SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY
SEP 13 2024

S-246358

NO.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

[redacted]

PLAINTIFF

AND:

3M COMPANY,
3M CANADA COMPANY,
EIDP, INC.,
E.I. DUPONT CANADA - THETFORD INC.,
THE CHEMOURS COMPANY,
THE CHEMOURS COMPANY FC, LLC and
THE CHEMOURS COMPANY CANADA

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c.50

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.
If you intend to respond to this action, you or your lawyer must

(a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

(a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

TIME FOR RESPONSE TO CIVIL CLAIM

A response to civil claim must be filed and served on the plaintiff(s),

(a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,

(b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,

(c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or

(d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF(S)

Part 1: STATEMENT OF FACTS

A. Definitions

1. In this Notice of Civil Claim, in addition to the terms that are defined elsewhere herein, the following definitions apply:

(a) **"Defendants"** means, collectively, 3M Company, 3M Canada Company, EIDP, Inc., E.I. Dupont Canada - Thetford Inc., The Chemours Company, The Chemours FC, LLC and The Chemours Company Canada;

(b) **"PFAS"** means the class of synthetic fluorochemicals and fluorosurfactants called per- and polyfluoroalkyl substances, and includes perfluorooctanoic acid (**"PFOA"**) and perfluorooctane sulfonate (**"PFOS"**); and

(c) **"PFAS-Infused Products"** means any product designed, developed, tested, manufactured, imported, marketed distributed and/or sold by the Defendants that contains PFAS, and the precursor PFAS chemicals manufactured by the Defendants (**"PFAS Components"**), that are intended to be used or incorporated into finished consumer or household products, including, *inter alia*, carpets, rugs, home textiles, non-stick cookware and water repellant clothing to impart stain-, soil-, oil- or water-resistence.

B. Introduction - Nature of Claim

2. The within proposed consumer product liability multi-jurisdictional class proceeding involves the sale and installation of carpets that release toxic carpet dust containing PFAS which people unknowingly inhale or ingest. Carpets and rugs are major sources of human and ecological PFAS exposures. Carpets and rugs constitute nearly one-half of all floor coverings in North American homes and workplaces. A large percentage of PFAS produced globally is used to treat carpets, rugs and other home textiles to confer stain-, soil-, oil- or water-resistence. The PFAS laden dust in carpets has damaged the buildings where carpet treated with PFAS has been installed, and which damage will continue unless the PFAS-infused carpets are removed and replaced with non PFAS carpet.

3. PFAS are a diverse group of chemicals often referred to as "Forever Chemicals" due to their strong carbon-fluorine bonds which makes them extremely resistant to degradation in the environment and difficult for the human body to effectively metabolize and/or excrete.

4. Once released into the environment during manufacture, use and/or disposal, PFAS become part of a virtually close cycle leading to chronic human and ecological exposures. Carpets and rugs materially contribute to the amount of the ubiquitous environmental contamination and exposures. As persistence PFAS lack a natural degradation route, their levels in the environment, humans or biota will continue to rise for as long as PFAS are produced and used in consumer or household products, and even after production of these compounds has ceased.

5. Exposure to PFAS can lead to adverse health outcomes in humans. If humans are exposed to PFAS through diet, drinking water or inhalation, these chemicals remain in the human body for a substantial period of time. Human epidemiology studies have shown that some PFAS can cause reproductive, developmental, liver, kidney, and immunological effects that are harmful.

6. The Defendants designed, developed, tested, manufactured, marketed, distributed, and/or sold stain- and soil- repellants with PFAS to carpet manufacturers and others without disclosing the dangers or toxicity of PFAS that were known to them. PFAS-Infused Products

sold by the Defendants were applied by carpet manufacturers, and others, to all, or substantially all, carpets manufactured in North America before carpet manufacturers ceased treating or incorporating PFAS into their carpet products in 2020.

7. For decades, while fully aware of the health risks posed by PFAS-Infused Products to humans, the Defendants through a shared purpose and common scheme sold PFAS-Infused Products to carpet manufacturers and others without disclosing the toxicity of their stain repellants. As the Defendants knew and intended, and as a foreseeable and common purpose of the scheme, carpet manufacturers treated their carpets with PFAS-Infused Products before they were sold to consumers. The Defendants did not themselves apply the PFAS-Infused Products to carpeting, rather carpet manufacturers, or other non-parties, did so to carpet fibers before the carpets were manufactured or after the carpet had been manufactured.

8. The Defendants never disclosed to carpet manufacturers, retailers and/or consumers that PFAS in carpets is extremely dangerous to human health, property and/or the environment. For instance, the Defendants knew based on their own joint studies that PFOA could cause cancer. Rather, the Defendants collaborated with each other to conceal and suppress such dangers all the while promoting the stain repellant qualities of their products.

9. Carpet manufacturers and retailers learned only recently that PFAS-Infused Products used to treat carpets are extremely dangerous. But they did not learn that from the Defendants. Rather, it fell to third parties, such as non-profit public interest groups and policy institutes, to inform major carpet manufacturers, such as Shaw Industries Group, Inc., Mohawk Industries, Inc, Interface, Inc., Tarkett, Milliken & Company, large purchasers, academic and government scientists, and others about those dangers.

10. As of January 2020, many large retailers such as Home Depot and Lowe's have stopped selling any carpets or rugs treated with PFAS. But even then, the Defendants continued to falsely claim that PFAS is not harmful and none of them have offered to replace the millions of carpets treated with PFAS and installed in residential homes or commercial buildings throughout North America.

11. As a result of their alleged misconduct and the harms they have caused, the Defendants are liable for: negligently designing defective products, negligently failing to warn of the health, property or environmental risks associated with their products, private nuisances, breaches of the *Competition Act*, R.S.C. 1985, c. C-34 and civil conspiracy.

12. The Plaintiff and putative class members were harmed and suffered actual damages as a result of the alleged misconduct of the Defendants. The Plaintiff and putative class members would not have purchased carpet treated with PFAS had the Defendants disclosed such to them. Further, the Plaintiff and putative class members were injured due to the property damage caused by the carpeting emitting PFAS.

13. The Plaintiff seeks relief for all other putative class members including, *inter alia*, recovery of damages for removal, disposal and replacement of the PFAS carpet from their property, punitive damages and disgorgement of the Defendants' unjustly acquired profits.

C. The Representative Plaintiff

14. The Plaintiff [redacted] has an address for service c/o 210 - 4603 Kingsway, Burnaby, British Columbia, Canada, V4H 4M4.

15. The Plaintiff purchased carpeting manufactured by Shaw Industries Group, Inc. for his residence in June 2019 from a flooring retailer in Surrey, British Columbia, Canada. The carpet is still installed in his residence. At the time the Plaintiff purchased the carpet he was unaware that it was manufactured and treated with PFAS that would be emitted by the carpet, causing property damage to his house immediately and continuing over the years until the present time. The Defendants have yet to disclose to him that his carpet was treated with PFAS. The Plaintiff did not know that PFAS was in his carpet until recently.

16. The Plaintiff would not have purchased the carpet if the Defendants had disclosed the presence of PFAS in the carpet. As a result of the Defendants wrongdoing, the Plaintiff was injured due to the property damage caused by the carpet emitting PFAS in his residence and by purchasing a defective product he never would have if he had known about the PFAS and the associated risks to health, property or the environment.

D. The Class and Class Period

17. Al resident persons or entities in Canada who purchased carpeting treated with PFAS-Infused Products through a retailer or distributor before January 1, 2020 and had it installed in a building still owned by such persons or entities and who have not removed the carpeting (the **"Class"** or "**Class Members**" and "**Class Period**"), excluding employees officers, directors, agents of the Defendants and their family members, class counsel, presiding judges and any person who has commenced an individual proceeding against or delivered a release to the Defendants concerning the subject of this proceeding, or such other class definition or class period as the Court may ultimately decide on the application for certification.

E. The Defendants

18. At all material times herein, the Defendants designed, developed, tested, manufactured, imported, marketed, distributed and/or sold PFAS-Infused Products in Canada, including the Province of British Columbia.

19. During the Class Period, the Defendants, or any of them, substantially controlled the market for PFAS-Infused Products in Canada, including the Province of British Columbia.

20. When a particular entity within a corporate family of Defendants engaged in wrongful or unlawful conduct alleged in this Notice of Civil Claim, it did so on behalf of all entities within that corporate family.

