

**THE KING'S BENCH
WINNIPEG CENTRE**

BETWEEN:

MUSKODAY FIRST NATION

Plaintiff,

– and –

3M CANADA COMPANY, 3M COMPANY,
AGC CHEMICALS AMERICAS, INC.,
AMEREX (CANADA) ULC, AMEREX CORPORATION,
ARCHROMA CANADA, CORP., ARCHROMA U.S., INC.,
ARKEMA CANADA INC., ARKEMA INC.,
BASF CANADA INC., BASF CORPORATION,
BUCKEYE FIRE EQUIPMENT COMPANY,
CARRIER FIRE & SECURITY, LLC,
CARRIER GLOBAL CORPORATION,
CHEMDESIGN PRODUCTS, INC.,
CHEMICALS INC.,
CHUBB FIRE & SECURITY CANADA CORPORATION,
CHUBB FIRE LIMITED, NATIONAL FOAM, INC.,
DEEPWATER CHEMICALS, INC.,
DUPONT DE NEMOURS, INC., EIDP, INC.,
E.I. DUPONT CANADA – THETFORD INC.,
THE CHEMOURS CANADA COMPANY,
THE CHEMOURS COMPANY,
THE CHEMOURS COMPANY FC, LLC,
THE CHEMOURS COMPANY NORTH AMERICA, INC.,
DYNAX CORPORATION,
NATION FORD CHEMICAL CO.,
TYCO FIRE PRODUCTS LP,

FILED
AUG 20 2024

Proceeding under *The Class Proceedings Act*

Defendants.

STATEMENT OF CLAIM
(August 20th, 2024)

FILED
AUG 20 2024



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Proceeding under *The Class Proceedings Act*

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STATEMENT OF CLAIM

(August 19th, 2024)

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *King's Bench Rules*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Manitoba.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is 40 days. If you are served outside Canada and the United States of America, the period is 60 days.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

August 20th, 2024

Issued by

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DEPUTY REGISTRAR
COURT OF KING'S BENCH
FOR MANITOBA

Registrar
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CLAIM

1. On behalf of Indian Bands in Canada, the Plaintiff claims against the Defendants, jointly and severally:

- (a) compensatory and punitive damages;
- (b) Abatement Costs;
- (c) costs of investigation under s 36 of the *Competition Act*;
- (d) pre- and post-judgment interest; and
- (e) costs.

I. PARTIES

A. Plaintiff

2. Muskoday First Nation is an Indian band under Canadian laws. It has an Indian Reserve in Canada.

B. Defendants

3. Each defendant group carried on business throughout North America, including in Canada and Manitoba, as partnerships formed to design, manufacture, and market PFAS products throughout the world for profit, in common, in concert, and pursuant to a common design.

- (a) “3M”: **3M Canada Company** is a Nova Scotia unlimited company

that is a subsidiary of **3M Company**, a Delaware corporation, and that carries on business under the name “3M Canada”.

(b) “Amerex”: **Amerex (Canada) ULC** is a Nova Scotia unlimited company. **Amerex Corporation** was formed under Alabama laws.

(c) “AGC”: **AGC Chemicals Americas, Inc.**, a Delaware corporation that is registered to do business in Canada and its provinces and territories, is a subsidiary of AGC Inc., a Japanese company.

(d) “Archroma”: **Archroma Canada, Corp.**, was incorporated under British Columbia laws. **Archroma U.S., Inc.** (a successor of Clariant Corporation, a successor of Sandoz Chemical Corporation), is a Delaware corporation.

(e) “Arkema”: **Arkema Canada Inc.** (formerly Elf Atochem Canada Inc. and Atofina Canada Inc.), formed under Ontario laws, and **Arkema Inc.** formed under Pennsylvania laws, are subsidiaries of the French Arkema S.A.

(f) “BASF”: **BASF Canada Inc.** was formed under Alberta laws. It is a subsidiary of the German BASF SE. **BASF Corporation** (a successor to Ciba Inc.) was formed under Delaware laws.

