated levels of PFOA and PFOS while living and or working at the former Pease AFB.
- M. Whether medical monitoring is available for the diseases linked to PFOS/PFOA exposure.
- N. Whether Plaintiffs and Class Members are entitled to damages and other monetary relief and other equitable relief, including but not limited to punitive damages, and if so, in what amount.
- O. Whether the members of the Classes and Subclasses have sustained damages and the proper measure of damages.
- P. Whether Manufacturing Defendants are strictly liable to Plaintiffs and the Class for their actions.
- Q. Whether Defendants are liable to Plaintiffs and the Class.

Superiority

284. The class action mechanism is superior to any other available means of the fair and efficient adjudication of this case. Given the great number of individuals in the Areas of Investigation impacted by Defendants' conduct, it is impracticable for Plaintiffs and the Class to individually litigate their respective claims due to the risk of inconsistent or contradictory judgments, generating increased delays and expense, and wasting judicial resources. No unusual difficulties are likely to be encountered in the management of this class action. The class action

mechanism presents considerably less management challenges and provides the efficiency of a single adjudication under the comprehensive oversight of a single court.

285. The proof regarding the release of PFC's into the air, soil and water, and the impact on the soil and groundwater, possible remedies, would be identical. Repetitive discovery for individual cases on the same core issues would be wasteful for both the courts and the parties.

286. Furthermore, cases like this, which require sophisticated scientific inquiries and expensive experts to opine about them, cost thousands of dollars to litigate. With class certification, these complex, expensive inquiries can be resolved once in a single proceeding. Absent class certification, Plaintiffs would not individually have damages sufficient to justify such expense.

ALTERNATIVE LIABILITY, CONCERT OF ACTION, ENTERPRISE LIABILITY

287. Defendants in this action are manufacturers that control a substantial share of the market for AFFF-containing PFOA and/or PFOS in the United States and are jointly responsible for the contamination of the groundwater and for causing the damages and injuries complained of in this Complaint.

288. Enterprise liability attaches to all Defendants and the liability of each should be assigned according to its percentage of the market for AFFF-containing PFOA and/or PFOS at issue in this Complaint. PFOA and PFOS is fungible; it is impossible to identify the exact Defendant who manufactured any given batch of AFFF containing PFOA and/or PFOS found free in the air, soil or groundwater, and, each of these Defendants participated in a state-wide and national market for AFFF containing PFOA and/or PFOS during the relevant time.

289. Concert of action liability attaches to all Defendants, each of which participated in a common plan to commit the torts alleged herein and each of which acted tortuously in pursuance of the common plan to knowingly manufacture and sell inherently dangerous AFFF-containing PFOA and/or PFOS.

290. Enterprise liability attaches to all of the named Defendants for casting defective products into the stream of commerce.

CONSPIRACY BETWEEN DEFENDANTS

291. Defendants actually knew of the health and environmental hazards which PFOA and PFOS posed to Plaintiffs and the Class.

292. Beginning in the 1970's and continuing through the date of this Complaint, Defendants formed joint task forces and committees and otherwise colluded for the avowed purpose of providing information about AFFF-containing PFOA and/or PFOS to the public and to government agencies, but with the true, unlawful purpose of:

- i. Creating a market for AFFF-containing PFOA and/or PFOS despite knowledge of the hazards which PFOA and PFOS posed to the groundwater in the City of Portsmouth and the residents who depend on such water;
- ii. Concealing the environmental properties and toxic nature of PFOA and PFOS, and its impact on Plaintiffs', the Class and the environment; and
- iii. Maximizing profits in a way Defendants knew would require them to contaminate Plaintiffs' drinking water and poison their bodies.

293. Defendants carried out their conspiracy by one or more of the following overt acts or omissions:

- i. Intentionally representing to the public that AFFF-containing PFOA and/or PFOS was safe and did not pose an environmental or human health risk;
- ii. Concealing the dangers of PFOA and PFOS (including toxicological information on the dangers of the chemicals to living organisms, adverse fate and transport characteristics and the propensity of PFOA and PFOS to contaminate groundwater) from the government and the public by, among other means, repeatedly requesting that information about the dangers and health effects of PFOA and PFOS be suppressed and not otherwise published and by downplaying any adverse findings relating to PFOA and PFOS;
- iii. Concealing the dangers of AFFF-containing PFOA and/or PFOS from end users, sensitive receptors, public water suppliers, and the users and consumers of groundwater;

- iv. Using their consideration resources to fight PFOA and PFOS regulation; and
- v. Collectively deciding to use PFOA and/or PFOS rather than other, safer surfactants because AFFF-containing PFOA and/or PFOS was the most profitable surfactant for Defendants to use.