21. As described in further detail below, the Defendants conspired with each other, acted in concert, or substantially assisted each other in performing acts and omissions which furthered a common design to promote their PFAS-Infused Products despite knowledge that injury and damage to the Plaintiff and the Class would likely result.

22. Various persons, partnerships, sole proprietors, firms, corporations and individuals not named as defendants in this action, the identities of which are presently unknown, have participated with the Defendants in the wrongful or unlawful behaviour alleged in this Notice

of Civil Claim, and have performed acts and made statements in furtherance of the wrongful or unlawful conduct for which the Defendants are vicariously liable. For the purposes of this claim, the term "co-conspirator" refers to any co-conspirator identified by name herein as well as any unnamed co-conspirator.

i. 3M Defendants

23. The Defendant, **3M Company ("3M")**, is a company duly incorporated pursuant to the laws of the State of Delaware, one of the United States of America, and has a registered agent, the Corporation Service Company, at 251 Little Falls Drive, Wilmington, Delaware, 19808, United States of America.

24. The Defendant, **3M Canada Company ("3M Canada")**, is a company incorporated pursuant to the laws of Canada, registered within the Province of British Columbia under number A0098958, and has a registered and records office at 2200 - 700 West Georgia Street, P.O. Box 10325, Vancouver, British Columbia, V7Y 1K8, Canada.

25. Hereinafter, the Defendants,3M and 3M Canada, and all of their related and predecessor corporations that are or were involved in the design, development, testing, manufacture, import, marketing, distribution and/or sale of PFAS-Infused Products, are collectively referred to, and interchangeably, as the "**3M Defendants**", unless referred to individually.

26. At all material times herein, including during the Class Period, the 3M Defendants designed, developed, tested, manufactured, imported, marketed, distributed and/or sold PFAS-Infused Products in Canada, including the Province of British Columbia, directly or indirectly, through agents, subsidiaries, affiliates, representatives, or predecessors. The PFAS-Infused Products designed and manufactured by the 3M Defendants are used in a multitude of different products, including, *inter alia,* widely used consumer or household products such as Scotchgard, Scotch-Brite, Steri-Strip stain and soil repellants for use on carpets and textiles.

27. If and to the extent that any related corporations were involved in the design, development, testing, manufacture, importation, marketing, distribution and/or sale of PFAS-Infused

Products in Canada, the Defendants, 3M and/or 3M Canada, are responsible for their conduct as master, employer, partner, joint venturer or alter ego. To the extent that any predecessor corporations involved in the design, development, testing, manufacture, importation, marketing, distribution and/or sale of PFAS-Infused Products in Canada, the Defendants, 3M or 3M Canada, are responsible for their conduct as successor.

28. The business of the 3M Defendants is, and was, inextricably interwoven with that of the other and each is the agent of the other for the purposes of design, development, testing, manufacture, importation, marketing, distribution and/or sale of PFAS-Infused Products in Canada. At all material times herein, the 3M Defendants acted pursuant to a common design in developing, designing, testing, manufacturing, formulating, importing, distributing, labelling, marketing, storing, loading, mixing, applying, using, selling, and conducting post-market surveillance of PFAS-Infused Products in Canada, including the Province of British Columbia.

29. In view of the close relationship between the 3M Defendants and the foregoing, each of the 3M Defendants is jointly and severally liable for the acts or omissions of the other.

ii Dupont Defendants

30. The Defendant, **EIDP, Inc.** (**"DuPont"**), is a company duly incorporated pursuant to the laws of the State of Delaware, one of the United States of America, and has a registered agent, The Corporation Trust Company, at Corporation Trust Center 1209 Orange Street, Wilmington, Delaware, 19801, United States of America. The Defendant, DuPont., was formerly known as E.I. du Pont de Nemours and Company.

31. The Defendant, **E.I. Dupont Canada - Thetford Inc.** (**"Dupont Canada"**) is a company duly incorporated to the laws of Canada, and has a registered and records office at 1045 rue Monfette E Nord, Thetford Mines, Quebec, G6G 7K7, Canada.

32. In 2015, the Defendant, DuPont, spun off its "performance chemicals" business and related environmental liabilities, including those related to PFAS-Infused Products, to the Defendant, **The Chemours Company** (**"Chemours"**), a company duly incorporated pursuant to the laws of the State of Delaware, one of the United States of America, and who has a

registered agent, The Corporation Trust Company, at Corporation Trust Center 1209 Orange Street, Wilmington, Delaware, 19801, United States of America.

33. The Defendant, **The Chemours Company FC, LLC** (**"Chemours FC"**), is a company duly incorporated pursuant to the laws of the State of Delaware, one of the United States of America, and has a registered agent, The Corporation Trust Company, at Corporation Trust Center 1209 Orange Street, Wilmington, Delaware, 19801, United States of America. The Defendant, Chemours FC, operates as a subsidiary of the Defendant, Chemours.

34. The Defendant, **The Chemours Canada Company** (**"Chemours Canada"**), is a company duly incorporated to the laws of Canada, registered within the Province of British Columbia under number A0093604, and has a registered and records office at Suite 2900 - 550 Burrard Street, Vancouver, V6C 0A3, British Columbia, Canada.

35. Hereinafter, the Defendants, DuPont, DuPont Canada, Chemours, Chemours FC and Chemours Canada, and all their related predecessor corporations, including E.I. du Pont de Nemours and Company, that are or were involved in the design, development, testing, manufacture, import, marketing, distribution and/or sale of PFAS-Infused Products, are collectively referred to, and interchangeably, as the "**DuPont Defendants**", unless referred to individually.

36. At all material times herein, including during the Class Period, the Dupont Defendants, designed, developed, tested, manufactured, imported, marketed, distributed and/or sold PFAS-Infused Products in Canada, including PFAS Components that were incorporated into PFAS-Infused Products by the other Defendants. This occurred directly or indirectly, through agents, subsidiaries, affiliates, representatives or predecessors.

37. If and to the extent that any related corporations designed, developed, tested, manufactured, imported, marketed, distributed and/or sold PFAS-Infused Products in Canada, the other DuPont Defendants, or any of them, are responsible for their conduct as master, employer, partner, joint venturer or alter ego. To the extent that any predecessor corporations designed, developed, manufactured, imported, marketed, distributed and/or sold PFAS-Infused Products in Canada, the other DuPont Defendants, or any of them, are responsible for their conduct as successor.

38. The business of the Dupont Defendants is and was inextricably interwoven with that of the other and each is the agent of the other for the purposes of design, development, testing, manufacture, import, marketing, distribution and/or sale of PFAS-Infused Products in Canada, including the Province of British Columbia. At all material times herein, the DuPont Defendants acted pursuant to a common design in developing, designing, testing, manufacturing, formulating, importing, distributing, labelling, marketing, storing, loading, mixing, applying, using, selling, and conducting post-market surveillance of PFAS-Infused Products in Canada, including the Province of British Columbia.

39. In view of the close relationship between the DuPont Defendants and the foregoing, each of the DuPont Defendants is jointly and severally liable for the acts or omissions of the other.

F. Factual Allegations

i. Chemical Properties of PFAS - "Forever Chemicals"

40. PFAS are a family of highly fluorinated synthetic chemical compounds containing bonds of carbon and fluorine atoms. The carbon-fluorine (**"C-F"**) bond is one of the strongest bonds in chemistry. Due to their unique chemical structure, PFAS are extremely stable and repel oil, grease, water, and heat. They do not naturally occur in the environment.

41. The chemical structure of PFAS make them : (i) persistent; (ii) mobile; (iii) bioaccumulative; (iv) biomagnifying; and (v) toxic.

42. PFAS do not significantly break down or biodegrade either in the environment or living organisms. This extreme persistence has given them the label or nickname "Forever Chemicals".

43. PFOA and PFOS are within a smaller subcategory of PFAS chemicals known as perfluoroalkyl acids (**"PFAAs"**). The properties and effects of PFOA and PFOS have been extensively researched.

44. PFAAs are composed of a chain of carbon atoms in which one carbon atom is attached to a functional group while the rest are bonded to fluorine atoms. PFAAs are characterized by this

C-F bond.