(g) “Buckeye”: **Buckeye Fire Equipment Company** was formed under Ohio laws and also carried on business under the name “Buckeye Fire Equipment Co.”.

(h) “Carrier”: **Carrier Fire & Security, LLC** and **Carrier Global Corporation** were formed under Delaware laws. Carrier acquired the PFAS business of Carrier Fire & Security Corporation, Kidde-Fenwal, Inc., Kidde Fire Protection, Inc., Kidde US Holdings Inc., United Technologies Corporation, and UTC Fire & Security Corporation, who are affiliates, predecessors, or subsidiaries of Carrier.

(i) “Chemicals”: **Chemicals Inc.** is a Delaware corporation.

(j) “Chemdesign”: **Chemdesign Products, Inc.** is a Delaware corporation.

(k) “Chubb”: **Chubb Fire & Security Canada Corporation** is a Nova Scotia unlimited company. **Chubb Fire Limited** is a United Kingdom private limited company. They are subsidiaries of United Technologies Corporation. Chubb carried on business throughout Canada under the business name “Chubb Fire & Security Canada”. **National Foam, Inc.** (a Delaware corporation), Chubb Fire Ltd., Chubb Fire & Security Ltd.,

Chubb National Foam, Inc., Chubb Security, PLC, and Red Hawk Fire & Security, LLC are affiliates of Chubb.

(l) “Deepwater”: **Deepwater Chemicals, Inc.** is a Delaware corporation.

(m) “DuPont/Chemours”: **E. I. DuPont Canada – Thetford Inc.** is a

Canadian corporation. **DuPont de Nemours, Inc.** and **EIDP, Inc.**

(affiliates, predecessors, or successors of E. I. du Pont de Nemours and

Company, E. I. du Pont de Nemours & Co., Corteva, Inc., and DuPont

Chemical Solutions Enterprise) were formed under Delaware laws. **The**

Chemours Canada Company is a Nova Scotia unlimited company.

The Chemours Company, The Chemours Company FC, LLC, and

The Chemours Company North America, Inc. were formed under

Delaware laws. Chemours acquired the PFAS and AFFF business of

EIDP, Inc. or its predecessors.

(n) “Dynax”: **Dynax Corporation** is a Delaware corporation.

(o) “Nation Ford”: **Nation Ford Chemical Co.** was formed under the

laws of South Carolina.

(p) “Tyco”: **Tyco Fire Products LP** (successor to The Ansul Company

and a subsidiary of Johnson Controls International Public Limited

Company) is a limited partnership formed under the laws of Delaware and is registered to do business throughout Canada and its provinces. Tyco or its affiliates acquired the PFAS products business of Chemguard, Inc.

4. This originating process is served outside of Manitoba without leave pursuant to Rule 17.02(a), (g), (h), (l), and (m) of the *King's Bench Rules*. The Defendants are joint tortfeasors respecting the following cause of action.

II. CAUSE OF ACTION

A. Factual Cause

5. The Plaintiff has aboriginal and other rights to a clean environment on its reserve, including the right to:

- (a) clean fresh surface and ground water to drink from and to fish in as its members and their ancestors have done according to aboriginal customs and practices since time immemorial; and
- (b) game to hunt for and consume according to aboriginal customs and practices, as its members and their ancestors have also done since time immemorial.

6. Indian Bands and their members have the right to the conservation and protection of the environment under the *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14, Article 29.

7. The Plaintiff's Indian Reserve is located on the South Saskatchewan River. Until the 1960s, Band members got their drinking water from the river in buckets. They ate deer that they hunted on the reserve, fish they caught from the river, and birds that used the river as a way point in their migration. The fish and game also drank from the river.

8. In the late 1960s, the Band began to pipe water in, but Band members continued hunting deer, elk, and birds which drank the river water. In the 1980's a water treatment plant was placed on an island in the middle of the river to service the Plaintiff's reserve. It was a shallow well that used the sand and earth of the island to filter it, and the water was then treated and pumped to members of the Band for personal use.