294. As a direct and proximate result of the Defendants' above described conspiracy, PFOA and PFOS, at all times relevant to this litigation has:

- i. Posed and continues to pose a health threat to Plaintiffs and the Class because it has bioaccumulated in their bodies; and
- ii. Will require testing and monitoring of Plaintiffs' health for known adverse health effects of PFOA and PFOS.

CAUSES OF ACTION FOR CLASS ACTION AND INDIVIDUAL CLAIMS

AS AND FOR A FIRST CAUSE OF ACTION: NEGLIGENCE

295. Plaintiffs hereby repeat, reallege, and reiterate each and every allegation in the preceding paragraphs as if fully restated herein.

296. Defendants knew or should have known that exposure to PFOA and PFOS was hazardous to the environment and to human health.

297. Defendants knew or should have known that the manner in which they were manufacturing, marketing, and selling AFFF, containing PFC's, was hazardous to human health, bioaccumulated in the blood, and caused serious health effects, including cancer.

298. Defendants also knew or should have known that PFC's are highly soluble in water, highly mobile, extremely persistent in the environment, and high likely to contaminate water supplies if released into the environment.

299. Defendants knew or should have known that the manner in which they were manufacturing, marketing, and selling AFFF containing PFC's would result in the contamination of the Haven well and others that provided drinking water to the former Pease AFB or Tradeport, as a result of these wells' proximity to Pease AFB.

300. Defendants owed a duty to Plaintiffs to act reasonably and not place inherently dangerous AFFF into the marketplace when its release into the drinking water supplies was imminent and certain.

301. Defendants marketed and sold their products with knowledge that AFFF containing large quantities of toxic PFC's would be used in training exercises and in emergency situations at military bases, including Pease AFB, in such a manner that dangerous chemicals would be released into the environment.

302. Further, Defendants marketed and sold their products with knowledge that AFFF containing large quantities of toxic PFC's would be stored in fire suppressant systems and tanks on USAF Bases and that such systems and storage were used and maintained in such a manner that dangerous chemicals would be released into the environment.

303. Knowing of the dangerous and hazardous properties of AFFF, and the manner in which AFFF would be used, stored, and maintained at Pease AFB, it was foreseeable that AFFF would contaminate the surrounding environment, groundwater, and drinking water supplies of the former Pease AFB.

304. Defendants therefore knew or should have known that safety precautions would be required to prevent the release of PFOA and PFOS into the surrounding environment, groundwater, and drinking water supplies.

305. The magnitude of the burden on the Defendants to guard against this foreseeable harm to Plaintiffs and the Class was minimal, as the practical consequences of placing this burden on the Defendants amounted to a burden to provide adequate instructions, proper labeling, and sufficient warnings about their AFFF products.

306. As manufacturers, Defendants were in the best position to provide adequate instructions, proper labeling, and sufficient warnings about their AFFF products.

307. Considering the above factors related to risk, foreseeability, social utility, burden of guarding against the harm, and the practical consequences of placing that burden on the Defendants, the Defendants therefore owed a cognizable duty to Plaintiffs and the Class not to contaminate the surrounding environment and groundwater with AFFF, containing dangerous levels of PFC's.

308. Defendants had a duty to warn of the hazards associated with AFFF, containing PFC's, entering and poisoning the environment and groundwater.

309. Defendants, as manufacturers, marketers, and sellers of AFFF owed Plaintiffs and the Class a cognizable duty to exercise reasonable care to ensure that AFFF was manufactured, marketed, and sold in such a way as to ensure that the end users of AFFF were aware of the potential harm PFOA and PFOS can cause to human health and the environment.

310. Upon learning of the release of the contaminants, all Defendants owed Plaintiffs and the Class a duty to warn and notify Plaintiffs and the Class of the release of the contamination before it injured Plaintiffs and the Class and/or to act reasonably to minimize the damage to Plaintiffs.

311. Defendants breached their duty by allowing PFOA and PFOS to be released into the wells that provided drinking water to residents and/or employees at former Pease AFB, and through their failure to warn and notify the end users of AFFF of the danger that PFOA and PFOS would enter into the environment and groundwater.