45. The chemical properties of PFAAs are, in part, related to the length of this C-F chain. As the size of the chain increases, the compound becomes more thermally, chemically, and biologically stable.

46. Once they enter the environment, "long-chain" PFAAs, such as PFOA and PFOS, can cause extensive and long-lasting environmental contamination due to their chemical properties.

47. Further, once they are in the environment, other PFAS compounds can transform into more stable and long-chain PFAAs, such as PFOA and PFOS.

48. The chemical properties, molecular architecture, and C-F bond of PFAS are unique to each proprietary manufacturer, such that the PFAS created and propagated by the Defendants, for example, can be identified as such by testing the affected environment and/or contaminated product.

ii. Health Risks of PFAS

49. PFAS are extremely toxic and have significant detrimental impacts on human health and the environment.

50. PFOA and PFOS are bioaccumulative, meaning they are readily absorbed in animal and human tissues after oral exposure, extremely stable and persistent once ingested, and resistant to metabolic degradation. Any newly ingested PFOA and PFOS will be added to whatever is already present in the body.

51. Short-term exposure to PFOA and PFOS can result in a body burden that persists for years and increases with additional subsequent exposures. In humans, PFOA and PFOS remain in the body for years.

52. Further, PFOA and PFOS can also biomagnify, meaning their concentration in organic tissue increases as they are consumed up the food chain. This means that humans that eat animals will accumulate the highest levels of PFOA and PFOS in the food chain.

53. PFOA and PFOS are toxic and can cause significant adverse health effects in humans, including testicular cancer, kidney cancer, liver damage, autoimmune and endocrine disorders, preeclampsia, ulcerative colitis, thyroid disease, and others. These injuries may arise within months or years after exposure.

54. Substantial non-occupational routes for PFOS and PFOA human exposure are through diet, drinking water or inhalation.

55. Government agencies and regulators in the United States, such as the Center for Disease Control and Environmental Protection Agency ("**EPA**"), and scientific experts have concluded that PFAS are human health hazards that present a substantial danger when released into the environment.

iii. History of the Defendants' Design, Production and Knowledge of Health Risks of PFAS

56. The 3M Defendants were the largest manufacturers of PFAS chemicals in North America from the 1940s through the early 2000s.

57. In the 1940s, the 3M Defendants pioneered the use of an innovate and patented process called electrochemical fluorination to create C-F bonds. They subsequently received patents for PFOA and PFOS throughout the 1950s and 1960s.

58. In the 1950s, the Defendant, DuPont, began using PFOA and other PFAS in its specialty chemical applications, including household products such as Teflon, and supplied PFAS-Infused Products to third parties for use in manufacturing, including carpeting.

59. From the 1940s to the 1970s, the Defendants designed, developed, tested, manufactured, marketed, distributed and/or sold PFAS-Infused Products throughout North America with the knowledge of 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 1940s and 1970s, the Defendants knew that PFAS were harmful to humans, including from, but not limited to, the following sources:

(a) in 1956 a Defendant, 3M, study on mice showed that PFAS accumulated in the blood and further, 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 Defendant, DuPont, toxicologist concluded that PFOA is toxic and should be "handled with extreme care" and affirmed industry concerns about the risks of PFAS;

(c) in 1963, a Defendant, 3M, technical manual classified PFAS as toxic, marking an internal recognition of the risks associated with PFAS;

(d) In 1965, a Defendant, DuPont, study on rats found liver damage and an increase spleen size as a result of exposure to PFAS and provided concrete evidence of their toxicity in mammals;

(e) a 1966 a Defendant, 3M, study found that PFAS caused acute oral toxicity in rats;

(f) in 1970, an internal Defendant, DuPont, memorandum found that PFAS substances posed significant health risks;

(g) in 1975, the Defendant, 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, the Defendant, 3M, discovered PFOA in the blood of its workers at its plant in Cottage Grove, Minnesota, United States;

(i) in 1977, the Defendant, 3M, tested workers and animals to measure PFAS in blood and found that PFOS was "more toxic than anticipated";

(j) in 1978, Defendant, 3M, studies revealed that PFOS and PFOA were toxic to rats, and that PFOS caused the death of monkeys tested in the studies; and

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

60. In the 1980s and 1990s, the Defendants accumulated the following additional scientific evidence that demonstrated the health risks of PFAS:

(a) in 1990, a Defendant, 3M, study found a risk of testicular cancer linked to exposure to PFOA;

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

(c) in 1995, a Defendant, DuPont, scientist expressed concern about the long-term health effects of PFAS;

(d) in 1997, a Defendant, 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, Defendant, 3M, scientists reported that PFAS moved up the food chain, and the Defendant, 3M, acquired more evidence that PFAS accumulated in the blood; and

(f) in 1999, a Defendant, 3M, scientist described PFOS as "the most insidious pollutant since PCB".

61. In 2000, under pressure from the EPA, the 3M Defendants announced a phasing out of production of PFAS in the United States.

62. With the 3M Defendants ceasing the sale of PFOA in the early 2000s, the DuPont Defendants, who had been purchasing PFOA from the 3M Defendants since the early 1950s, no longer had a supplier for this chemical. As a result, the DuPont Defendants began manufacturing PFAS Components for their own use in PFAS-Infused Products and for other manufacturers in the early 2000s.

63. In December 2022, the 3M Defendants announced they were going to exit PFAS Component manufacturing altogether by the end of 2025, in part due to regulations introduced around the world to restrict PFAS compounds.

64. At all material times herein, including during the Class Period, the 3M Defendants designed, developed, tested, manufactured, imported, marketed, distributed, supplied and/or sold PFAS-Infused Products in Canada, including PFAS Components used in the manufacturing processes or incorporated into PFAS-Infused Products. From the 1940s until a time presently unknown to the Plaintiff, the 3M Defendants were the primary supplier of PFAS Components used in the manufacturing processes or incorporated into PFAS-Infused Products in Canada.

65. At all material times herein, including during the Class Period, the DuPont Defendants designed, developed, tested, manufactured, imported, marketed, supplied, distributed and/or sold PFAS-Infused Products in Canada, including PFAS Components used in the manufacturing processes or incorporated into PFAS-Infused Products.

66. Safer reasonable alternative designs for PFAS-Infused Products, including their PFAS Components, exist. Despite knowledge of this, as well as knowledge of the toxic nature of the PFAS compounds and the health risks posed to humans and the environment, the Defendants continued to develop, manufacture, formulate, distribute, market and/or sell their PFAS-Infused Products, including their PFAS Components.

iv. Carpets infused with PFAS are a significant source of harmful PFAS in indoor environments

67. In carpets and rugs, PFAS have been used since the early 1980s to impart stain-, soil-, and grease resistance. Most residential and commercial carpets are treated with PFAS-based stain and soil repellents. PFAS-containing treatments can be applied to carpets at four different stages: (1) during the manufacturing of the carpet fibers; (2) during the carpet and rug manufacturing process, at the carpet and rug mill; (3) after the carpet and rug manufacturing process, at a separate finishing facility or in stores at the time of sale; or (4) post-sale of the carpet or rug by consumers or professional cleaners.

68. In the mid-1950s, the 3M Defendants developed "Scotchgard Fabric Protector", the first

PFAS-based stain and soil repellent for use on textiles. This was followed in 1963 by the development of "Zepel" by the DuPont Defendants for use on clothing. In 1972, the 3M Defendants produced "Scotchgard Carpet Protector", the first product specifically marketed for use on carpets. The floor covering sector has been receptive to using surface treatments because carpet fibers are commonly made of synthetic materials such as nylon, polypropylene, acrylic, and polyester, which can readily absorb water- or oil-based compounds. As such, most residential and commercial carpets and rugs sold in North America are treated with PFAS to provide resistance to soil and oil or water-based stains, by preventing adhesion of solid and liquid contaminants to fibers.

69. Carpets and rugs can be a significant source of PFAS in the indoor environment. Through normal use, treated carpets, rugs, and other consumer products release PFAS into indoor air and dust, which people unknowingly inhale or ingest.

70. Further, carpets and rugs are a major source of exposure for infants via direct contact and incidental indoor dust ingestion. Young children have been shown to ingest more soil and dust than adults, due to greater hand-to-mouth transfer, which can result in higher exposure to PFAS found in these contaminated environmental media. Industrial workers, carpet installers, carpet recyclers, carpet cleaners, and workers in upholstered furniture, furnishings, outdoor clothing, and carpet stores may also experience above-average PFAS exposure levels.