9. In the mid 1990's, the Prince Albert Rural Water Authority pumped

water from the North Saskatchewan River to the Plaintiff and piped water to Band members on the west side of the river. The treatment plant on the island continued to supply water to members on the east side of the river.

10. The water for the east side eventually became discolored and could no longer be safely consumed or used to wash clothes, and it was thereafter brought from the west side by an extension to the piping system.

11. Today, any water, fish, and game they obtain from the reserve is contaminated with PFAS. The Plaintiff has to expend its band funds to bring water, fish, and game onto the reserve for human consumption.

12. From at least the 1940's, the Defendants designed, manufactured, and marketed all or most of the PFAS products in North America. In the 1940s, 3M pioneered the use of an innovative and patented process called electrochemical fluorination to create carbon-fluorine bonds, the building blocks of PFAS. From the 1950s, 3M marketed PFAS to other Defendants.

13. PFAS, including PFOA and PFOS, have properties that make them:
 - (a) highly soluble in water, mobile, and resistant to environmental or photochemical degradation, so they disperse very easily in the environment over long distances and decompose very slowly;
 - (b) bioaccumulative and biomagnifying, meaning that once absorbed into animal, fish, and human tissues, they tend to accumulate in organisms and concentrate throughout the food chain; and
 - (c) toxic, meaning they pose serious risks to human and animal health, such as immunotoxicity and neurotoxicity. PFAS exposure, including through drinking water, is harmful to human health.

14. As a result of the Defendants' design, manufacture, and marketing of PFAS products, PFAS is found virtually everywhere in North America. PFAS are ubiquitous in the environment on Indian Reserves and are found in the waterways, groundwater, and drinking water.

15. Used for decades in manufacturing to make surfaces water-repellent, dirt-repellent, or impermeable to grease, PFAS are found in household and

commercial products to add resistance to heat or water.

(a) Valued for their resistance to heat, water, and oil, PFAS have been widely incorporated into many consumer and industrial products across Canada, including water-repellent clothing, non-stick cookware, cosmetics, and stain-resistant fabrics.

(b) PFAS have been widely used in military and industrial uses, particularly in insulation and extinguishing agents. PFAS are found in AFFF that is used for fire suppression, including at airports and military bases. AFFF have the ability to extinguish fires and are therefore used in the civil and military aviation sectors and in the oil industry. AFFF can be manufactured without PFAS with similar utility.

16. Major sources of PFAS contamination near Indian Reserves include:

(a) agricultural land where biosolids contaminated with PFAS have been applied as fertilizer;

(b) airports and military bases where AFFF are regularly used;

(c) industrial facilities, including those involved in textile and leather processing, metal plating, and electronics manufacturing;

- (d) landfills with discarded PFAS products and industrial waste; and
- (e) wastewater treatment plants that receive and discharge PFAS-contaminated effluent.

17. The persistent nature of PFAS in the environment, combined with their ability to travel long distances across the continent in air and water, has resulted in widespread contamination that extends far beyond the immediate vicinity of their sources of release.

18. The environmental contamination caused by PFAS on Indian Reserves is virtually permanent due to the extremely long half lives of PFAS. PFAS contaminates surface and groundwater and accumulates in fish and game. Unless abated, these substances will persist in the environment for centuries.

19. PFAS meets the criteria for toxicity to the environment in the *Canadian Environmental Protection Act, 1999*, SC 1999, c 33. In 2012, they were added to the *List of Toxic Substances* in Schedule 1.

20. Since 2012, PFAS has been regulated under the *Prohibition of Certain Toxic Substances Regulations, 2012*, SOR/2012-285, which prohibits the manufacture, sale, use, and import of PFAS products, with limited exceptions.