312. As such, the Defendants, negligently, grossly negligently, recklessly, willfully, wantonly, and/or intentionally breached their legal duties to the Plaintiffs and the Class, causing

the contamination of the former Pease AFB water supplies that Plaintiffs and the Class provided drinking water to.

313. Defendants further breached the duties owed to the Plaintiffs and the Class by failing to take reasonable, adequate, and sufficient steps or actions to eliminate, correct, or remedy any contamination after it occurred.

314. Defendants' failure to notify the Plaintiffs and the Class in a timely manner of the contamination of the wells that provided drinking water to residents and/or employees at former Pease AFB.

315. Defendants' breaches of their duties were direct and proximate causes of Plaintiffs' and the Class' injuries, damages, and the imminent, substantial, and impending harm to their health.

316. Defendants' breaches of their duties caused the drinking water provided to residents and/or employees at former Pease AFB to become contaminated with unsafe and dangerous levels of PFOA and PFOS.

317. Further, Defendants' breach of their duty to timely notify the community and act reasonably in warning of the presence of PFOA and PFOS in AFFF, Plaintiffs and the Class were forestalled from undertaking effective and immediate remedial measures, and Plaintiffs and the Class have expended and/or will be forced to expend significant resources to test, monitor, and remediate the effects of Defendants' negligence for many years.

318. Plaintiffs and the Class suffered foreseeable injuries and damages as a proximate result of said Defendants' negligent breach of their duties as set forth above. At the time Defendants breached their duties to Plaintiffs and the Class, Defendants' acts and/or failures to act

posed recognizable and foreseeable possibilities of danger to Plaintiffs and the Class so apparent as to entitle them to be protected against such actions or inactions.

319. Accordingly, Plaintiffs and the Classes seek damages from Defendants, in an amount to be determined at trial, directly resulting from their injuries to their persons, in a sufficient amount to compensate them for the injuries and losses sustained and to restore Plaintiffs and the Class to their original position, including but not limited to injuries to persons, including the need for medical monitoring as an element of damages, and actual, consequential, and nominal damages, flowing from the negligence which are the natural and proximate result of Defendants conduct in an amount to be proved at trial.

AS AND FOR A SECOND CAUSE OF ACTION: MEDICAL MONITORING

320. Plaintiffs hereby repeat, reallege, and reiterate each and every allegation in the preceding paragraphs as if fully restated herein.

321. Medical monitoring is available to Plaintiffs and Class Members who have yet to sustain a present injury as a stand-alone cause of action as the increased risk of developing the diseases and conditions discussed *supra* constitute an injury-in-fact and also as an element of damages associated with Plaintiffs and Class Members other claims for those Plaintiffs and Class Members who have sustained a present injury.

322. Plaintiffs and Class members have been substantially exposed to PFAS, toxic and hazardous substances, through the negligent actions of Defendants. Plaintiffs suffer or are in increased risk of contracting a serious latent disease as a proximate result of exposure. Because of that increased risk, periodic diagnostic medical examinations are reasonably necessary to achieve early detection and treatment of the disease.

323. Defendants knew or should have known that the manner in which they were manufacturing, marketing, and selling AFFF containing PFC's would result in the contamination of the wells that provided drinking water to residents and/or employees at former Pease AFB.

324. Defendants knew or should have known that exposing humans to PFC-contaminated water would be hazardous to human health and the environment.

325. The Plaintiffs and the Classes have been exposed to PFOA, PFOS, and potentially other toxic substances that resulted from the use, storage, and discharge of AFFF at Pease AFB.

326. As described more fully above in this Complaint, PFOA and PFOS exposure leads to the bioaccumulation of PFOA and PFOS in the blood, seriously increasing the risk of contracting numerous diseases. Medical tests currently exist that can determine the level of PFOA and PFOS in the blood.

327. Given that exposure to and bioaccumulation of PFOA and PFOS significantly increases the risk of contracting a serious medical condition, periodic medical examinations to detect latent diseases are both reasonable and necessary. A thorough medical monitoring plan, following common and accepted medical practices, can and should be developed for the Plaintiffs and the Classes to assist in the early detection and beneficial treatment of the diseases that can develop as a result of exposure to PFOA and PFOS.

328. As a direct and proximate result of Defendants' acts and omissions, Plaintiffs are therefore entitled to seek injunctive relief, including, but not limited to a private party medical monitoring program for Plaintiffs and the Class Members, a relief that does not interfere with or alter any ongoing cleanup efforts under CERCLA provisions and a trust that will cover a prospective medical monitoring program.