71. During normal product use, surface abrasion can release PFAAs from treated carpet and rug fibers via tiny particles, which can become resuspended. Human exposure to PFAS occurs via inhalation of volatile PFAS and PFAS-containing fine particles, as well as via incidental ingestion of household and office dust, which concentrates PFAS. Carpet used in institutional settings may contain higher amounts of PFAS, presumably due to its use in high-traffic areas.

72. Human exposure to PFAS can also occur through house dust, which can have significantly higher PFAS levels than background concentrations in urban soils. As people spend, on average, more of their time indoors, incidental ingestion and inhalation of indoor dust represent potentially significant exposure pathways to multiple contaminants along with PFAS.

73. Moreover, the air in homes, offices, and retail businesses can become contaminated with volatilized PFAAs, which are impurities or intermediate degradation products of the stain and

soil repellents used on carpets and rugs. PFAAs from carpet and rug treatments can also adsorb to house dust or be released as tiny particles from surface abrasion during normal use. Household and office dust concentrates PFAS, leading to exposure via inhalation of PFAA-containing fine particles and incidental ingestion of dust.

74. Office workers are another large group that may experience chronic exposures to PFAS while on the job. Office air can be contaminated with PFAAs from carpet treatments, leading to involuntary, chronic inhalation exposures in workers. PFAS can also adsorb to office dust or be released from surface abrasion as tiny particles, which office workers may ingest. Due to their long usage life, commercial carpets could be a near-daily source of exposure to PFOA, PFOS, and other phased-out longer chain PFAS for office workers.

v. PFAS in carpeting is dangerous throughout the life of the carpet

75. Carpets continue to emit PFAS throughout their lives. PFAS are released by consumer or household products, including carpets, through ordinary wear and tear. They make their way into humans and household dust. They are washed down the drain, contaminating wastewater and related biosolids used as compost. They are released to surface water and groundwater from the industrial facilities that manufacture and use them.

76. Routine wear and tear, as well as any type of cleaning, dislodges PFAS chemicals from carpet fibers into air and dust. People inhale or ingest PFAS chemicals throughout the lifecycle of production, use, and disposal of carpet.

77. Despite the voluntary removal of PFAS from new carpets, PFAS will remain a legacy chemical issue because of the ten to twenty year lifetime of carpets. Furthermore, current aftermarket treatments for stain, soil, and grease repellency still contain PFAS. As a result, it is precautionary to assume that all carpets in the waste or recycling pipeline are contaminated with PFAS.

78. Although the carpet industry has largely eliminated treatments based on long-chain PFAS from production as a result of pressure from consumers and government regulators, the Defendants replaced them with treatments based on shorter-chain PFAS compounds. The environmental concentration of short-chain PFAS now often exceeds those of the longer-chain substances in water and other media, yet there is very limited toxicological data for them.

vi. For decades, the Defendants collaborated to suppress and conceal information about PFAS risks, deceived consumers and government regulators, and failed to act on their knowledge of the dangers of PFAS-Infused Products

79. Despite their knowledge of the harms of their PFAS-Infused Products, the Defendants have collaborated to suppress and conceal scientific research on the hazards associated with PFAS and mounted a campaign to control the scientific dialogue on the risks of PFAS.

80. Through their roles as the designers, manufacturers, marketers, distributors, and sellers of PFAS-Infused Products, the Defendants controlled the information available to their customers, government regulators, and the general public. The Defendants had a vested and common financial interest in exercising this influence to conceal the true harmful nature of PFAS, in spite of their obligations to provide this information and to be truthful in advertising.

81. Internal documents and testimony made public demonstrate a strategy to "shape the debate at all levels." For instance, a consultant retained by the Defendant, Dupont, to work on PFAS issues outlined the company's goal in a 2003 proposal, which reads in part, as follows:

> DUPONT MUST SHAPE THE DEBATE AT ALL LEVELS. . . .The outcome of this process will result in the preparation of a multifaceted plan to take control of the ongoing risk assessment by the EPA, looming regulatory challenges, likely litigation, and almost certain medical monitoring hurdles. The primary focus of this endeavor is to strive to create the climate and conditions that will obviate, or at the very least, minimize ongoing litigation and contemplated regulation relating to PFOA. This would include facilitating the publication of papers and articles dispelling the alleged nexus between PFOA and teratogenicity as well as other claimed harm. We would also lay the foundation for creating Daubert precedent to discourage additional lawsuits.... This battle must be won in the minds of the regulators, judges, potential jurors, and the plaintiff's bar.... Manufacturers must be the aggressors.

82. The Defendants efforts to conceal or suppress knowledge of the harms of PFAS began as soon as evidence of its toxicity began to emerge, when they marked scientific studies and

related documents as "confidential," withholding their disclosure in spite of the public interest and evidencing an awareness of legal exposure.

83. The Defendant, 3M, used a variety of tactics to deceive others and to conceal the negative effects of PFAS, including, *inter alia*: (i) tactics to prevent research into the adverse effects of its PFOS; (ii) submission of misinformation about its PFOS to the EPA; (iii) failure to disclose substantial risks associated with its PFOS to the EPA; (iv) failure to inform the public of the widespread dispersal of its PFOS in the environment and population; (v) production of chemicals it knew posed an ecological risk and a danger to the food chain; and (vi) attempts to keep its workers from discussing the problems with the company's fluorochemical projects so as to prevent their discussions from being used in the legal process.

84. The Defendant, 3M, intentionally withheld scientific information about the material risks of its PFAS-Infused Products. For instance, when researchers contacted the Defendant, 3M, in 1975 about the "universal presence" of organic fluorine in compounds in blood among the general population, it "plead ignorance," misled them by advising him that 'Scotchgard' was a polymeric material not a fluorochemical and feigned a position of scientific curiosity and desire to assist in any way possible. The Defendant, 3M, directed its Central Analytical Laboratory to conduct similar sampling from blood banks, from which an internal report concluded that the organic fluorine compounds "resembled most closely" PFOS, confirming the suspicions held by its own researchers. Subsequent Defendant, 3M, research in 1976 confirmed that the compounds found in human blood by the researchers were PFOS manufactured by the Defendant, 3M.

85. The Defendant, 3M, withheld material scientific information from government agencies as well. From the 1970s, the Defendant, 3M, conducted over a thousand studies related to the properties of PFAS and its effects on human health and the environment. These studies were not disclosed to the EPA, but from 1980 to 1993, the Defendant, 3M, submitted only eighty-four studies or reports to the EPA. From 1998 to 2000, the Defendant, 3M, submitted over 1,218 studies or reports, many of which had been prepared decades earlier.

86. Even after the Defendant, 3M's, phase-out, the company worked to control and to distort the science on PFAS. When the Defendant, 3M, revealed in 1998 that PFOS was in the blood of the general population, it developed a "Science Publication Strategy" to simultaneously publish select studies in academic journals to create a "context which demonstrates that there is no

medical or scientific basis to attribute any adverse health effects to 3M products." Meanwhile, the Defendant, 3M's, Corporate Toxicology Department, had already calculated a "safe" level of PFOS in human blood of 1.05 ppb and reported internally that the Defendant, 3M, needed to replace PFOS-based chemistry that the compounds were very persistent and insidiously toxic.

87. Further, the Defendant, 3M's, PFAS strategy also included providing selective funding of outside research through 'grant' money', to an academic professor, who publicly presented himself as an independent expert but behind the scenes worked for the Defendant, 3M, by reviewing articles submitted to academic journals for publishing. The goal was to keep negative papers regarding PFAS out of the scientific literature as they can be a large obstacle to refute in litigation. The deceptive intentions of the Defendant, 3M, and the academic professor, were further evidenced by his assurances to his benefactor that he acted to ensure "there was no paper trail to 3M".

88. Similarly, the Defendant, DuPont, conducted its own studies of the toxicity of PFOA but did not communicate the results to the public or to government regulators. The Defendant, DuPont, understood the nature of PFAS, the significance of its concentrations, and the hazards it presented to the company's employees, the public, and the environment.

89. Despite its knowledge, the Defendant, DuPont, continued to manufacture PFAS while it actively suppressed scientific awareness of the hazards of its products.