21. The presence of PFAS even at extremely low levels renders drinking water unsafe to consume. In 2018 and 2019, Health Canada established drinking water quality guidelines for PFAS. PFAS levels on the Plaintiff's reserve are beyond those thresholds, and will remain so unless remediated.

22. Given the adverse health effects associated with exposure to PFAS, PFAS concentrations in drinking water should be non-existent or as low as reasonably achievable.

23. After the Defendants marketed PFAS products that were used throughout North America, PFAS migrated from soil to ground and surface water, and from there, spread throughout the continent, including onto Indian Reserves in Canada, via flowing rivers, streams, and aqueducts. The persistence of PFAS in the environment has resulted in the contamination of

ground, surface, and drinking water sources on Indian Reserves, posing significant risks to human health.

24. Use of the Defendants' PFAS products throughout North America resulted in environmental contamination of the Plaintiff's Indian Reserve, including to the ground and surface water, the lakes, rivers, and streams in which its members fish on its reserve, and its sources of drinking water.

25. The presence of PFAS contamination on Indian Reserves is always attributable to use and migration of the Defendants' PFAS products. Their presence at unreasonably high levels in groundwater tables and rivers can only be explained by human activity. Different variants of PFAS can be traced back to specific brands of manufacturers and distributors.

26. The PFAS manufactured by the Defendants entered the water sources on Indian Reserves through a variety of routes, including:

- (a) direct discharge of industrial waste containing PFAS into rivers, lakes and streams;

- (b) landfills where consumer products containing PFAS and industrial waste have been disposed of;
- (c) runoff from sites where AFFF has been used for firefighting and training exercises; and
- (d) infiltration of PFAS from contaminated soil into groundwater.

27. At all material times, PFAS contamination of Indian Reserves was a reasonably foreseeable consequence of the design, manufacture, and marketing of PFAS products by the Defendants. The Defendants knew that when these products were used as directed, PFAS would be released and would contaminate water sources.

28. PFAS contamination, particularly in drinking water and fish and game that are consumed (and that have in turn consumed other fish and game that have consumed PFAS), has serious adverse consequences for human health. PFAS are particularly harmful to the health of children and pregnant women, and are a causal factor in the development of autoimmune and endocrine disorders, cancers, congenital malformations, and organ damage.

29. From the 1940s to the 1970s, the Defendants knowingly designed, manufactured, and marketed PFAS products throughout North America, with knowledge of (and a belief in) the dangers to human health from PFAS, the extremely long half-lives of PFAS, and the risk of long-term environmental contamination from PFAS migration. Between the 1940's and 1970's, the Defendants knew that PFAS were harmful to humans, including from (but not limited to) the following sources.

(a) A 3M study on mice showed that PFAS accumulated in the blood, and a Stanford University study found that PFAS bound to proteins in humans. These findings alerted the Defendants to the health risks associated with PFAS exposure, including their ability to accumulate in the body and interact with human biological components.

(b) In 1961, a DuPont toxicologist concluded that PFOA is toxic and should be "handled with extreme caution" and affirmed industry concerns about the risks of PFAS.

(c) In 1963, a 3M manual classified PFAS as toxic, marking an internal recognition of the risks associated with PFAS.

(d) In 1965, a DuPont study on rats found liver damage and an increase

in spleen size as a result of exposure to PFAS and provided concrete evidence of their toxicity in mammals.

(e) A 1966 3M study found that PFAS caused acute oral toxicity in rats.

(f) In 1970, an internal DuPont memorandum found that PFAS substances posed significant health risks.

(g) In 1975, 3M was informed that PFAS accumulated in human blood samples and concluded that PFOS was present in the blood of the general population.

(h) In 1976, 3M discovered PFOA in the blood of its workers.

(i) In 1977, 3M tested workers and animals to measure PFAS in blood and found that PFOS was “more toxic than expected.”

(j) In 1978, 3M studies revealed that PFOA reduced the survival rate of fathead minnows’ eggs, that PFOS and PFOA were toxic to rats, and that PFOS caused the death of monkeys tested in the studies.