**AS AND FOR A THIRD CAUSE OF ACTION: PRODUCTS LIABILITY –
FAILURE TO WARN**

329. Plaintiffs hereby repeat, reallege, and reiterate each and every allegation in the preceding paragraphs as if fully restated herein.

330. Defendants knew or should have known that exposure to PFOA and PFOS was hazardous to the environment and to human health.

331. Defendants knew or should have known that the manner in which they were manufacturing, marketing, and selling AFFF, containing PFC's, was hazardous to human health and the environment.

332. Defendants knew or should have known that the manner in which they were manufacturing, marketing, and selling AFFF containing PFC's would result in the contamination of the wells that provided drinking water to residents and/or employees at former Pease AFB.

333. Defendants had the duty to warn of the hazards associated with AFFF entering and poisoning the environment and groundwater because they knew of the dangerous, hazardous and toxic properties of the AFFF.

334. Defendants failed to provide sufficient warning that the use and storage of Defendants' product would cause the product to be released into the environment and cause the contamination of the environment, groundwater, and drinking water, with PFOA and PFOS.

335. Further, this contamination led to the exposure and bioaccumulation of PFOA and PFOS of the Plaintiffs and the Class and increased their risk of developing numerous diseases as more fully set forth above.

336. Adequate instructions and warnings on the AFFF products could have reduced or avoided these foreseeable risks of harm to Plaintiffs and the Class.

337. Had Defendants provided adequate warnings, Plaintiffs and the Class could have taken measures to avoid or lessen their exposure.

338. Had Defendants provided adequate warnings to the end users, steps could have been taken to reduce or prevent the release of PFOA and PFOS into the environment, groundwater, and drinking water.

339. Defendants' failure to warn was a direct and proximate cause of the environmental and health impacts from PFOA and PFOS that came from the use, storage and disposal of AFFF at Pease AFB.

340. As such, Defendants' failure to provide adequate and sufficient warnings for the AFFF that they manufactured, marketed, and sold renders the AFFF a defective product.

341. As a result of Defendants' conduct and the resulting contamination, the Plaintiffs and the Classes have been injured in that their exposure to PFOS, PFOA, and potentially other toxic substances has caused them to develop illnesses associated with this exposure as more fully described and/or significantly increased their risk of developing those illnesses.

342. As a result of Defendants' manufacture, sale or distribution of a defective product, Defendants are strictly liable in damages to the Plaintiffs and Class Members.

343. Defendants' acts were willful, wanton, reckless and/or conducted with a reckless indifference to the rights of Plaintiffs and Class Members.

**AS AND FOR A FOURTH CAUSE OF ACTION: PRODUCTS LIABILITY –
DEFECTIVE DESIGN**

344. Plaintiffs hereby repeat, reallege, and reiterate each and every allegation in the preceding paragraphs as if fully restated herein.

345. Defendants knew or should have known that exposure to PFOA and/or PFOS was hazardous to the environment and to human health.

346. Defendants knew or should have known that the manner in which they were manufacturing, marketing, and selling AFFF, containing PFOA and/or PFOS, was hazardous to human health and the environment.

347. Defendants knew or should have known that the manner in which they were manufacturing, marketing, and selling AFFF containing PFOA and/or PFOS would result in the contamination of the wells that provided drinking water to residents and/or employees at former Pease AFB.

348. Knowing of the dangerous and hazardous properties of the AFFF, Defendants could have manufactured, marketed, and sold alternative designs or formulations of AFFF that did not contain PFOA or PFOS.

349. These alternative designs and/or formulations were already available, practical, and technologically feasible.

350. The use of these alternative designs would have reduced or prevented the reasonably foreseeable harm to persons that was caused by the Defendants' manufacture, marketing, and sale of AFFF that contained PFOA or PFOS.

351. Additionally, the AFFF that was manufactured, marketed, and sold by the Defendants contained PFOA and/or PFOS chemicals that were so toxic and dangerous to human health and the environment, mobile, and persistent, that the act of designing, formulating, manufacturing, marketing, and selling this product was unreasonably dangerous under the circumstances.

352. Further, this contamination then led to the exposure and bioaccumulation of PFOA and PFOS to the residents and/or employees at former Pease AFB and increased their risk of numerous diseases.

353. The AFFF manufactured, marketed, and sold by the Defendants was defectively designed as the foreseeable risk of harm could have been reduced or eliminated by the adoption of a reasonable, alternative design that was not unreasonably dangerous.