90. By the late 1990s, the Defendant, DuPont, understood its substantial liability exposure from its decades of releasing toxic PFAS into the environment. Internally, its employees expressed serious concerns regarding the toxicity issues associated with PFOA exposure.

91. These liability concerns extended to their interactions with government regulators and their misleading disclosures. In a 2001 email, the Defendant, Dupont's, lawyer wrote the following:

> Got a call about 2130 when in bed last night from one of our engineers worrying about our technique for measuring surfactant at Parkersburg. We learned recently that our analytical technique has very poor recovery, often 25%, so any results we get should be multiplied by a factor of 4 or even 5. However, that has not been the practice, so we

> have been telling the agencies results that surely are low. Not a pretty situation, especially since we have been telling the drinking water folks not to worry, results have been under the level we deem "safe" of 1 ppb. We now fear we will get data from a better technique that will exceed the number we have touted as safe. Ugh

92. In an October 2001 email, the same Defendant, Dupont, lawyer also stated:

> [W]e are exceeding the levels we say we set as our own guideline, mostly because no one bothered to do the air modeling until now, and our water test has [been] completely inadequate . . . . I have been telling the business to get out all the bad news . . . . Too bad the business wants to hunker down as though everything will not come out in the litigation, god knows how they could be so clueless.

93. After the EPA learned of the hazards of PFAS, the agency filed administrative actions against the Defendants, 3M and DuPont, for concealing their knowledge in violation of United States federal law. Those claims included multiple failures to report information to the EPA about the substantial risk of injury to human health or the environment from a chemical during a period beginning in June of 1981 through March of 2001.

94. Once the EPA was alerted to the health hazards of PFAS in 1998 and received a late disclosure of over 1,200 reports and studies, it and the scientific community commenced significant scientific inquiries into the nature of these chemicals. Since then, the scientific community has produced a substantial body of research, with some years exceeding 1,000 published studies on PFAS. The extraordinary number of studies which have been conducted in the last two decades reflect the profound lack of knowledge held by government regulators and the general scientific community about the properties and risks of PFAS, as a consequence of the Defendants concealing and suppressing knowledge and research for decades. The Defendants sought to exploit that lack of knowledge to preserve their PFAS and related business lines.

95. Acting for commercial gain at the expense of consumers and others, the Defendants manipulated, obfuscated, and failed to disclose scientific studies demonstrating the persistence, bioaccumulation, and toxicity of their PFAS-Infused Products. The Defendants

deceptively sought to mislead their customers and consumers in general about the safety of their PFAS-Infused Products to human health and the environment and thereby delay the adoption of safe or safer alternatives to their PFAS-Infused Products.

vii. After stopping sales of C8 PFAS-Infused Products, the Defendants started selling C6 PFAS, including to carpet manufacturers, even though they knew C6 PFAS is as dangerous as C8 PFAS-Infused Products and/or knew they lacked data to sell C6 PFAS products as being safer

96. Before its phase-out in the early 2000s, PFOS was an active ingredient in the 3M Defendants Scotchgard product. After 2003, the 3M Defendants largely switched to perfluorobutanesulfonic acid ("PFBS") based formulas. PFBS is a C6 PFAS, a short chain fluorocarbon.

97. Similarly, before its phase-out in the early 2000s, PFOA was an active ingredient in Stainmaster and other products sold by the Dupont Defendants. As part of an agreement with EPA, the DuPont Defendants ceased production and use of PFOA in 2013. The Dupont Defendants introduced "GenX" in 2009 to replace PFOA in the manufacture of Teflon and coatings for stain-resistant carpeting, waterproof clothing, and many other consumer products. GenX is a C6 PFAS and is now a Defendant, Chemours, trademark name.

98. The DuPont Defendants promoted GenX as a safer alternative but soon realized it might be harmful. In reports later submitted to the EPA, the DuPont Defendants acknowledged that rodents exposed to GenX suffered birth defects and showed signs of liver disease and cell changes indicative of early-stage cancer.

99. The EPA considers GenX chemicals as a replacement for PFOA, and PFBS as a replacement for PFOS. The EPA has advised that oral toxicity studies show that the liver is sensitive to GenX chemicals, and the kidney and thyroid are sensitive to PFBS . Further, the EPA has advised that animal studies have shown health effects in the kidney, blood, immune system, developing fetus, and especially in the liver, following oral exposure to GenX Chemicals and the data are suggestive of cancer. As to PFBS, the EPA has advised that animal studies have shown health effects on the thyroid, reproductive organs and

tissues, developing fetus, and kidney following oral exposure.

100. The Defendants have concealed the dangers of C6 PFAS and to continue to perpetuate flawed assumptions that short-chain PFASs present negligible human health risk and are a suitable replacement chemical. In fact, the Defendants have never provided any evidence that C6 PFAS products are safer than C8 PFAS-Infused Products. There is no significant body of data that exists, or ever has existed, to support any such claim of the Defendants.

101. To the contrary, the EPA has indicated that although there is an extensive database for PFOA, few studies have examined the toxicity of shorter-chain PFAS and that the data suggest that the toxicity profile is quite similar to that of PFOA.

102. Moreover, numerous recent studies show that C6 PFAS is not safer than C8 PFAS-Infused Products. These studies indicate that short-chain PFAS exhibit toxicity impacts similar to those of long-chain PFAS, causing effects such as immunosuppression, reproductive and developmental toxicity, harm to the thyroid, are as persistent in the environment as long-chain PFAS and contaminate food and drinking water.

103. Short-chain PFAS are equally toxic, persistent and more mobile in the environment than the chemicals they are replacing. The human heath risks from short-chain PFAS have been significantly underestimated. And the Defendants continue to falsely claim that there is no imminent public health risk arising from the use of short-chain PFAS.

viii. After selling Stainmaster carpets for almost two decades, the Dupont Defendants sell their Stainmaster business to Invista in 2004, but continue to sell PFAS products to Invista

104. The DuPont Defendants launched the "Stainmaster" product line in 1986 in a successful attempt to sell carpeting with a PFAS infused Teflon coating that made nylon carpeting more resistant to stains.

105. The DuPont Defendants launched the largest advertising and promotion campaign in the history of the carpeting industry to sell Stainmaster carpets, without ever disclosing the use

of PFAS or the dangers of which the DuPont Defendants were fully aware of. One of the most memorable commercials from the Stainmaster advertising campaign aired in 1987, portraying a toddler in his highchair launching his blue airplane shaped dish into the air, spilling its contents onto Stainmaster carpet, without disclosing that Stainmaster was endangering the child because of its use of PFAS.

106. In 2003, DuPont Textiles and Interiors was formed from the DuPont Defendants textile fibers division. The company was given the name Invista and was then sold in 2004 to Koch Industries. The sale included Stainmaster and other brands.

107. Invista continued to sell Stainmaster after the sale. It packaged or bundled with its carpet fiber sales certain topical fluorochemicals, including C6 fluorochemical-containing additives supplied by the Dupont Defendants, to be used by its carpet mill customers during the manufacturing process. These chemistries were labeled as DuPont products, and were accompanied by DuPont Material Safety Data Sheets.

108. It was not until 2017 that Invista transitioned to exclusively fluorine-free formulations in its branded carpets.

ix. In 2020 the Defendants ceased using PFAS-Infused Products but continued to falsely claim that such products were safe

109. Even when it discontinued PFAS infused Scotchgard in 2000, the 3M Defendants continued to falsely claim that it is safe. In May 2000, the 3M Defendants announced that they would stop making many of its well-known Scotchgard products, including its spray that protects clothing, fabrics, upholstery and carpets from stains and other damage. But the 3M Defendants falsely maintained that Scotchgard was safe and that the chemical compounds posed no health risk to humans.

110. Further, in May 2000, the 3M Defendants also announced that they were stopping production of PFOS altogether. The announcement made no mention of health or toxicity concerns from their PFAS-Infused Products. The 3M Defendants' implication that the toxicity of PFOS had no bearing on their decision to stop production was false. The EPA

explained in a statement that the 3M Defendants own tests had shown that PFOS could pose a risk to human health and the environment, and that if the 3M Defendants had not withdrawn it, the agency would have forced it to do so.

111. In December 2022, the 3M Defendants announced that they were going to exit PFAS Component manufacturing altogether by the end of 2025, in part due to regulations introduced around the world to restrict PFAS compounds. However, the 3M Defendants continued to falsely maintain that their PFAS-Infused Products were safe for their intended uses, including the repellant treatment of carpets.