(k) In 1979, a DuPont survey of employees at its Teflon plant in Parkersburg, West Virginia, found possible evidence of liver damage.

30. In the 1980s and 1990s, the Defendants accumulated additional

scientific evidence that demonstrated risks of PFAS.

(a) In 1990, a 3M study found a risk of testicular cancer linked to exposure to PFOA.

(b) In 1992, a DuPont study found high rates of cancer among its workers, and a former 3M scientist found that male workers exposed to PFOA were more likely to die from prostate cancer.

(c) In 1995, a DuPont scientist expressed concern about the long-term health effects of PFAS.

(d) In 1997, a 3M chemist tested human blood for chemical contamination. His analyses affirmed that PFOS was present in almost all blood samples tested, including samples from remote areas.

(e) In 1998, 3M scientists reported that PFAS moved up the food chain, and 3M acquired more evidence that PFAS accumulated in the blood.

(f) In 1999, a 3M scientist described PFOS as “the most insidious pollutant since PCBs.”

31. Despite this knowledge over the decades, the Defendants stayed silent about these risks. They:

- (a) neglected to conduct sufficient research on the long-term effects of PFAS exposure;
- (b) failed to adequately warn the public about the risks of PFAS and share critical safety information with regulatory authorities; and
- (c) continued to manufacture and market PFAS products.

32. The Defendants at no time warned of the environmental and health risks posed by their PFAS products; indeed, they concealed and downplayed the dangers in North American public statements and marketing campaigns.

33. Because of the environmental and health risks posed by PFAS, the Plaintiff has incurred, and will continue to incur, significant Abatement Costs to address and abate the harms caused by PFAS contamination.

34. The Plaintiff sues on behalf of other Indian Bands who have also incurred, or will incur, similar Abatement Costs.

35. As a result of the Defendants' actions, PFAS have been detected in

drinking water sources on Indian Reserves. This contamination has resulted (and will continue to result) in significant costs for water treatment to avoid personal injury in humans if left unremediated.

B. Nominated Cause

1. *Competition Act*

36. On behalf of Indian Bands, the Plaintiff sues the Defendants under the *Competition Act*, RSC 1985, c C-34, ss 36 and 52.

(a) To promote the sale and use of PFAS products throughout North America, including in Canada, the Defendants made or engaged in the making of false or misleading representations throughout North America, including in Canada, by failing to warn of the risk of environmental contamination and adverse health consequences from PFAS and by falsely stating that PFAS products were safe when used as directed and as intended.

(b) The Defendants made the false or misleading representations to the public through various sources, including (but not limited to) advertisements, press releases, product labels, safety data sheets, and biased scientific studies that they sponsored.

(c) As a result of the Defendant's false or misleading representations, the Defendants gained regulatory authorization to market their products, including in Canada, and the Defendants dramatically increased the sales of their PFAS products.

(d) The Defendants knew there was consistent and reliable scientific evidence in support of the risks of environmental contamination from PFAS; they nevertheless intentionally failed to disclose these studies and to warn of such risks. The Defendants spent millions of dollars to market their PFAS products to Canadian consumers.

(e) The Defendants' false or misleading representations caused Indian Bands to incur, and to continue to incur, Abatement Costs and costs of investigating the extent of PFAS contamination on their reserves.

2. Conspiracy

37. Primarily to profit from the sale of PFAS products at the expense of consumers (including Indian Bands), and with knowledge that the use of PFAS products would cause the contamination of water sources throughout North America (including on Indian Reserves), all or some Defendants agreed:

- (a) to withhold scientific reports and studies from regulators and North American consumers about the health and environmental risks associated with PFAS, with knowledge and the intent that regulators would authorize the sale of, and that consumers (including Indian Bands) would purchase and use, PFAS products in Canada;
- (b) to misrepresent to the North American public that PFAS products did not migrate nor pose a risk to the environment or human health when used as directed and as intended; and
- (c) to downplay the environmental and health risks of PFAS products.