354. Defendants' defective design and formulation of AFFF was a direct and proximate cause of the environmental and health impacts from PFOA and PFOS, that came from the use and storage of AFFF at Pease AFB.

355. As a direct result of Defendants' defective design and formulation of AFFF and the resulting contamination, the Plaintiffs and Class Members have been injured in that their exposure to PFOS, PFOA, and potentially other toxic substances has caused them to develop illnesses associated with this exposure as more fully described and/or significantly increased their risk of developing those illnesses.

356. As a result of Defendants' design and formulation of a defective product, Defendants are strictly liable in damages to the Plaintiffs and Class Members.

357. Defendants' acts were willful, wanton, reckless and/or conducted with a reckless indifference to the rights of Plaintiffs and Class Members.

CLAIM FOR ENHANCED COMPENSATORY DAMAGES

358. Plaintiffs and the Class hereby repeat, reallege, and reiterate each and every allegation in the preceding as if fully restated herein.

359. At all times relevant to the present cause of action, Defendants manufactured, marketed, and sold the AFFF that was used at Pease AFB that resulted in the contamination of the water supply relied upon by Plaintiffs at all relevant times.

360. At the time the above-described, affirmative, voluntary, and intentional acts were performed by Defendants, Defendants had good reason to know or expect that large quantities of

PFOA and PFOS would and/or could be introduced into the environment, causing contamination of surface and groundwater, as well as public drinking water wells.

361. The above-described affirmative, voluntary, and intentional acts were performed with the reckless disregard of the potential for PFOA and PFOS to be disbursed through the water consumed by Plaintiffs and Class Members.

362. Defendants' negligent, reckless, wanton, willful, and/or oppressive actions and/or wanton, willful, oppressive and/or intentional failures to act caused an unknown quantity of PFOA and PFOS to be released into the drinking water supplied to residents and employers at the former Pease AFB.

363. Defendants' wanton, willful, and/or oppressive conduct includes but is not limited to Defendants' failure to take all reasonable measures to ensure PFOA and PFOS, which they knew to be carcinogenic, was not ingested by Plaintiffs and the Class.

364. Defendants have caused great harm to the environment and wells that supplied drinking water to Plaintiffs and the Class and demonstrated an outrageous conscious disregard for their safety with implied malice, warranting the imposition of enhanced compensatory damages.

365. Accordingly, Plaintiffs and Class Members seek damages from Defendants, in an amount to be determined at trial, directly resulting from their injuries to their persons, in a sufficient amount to compensate them for the injuries and losses sustained and to restore Plaintiffs and the Class to their original position, including but not limited to injuries to persons, including the need for medical monitoring as an element of damages which are the natural and proximate result of Defendants' conduct in an amount to be proved at trial.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs and the Class demand judgment against Defendants, and each of them, jointly and severally, and request the following relief from the Court.

- A. Certification of the proposed Sub-Classes;
- B. A declaration that Defendants acted with negligence, gross negligence, and/or willful, wanton, and careless disregard for the health, safety of Plaintiffs and members of the Class;
- C. An award to Plaintiffs and the Class of general, compensatory, exemplary, consequential, nominal, and enhanced compensatory damages;
- D. An order for an award of attorney fees and costs, as provided by law;
- E. Pre-judgment and post-judgment interest as provided by law;
- F. Equitable or injunctive relief, including, but not limited to, an order requiring defendants:
 - 1. To establish and implement a medical monitoring program for Plaintiffs and the Class Members.
 - 2. An order requiring the Defendants to fund a trust that will cover a prospective medical monitoring program.
- G. An order for all such other relief the Court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury of any and all issues in this matter so triable.

Dated: May 24, 2019

Respectfully Submitted,

NAPOLI SHKOLNIK PLLC

NIXON VOGELMAN BARRY SLAWSKY

SIMONEAU P.A.

By: /s/ Tate J. Kunkle
Patrick J. Lanciotti, PHV pending
360 Lexington Avenue
11th Floor
New York, NY 10017
(212) 397-1000
tkunkle@napolilaw.com
planciotti@napolilaw.com

By: /s/ Kirk Simoneau
Lawrence A. Vogelmann, #10280
77 Central Street
11th Floor
Manchester, New Hampshire 03101
(603) 669-7070
ksimoneau@davenixonlaw.com
LVogelman@davenixonlaw.com