112. The DuPont Defendants have also failed to inform or warn consumers and others that their PFAS-Infused Products are dangerous. Even as the Dupont Defendants had scientific information about the toxic impacts of PFAS on human health, drinking water and the air, they continued to produce and discharge PFAS, including the carpeting which is the subject of these proceedings.

x. The Defendants' Common Design and Unlawful Collusion

113. The Defendants form an inextricably interwoven corporate structure designed to advance their common PFAS business through their wrongful and deceptive introduction, regulatory approval, design, testing, manufacturing, importing, marketing, promotion and sale of PFAS-Infused Products. Namely, at all material times, each Defendant:

(a) was the agent, servant, employee, partner, alter ego, aider and abettor, co-conspirator or joint venturer of each of the other Defendants, and they were at all times operating and acting within the purpose and scope of said agency, service, employment, partnership, conspiracy or joint venture;

(b) ratified and approved the acts of each of the other Defendants; and

(c) acted in concert, or substantially assisted each other in performing acts and omissions which furthered a common design to misrepresent the known risks of PFAS-Infused Products and to deceptively promote PFAS- Infused Products to

treat carpeting in order to maximize their profits.

114. The arrangement between the Defendants ensured that all parties to the common design had an incentive to maximize profit from sales of PFAS-Infused Products used to treat carpeting in Canada.

115. Beginning in the 1940s and continuing through at all times material to this case, the Defendants, or any of them, conspired to engage in unlawful and wrongful acts with respect to the design, development, testing, manufacture, import, marketing, and sale of PFAS-Infused Products in Canada, both with each other and their co-conspirators.

116. The conspiracy described above was unlawful because it was intended to cause harm to the Plaintiff and Class Members through, *inter alia*:

(a) intentionally misrepresenting to the public that PFAS-Infused Products used to treat carpeting were safe and did not pose a risk to health, property or the environment; and

(b) concealing from the public the dangers of PFAS-Infused Products used to treat carpeting.

117. The predominant purpose of the conduct of the Defendants and their co- conspirators was to cause injury to the Plaintiff and Class Members, by maximizing profits from the sale of PFAS-Infused Products used to treat carpeting, when they knew or ought to have known the risks posed by the intended use of PFAS- Infused Products.

118. Each of the Defendants performed overt acts in furtherance of the conspiracy, including, but not limited to, the following activities:

(a) sharing research and scientific findings on the risks associated with PFAS;

(b) sharing market data, sales data, sales forecasts, marketing plans and demand estimates for PFAS-Infused Products in Canada; and

(c) collaborating with each other in their safety and hazard representations regarding PFAS-Infused Products to the public and government regulators.

119. The Defendants are jointly liable for their wrongful acts.

Part 2: RELIEF SOUGHT

120. The Plaintiff, on its own behalf and on behalf of Class Members, claims against the Defendants, jointly and severally, as follows:

(a) an order certifying this action as a class proceeding and appointing the Plaintiff as the named representative;

(b) a declaration that the Defendants were negligent in the design of the PFAS-Infused Products causing the Plaintiff and Class Members to suffer damages;

(c) a declaration that the Defendants were negligent in failing to warn of the increased health risks from exposure to PFAS-Infused Products in carpets causing the Plaintiff and Class Members to suffer damages;

(d) a declaration that the Defendants breached duties owed in the design, development, testing, manufacture, import, marketing, distribution and/or sale of PFAS-Infused Products in carpets;

(f) damages to abate the private nuisances of the PFAS-Infused Products in carpets;

(g) a declaration that the Defendants engaged in conduct contrary to Part VI of the *Competition Act,* R.S.C. 1985, c. C-34 and are consequently liable to the Plaintiff and Class Members for damages;

(h) damages for the tort of civil conspiracy;

(i) an accounting and disgorgement of the Defendants' ill-gained profits or restitution;

(j) injunctive and/or declaratory relief requiring the Defendants to remove, dispose and replace all carpets treated with their PFAS-Infused Products with non PFAS carpet and to fully make whole all Class Members for all costs and economic losses associated therewith;

(k) an order pursuant to section 29 of the *Class Proceeding Act*, R.S.B.C. 1996, c.50 ("*CPA*") directing an aggregate assessment of damages;

(l) costs of notice and administering the plan of distribution of the recovery in this action plus applicable taxes pursuant to section 24 of the *CPA*;

(m) damages, including actual, compensatory, incidental, statutory and consequential damages;

(n) aggravated, exemplary or punitive damages;

(o) costs of investigation pursuant to section 36 of the *Competition Act*;

(p) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act,* R.S.B.C. 1996, c. 79; and

(q) such further and other relief as to this Honourable Court may seem just.

Part 3: LEGAL BASIS

Jurisdiction

121. There is a real and substantial connection between British Columbia and the facts alleged in this proceeding. The Plaintiff and Class Members plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act*, R.S.B.C. 2003, c.28 (the "*CJPTA*") in respect of the Defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to sections 10

(e)(i), (e)(iii)(A)(B), (f), (g), (h) and (i) of the *CJPTA* because this proceeding:

(e)(i) concerns contractual obligations to a substantial extent, were to be performed in British Columbia;

(e)(iii)(A)(B) the contract is for the purchase of property, services or both, for use other than in the course of the purchaser's trade or profession, and resulted from a solicitation of business in British Columbia by or on behalf of the seller;

(f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;

(g) concerns a tort committed in British Columbia;

(h) concerns a business carried on in British Columbia; and

(i) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

Causes of Action

Negligence

i. Negligent Design

122. The Plaintiff and Class Members incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.

123. At all material times herein, the Defendants were engaged in the business of designing, developing, testing, manufacturing, marketing, distributing and/or selling PFAS-Infused Products to carpet manufacturers and others.

124. As manufacturers of PFAS-Infused Products, the Defendants had a duty not to place or introduce into the stream of commerce in Canada a product that is unreasonably

dangerous.

125. At all material times herein, the Defendants, and each of them, owed a duty of care to the Plaintiff and Class Members to, *inter alia*:

(a) use reasonable care in the design of their PFAS-Infused Products;

(b) undertake sufficient studies and testing to determine whether their PFAS-Infused Products were safe for those using or exposed to them, and whether they were suitable for their intended use, in particular, as a carpet stain repellant;

(c) design, develop, test, manufacture, produce, formulate, create, develop, sell or distribute PFAS-Infused Products after thorough and adequate pre-and post-market testing;

(d) determine whether the foreseeable risk of harm to public health, property and the environment posed by the PFAS-Infused Products outweighed the utility of using PFAS in those products and outweighed the cost to the Defendants of reducing or eliminating such risk;

(e) adequately test their PFAS-Infused Products to fully reveal the magnitude of the risks associated with their use and exposure, in particular, as a carpet stain repellant;

(f) design their PFAS-Infused Products in ways that substantially reduced and eliminated the public health, property and environmental dangers posed by PFAS;

(g) design and manufacture their PFAS-Infused Products to ensure that they are at least as safe and effective as other such products on the market;

(h) not assert or claim that their PFAS-Infused Products were safe and suitable

for their intended use, in particular, as a carpet stain repellant, when, in fact the Defendants knew or should have known that this was not the case;

(i) not to misrepresent or downplay the public health, property or environmental dangers posed by their PFAS-Infused Products to carpet manufacturers, consumers and the public; and

(i) provide timely recalls of their PFAS-Infused products that were unsafe in their intended use and application, in particular, as a carpet stain repellant.