38. Particulars of the agreements and the acts and omissions taken in furtherance thereof include (but are not limited to) the following.

- (a) In the early 2000s, DuPont and Tyco formed a Fire Fighting Foam Coalition to advocate for the continued use of AFFFs. The Coalition repeatedly made representations throughout North America about the risks of AFFF that DuPont and Tyco knew were false or misleading, including that their telomer-based AFFF did not contain PFAS that would transform into PFOA in the environment.

(b) Dupont and 3M shared research and scientific findings on the risks associated with PFAS and agreed not to disclose some to regulators nor to the North American public, how to present those they did disclose, and the strategy in which to downplay their significance to the environment and human health.

(c) The Defendants agreed to use common third party lobby groups to influence regulatory oversight and the avoidance of regulatory restrictions on the marketing of their common PFAS products.

39. As a result of their agreements, the Defendants thwarted regulatory investigations and government restrictions on AFFF and other PFAS products and thereby prolonged their use in Canada.

40. Because of the agreements and the overt acts that the Defendants took in furtherance thereof, the Plaintiff and others purchased and used PFAS products that ultimately migrated onto the Plaintiff's Indian Reserve and contaminated the environment thereon.

3. Negligence

41. The Defendants owed Indian Bands a duty of care:

- (a) not to market PFAS products without undertaking research, studies, and testing to ascertain whether PFAS were reasonably safe for those exposed to them;
- (b) design PFAS products to use amounts of PFAS that were as low as reasonably possible in comparison to their perceived social utility;
- (c) design PFAS products in a way that minimizes their capacity to migrate in the environment through air, soil, and water;
- (d) design PFAS in a way that minimizes their half lives so that they do not persist in the environment for centuries after they are released;
- (e) design and manufacture PFAS products to ensure that they posed no greater risk to human health and the environment than similar existing products that were already on the market, that did not use PFAS in their manufacture, and that have equal or greater utility;
- (f) not to withhold information that PFAS products are not safe to humans or the environment when used as directed and intended;
- (g) inform purchasers and users of PFAS products, including Indian

Bands, of the environmental and health risks associated with using PFAS, including through clear, current, and complete product labels and safety data sheets;

(h) inform consumers as to how to minimize the risk of contamination from PFAS and maximize the detection and removal of PFAS contamination from water sources;

(i) inform the public, including Indian Bands, that PFAS is a possible or likely source of contamination of their lands;

(j) warn Indian Bands not to eat fish and game that may have been exposed to PFAS-contaminated areas and that may contain PFAS;

(k) recall or stop selling PFAS products that have minimal utility but a high risk of environmental contamination and adverse health effects or to limit their use to only necessary, last resort applications; and

(l) take reasonable steps to ascertain whether Indian Reserves are contaminated and to clean up PFAS-contaminated areas on reserves.

42. Environmental contamination and consequent Abatement Costs were a reasonably foreseeable consequence of the breach of the Defendants' duty of

care. If left unremediated, PFAS contamination will cause personal injury and death in those who are exposed to the contamination.

43. The Defendants breached their duty of care to Indian Bands in the design, manufacture, and marketing of PFAS products, including by:

(a) marketing PFAS and PFAS products without undertaking all (or any) reasonable research, studies, and testing to ascertain whether PFAS products were reasonably safe for those exposed to them;

(b) designing PFAS products that used unreasonable amounts of PFAS;

(c) designing PFAS products in a way that did not minimize their capacity to migrate in the environment through air, soil, and water;

(d) designing PFAS in a way that did not minimize their half lives so that they do not persist in the environment for centuries;

(e) designing and manufacturing PFAS products in ways that did not ensure that they posed no greater risk to human health and the environment than similar existing products that were already on the market and that had equal or greater utility;

(f) withholding information that PFAS products were not safe to

humans or the environment when used as directed and intended;