126. The Defendants breached the standard of care expected in the circumstances, and were therefore negligent in the research, design, development, testing, manufacture, marketing distribution and sale of PFAS-Infused Products by, *inter alia*:

(a) failing to use reasonable care in the design of their PFAS-Infused Products;

(b) failing to undertake sufficient studies and testing to determine whether their PFAS-Infused Products were safe for those using or exposed to them, and whether they were suitable for their intended use, in particular, as a carpet stain repellant;

(c) designing, developing, manufacturing, producing, formulating, creating, selling or distributing PFAS-Infused Products without thorough and adequate pre-and post-market testing;

(d) failing to determine whether the foreseeable risk of harm to public health, property and the environment posed by the PFAS-Infused Products outweighed the utility of using PFAS in those products and outweighed the cost to the Defendants of reducing or eliminating such risk;

(e) failing to adequately test their PFAS-Infused Products to fully reveal the magnitude of the risks associated with their use and exposure, in particular, as a carpet stain repellant;

(f) failing to design their PFAS-Infused Products in ways that substantially reduced and eliminated the public health, property and environmental dangers posed by PFAS;

(g) failing to design and manufacture their PFAS-Infused Products to ensure that they are at least as safe and effective as other such products on the market;

(h) asserting or claiming that their PFAS-Infused Products were safe and suitable for their intended use, in particular, as a carpet stain repellant, when, in fact the Defendants knew or should have known that this was not the case;

(i) misrepresenting or downplaying the public health, property and environmental dangers posed by their PFAS-Infused Products to carpet manufacturers, consumers and the public; and

(i) failing to provide timely recalls of their PFAS-Infused products that were unsafe in their intended use and application.

127. At all material times herein, PFAS-Infused Products were in a defective condition and unreasonably dangerous to Class Members, to an extent beyond that which would be expected or contemplated by an ordinary consumer when used in an ordinary and reasonably foreseeable manner.

128. The Defendants knew of these risks but nevertheless failed to use reasonable care in the design of their PFAS-Infused products. The Defendants could have made products that did not contain the PFAS chemicals at issue herein or could have designed their PFAS-Infused Products in ways that substantially reduced or eliminated the health, property and environmental dangers posed by PFAS. The Defendants' failure to adopt those reasonable, feasible, safer, alternative designs rendered their products defective, not reasonably safe, and unreasonably dangerous to persons and property.

129. At all material times herein, Class Members used their carpets treated with PFAS-Infused Products as intended.

130. The Defendants' PFAS-Infused Products were defectively designed at the time they left Defendants' control, and those products reached their end users without substantial change in their condition.

131. As a direct and proximate result of Defendants' unreasonably dangerous design of PFAS-Infused Products, Class Members have been injured by widespread and toxic PFAS contamination of their properties.

132. These and other acts by the Defendants were a direct and proximate cause of damages to the Class Members.

ii. Negligent Failure to Warn

133. The Plaintiff and Class Members incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.

134. As the developers , manufacturers, distributors or importers of PFAS-Infused Products, the Defendants were in such a close and proximate relationship to the Plaintiff and Class members, as to owe them a duty of care. The Defendants caused PFAS-Infused Products to be introduced into the stream of commerce in Canada, and they knew that any damages or adverse effects related to PFAS-Infused Products used by carpet manufacturers to treat carpets would cause injury to the Plaintiff and Class Members.

135. As such, the Defendants had a duty to adequately warn against latent dangers resulting from foreseeable uses and misuses of their PFAS-Infused Products that the Defendants knew about. The Defendants' duty to warn extended to all third parties who might be foreseeably harmed by the ordinary use and misuse of their PFAS-Infused Products, including Class Members, as well as to all carpets manufacturers who treated their carpets with PFAS-Infused Products before selling them to Class Members.

136. At all material times herein, the Defendants owed a duty of care to the Plaintiff and Class Members to, *inter alia*,

(a) to provide adequate warnings to Class Members about the dangers of carpet treated with PFAS-Infused Products;

(b) not to provide false and misleading statements about the dangers of PFAS-Infused Products;

(c) provide adequate instructions, guidance and safety measures to persons who could be reasonably be expected to be exposed to PFAS-Infused Products;

(d) adequately monitor, investigate, evaluate and follow-up on reports of potential risks associated with PFAS-Infused Products to treat carpets;

(e) provide adequate, timely warnings about the increased risks associated with PFAS-Infused Products used to treat carpets; and

(f) provide timely recalls of PFAS-Infused Products that were unsafe in their intended use and application, in particular, to treat carpets.

137. The Defendants breached the standard of care expected in the circumstances, and therefore were negligent to take adequate and appropriate steps, in a timely manner, to warn the public, consumers, Plaintiff and Class Members about the health, property and environmental risks associated with exposure to carpets treated with PFAS-Infused Products by, *inter alia*:

(a) failing to provide adequate warnings to Class Members about the dangers of carpet treated with PFAS-Infused Products;

(b) by providing false and misleading statements about the dangers of PFAS-Infused Products;

(c) failure to provide adequate instructions, guidance and safety measures to persons who could be reasonably be expected to be exposed to PFAS-Infused Products;

(d) failure to adequately monitor, investigate, evaluate and follow-up on reports of potential risks associated with PFAS-Infused Products to treat carpets;

(e) failure to provide adequate, timely warnings about the increased risks associated with PFAS-Infused Products used to treat carpets;

(f) failure to provide timely recalls of PFAS-Infused Products that were unsafe in their intended use and application, in particular, to treat carpets.

138. Notwithstanding the Defendants' superior knowledge of the risks posed by PFAS-Infused Products, the Defendants failed to warn carpet manufacturers, consumers, the public, and Class Members of those risks.

139. Any warnings that the Defendants might have disseminated were rendered ineffective by their false and misleading public statements about the dangers of PFAS-Infused Products, and their widespread and longstanding efforts to conceal and misrepresent the public health and environmental impacts of PFAS.

140. The Defendants' inadequate warnings and instructions rendered PFAS-Infused Products defective and not reasonably safe.

141. The Defendants' PFAS-Infused Products were defective by virtue of their inadequate warnings at the time they left Defendants' control, and those PFAS-Infused Products reached their end user without substantial change in their condition.

142. The Defendants' failure to warn proximately caused reasonably foreseeable injuries to Class Members, who would have heeded legally adequate warnings about the dangers of PFAS-Infused Products. At all material times, Class Members used their carpets with PFAS-Infused Products as intended.

143. Had the Defendants provided adequate warnings regarding the dangers of PFAS to carpet manufacturers who treated carpets with PFAS-Infused products, the carpet manufacturers would not have treated their carpets with those products. Similarly, had Defendants provided adequate warnings regarding the dangers of PFAS to Class Members about the dangers of carpet treated with PFAS-Infused Products, those products would not have gained widespread acceptance in the marketplace, and Class Members would not have installed the carpets at issue.

144. These and other acts by Defendants were a direct and proximate cause of damages to Class Members.

Private Nuisance

145. The Plaintiff and Class Members incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.

146. The Defendants substantially, intentionally, and/or unreasonably interfered with Plaintiff's and Class Members' use of their land by selling PFAS-Infused Products to carpet manufacturers without disclosing the emissions dangers of PFAS in PFAS-Infused Products, knowing that the carpet manufacturers would sell PFAS-infused carpets to the Class Members without disclosing the emissions dangers of PFAS in PFAS-Infused Products. The Defendants' conduct constitutes a private nuisance.

147. The Defendants knew that Class Members would suffer dangerous PFAS emissions from those carpets, which emissions would endure over time but did not disclose those dangers to Class Members.

148. The Defendants' conduct was a substantial factor in causing harm to the Plaintiff and the Class.

149. The Plaintiff and Class members did not consent to the conduct that resulted in carpets being treated with PFAS-Infused Products.

150. As a direct and proximate result of the Defendants' creation of private nuisances, the Plaintiff and Class Members have suffered and continue to damages. Such damages were foreseeable by the Defendants.

151. The Plaintiff seeks to abate the private nuisances the Defendants created and seeks all necessary relief to abate these private nuisances.

Breach of the *Competition Act*

152. The Plaintiff and Class Members incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.

153. The *Competition Act* applies to business transacted in Canada. The PFAS-Infused Products are "products" within the meaning of sections 2 and 52 of the *Competition Act*.

154. The wrongful conduct of the Defendants includes both express misrepresentations to carpet manufacturers and purchasers of carpets treated with PFAS-Infused products regarding the safety and efficacy of the PFAS-Infused Products, as well as omissions, including the failure to warn of risks to the health, property and the environment.

155. The Defendants knew, or ought to have known, that their representations and omissions were false and misleading in a material respect. As a result, the Defendants breached section 52 of the *Competition Act* and committed an unlawful act because their representations and omissions:

(a) were made for the purpose of promoting, directly or indirectly, the use of PFAS-Infused Products to treat carpets;

(b) were made for the purpose of promoting, indirectly or directly, any business interests of the Defendants;

(c) were made to the public;

(d) were made knowingly and recklessly; and

(e) were false and misleading in a material respect.

156. As a result of the Defendants' breaches of s. 52 of the *Competition Act,* consumers in British Columbia and Canada chose to purchase carpets treated with PFAS-Infused Products, when they otherwise would not have.

157. The Plaintiff and the Class Members suffered damages as a result of the Defendants' unlawful breach of section 52 of the *Competition Act.*

158. The Plaintiff and Class Members also seek their costs of investigation, pursuant to section 36 of the *Competition Act*.

Civil Conspiracy

159. The Plaintiff and Class Members incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.

160. The Defendants and their co-conspirators are liable for the tort of civil conspiracy-both under unlawful means conspiracy and predominant purpose conspiracy.

161. The Defendants and their co-conspirators entered into agreements with each other to use unlawful means which resulted in the loss, injury and damage, including special damages, to the Plaintiff and other members of the Class.

162. The unlawful means used include, but are not limited to, the activities and arrangements pled at paragraphs 113 to 118 above. In furtherance of the conspiracy, the Defendants, along with their agents, servants, and unnamed co-conspirators, carried out the unlawful acts.

163. The unlawful acts particularized herein were directed towards the Plaintiff and the Class.

164. The Defendants and their co-conspirators knew that their unlawful acts would likely cause injury to the Plaintiff and the Class.

165. The Defendants and their co-conspirators were motivated to conspire. Their predominant purpose was to harm the Plaintiff and other members of the Class, in the form of property damage and other damages, by maximizing profits from the sale of PFAS-Infused Products used to treat carpeting in Canada when they knew or ought to have known of the risks posed by the intended use of their PFAS-Infused Products.

166. The Defendants and their co-conspirators intended to cause loss, injury and damage to the Plaintiff and the Class. In the alternative, the Defendants and their co-conspirators knew in the circumstances that their unlawful acts would likely cause injury.

167. As a result of the Defendants' unlawful conduct, the Plaintiff and the Class have suffered damages and losses.

168. Further, and in the alternative, the Plaintiff pleads that he and the Class Members are entitled to the remedies of accounting and disgorgement of profits or revenues, based on equitable and restitutionary principles.

169. As a result of the Defendants' conduct described herein, the Plaintiff and the Class have a legitimate interest in preventing the Defendants' profit-making activity and to have monetary relief assessed in an amount equal to the gross revenues earned by the Defendants, or the net income received by the Defendants or a percentage of the proceeds from the sale of PFAS-Infused Products used to treat carpeting, as a result of the Defendants' conduct. As an expected and intended result of their unlawful conduct, the Defendants' have profited and benefitted from the sales of PFAS-Infused Products used to treat carpeting that would not have been made but for the unlawful conduct.

Fraudulent Concealment and Discoverability

170. The Defendants intentionally and fraudulently concealed the existence of their unlawful conduct and the dangers of PFAS from the public, including the Plaintiff and the Class.

171. The affirmative acts of the Defendants alleged herein were fraudulently concealed and carried out in a manner that precluded detection.

172. The Plaintiff and the Class did not discover, and could not have discovered through the exercise of reasonable diligence, the existence of the Defendants' wrongful conduct particularized herein, the loss or damage having occurred or that it was caused or contributed to by the Defendants' actions or inactions, or that a court proceeding would be an inappropriate means to seek to remedy the injury until this action was filed.

Tolling of the *Limitation Act*, S.B.C. 2012, c. 13

173. The Plaintiff and Class Members did not know, and could not reasonably have discovered: (i) that their carpeting contained PFAS-Infused Products; or (2) the Defendants' deception with respect to the harms caused by those products.

174. Within the period of any applicable provincial statutes of limitation, the Plaintiff and Class Members could not have discovered through the exercise of reasonable diligence that their carpets contained PFAS that would continue to be emitted into the environment throughout the life of the carpeting.

175. The Plaintiff and Class Members did not discover, and did not know of, facts that would have caused a reasonable person to suspect that Defendants did not report information within their knowledge to government regulators or to consumers; nor would a reasonable and diligent investigation have disclosed that the Defendants had concealed information about PFAS.

176. For these reasons, all applicable provincial statutes of limitation have been tolled by operation of the discovery rule with respect to all claims alleged herein.

177. The Defendants are and were under a continuous duty to disclose to the Plaintiff and Class Members the true character, quality, and nature of carpeting treated with PFAS-Infused Products.

178. The Defendants knowingly, affirmatively, and actively concealed or recklessly disregarded the true nature, quality, and character of the PFAS infused into the Plaintiff's and Class Members' carpeting.

179. Based on the foregoing, the Defendants are estopped from relying on any provincial statutes of limitations in defense of this action.

Plaintiff's(s') address for service:

Dusevic & Garcha
Barristers & Solicitors
#210 - 4603 Kingsway
Burnaby, BC V5H 4M4
Canada

Fax number address for service (if any):

604-436-3302

E-mail address for service (if any):

ksgarcha@dusevicgarchalaw.ca

Place of trial:

Vancouver, BC, Canada

The address of the registry is:

800 Smithe Street
Vancouver, BC V6Z 2E1
Canada

Dated: September 11, 2024

Signature of K.S. Garcha

lawyer for plaintiff(s)

ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE OUTSIDE BRITISH COLUMBIA

There is a real and substantial connection between British Columbia and the facts alleged in this proceeding. The Plaintiff and the Class Members plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act* R.S.B.C. 2003 c.28 (the "*CJPTA*") in respect of these Defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to sections 10(e)(i), (iii)(a) & (b), (f), (g), (h) and (l) of the *CJPTA* because this proceeding:

(e)(i) concerns contractual obligations to a substantial extent, were to be performed in British Columbia:

(e) (iii)(a) & (b) the contract is for the purchase of property, services or both, for use other than in the course of the purchaser's trade or profession, and resulted from a solicitation of business in British Columbia by or on behalf of the seller;

(f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;

(g) concerns a tort committed in British Columbia;

(h) concerns a business carried on in British Columbia;

(i) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The within proposed consumer product liability multi-jurisdictional class proceeding involves the sale and installation of carpets treated with toxic stain repellants designed, developed, testsed, manufactured, marketed, distributed and/or sold by the Defendants, who failed to disclose the dangers of their stain repellants to carpet manufacturers and consumers, who suffered property damage arising from the emission dangers of their carpeting infused with toxic stain repellants.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

[ ] motor vehicle accident

[ ] medical malpractice

[ ] another cause

A dispute concerning:

[ ] contaminated sites

[ ] construction defects

[ ] real property (real estate)

[ ] personal property

[ ] the provision of goods or services or other general commercial matters

[ ] investment losses

[ ] the lending of money

[ ] an employment relationship

[ ] a will or other issues concerning the probate of an estate

[x] a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[x] a class action

[ ] maritime law

[ ] aboriginal law

[ ] constitutional law

[ ] conflict of laws

[ ] none of the above

[ ] do not know

Part 4:

1. *Class Proceedings Act*, R.S.B.C. 1996, c. 50

2. *Canadian Environmental Protection Act,* 1999, SC 1999, c.33

3. *Prohibition of Certain Toxic Substances Regulations*, 2012, SOR/2012-285

4. *Competition Act*, R.S.C 1985, c. C-34

5. *Court Jurisdiction and Proceedings Transfer Act*, R.S.B.C. 2003 c. 28

6. *Limitation Act*, S.B.C. 2012, c.13; *Limitations Act*, RSA 2000, c. L-12; *The Limitations Act,* SS 2004, c. L-16.1; *The Limitations Act*, SS 2004, c. L-16.1; *The Limitation of Actions Act,* CCSM c. L150; *Limitations Act,* 2002, SO 2002, c. 24, Sch. B; *Limitations Act*, SNL 1995, c. L-16.1; *Limitation of Actions Act*, SNS 2014, c. 35; *Limitation of Actions Act*, SNB 2009, c. L-8.5; *Statute of Limitations*, RSPEI 1988, c. S-7; *Limitation of Actions Act*, RSY 2002, c. 139; *Limitation of Actions Act*, RSNWT 1988, c. L-8; *Limitation of Actions Act,* RSNWT (Nu) 1988, c. L-8

7. *Court Order Interest* Act, R.S.B.C., c. 79

[redacted]