(g) not informing purchasers and users of PFAS products, including Indian Bands, of the health and environmental risks associated with using PFAS, including by failing to label products and distribute safety data sheets that warned of the risk of migration and environmental contamination from PFAS;

(h) failing to inform consumers as to how to minimize the risk of contamination from PFAS and how to maximize the detection and removal of PFAS contamination from land and water sources;

(i) failing to inform the public, including Indian Bands, that PFAS was a source of contamination of their lands and water sources;

(j) failing to inform Indian Bands not to eat fish and game that may have been exposed to PFAS contaminated areas and that contained PFAS;

(k) not recalling PFAS products that the Defendants knew to have minimal utility but a high risk of environmental contamination and adverse effects on human health or to limit their use to only necessary applications; and

(l) not taking reasonable (or any) steps to ascertain whether Indian

Reserves were contaminated and to clean up PFAS-contaminated areas on those reserves.

44. Due to the Defendants' breach of their duty of care, Indian Bands have PFAS contamination on Indian Reserves. If the Defendants had disclosed the risks of PFAS, regulators would not have authorized PFAS products for marketing in Canada and consumers would not have purchased them.

45. The Defendants willfully marketed PFAS products in Canada with knowledge or without care that they would contaminate Indian Reserves and interfere with the aboriginal rights of Indians Bands and their members to fish and hunt as they have done since time immemorial.

4. Nuisance

46. The Defendants' PFAS products caused environmental contamination on Indian Reserves that is harmful to the health of Indian Band members and that unreasonably interferes with:

(a) the exercise of their traditional aboriginal hunting and fishing rights

that non-aboriginal Canadians off Indian Reserves do not enjoy; and
(b) their access to clean drinking water from sources on their reserves.

47. As a result of the nuisance, the Plaintiff and other Indian Bands have incurred Abatement Costs.

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Schedule “A”

Additional Definitions Employed in This Claim

48. **“Abatement Costs”** were (and are) past (and future) expenditures of Indian Band funds relating to the costs of defining, monitoring, treating, remediating, and removing PFAS from the environment on Indian Reserves, including costs to:

- (a) fully investigate, remediate, treat, assess, and restore the lands, waters, sediments and other natural resources on Indian Reserves; and
- (b) monitor and treat PFAS contamination in drinking water, wastewater, storm water discharges, and biosolids, including:

- (i) treatment through activated carbon (granulated or powdered), ion exchange resin (reverse osmosis nanofiltration), and advanced oxidization (ozone and catalyzed hydrogen peroxide); and
- (ii) remediation, including pump and treat, excavation and treatment, excavation and disposal, and stabilization (activated carbon and aluminum hydroxide).

49. **“AFFF”** is aqueous film-forming foam that was manufactured with, and that contained, massive quantities of PFAS that are released into the environment when used as directed and as intended by the Defendants. AFFF includes AFFF products.

50. **“Indian Bands”** are bands that are constituted under the *Indian Act*, RSC 1985, c I-5.

51. **“Indian Reserves”** are reserves under the *Indian Act*, RSC 1985, c I-5.

52. **“PFAS”** are per- and poly-fluoroalkyl substances, including PFOS and PFOA, and their chemical precursors. PFAS include commonly structured compounds that are not found naturally in the environment. They must be synthesized by human design and engineering. All PFAS:

- (a) have extremely long half lives and therefore remain in the environment for centuries unless steps are taken to remove them;
- (b) rapidly migrate through air, soil, and water over long distances; and
- (c) can cause harm to the environment and human health.

53. **“PFAS products”** are products, including (but not limited to) AFFF, that were designed, manufactured, and marketed by the Defendants throughout North America, including in Canada and on Indian Reserves that contained PFAS. PFAS products include the PFAS that are used in such products.

54. **“PFOA”** and **“PFOS”** are perfluorooctanoic acid and perfluorooctane sulfonate, types of PFAS.